

USA Today Editorial

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[Opposing view: No special privilege](#)

By Michael Battle

At issue is "media shield" legislation that would exempt reporters from the obligation of ordinary citizens to provide information to law enforcement when issued a subpoena. The law is clear. The U.S. Supreme Court declined to interpret the First Amendment "to grant newsmen a testimonial privilege that other citizens do not enjoy." Congress passed a law criminalizing the disclosure of certain categories of classified information.

Notwithstanding these facts, some argue that media-shield legislation is essential for reporters to secure sources for their reporting. Such legislation is unnecessary, and dangerous.

Federal prosecutors rarely subpoena reporters. Doing so requires the approval of the attorney general. Internal policies limit such subpoenas to circumstances where the need is great and there are no reasonable alternatives. Reporters have ample opportunity to challenge subpoenas. In the past 15 years, in only 13 cases have subpoenas been issued to reporters for "confidential source" information — an average of less than one case a year. It's difficult to conceive of a "chilling effect" on legitimate journalism from this record.

Further, a media-shield law could limit the speed and ability of law enforcement to collect evidence and solve crimes. Some proposals would place those decisions in the courts when reporters are subpoenaed. Prosecutors working cases are best suited to make these decisions.

Some proposals would prevent the Justice Department from prosecuting certain leaks of classified information. Our country must keep secrets in order to collect intelligence, hunt terrorists and wage war. Leaks of classified information have severely damaged our national security and put lives at risk. Some claim if we punish such leaks, instances of wrongdoing will never be uncovered. The Intelligence Community whistle-blower Protection Act was created so that such concerns could be raised, while classified information remains protected.

Recent experience shows that reporters have no difficulty recruiting confidential sources under existing law. The notion of changing the law to prohibit disclosure of information that could prove a crime or stop a terrorist attack is unfortunate.