

**Richard BORRECA and "Honolulu Star-Bulletin" v. Frank
FASI**

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

Opinion by SAMUEL P. KING, District Judge.

On December 21, 1973, city hall news reporter Richard Borreca and his employer Gannett Pacific Corporation, doing business as Honolulu Star-Bulletin, filed a lawsuit in this court requesting an injunction and damages against Frank F. Fasi, Mayor of the City and County of Honolulu, and James Lee Loomis, Administrative Assistant to the Mayor and Director of Information and Complaint Office, for denying Borreca access to city hall news.

A motion for a preliminary injunction was heard on January 4, 1974, and granted January 7, 1974. The following constitutes the findings of fact and conclusions of law.

Findings of Fact

The Honolulu Star-Bulletin is Hawaii's leading newspaper of general circulation. Richard Borreca came to Hawaii in 1968, attended the University of Hawaii for two years, then started working for the Honolulu Star-Bulletin as a news reporter in 1970. For the past two years, his assignment has been Honolulu's city hall, which includes attending the mayor's news conferences. He is currently president of the City Hall Correspondents Association. His employer is satisfied with his professional qualifications.

During 1973, Mayor Fasi concluded that Borreca was irresponsible, inaccurate, biased, and malicious in reporting on the mayor and the city administration. This conclusion was based on the news stories written by Borreca, and was reinforced by a report that Borreca had said that the mayor was a "crook" and that Borreca was going to "shaft" the mayor at every opportunity. Mayor Fasi expressed his dislike for Borreca personally and stated that he would not talk to Borreca "until Hell freezes over." He declared Borreca persona non grata at city hall and instructed his staff, and specifically his administrative assistant James Lee Loomis, to keep Borreca out of the mayor's office.

Loomis, on behalf of the mayor and as part of his usual duties, announced general news conferences in the mayor's office for November 2 and 22 and December 13 and 19, 1973.

A general news conference was defined by Loomis as a conference "where all media generally are informed of the mayor's intention to hold a news conference and all are free to attend." Loomis testified: "Customarily I will have my people notify the two city desks of the two dailies [the afternoon Honolulu Star-Bulletin and the morning The Honolulu Advertiser], call the three television stations [KGMB-TV, KHON-TV, and KITV], one or two radio stations that we know directly would usually care, and we notify the two wire services (AP and UPI). They in turn put out the word of the news conferences to their subscribers which would include anybody. "

The usual format at these news conferences was that a prepared release would be handed out and explained to the attending representatives of the news media who would ask questions mostly confined to the subject matter of the release. There would be some TV camera coverage. The topics discussed related to the business of the City and County of Honolulu.

Borreca presented himself at the mayor's office on November 2, 1973, as the Honolulu Star-Bulletin's representative at the news conference. Loomis informed Borreca that Borreca would not be allowed to attend the news conference.

Borreca was in fact blocked and denied entry and no one from the Honolulu Star-Bulletin was in attendance at this conference.

Borreca again presented himself at the mayor's office on November 22, 1973, as the Honolulu Star-Bulletin's representative at that news conference. It is a fair inference from the evidence that Borreca expected to be excluded and purposely sought a confrontation with Loomis, which did occur. Borreca recorded the verbal parts on a portable tape recorder, transcribed it, and wrote it up for the next day's afternoon newspaper.

Borreca was in fact excluded from this news conference and the two December news conferences and no one from the Honolulu Star-Bulletin was in attendance at these conferences. Mayor Fasi informed the Honolulu Star-Bulletin that any other reporter from that newspaper would be welcome, but the newspaper declined to change Borreca's assignment or to send another representative to the mayor's news conferences.

It is clear from the evidence that the mayor's objections to Borreca are based solely on what appeared in the Honolulu Star-Bulletin as Borreca's city hall news stories. No other ground for objection has been given, although Loomis mentioned "other acts" by Borreca. These "other acts" turned out to be Loomis' observation that Borreca seldom took notes thereby increasing the probability of inaccurate reporting, and statements attributed to Borreca indicating bias and malice against Mayor Fasi. For purposes of this motion for a preliminary injunction only and without affecting his right to contest the negative statements made about him by the mayor and Loomis, Borreca offers no rebuttal evidence regarding the accuracy of his reporting or his attitude toward the mayor.

First Amendment freedom of the press includes a limited right of reasonable access to news. This right of access includes a right of access to the public galleries, the press rooms, and the press conferences dealing with government.

Mayor Fasi argues that his ostracism of Borreca and ultimatum to the Honolulu Star-Bulletin are not invasions of freedom of the press. The mayor argues that nothing he has done "subjects, or causes to be subjected . . . [Borreca or the Honolulu Star-Bulletin] . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution" because the Honolulu Star-Bulletin is not prevented from having a representative at a news conference as anyone other than Borreca would be admitted. Borreca is not denied access to news as he may obtain a copy of each news release and of any other written material, and the right of access to news does not include a requirement that Mayor Fasi respond to Borreca's questions.

One would have to be naive to believe that an individual reporter is solely responsible for the manner in which that reporter's news stories appear in print. Thus Mayor Fasi's objections to Borreca's performance as a reporter can be taken as objections to the Honolulu Star-Bulletin's approach to city hall news. Requiring a newspaper's reporter to pass a subjective compatibility-accuracy test as a condition precedent to the right of that reporter to gather news is no different from requiring a newspaper to submit its proposed news stories for editing as a condition for the right of that newspaper to have a reporter cover the news. Each is a form of censorship.

News conferences are not held solely or even primarily for the benefit of the news media. Structured news conferences on limited topics covered by predistributed news releases serve the purpose of the person holding the conference as much if not more than of the news media. Manipulation of the news is a highly developed technique, utilizing staff news specialists, self-serving handouts, programmed appearances, and positive and negative reinforcement in dealing with reporters and news media. Hand-picking those in attendance intensifies the manipulation. In some respects, therefore, these events are less newsworthy than a freer give and take between interviewers and interviewee. To say, however, that attendance at such a news conference is not a legitimate news gathering activity is absurd.

The mayor is quite correct in his position that he is not required to respond in any way to any question put to him by any representative of any news media... and that there is no requirement that he hold any news conferences. He suggests he may select individual representatives of the news media with whom to meet in situations other than general news conferences. The mayor is no doubt right.

A free press is not necessarily an angelic press. Newspapers take sides, especially in political contests. Newspaper reporters are not always accurate and objective. They are subject to criticism, and the right of a governmental official to criticize is within First Amendment guarantees.

But when criticism transforms into an attempt to use the powers of governmental office and general news conferences to intimidate or to discipline the press or one of its members because of what appears in print, a compelling governmental interest ...must be shown in order to meet Constitutional standards. No compelling governmental interest has been shown or even claimed here.