

## Recent events demonstrate Missouri needs shield law



### Reporters need secret source privilege

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Last month when I wrote about the reporter's privilege issue, I never dreamed we would have activity so quickly in this matter, and that the entire month we would be dealing with news about reporters and jail terms and sources. I believed the Supreme Court would take the case. Instead, the court's decision to decline to hear the matter leaves us with no additional federal case law to help us interpret the extent of any reporter's privilege in this country.

As the special prosecutor continues investigating leaks and Judith Miller awaits in jail the end of the grand jury term, we have time to consider further a few additional thoughts on this issue.

A number of privileges have been recognized over the years by the court system. There is the attorney-client privilege, the doctor-patient privilege and the priest-penitent privilege.

Always this privilege rests with the non-professional rather than the professional. The client has the right to have a privilege asserted by the attorney. The patient has the right to have the privilege asserted by the doctor. The confessor has the right to have the privilege asserted by the priest.

But the privilege in the case of reporters and sources rests with the reporter. The reporter asserts the privilege to facilitate the reporter's performance of his or her job. It DOES protect the source, but the benefits run more to the reporter than to the source, it seems to me, whereas in other privileges, less of a benefit runs to the doctor, the lawyer or the priest.

Inasmuch as our government is based upon a series of checks and balances, the media serves the role of a check against government. And one way to strengthen that system would be for Congress to add to the tools within the media's box the ability to rely on unnamed sources in order to perform that balancing mechanism.

I agree that the use of an unnamed source should not become a commonplace occurrence. Nevertheless, I do believe that there are times when stories must be reported involving issues of great importance to the country. I believe that there are times when the only way reporters can obtain needed information to report on those matters is to rely on sources who refuse to have the information attributed to them.

A reporter, of course, has the obvious duty to ensure that the facts being used are true and accurate, to the best of his or her ability. But I believe that it is inherent that this reporter be allowed to protect the name of this source at all costs, until it becomes apparent that there is literally no other way to obtain the information sought from the reporter and that the need for the information so critically outweighs the need to protect the privilege and all that it safeguards that the balance scale must tilt in the interest of disclosure.

And, at that point, I believe the reporters in this country must be willing to stand up for their beliefs. I applaud Judith Miller for her stand.

I further believe that a federal shield law is not enough. The issue has long bounced around in Missouri. For many years, media lawyers in the state took the position that we should rely on the First Amendment and that no shield law was needed. We have now seen the tails of the First Amendment in this area and they are not long enough.

I think Missouri needs a shield law, also. Observers of our legislature will tell you and me that this will not happen any time soon in our state – that the legislature is not pro-media and that passing such a measure would be difficult, if not impossible.

Perhaps it has been too long since the last good scandal on the state level. It is a good thing that our state leaders are acting with scruples and integrity. But the public then forgets that the checks and balances necessary to keep this harmony in place depend, in part, on the Fourth Estate.

There are on-going examples of situations where public disclosure of certain facts makes public officials back off an activity that perhaps was not in the public's best interest. Just recently Gov. Blunt's director of the state's Division of Business Development and Trade resigned after public disclosure of issues placed her credibility in question.

What Gov. Blunt knew or didn't know about this situation is not the issue in this column. What is important is that public disclosure by the media of this situation resulted in a wrong being corrected. This was not a woman who properly belonged in that position. No checks and balances system was in place to catch this error.

We, the media in this state, could have found ourselves in the situation of protecting a confidential source in regard to this story. And one of our own might now be in jail, protecting a source.

Access to public records is not always enough. Information sometimes must be dug out of deep holes. Lawyers and prosecutors in the state have started using subpoenas as the fast track for using reporters to do their investigative work for them. It's time we started demanding a reporter's privilege on the books.

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