

Protecting The Press -- And the Public

By Mike Pence and Richard G. Lugar

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Freedom of speech and the press are two of the most important rights we Americans possess under our Constitution. They form the bedrock of our democracy by creating a free flow of information to the public.

Unfortunately, these rights are under attack. Nearly a dozen reporters were given or threatened with jail sentences last year for refusing to reveal confidential sources. Compelling reporters to testify, and in particular to reveal the identity of their confidential sources, hurts the public interest. Many whistle-blowers will refuse to come forward, and reporters will be unable to provide our constituents with information they have a right to.

That's why we have introduced the Free Flow of Information Act, or Media Shield Law, with the bipartisan co-sponsorship of Sen. Chris Dodd (D-Conn.) and Rep. Rick Boucher (D-Va.). This bill would set national standards for subpoenas issued to reporters by an entity or employee of the federal government. It strikes a reasonable balance between the public's right to know and the fair administration of justice.

Congress has a history of protecting this right, which is essential to democracy. Last year it enacted legislation that directed the State Department to promote international initiatives to cultivate free, fair, legally protected and sustainable media in developing countries. The National Endowment for Democracy has embraced this effort and is proceeding with implementation.

While we focus on democracy abroad, we cannot let those freedoms erode at home. The Constitution states that freedom of the press shall not be infringed. A cornerstone of our society is the open market for information that the media share with the public. If the media are hampered from gathering the facts in the first place, they risk becoming little more than conduits for government press releases.

Our bill works to solve this problem by setting national standards that must be met before federal officials may issue a subpoena to a member of the news media in any federal criminal or civil case. In the case of a confidential source, the bill provides that a reporter cannot be compelled to reveal the source. In the case of other information, it sets out certain tests that civil litigants or prosecutors must meet before they can force a journalist to turn over information.

Prosecutors must show, for instance, that they have tried unsuccessfully to get the information in other ways and that the information would be crucial to "an issue of substantial importance" in the case. If they were seeking confidential information in a criminal case, they would have to show that a crime had been committed and that the information being sought was essential to the investigation. These protections are enough to ensure that a whistle-blower's identity would be protected when he or she comes forward with information about corporate or government misdeeds, but they would still allow the courts and other federal agencies to do their jobs.

It is important to note what the bill does not do. It doesn't give reporters a license to break the law in the name of gathering news. It doesn't give them the right to interfere with police and prosecutors who are trying to prevent crimes. It leaves laws on classified information unchanged. It simply gives journalists certain rights and abilities to seek sources and report appropriate information without fear of

intimidation or imprisonment, much as, in the public interest, we allow psychiatrists, clergy and social workers to maintain confidences.

It is important to note that this bill is not a radical step. Thirty-one states, including Indiana, plus the District of Columbia, already have their own "shield laws." Most of the provisions in our bill come directly from internal Justice Department guidelines instituted more than 30 years ago during Richard M. Nixon's presidency. Strengthened in the 1980s, the guidelines have been maintained by Republican and Democratic administrations ever since. With the alarming rise in the number of reporters being threatened with jail, it's time to put these guidelines into law and expand Indiana's time-tested approach to federal proceedings nationwide.

Mike Pence is a Republican representative from Indiana, and Richard G. Lugar is a Republican senator from that state.

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