

NATIONAL PRESS CLUB NEWSMAKER LUNCHEON WITH SENATOR RICHARD LUGAR
(R-IN) AND
REPRESENTATIVE MIKE PENCE (R-IN)

TOPIC: FEDERAL MEDIA SHIELD LEGISLATION

MODERATOR: JONATHAN SALANT, PRESIDENT, THE NATIONAL PRESS CLUB

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MR. SALANT: Good afternoon, and welcome to the National Press
Club. I'm Jonathan Salant, a reporter for Bloomberg News and
president of the Press Club.

I'd like to welcome club members and their guests in the audience
today, as well as those of you watching on C-SPAN. Please hold your
applause during the speech so we have time for as many questions as
possible.

For our broadcast audience, I'd like to explain that if you hear
applause, it is from the guests and the members of the general public
who attend our luncheons, not from the working press.

The video archive of today's luncheon is provided by ConnectLive
and is available to members only through the Press Club's website at
www.press.org. Press Club members may get free transcripts of our
luncheons at our website. Nonmembers may buy transcripts, audio tapes
and video tapes by calling 1-888-343-1940. For more information about
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Before introducing our head table, I'd like to remind our members

of future speakers. On August 7th, Governor George Pataki, state of New York. And on September 11th, the fifth anniversary of 9/11, Governor Thomas Kean and Lee Hamilton, the chair and the vice chair of the 9/11 commission, will be our luncheon speakers.

If you have any questions for our speaker, please write them on the cards provided at your table and pass them up to me. I will ask as many as time permits.

I'd now like to introduce our head table guests and ask them to stand briefly when their names are called. Please hold your applause until all of the head table guests are introduced.

From your right, Greg Mott of The Washington Post, the vice chair of the National Press Club's Freedom of the Press Committee; Rick Dunham of Business Week, the immediate past president of the club; Ken Paulson, the editor of USA Today, which just won the softball championship in the Metropolitan Media Softball League; Beverly Hudnut, the communications director for the Commission on the National Guard and Reserves; Maureen Groppe of Gannett News Service and member of the National Press Club's Board of Governors.

I'll skip over our first speaker -- Angela Greiling Keane, the associate editor of Traffic World magazine and the vice chair of the Press Club's Speakers Committee.

I'll skip over our second speaker -- Steve Cook of the National Association of Realtors and the member of the Speakers Committee who organized today's luncheon.

And Steve, thank you very much.

Bob Webb, the vice president of the Washington, D.C. chapter of the Society of Professional Journalists; Geneva Overholser of the University of Missouri and the chair of the National Press Club's Freedom of the Press Committee; Sylvia Smith of the Fort Wayne Journal-Gazette and the secretary of the National Press Club; and Mark Schoeff of Workforce Management and the chair of the Press Club's Awards Committee.

And we just finished our awards dinner that Mark helped coordinate, and in journalism we celebrated that night as a powerful argument for the First Amendment. (Applause.)

The First Amendment guarantees freedom of the press. It also imposes huge responsibilities on us. The Founders supported press freedom so that we could become another check in our system of checks and balances, holding public officials accountable to the public who elects them and pays their salaries. But if every story about government wrongdoing is met with a subpoena demanding the reporter's sources, then we cannot do our jobs.

What has happened recently is that lawyers and judges are going after journalists first rather than trying to find other ways to get the information they want. Judy Miller of The New York Times went to jail. Tim Russert of NBC and Walter Pincus of The Washington Post are among the journalists forced to testify before a grand jury

investigating the leak of Valerie Plame's name. Stephen Hatfield, named as a person of interest concerning the anthrax attacks, subpoenaed Gannett, CBS and seven other news organizations. Wen Ho Lee, the focus of the spying investigation that was subsequently dropped, demanded that Joe Hebert and four other reporters reveal their confidential sources. Their employers agreed to pay \$750,000 to settle the suit.

Against this backdrop, Senator Richard Lugar and Representative Mike Pence, two Indiana Republicans, have introduced legislation to create a federal shield law. This would require prosecutors and other lawyers to exhaust other avenues before going after journalists. While the privilege would not be absolute, the legislation would prevent journalists from being the first people forced to testify. Instead, they would be among the last.

Senator Lugar and Representative Pence were invited here today in light of the importance of their proposed war in protecting the public's right to know. Senator Lugar is best known as the chairman of the Foreign Relations Committee. In that role, he is a frequent guest on the Sunday talk shows. He also sits on the Agriculture Committee and ran for president briefly in 1996.

Representative Pence, a former radio talk show host, chairs the Republican Study Committee, a group of conservative House Republicans. He sits on the Judiciary, International Relations and Agriculture committees.

In the month that we are marking the 40th anniversary of the Freedom of Information Act, it is a pleasure to invite both lawmakers to the National Press Club. Representative Pence will speak first, followed by Senator Lugar. And then after we will ask questions from the audience.

Congressman. (Applause.)

REP. PENCE: Thank you, Jonathan.

