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# Best shield for press is Constitution

WASHINGTON — We are back again at this business of a federal "shield law" for newsmen. A House judiciary subcommittee finally has agreed on a bill sponsored by Wisconsin's Robert W. Kastenmeier. If the full committee can stop hassling over impeachment for a few days, in order to consider this matter, his bill may even be sent to the floor.

It has taken 18 months of hard work to reach this stage. Scores of witnesses have been heard; a dozen drafts of proposed bills have been reviewed and discarded; if any bill at all is to be passed, it will be the Kastenmeier bill or something close to it.

My own suggestion, for whatever it may be worth, sounds a good deal more brutal than I mean it to be: Kill the bill. Kill all the shield law bills. The Constitution itself, interpreted case by case as challenges come along, re-

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mains the one best shield the press could possibly possess.

THE VARIOUS proposals before Congress have the same admirable purpose in mind. It is to protect the public interest in a free press, and especially in investigative journalism. This interest is real — and it is in real trouble.

Many of the most important stories carried in the press are developed in this fashion: A telephone rings on some reporter's desk. The caller is a friendly clerk, let us say, in the local public works department. He has come across evidence of what appears to be graft. He is willing to point the reporter in the direction of this evidence, provided one thing: "You've got to protect me." The reporter gives this assurance, and goes to work on the story.

Sometimes these things pan out; sometimes they don't. Suppose that in this case the tip is solid. After hard digging,

~~the story is developed and published.~~ An uproar ensues. The local city council demands to know the reporter's source. A grand jury is empaneled to investigate the corruption. The reporter is subpoenaed. In an extreme case, the director of public works may be indicted. His lawyers demand that the reporter be summoned as a witness for the accused.

THE OBJECT OF a shield law is to protect the reporter in such situations. Under the Kastenmeier bill, he would be granted absolute immunity from having to reveal his source to a legislative committee or to a grand jury. Only in the most compelling circumstances could the reporter be ordered to identify his source at a criminal trial.

Yet, to say that the object is to protect the reporter is to put the matter too narrowly. What is being protected is the public interest in having the graft exposed. If confidential sources cannot be assured that their names will be kept secret, confidential sources will simply dry up. The hypothetical clerk in the public works department will not risk being fired. He will keep his mouth shut and the corruption will continue.

My own conviction is that in 99 cases out of 100, the courts will understand this problem and will defend the public interest. To be sure, a majority of the Supreme Court has not yet been persuaded, but in the key case in 1972, *Bransburg v. Hayes*, Justice Lewis Powell was wobbling. Given a fresh case, with a good set of facts, Powell could vote the other way — that is, Powell might vote to protect the reporter, the source and the public interest alike.

ADOPTION OF a federal shield law would only complicate matters. It would be impossible, in my view, to restrict application of such a law to men and women generally identified with the working press. The proposed shield could be invoked as readily by any person "preparing information in any form for any medium of communication to the public." The bill is too broad.

The First Amendment, protecting a free press from abridgment by law, does not give a newsman absolute rights; but the First gives us abundant rights, day in and day out, to do our job. We would be well advised, it seems to me, to say to the gentleman from Wisconsin, thanks, but not hanks.