

# **Understanding News Media: Shield Law & Reporter's Privilege**

Shield laws help maintain the flow of vital information for citizens while ensuring

journalists and confidential informants are not intimidated by threats of prosecution. Despite more than 80 years of lobbying by free-press advocates, Congress has never adopted a shield law to protect journalists in federal courts. However, 40 states and the District of Columbia have adopted shield laws to protect journalists in state courts, showing the public's support for protecting journalists' sources. Among the states with these

protections the details of whom and what type of information is protected from disclosure vary from state-to-state.

New York's Shield Law was first enacted in 1970 and provides absolute privilege to professional journalists with respect to confidential information and qualified privilege for non-confidential information. The privileges apply equally in civil and criminal cases.

The New York law defines a professional journalist as one who, for gain or livelihood, is gathering, preparing, collecting, writing, editing, filming, taping or photographing of news. A 1981 amendment expanded Shield Law protection to include those working for any "professional medium or agency which has one of its regular functions the processing and researching of news intended for dissemination to the public." Civil Rights Law § 79-h (a) (6). Unpaid bloggers, citizen and student journalists are not covered by the New York law.

Courts may force disclosure of non-confidential news if the party seeking the information can clearly and specifically show that the news:

- is highly material and relevant
  - is critical or necessary to the maintenance of a party's claim or defense; and
  - is not obtainable from any alternative source
- If the government routinely forced journalists to reveal their documents and sources, then citizens would only know what the government wants the citizens to know – essentially eliminating the freedom of the press provision of the First Amendment.

## **Newspaper Activities:**

- ◆ Look through the newspaper for articles that reference unnamed or confidential sources. Discuss as a class how this story might be different if the reporter and others working on the report were fearful of being required to reveal who provided the necessary information.
- ◆ Search for an example of news about a government agency that reflects the public's right of free access to information - even if that information embarrasses public officials.