

public's right to effective law enforcement and fair trials. Senator LUGAR and I introduced a similar bill last year, which garnered the support of 10 cosponsors from both sides of the aisle, as well as 39 media organizations, including the Washington Post, The Hearst Corporation, Time Warner, ABC Inc., CBS, CNN, The New York Times Company, and National Public Radio.

There has been a growing consensus that we need to establish a Federal journalists' privilege to protect the integrity of the news gathering process, a process that depends on the free flow of information between journalists and whistleblowers, as well as other confidential sources.

Under my chairmanship, the Judiciary Committee held three separate hearings on this issue at which we heard from 20 witnesses, including prominent journalists like William Safire and Judith Miller, current and former Federal prosecutors, including Deputy Attorney General Paul McNulty, and First Amendment scholars.

These witnesses demonstrated that there are two vital, competing concerns at stake. On one hand, reporters cite the need to maintain confidentiality in order to ensure that sources will speak openly and freely with the news media. The renowned William Safire, former columnist for the New York Times, testified that "the essence of news gathering is this: if you don't have sources you trust and who trust you, then you don't have a solid story—and the public suffers for it." Reporter Matthew Cooper of Time Magazine said this to the Judiciary Committee: "As someone who relies on confidential sources all the time, I simply could not do my job reporting stories big and small without being able to speak with officials under varying degrees of anonymity."

On the other hand, the public has a right to effective law enforcement and fair trials. Our judicial system needs access to information in order to prosecute crime and to guarantee fair administration of the law for plaintiffs and defendants alike. As a Justice Department representative told the Committee, prosecutors need to "maintain the ability, in certain vitally important circumstances, to obtain information identifying a source when a paramount interest is at stake. For example, obtaining source information may be the only available means of preventing a murder, locating a kidnapped child, or identifying a serial arsonist."

As Federal courts have considered these competing interests, they adopted rules that went in several different directions. Rather than a clear, uniform standard for deciding claims of journalist privilege, the Federal courts currently observe a "crazy quilt" of different judicial standards.

The current confusion began 33 years ago, when the Supreme Court decided *Branzburg v. Hayes*. The Court held that the press's First Amendment right to publish information does not include a right to keep information secret from a grand jury investigating a criminal matter. The Supreme Court also held that the common law did not exempt reporters from the duty of every citizen to provide information to a grand jury.

The Court reasoned that just as newspapers and journalists are subject to the same laws and restrictions as other citizens, they are also subject to the same duty to provide information to a court as other citizens. However, Justice Powell, who joined the 5-4 majority, wrote a separate concurrence in which he explained that the Court's holding was not an invitation for the Government to harass journalists. If a journalist could show that the grand jury investigation was being conducted in bad faith, the journalist could ask the court to quash the subpoena. Justice Powell indicated that courts

might assess such claims on a case-by-case basis by balancing the freedom of the press against the obligation to give testimony relevant to criminal conduct.

In attempting to apply Justice Powell's concurring opinion, Federal courts have split on the question of when a journalist is required to testify. In the 33 years since *Branzburg*, the Federal courts are split in at least three ways in their approaches to Federal criminal and civil cases.

With respect to Federal criminal cases, five circuits—the First, Fourth, Fifth, Sixth, and Seventh Circuits—have applied *Branzburg* so as to not allow journalists to withhold information absent governmental bad faith. Four other circuits—the Second, Third, Ninth, and Eleventh Circuits—recognize a qualified privilege, which requires courts to balance the freedom of the press against the obligation to provide testimony on a case-by-case basis. The law in the District of Columbia Circuit is unsettled.

With respect to Federal civil cases, nine of the 12 circuits apply a balancing test when deciding whether journalists must disclose confidential sources. One circuit affords journalists no privilege in any context. Two other circuits have yet to decide whether journalists have any privilege in civil cases. Meanwhile, 49 States plus the District of Columbia have recognized a privilege within their own jurisdictions. Thirty-one States plus the District of Columbia have passed some form of reporter's shield statute, and 18 States have recognized a privilege at common law.

