

Editorial Revive the Free Flow of Information Act



Copies of the Los Angeles Register are inspected at the paper's Orange County printing press. (Los Angeles Times)

By **THE TIMES EDITORIAL BOARD**

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Last year the Senate Judiciary Committee approved a bill affording some protection for reporters' confidential sources, similar to the protection that is already provided by the vast majority of states, including California. But the bill — known as the Free Flow of Information Act — has languished in the Senate since then, despite widespread and bipartisan criticism of the Obama administration's aggressive efforts to obtain information from journalists.

In a letter to the Republican and Democratic leaders of the Senate, 75 media organizations — including Tribune Co., the parent corporation of the Los Angeles Times — have called for a floor vote on the bill. The letter was sent to Sens. Harry Reid (D-Nev.) and Mitch McConnell (R-Ky.) a few days after the Supreme Court refused to hear the appeal of James Risen, a New York Times reporter who has been contesting a subpoena requiring him to testify at the upcoming trial of a former CIA agent. The agent, Jeffrey Sterling, is accused of revealing classified information about a failed CIA plan to compromise Iran's nuclear program, an operation described in a book by Risen.

It isn't certain that Risen would have been protected from having to testify if the Free Flow of Information Act had been the law when he was subpoenaed, but it is a possibility. And reporters in general would benefit from the bill's requirement of robust judicial review before a confidential source can be unmasked. Reporters, like readers, wish that sources would always be willing to be identified. But sometimes — especially in cases involving public corruption — the only way to obtain information is to offer a pledge of confidentiality, and then abide by it.

The Free Flow of Information Act requires that, before ordering a journalist to reveal a source, a judge must weigh the public interest in disclosure against the public interest in "gathering and disseminating the information or news at issue and maintaining the free flow of information." Disclosure could be compelled to prevent a death or kidnapping or an act of terrorism. The privilege created by the bill is far from absolute, but it would be a significant improvement over the status quo, in which the Justice Department decides for itself whether the needs of law enforcement trump "the public's interest in the free dissemination of ideas and information."

Media organizations have pressed for years, without success, for a qualified reporter's privilege at the federal level. But opinion in Congress may be shifting. Recently the House approved an amendment to a Justice Department spending bill that would prevent it from compelling reporters to testify about confidential information or sources. Senate leaders should maintain the momentum by bringing the Free Flow of Information Act to the floor for a vote.

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