



The PACIFIC ALLIANCE
to STOP SLAVERY

LATE
Testimony

DATE: 3/14/11

ATTN: COMMITTEE ON HUMAN SERVICES

Rep. John Mizuno, Chair

HEARING DATE: Monday, March 14th 2011

HEARING PLACE: Conference Room 329 - State Capitol - 415 South Beretania Street

TIME: 9am

RE: **SB77**

Dear Committee Human Services:

The rise in Human Trafficking among international and domestic trafficked persons is increasing as Hawaii is now 1 of 5 states in the nation that has not passed local legislation making it all too easy for victims of this modern-day slavery to fall through the cracks of our justice system as they are mistakenly seen as "illegal immigrants."

Hawaii has also recently been implicated in a federal investigation of the largest labor-trafficking case in U.S. history involving more than 400 victims. (Global Horizons¹).

Existing laws are non-existent to deter Labor-Trafficking while protecting victims. Effective deterrents require bringing traffickers who exploit trafficked persons, to justice.

The lack of legal definition in our Hawaii criminal statutes creates a reluctance in the implementation of adequate services and facilities in Hawaii to meet the needs of trafficking victims in terms of health care, housing, education, medical services, and legal assistance--services which safely support the recovery and ability of trafficked persons to regain control of their lives and also to assist with the prosecution of traffickers.

In order to deter Human Trafficking, Hawaii must recognize that Human Trafficking is a serious offense. This can be simply accomplished by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting, rather than punishing, the victims of these offenses.

We support the passage of SB77 with the following language to include as an amendment:



Amendments to SB77

The following Amendments are proposed to SB77:

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

Labor Trafficking

§707-A Definitions. As used in this part:

"Labor" means work of economic or financial value.

"Services" means a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor or a third party.

"Venture" means a business relationship between two or more parties to undertake economic activity together.

§707-B Labor trafficking in the first degree. (1) A person commits the offense of labor trafficking in the first degree if the person knowingly provides or obtains or attempts to provide or obtain another person for labor or services, by any of the following means:

- (a) Extortion as defined in section 707-764;
- (b) Kidnapping as defined in section 707-720;
- (c) Unlawful imprisonment as defined in section 707-721 or 707-722;
- (d) Force, threat, or intimidation;
- (e) Deception, as defined in section 708-800, or fraud, which means making material false statements, misstatements, or omissions to induce or maintain the person to engage or continue to engage in the labor or services;
- (f) Requiring that labor be performed to retire, repay, or service a real or purported debt, if performing the labor or services is the exclusive method allowed to retire, repay, or service the debt and the indebted person is required to repay the debt with direct labor in place of currency; provided that this shall not include labor or services performed by a child for the child's parent or guardian;
- (g) Assault in violation of either section 707-710, 707-711, or 707-712;



- (h) Withholding any of the trafficked person's government-issued identification documents with the intent to impede the movement of the person;
- (i) Using any scheme, plan, or pattern intended to cause the person to believe that if the person did not perform the labor or services, then the person or a friend or a member of the person's family would suffer serious harm, serious financial loss, or physical restraint; or
- (j) Using or threatening to use any form of domination, restraint, or control over the person which, given the totality of the circumstances, would have the reasonably foreseeable effect of causing the person to engage in or to remain engaging in the labor or services.

(2) Labor trafficking in the first degree is a class A felony.

§707-C Labor trafficking in the second degree. (1) a person commits the offense of labor trafficking in the second degree if the person knowingly:

- (a) Recruits, entices, solicits, isolates, harbors, transports or maintains, or so attempts, another person knowing that the person will be subjected to forced labor or services under §707-B; or
- (b) Either acting as an individual or using a licensed business enterprise, aids another in a venture knowing that the other person in that venture is committing the offense of labor trafficking in the first degree; or
- (c) Benefits, financially or by receiving something of value, from participation in a venture knowing or in reckless disregard of the fact that another person has engaged in any act in violation of subsection (a) or (b) in the course of that venture or that another person in that venture is committing the offense of labor trafficking in the first degree.

(2) Labor trafficking in the second degree is a class B felony; provided that if a violation of subsection (1) involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to cause the death of a person, or if a death results, the offense shall be a class A felony.

(3) Upon conviction of a defendant under subsection (1), the court shall also order that any and all business licenses issued by the State be revoked for the business or enterprise that the defendant used to aid in the offense of labor trafficking in the second degree; provided that the court, in its discretion, may reinstate the business license upon petition to the court by any remaining owner or partner of the business or enterprise who was not convicted of an offense under this section.

§707-D Additional sentencing considerations; victims held in servitude. In addition to the factors set forth in sections 706-606 and 706-621, when determining the particular sentence to be imposed on a defendant convicted under section 707-B or 707-C, the court shall consider:

- (a) The time in which the victim was held in servitude; and



- (b) The number of victims.