There is little wonder that there is a growing consensus concerning the need for a uniform journalists' privilege in Federal courts. This system must be simplified.

Today, we move toward resolving this problem by introducing the Free Flow of Information Act. The purpose of this bill is to guarantee the flow of information to the public through a free and active press, while protecting the public's right to effective law enforcement and individuals' rights to the fair administration of justice.

This bill also provides ample protection to the public's interest in law enforcement and fair trials. The bill provides a qualified privilege for reporters to withhold from Federal courts, prosecutors, and other Federal entities, confidential source information and documents and materials obtained or created under a promise of confidentiality. However, the bill recognizes that, in certain instances, the public's interest in law enforcement and fair trials outweighs a reporter's interest in keeping a source confidential. Therefore, it allows courts to require disclosure where certain criteria are met.

In most criminal investigations and prosecutions, the Federal entity seeking the reporter's source information must show that there are reasonable grounds to believe that a crime has occurred, and that the reporter's information is essential to the prosecution or defense. In criminal investigations and prosecutions of leaks of classified information, the Federal entity seeking disclosure must additionally show that the leak caused significant, clear, and articulable harm to the national security. In noncriminal actions, the Federal entity seeking source information must show that the reporter's information is essential to the resolution of the matter.

In all cases and investigations, the Federal entity must demonstrate that nondisclosure would be contrary to the public interest. In other words, the court must balance the need for the information against the public interest in newsgathering and the free flow of information.

Further, the bill ensures that Federal Government entities do not engage in "fishing

expeditions" for a reporter's information. The information a reporter reveals must, to the extent possible, be limited to verifying published information and describing the surrounding circumstances. The information must also be narrowly tailored to avoid compelling a reporter to reveal peripheral or speculative information.

Finally, the Free Flow of Information Act adds layers of safeguards for the public. Reporters are not allowed to withhold information if a Federal court concludes that the information is needed for the defense of our Nation's security, as long as it outweighs the public interest in newsgathering and maintains the free flow of information to citizens, or to prevent an act of terrorism. Similarly, journalists may not withhold information reasonably necessary to stop a kidnapping or a crime that could lead to death or physical injury. Also, the bill ensures that both crime victims and criminal defendants will have a fair hearing in court. Under this bill, a journalist who is an eyewitness to a crime or tort or takes part in a crime or tort may not withhold that information. Journalists should not be permitted to hide from the law by writing a story and then claiming a reporter's privilege.

It is time to simplify the patchwork of court decisions and legislation that has grown over the last 3 decades. It is time for Congress to clear up the ambiguities journalists and the Federal judicial system face in balancing the protections journalists need in providing confidential information to the public with the ability of the courts to conduct fair and accurate trials. I urge my colleagues to support this legislation and help create a fair and efficient means to serve journalists and the news media, prosecutors and the courts, and most importantly the public interest on both ends of the spectrum.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 312—HONORING THE SACRIFICE AND COURAGE OF THE 6 MINERS WHO WERE TRAPPED, THE 3 RESCUE WORKERS WHO WERE KILLED, AND THE MANY OTHERS WHO WERE INJURED IN THE CRANDALL CANYON MINE DISASTER IN UTAH, AND RECOGNIZING THE COMMUNITY AND THE RESCUE CREWS FOR THEIR OUTSTANDING EFFORTS IN THE AFTERMATH OF THE TRAGEDIES

Mr. HATCH (for himself and Mr. BENNETT) submitted the following resolution; which was considered and agreed to:

S. RES. 312

Whereas, on August 6, 2007, 6 miners, Kerry Allred, Don Erickson, Luis Hernandez, Carlos Payan, Brandon Phillips, and Manuel Sanchez, were trapped 1,800 feet below ground in the Crandall Canyon coal mine in Emery County, Utah;

Whereas Federal, State, and local rescue crews have worked relentlessly in an effort to find and rescue the trapped miners;

Whereas, on August 16, 2007, Dale "Bird" Black, Gary Jensen, and Brandon Kimber bravely gave their lives and 6 other workers were injured during the rescue efforts;

