



**Testimony of William Safire
Hearing on H.R. 2102
"The Free Flow of Information Act of 2007
Before the House Committee on the Judiciary
Thursday, June 14, 2007**

Mr. Chairman, committee members: I am here today to urge Congress to pass a law to stop the Federal government and the courts from continuing down the dangerous path of denying Americans our right to the free flow of news.

For thirty years, I was a political columnist for the New York Times, and now write a weekly language column for the Times magazine. Before that, I was a speechwriter in the Nixon White House. The opinions I express are my own.

For the past few years, the process of gathering the news has been under unprecedented attack. That's because prosecutors and judges have been stripping away the single most important tool a reporter has for digging out information: the ability to gain the trust of a source by promising to keep his or her identity confidential.

The movement to force journalists to reveal their sources is an attempt to turn the press into an arm of the law. That trend defeats the administration of justice. The reason that almost all of the states have set up shields for journalists is that the exposure of corruption, malfeasance, official incompetence and stultifying secrecy often starts with the press. It helps the law because it is independent of the law.

I'm here as a journalist to testify from my real world that a "chilling effect", in Justice Brennan's phrase, is being felt by today's reporters and columnists. Believe me, when a journalist is threatened with jail, or indeed is jailed, for refusing to blow the whistle on a whistleblower, or to betray a trusting source, he or she feels a coercive chill. And when a reporter is faced with legal expenses that his mid-sized publication cannot afford to pick up, and the choice is "ratting out" a source or going into bankruptcy, that hits home hard. Don't believe that ordinary citizens as well as public officials won't think twice about trusting a reporter to respect a confidence --- it's happening right now as never before.

Here's something else I hope you won't believe: that a Federal shield law --- like those now helping police and prosecutors in almost all the States --- means that journalists will be placed "above the law" that requires other citizens to give testimony. That's a slogan, not an argument. Lawyers have that privilege and are not "above the law". Same with clergy of all faiths; same with doctors, and since 1996, same with psychotherapists. And the same right to clam up exists with husbands and wives, including divorced spouses, not to be forced to betray confidences about each other. When you stop to think about it, it means that more than half the people in America must have the "privilege"; are they all "above the law"?

Of course, those time-honored protections are in effect because our society, in many cases and for good reason, puts trust and mutual confidence first. But there are always practical limitations; You cannot refuse to testify in order to help commit a future crime.

That sense of balance is why the bill before you makes sense. And is overdue. It takes the public interest in compelling disclosure of the source and balances it with the public interest in gathering news. Last year the Justice Department's central objection to a journalists' shield was "national security". This bill responds to that concern by making it possible to break confidence when "necessary to prevent imminent and actual harm to national security". I'm in the word business: "imminent", rooted in the Latin for "threat", does not mean "soon" --- it means "about to happen, without delay."

If the committee is interested, I have a few concrete "insider's" examples to illustrate the connection between source and reporter.

On the Department of Justice "guidelines" about subpoenas to journalists: I have some information about how and why they were drawn up and how they have been subverted and made meaningless.

On the latest "chilling effect" technique: how a prosecutor can play the media hostage card to stifle criticism of him by an otherwise gutsy columnist.

On how a reporter makes and keeps contact with sources instead of relying on the old "over the transom" missive that cannot be verified and should be distrusted.

On the long-term relationship between source and reporter that led to the story of the first use of poison gas at Halabja in Iraq --- broadcast on CBS and ignored.

On how much to trust a source and when to stop trusting him, in connection with the director of CIA and

Iran.

On when and how a prosecutor got to a source with the help of a reporter, in connection with the UN oil-for-food scandal.

My purpose in offering you these tidbits is to take the subject out of the legal and academic area for a few moments and give you a sense of life in the real world of newsgathering. It's a cityscape of two-way streets, sometimes frowned upon as "symbiotic relationships". Under attack by well-meaning people eager to penetrate confidence to protect secrecy, it needs the protection of new Federal law to give clarity to the present confusion in the minds of judges, prosecutors, litigants and yes --- deepening concern in the world of reporters and the sources who trust them.