



The Judiciary, State of Hawaii

Testimony to the Twenty -Fourth Legislature, 2008 Session
Senate Committee on Judiciary and Labor
The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair

Tuesday, March 25, 2008, 9:30 a.m.
State Capitol, Conference Room 016

by
Hawaii Supreme Court Standing Committee on the Rules of Evidence

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2557, H.D. 1, Relating to Evidence

Judiciary's Position:

The Standing Committee on the Rules of Evidence (Evidence Committee) respectfully requests that this measure be deferred and referred to it for interim study and a report to the 2009 Legislature.

In order to assist the Legislature in its evaluation of new evidence proposals and to enable the Judiciary to fulfill its constitutional responsibility to assert primacy in matters "relating to process, practice, procedure and appeals," Chief Justice Ronald Moon created the Evidence Committee in 1993 with a mandate "to study and evaluate proposed evidence law measures referred by the Hawaii Legislature, and to consider and propose appropriate amendments to the Hawaii Rules of Evidence.

According to Article VI, section 7 of the Hawaii Constitution, the Hawaii Supreme Court has the "power to promulgate rules...relating to process, practice, procedure and appeals, which shall have the force and effect of law." This constitutional mandate includes rules of evidence. Beginning with the promulgation of the Hawaii Rules of Evidence in 1980, the Supreme Court has elected to share this power with the Legislature. See Bowman, *The Hawaii Rules of Evidence*, 2 U. Haw. L. Rev. 431 n.3 (1981)("The cooperative approach was designed in part to avoid a separation of powers struggle between the legislative and judicial branches of



House Bill No. 2557, H.D. 1, Relating to Evidence
Senate Committee on Judiciary and Labor
March 25, 2008
Page 2

government"). Evidence rules are thus on the legislative agenda. But the Evidence Committee has a compelling interest in generating and voicing opinions regarding evidence measures such as that contained in House Bill No. 2557, H.D. 1.

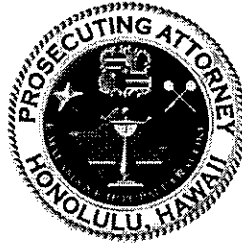
To assure the Judiciary a fair opportunity to exercise its constitutional function, the House and Senate Judiciary Committees, pursuant to a practice established several years ago, refer all new evidence measures to the Evidence Committee for interim study and a written report to the very next session of the Legislature. In this way the Evidence Committee is able to supply informed opinions to the Legislature, and the Legislature continues to have the final say in these matters. This procedure has worked well for the better part of the past decade. Accordingly, the Evidence Committee requests deferral and referral of House Bill No. 2557, H.D. 1, because it is a new measure that has just come to our attention.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawai'i**

March 25, 2008

RE: H.B. 2557, H.D. 1; RELATING TO EVIDENCE.

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following comments in opposition to H.B. 2557, H.D. 1.

The purpose of this bill is to add a new section to Hawaii Revised Statutes ("HRS") chapter 621 which relates to evidence and witnesses. The section that is added provides that a journalist or newscaster who is presently or previously employed with a news organization or any person who can credibly establish that the person has participated in the dissemination of news or information of substantial public interest, shall not be required by a legislative, executive or judicial officer to disclose by subpoena or otherwise, the source of information or information obtained in the course of gathering, receiving, or processing of information for communication to the public. The bill also exempts instances where: 1) there is probable cause to believe that the journalist or newscaster has committed, is committing or is about to commit a crime; 2) the journalist or newscaster is a percipient witness to the commission of a crime; or 3) in a non-criminal matter judicial matter, the party seeking to compel disclosure can show by clear and convincing evidence that the source or information sought is unavailable from reasonable alternative sources, noncumulative and necessary and relevant to the claim or defense asserted.

We oppose this bill since it fails to recognize a legitimate and significant public interest in the investigation and prosecution of crime. The proposed shield could deny crime victims and their families, their right for a judicial resolution of the crime and would hamper the search for the truth in criminal cases. And what if the information withheld under this shield was helpful to a criminal defendant because it implicated somebody else?