§707-E Extended terms of imprisonment; labor trafficking offenses. If a person is found guilty of a violation under section 707-B or 707-C and the victim suffered bodily injury, the person may be sentenced to an extended indeterminate term of imprisonment. Subject to the procedures set forth in section 706-664, the court may impose, in addition to the indeterminate term of imprisonment provided for the grade of offense, an additional indeterminate term of imprisonment as follows:

- (a) Bodily injury – an additional two years of imprisonment;
- (b) Serious bodily injury – an additional five years of imprisonment;
- (c) Permanent or life-threatening bodily injury – an additional fifteen years of imprisonment; or
- (d) If death results, the defendant shall be sentenced in accordance with the homicide statute relevant for the level of criminal intent.

When ordering an extended term sentence, the court shall impose the maximum length of imprisonment. The minimum length of imprisonment for an extended term sentence under paragraphs (a), (b), (c), or (d) shall be determined by the Hawaii paroling authority in accordance with section 706-669.

§707-F Restitution for victims of labor trafficking. (1) In addition to any other penalty, and notwithstanding a victim's failure to request restitution under section 706-646(2), the court shall order restitution to be paid to the victim, consisting of an amount that is the greater of:

- (a) The total gross income or value to the defendant of the victim's labor or services; or
 - (b) The value of the victim's labor or services, as guaranteed under the minimum wage provisions of chapter 387 or the Fair Labor Standards Act of 1938, P.L. 75-718, 29 United States Code 201 - 219, inclusive, whichever is greater.
- (2) The return of the victim to the victim's home country or other absence of the victim from the jurisdiction shall not relieve the defendant of the defendant's restitution obligation.
- (3) For purposes of this section, "victim" means the person against whom an offense specified in section 707-B or 707-C has been committed.

§707-G Nonpayment of wages. (1) A person commits the offense of nonpayment of wages if the person, in the capacity as an employer of an employee, wilfully or with intent to defraud fails or refuses to pay wages to the employee. In addition to any other penalty, a person convicted of nonpayment of wages shall be fined not less than \$2,000 nor more than \$10,000 for each offense.

- (2) Nonpayment of wages is:



- (a) A class C felony, if the amount owed to the employee is equal to or greater than \$2,000 or if the person convicted of nonpayment of wages falsely denies the amount or validity of the wages owed; or
 - (b) A misdemeanor, if the amount owed to the employee is less than \$2,000.
- (3) A person commits a separate offense under this section for each pay period during which the employee earned wages that the person failed or refused to pay the employee. If no set pay periods were agreed upon between the person and the employee at the time the employee commenced the work, then each "pay period" shall be deemed to be bi-weekly.
- (4) In addition to any other penalty, the court shall order restitution to be paid to the employee, consisting of an amount that is the greater of:
- (a) The wages earned by the employee that were unpaid by the person convicted of nonpayment of wages; or
 - (b) The value of the employee's labor or services, as guaranteed under the minimum wage provisions of chapter 387 or the Fair Labor Standards Act of 1938, P.L. 75-718, 29 United States Code 201 - 219, inclusive, whichever is greater.
- (5) An employee who is the victim of nonpayment of wages may bring a civil action to recover all wages owed by the person convicted of nonpayment of wages.
- (6) For purposes of this section:

"Employee" means any person working for another for hire, including but not limited to an individual employed in domestic service or at a family or person's home or any individual employed by the individual's parent or spouse, or independent contractors.

"Person" includes any individual, partnership, association, joint-stock company, trust, corporation, the personal representative of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any persons, but shall not include the United States.

"Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

§707-H Unlawful conduct with respect to documents. (1) A person commits the unlawful conduct with respect to documents if the person knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported government identification document of another person:

- (a) In the course of a violation or attempt to commit an offense under section 707-B or 707 C;
or



- (b) To prevent or restrict, or in an attempt to prevent or restrict, without lawful authority, the ability of the other person to move or travel, in order to maintain the labor or services of the other person, when the person is or has been the victim of an offense under section 707-B or 707-C.

(2) A person commits the unlawful conduct with respect to documents if the person knowingly destroys, conceals, removes, or confiscates any actual or purported government identification document of an employee.

(3) Unlawful conduct with respect to documents is a class C felony."

SECTION 2. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

"§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, labor trafficking, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, unlawful methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, or electronic enticement of a child which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture."

SECTION 3. Section 803-44, Hawaii Revised Statutes, is amended to read as follows:

"§803-44 Application for court order to intercept wire, oral, or electronic communications. The attorney general of this State, or a designated deputy attorney general in the attorney general's absence or incapacity, or the prosecuting attorney of each county, or a designated deputy prosecuting attorney in the prosecuting attorney's absence or incapacity, may make application to a designated judge or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, in the county where the interception is to take place, for an order authorizing or approving the interception of wire, oral, or electronic communications, and such court may grant in conformity with section 803-46 an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the



investigation of the offense as to which the application is made, if the interception might provide or has provided evidence of:

- (1) Murder;
- (2) Kidnapping;
- (3) Labor trafficking in the first degree;
- (4) Labor trafficking in the second degree;

~~[(3)]~~ (5) Felony criminal property damage involving the danger of bodily injury as defined in section 707-700;

~~[(4)]~~ (6) Distribution of dangerous, harmful, or detrimental drugs; or

~~[(5)]~~ (7) Conspiracy to commit one or more of the above; or involving

~~[(6)]~~ (8) Organized crime and any of the following felony offenses:

- (A) Extortion;
- (B) Bribery of a juror, of a witness, or of a police officer;
- (C) Receiving stolen property; ~~[and]~~
- (D) Gambling; and
- (E) Money laundering."

