

## Bloggers are not journalists, according to Senate bill

**Michael Lindenberger**

Citizen Media Law Project

February 28, 2009

Text size + -

The question of [what makes a journalist](#) is due for yet another round of debate, now that Congress is weighing two competing versions of a federal shield law for reporters.

Last Friday, the [Senate introduced](#) its own version of the Free Flow of Information Act, a follow-up to the [House's action](#) two days before. Both versions would provide new — if limited — protection against subpoenas for journalists, and both version contain a range of exceptions. Both bills were introduced in 2007 as well, with the House version passing overwhelmingly despite a veto threat. The Senate bill was passed easily out of committee only to die without a vote of the full chamber as the session ran out of time. (For details on the previous bills, see previous CMLP posts [here](#), [here](#), [here](#), and [here](#).)

Again, the 2009 bills differ in a key respect, namely in how they define journalists. The [Senate bill](#) is fairly straightforward and generous in this regard. It covers a person "who is engaged in journalism," and defines the latter by:

*the regular gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.*

The [House version](#), on the other hand, puts limits on who is covered in a way that potentially leaves most bloggers and many others outside the protective zone of the shield. From the bill:

*The term "covered person" means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain and includes a supervisor, employer, parent, subsidiary, or affiliate of such covered person.*

ADVERTISEMENT



"Substantial" isn't defined, but one would assume that many bloggers, student journalists and even those who freelance for magazines or papers that pay poorly, could have a hard time utilizing the protections afforded by the bill, should this version become law.

It's an old question, this issue of who qualifies as a journalist. And it has been part of the debate over the so-called reporter's privilege for decades, at least since [Branzburg v. Hayes](#), 408 U.S. 665 (1972), the 5-4 Supreme Court decision that ruled against press protections in

1972. *The Louisville Courier-Journal* reporter Paul Branzburg lost the case, but the fifth vote came from a sympathetic corner. Justice Powell voted with the majority to compel Branzburg's testimony, but penned an enigmatic concurrence that has been cited by many federal courts to bolster the idea that there is some protection, no matter how ill defined, stemming from the First Amendment:

*The Court does not hold that newsmen, subpoenaed to testify before a grand jury, are without constitutional rights with respect to the gathering of news or in safeguarding their sources.*

[Branzburg](#), 408 U.S. at 709 (Powell, J., concurring). A federal statute establishing a qualified journalists' privilege would bring much-needed clarity and uniformity to this area of law, and it would also represent a historic step forward in vindicating the public's right to know. It'll be a shame, though, if a shield law passes with the House language that effectively shuts out most bloggers and other independent journalists. It will be journalism history, but with an asterisk.

Research related links

- [More online journalists imprisoned than print journalists](#)
- [Senate Passes \\$819 Billion Economic Stimulus Bill](#)
- [Military report: secretly 'recruit or hire bloggers.'](#)
- [Bailout Bill Sent Back to House After Senate Passage](#)
- [Senate To Push Carbon Tax Enslavement Bill](#)
- [NSA Security Officer: We Should Just Kill Troublesome Bloggers](#)
- [Breakdown of the Senate Version of the Banker Bill](#)
- [Congress Will Not Get a Chance to Read Stimulus Bill](#)
- [Full Text of Senate Banker Bill](#)
- [St. Paul dropping all misdemeanor charges for journalists arrested during RNC](#)
- [Senate Bill Proposes to Screen and Medicate Mothers](#)
- [Stimulus Bill Raises Concerns Over Government Rationing of Health Care](#)

Listen to the Alex Jones Show Online

Open Flash Audio Player in a New Window

Why almost everyone

THE TRUTH ABOUT WHAT REALLY HAPPENED TO THE CATHOLIC CHURCH

CLICK HERE FOR INFORMATION

TAKE THE HIGH ROAD TO A LONG AND HEALTHY LIFESTYLE

Are YOU suffering from ISSUES RELATED TO

Angina Pain  
High Blood Pressure  
Congestive Heart Failure  
Irregular Heart Beat  
Clogged Arteries

LIVE YOUR LIFE FREE OF SICKNESS PAIN AND FEAR

HEART AND BODY EXTRACT

DEBUNKING 9/11 DEBUNKING

An Answer to Popular Mechanics and Other Defenders of the Official Conspiracy Theory

DAVID RAY GRIFFIN  
Author of *The New Pearl Harbor*

"David Ray Griffin has established himself -- alongside Seymour Hersh -- as America's number one bearer of unpleasant, yet necessary, public truths."

Richard Falk, Professor of International Law, Emeritus, Princeton University

Watch Uncensored, Unregulated TV On Your PC

OrderFreeTV.com

4000 + Channels You Can't Get From Cable And Satellite Providers