Whereas Utah is one of the largest coal-producing States in the United States, having produced more than 26,000,000 tons of coal in 2006;

Whereas coal generates more than half of our Nation's electricity, providing millions

of Americans with energy for their homes and businesses;

Whereas coal mining continues to provide economic stability for many communities in Utah and throughout the United States;

Whereas during the last century over 100,000 coal miners have been killed in mining accidents in the Nation's coal mines; and

Whereas the American people are greatly indebted to coal miners for the difficult and dangerous work they perform: Now, therefore, be it

Resolved, That the Senate—

(1) honors Kerry Allred, Don Erickson, Luis Hernandez, Carlos Payan, Brandon Phillips, and Manuel Sanchez, as well as Dale "Bird" Black, Gary Jensen, and Brandon Kimber for their sacrifice in the Crandall Canyon coal mine;

(2) extends the deepest condolences of the Nation to the families of these men;

(3) recognizes the brave work of the many volunteers who participated in the rescue efforts and provided support for the miners' families during rescue operations; and

(4) honors the contribution of coal mines and coal-mining families to America's proud heritage.

SENATE RESOLUTION 313—SUPPORTING THE WE DON'T SERVE TEENS CAMPAIGN

Mr. LOTT (for himself and Mr. PRYOR) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 313

Whereas the 2005 National Survey on Drug Use and Health estimates there are 11,000,000 underage alcoholic beverage drinkers in the United States;

Whereas research shows that young people who start drinking alcoholic beverages before the age of 15 are 4 times more likely to develop an alcohol-related disorder later in life;

Whereas surveys show that 17 percent of 8th graders, 33 percent of high school sophomores, and 47 percent of high school seniors report recent drinking;

Whereas, in a 2003 survey of drinkers ages 10 to 18, 65 percent said they got the alcohol from family members or friends—some took alcohol from their own home or a friend's home without permission, and in other cases adults, siblings, or friends provided the alcohol;

Whereas the Surgeon General issued a national Call to Action against underage drinking in March 2007, asking Americans to do more to stop current underage drinkers from using alcohol and to keep other young people from starting;

Whereas the Leadership to Keep Children Alcohol Free initiative is a coalition of Governors' spouses, Federal agencies, and public and private organizations which specifically targets prevention of drinking in the 9- to 15-year-old age group;

Whereas the National Alliance to Prevent Underage Drinking is a coalition of public health, law enforcement, religious, treatment and prevention, and other organizations with the goal of supporting and promoting implementation of a comprehensive strategy to reduce underage drinking;

Whereas the best protections against underage drinking are comprehensive prevention and enforcement strategies that include educating parents and members of the community;

Whereas beverage alcohol is a unique product and is regulated in such a way as to encourage social responsibility;

Whereas parents should be encouraged to talk to their children about the dangers of underage drinking;

Whereas the goal of the We Don't Serve Teens campaign is to educate parents and community leaders about effective ways of reducing underage drinking;

Whereas the We Don't Serve Teens campaign seeks to unite State officials, business leaders, parents, and community leaders in fighting underage drinking;

Whereas the Federal Trade Commission has partnered with other Government entities, members of the beverage alcohol industry, and members of the advocacy community to educate the public on the dangers of underage drinking;

Whereas the Federal Trade Commission has created an Internet website, www.dontserveteens.gov, as a resource for parents, educators, and community leaders concerned with underage drinking;

Whereas Congress has demonstrated its commitment to the prevention of underage drinking by enacting the Sober Truth on Preventing Underage Drinking Act (STOP), which recognizes that the 3-tier system of manufacturer, wholesaler, and retailer and continued State regulation of the sale and distribution of alcohol are critical to preventing access to alcohol by persons under 21 years of age; and

Whereas the We Don't Serve Teens campaign recognizes that all 3 tiers of the beverage alcohol industry play a key role in the prevention of underage drinking, and unites all of those participants in a concerted effort to protect America's youth: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of campaigns working to prevent underage drinking, including the We Don't Serve Teens campaign;

(2) recognizes September 10-15, 2007, as "National We Don't Serve Teens Week";

(3) encourages people across the Nation to take advantage of the wealth of information that can be used to combat underage drinking; and

(4) commends the leadership and continuing efforts of all groups working to reduce underage drinking, including State and local officials, the Federal Trade Commission, community groups, public health organizations, law enforcement, and the beverage alcohol industry.

