Confidentiality Complications:

How new rules, technologies and corporate practices affect the reporter's privilege and further demonstrate the need for a federal shield law

The Reporters Committee for Freedom of the Press

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Lucy A. Dalglish, Esq.
Gregg P. Leslie, Esq.
Elizabeth J. Soja, Esq.
1101 Wilson Blvd., Suite 1100
Arlington, Virginia 22209
(703) 807-2100

Executive Summary

The corporate structure of the news media has created new obstacles, both financial and practical, for journalists who must keep promises of confidentiality. Information that once existed only in a reporter's notebook can now be accessed by companies that have obligations not only to their reporters, but to their shareholders, their other employees, and the public. Additionally, in the wake of an unprecedented settlement in the Wen Ho Lee Privacy Act case, parties can target news media corporations not just for their access to a reporter's information, but also for their deep pockets.

The potential for conflicts of interest is staggering, but the primary concerns of The Reporters Committee for Freedom of the Press are that:

- because of the 21st-century newsroom's reliance on technology, corporations now have access to notes, correspondence and work-product information that before only existed in a reporter's notebook;
- the new federal "e-discovery" court rules allow litigants to discover vastly more information than a printed page – or even a saved e-mail – would provide during litigation;
- while reporters generally only have responsibilities to themselves, their family, and their sources, a corporation often has responsibilities to shareholders and regulators that can force compromises in the protection of newsgathering materials;
- since so many reporters have said that they would willingly go to jail to protect their sources, some plaintiffs and prosecutors are now threatening to financially ruin the journalist, often with the assumption that news media corporations will back their reporter and pay steep fines;
- the settlement in the Wen Ho Lee case has demonstrated to civil plaintiffs that a large check from news media organizations can be obtained in lieu of confidential information;
- the costs of litigation – both emotional and financial – are weighing heavily on journalists and news media corporations.

If enacted, the proposed Free Flow of Information Act of 2007 will help relieve many of these concerns and ensure that a free flow of information continues to reach the public.

Analysis

In March 2007, Judge Reggie Walton of the District Court of the District of Columbia issued an order advising Dr. Steven Hatfill that proceeding with his Privacy Act lawsuit against the government was "an endeavor" that Hatfill assumed "at his peril if he decides not to further identify the source or sources of the purported improper disclosures." Judge Walton urged Hatfill to "obtain the identity of the alleged source or sources at the Department of Justice and the Federal Bureau of Investigation who allegedly provided information to news reporters" about Hatfill's former status as a "person of interest" in the anthrax attack investigations.

Of course, Hatfill's biggest problem was that the reporters in questions – Jim Stewart of CBS, Brian Ross of ABC, Allan Lengel of *The Washington Post*, Toni Locy of *USA Today*, and Daniel Klaidman and Michael Isikoff of *Newsweek* – had already refused to break promises of confidentiality they made to their sources. The reporters had complied with Hatfill's earlier subpoenas, but they refused to divulge the identities of individual sources at the Justice Department and FBI or talk about any confidential information. Hatfill was going to have to get creative if he wanted to follow Judge Walton's advice.

What happened in the following weeks demonstrated new and dangerous pitfalls of confidential source reporting. In particular, Hatfill's case has shown how corporate responsibilities can conflict with a journalist's ability to disseminate information to the public – and the case is not yet over. Although Hatfill's situation is not the first to showcase these problems, it seems to be a culmination of several cases in recent years that have targeted the new corporate vulnerability of the news media. These cases depict a troubling trend that shows the increasing need for a federal reporter's shield law to protect journalists and the free flow of information without compromising corporate responsibility.

A 'person of interest' takes on the government – and the news media

In the wake of anonymous anthrax attacks that killed five people and injured 17 in 2001, a government investigation of the crimes focused on bio-defense scientist Dr. Steven Hatfill, who was deemed a "person of interest" in the matter by various unnamed individuals at the Justice Department and the FBI.[1] In the end, Hatfill was never charged with a crime, and in 2003 he sued then-Attorney General John Ashcroft and other government officials under the Federal Privacy Act[2] for publicly implicating him in the investigation and leaking that information to reporters. Among

[1] *See, e. g.*, Eric Schmitt, *Scientist Denies Being Involved in Anthrax Plot*, N.Y. TIMES, Aug. 12, 2002 at A1; *see also* Toni Locy, *Anthrax Investigators Tail Scientist '24/7'*, USA TODAY, May 28, 2008; *see also* Rachel Smolkin, *Into the Spotlight*, AM. JOURN. REV., Nov. 1, 2002.