Thank you to all of the board of the National Press Club.

I am deeply honored to be here today on a topic of such great importance to the life of our nation. I'm especially honored to share the podium today with a hero of mine in Indiana, a mentor, a man who I have been accused of dying my hair to look like. (Laughter.)

You know, it's said that a prophet is without honor except in his native place. But let me tell you: Hoosiers know we have a statesman in the United States Senate and his name is Richard Lugar, and I'm honored to share the podium today. (Applause.)

We need look no further than Senator Lugar's work as chairman of the Senator Foreign Relations Committee to find evidence of his commitment to the issues about which we are gathered today. Senator Lugar was the primary force behind legislation that Congress enacted last year, directing the State Department to promote international initiatives to support the development of free, fair, legally protected and sustainable media in developing countries. It's

precisely that level of visionary leadership that will, no doubt, and has, no doubt, helped ensure that First Amendment rights of free press are protected here in the United States as well.

When Senator Lugar and I stand in our respective chambers and take our oath of office before each session of Congress, we pledge ourselves, quite simply, to support and defend the Constitution of the United States of America. And enshrined in the First Amendment are these words, which bear repeating today: Congress shall make no law abridging the freedom of speech or of the press.

It is in that spirit, a fealty to that duty and that oath taken, that I introduced the Free Flow of Information Act along with my Democrat colleague, Richard Boucher of Virginia, early last year. And I must tell you that this caused some curiosity among some of my conservative colleagues. Chairing the House Conservative Caucus, some came up to me, particularly reporters, and would say, you're pretty conservative, right? And I'd say right. And they'd say, well do you think the press is liberal? And I'd say, oh gosh, yeah, terribly liberal. And they'd say, well, why are you doing this? Kind of doing the IQ test thing with me. (Laughter.) And I would say from my heart what I say to you today: As a conservative, I believe the only check on government power in real time is a free and independent press. And those of us who cherish the principles of limited government, as Senator Lugar and I do, understand and appreciate the reasons why freedom of the press was enshrined in that First Amendment of the Bill of Rights.

The freedom of speech and the press, I would offer to you, are two of the most important rights we Americans possess under our Constitution. They truly form the bedrock of our democracy by ensuring the free flow of information to the public, although Thomas Jefferson warned, and I quote, "Our liberty cannot be guarded but by freedom of the press, nor that limited without danger of losing it."

Today, as many in this room know, these rights are under attack. In late 2003, politicians engaged in the familiar clash along the fault lines of the politics of personal destruction. Special counsels were appointed, testimony was given, indictments were handed down, book deals were signed. All the while, a much greater scandal languished for 85 days in a quiet prison cell in suburban Washington, D.C., in a sad image of an American journalist behind bars, whose only crime was standing up for the public's right to know. And Judith Miller is not alone.

In just the past few years, many other journalists have been given or threatened with jail sentences for refusing to reveal confidential sources, and at least a dozen more have been questioned or are on the receiving end of subpoenas. Let me say this clearly: Compelling reporters to testify and, in particular, compelling reporters to reveal the identity of their confidential sources

intrudes on the news-gathering process and harms the public interest. Without the assurance of confidentiality, many whistleblowers will simply refuse to come forward, and reporters will be unable to provide the American public with information they need to make decisions as an informed electorate.

I'm sure we all remember the images from last summer of the 91-year-old W. Mark Felt waving to news crews from his Santa Rosa home. The Washington Post ran the accompanying headline "Deep Throat Revealed" -- an appropriate place for that headline to be printed. Two things are clear about the role that the former FBI assistant director played, though, in that infamous Watergate scandal. Number one, Deep Throat exposed corruption in high places because of his absolute confidence that his identity would be protected. And number two, Deep Throat would not have that protection today.

However motivated by patriotism and high ideals, I offer very humbly, for the purpose of discussion, I think it unlikely that Mr. Felt would reveal confidential information to Bob Woodward today. As a litany of federal prosecutions attest, under current laws, reporters may be forced to reveal the identity of confidential sources under circumstances quite similar to the Deep Throat case. While I'm relieved that Mark Felt stepped forward and that Judith Miller was released from jail, the American people should know that the freedom of the press is still very much behind bars.

With much of the focus the past year on Felt, Miller and the news-gathering process, it's important that we state clearly that a federal shield law is not about protecting journalists' right to keep a news source confidential. It's not about protecting reporters at all. It's about protecting the public's right to know.

The Free Flow of Information Act does not give reporters a license to break the law in the name of news-gathering. It doesn't give them the right to interfere with police and prosecutors who are trying to prevent crimes. It simply gives journalists certain rights and abilities to seek sources and report appropriate information without fear of intimidation or imprisonment.

As many of you know, there were legitimate national security questions raised by some members of Congress concerning the scope of our original act. And we worked diligently to address those questions, revising our bill in between the two Senate hearings that took place before the Senate Judiciary Committee. And I believe the revised bill maintains the ultimate goal of protecting the public's right to know and protecting our nation's secrets. Under that revised language, a reporter cannot be compelled to reveal a source unless the disclosure of the identity of a source is necessary to prevent imminent and actual harm to national security. And on the Senate side, there have been even greater protections discussed and considered to protect our nation's vital security secrets.

