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Jim Astrachan testified in front of the House Judiciary Committee on March 18, 2009 in favor of expanding Maryland's Reporter Shield Law to include electronic media.

My testimony is provided in support of HB 1202. In essence, this bill is an effort to **EXPAND MEDIA COVERED** by the Reporter's Shield Law from print, TV and radio to electronic media. I believe the bill is deserving of consideration.

This legislature should be proud that Maryland was the **FIRST STATE** in the nation to adopt a shield law for journalists. That was in 1896 following the incarceration of Baltimore Sun reporter **JOHN T. MORRIS**, who learned through his investigation that some City politicians were accepting bribes. He refused to disclose his **SOURCES** to the grand jury, and he spent the rest of the grand jury's term – 5 days – in jail.

As a result of Mr. Morris' incarceration, the Journalist's Club, a newspaper organization, pressed the legislature for relief to protect newspaper **REPORTERS** who declined to reveal confidential **SOURCES** to the courts. This resulted in an evidentiary privilege that enabled reporters to refuse to disclose their **SOURCES** of information. The legislation became known as the "**PRESS SHIELD LAW**".

It took **30 YEARS** for the next state to enact a similar law. Maryland was indeed on the cutting edge or perhaps even the bleeding edge. 37 states now have some form of shield law on their books.

In 1949, Maryland once again evidenced its bleeding edge approach to this subject when it added **RADIO** and **TELEVISION** to the statutory protection, which in 1949, only extended to **JOURNALISTS** engaged in the **PRINT MEDIA**. In 1949 hardly anyone had a TV set, although the technology had been around since 1923 when the first working TV set was created in England. The privilege still applied only to **JOURNALISTS** but the media they worked for was broadened beyond newspapers. This bill is in the same vein as that 1949 amendment.

The Maryland Shield Law **GENERALLY PROTECTS 1)** sources of information and **2)** news or information procured by a journalist for communication to the public if

not yet communicated. The protection of **SOURCE IS UNQUALIFIED**. The **PROTECTION OF MATERIAL IS QUALIFIED**. This remains unchanged in HB 1202.

In *Lightman v. State*, 15 Md. App. 719, the Shield Law was interpreted by the Court of Special Appeals not to protect information about a crime actually witnessed by a reporter, versus the reporter's confidential source of that information. This bill does not change this interpretation of the statute.

What HB 1202 does is **REDEFINE** what media is covered by **DELETING FROM THE EXISTING LAW THE TRADITIONAL DESCRIPTION OF JOURNALISTS AS PERSONS WHO WORK FOR NEWSPAPERS, TV, RADIO, WIRE SERVICES AND NEWS AGENCIES**. This means that any and **ALL MEDIA** would be covered if the "reporter" meets the definition of "covered person".

The bill provides a privilege to "**COVERED PERSONS**," who are defined in the bill as **PERSONS WHO HAVE A "PRIMARY INTENT TO INVESTIGATE EVENTS AND PROCURE MATERIAL IN ORDER TO DISSEMINATE TO THE PUBLIC NEWS OR INFORMATION CONCERNING**" what is generally considered news or information.

Being able to compel the reporter to reveal the information may well likely result in discovery of the source and this judicially created interpretation has been criticized.

To be a covered person, and assert the privilege, that person would arguably be performing a typical reporter's job, which is to say that person would be one who "**REGULARLY GATHERS, PREPARES, COLLECTS, PHOTOGRAPHS, RECORDS, WRITES, EDITS, REPORTS OR PUBLISHES**…" relating to items of news and public interest. The covered person must do this through **INTERVIEWS, DIRECT OBSERVATION OF EVENTS**, or **COLLECTING AND ANALYZING VARIOUS FORMS OF COMMUNICATIONS**, such as documents or transcripts. That person must also have had the **INTENT TO GATHER NEWS** at the inception of his activities in order to assert the privilege.

As mentioned, the privilege is **ABSOLUTE AS TO SOURCE** and **QUALIFIED AS A DISCLOSURE OF NON-PUBLISHED CONTENT** if a court is satisfied that:

- The information sought is relevant;
- It could not be found elsewhere through exercise of due diligence; and
- There is an overriding public interest in disclosure.

This bill does not change existing law in this regard.

To extend coverage to electronic media, to some extent HB 1202 borrows the language of **HR 985, THE FREE FLOW OF INFORMATION ACT**, introduced in the House of Representatives in February 2009. HR 985 is an attempt to federally codify what Maryland did more than 110 years ago.

The Shield Law is not about the 1st Amendment – protected freedom of the press enjoyed by everyone from the NYT to a lone pamphleteer. It's about a public benefit, and privilege, whereby a reporter's source is protected. The purpose is to encourage news sources to come forward to journalists by protecting their identities. The disclosure is the public benefit.

HR 985 goes through great pain to define a covered person as a **JOURNALIST, REGARDLESS OF MEDIA EMPLOYED**. It does this by using the same criteria as does HB 1202, but also **ADDS THE REQUIREMENT** that the person **EARN A SUBSTANTIAL PART OF HER LIVING, OR EARNS A SUBSTANTIAL FINANCIAL GAIN, FROM THE EFFORTS FOR WHICH THE PRIVILEGE WOULD BE ASSERTED**. In other words, HR 985 tries to limit the use of the privilege to legitimate and professional journalists who make a living from their endeavors in contrast to bloggers who do not.

HB 1202 does not do this, as this qualifying language is not present, and the only concern I have with this bill is that it should only apply to "**PROFESSIONALS**" engaged in news gathering and reporting, who by **TRAINING** and perhaps **SUPERVISION** follow a somewhat **UNIFORM SET OF RULES** on how news should be gathered and **OBJECTIVELY** reported.

HB 1202 attempts to do this, but could be bolstered in this regard.