[2] "The Privacy Act provides a private right of action against a government agency when records pertaining to an individual have been improperly disclosed by that agency. When a court finds that an agency made such a disclosure 'in a manner which was intentional or willful,' the United States is liable for damages plus attorneys' fees and costs." *Lee*, 413 F.3d at 55; *see generally* Privacy Act, 5 U.S.C. § 552a (2006) (internal citations omitted).

other things, Hatfill claimed that he lost his job as a government contractor and said he has been unable to find employment since being publicly identified by the news media in the investigation.[3]

In February 2004, Judge Walton – who also presided over I. Lewis "Scooter" Libby's perjury and obstruction of justice trial surrounding the leak of former CIA operative Valerie Plame's identity to the press – first approved the use of news media subpoenas in Hatfill's Privacy Act suit. However, anticipating legal challenges by the news media, Hatfill's attorneys declined to issue the subpoenas. In late 2004, Walton approved similar subpoenas again and ordered as many as 100 federal agents to waive any confidentiality agreements they had with the media.

Beginning in December 2004, a number of news organizations received subpoenas to provide documents and testimony in the case. At least 13 subpoenas were served at that point. Four subpoenas were voluntarily withdrawn, but nine subpoenas – served on ABC, CBS, NBC, The Associated Press, *The Washington Post*, *Newsweek*, Gannett Co., the *Los Angeles Times*, and former *Baltimore Sun* reporter Scott Shane – were contested. In May 2005, Hatfill voluntarily withdrew these subpoenas after the government backed down from its earlier position refusing to make witnesses available and finally allowed federal employees to testify. Another round of subpoenas was subsequently served on Stewart, Ross, Lengel, Locy, Klaidman and Isikoff. The reporters agreed to testify at depositions, but they refused to answer questions related to the names of individual sources or other confidential material. The deposition testimony revealed that the sources were within the Justice Department, but the reporters refused to name names.

Hatfill declined to file motions to compel until the March 2007 order issued by Judge Walton urged Hatfill to compel the testimony or risk losing his case. Following that order (and perhaps taking it further than Judge Walton intended), Hatfill not only filed motions in April to compel the testimony of the six reporters, but also subpoenaed eight news organizations. On top of that, Hatfill went a step further – he issued new subpoenas to corporate parties The New York Times Company, *The Baltimore Sun* and subpoenaed more journalists, including six *Washington Post* reporters[4] and Mark Miller of *Newsweek*.

The promise of corporate 'deep pockets'

So why would Hatfill subpoena the news media companies when it was the journalists themselves who knew the identity of the government sources? He was simply following in the footsteps of other plaintiffs and prosecutors who have now realized that corporate news media parties often have more vulnerabilities – and more money – than individual reporters. Faced with the reality that many journalists are ready and willing to go to jail to protect their sources, those who seek journalists' confidential information have begun to seek alternative ways to compel testimony or obtain confidential information. And if that fails, they can seek large sums of money from the "deep pockets" of the news media corporations.

[3] *See* Schmitt, *supra* at note 1.

[4] Marilyn Thompson, David Snyder, Guy Gugliotta, Tom Jackman, Dan Eggen and Carol D. Loennig – all of the *Washington Post* – have now received subpoenas as well.

It has been well-documented in the news that several journalists over the past decade have either gone to jail willingly or said that they would go to jail rather than betray promises made to sources in the course of their employment.[5] The jailing of former *New York Times* reporter Judith Miller and the potential jail time faced by *San Francisco Chronicle* reporters Mark Fainaru-Wada and Lance Williams[6] received an enormous amount of attention from the public, and many other journalists have also pledged to take their source's identity to the jail cell as well.[7] So what's a plaintiff to do? If a party can't coercively compel a journalist's testimony by threatening jail time, some are now threatening to financially ruin the journalist. But most parties also assume that in most situations, the news media corporation will back their reporter and pay the fines instead.

