

Statement of

# The Honorable Russ Feingold

United States Senator  
Wisconsin  
July 20, 2005

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At the Senate Judiciary Committee  
Reporters' Shield Hearing

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Mr. Chairman, I want to thank you for holding this hearing. I want to welcome our witnesses, especially my friend Floyd Abrams. The last time I saw him he was arguing against the constitutionality of the McCain-Feingold bill. Fortunately, he lost that case, but he is truly a legendary First Amendment lawyer and we are honored to have him here today. I am also pleased to be back on the same side of a First Amendment debate with him, and with the rest of this panel. Thanks to all of the panelists for their excellent testimony and willingness to be here today.

Mr. Chairman, recent events have certainly made the proposed federal shield law a hot topic. The sight of reporters in handcuffs is not a pleasant thing for any of us to see. As our witnesses have noted, these scenes are becoming more and more common. Thirty-three years after the Branzburg decision, it is time for Congress to act. I have cosponsored a bill introduced by Senator Dodd, S. 369, and I will certainly have a close look at Senator Lugar's bill as well. The important thing is to end the uncertainty, and the incongruities caused by having protection for anonymous sources in 49 states and the District of Columbia, but not in federal cases.

I do not take lightly the issues raised by the Deputy Attorney General. We must certainly consider the effect that a shield law might have on investigations and prosecutions of terrorism and other serious crimes. But anonymous sources have been too important to exposing government and corporate wrongdoing to let the current situation continue. It is not a credible argument to say that because high profile anonymous sources have continued to work with reporters even without a shield law in the decades since Branzburg that that will continue indefinitely. The chilling effect that our witnesses have mentioned is a gradual lowering of the temperature, not an instant ice age. The more high profile contempt prosecutions of journalists we have, the greater the chances that potential sources will be deterred from coming forward.

Another argument made by the Deputy Attorney General with which I disagree is that congressional legislation in this area would overrule Branzburg. That is incorrect. Branzburg stands for the proposition that the protection of the identity of anonymous sources is not required under the First Amendment. But many judges ruling in these cases have invited Congress to legislate. This is an area where Congress has the power, and the responsibility, to set out the parameters under which testimony of this kind can be compelled.

A free society cannot long survive without a robust free press. I am very grateful to our witnesses for the expertise they bring to this subject and I look forward to working with them and others to design a workable and effective federal shield law. The press will certainly benefit from such a law, but more importantly, the nation will benefit.