

SIXTEENTH CRIMINAL TRIBUNAL
LOCAL COURT OF TAIPEI, REPUBLIC OF CHINA

-----X

LIU TAI-YING,

Private Prosecutor,

- against -

YUEN YING CHAN, CHUNG-LIANG HSIEH,
and WANG SHU-YUAN,

Defendants.

:
: **BRIEF OF ABC, INC.,**
: **THE ASSOCIATED**
: **PRESS, CBS INC.,**
: **DAILY NEWS LP,**
: **DOW JONES &**
: **COMPANY, INC.,**
: **THE LOS ANGELES**
: **TIMES AND THE**
: **TIMES MIRROR**
: **COMPANY,**
: **NATIONAL**
: **BROADCASTING**
: **COMPANY, INC.,**
: **THE NEW YORK**
: **TIMES COMPANY,**
: **TIME INC., THE**
: **WASHINGTON**
: **POST COMPANY,**
: **AND THE**
: **COMMITTEE TO**
: **PROTECT**
: **JOURNALISTS, AS**
: **FRIENDS OF THE**
: **COURT IN**
: **SUPPORT OF**
: **DEFENDANTS**

-----X

This brief is submitted by ABC, Inc., the Associated Press, CBS
Inc., Daily News LP, Dow Jones & Company, Inc., The Los Angeles Times and
The Times Mirror Company, National Broadcasting Company, Inc., The New

York Times Company, Time Inc., The Washington Post Company and the Committee to Protect Journalists, as friends of the Court, in support of the defendants. They hope to assist the Court by describing some international principles of defamation law that support construing the Republic of China's defamation law to preclude any criminal penalty in this case.

Statement of Interest

The signatories to this brief are media companies that gather and report the news in the Republic of China, throughout Asia, and in every country in the world. The news reports prepared by these companies reach billions of people each day, in print, on television, on the radio, and on the Internet. Through reporters and editors working in Asia and around the world, these companies produce, for example:

- the internationally recognized business newspapers The Wall Street Journal and The Asian Wall Street Journal;
- the television news programs of ABC, CBS and NBC, delivered globally by such well-known reporters as Peter Jennings, Dan Rather and Tom Brokaw;
- the worldwide news dispatches of The Associated Press;
- The Washington Post, the preeminent newspaper in America's capital city, and the Los Angeles Times, the preeminent newspaper in California, America's largest state;
- The New York Times, one of the world's most prestigious newspapers of politics and international affairs;
- The International Herald Tribune, a major English-language newspaper of worldwide circulation;

- Time and Newsweek, the world's most widely read newsmagazines; and
- the New York Daily News, the largest-circulation daily in the New York City area, which itself is home to the largest population of Chinese persons living outside of Asia.

This brief also is joined by the Committee to Protect Journalists ("CPJ"), an independent, nonprofit organization dedicated to protecting the human rights of journalists in countries around the world. CPJ performs its mission by documenting, protesting and publicizing violations of press freedom worldwide, particularly through the publication of its annual country-by-country report, Attacks on the Press. CPJ's honorary chairman is Walter Cronkite of CBS News, and its board of directors includes Peter Arnett and Bernard Shaw of Cable News Network; Tom Brokaw, anchor and managing editor of the NBC Nightly News with Tom Brokaw; Dan Rather, anchor and managing editor of the CBS Evening News; and representatives of other internationally famous media companies, such as ABC, Dow Jones & Company, The New York Times Company, The Times Mirror Company and The Washington Post Company.

As part of its mission, CPJ has worked to defend the right of journalists from the Republic of China to participate fully in world affairs. For example, CPJ has fought to have journalists from the Republic of China fully accredited at the United Nations, over the objection of the People's Republic of

China. More information about CPJ and the other signatories to this brief is found in the appendix that follows the text.

As employers and defenders of journalists around the world, the signatories to this brief regard criminal prosecution of a journalist anywhere as a threat to the freedom of the press everywhere. Through their international newsgathering, publication, broadcasting and advocacy efforts, these companies and CPJ have gained special knowledge of global legal standards governing the press. This brief is submitted in the hope of assisting the Court by describing certain international standards of defamation law that the Court may wish to consider in deciding this case.