We note that like investigative journalism, the ultimate goal of criminal investigations and criminal trials are a search for the truth. Unlike investigative journalism, the witnesses and evidence presented in the criminal justice system must be tested in an adversarial framework intended to culminate in a public trial where witnesses are questioned and confronted. We agree that there is a significant public purpose to ensure a free flow of newsworthy

information to the community; however, we believe this bill fails to recognize that there can also be a significant public purpose to hold persons who have committed serious crimes in our community criminally accountable. Although this bill contains an exemption for civil cases, there is no exemption for criminal cases. Thus, if a serious crime is committed and the journalist has information materially relevant to the commission of the crime, and there information is unavailable through other means or sources, this bill would permit the journalist to refuse disclose the information. The public might find out about it in the news, but no one might be held criminally accountable. We do not think that this is ultimately in the public interest to fail to have any recourse for criminal cases while providing an exemption in civil cases.

For these reasons, we oppose House Bill 2557, H.D. 1 and thank you for this opportunity to testify.



Since 1967, protecting the public's right to know

The Big Island Press Club

P.O. Box 1920 Hilo, Hawaii 96721

The Honorable Senator Brian T. Taniguchi, Chairman
The Honorable Senator Clayton Hee, Vice Chairman
Committee on the Judiciary and Labor, Hawaii State Senate

Big Island Press Club — John Burnett, President (808) 854-9422

Tuesday, March 25, 2008, 9:30 a.m. Conference Room 016

Opposition to HB 2557 H.D.1 Relating to evidence.

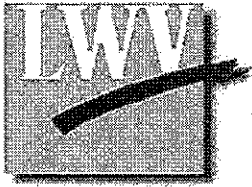
The Big Island Press Club has been dedicated to openness in government and the public's right to know since 1967.

In regard to House Bill 2557 HD1 relating to evidence, commonly known as the "journalism shield" bill, our organization is opposed to the measure, in its present form, becoming law in the State of Hawaii.

The bill creates an exception to protection where: (1) Probable cause exists to believe that the journalist or newscaster has committed, is committing, or is about to commit a crime. Such a requirement would force a journalist to testify against him or herself in violation of the Fifth Amendment to the United States Constitution.

The bill also creates an exception where: (2) The journalist or newscaster is a percipient witness to the commission of a crime. This exception is overly broad and essentially nullifies the intent of a journalist's shield law, which is to shield journalists from being forced into the role of agents of the government. The effect would be to prohibit investigative journalism in the State of Hawaii.

The Big Island Press Club believes HB 2557, if enacted, would have exactly the opposite effect of "shielding" journalists and their confidential sources. Such a law would be a violation of the freedom of the press guaranteed by the First Amendment of the United States Constitution.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON HB 2557, HD1 RELATING TO EVIDENCE

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair
Tuesday, March 25, 2008 9:30 a.m.
Conference Room 016

Chair Taniguchi, Vice Chair Hee, members of the Committee on Judiciary and Labor,

The League of Women Voters supports the intent of HB 2557, H.D. 1 .

I was quite startled when I came across an article from the July 2, 2006 issue of the Honolulu Advertiser written by Theodore B. Olson, a former solicitor general of the United States which stated that forty-nine states and the District of Columbia have laws protecting the confidentiality of reporters' sources and that Hawaii does not.

There has been enough testimony on the need of such a law to encourage investigative journalism and the willingness of people with access to information which might reveal violations of law within government, businesses and other organizations to share this information anonymously because of the fear of reprisals.

We welcome the more liberal interpretation of professional journalists and newscasters to keep up with changing times. While we do rely on other sources of news also, our newspapers and electronic media still remain valuable sources of news and we hope that a shield law will encourage the media heads to support more investigative reporting.

Society benefits when there is assurance that there are systems in place that encourage the exposure of noncompliance with rules and regulations and the law, as well as outright violations of laws.

We have not had the time to look into all of the implications and consequences of the addition of exceptions to the privileges provided by the H.D. 1 version of this bill, which explains our support of only the intent of this bill.

Thank you for this opportunity to present testimony on HB 1.