For example, in March 2004, reporter Jim Taricani of NBC affiliate WJAR television in Providence, R.I., was held in civil contempt of court for refusing to reveal the identity of a source who leaked videotaped evidence in an FBI corruption case involving a city official.[8] After a failed appeal to the U.S. Court of Appeals in Boston (1st Cir.), Taricani was ordered to begin paying steep fines of $1,000 per day for refusing to identify his source.[9] Because the fines – which had reached $85,000 by November 2004 – would have financially devastated virtually any reporter, Taricani's employer, NBC, footed the bill. When the judge saw that the fines were not having the intended coercive effect, he found Taricani in criminal contempt of court and sentenced him to a term of home confinement. Cases like Taricani's may have demonstrated to potential plaintiffs, however, that news media corporations are willing to go to certain financial lengths to protect an employee who was simply doing his job. Furthermore, the public has since learned that for some parties, a fistful of corporate cash may be an attractive alternative to a reporter's source.

The Wen Ho Lee Settlement sets a precedent

The "deep pocket" problem became most apparent in the recent case of scientist Wen Ho Lee – a case that is markedly similar to Hatfill's. In 1999, Lee became the subject of a government investigation when he was accused of stealing United States nuclear technology secrets for China.[10] Although Lee faced 59 counts of felony espionage, all charges but one against the former nuclear physicist at the Los Alamos National Laboratory in New Mexico were eventually dropped due to

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[5] *See, e.g. Reporters and Federal Subpoenas: A Special Report*, The Reporters Committee for Freedom of the Press (2007), available at http://www.rcfp.org/shields_and_subpoenas.html.

[6] Williams and Fainaru-Wada refused to tell investigators who leaked the secret grand jury testimony of several athletes who were being questioned about steroid use in connection with a federal investigation of the Bay Area Laboratory Co-Operative, known as BALCO. The two were subpoenaed, held in contempt of court, and faced potential jail time before their source, and attorney for BALCO executives, confessed on Feb. 14, 2007. They are also the authors of *Game of Shadows*, a book about steroids in Major League Baseball.

[7] *See, e.g., Frontline: News War, "Secrets, Sources and Spin"* (PBS television broadcast, Feb. 13, 2007).

[8] *See In re: Special Proceedings (Taricani)*, 32 Media L. Rep. 1905 (D. R.I. 2003).

[9] *Id.*

[10] *See, e.g.*, James Risen, *U.S Fires Scientist Suspected of Giving China Bomb Data*, N.Y. TIMES, March 9, 1999 at A1.

lack of evidentiary support.[11] After the investigation concluded, Lee brought a lawsuit against the FBI and U.S. Departments of Energy and Justice under the Privacy Act alleging that government officials had violated his rights by speaking improperly to members of the news media during the investigation.[12]

In order to prevail in court, Lee said he needed to know the names of the specific officials within the government departments who had spoken with the news media.[13] Articles covering the story, however, attributed the information only to anonymous government sources. In 2003, Judge Thomas Penfield Jackson of the U.S. District Court in Washington, D.C., ordered five reporters who covered Lee's story – James Risen and Jeff Gerth of *The New York Times*, Bob Drogin of the *Los Angeles Times*, Pierre Thomas, formerly of CNN and now with ABC News, and H. Josef Hebert of the Associated Press – to reveal their confidential sources. Just as in the Hatfill case, the journalists agreed to comply with the subpoenas and submit to questioning, but they refused to reveal their sources or discuss confidential information.[14] Judge Jackson found the reporters in contempt of court on Aug. 18, 2004 and ordered each to pay a fine of $500 per day, but the fine was stayed pending the reporters' appeal to the D.C. Circuit Court of Appeals.

In June 2005, the Court of Appeals upheld the contempt citations against Risen, Drogin, Thomas and Hebert; Gerth's citation was thrown out because he testified under oath that he did not know the sources' identities. That November, the Court of Appeals declined the reporters' request for *en banc* review.[15] Walter Pincus of *The Washington Post* received a similar subpoena in early 2004 and also refused to reveal his source. In a separate proceeding, Pincus was found to be in contempt by the trial court in November 2005. In 2006, the reporters sought a writ of certiorari to the U.S. Supreme Court. Just days before the Court was to decide whether or not to accept the case, Lee entered into a settlement agreement with the government.[16] Based on this agreement, the need for the reporters' sworn testimony disappeared and they were no longer in contempt of court, thus eliminating the threat of daily fines or jail time.