In the case of other information, it sets out certain tests that prosecutors must meet before they can force a journalist to turn over information. They must show that they've tried unsuccessfully to get the information in other ways, that the information would be crucial to a, quote, "issue of substantial importance" in the case. If they seek confidential information in a criminal case, they would have to show that a crime had been committed and that the information sought was essential to the investigation. These protections, I believe, are enough to ensure that a whistleblower's identity would be protected when he or she comes forward with information about corporate or

government misdeeds. But they would still allow the courts and other federal agencies and law enforcement officials to do their jobs.

I would offer to you humbly that our bill strikes the proper balance between the public's interest and the free dissemination of information and the public's interest in effective law enforcement and the fair administration of justice. In short, the Free Flow of Information Act protects the public's right to know and to be protected.

So where do we stand? Well, the United States Senate, I am happy to say, under my colleagues' strong urging and leadership, has held a pair of hearings on the idea of a federal media shield and has twice scheduled the bill for markup. And, no doubt, Senator Lugar will apprise us of the state of play in more detail.

In the House, Chairman Jim Sensenbrenner not only remains open to the idea of a federal media shield law, but he informed me on the floor just one hour ago that on September 14th the subcommittee on Internet and the courts will hold a full subcommittee hearing on the Free Flow of Information Act in the House of Representatives.

To close, I'd like to just share with you some of what motivates me on this issue. I was in Chicago speaking on this topic about a year ago, and I found myself over in the Chicago Tribune. My family's all from Chicago, my mom and dad grew up there and my immigrant grandfather drove a bus in Chicago for 40 years. I had always heard about the lobby of the Chicago Tribune, but I wanted to go see it for myself. And I walked in and there chiseled up the wall about as high as your neck can twist are words of our Founders and words of Robert McCormick, the man that founded that paper in 1847. And they really speak to my heart about this issue, and I thought I'd close with them today.

It was Colonel McCormick who -- I would correct myself; his grandfather founded the paper in 1847 -- who said, quote, "The newspaper is an institution developed my modern civilization to present the news of the day and to furnish that check upon government which no constitution has ever been able to provide."

James Madison, the father of our Constitution said, and I quote, "To the press alone, checkered as it is with abuses, the world is indebted."

For all the triumphs which have been gained by reason and humanity over error and oppression, Daniel Webster would say, and I quote, "The entire and absolute freedom of the press is essential to the preservation of government on the basis of a free Constitution."

And I close with the words inscribed on the Liberty Bell, words that come from an ancient text. God spoke to Moses on Mount Sinai and our Founders saw fit to associate them with our nation's founding. There along that Liberty Bell it simply reads, "Proclaim liberty throughout all the land and unto all the inhabitants thereof."

I would submit to you today now is the time for Congress to proclaim liberty, to embrace the principles of the American founding,

say yes to a free and independent press and say yes in so doing to the ongoing vitality of this experiment in democracy that we call the United States of America.

Thank you very much. God bless you.

(Applause.)

SEN. LUGAR: Jonathan Salant, distinguished journalists and those who cherish the First Amendment, all here together with us today, I was inspired to become a part of this important endeavor by my colleague from Indiana, Mike Pence. We had a lunch and were discussing the life and the times in Indiana. And he brought to my attention something that he felt was very important that went beyond Indiana, that was important really to the ethos of our country. And thus was born our collaboration on this legislation. And it has continued vigorously because Mike Pence is a leader in the House and he has an extraordinary following.

And I believe that he's going to get results, and I know he is depending on me to produce on our side, and we are going to do our best.

Well, let me just commence by saying, in my judgment, the free flow of information is an essential element of democracy. A free press promotes an open marketplace of information and provides public and private sector accountability to our nation's electorate. By ensuring the free flow of information, citizens can work to bring about improvements in our government and in our civic life. It is in our nation's best interests to have an independent press that is free to question, to challenge and to investigate issues and stories without concern for political party position or who hold power at that time.

The role of the media as a conduit between government and the citizens it serves must never be devalued. This principle that we practice at home is also one that we promote abroad. Spreading democracy abroad has become a pillar of United States foreign policy, and we've recognized that a free and independent press is both essential to building democracy and a barometer of the health of young and often imperfect democratic systems. The example of press freedom that we set in this country is an important beacon to guide other nations as they try to make the transition from autocratic forms of government.

Now, unfortunately, the free flow of information to citizens of the United States is inhibited and our open market of information is being threatened. While gathering information on a story, a journalist is sometimes required to accept information under the promise of confidentiality. And without insurance of anonymity, many conscientious citizens with evidence of wrongdoing would stay silent.

