

renewed, and he was jailed when he again refused because the California shield law did not protect former journalists.

"I would think this [list] was sweeping enough that the judge should see that the law was intended to include these new forms," Coulter said this week.

However, since the judge requires specificity in the list of employers and the Nevada Legislature is now in session, there is the option for legislators to add online journalism entities to that list. Bill introductions are possible until March 25, and even after that date there are provisions for new measures to be introduced.

INK VS. ELECTRONS

Former UNR journalism professor Warren Lerude, who as Reno Gazette Journal executive editor supported and testified for Coulter's bill, offered another route. He suggested that the judge was looking at defining a journalist instead of defining the journalist's news entity. The law protects newspapers, Lerude said this week, and that doesn't just mean *print* newspapers.

"In my view, Sam Toll's online newspaper is a newspaper, and the shield law covers newspapers," Lerude said. "It does not define newspapers as only in print."

In that connection, Toll in his filing quoted a decision that he and Wilson attributed to a U.S. Court of Appeals/Ninth Circuit ruling but which actually comes from the U.S. Supreme Court opinion in *Citizens United vs. FEC*: "With the advent of the Internet and the decline of print and broadcast media ... the line between the media and others who wish to comment on political and social issues becomes far more blurred." As for the Ninth Circuit, its attitude has been described by a Los Angeles Times headline—"9th Circuit to bloggers: You're all journalists now, kinda sorta."

However, Toll may be trying to establish the rights of online entities under the shield law, because he seems to be *avoiding* being defined as a newspaper. On his website he has posted, "The Teller is not a 'newspaper' because the NPA did not classify it as such on its website and I don't put ink to paper."

In addition, Wilson in his ruling said Toll offered an affidavit of former Nevada Press Association Director Barry Smith. Wilson then wrote, "Mr. Smith did not say the Storey Teller is a newspaper. In fact, he distinguishes between daily and weekly news publications on the one hand and online news services, magazines, and others, on the other hand. The court [Wilson] concludes that because Toll does not print the Storey Teller the Storey Teller is not a newspaper and, therefore, the news media privilege is not available to Toll under the 'reporter of a newspaper provision of [Nevada revised statute] 49.275.'"

"I don't
put ink to
paper."

Sam Toll
Editor

Gilman's attorneys argued that because Toll has described his website's mission as "to provide a source of irritation to the Good Old Boys who operate the Biggest Little County in the World with selfish impunity forever," therefore "The Storey Teller is not news ... the defendant is not a reporter." That would put courts in the position of judging content. In addition, the First Amendment to the U.S. Constitution was written by the founding Congress at a time when objective journalism did not exist. All journalism of the 1700s was opinion and partisan, and frequently vicious, and the founders wanted it protected. In any event, Toll's site currently contains reports on taxable sales in Storey County, state schools funding, and an explosion in the Delta Saloon.

Wilson's reading of the statute could also put judges in the position of deciding what part of a reporter's job is covered by the shield and what part is not. As Lerude points out, "Many stories that don't make the print editions do make the online editions." And some print stories are expanded online as events develop.

Another weakness in the Nevada shield law is that it does not cover freelance journalists. At the time that the 1975 changes were made in the law, there was news coverage of a university professor in another state who was writing a book and claimed a confidentiality source privilege. There was some concern in the Nevada Legislature, including on Coulter's part, about the list defining journalists becoming unwieldy. But in ensuing years, the ranks of freelancers have grown sharply, fostered by online journalism.

In 2014, the Technological Crime Advisory Board in the state attorney general's office drafted language that would have extended the shield to "any medium of expression that currently exists or shall exist in the future." But the draft was not introduced at the 2015 Nevada Legislature. It is not known why, but in the 2014 election, both houses of the Nevada Legislature went Republican and the attorney general's post was won by Republican Adam Laxalt.

The dispute is attracting considerable attention. Courthouse News Service, a widely-read, Pasadena-based website reported the case under the headline, "Who Is a Journalist? In Nevada, It's Complicated."

In a reader comment posted at Nevada Current, Toll said, "I now face the unenviable position of being forced to roll on confidential sources or going to the hoosegow. What would you do?"

Wilson's ruling will be appealed. □

The full language of the Nevada shield law can be read at bit.ly/2NZ6627.

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