

1/31/63
File: URE Privileges Article

Memorandum No. 63-10

Subject: Study No. 34(L) - Uniform Rules of Evidence
(Rule 36.1--Newsman's Privilege)

The Commission has not considered the Newsman's Privilege as yet. Neither has the State Bar. Attached to this memorandum as Exhibit I is a brief statement by Dean Hale of the University of Southern California which was prepared in 1937 in connection with a Tentative Draft of a Partial Recodification of the California Law of Evidence for the California Code Commission. You should also read pages 118 to 137 of the Study in connection with this privilege.

The statement of the proposed rule on the yellow pages included among the Uniform Rules was prepared by the staff. Like the privilege stated in Rule 36, the Newsman's Privilege is a privilege not to reveal a source of information. Hence, the statement of the Newsman's Privilege in Rule 36.1 is based on Rule 36. Appended to the draft of Rule 36.1 are comments showing the difference between Rule 36.1 and Rule 36.

You should also compare Rule 27 of the New Jersey Statute on privileges which appears on page 6 of the green pages attached to Memorandum 63-2. Comments on this rule on the pink and white pages merely indicate that the New Jersey Commission and Committee felt some obligation to retain the existing New Jersey law.

The existing California law is contained in subdivision 6

of Section 1881 of the Code of Civil Procedure:

6. A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a court, the Legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station be so adjudged in contempt for refusing to disclose the source of any information procured for and used for news or news commentary purposes on radio or television.

The second paragraph of the quoted subdivision and the reference to wire services and press associations in the first paragraph were added by amendment in 1961. Some attempt was made at the 1961 session to add news magazines but the attempt was unsuccessful. The principal difference between the rule contained in Code of Civil Procedure, Section 1881 and Rule 36.1 is that the proposed Rule 36.1 grants but a discretionary privilege while the privilege contained in Code of Civil Procedure Section 1881 is absolute.

Respectfully submitted,

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NEWSPAPER-INFORMANT PRIVILEGE

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It is recommended that this privilege, (section 1881(6), Code of Civil Procedure) established by the legislature in 1935, be abolished. It closes one more door to information that may be needed in a judicial proceeding, without a corresponding gain in social advantage. Some reason can be assigned for protecting every confidential communication. The tendency is becoming epidemic. This privilege has recently gained recognition in a few states. Accountants have also secured similar legislation to a slight extent. Social workers are now wishing to be included. If a few more doors can be closed we can probably effectually stop all litigation by closing all avenues to the facts. For a special criticism of this code provision see 9 So. Calif. Law Rev. 343.