Restricting the manner in which appropriate news is gathered is tantamount to restricting the information that the public has a right to hear. After a long period, when there were few clashes between the media and authorities, a disturbing new trend has developed. More than 30 reporters have been recently served subpoenas or questioned in

at least four different federal jurisdictions about their confidential sources. From 1991 to September 6, 2001, the Department of Justice issued 88 subpoenas to the media, 17 of which sought information leading to the identification of confidential sources. In fact, three

journalists have been imprisoned at the request of the Department of Justice, U.S. attorneys under its supervision or special prosecutors since the year 2000.

As a result, the press is hobbled in performing the public service of reporting news. And I fear the end result of such actions is that many whistleblowers will refuse to come forward and reporters will be unable to provide the American people with information that we deserve. As my friend and colleague, Senator Chris Dodd, stated during a hearing last year before the Senate Judiciary Committee, and I quote, "Today the principle of a well-informed citizenry as the cornerstone of self government is at risk." End of quote from Senator Dodd.

Most jurisdictions in our country have recognized that confidential sources are integral to the press's role of keeping the public informed and provided some kind of shield so the journalists can keep the secrets of such sources. Every state and the District of Columbia, excluding Wyoming, has by legislation or court ruling created a privilege for reporters not to reveal their confidential sources. My own state of Indiana provides qualified reporters appropriate protection from having to reveal any such information in court.

The federal courts of appeal, however, have an inconsistent view of this matter. Some circuits allow the privilege in one category of cases, while others have expressed skepticism about whether any privilege exists at all. It does not make sense to have a federal system of various degrees of press freedom dependent upon where you live and who provides the subpoena. In fact, 34 state attorney generals have argued that the lack of a clear standard of federal protection undermines state laws.

In addition, there is ambiguity between the official Department of Justice rules and unofficial criteria used to secure media subpoenas. The Department of Justice guidelines also do not apply to special prosecutors, or private civil litigants. There is an urgent need for Congress to state clear and precise policy guidance.

In response to this situation, last year I was pleased to join with my colleagues, Congressman Mike Pence and Representative Rick Boucher in the House of Representatives, and Senator Chris Dodd in the Senate, to introduce the Free Flow of Information Act. This legislation provides journalists with certain rights and abilities to seek sources and report appropriate information without fear of intimidation or imprisonment. The bill sets national standards which must be met before a federal entity may issue a subpoena to a member of the news media in any federal, criminal or civil case. It sets out certain tests that civil litigants or prosecutors must meet before they can force a journalist to turn over information.

Litigants or prosecutors must show, for instance, that they have

tried unsuccessfully to get the information other ways and the

information is critical to the case. These standards were based on Justice Department guidelines and common-law standards. Subsequently, I've worked with Senators Arlen Specter and Chris Dodd in coordination with Congressman Mike Pence to craft a revised Free Flow of Information Act to address some of the concerns expressed by members of the Senate Judiciary Committee.

Additional protections have been added to the bill to ensure that information will be disclosed in cases where the guilt or innocence of a criminal is in question, in cases where a reporter was an eyewitness to a crime, and in cases where the information is critical to prevent death or bodily harm. The bill also permits a reporter to be compelled to reveal the source in certain national security situations. The language makes clear the testimony of a journalist concerning the unauthorized disclosure of properly classified government information can be obtained.

By providing the courts with a framework for compelled disclosure, our legislation promotes greater transparency of government, maintains the ability of courts to operate effectively and protects whistleblowers who identify government or corporate misdeeds. It's also important to note what the legislation does not do. The legislation neither gives reporters a license to break the law nor permits reporters to interfere with criminal investigation efforts.

State shield laws have been on the books for years, and I have not seen any evidence to support a correlation between reporter privilege laws and criminal activity or threats to public safety. As the American Bar Association points out in a recent letter to the Senate Judiciary Committee, the fact that not one case of the state shield laws has been repealed serves as further evidence that the shield laws and law enforcement priorities can be properly balanced.

Furthermore, the Free Flow of Information Act does not weaken our national security. The explicit national security exception and continued strict standards resulting -- rather relating to classified information will ensure that reporters are protected while maintaining an avenue for prosecution and disclosure when considering the defense of our country. This qualified privilege has been carefully crafted to balance the distinct and important roles of both the press and law enforcement.

As chairman of the United States Senate Foreign Relations Committee, I believe the passage of this bill would have positive diplomatic consequences. This legislation not only confirms America's constitutional commitment to press freedom, it also advances President Bush's American foreign policy initiatives to promote and to protect democracy.

Our nation always leads best when we lead by example. Unfortunately, the press remains under siege in a number of foreign countries. And for instance, the Reporters Without Borders points out that 129 journalists are currently in jail around the world, with more than half of these cases in China, Cuba and Burma. This is not good

company for the United States of America. Global public opinion is always on the lookout to advertise perceived American double standards.

Just look, for example, at the international commentary when Judith Miller, a reporter for The New York Times, was jailed for 85 days last year. Moscow News reported then, and I quote: "The Russian Interior Ministry has denounced the arrest of U.S. journalist Judith Miller. The journalists' right to keep their sources secret is part of the press freedom mechanism in a democratic society," end of quote. (Laughter.)

