

Talking Points Federal Shield Law – “Free Flow of Information Act”

- Senator, the pressing need for a federal shield law remains and includes a new twist: bankrupting journalists into revealing their confidential sources.
- Recently, a federal judge ordered Toni Locy, a former USA Today reporter and now university professor, to personally pay contempt fines up to \$5000 a day for refusing to reveal her confidential sources. And, in an unprecedented move, the judge prohibited anyone, including her former employer or even her own family, from helping her pay the fines.
- A three-judge panel stayed the fines pending Ms. Locy’s appeal, but all around the nation, this ruling sent a chilling message to journalists, whistleblowers and other confidential sources.
- The Locy case reflects a growing trend of reporters being subpoenaed or threatened for their confidential sources. And it is this trend that threatens investigative journalism and underlines the need for federal shield law.
- The House has already passed a federal shield bill (H.R.2102) by an overwhelming – bi-partisan – margin of 398 to 21. A similar bi-partisan bill (S. 2035) was reported out of the Senate Judiciary Committee in October on a 15-4 vote.
- It is time for the Senate to take up this bill so that reasonable ground rules are established for when reporters can be compelled in court to reveal their confidential sources.
- While newspapers and the journalism community would have preferred an “absolute privilege” against revealing confidential sources, the Senate bill provides a qualified privilege with exceptions for acts of terrorism or other significant harm to national security, eyewitness observations of a crime or if the information is needed for the prevention of death, kidnapping or substantial body harm.
- Forty-nine states and the District of Columbia recognize a reporter’s privilege through laws or judicial decisions, but no uniform federal standard exists to govern when confidential source information can be sought from reporters.
- Groundbreaking stories, such as conditions at Walter Reed Medical Center, the Enron scandal and steroid abuse in Major League Baseball, would not have been known to the public – or to the Congress – without confidential sources.
- If sources, including government and private sector whistleblowers, are uncertain whether reporters have adequate protection, they will not come forward and the public dialogue on important issues will diminish. And, if journalists have to fear personal bankruptcy every time they write high profile stories using confidential sources, they may just stop writing them because the personal cost is too great.
- **Please vote “YES” on S. 2035 – the Federal Shield Bill - when it comes up in the Senate and vote “NO” on any amendments that would weaken the well-reasoned protections in bill. I look forward to hearing back from you on your position on the bill.**