Jean Y. Aoki, Legislative Committee
League of Women Voters of Hawaii



LATE

**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 2557, H.D. 1, RELATING TO EVIDENCE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, March 25, 2008 **TIME:** 9:30 AM

LOCATION: State Capitol, Room 016
Deliver to: Committee Clerk, Room 219, 1 Copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Girard D. Lau, First Deputy Solicitor General

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General appreciates the intent of this measure, but has serious concerns.

We support in general the concept of a reporter's privilege because it maximizes the public's access to important information, by making it more likely that a person will disclose significant information to a reporter. This increase in the free flow of information also promotes government accountability.

However, we have concerns about the broad and virtually unlimited scope of the privilege provided in this bill. No exception is provided, for example, even where law enforcement investigation or prosecution of serious crimes, or the safety and security of the public, would be severely impaired. An exception should be provided to ensure that law enforcement and public safety are not compromised. Accordingly, we strongly recommend that a paragraph (5) be added to the exceptions listed in subsection (c) of the new section being added to chapter 621, Hawaii Revised Statutes, by section 1 of the bill. The new paragraph could read: "(5) Disclosure is material to the investigation or prosecution of a felony or other serious crime, or is important to prevent a serious threat to public safety or welfare, and the same information is not reasonably available from other sources."

In addition, there may be limited circumstances under which a criminal defendant, for example, may have a constitutional right to disclosure of the privileged information. Although the precise details and scope of any such right are unclear, another exception can and should be added to subsection (c) that reads: "(6) A party to a legal case has a constitutional right to the disclosure of the information."

We also believe that, while protection of the identity of the source is critical to the effectiveness of the privilege in encouraging sources to talk to a reporter, see subsection (a)(1), the broad additional protection of "unpublished information" provided in subsection (a)(2) is unnecessary because sources are primarily concerned with disclosure of their identity (or information that could lead to discovery of their identity), not with the disclosure of other information the reporter chose not to specifically report. Thus, we recommend deleting subsection (a)(2) altogether, or, alternatively, at the very least amending subsection (a)(2) to cover only such unpublished information given with express expectation of confidentiality. The latter option can be accomplished by amending subsection (a)(2) to read "Any unpublished information given by the source with express expectation of confidentiality obtained or prepared by the person"

Because it is important, however, that not only the identity of the source, but also information that could lead to the discovery of the identity of the source be protected, we recommend that subsection (a)(1) be amended to read as follows: "The source, or information that could reasonably be expected to lead to the discovery of the identity of the source, of any published or unpublished information obtained by the person"

We are also concerned that the persons covered by the privilege is far too broad. Although the journalists or newscasters covered by subsection (a) are appropriately limited, subsection (b) expands coverage to virtually anyone by including persons using "any tangible or electronic medium." This would mean that a person passing out

leaflets on the street, any blogger, or even a one-time poster of a news item on the internet, could be covered. We thus strongly recommend that subsection (b) be deleted. Deleting subsection (b) would not seriously hamper the free flow of information to the public, because any source wanting to disclose important information, but concerned about disclosure of his or her identity, could always go to a journalist or newscaster covered under subsection (a). If the Committee wishes, however, we would not be opposed to expanding the coverage of subsection (a) to include digital versions of physical newspapers or magazines. Accordingly, if subsection (b) is deleted as we strongly recommend, the Committee could, if it so chooses, amend subsection (a) to read: "A journalist or newscaster presently or previously employed by or otherwise professionally associated with any newspaper or magazine (or any digital version thereof operated by the same organization), news agency, press association, wire service, or radio or television transmission station or network"

An additional substantive change should be made. Currently the bill, in subsection (a), covers journalists or newscasters who are "presently or previously employed by or otherwise professionally associated with" the newspaper, etc. The inclusion of "previously employed" makes sense because the journalist should not have to disclose the information just because he or she is no longer a journalist. However, the bill fails to require that the journalist obtain the privileged information at the time he or she was employed by or professionally associated with the newspaper, etc. Thus, a person who works for a newspaper or radio station, but then resigns and later receives information from a source, would be wrongly covered for information obtained while no longer a journalist or newscaster. Accordingly, to correct this problem, subsection (a)(1) should be revised to only protect "The source of any published or unpublished information obtained by the person while so employed or professionally associated in the course of gathering" Similarly, subsection (a)(2), if it is not eliminated completely, should be similarly revised