Furthermore, the Guardian in London writes, and I quote: "The American Constitution no longer protects the unfettered freedom of the press. That is the only conclusion that can be drawn from the remarkable case of The New York Times journalist Judith Miller," end of quote. In fact, earlier this summer, a Japanese court upheld a qualified right of reporters to protect their anonymous sources as an occupational secret. Likewise, Mexico recently passed the Professional Secrecy Act, which allows for journalists to protect their sources.

Now the United States has long funded efforts to train journalists around the world and to assist new democracies in adopting laws protecting press freedom. Several years ago, I became concerned that those programs were not adequately coordinated and often fell short of guaranteeing that the United States build a free, fair and sustainable media in countries and regions emerging from dictatorship. A Government Accountability Office study confirmed my views.

Now to address this shortcoming, I introduced legislation to establish a Free Media Center at the National Endowment for Democracy. This legislation was approved, and today I'm proud to announce that the State Department has now funded the establishment of the Free Media Center. The National Endowment for Democracy will begin this important initiative in September.

The new Free Media Center will bring together many media assistance practitioners and experts now working around the world to coordinate their activities, establish best practices and serve as a clearing house for information and programs. The center will also seek to enlist the involvement of America's media companies to ensure that our mutual commitment to a free press is promoted worldwide. While this initiative is important, the United States advocacy of freedom and democracy abroad will not be fully effective unless we first support an open and free press at home.

And in conclusion, I thank again my Hoosier colleague Mike Pence and his partner, Rick Boucher, who have kept the faith in the House of Representatives, as well as my colleagues, Chris Dodd and Arlen Specter, in the United States Senate for their tireless work on this issue. I look forward with you to continuing work with each of them to ensure that all citizens have a free flow of information in our country.

I thank you very much. (Applause.)

MR. SALANT: I'll ask both Senator Lugar and Congressman Pence to come up behind me, and a lot of questions they both will want to answer and then a couple that they won't want to answer.

Let's begin: How do your constituents feel about your support for a shield law? Do they understand the need?

SEN. LUGAR: They like the idea. They understand the need. I have yet to receive the first critical comment from any Hoosier. As a matter of fact, there's a great deal of hometown pride, I suspect, that Mike Pence and I are involved in this endeavor.

MR. SALANT: Congressman, how popular is the bill among your fellow conservative Republicans? Have you made much inroad in changing their opinion?

REP. PENCE: Well, let me go back to the Indiana question. (Laughter.)

I actually believe -- this is a contentious issue, but I've been very heartened from everyone from Chairman Jim Sensenbrenner, who is a well-known conservative in the House of Representatives, to many of my

colleagues in the Republican Study Committee who've come up, crinkled their nose a little bit, said, don't you have that bill helping the press? I stop them and say this is -- and I say very intently, after the dig, I say, this isn't about protecting reporters. This is about protecting the public's right to know.

And I really believe with all my heart that we can move this legislation in the House of Representatives, that rightly framed, responsibly done with regard to national security -- which Senator Lugar reflected in detail the good work that's being done in the Senate -- I truly believe this bill could enjoy broad support, even among many House conservatives in Congress today.

MR. SALANT: It's good to hear from both of you that a free press is essential to our democracy. But this questioner writes: Neither of you, as loyal Republicans, have specifically blamed President Bush for, as Senator Lugar just said, "this disturbing new trend." Why don't you demand of President Bush that he direct the attorney general to stop the issuance of any more subpoenas against the press as a policy matter?

SEN. LUGAR: Well, let me just say that we have -- I think Mike would agree -- some difference of opinion with the Department of Justice. This is clearly a part of the president's administration, so he bears responsibility for appointment of the attorney general, but it goes well beyond that and preceded this administration.

The Department of Justice, unfortunately, has taken historically a point of view that national security, obviously, comes first, but beyond that, that there is not a need for this type of legislation. And some historians would say we've had quiet periods in our history that confirm the fact that things go up and down in this area. In fact, some in the press have said, by trying to define these issues, you take away, perhaps, the absolute sense of the First Amendment,

that it is sometimes better to argue as opposed to the fine points of precisely when an eyewitness situation occurs, a criminal situation has been exhausted, and you go to the reporter -- even a national security situation. Some would say, let's really have a shoot-out on this -- First Amendment versus whatever administration, or so forth.

Mike and I have decided that is not as advisable as attempting to advance the cause with this legislation, with all the compromises we've described and probably some more. But nevertheless, I've not visited with the president about the issue. My view is that if I did that he would approve of what we were doing. This is not something in which the president has taken direct involvement. Perhaps he should take a greater one, maybe he will, as we proceed farther.

MR. SALANT: As a follow-up: Please assess the state of press freedom under the Bush administration. Has the state of press freedom changed during the past five and a half years?