However, in an unusual twist, the news media organizations involved actually contributed to the government's settlement with Lee. Even though they were not parties to the lawsuit, ABC News, The Associated Press, the *Los Angeles Times*, *The New York Times* and *The Washington Post* each agreed to pay Lee $150,000. Faced with the possibility of their reporters being fined $500 a day (roughly $15,000 a month, or $180,000 a year), settling for that amount might have been a bargain. The companies issued a statement that expressed their reluctance "to contribute anything to this settlement" and their belief that they "sought relief in the courts and found none." The organizations further explained that they agreed to the settlement "to protect our confidential sources, to protect our journalists from further sanction and possible imprisonment, and to protect out news organizations from potential exposure."

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[11] Lee pleaded guilty to one count of copying classified information onto computer disks. *See Lee v. Dept. of Justice*, 413 F.3d 53, 55 (D.C. Cir. 2005).
[12] *See Lee*, 413 F.3d at 55; *see also* 5 U.S.C. § 552a (2006).
[13] *Lee*, 413 F.3d at 56.
[14] *Id*.
[15] *See Lee v. Department of Justice*, 428 F.3d 299 (D.C.Cir. Nov 02, 2005) (*rehearing denied*).
[16] *See Drogin v. Lee*, 126 S.Ct. 2351 (U.S. June 5, 2006) (*certiorari denied*).

The companies also considered the possibility that a statement made in court by the new judge on the case was not an idle threat. According to those present that day, U.S. District Judge Rosemary M. Collyer suggested in open court that should the reporters refuse to identify their sources, she would impose personal fines on the reporters and forbid their employers from reimbursing them. Counsel for one of the reporters later recalled that company executives and attorneys felt that they couldn't let their reporters face personal financial ruin simply because they were doing their jobs.

There is no precedent yet regarding what kind of fines can and cannot be assessed on news media corporations when a reporter refuses to reveal a source or divulge information. However, the Lee case demonstrated that even the mere threat of large fines can have a significant impact. Once news media corporations know that steep fines can be threatened against them, executives may feel that they have no choice other than to settle with plaintiffs. In turn, a plaintiff has an incentive to use subpoenas for financial gain, and may even attempt to subpoena as many news organizations as possible in order to increase a potential settlement.

Furthermore, it's not just the fines that can cause problems for companies. Even apart from large fines or settlements, the time and money involved in any corporation's defense of a reporter can be draining and significant to the corporation and all of its employees. In an age where newspapers are losing money due to the public's ability to news from alternative sources like the Internet, litigation costs can weigh heavily, especially when the company involved is small. Of course, journalists also fear being fined personally – a sanction that many view as worse than prison.

The 21st-century reporter's notebook

Despite these cases, a corporation's "deep pockets" may not be the biggest corporate threat to the journalism profession. In today's technology-based newsrooms, it is not just the reporter who has access to notes, e-mail, and electronic story drafts. Corporations now have access to the journalists' computers and electronic files and communications, and there are undeniable and often competing corporate realities that affect these companies with regard to those notes and files, especially if the companies are publicly held. The profession of journalism – that is, the work of reporters to collect truthful information and provide it to the public – can, in today's technologically advanced world, conflict with the business of disseminating the news. Instead of merely subpoenaing journalists to uncover the identities of their anonymous sources, it is becoming more common to use the corporate structure of a journalist's employer – and the corporate responsibilities that go along with that structure – to coercively compel information from both the reporter and the company.

Consequently, inevitable corporate involvement is changing what used to be a personal relationship between sources and individual journalists into a potentially less-trustworthy relationship between sources, journalists and corporations. Like all corporations, news media organizations are subject to the federal regulation of their business practices and subject to the rules of civil procedure and discovery when they become parties to a lawsuit. In many cases, this means keeping records that would have perhaps before been destroyed to protect the integrity of the

newsgathering process. The advent of electronic discovery – or "e-discovery" – and the updated Federal Rules of Civil Procedure have also made it easier for plaintiffs to subpoena a news media corporation to obtain information from an individual reporter's computer or files.[17] When coupled with the relatively new requirement that businesses preserve records as soon as they merely suspect that they will be parties to litigation, these technological advances have the potential to create a windfall for those who seek to compel journalists' sources.

If reporters stand by their principles and refuse to turn over subpoenaed materials or information, they risk being sent to jail for contempt of court. The reporters' responsibilities in these situations are to themselves, their families, their readers (or viewers) and their confidential sources. A news media corporation, however, has responsibilities imposed by both the law and the interests of shareholders, if it is a publicly traded company. Additionally, a corporation is made up of many employees who will potentially be affected by a severe financial drain on the company's resources. This can easily create competing interests when a company is asked to turn over a reporter's information.