SECTION 4. Section 842-1, Hawaii Revised Statutes, is amended by amending the definitions of "organized crime" and "racketeering activity" to read as follows:

"Organized crime" means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, labor trafficking, or corruption of law enforcement officers or other public officers or employers.

"Racketeering activity" means any act or threat involving^[5] but not limited to murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, labor trafficking, theft, or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year."

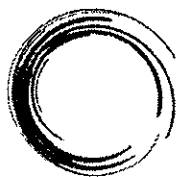
Sent: Monday, March 14, 2011 7:54 AM
To: HUS testimony
Cc: jdold@polarisproject.org
Subject: Testimony for SB77 on 3/14/2011 9:00:00 AM
Attachments: Hawaii Testimony on SB77 with Amendment.docx; Amendments to SB77.docx

Testimony for HUS 3/14/2011 9:00:00 AM SB77

Conference room: 329
Testifier position: comments only
Testifier will be present: No
Submitted by: James L. Dold, J.D.
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Submitted on: 3/14/2011

Comments:

LATE
Testimony



POLARIS PROJECT

FOR A WORLD WITHOUT SLAVERY

TESTIMONY ON SB77 WITH AMENDMENTS PRESENTED TO THE HUMAN SERVICES COMMITTEE MARCH 14, 2011

Mr. Chairman and members of the Human Services Committee; on behalf of the more than 15,000 supporters of Polaris Project, thank you for providing us with an opportunity to speak about the crime of human trafficking. My name is James Dold and I am Policy Counsel for the Polaris Project.

Polaris Project is a leading national organization dedicated to combating human trafficking within the United States by serving victims, raising public awareness, and engaging in policy advocacy at both the State and Federal level. We have been selected by the U.S. Department of Health and Human Services to be its training and technical assistance provider and have operated the National Human Trafficking Resource Center and Hotline since December 2007. During this time our human trafficking call specialists have fielded over 25,000 calls from across the nation. We have also provided victim services to more than 300 survivors of human trafficking since 2004 in our D.C. and New Jersey client service offices.

We greatly appreciate the Hawaii Legislature's concern for and willingness to address the crime of human trafficking, a grave violation of human rights. Human trafficking is a monstrous crime, shrouded in secrecy, often unknown except to those who remain bound by invisible chains. It is one of the great injustices of our lifetime and will continue to threaten the freedom of our children, our neighbors, and our fellow brothers and sisters until it is eradicated completely.

Human Trafficking National and Global Perspective

Human trafficking is the modern-day slavery, and it is one of the fastest growing criminal industries in the world, consisting of the subjugation, recruitment, harboring, or transportation of people for the purpose of forced labor or services or commercial sexual exploitation. Victims of human trafficking in the United States include children and adults, as well as foreign nationals and U.S. citizens.

The United States Government estimates that between 600,000 to 800,000 people are trafficked across international borders for forced labor and sexual servitude each year, 70 percent of whom are women and over 50 percent are children. This does not

include those trafficked within their own countries, which is as high as 2 to 4 million persons. Of those trafficked across international borders, up to over 60,000 individuals at a minimum are trafficked into the United States each year. These numbers suggest that the actual figure for the scope of human trafficking is much higher. The State Department estimates that there are roughly 12.3 million slaves in the world today, more than at any other time in the history of the world. Another estimate, by renowned human trafficking expert Kevin Bales, puts the total number of people trapped in modern-day slavery at an estimated 27 million. Of that astounding number, Dr. Bales estimates that 15 to 20 million are victims of labor trafficking.

Most victims suffer a horrific life in which they are repeatedly beaten, raped, starved, chained or locked up, and psychologically tortured. For many, the only way of leaving is by means of escape, rescue, suicide, or murder.

There have been trafficking investigations in all 50 States and incidence of trafficking have been reported in 91 U.S. cities. Human trafficking is a crime that thrives in secrecy and is feed by the insatiable greed of those who see human beings as a commodity to be profited off of. Globally, human trafficking generates over \$32 billion in annual revenue.

Recently, Polaris Project served a labor trafficking victim, "Sabine," who was brought over from Rwanda by a wealthy family in the United States. Sabine was the only survivor from her family of the genocide in Rwanda, so when a wealthy family offered her a chance to move to America with them she agreed. Upon arrival, however, she quickly learned that she had been taken advantage of. She was imprisoned in the home; unable to leave, she was made to work around the clock. Anytime she had to sleep she was made to sleep on the kitchen floor. After six months of servitude she was allowed to go to church for an hour each Sunday. On one of her visits she was approached by a kindly Rwandan man. He asked if she was ok and after learning about her situation, he helped her escape. He took Sabine to one of our partner agencies and once they learned her story they immediately referred her to Polaris Project.