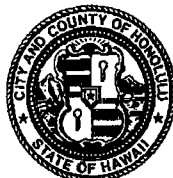
to protect only "Any unpublished information given with express expectation of confidentiality obtained or prepared by the person while so employed or professionally associated in the course of gathering"

LATE

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
MICHAEL D. TUCKER
DEPUTY CHIEFS

OUR REFERENCE JC-NTK

March 25, 2008

The Honorable Brian T. Taniguchi, Chair
and Members
Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: House Bill No. 2557, H.D. 1, Relating to Evidence

I am Richard C. Robinson, Acting Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 2557, H.D. 1, Relating to Evidence.

The addition of this section to the Hawaii Revised Statutes would work against the greater good of the community. Allowing journalists or people involved in the dissemination of news or information to conceal information from the police would sabotage the purpose behind our criminal justice system. This purpose is to search for the truth.

Our judicial system is based on a search for the truth through an intensive investigation that gathers the most information from as many sources as possible. This information may support or disclaim the allegations against a person, and it will ultimately be used to decide if a person is guilty or not in a court of law. By allowing some individuals to conceal their information, the justice system will not receive the entire picture. This may result in the wrong person being punished or the wrong person being freed. This lopsided picture of truth will not give anyone justice.

Thank you for the opportunity to testify.

Sincerely,

RICHARD C. ROBINSON, Acting Major
Criminal Investigation Division

APPROVED:

For
BOISSE P. CORREA
Chief of Police

LATE



BY FAX: 586-6659

Committee: Committee on Judiciary and Labor
Hearing Date/Time: Tuesday, March 25, 2008, 9:30 a.m.
Place: Room 016
Re: Testimony of the ACLU of Hawaii to Offer Comments on HB 2557, HD1, Relating to Evidence

Dear Chair Taniguchi and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes to offer comments to HB 2557, HD1.

Freedom of the press promotes speech and self-governance for all Americans. Journalists provide information needed for voters to evaluate candidates. They uncover unlawful acts by elected representatives and expose government abuses of power. Investigative reporting helps ensure that our government is open to public scrutiny. Liberty is lost without a free and independent press.

Journalists cannot maintain their independence without access to information from confidential sources. The Watergate scandal and the Pentagon Papers became public only after informants were assured anonymity. More recently, confidential sources broke stories about illegal government programs including torture, warrantless wiretapping, kidnapping, and illegal detention. In retaliation, the government has used subpoenas to intimidate journalists into revealing sources and jailed them if they declined to name names.

The government's efforts to silence dissent are facilitated by the lack of a journalist's privilege from identifying confidential sources. Forty-nine states and D.C. recognize some form of reporters' privilege. A vibrant and meaningful state reporters' shield will ensure that journalists continue to have the tools they need to hold the government accountable to the people. It also will allow the press to continue to inform the public about substantial risks to our health and safety without fear of government persecution.

We urge this Committee to pass a state media shield law with the following recommendations:

- **Adopt a qualified privilege** that generally protects against forced disclosure of sources, with narrow exceptions for protecting other competing rights and interests.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Hon. Sen. Taniguchi, Chair, JDL Committee
and Members Thereof
March 25, 2008
Page 2 of 2

- **Balance a reporters' privilege with the constitutional rights of criminal defendants** to have access to sources and information that may be exculpatory or might mitigate their sentences.
- **Use a functional definition of "journalist"** focusing on acts of journalism and whether information from confidential sources is secured for dissemination to the public.

The experience of the states, most federal courts, and our closest allies around the world demonstrates that we can have freedom of the press without harming our collective security. A state media shield law that safeguards free speech and other important interests strikes the right balance.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

LATE

March 25, 2008

Ryan Kawaiiani Ozawa
95-595 Kanamee St., #326
Mililani, HI 96789
(808) 372-3372 c.

Senate Judiciary and Labor Committee Members
c/o Sen. Brian T. Taniguchi (Chair)
Hawaii State Capitol, Room 219
415 South Beretania Street
Honolulu, HI 96813

Aloha mai!