These conflicts were apparent in 2003 when special prosecutor Patrick Fitzgerald sought the identity of *Time* magazine journalist Matthew Cooper's source during the Plame affair, discussed below. Instead of merely subpoenaing Cooper for the information, Fitzgerald also subpoenaed Time, Inc. and demanded that the company turn over Cooper's e-mail and electronic notes. Involving a media corporation in this way is likely to have an effect on the ability of sources to trust reporters in the first place. When the promise of confidentiality was solely a personal one, a source's willingness to trust the reporter was based on a one-on-one relationship. Now, a source must consider whether he or she will risk the possibility that a corporate board will disagree with the reporter's decision.

Complicating these subpoenas is a news media corporation's duty, notwithstanding First Amendment concerns, to preserve documents and data due to the new requirements of e-discovery under the Federal Rules of Civil Procedure. The news media's dependence on technology indirectly exacerbates both of these problems. Unlike the days before e-mail and computers, it's not just the reporter's notebook that a news media company needs to worry about when a legal dispute arises. Virtually every reporter is sending out e-mail and keeping electronic drafts of stories, which means that companies have more access to far more data now. Although the dispute over whether the reporter or the newspaper owns a reporter's notebook is not new, 21st-century technology means that a plaintiff can be reasonably sure that both the reporter and the newspaper have access to the reporter's files.

Cooper, *Time*, and the Plame affair

In July 2003, CIA officer Valerie Plame's undercover status was infamously revealed by columnist Robert Novak, who cited two anonymous "senior administration officials" as his sources.[18]

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[17] *See, e.g.*, Conor R. Crowley, *Knowing What ESI Stands For Isn't Enough*, NAT. LAW. J., Mar. 26, 2007.

[18] *See* Robert Novak, *Mission to Niger*, WASH. POST, July 14, 2003 at A21.

Some saw the leak as a politically motivated attack on Plame's husband, former Ambassador Joseph C. Wilson IV, who publicly criticized the Bush administration. Shortly after Novak's column ran, several other journalists, including former *Time* reporter Matthew Cooper, wrote about receiving similar information.[19] On May 21, 2004, the grand jury and special prosecutor Patrick Fitzgerald subpoenaed both Cooper and Time, Inc. seeking both testimony and documents relating to Cooper's article.[20]

Both Cooper and Time, Inc. fought the subpoenas, but in August 2004, Judge Thomas Hogan found both the reporter and the company in contempt of court. After receiving a confidentiality waiver from his source, White House aide I. Lewis "Scooter" Libby, Cooper agreed to give "limited testimony" under oath on August 24.[21] However, the next month, both Cooper and Time received another subpoena seeking additional information. When efforts to quash these additional subpoenas failed, Cooper and Time, Inc. were held in contempt of court again.

At the end of June 2005, Cooper and Time, Inc. reached the end of the road in the appeals process when the U.S. Supreme Court declined to intervene, allowing the contempt finding to stand. Just a few days after the Supreme Court refused to get involved, Time, Inc. announced that it would comply with the subpoena for Cooper's notes. Over Cooper's objections, the company handed over Cooper's notes and e-mail to Fitzgerald.[22] After receiving a waiver of confidentiality from White House advisor Karl Rove, Cooper testified before the grand jury on July 13, 2005. In an article in *Time* article "What I Told the Grand Jury," Cooper said that his testimony at the "grand jury session revolved around my notes and my e-mails" that Time, Inc. had disclosed without his consent.[23]

In an official statement defending the company's decision, *Time's* then-Editor in Chief Norman Pearlstine said that the company had, from the beginning, supported Cooper's efforts "in resisting the Special Counsel's attempts to obtain information regarding Mr. Cooper's confidential sources." Pearlstine noted further that company officials felt that with their decision not to intervene, "the Supreme Court has limited press freedom in ways that will have a chilling effect on our work and that may damage the free flow of information that is so necessary in a democratic society" by denying the motions to quash the subpoenas. However, he said that in spite of these concerns, Time, Inc. would "deliver the subpoenaed records to the Special Counsel in accordance with its duties under the law." The company's reasoning, according to Pearlstine, was that "[t]he same Constitution that protects the freedom of the press requires obedience to final decisions of the courts and respect for their rulings and judgments."