Unfortunately, Sabine's story is far too common in the United States. I cannot impress upon members of the Human Services Committee enough, that labor trafficking is alive and well in the United States and it affects every corner of our nation. It is also prevalent in Hawaii.

Human Trafficking in Hawaii

Every day we receive calls through the National Human Trafficking Resource Center referencing situations where men, women, and young children are subjected to

violence, coercion, and fraud in order for their traffickers to profit. While we do not know how many victims there are in Hawaii, we do know that the National Hotline has received calls referencing trafficking situations in cities throughout the state of Hawaii. Some of these calls were classified as tips that human trafficking was occurring in different cities, including Honolulu, Hilo, and Wakiki Beach.

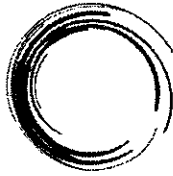
Most recently, Hawaii was home to the largest labor trafficking case in the history of the United States. On September 1, 2010, the U.S. Department of Justice brought formal charges against the President and Chief Operating Officer of Global Horizons for “engaging in a conspiracy to commit forced labor and document servitude.” The case involved 400 Thai workers who were lured with false promises of high-paying farm jobs but were exploited and forced into labor, often with little or no pay. The victims were sent to 13 states including Washington, California, Florida, Colorado, Hawaii, Utah, the Carolinas, the Dakotas, Kentucky, New York, and Virginia. One of the most publicized cases came from victims who worked at 13 to 14 farms on Oahu, Kauai, Maui and the Big Island, tending to coffee, fruits and vegetables for Aloun Farms and Maui Pineapple Farm.

Human trafficking is a scourge that preys on the most vulnerable among us and exploits those who are in need of protection. And while it may be easy at times to pretend that human trafficking is not a crime that affects every day Americans, I can tell you with absolute certainty that it does. It is a crime of absolute evil, but by criminalizing labor trafficking you will provide law enforcement and prosecutors in Hawaii with the tools that are needed to combat it.

If it is the will of the Human Services Committee to amend SB77 to include provisions criminalizing human trafficking, we would suggest incorporating the provisions from HB577. In particular, we have submitted amendments from HB577 that would criminalize labor trafficking in the first and second degree. Additionally, it would provide victims of labor trafficking with restitution. By passing SB77 with the labor trafficking amendments, Hawaii will bring its laws in line with the other 45 states that have enacted some form of anti-human trafficking law.

Support HB577

Therefore, we ask that the honorable members of the Human Services Committees act, with what Dr. Martin Luther King, Jr. referred to as “the fierce urgency of now,” by voting favorably upon SB77 with labor trafficking amendments. If you should have any questions, please feel free to call me at (202) 745-1001, ext. 132. Mahalo.



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- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture."

SECTION 3. Section 803-44, Hawaii Revised Statutes, is amended to read as follows:

"§803-44 **Application for court order to intercept wire, oral, or electronic communications.** The attorney general of this State, or a designated deputy attorney general in the attorney general's absence or incapacity, or the prosecuting attorney of each county, or a designated deputy prosecuting attorney in the prosecuting attorney's absence or incapacity, may make application to a designated judge or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, in the county where the interception is to take place, for an order authorizing or approving the interception of wire, oral, or electronic communications, and such court may grant in conformity with section 803-46 an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, if the interception might provide or has provided evidence of:

- (1) Murder;

(2) Kidnapping;

(3) Labor trafficking in the first degree;

(4) Labor trafficking in the second degree;

~~[(3)]~~ (5) Felony criminal property damage involving the danger of bodily injury as defined in section 707-700;

~~[(4)]~~ (6) Distribution of dangerous, harmful, or detrimental drugs; or

~~[(5)]~~ (7) Conspiracy to commit one or more of the above; or involving

~~[(6)]~~ (8) Organized crime and any of the following felony offenses:

(A) Extortion;

(B) Bribery of a juror, of a witness, or of a police officer;

(C) Receiving stolen property; ~~[and]~~

(D) Gambling; and

(E) Money laundering."

SECTION 4. Section 842-1, Hawaii Revised Statutes, is amended by amending the definitions of "organized crime" and "racketeering activity" to read as follows:

"Organized crime" means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, labor trafficking, or corruption of law enforcement officers or other public officers or employers.

"Racketeering activity" means any act or threat involving~~g~~ but not limited to murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, labor trafficking, theft, or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year."