SENATE RESOLUTION 314—DESIGNATING SEPTEMBER 13, 2007, AS "NATIONAL CELIAC DISEASE AWARENESS DAY"

Mr. INHOFE (for himself and Mr. NELSON of Nebraska) submitted the following resolution; which was considered and agreed to:

S. RES. 314

Whereas celiac disease affects approximately 1 in every 130 people in the United States, for a total of 3,000,000 people;

Whereas the majority of people with celiac disease have yet to be diagnosed;

Whereas celiac disease is a chronic inflammatory disorder that is classified as both an autoimmune condition and a genetic condition;

Whereas celiac disease causes damage to the lining of the small intestine, which results in overall malnutrition;

Whereas, when a person with celiac disease consumes foods that contain certain protein fractions, that person suffers a cell-mediated immune response that damages the villi of the small intestine, interfering with the ab-

sorption of nutrients in food and the effectiveness of medications;

Whereas these problematic protein fractions are found in wheat, barley, rye, and oats, which are used to produce many foods, medications, and vitamins;

Whereas because celiac disease is a genetic disease, there is an increased incidence of celiac disease in families with a known history of celiac disease;

Whereas celiac disease is underdiagnosed because the symptoms can be attributed to other conditions and are easily overlooked by doctors and patients;

Whereas, as recently as 2000, the average person with celiac disease waited 11 years for a correct diagnosis;

Whereas ½ of all people with celiac disease do not show symptoms of the disease;

Whereas celiac disease is diagnosed by tests that measure the blood for abnormally high levels of the antibodies of immunoglobulin A, anti-tissue transglutaminase, and IgA anti-endomysium antibodies;

Whereas celiac disease can only be treated by implementing a diet free of wheat, barley, rye, and oats, often called a "gluten-free diet";

Whereas a delay in the diagnosis of celiac disease can result in damage to the small intestine, which leads to an increased risk for malnutrition, anemia, lymphoma, adenocarcinoma, osteoporosis, miscarriage, congenital malformation, short stature, and disorders of skin and other organs;

Whereas celiac disease is linked to many autoimmune disorders, including thyroid disease, systemic lupus erythematosus, type 1 diabetes, liver disease, collagen vascular disease, rheumatoid arthritis, and Sjogren's syndrome;

Whereas the connection between celiac disease and diet was first established by Dr. Samuel Gee, who wrote, "if the patient can be cured at all, it must be by means of diet";

Whereas Dr. Samuel Gee was born on September 13, 1839; and

Whereas the Senate is an institution that can raise awareness in the general public and the medical community of celiac disease: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 13, 2007, as "National Celiac Disease Awareness Day";

(2) recognizes that all people of the United States should become more informed and aware of celiac disease;

(3) calls upon the people of the United States to observe the date with appropriate ceremonies and activities; and

(4) respectfully requests the Secretary of the Senate to transmit a copy of this resolution to the Celiac Sprue Association, the American Celiac Society, the Celiac Disease Foundation, the Gluten Intolerance Group of North America, and the Oklahoma Celiac Support Group No. 5 of the Celiac Sprue Association.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2790. Mrs. MURRAY (for herself and Mr. BOND) proposed an amendment to the bill H.R. 3074, making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

SA 2791. Mrs. MURRAY proposed an amendment to the bill H.R. 3074, *supra*.

SA 2792. Mrs. MURRAY (for herself, Ms. LANDRIEU, Mr. SCHUMER, Mrs. CLINTON, Mr. LAUTENBERG, Mrs. LINCOLN, Mr. DURBIN, Mr. CARDIN, Mr. ROCKEFELLER, Mr. KERRY, Mr. SALAZAR, and Mr. PRYOR) proposed an