I am writing to express my support for HB 2557 HD1 (relating to disclosure of evidence exceptions for journalists and newscasters). But I also wish to convey my great hope that the Legislature also seize the opportunity to take an important early step toward recognizing and legitimizing the role of the Internet, and citizen journalists, in newsgathering and publishing.

The Need for a Shield Law:

First and foremost, a "shield law" such as this is absolutely necessary to ensure that members of the media be able to do their jobs. And by that I mean more than earning a paycheck. I mean fulfilling the spirit of the First Amendment, and the vision of an informed populace. Does a free press mean more headaches for the government? Surely. Can the media actually be a hindrance to the government? Sometimes. But even Thomas Jefferson said, "Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

I am not asking for the abolishment of government, of course. But I am asking you to recognize that the role of the press is crucial to democracy. And this role cannot be allowed to wither in the face of political and legal machinations or unchecked civil litigation. In my view, the dissemination of the most sensational or even unconscionable story cannot do more damage than the suppression of one piece of information that the public needs to know. If we are to err, let us err on the side of transparency.

-- more --

Broadening the Definition of a Journalist:

Now, I believe HB 2557 HD1 is an important first step that the Legislature needs to take. And I note that in the bill summary, the exceptions cover journalists, newscasters, and **“persons participating in collection or dissemination of news or information of substantial public interest.”** However, the main body of the bill is much more restrictive. It includes current and previous employees of professional news outlets, but leaves no room for independent, individual persons who perform the same functions.

I feel the wording of the bill summary noted above should be included in the bill itself, in lieu of the “presently or previously employed by” clause. Journalists should be defined by the role they play – what they do, and toward what end – rather than whomever signs their paychecks. As established public access and other government-funded media outlets prove, a paycheck or professional membership should not be a prerequisite to practicing journalism, or serving the public good through the “collection or dissemination of news or information of substantial public interest.”

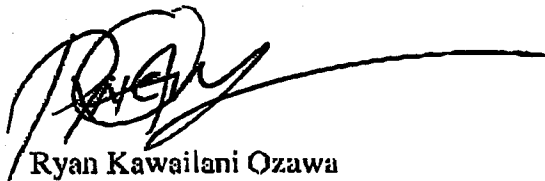
Indeed, compared to the resources of a commercial news outlet or reporters’ guild, I dare say a private individual is in greater need of the protection outlined in this bill when it comes to practicing journalism.

Acknowledging the Internet:

Finally, and briefly, I’d like to suggest that the Internet be added to the otherwise exhaustive list of mediums reflected in the bill. At present, the bill includes any “newspaper, magazine, news agency, press association, wire service, or radio or television transmission station or network.” I’d like to point out that every single one of these media outlets maintain a substantial presence and are making significant investments online. And more than a few exist primarily on the Internet.

The Legislature clearly considered its website a key method of disseminating information. It’s how I became aware of this bill. I think it makes sense, therefore, to append, **“or website,”** to the list included in HB 2557 HD1.

Mahalo for your consideration.



Ryan Kawaiiani Ozawa

testimony

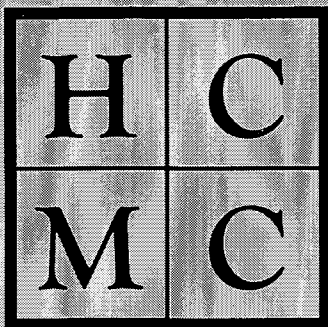
From: Cliff Slater [cslater@lava.net]
Sent: Tuesday, March 25, 2008 7:27 AM
To: Sen. Brian Taniguchi
Cc: testimony
Subject: In support of HB 2557 HD1
Expires: Tuesday, April 01, 2008 12:00 AM

I am in support of HB 2557 HD1 "relating to evidence." Journalist and journalism groups in Hawaii have nearly unanimously supported establishing a journalism shield bill here. Thirty other states have such a shield law, which helps to protect journalist's notes and confidential sources when they are subpoenaed in civil trials. In Hawaii, journalists have been subpoenaed and threatened with the possibility of large fines and jail time if they don't comply with court orders to turn over the information to private attorneys who are seeking to either intimidate investigative reporters or defend their clients in civil matters.

This is a very real problem for our local journalists and the legislation as it stands will help to protect them in such extreme cases.