Sent: Sunday, March 13, 2011 10:05 PM
To: HUS testimony
Cc: DCitron@law.umaryland.edu
Subject: Testimony for SB77 on 3/14/2011 9:00:00 AM
Attachments: Testimony of Danielle Keats Citron for S.B.pdf

LATE
Testimony

Testimony for HUS 3/14/2011 9:00:00 AM SB77

Conference room: 329
Testifier position: support
Testifier will be present: No
Submitted by: Danielle Keats Citron
Organization: Individual
Address:
Phone:
E-mail: DCitron@law.umaryland.edu
Submitted on: 3/13/2011

Comments:



**Testimony to the House Committee on Human Services
Monday, March 14, 2011
9:00 a.m.
Conference Room 329
Hawaii State Capitol**

RE: SB 77 SD1 RELATING TO COURTS

**UNIVERSITY OF MARYLAND
SCHOOL OF LAW**

WRITTEN TESTIMONY OF DANIELLE KEATS CITRON,
Professor of Law, University of Maryland School of Law,
Affiliate Fellow of Yale Information Society Project,
Affiliate Fellow of Stanford Center on Internet and Society

CYBER HARASSMENT

Cyber harassment is a serious and widespread problem. It routinely involves threats of rape and other forms of sexual violence. It includes the posting of revealing photographs of victims or doctored pictures portraying victims being raped and strangled. The harassment often exposes victims' sensitive personal information, such as Social Security numbers and medical information. It commonly involves the impersonation of victims: Perpetrators post victims' telephone numbers, home addresses, and purported interest in anonymous sex or rape fantasies.¹

Such harassment has a profound effect on targeted individuals. It discourages them from writing and earning a living online. Targeted individuals shut down their blogs and websites.² It interferes with their professional lives. It raises their vulnerability to offline violence and has led

¹ For detailed explanation of the phenomenon of cyber harassment, see Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61 (2009) and Danielle Keats Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373 (2009).

² A 2005 Pew Internet and American Life Project study attributed a 11 percent decline in women's use of chat rooms due to menacing comments. *Female Bloggers Face Harassment*, WOMEN IN HIGHER EDUC., June 2007, at 5.

to physical attacks at the hands of third parties inspired by online postings. The harassment causes considerable emotional distress.³ Some targeted individuals have committed suicide.⁴

CURRENT REALITIES

While cyber attackers target men, more often their victims are female. The nonprofit organization *Working to Halt Online Abuse* reports that from 2000 to 2008, 72.5% of the 2,519 individuals reporting cyber harassment were female.⁵ Just over half of the victims had a relationship with their attackers.

For instance, in December 2009, a California man, Jebidiah James Stipe, impersonated his ex-girlfriend in a Craigslist advertisement, posting her home address and interest in a “real aggressive man with no concerns for women well being.”⁶ The advertisement sought “humiliation, physical abuse, and sexual abuse.” Stipe told investigators that he posted the advertisement because he was upset with his ex-girlfriend for “remaining in a relationship with her current boyfriend.” Another man, Ty McDowell, responded to the posting: He forced his way into the woman’s home, tied her hands behind her back, blindfolded her, and raped her. McDowell’s lawyer explained that his client believed he was playing out the woman’s lurid sexual fantasy. Stipe previously posted similar online advertisements with his ex-wife as the target.

Although cyber harassment’s scope is difficult to estimate, one study suggests that approximately 40 percent of female Internet users have experienced cyber harassment.⁷ The U.S. Department of Justice has explained that any statistical evidence surrounding cyber harassment is likely to underestimate the phenomenon as women tend to underreport it due to feelings of shame and embarrassment.⁸

THREATS TO PRIVACY

Cyber harassment invades victims’ privacy by exposing their sensitive personal information, revealing photographs, and the like. Because search engines reproduce information cached online, time’s passage cannot alleviate their reputational, emotional, and physical damage. Unlike newspapers, which were once only easily accessible in libraries after their publication, search engines now index all content on the web, and can produce it instantaneously. Victims must live with digital privacy invasions that are deeply humiliating, reputation-harming, and potentially dangerous as demonstrated by the Craigslist rape, as well as searchable and

³ Ellen Nakashima, *Sexual Threats Stifle Some Female Bloggers*, WASH. POST, Apr. 30, 2007, at A1.

⁴ B.J. Lee, *When Words Kill: Suicide Spurs Bid to Regulate the Net in South Korea*, NEWSWEEK.COM, Oct. 15, 2008.

⁵ WORKING TO HALT ONLINE ABUSE, CYBERSTALKING COMPARISON STATISTICS 2000-2008.

⁶ William Browning, *Suspect Solicited Ex’s Rape, Affidavit Says*, WYOMING BILLINGS GAZETTE, Feb. 5, 2010. For the rape victim’s interview on Oprah, see <http://www.everythingoprah.com/2010/09/craigslist-rape-victim-sarah-shares-horrific-story-on-the-oprah-winfrey-show.html>.

⁷ Azy Barak, *Sexual Harassment on the Internet*, 23 SOC. SCI. COMPUTER REV. 77 (2005).

⁸ ATT’Y GEN. TO VICE PRESIDENT, CYBERSTALKING: A NEW CHALLENGE FOR LAW ENFORCEMENT AND INDUSTRY (1999).

accessible from anywhere, and by anyone, in the world. Often, the information is taken out of context, producing a distorted and damaging view of the person.⁹

While lawsuits can serve to redress victims for these harms, they also can compound the severity of these privacy problems. Law often permits victims to sue perpetrators for intentional infliction of emotional distress, invasion of privacy, and defamation. But victims must bring such civil lawsuits in their own names. As a result, the complaints, which are available to the press and interested individuals, further publicize the cyber harassment, exacerbating the privacy harms suffered by victims. In turn, victims may refrain from pursuing their harassers in court *not* because they lack legitimate claims but because they fear exposing themselves to further privacy invasions.

S.B. No. 77 SD1

Senate Bill 77 SD1 aims to protect the privacy of cyber harassment victims so that they can bring lawsuits against their attackers. It allows victims who have already received an order of protection, temporary restraining order, or protective order against the perpetrator to sue as Jane or John Does in cases involving domestic abuse. The law itself is quite narrow, only providing these protections to cyber harassment victims who have already been recognized by a court as deserving of a protective order in the context of a domestic violence matter. Although I believe that the proposed legislation should be expanded to include other victims of cyber harassment, the bill serves a crucial role in permitting victims to bring law's coercive and moral power to bear against cyber harassers. Because the bill allows courts to weigh the victim's interest in privacy against the public's interest in disclosure, it both protects privacy and transparency.

CONCLUSION

Cyber harassment is a serious problem that causes serious harm to victims and their families. This bill would help victims bring lawsuits that would deter and remedy cyber harassment without unnecessarily sacrificing transparency.

⁹ For a detailed explanation of the way digital environment exacerbates privacy problems, see Danielle Keats Citron, *Mainstreaming Privacy Torts*, 99 Cal. L. Rev. (forthcoming 2011) and DANIEL J. SOLOVE, *THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET* (2007).

Sent: Sunday, March 13, 2011 9:58 PM
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Cc: msharvard@gmail.com
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LATE
Testimony

Testimony for HUS 3/14/2011 9:00:00 AM SB77

Conference room: 329
Testifier position: support
Testifier will be present: No
Submitted by: Jane Doe
Organization: Individual
Address:
Phone:
E-mail: msharvard@gmail.com
Submitted on: 3/13/2011

Comments:

**Testimony to the House Committee on Human Services
Monday, March 14, 2011
9:00 a.m.
Conference Room 329
Hawaii State Capitol**

**RE: SB 77 SD1 RELATING TO COURTS
Position: Strong Support**

Cyber harassment of women and other minority populations (e.g., LGBT) exemplifies the 21st century behavior that is harmful to women and minorities; and it continues to be disappointingly trivialized (Citron, 2009). Until the 1970s, no term even existed for sexual harassment in the workplace and domestic violence in the home, and women were expected to manage these harms in isolation and without the support of law enforcement and the judicial system (Citron, 2009).

I am submitting my testimony in support of SB 77 SD1 because I was the victim of domestic violence in the late 90s. Through threats of violence and under duress when I attempted to leave this abusive relationship in 1999, my son's father procured sexually explicit photographs of me long before digital cameras and user generated content technology on the internet was available to the average consumer.

Over a decade later, I became the target of cyber harassment by my son's father who made repeated internet publications of me in a state of undress and of a sexual nature; alongside extremely offensive racist and sexual comments that identified me by my true full name and place of employment. This vindictive behavior was done in retaliation after I testified against him in an abuse proceeding brought by another woman, and requested a child support re-evaluation for the child we share in 2008.

I first learned of the photographs and published comments in 2008, after I began receiving anonymous email contact at a social networking site, on my personal work email, and telephone calls made to me by several male strangers. The First Circuit Family Court issued a Protective Order against my son's father (Defendant) that remains in effect for several years and ordered that the Defendant return any photographs of me to my attorneys. This matter has still not been resolved, and weeks after the Family Court issued the Protective Order, a fourth posting was made.

I attempted to file a Jane Doe Complaint in the First Circuit Court, State of Hawaii, to compel the cessation of the harassing and intrusive conduct because I felt that these callous, cruel, and calculated attacks upon my privacy, reputation, and character caused me to fear that this harassment - not even considered criminal under current state Hawaii law (e.g., postings on 3rd party websites and online impersonation vs. direct communication) - would ever cease. Moreover, the targeted nature of these attacks - and in particular, the inclusion of my full name, business, and contact information - made me fear for my own physical safety and those of my minor children from the general public.

Upon filing my motion to proceed anonymously as a Jane Doe, the Judge in this case DENIED me the opportunity to proceed and did not issue any further explanation of his order. This prevented me the opportunity to seek an appeal (e.g., no written opinion for an Appeals Court to examine), so I filed a Motion for Clarification, Reconsideration, and a Hearing. After filing this Motion, the same Judge held on to my Motion for Reconsideration for five (5) months and then "hand delivered" it back to my attorney with no stamp, but a non-verbal gesture of "Denied" for the second (2nd) time, and no opportunity to plead my case before him.

To date, my efforts to file as a Jane Doe has personally cost me over \$40,000, and despite being a victim of highly embarrassing invasion of privacy and harassment stemming from domestic violence, the Judge's decision has made it impossible for me to seek meaningful redress in the courts. Consequently, I fear the harms that I have already suffered will be magnified not only by publicity, but my personal safety and well-being as a private citizen will be jeopardized. As the 11th Circuit Court of Appeals recently decided upon Jane Doe cases it stated, "the district court failed to give due consideration to the concerns the Plaintiffs raised about being forced to maintain the suits in their own names. Justice should not carry such a high price and accordingly, we vacate the district court's order."

The use of "Doe Plaintiffs" to protect the legitimate privacy rights has been recognized as an appropriate practice in circumstances when a plaintiff would be further stigmatized by disclosing his or her name in court documents. In determining whether a plaintiff should be able to proceed anonymously, courts balance "the plaintiff's interest in anonymity....against both the public interest in disclosure and any prejudice to the defendant." *Sealed Plaintiff v. Sealed Defendant*, 537 F. 3d 185, 189 (2nd Cir. 2008) (adopting the Ninth Circuit's formulation as described in *Does v. Advanced Textile Corp*, 214 F. 3d 1058m 1068 (9th Cir 2000), and holding that the district court abused its discretion in refusing to allow sexual assault plaintiff to proceed anonymously). In balancing these interests, courts have employed a number of non-exclusive factors such as whether the case involves matters that are highly sensitive and of personal nature.

The right to privacy is also recognized in our Hawaii Constitution. *See* Haw. Const. art. I, §§ 6-7. Among the privacy interests protected by our Constitution is informational privacy: the right to keep confidential information that is "highly personal and intimate."

I am asking for your support of HB 77 SD1 because our state Constitution protects this privacy right, and the First Circuit Court, State of Hawaii, refused to weigh any of the factors or engage in any type of balancing of harms.

The trivialization of online harassment and privacy violations will continue given the nature of the internet, absence of public policy on state and federal levels, and marginalizes victims' experiences of mental and emotional distress and humiliation. Missouri teenager Megan Meier, committed suicide in October 2006, when a prank was played by her 47 year old neighbor. Last fall, Rutgers student Tyler Clemente, committed

suicide when his sexual encounter with another male was live streamed without his consent or knowledge.

As Professor Citron wrote in her journal article *Law's Expressive Value in Combating Cyber Gender Harassment*, "law creates a public set of meanings and shared understandings between the state and the public. It clarifies, and draws attention to, the behavior it prohibits....law educates the public about what is socially harmful." (Citron, 2009). In an increasingly digital world, a person's privacy and reputation become vulnerable to anonymous participants, and cyber harassment will continue to increase with greater frequency and norms - particularly against women, children, and other minorities.

Not only is it important to address cyber harassment as a crime while protecting online First Amendment right to free speech, the harms and apparent suicide of victims makes this a serious threat to public safety (Jameson, 2008). It is important that law enforcement have the tools (e.g., state law and technological tools to unmask online offenders) which makes cyber harassment a crime, but also require the court system to adopt a multi-factor test to balance privacy vs. access in every case where (a) a party wants anonymity; (b) the party moves for anonymity. The amendments required in SB 77 SD1 would include a list of factors that the courts must consider, and to codify the key cases in this area from other jurisdictions.

Sadly, the Judge in my case refused to rely on persuasive precedent from courts in other jurisdictions that have previously dealt with similar cases, and denied me the opportunity to seek redress without exacerbating the very harms I was seeking redress for. To date, the perpetrator has suffered no criminal charges and I am not willing to move forward with this case under my true name due to the reasons mentioned.

Thank you for allowing me to submit this testimony. I share this story with the genuine hope that something good will come out of my own personal story of humiliation, emotional and mental suffering, and that no other person will have to experience the same isolation and lack of law enforcement and judicial support that is the essence behind SB 77 SD1 legislation.

Respectfully Submitted,
Pseudonym Jane Doe

References

Citron, Danielle Keats (2009), Law's expressive value in combating cyber gender harassment, *Michigan Law Review*, Vol. 108: 373, 373-416.

Jameson, Sarah (2008). Cyber harassment: Striking a balance between free speech and privacy, *Commonlaw Conspectus*, Vol. 17, 231-266.

Testimony for SB77: Relating to the Courts

To: Representative John Mizuno, Chair; Representative Jo Jordan, Vice Chair; and Members, Committee on Human Services

From: Erwin Gabrillo

Hearing: Monday, March 14, 2011, 9:00am, Room 329

**LATE
Testimony**

The HB 1478 language [" Section 657- Fraud or undue influence; wills, estate plans, or trusts. All actions to challenge or contest a will, estate plan, or trust where" (1) It is alleged that the testator, principal, or property owner who established the will, estate plan, or trust as a result of fraud or undue influence by (A) The beneficiary or beneficiaries of the amendments; or (B) Persons acting as agents of the parties in subparagraph (A); and (2) The action is commenced by persons who are designated as beneficiaries of the will, estate plan, or trust prior to these amendments; shall be brought within nine years after the cause of action accrued or within six years after discovery of the fraud or undue influence, whichever period is longer. "]

"Here's another way to improve our courts: Give our elders more time to sue when fraud or undue influence is used to get them to change their wills or estate plans and this change benefits those who got the elder to change their will or estate plan. Our courts should allow those who were beneficiaries under the unchanged will or estate plan more time to sue also. Given the deceptive, secretive, and concealed nature of this fraud against our kapunas – our courts should also allow our elders and their previous beneficiaries extra time to sue because it simple takes more time to detect this fraud."

