

A sampling of editorial comment on a Federal Shield Law

Contra Costa Times

<http://www.contracostatimes.com/mld/cctimes/15269524.htm>

Pass federal shield law

OFTEN THE ONLY way a journalist can ferret out information about waste, fraud and abuse in government and the private sector is through the use of confidential sources. Without confidentiality many knowledgeable and reliable sources would refuse to say anything, slowing the free flow of information that the public needs to be informed voters and consumers.

The forced disclosure of confidential sources and information undermines one of critically important roles of journalists as public watchdogs.

The need for protecting journalists from revealing confidential sources and unpublished information has been broadly recognized on the state level.

Thirty-one states and the District of Columbia have statutory shield laws giving journalists some form of privilege against compelled production of confidential or unpublished information. Eighteen states have established varying confidentiality privileges for journalists through their courts.

The public also heavily supports shield laws for journalists. American Journalism Review found that 69 percent of Americans agree with the statement: "Journalists should be allowed to keep a news source confidential."

Despite the support of the public and virtually every state government, there remains a gaping hole in efforts to protect journalists from forced disclosure of confidential sources and information. Federal courts can compel journalists to reveal sources and unpublished materials because there is no federal shield law.

With increasing threats to the effectiveness of journalism by federal prosecutors, there has never been a greater need for a national shield law.

Over the past five years, three federal courts of appeals have affirmed contempt citations issued to reporters who declined to reveal confidential sources, each imposing prison

sentences more severe than any previously experienced by journalists in American history.

That is one reason why the California Legislature is considering a resolution by Assemblywoman Noreen Evans, D-Santa Rosa, to press Congress to pass a federal shield law for journalists. Attorneys general of 34 states also support such protection for confidential sources. The measure, AJR 31, deserves the full support of everyone in Sacramento.

California's Legislature cannot force Congress to pass a shield law, but it, along with other states, can put pressure on federal lawmakers to take action. California has the largest congressional delegation in the nation. It would be encouraging for a free and effective press if broad bipartisan support were given to a federal shield law by the state's 53 House members and two senators.

The most important beneficiaries of shield laws are the American people, who deserve to know all they can about their public officials and private enterprises that have such a huge impact on their lives.

Vallejo (Ca.) Times-Herald

http://www.timesheraldonline.com/ci_4136942

Shield laws more vital than ever

Journalists are an essential part of this country's democratic freedom, but they are neither government informants nor government employees.

So when journalists investigate alleged corruption in government agencies, their sources and notes do not belong to the government and should be protected from government subpoena or seizure.

An independent press must be free to question people who work inside government and free to report what they say while protecting the identity of whistle-blowers who otherwise would conceal wrongdoing, corruption or criminality.

Yet, federal courts are still able to throw journalists in jail for refusing to disclose their sources. First Amendment freedoms are still not strong enough to keep those at the highest level of our government from intimidating working journalists.

Most states already have protective legislation in place for their journalists. Laws that shield reporters from the courts exist in California, 30 other states and in the District of Columbia.

Journalists covering the federal government, however, do so without a net. That is why the courts were able to hold Judith Miller of The New York Times and Matthew Cooper of Time magazine in contempt for refusing to divulge the identities of confidential sources to federal investigators.

Those two cases are just part of a worsening problem. Last year, 22 reporters received federal subpoenas to divulge privileged information, according to the Reporters Committee for Freedom of the Press.

That compares with an average of fewer than nine per year from 1991 to 2001.

It is a trend that must be halted at all levels. The federal courts should be told in new legislation that reporters, their notes and source material is out of bounds. Jailings and subpoenas already are having a chilling effect on news organizations that must be free to investigate without the burden of constant harassment and legal wrangling.

Two bills are before Congress that would protect a journalist's ability to protect confidential sources.

Neither bill is the absolute protection journalists need, each hedging the need to "maintain the free flow of information to the public" with conditions. But the conditions are extreme and should not affect the normal course of journalistic work.

California's Legislature on Tuesday will take up a joint resolution that will encourage the House and the Senate to act on these two bills now sitting in congressional committees and to enact a federal shield law.

This legislation was written by Vallejo's own Assemblywoman Noreen Evans and sponsored by the California Newspaper Publishers Association. We urge its approval, so that California's nudge toward better federal laws can be combined with other states that are also sending in their support for a free press on a federal level.

Evans' Assembly Joint Resolution 31 stresses that "a free press is vital to the publication of important news within our society so that our government is accountable to its citizens."

It notes that 69 percent of Americans agree with the statement: "Journalists should be allowed to keep a news source confidential."

Evans' bill was introduced last year and approved by the Assembly on a vote of 70-0 before the Legislature adjourned for the year. It's time to finalize it, and for Congress to remember that a true democracy encourages the free flow of ideas.

It's hard to reconcile that tenet with the sight of a reporter sitting behind bars because he or she sought to protect not only a free flow of ideas, but also a constitutional principle that has flourished for more than 200 years.

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

http://seattlepi.nwsourc.com/opinion/258995_shielded.html

Capitol Watch: Shields up

The Legislature is set to vote on measures that would set into state law safeguards that journalists have had to depend on the courts to maintain on a case-by-case basis.

.While the benefit to professional journalists is obvious, the fundamental public benefit is more extensive and important.

Insiders are the most often the source of disclosures about corruption and criminal behavior within governments and corporations. They are both privy to damning information and subject to retaliation if they're exposed as the source. So the free flow of information may depend on a reporter's or author's ability to promise anonymity and keep that promise, even in the face of demands from government or the courts that they break it.

House and Senate versions of the state bill await only a floor vote. Reporters, researchers, scholars or others would have absolute protection from having to disclose their anonymous sources. A judge could order disclosure of their notes, tapes and other "work product," but only under a set of specific standards. Physical evidence of a crime, however, would have to be disclosed.

We're concerned that the definition of those covered by each privilege may be too narrow. It would not seem to cover, for instance, those who pursue information without being specifically paid to do so. Not all critics and truth seekers are on a payroll. It may still be up to the courts, as time and technology continue to change the nature and distribution of information, to ensure that the law, once imposed, shields all those it should.

Los Angeles Times

<http://www.latimes.com/news/printedition/opinion/la-ed-shield06jun06,1,2568880.story>

Media sources need a shield

Give journalists -- however they're defined -- protection for their sources.

June 6, 2006

FIVE NEWS ORGANIZATIONS — including the Los Angeles Times — agreed last week to pay a total of \$750,000 to Wen Ho Lee, a former nuclear scientist who was

arrested in 1999 and jailed for nine months as part of an espionage investigation at the Los Alamos National Laboratory in New Mexico.

The payments, part of a negotiated settlement of Lee's lawsuit accusing the U.S. government of leaking information to the media from his personnel files, mean that reporters for The Times and the other news organizations won't be punished for declining to identify confidential sources.

Some free-press advocates expressed concern that the payments would encourage the subjects of other stories based on confidential sources to seek similar payments.

But that slippery slope can be avoided if Congress follows the example of two-thirds of the states (including California) and enacts a "shield law" providing limited but real protection to journalists' confidential sources.

The Senate and the House are considering different versions of the Free Flow of Information Act. Both bills would require that journalists be questioned about confidential sources only after investigators or other parties have exhausted attempts to obtain the information elsewhere — a codification of current Justice Department guidelines.

Equally important, both bills also would allow judges to weigh the reporter's privilege against the importance of the government's interest in breaching confidentiality. The Senate bill eloquently emphasizes that *two* public interests must be balanced: "the public interest in compelling disclosure and the public interest in news gathering and maintaining a free flow of information to citizens."

Where the bills differ is in the definition of those who could assert the confidentiality privilege.

The Senate bill, supported by Judiciary Committee Chairman Sen. Arlen Specter (R-Pa.), defines a journalist as someone who "for financial gain or livelihood" reports, writes or takes photographs for a newspaper, book publisher, radio or television network or "Internet news service."

The House bill extends the privilege to anyone who "publishes a newspaper, book, magazine or other periodical in print or electronic form" — a formulation that is friendlier to bloggers and student journalists but is too sweeping for some members of Congress.

We favor this broader approach, but not to the point of blocking legislation that could bring federal protections at least in line with those offered by California and states with similar laws.

The California law, which is part of the state Constitution, protects "a publisher, editor, reporter or other person connected with or employed upon a newspaper, magazine or

other periodical publication, or by a press association or wire service, or any person who has been so connected or employed." (Recently a state appeals court extended the law's protection to online news services as well.)

The day may come when Congress or the states will provide greater legal protection for bloggers and "nonprofessional" journalists. For now, the priority is to make federal law at least as protective of traditional journalists' confidential sources as the laws of most of the states

Washington Post

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/14/AR2006061402098.html>

Reporters and Sources

Congress considers a federal shield law.

Thursday, June 15, 2006; A26

PERHAPS AS EARLY as today, the Senate Judiciary Committee could report out a bill to create a modest privilege for reporters to protect their confidential sources in criminal and civil proceedings. Lawyers, priests, psychotherapists and others enjoy varying degrees of such protection for their confidential conversations; so do reporters in almost all state courts. Several recent cases -- the Valerie Plame investigation and the recently settled Wen Ho Lee civil lawsuit most prominently -- have served as reminders of the need for a shield in federal court as well. The issue is whether reporters or their employers should face jail or ruinous fines for doing what they have to do to bring the public the news it expects: honoring their promises of confidentiality to sources.

A bill sponsored by Republican Sens. Richard G. Lugar (Ind.) and Arlen Specter (Pa.) and Democrats Charles E. Schumer (N.Y.) and Christopher J. Dodd (Conn.) would not shield journalists in all situations; far from it. In criminal cases, it would allow prosecutors or defendants to subpoena reporters when they have exhausted alternative means of garnering needed information and when a judge finds disclosure, on balance, in the public interest. In civil cases, a judge could compel disclosure of a confidential source when it was "critical to the successful completion of the civil action" and "nondisclosure . . . would be contrary to the public interest" taking into account "the public interest in newsgathering and in maintaining the free flow of information to the widest possible degree about matters that enter the public sphere."

That free flow of information is what this is about. We don't pretend to be unbiased; representatives of The Washington Post Co. have advocated for the bill. But we firmly believe there's a larger interest here. History makes clear that critical stories, including the exposure of executive malfeasance that we remember as the Watergate scandal, have depended on the confidence of potential sources in journalists' willingness and ability to protect their identities. That ability is under threat. The result could be less reporting on

government overreaching and wrongdoing -- and less of the kind of openness on which any democracy depends.

The Missoulian, Missoula, MT

<http://www.missoulian.com/articles/2006/06/04/opinion/opinion1.txt>

'Shield' protects you more than reporters

-Sunday, June 4, 2006

SUMMARY: It's not about us keeping our reporters out of jail so much as you keeping access to information.

In our profession, as most, there are characters who we wouldn't mind seeing behind bars, if not water-boarded. Even within the news media, the news media can be annoying.

But the federal government's recent penchant to jail or threaten to jail journalists for publishing or broadcasting information officials want kept secret is a danger - not to journalists, who can easily avoid jeopardy, but to you. At the bottom of efforts to crack down on information leaked to the press is the government's insistence that the public be kept in the dark. What's under attack isn't press freedom but democracy. Democracy functions only through the participation of an informed citizenry. Democracy gives way to despotism when the only information citizens have is that which the political elite want them to have.

This is why new legislation to create a federal "shield law" for reporters is worthy of your support - not for the sake of journalists. For your own sake.

The "Free Flow of Information Act," introduced in the U.S. Senate on May 18, would do at the federal level what laws in Montana and dozens of other states do at the state level - protect reporters from government coercion to reveal the identity of confidential sources. This is a moderate bill that balances the public's right to know with legitimate criminal investigation needs and national security. There's no blanket immunity for reporters called to testify, and we aren't arguing there should be. But the legislation at least tries to differentiate between disclosures that are merely embarrassing or politically damaging to the government and those that present real and present dangers to national security. The law also includes a provision requiring reporters to testify about crimes to which they're a witness and to reveal sources when, in a judge's opinion, the information is necessary to prevent death or physical harm.

Now we'll let you in on a little secret: No journalist fears going to jail. Not really. A few hours or days behind bars gets you lionized in our business. It's a career-maker guaranteed to cement any journalist's reputation as a courageous defender of the First Amendment - whether that's actually the case or not. Any journalist who doesn't want to risk jail, of course, can simply avoid reporting sensitive information, not take information from confidential sources or sing like a canary to the grand jury.

On the other hand, we can tell you that many people who know things that you want to know, or at least ought to know, very much do fear going to jail. They fear losing their jobs and incomes, defaulting on their mortgages and not being able to buy shoes for their children. For a good many government workers, the way to get ahead is to do whatever's best for those in power, to heck with the public and democracy. Government insiders who spill the beans almost never are celebrated in their professions the way jailed journalists are. That's not right, but it's correct.