REP. PENCE: Let me say it's a good follow-on to the last question. And this would be a great deal more simple a national debate if this all began in 2001. It didn't. The truth is that it was a Supreme Court decision in the 1970s that set into motion what has been a consistent and persistent erosion of the First Amendment freedom of the press. And that is a reality that, therefore, crosses Republican and Democrat administrations -- several of each.

And I, without giving an assessment of the current state of play, I in my remarks tried to be clear. I think this is a very perilous time for the First Amendment freedom of the press. And therefore, it's a very perilous time for the republic and we have to reverse what has been more than a quarter of a century course of eroding of free and independent press in America. And then that's how, I think, being intellectually honest, we ought to view it.

MR. SALANT: Are you concerned about shielding reporters during wartime?

SEN. LUGAR: Yes. (Laughter.)

Let me just amplify my colleague's response by saying under the Franklin Roosevelt administration -- I find this example from The Columbia Journalism Review of a current issue which goes back to Midway. And apparently, a reporter from the Chicago Tribune was onboard a ship there with the executive officer. And The Columbia Review doesn't say whether the reporter heard this from the exec or whether he took some notes off the table or what have you, but nevertheless, there was considerable information about the Japanese heading toward Midway and congregating in a very hostile way.

And so without knowing the whole sequence of who did what and so forth, the fact is, the Chicago Tribune realized it was, in due course, sitting on a very powerful story and published it. Now once again, the rumor is, according to The Columbia Review, that President Franklin Roosevelt was so enraged that he thought about occupying the Chicago Tribune headquarters -- (laughter) -- indicting, or worse, Colonel McCormick and all of the above. Once FDR was calmed down by others, still, this was a very hostile situation. This is wartime.

The success of our fleet at Midway had already been ensured, but nevertheless, the thought of these prying eyes of this reporter and this story that rankled and continued on for quite some time in the debate.

MR. SALANT: Who do you blame for the state of subpoenas to journalists?

REP. PENCE: He said, you answer. (Laughter.)

I think the law. We're talking about the state of the law today. The supreme law of the land puts these tools in the hands of federal prosecutors. And we hire them and pay them to do their jobs and they use all the tools in the box.

What Senator Lugar and I are purposing to do with our colleagues is to change what's in the tool box and make it again consistent with First Amendment freedom of the press.

MR. SALANT: Leaking depends on secrets. Does the U.S. have too many secrets?

SEN. LUGAR: Well, clearly, the argument over classified material comes up again and again as to various trends of how much is classified and how much is put into a secret category of one form or another.

You know, currently, people who are counting see many more documents being classified than in a comparable period, perhaps because of the security situation, but then the suspicion often -- not just of the press but of the public that's knowledgeable -- is that this covers potentially mistakes and errors, quite apart from whether there's reason for the classification.

I suspect that as a matter of fact much less is secret than we all tend to think is the case. But clearly, our legislation does take the national security into mind. It is important that we have good intelligence, that people who are involved in that situation have every protection so they may do their work on behalf of all of us. And there will always be tension as to how much should be classified and how much should not.

I'm inclined to err on the side of the classifying less, but others can argue -- I suppose persuasively -- that the current level is quite appropriate.

MR. SALANT: The New York Times is under investigation by the Justice Department for its revelation of the administration's mass screening of the bank records of American citizens. What does your bill do to protect the public's right to know of this administration program?

SEN. LUGAR: The bill that we have presented will offer the same protection to The New York Times as to anybody else or to reporters who are involved in this situation -- namely, that we will, I suspect, go -- as Mike said -- through the rudiments of the law. And eventually, subpoenas might be obtained under our bills or under

interpretations by the Justice Department of what they have currently.

I would just take the liberty of extending the question a bit by saying that one of the problems of passing our legislation is that New York Times' type of incidents occur right in the middle of the discussion. (Laughter.) Now, this has nothing to do with the merits of our bill, but it has a lot to do with the dynamics that Arlen Specter finds on the Judiciary Committee, for example.

So for the moment, we are hopeful of having markups and, as Mike has said, we're sort of close to that point. But then suddenly a New York Times story comes along; there's a great flurry and commotion. The reaction of President Bush, I think, was not quite as volatile as what I described with FDR back at Midway. (Laughter.) But they may be comparable, and for the same reason. If you were president of the United States, you know, you just wonder what's going to go wrong next and who is responsible, and what do we do about it? But then as

everybody calms down and we walk around the problem, the normal course of law is going to be followed. We will probably have a markup, and there will be even more protections for those reporters there or anywhere else.

MR. SALANT: The bill essentially allows a judge to decide whether the harm of a leak outweighs the value of the public getting information. Should the same test be applied to lawyers about testifying about clients or doctors testifying about patients?

REP. PENCE: Well, let me say we -- in the drafts that are in the House of the Free Flow of Information Act and in the drafts that may be the basis for a markup in the Senate, the definition of terms, the breadth of judicial discretion is a subject of much discussion and much debate, whether it's on a national security question or otherwise.