"Our courts should protect our kapunas from fraud that's used to cause them to change their wills. Those who victimize our elders capitalize on the slower pace of life kapunas enjoy and the fact that a kapuna's immediate family is dispersed and away from a kapuna during these latter stages of life. Our courts should then provide elders with more time to sue if undue influence or fraud was used to get them to change their wills or estate plans, and that change benefits the ones who got the kapuna to make the changes. Also, those who benefited before the will or estate plan was changed -- should also be given more time by our courts to sue. To betray and take advantage of our kapuna in this way is very sneaky and the perpetrators make every effort to remain hidden as long as possible – so uncovering their fraud can take a long time as well. It is just fair for our courts to give our kapuna and all those who were beneficiaries before the will was changed with more time to sue -- because it takes more time to find out what happened."

I think SB 77 should include provisions to protect our elders against fraud when it's used to make them amend their wills and estate plans and such amendments benefit those who prevail upon them to amend those documents. Our courts can protect elders from this by simply giving them and the pre-amended will or estate plan beneficiaries extra time to sue."

Testimony for SB77: Relating to the Courts

To: Representative John Mizuno, Chair; Representative Jo Jordan, Vice Chair; and Members, Committee on Human Services

From: Paulo Nacionales

Hearing: Monday, March 14, 2011, 9:00am, Room 329

LATE
Testimony

The HB 1465 language ["Section 551D – (a) A durable power of attorney shall not be enforceable unless it is: (1) Signed by two witnesses who satisfy the requirements of subsection(b); and (2) Acknowledged by a notary public. (b) A person shall not be a witness to execution of a durable power of attorney unless the person is: (1) Eighteen years of age or older; (2) Not the attorney in fact named in the durable power of attorney; (3) Not related to the attorney in fact or to the other witness; and (4) Is witness to either the signing of the instrument by the principal or the principal's acknowledgement of the signature on the durable power of attorney"]

AND

"Section 560:5 – (a) A power of attorney shall not be enforceable unless it is: (1) Signed by two witnesses who satisfy the requirements of subsection(b); and (2) Acknowledged by a notary public. (b) A person shall not be a witness to execution of a power of attorney unless the person is: (1) Eighteen years of age or older; (2) Not the attorney in fact named in the power of attorney; (3) Not related to the attorney in fact or to the other witness; and (4) Is witness to either the signing of the instrument by the principal or the principal's acknowledgement of the signature on the power of attorney power."]

"Sadly, the most widely exploited document used by perpetrators of elder abuse is the Power of Attorney and the Durable Power of Attorney because either of these can give the perpetrator immediate access to the victim's bank accounts, real estate, and other valuable property unlike a will, trust, or estate planning document that may not take effect for many years. What the courts can do to make such exploitation more difficult is to require both the Power of Attorney and the Durable Power of Attorney to be signed by two non-party witnesses and notarized. This will make this exploitation more difficult because what perpetrators often do is Also, perpetrators often seek to rush their elderly victims into sign these documents, and these added requirements will require that more time and attention be given prior to execution and giving effect to these documents – thereby time-encumbering the process and making discovery of the victimization more subject to detection and deterrence "

Testimony for SB77: Relating to the Courts

To: Representative John Mizuno, Chair; Representative Jo Jordan, Vice Chair; and Members, Committee on Human Services

From: Diona Tabion

Hearing: Monday, March 14, 2011, 9:00am, Room 329

LATE
Testimony

The HB 1003 language ["(1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of . . . (h) A person know by the defendant to be a witness in family court case and the killing is related to the person's status as witness."]

"My strong conviction is that when a defendant intentionally or knowingly causes the death of someone whom the killer knows is a witness in a family court case -- then that defendant should be charged with murder in the first degree. No witness should be without such protection if the efficacy and integrity of any of our Hawaii courts is to be guaranteed. It's hard enough being a witness and we should add such positives to our judicial system if we want more people to agree to provide testimony. So I think SB 77 should be included this as well."

"When someone knowingly or on purpose kills a person they know is a witness in a family court case that someone ought to be charged with first degree murder. All witnesses should be protected to promote the effectiveness of our courts."

"Just a comment on SB 77: Protecting witnesses makes our courts more effective. So I think we should also include in first degree murder cases the killing of people who are witnesses in family court cases."

"I want to say this about SB 77 -- we should also make it a case of 1st degree murder when the defendant kills somebody they know is a witness in a family court case. Those witnesses, as do all witnesses in court, deserve our protection."

"I think this bill, SB 77, should make the murdering of witnesses in a family court case, a first degree murder offense as any killing of a witness should be."

"Just like the killing of a police officer is 1st degree murder in the performance of his duty, I think that the murdering of any court witness -- in whatever court that witness is testifying in -- should be a case of first degree murder, also. In every court or judicial proceeding where a witness will testify, these witnesses should have this protection because they deserve it. And these protections would further promote the integrity of all our judicial proceedings."