

1. **OVERVIEW: MILLER.**

1. History: Branzburg indicated that there was no 1Am journalist's privilege and suggested that Congress should create a federal shield law. But courts began to distinguish Branzburg on the facts and interpreted a JP generally. Also, states began created their own shield laws. As a result, there is no federal statutory privilege, there are numerous state statutory privileges, and there is an inconsistently applied constitutional privilege.
2. Issue: Is information protected?: The constitutional privilege has been most consistently applied to protect the sources of news information. It's unclear whether this protection can be extended to cover news information directly, in order to not reveal information which could disclose a source. Also, sources generally refer to human informants, but occasionally news research has been interpreted as a source. Is Sheridan's information a confidential source, related to the protection of confidential human sources, or not a source at all?
3. Issue: How much information protected?: If information is protected though not as a source, it's unclear if there must still be some relation to source protection. Some courts indicate that unpublished information is generally protected and other courts only extend the protection for confidentiality of sources purposes. Did Sheridan's deposit of the information in a public library make the theory of protecting confidential sources inapplicable? If so, is the relation to protecting confidential sources determinate?
4. Issue: Is disclosed information protected?: Courts argue about protections over information relating to news which has been published. Some say that while unpublished news and background information related to unpublished news can be protected, background information related to published news, such as video outtakes and notes, should not be protected. But the further question of whether the published news itself, and not the background information related to published news, has not been explored because such information is usually readily available. Did Sheridan's deposit of the information in a public library, though not for public viewing, constitute a disclosure so that such information, generally regarded as background information, was actually "published" news?
5. Issue: