



## Reporter Shield: Protecting the Free Flow of Information

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*What is the role of the press?*

**Freedom of the press promotes speech and self-governance for all Americans.** Journalists provide information voters need to evaluate candidates. They uncover unlawful acts by elected representatives and expose government abuses of power. Investigative reporting helps ensure the government is open to public scrutiny. Liberty is lost without a free and independent press.

*How does confidential information help journalists inform the public?*

**Confidential information maintains the independence of the press.** The government often hides embarrassing or unlawful activities in the name of national security. Watergate and the Pentagon Papers became public only after informants were assured anonymity. More recently, confidential sources broke stories about illegal government programs including torture, warrantless wiretapping, kidnapping, and illegal detention. The government has used subpoenas to chill confidential sources from coming forward so many unfavorable stories will not be reported.

*What is a reporter shield law?*

**Reporter shield laws allow journalists to do their jobs without government interference.** These laws protect a news journalist from testifying about confidential information and the sources of that information when obtained during the process of gathering and disseminating news to the public.

*Do the states have any reporter shield laws?*

**Forty-nine states and D.C. recognize some form of reporter shield.** However, the lack of a federal reporter shield law has resulted in a hodge-podge of protection that undermines even the strongest state law. Increasingly, the Justice Department is exploiting the press's vulnerability by subpoenaing journalists and their notes in a way one former senior Bush official denounced as a "reckless abuse of power."

*Aren't journalists protected from compelled disclosure by the First Amendment?*

**In 1972, the Supreme Court asked Congress to enact a legislative solution.** In *Branzburg v. Hayes*, five justices concluded the First Amendment provided the press with at least some protection from government investigations. However, a majority of justices were unwilling to fashion a specific shield rule. Instead, the Court invited Congress to "determine whether a statutory newsman's privilege is necessary and desirable and to fashion standards and rules as narrow or broad as ... necessary."

*The Administration says this is a solution in search of a problem. Is that true?*

**No, in recent years over 30 journalists have been jailed for not identifying confidential sources compared to only five convicted under the Sedition Act of 1798.** Today, journalists face more jail time and higher fines than at any other time in American history, often receiving greater punishment than those convicted of the crimes reported by journalists.

*Will journalists always be able to refuse to testify under a federal shield law?*

**No, the proposed federal shield laws all provide for a qualified privilege that is balanced with other interests.** For example, a journalist would be required to identify confidential sources and information that might prove a criminal defendant's innocence or reduce the defendant's sentence.

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