We, however, fully expect that in the case of all of the state media shield statutes that have been on the books for many years that the courts of appropriate jurisdiction will interpret this statute, define it, give it its (meets and bounds ?) and therefore create the kind of predictability that will greatly benefit people in the news-gathering business. So we welcome judicial interpretation. If this becomes law, it certainly would be a part of defining what this law means. And I think at the end of the day the protections that the Free Flow of Information Act would extend would greatly benefit people in the news-gathering business, because of the ability to source the statute and the judicial decisions to determine where the boundaries are, where the safe harbor is in gathering in the enormous volume of information that never touches on bodily harm, never touches on national security, but falls in the category of information that the American people have a right to know to make decisions as an informed electorate.

MR. SALANT: Without passage of this bill, would either of you be more cautious about sharing confidential information with a reporter? (Laughter.)

SEN. LUGAR: Well, let me just say for the moment now, those of

us who have some public responsibility have a responsibility to be forthcoming about what is going on. Now, if we have a classified document, then we have to respect the fact that the laws of our country are that we should respect the classified document. So my advice to officeholders, people of responsibility would be not to break the law, to observe the law, but, in the case of Mike Pence and myself, maybe to amend the laws and try to modify the situation -- (light laughter) -- at least for the benefit of reporters, not for ourselves. I think our responsibilities remain the same.

MR. SALANT: If this legislation is passed and in a particular case all other avenues of information have been exhausted, will you expect a reporter to free reveal his sources, or her sources?

REP. PENCE: Well, we would not be passing a statute to outlaw civil disobedience. (Pause.) That was a joke. (Laughter.) Apparently poor. (Laughter.)

But what we're really trying to do here would, it seems to me, would greatly impact this process before we get to that moment. It would be to create an environment where the people that work for many people in this room would know where the line is. Today people don't know. A reporter cannot look at Senator Lugar or me or any of our colleagues and with absolute certainty say that this is off the record and I will keep your name out of it. And we've had headlines for the last year of people who were told emphatically that what they were saying was off the record and their name would not be involved.

And I want to say, without -- I agree wholeheartedly with the sentiment expressed by Senator Lugar about our duty as public men and women to be forthcoming, within the boundaries of the law. But it is -- I will also say it is inconceivable to me that, left in its current form, the law would not serve to have a chilling effect on the flow of information from sources, official and otherwise, in Washington, D.C., to the public at large. And it's not -- we're not just talking about sources, people that have titles before their names; but we're also talking about the people that actually have most of the information you all utilize. And whether or not that individual working somewhere in the bureaucracy would be willing to step forward and risk their entire career to share information that they know in their heart as an American the public has a right to know is really, in large part, what we're dealing with today. That, to me -- it's about creating the boundary lines in the law that will encourage that flow of information, and not so much focusing on the point of decision by a reporter in a court and a moment of confrontation.

MR. SALANT: On another constitutional issue, do you agree with the recently released report of the American Bar Association -- in fact, they released a report here yesterday -- which concluded that President Bush has run afoul of the Constitution in many of his signing statements, in which the president has declared that he will not enforce certain laws passed by Congress? And along those lines, what would happen if your bill to protect the press is passed but the administration declines to enforce it?

SEN. LUGAR: Well, I would say, in good humor, I would hope the president would not add a message on top of the signing of the bill.

(Laughter.) And I think that these messages and these words are a part of a debate that we're having now with the Congress and the chief executive. And this is an important debate to have. I don't know what the resolution will be of it, but it once again comes into the checks and balances between the executive and the legislative. And on this occasion, the president, given whatever counsel he's been given, has apparently attempted to modify the course of the legislation or its extent or whatever was the purpose of the note. Those of us who were involved in voting for the legislation and guiding it through would understandably be upset about this. But in our normal dialogue and our course of parlance with the chief executive, we'll make that known and we hopefully will come to some better conclusions.

MR. SALANT: You hinted there would be more compromises on the bill. What is your definition of an unacceptable compromise?
(Laughter.)

SEN. LUGAR: Well, let me just say there's no way in advance to know that. We've not come to the point of having the bill marked up in either committee, House or Senate, quite apart from passage on the floor, conference and all the rest of it. I wouldn't just say, "Trust us," -- (laughter) -- but nevertheless, we have a desire for progress here, and I've already described the initial attempt and modifications of that, which are thoroughly attempts to bring about compromise or at least better feeling with the Judiciary Committee, which, after all, is going to be marking this up. It's not in the jurisdiction of my Foreign Relations Committee; it's in Senator Specter's committee. And then, finally, on the floor of the Senate, I have no idea as to what amendments will be offered by members, or if we get to conference with the House how we will all come out there.

But I think we've tried to at least outline today, both of us, our general idealism about this, the practical steps we've taken to make it at least, if not the court of last resort to press the reporter, way down the trail, after information is sought by prosecutors in many other ways.

MR. SALANT: Switching gears: What needs to be done in the Middle East to stop the fighting between Israel and Hezbollah?
(Laughter.)