If there were a way to ensure a flow of information to you and other citizens without protecting reporters from government coercion, we'd be willing (perhaps gleeful at times) to see some of our colleagues hauled off in leg irons now and then. Perhaps there'll come a time in the Information Age when everyone's his own investigative reporter, when everyone has the ability to keep tabs on the government and spread the word over the Internet. But for now, for better or worse, the main conduit citizens have for information needed to keep their own government in check is the news media.

Not all the information that comes through that conduit is good. Some of it is not. We can't think of anyone better to judge the quality and usefulness of that information than you - certainly not those in the government. The purpose of a federal shield law for reporters is to allow you - rather than the government - to decide what you need to know

Daily Herald, Provo, Utah

<http://www.heraldextra.com/content/view/190725/3/>

News sources need protection

Two more reporters are facing jail time for refusing to reveal confidential sources in matters of great public concern.

Meanwhile, legislative bills that could keep them out of jail languish in congressional committees.

Lance Williams and Mark Fainaru-Wada of the San Francisco Chronicle have been ordered to reveal who leaked grand jury testimony regarding an investigation into a lab supplying athletes with steroids.

The reporters were the ones who broke the story that several major-league baseball players were using performance-enhancing drugs supplied by a San Francisco-area laboratory. The stories were based on transcripts of a secret grand jury probe of the lab.

Had they come before a California state judge, Williams and Fainaru-Wada would not be facing jail time; they would be protected by a state law granting reporters the right to keep their

sources confidential. Unfortunately, they are in federal court where no such privilege exists.

If their appeal fails, Williams and Fainaru-Wada would not be the first reporters sent to jail for refusing to out a source. New York Times reporter Judith Miller spent 85 days in jail for refusing to divulge who told her the identity of CIA operative Valerie Plame. Freelance writer Vanessa Leggett was incarcerated for almost 18 months for refusing to turn over notes on a murder case to federal investigators.

Some members of Congress are trying to fix the problem by creating a federal shield law. It is long overdue.

Sen. Richard Lugar, R-Ind., has sponsored a bill in the Senate creating a qualified privilege for reporters. Reps. Mike Pence, R-Ind., and Rick Boucher, D-Va., have sponsored a similar bill in the House. The proposed laws would create a privilege requiring government to exhaust all other avenues for obtaining information before compelling a reporter to identify a confidential source.

They also require the government to establish that a greater public good is served by compelling reporters to reveal their sources than is served by the free flow of the information itself.

At present, the bills are stalled in the House and Senate Judiciary Committees. Some lawmakers are expressing concerns about allowing reporters to protect sources who divulge information pertaining to national intelligence gathering. The measures also face opposition from the Department of Justice on the grounds that they would impede the pursuit of terrorists.

We find both worries to be unfounded. These bills deserve a fair hearing in the committees and a debate by the full House and Senate.

A reporter's privilege would benefit the public by allowing the media to bring information on important public issues to light without fear. Many times, people who have knowledge of such matters do not want to come forward for fear of retaliation. Allowing journalists to protect the identities of such sources ensures that the public gets the information it needs.

Watergate, the Pentagon Papers and the Pike report about CIA assassinations, domestic spying and other misdeeds are among the major stories that likely would not have been reported if sources could not come forward with an assurance of confidentiality. Williams and Fainaru-Wada's reports led to a Congressional inquiry into steroid abuse in baseball. They also spurred Major League Baseball to enact a meaningful policy on steroids. Reforming the national pastime is a fair trade for allowing reporters to protect their sources.

We urge Utah Republicans who sit on the judiciary committees in Congress -- Sen. Orrin G. Hatch and U.S. Rep Chris Cannon -- to urge a hearing of this matter soon. Journalists must have the means to fulfill their First Amendment mandate of keeping government accountable to the people.

Wisconsin State Journal

<http://www.madison.com/wsj/home/opinion/index.php?ntid=96047&ntpid=1>

Ruling an assault on press freedom

August 23, 2006

Reporters should not be forced to reveal their sources. Such a demand infringes on the freedom of the press -- a constitutional guarantee -- and its right to inform and educate the public.

Many people take immense safety and career risks to reveal wrongdoing. Protecting a source's confidentiality ensures that sensitive information is offered without fear.

That's why a federal judge is wrong to threaten two San Francisco Chronicle reporters with jail time if they don't reveal who leaked grand jury testimony on steroid abuse among U.S. athletes.

