

# THE FIGHT FOR A SHIELD LAW

Trade Groups Battle to Protect Journalists From Pressure to Reveal Sources

By Debra Kaufman

Special to TelevisionWeek

On July 30 of this year, a federal shield law stalled in the Senate when supporters—including the Society of Environmental Journalists—failed to garner enough votes to end the debate and force a vote on the issue.

That's the latest salvo in the effort of journalists and organizations such as SEJ and the Society of Professional Journalists to enact a shield law that would protect jour-

nalists from being forced to reveal anonymous sources. Over the years, numerous environmental journalists have been subpoenaed in federal cases and faced daunting fines and the prospect of jail.

"It's our legislative priority to get it passed," said SPJ President Dave Aeikens, a reporter at the St. Cloud Times. "We're part of a large coalition of media groups trying to get it passed. We're hoping it goes again this fall. And if it doesn't, we'll go right at it

again when the new congressional session starts in January."

"There have been too many instances of journalists being subpoenaed in federal cases," he said. "What we want is a qualified privilege. There are some circumstances where we wouldn't have the privilege. But we want the government to have to jump through a few hoops before we're forced to turn over our unnamed sources. We don't want to be the first resort. We want to be the last resort."



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According to the Society of Professional Journalists, 49 states have common-law, statutory or rule-based protections to shield journalists and their confidential sources from compelled testimony. The lack of a federal shield law means that journalists are not protected in federal cases.

Take Toni Locy, a former USA Today reporter who wrote about Steven Hatfill, the former Army scientist whom the government investigated in the 2001 anthrax attacks but whose name has since been cleared. When Mr. Hatfill filed a Privacy Act suit against the government, Ms. Locy refused to give up her confidential sources and the U.S. District Court in D.C. held her in contempt. She is currently urging the U.S. Circuit Court of Appeals to keep her case on the docket, seeking a reporter's privilege to keep her sources confidential.

SEJ President Tim Wheeler, a reporter at The Baltimore Sun, noted the challenge of getting a federal shield law passed. "They want it compromised," he said. "Some kind of shield law would be better than none at all. But the tension again is over who's protected and what defines a journalist deserving of protection."

In Cincinnati, WCPO-TV investigative reporter Hagit Limor, who recently became secretary-treasurer on the SPJ board, is a strong advocate of a federal shield law. She agreed with Mr. Wheeler's assessment that part of the ongoing issue is defining what a journalist is. "Some in Congress want to define who is a journalist, as new forms of communication create categories such as bloggers," she said. "Some people think the protections should extend to all citizens, like the First Amendment. The bottom line is that we are dedicated to free flow of information and free flow of journalism and have been since the SPJ was formed."

Ms. Limor also noted the increasing need for a shield law. "In recent years, prosecutors have felt less and less constrained to haul journalists in front of courts," she said. "It's important that we work towards a law that

protects all journalists.

"To say this is a necessary part of the reporter's arsenal is an understatement," she said. "It's just not feasible for a reporter to have to face potentially going to jail to protect a source. And that's what we have done since the beginning of freelance press in the U.S."

Going to jail to protect sources is exactly what happened to freelance reporter Josh Wolf after he videotaped a July 2005 protest in San Francisco. In February 2006 a federal grand jury formed to investigate the incident subpoenaed him for his testimony and unedited footage of the protest, both of which he refused to provide. On Aug. 1, he was jailed for contempt, and after a brief release on

his own recognizance, he was re-jailed on Sept. 19, 2006. He remained there until April 2007—226 days of incarceration—making him the longest-held journalist in U.S. history. The SPJ gathered \$31,000 to pay for Mr. Wolf's legal fees.

"We think this is a very important bill to pass," said Mr. Aeikens. "We need this shield law to make sure that people aware of wrongdoing in government have a place to share that information and can get the word out without being afraid of retribution."

The upcoming presidential election offers the possibility of moving the shield law along. "McCain and Obama both said they supported the shield law," Mr. Aeikens said. "It's hard to say if that will change, but we're optimistic." It's worth noting, however, that both Mr. McCain and Mr. Obama were no-shows on the Senate vote this summer that stalled passage of the bill.

Journalists such as Ms. Limor plan to soldier on. "I'm passionate about this because I believe in this day and age, when there seem to be more restrictions placed on how reporters do their jobs, that more than ever we need federal protection," she said. "That makes it clear that when brave people come forward with sensitive information that is urgent to the public that we are able to protect their identities and inform the citizenry." ■



HAGIT LIMOR  
WCPO-TV, Cincinnati



DAVE AEIKENS  
SPJ



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