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SEN. LUGAR: Secretary Rice, representing the president, is attempting, as I understand it, to obtain a multinational force that will stand between Hezbollah and the Israelis and will likewise move the procedures, the democratic procedures in Lebanon on to a democracy that can in fact patrol its own country and have some control over its people. That is a tall order, as to which countries are going to step forward, their competence to handle all of the above. But nevertheless, that it appears to me to be the course that the powers that be -- and they include a number of nations that are offering constructive comment about this -- are moving toward, to have some separation, some force that will stop the fighting, stop the killing, but at the same time try to strengthen the Lebanese government so that it can play a role for democracy in that area.

MR. SALANT: This questioner says Israel has a right to defend its sovereignty against Hezbollah. Does India have the same right to defend its territory against terrorist groups operating from neighboring Pakistan?

SEN. LUGAR: Yes, they do. (Laughter.) And they have been doing so. Our counsel, as friends of both India and Pakistan, is to be helpful in trying to cut down the number of sorties of any sort that might come from either direction, and as a matter of fact, in a much more dangerous world, to work with statesmen in India and Pakistan so they understand the implications of having nuclear weapons, of having the early warning systems or warnings systems of all sorts that the United States attempted to perfect with the former Soviet Union during a long time of potential difficulty and tragedy for both of our nations.

And I believe that diplomacy has been more effective since 9/11, in part because we dropped economic sanctions, political sanctions, against India and Pakistan. We've entered, really, a new chapter and currently have been debating in the Foreign Relations Committee a new arrangement with regard to the sharing of nuclear technology, the United States and India. That debate still has to occur, finally, and votes in the House and the Senate on legislation we've passed. But that is a monumental step forward in terms of a strategic relationship. Likewise, the potential sale of F-16 aircraft, after a very long lapse, to Pakistan, is an indicator that times have changed there, that they're in much more good faith.

So our active diplomacy in both of those situations is of the essence, in the building of those relationships, so that there can be movement toward peace without either country feeling it's compromising sovereignty.

MR. SALANT: With all the Indiana reporters here, there's no way you were going to away without a local question. Is the Indiana toll road lease deal a risky move, or a forward-thinking plan? (Light laughter.)

REP. PENCE: I'll take that. (Laughter.)

SEN. LUGAR: It's a tough issue.

REP. PENCE: Not in my district. (Laughs; laughter.) It's in his.

Let me say I am a great admirer of Governor Mitch Daniels, and I think that he has brought a style of leadership to the state of Indiana -- everything from reforming our clocks -- (laughter) -- to turning a toll road that lost, I think, \$100 million a year into the very means whereby we will finance the construction of our infrastructure for the next decade without raising taxes on Hoosiers. I heartily endorse what the governor has done, and I have every confidence that as Hoosiers grow more and more aware of this issue they'll come to appreciate the tremendous infusion of resources associated with that project and will come to appreciate the leadership of the governor and the general assembly in making it

possible.

MR. SALANT: Before we ask the last question I want to offer each of you a certificate of appreciation for appearing before the club.

REP. PENCE: Thank you very much.

SEN. LUGAR: Thank you. Thank you very much.

MR. SALANT: And, of course, the coveted National Press Club coffee mug. (Laughter, applause.)

I want to end it the way we began it, talking about the shield law. What needs to be done to make the shield bill a law?

REP. PENCE: Want to lead --

SEN. LUGAR: Well, let me just suggest that a markup in the Judiciary Committee of the Senate needs to occur, a debate and vote on the Senate floor. Likewise, Mike has mentioned a hearing in the House committee that may be relevant, and markup there and movement on the floor; then conference between the two bills, if they are different, and I suspect that they will be in some particulars; and passage of

the conference report and, hopefully, a signature by the president. That's a tall order, given the number of days or weeks of legislative business still ahead of us, but we are still optimistic that that movement will occur and we will go back fortified by this meeting.

REP. PENCE: I want to take again the opportunity to thank you, Jonathan, for the privilege of appearing publicly with Senator Lugar at this gathering, and to leave you all with a challenge. I worked for the better part of a decade in broadcasting, so my answer is going to harken back to my time working in and around people like you every day. Senator Lugar's a legislator, and he just spoke as a legislator about what needs to happen. I'm going to challenge you, as former colleague, to say if what we've said here today and if the work that we have done with our colleagues resonates with you, I challenge you to return to your editorial boards, return to your column space, return to your airwaves with a message to the American people that says this is about your right to know. If we can fire the imagination of the American people for the freedom of the press by helping them to understand that this 30-year erosion of a free and independent press is an erosion of their rights, then Congress will act with all deliberate speed.

Thank you very much. God bless you. (Applause.)

MR. SALANT: I'd like to thank everyone for coming today. I'd also like to thank National Press Club staff members Melinda Cooke, Pat Nelson, Jo Anne Booz and Howard Rothman for organizing today's lunch, and thanks to the Eric Friedheim National Journalism Library at the National Press Club for its research. Research at the library is available to all club members by calling 202- 662-7523.

We're adjourned. (Raps gavel.)

(Applause.)

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