Cliff Slater
Ph: 808.524.5619
Cel: 808.285.7799
www.honolulutraffic.com
www.cliffslater.com

LATE



Honolulu Community Media Council

Since 1970

President:

Chris Conybeare

Vice-President:

Beth Ann Kozlovich

Treasurer:

Teresita Bernales

Secretary:

Marya Grambs

Board Members at Large:

Brenda Ching

Gerald Kato

Jean King

Michael Largarticha

Richard Miller

Sarah Vann

March 28, 2008

To: The Honorable Brian Taniguchi, Chair, and Members of the Senate Committee on Judiciary and Labor

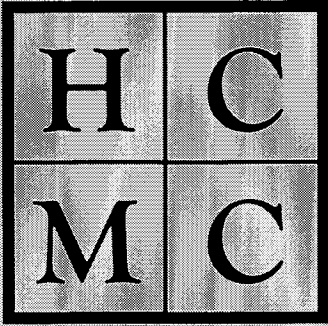
Fr: Gerald Kato, HCMC Board

Re: HB2257HD1

The Honolulu Community-Media Council commends the Legislature for taking up this important issue involving freedom of the press and the free flow of information. We support the intent of HB2557HD1 and the amendments suggested by the Journalism Coalition to essentially separate traditional and non-traditional journalists into two parts in the bill while giving protection to all who disseminate information in the public interest.

HCMC believes it is important to have a measure of protection for citizen journalists and others, such as independent filmmakers and authors who do not fall neatly into the definition of traditional journalists but whose work advances the public interest. This would be consistent with the U.S. Supreme Court's recognition that the "press" includes all forms of publications that contribute to the free flow of information.

HCMC recently sponsored a Freedom of Information Day speech by Sheila Coronel, director of the Toni Stabile Center for Investigative Journalism at Columbia University and an award winner for her investigative reports in the Philippines. Coronel said Shield Laws should protect all journalists, including citizen journalist and bloggers, because the distinction between professional and citizen journalists is getting increasingly blurred as citizen journalists improve their skills and professional organizations rely more on the community to provide information.



Honolulu Community Media Council

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Michael Largarticha

Richard Miller

Sarah Vann

"It will come to a point when it's useless to say that these protections only apply to journalists who are employed by a mainstream news organization," Coronel said.

HCMC believes that the exceptions sought by the Attorney General's Office and the City Prosecutor would emasculate the bill and dilute if not completely defeat its intent to encourage sources to disclose information useful to the public. It seems to us that such exceptions are designed to make the press a tool of government rather than an independent source of information, and that runs contrary to the intent of this bill and the intent of the framers of the Constitution.

On one point we do strongly agree with the Attorney General. On December 7, 2006, Attorney General Mark Bennett representing Hawaii joined with twenty-three states and the Commonwealth of Puerto Rico in an amicus brief in the case of United States of America v. Mark Fainaru-Wada; et al. This is the case of two San Francisco Chronicle reporters who refused to disclose the identities of confidential sources involving their stories on use of steroids in major league baseball. The brief said "that the free flow of information is vital to the workings of a healthy democracy; that journalists play a crucial role in gathering and reporting such information; that the most important information must often come from sources who need or prefer to remain confidential; and that without the confidentiality guaranteed by the reporter's privilege, the sources will remain silent and their information secret."

We cannot agree more with those sentiments. That is why a strong and broadly-based Shield Law should be supported by the Senate Judiciary and Labor Committee.

Freedom of the press is in the 1st Amendment because history taught America's founders its importance. They remembered that colonial printers had been licensed, but licenses could be revoked and printers imprisoned (Ben Franklin's older brother James was once imprisoned for a month). Those dedicated to liberty rejected British fears that "Great inconvenience may arise by the liberty of printing" and Virginia Governor William Berkeley's 1671 view that "I thank God that there are no free schools nor printing...learning has brought disobedience and heresy, and printing has divulged them, and libels against the best government. God keep us from both."

Unfortunately, current press freedoms fall short of that envisioned by our founders. The annual worldwide press freedom index from Reporters Without Borders shows the United States, which is supposedly spreading freedom and liberty throughout the world, is in a fast decline regarding the freedom of its own press.