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[19] *See*, *e.g.*, Matthew Cooper, *A War on Wilson*, TIME, July 17, 2003.
[20] Although she never published an article about the matter, former *New York Times* reporter Judith Miller was found to have knowledge about the leak as well and was subpoenaed later that summer. The *Times* also received a subpoena but maintained that they did not have access to the information. Miller, of course, ended up in jail for 87 days for her refusal to testify.
[21] *See* Matthew Cooper, *What I Told the Grand Jury*, TIME, July 17, 2005.
[22] *Id*.
[23] *Id*.

New rules, new complications

Corporate access to a reporter's information became more problematic in December 2006 when the Federal Rules of Civil Procedure governing discovery and information-gathering in civil lawsuits were updated to address the modern practice of storing data in computer files rather than in filing cabinets.[24] The new Federal Rule of Civil Procedure 34 adds electronically stored data ("ESI") as a type of information that parties to lawsuits can be required to produce, in addition to the notes, letters and documents that were traditionally subject to discovery. Further, the new rule recognizes that ESI can exist in different formats and programs (for example, PDF, TIFF or Microsoft Word) and allows litigants to specify the format in which data is to be produced. The producing party may object and suggest a different format, and if the parties cannot agree, the court can specify the form of production.

By making information discoverable as ESI rather than as printed sheets of paper, litigants can discover vastly more information than a printed page – or even a saved e-mail – would provide.[25] ESI often comes with large amounts of "metadata" and system data, which could provide information about creation and use of the documents themselves. This metadata acts as a roadmap of the document's history – examples include editing and drafts, time stamps, use of printers or faxes, e-mail headers and routing information. Thus, under the new Rule 34, litigants can potentially become privy to every change made to a document, every use of a printer, and countless other details that could never be learned from a printed page.

Additionally, news media companies – like all corporations – are also now required to retain data as soon as the corporation merely *anticipates* litigation.[26] Courts have said recently that a corporation must preserve any data or documents that are "reasonably likely to be requested during discovery" rather than when a complaint is filed or a subpoena is served.[27] Once a company anticipates a legal claim, "it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure preservation of relevant documents."[28] If a corporation fails to place this hold and documents or data are destroyed, the corporation may be guilty of destruction of evidence (referred to as "spoliation"), which can result in serious sanctions.

A practical solution

In light of these new and troublesome complications, it is even more vital that Congress provide some protection for journalists who work for news media corporations. Ever since the state of Maryland enacted the first reporter's shield legislation in response to the jailing of *Baltimore Sun* reporter John T. Morris 110 years ago, shield laws have emerged as practical and vital tools for

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[24] *See generally* Kathy Perkins, *"Byte" Me! Protecting Your Backside in an Electronic Discovery World*, 76 J. KAN. B.A. 22 (March 2007); *see also* John L. Kreiger, *What You Need to Know About the New E-Discovery Rules*, 15 NEV. LAW. 17 (April 2007).
[25] *Id*.
[26] *See generally Zubulake v. USB Warburg*, 220 F.R.D. 212 (S.D.N.Y. 2003).
[27] *Id*. at 217 (internal citations omitted).
[28] *Id*. at 218.

preventing abuse of reporters and their sources. In many ways, the landscape has changed since 1897 and become even more perilous for intrepid reporters who facilitate the free flow of important information to the public.

The corporate structure of the news media has created even more obstacles, both financial and practical, for a journalist who must keep promises of confidentiality. Information that once existed only in a reporter's notebook can now be accessed by companies that have obligations to their reporters, their shareholders, their other employees, and the public. Additionally, in the wake of the Wen Ho Lee settlement, parties will target news media corporations not just for their access to a reporter's information, but also for their deep pockets. The potential for conflicts of interest is staggering.

If the status quo is allowed to continue, the settlement in the Wen Ho Lee case and Time, Inc.'s conflict of interest regarding Matthew Cooper's notes will become far more commonplace and the free flow of information to the public will inevitably be compromised. Just as the Maryland Legislature recognized the need for this type of protection over a century ago, Congress must appreciate that societal changes now necessitate laws that prevent overzealous plaintiffs and prosecutors from exploiting the vulnerabilities of today's journalist and today's news media corporation. The free flow of information to the public depends on it.