Reporters Mark Fainaru-Wada and Lance Williams worked hard to reveal steroid abuse and other problems in Major League Baseball. Their stories led to a congressional inquiry and new rules on steroids testing and use.

At no time did they break the law. They reported information that, according to the Chronicle, already had been turned over to countless sources as part of discovery.

They did not reveal any information threatening national security. They wrote about baseball, steroids and athletes.

So it's downright ridiculous that those who may have broken the law -- athletes who testified before a grand jury in exchange for immunity from prosecution -- are free, while the reporters who did nothing wrong are facing jail time. The case is a travesty.

Whistleblowers, whether they choose to be anonymous or named, often uncover corruption in government, business and sports. And they share what they know with the one powerful watchdog for the public's interest -- a journalist.

Tampering with this relationship has long been a way for officials to hide their chicanery. And it's a blatant attempt to scare sources and reporters into silence. Examples abound, from Watergate in the 1970s to the more recent attempt by the Bush administration to force The New York Times reporters to reveal who leaked information about a secret program to spy on Americans without warrants.

Ultimately such attempts hurt the free flow of information that protects the public and helps it make electoral, health-care, safety and other choices. U.S. District Judge Jeffrey White's ruling last week enforces one such damaging attempt.

These assaults on the First Amendment should stop. Congress should pass the Free Flow of Information Act, introduced in the House and Senate this year.

This federal law would enhance protections in several states, including Wisconsin, that shield the public, journalists and sources from irresponsible threats. Protecting the press means protecting the public's right to know.

Orange County Register

http://www.ocregister.com/ocregister/opinion/homepage/article_1152560.php

Watch what you read

Gonzales hints at leak prosecutions

Attorney General Alberto Gonzales may have simply been launching a trial balloon on one of the Sunday political chat shows when he hinted that certain laws could be interpreted to authorize the prosecution of journalists who receive leaks of classified material. If so, that trial balloon needs to be punctured. If not, the law needs to be changed. If it's intended as intimidation, Mr. Gonzales deserves the scorn all bullies deserve.

On ABC's "This Week" Sunday, Mr. Gonzales was asked if he can prosecute journalists for publishing classified information. The administration is reportedly upset about the story last December that revealed the National Security Agency's warrantless wiretapping of Americans in telephonic communication with alleged terrorist suspects overseas, among others. His careful lawyer's answer deserves careful analysis.

"There are some statutes on the book which, if you read the language carefully, would seem to indicate that that is a possibility. That's a policy judgment by the Congress in passing that kind of legislation. We have an obligation to enforce those laws."

Mr. Gonzales is almost certainly referring to the World War I-era 1917 Espionage Act, which made it a crime for "unauthorized persons" to receive national defense information and transmit it to others. The Justice Department is using that act, which hadn't been invoked for years, to prosecute two pro-Israeli lobbyists, although the judge in that case is considering a motion to dismiss the charges on the contention that the old law is unconstitutionally vague and violates the First Amendment.

If that provision, written before World War II, the Cold War and the rise of the National Security State, were applied literally, it could make journalists who publish such material criminals. It could also make criminals of whistle-blowers seeking to reveal government abuses of power, of academics who write papers and books about leaked information, of

members of Congress who discuss classified material, and perhaps even of readers of newspapers who discuss stories based on leaked information with their friends.

Mr. Gonzales is more than a little disingenuous in trying to make it seem as if policy judgments by Congress could "force" the administration to go after journalists. The 1917 Espionage Act was not passed by the current Congress to force the administration's hand. It has never been applied against journalists because most authorities believe the First Amendment would protect journalists and others from its provisions. Indeed, during the Clinton administration Congress passed a law to criminalize leaks of classified material (which Mr. Clinton vetoed) precisely because people on all sides of the issue understood that then-current law (including the Espionage Act) did not criminalize most leaks.

Government officials who receive security clearances and promise not to divulge classified material are a different story. They have made contractual assurances and been entrusted with secret information. Ordinary citizens – and yes, that includes journalists – are under no such contractual obligation.

Unfortunately, government has become so big, so secretive, and so inclined to classify material that is embarrassing or scandalous rather than vital to national security that whistle-blowers and leakers are sometimes the only way citizens can learn what government is really doing in their name. Prosecuting journalists would not be the end of freedom as we know it, but it would be a step on the road to more overbearing government.