The report ranked the United States in 44th place, an huge drop from a favorable position of 22nd held last year, and from 17th place in 2002.

The organization mentioned that several journalists were expelled from the country since the terrorist attacks of 2001. Judith Miller of the New York Times, jailed in 2005 for refusing to disclose a source, is the most famous illustration, but there are many others who could face similar fates. The organization also mentioned that several journalists were expelled from the country since September 11th. Federal courts are getting increasingly bold about subpoenaing journalists and trying to force them to disclose their confidential sources. These cases are important to note when we mock the press of such countries as China.

The current pressures to limit the freedom of the press justify recalling just how crucial it was to our founders. Thomas Jefferson asserted that "Our liberty depends on the freedom of the press, and that cannot be limited without being lost." John Adams argued that "Liberty cannot be preserved without a general knowledge among the people...of the characters and conduct of their

rulers," which is why Samuel Adams found that "there is nothing so fretting and vexatious, nothing so terrible to tyrants...as a free press."

Fisher Ames wrote that "freedom of the press...is a precocious pest, and a necessary mischief, and there would be no liberty without it." George Mason said that "The freedom of the press is one of the bulwarks of liberty, and can never be restrained but by despotic governments." James Madison, "the Father of the Constitution," stated it most powerfully, when he wrote, "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."

Unfortunately, our understanding of the importance of freedom of expression has eroded since America's founders gave them pride of place in the Bill of Rights. They would be unable to reconcile current restrictions, much less proposals for further ones, with their belief in liberty or our founding documents. In fact, restrictions are closer to the Soviet ideal than ours. In Lenin's words:

"Why should freedom of speech and freedom of press be allowed? Why should a government...allow itself to be criticized? I would not allow opposition by lethal weapons. Ideas are much more fatal things than guns. Why should any man be allowed to buy a printing press and disseminate pernicious opinions calculated to embarrass the government?"

Lenin was right: Ideas are ultimately more fatal than guns. But that is why Americans must defend the freedom of the press. As Jefferson said, "To preserve the freedom of the human mind...and freedom of the press, every spirit should be willing to devote itself...for as long as we may think as we will and speak as we think, the condition of man will proceed in improvement."

America weathered the unconstitutional Sedition Act of 1798 because so many citizens recognized it as an affront to liberty. But it is not clear that Americans' current dedication to liberty is as great. Yet John F. Kennedy's recognition that "a nation that is afraid to let its people judge the truth and falsehood in an open market is afraid of its people" is as true today as ever. And, as Supreme Court Justice William Douglas once put it, "Restriction of free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us."

It is rather sad that the state legislature must pass laws to uphold a right that has already been reiterated in the U.S. Constitution. It shows us the current state of the United States. Yet this right must be protected. Therefore I urge the senate to support this shield law to protect the press so that the people of Hawaii can benefit from an increased and unbiased free flow of information and ideas.

LATE**testimony**

From: Carrollmcc@aol.com
Sent: Wednesday, March 26, 2008 10:17 AM
To: Sen. Brian Taniguchi
Cc: testimony
Subject: HB 2557

To: The Honorable Brian Taniguchi

From: Mary and David Carrol
Residents and home owners
Naalehu. HI 96772

Dear Senator Taniguchi
The following issue was recently brought to our attention:

HB 2557 HD1 "relating to evidence" will be heard this Thursday in the Senate Judiciary Committee beginning at 9:30 a.m. at the Hawaii State Capitol room 016. As you may know, journalist and journalism groups in Hawaii have nearly unanimously supported establishing a journalism shield bill here. Thirty other states have such a shield law, which helps to protect journalist's notes and confidential sources when they are subpoenaed in civil trials. In Hawaii, journalists have been subpoenaed and threatened with the possibility of large fines and jail time if they don't comply with court orders to turn over the information to private attorneys who are seeking to either intimidate investigative reporters or defend their clients in civil matters. This is a very real problem for our local journalists and the legislation as it stands will help to protect them in such extreme cases. The bill, introduced by House Judiciary Co-chair Blake Oshiro, has already passed the House. Now it up to the Senate.

Please vote for the journalist shield law, HB 2557.

Sincerely,

Mary and David Carroll

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