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September 19, 2007

**Honorable Patrick Leahy, Chair  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20510**

**Dear Chairman Leahy:**

**We are writing to thank you for your efforts to address the need for a federal reporters' shield law and to express our support in principle for S. 1267, the Free Flow of Information Act of 2007. We recognize that this bipartisan compromise bill, the product of several years of Congressional deliberation and negotiation, has been carefully crafted to preserve the free flow of information to the public through a free and active press while protecting the public's right to effective law enforcement and ensuring the fair administration of justice.**

**It is indisputable that journalists play a critical role in an informed democracy. Reporters who have relied on confidential sources have informed us about undisclosed governmental activities, corporate scandals and drug rings and other criminal activities -- revelations that have prompted citizens to take action, Congress to pass remedial legislation and prosecutors to file lawsuits.**

**The ability and willingness of the press to uncover information to which the American people would not otherwise have access is a hallmark of our democracy. A free press acts as an additional check and balance, and promotes public confidence in both our government and social institutions. Maintaining the free flow of information may not always be a popular position, especially during trying times, but it is essential in a democracy.**

**That 49 states and the District of Columbia already recognize an absolute or qualified privilege for journalists to protect their sources is strong evidence that a national consensus exists over the need to shield reporters so that they can undertake independent, objective investigations on behalf of the public and share information that would not otherwise be forthcoming. That not one state or the District of Columbia has repealed its reporters' shield law similarly suggests that these laws are working and are not interfering with criminal investigations or the daily work of government.**

Despite the wealth of experience at the state level, federal protections lag far behind. In the absence of a uniform federal law and clear Supreme Court precedent, federal courts have applied different judicial standards developed on a case-by-case basis. Not only is there an absence of uniformity between the circuits, often there is no uniformity within a circuit. It is regrettable that the resulting state of confusion has created unpredictability and encouraged litigation.

Reporters and news agencies are, with increasing frequency, finding themselves embroiled in contentious federal lawsuits. In recent years, prosecutors and other litigants around the country have pursued reporters zealously in an effort to learn the identity of their confidential sources and obtain unpublished information. News media leaders have warned Members of Congress and the public that many in the industry have reached the point where the absence of a clearly defined federal reporters' privilege is affecting their editorial decisions, which in turn affects the free flow of information to the public. Others have echoed the same or similar concerns. In the last several years, more than 70 journalists and news organizations have been embroiled in disputes with federal prosecutors and other litigants seeking to discover unpublished information; dozens have been asked to reveal their sources.

Recognizing the critical role that journalists play in an informed democracy and concerned by recent trends, the ABA adopted policy in August 2005 urging Congress to enact a federal shield law that would require any party seeking to subpoena a journalist to force disclosure of information to demonstrate that:

1. the information sought is essential to a critical issue in the matter;
2. all reasonable alternative sources for acquiring the information have been exhausted; and
3. the need for the information clearly outweighs the public interest in protecting the free flow of information.

The ABA supports S. 1267 in principle because it respects these principles while responding to the concerns of government officials that a federal shield law must not impede legitimate criminal investigations or threaten national security.

We hope that the Senate Judiciary Committee acts decisively on this legislation and that it culminates in the enactment this Congress of a qualified federal shield law that that will eliminate the current confusing patchwork of court rulings and provide a clear, uniformly applied federal standard.

Sincerely,



Denise A. Cardman  
Acting Director

cc: Members of the Committee