Summary of Argument

Freedom itself is imprisoned when a journalist goes to jail. To create an informed citizenry, every true democracy depends on a vigorous press to report frankly and fully on controversial issues -- even when those reports cause discomfort to the prominent and powerful. In the words of the United States Supreme Court, speech concerning public affairs must be protected because it is "more than self-expression; it is the essence of self-government."¹ Journalists cannot perform their vital civic function from a prison cell. The mere prospect of criminal punishment causes journalists to fear the consequences of honest

reporting, and may cause important stories to go unwritten or unaired. For that reason democracies around the world have generally ceased to enforce their criminal defamation statutes, and rely on civil remedies instead to redress any injury caused by the publication of allegedly false facts in the press.

The Republic of China would show support for these international standards of human rights and press freedom by foregoing criminal punishment of the defendant journalists in this case. No government anywhere should ever imprison a journalist merely for writing or broadcasting a controversial news story that may offend powerful political officials, even if that news story contains allegedly false facts. No journalist today is imprisoned for that reason in any true democracy. Rather, journalists today are imprisoned principally in countries that do not respect basic human rights.

International standards also suggest that if the defendants believed in good faith that their article was true, then they should incur no penalty at all even if their article is determined to be false. Free political debate depends on a press that is free to pursue controversial news stories, even at the risk of publishing occasional errors of fact. The defamation statute at issue here provides that "good intent" is a defense. Consistent with international standards, "good

intent" can and should be construed to mean that these reporters should be exonerated if they believed in good faith that their article was true.

In recent years the Republic of China has gained international respect for its transformation to democracy. The international community has noted the emergence in the Republic of China of free elections, governmental tolerance of dissent, and the development of a truly independent press.² The imposition of criminal sanctions in this case would mark a step backward in the Republic of China's effort to satisfy the norms of human rights that characterize true democracies today.

Statement of Facts

The signatories to this brief take no position on any issues of fact that are disputed between the plaintiff and the defendants. Based upon the public record, the following facts appear to be undisputed:

Defendants published an article in Yazhou Zhoukan magazine. This article asserted that Liu Tai-Ying told an American named Mark Middleton that the Kuomintang was prepared to donate U.S. \$15 million to the election campaign of President Clinton. Liu Tai-Ying denies making such a statement. Liu Tai-Ying further claims that the publication of this article has severely injured his

good name. On this basis, Liu Tai-Ying has initiated both this prosecution and a separate civil suit against the defendants.

Defendants assert that their article is true. Defendants further assert that they based their article on statements made to them by Chen Chao-Ping, who attended the meeting between Liu Tai-Ying and Mark Middleton and thereafter told defendants that Liu Tai-Ying did offer the \$15 million campaign contribution. Defendants assert that at the time they published their article, they honestly and reasonably believed the article to be true.

Argument

Point One

CRIMINAL PENALTIES FOR DEFAMATION ARE GENERALLY DISCREDITED IN DEMOCRACIES

Freedom of the press is internationally recognized as a core democratic value that defamation actions can destroy. When a political official or government agency alleges reputational injury, then, in the words of the Supreme Court of Hong Kong, "a higher principle is at stake, namely the inhibiting effect of the threat of an action for defamation on the freedom of the press to comment on the activities of bodies which operate in the public sphere."³ Criminal defamation penalties pose the most serious threat of all to free speech values, and thus are

never "justified in a democratic society," as the European Court of Human Rights has said.⁴ Countries around the world essentially have abandoned criminal defamation prosecutions because such prosecutions deter the press from informing the citizenry on important public issues; serve no law-enforcement purpose; and are unnecessary given the availability of civil remedies. This case presents an opportunity for the Republic of China to join the international community in rejecting the idea that journalists may be criminally punished for publishing allegedly false statements that may offend persons in power.

A. Democracies Generally Do Not Put Journalists In Jail Merely Because News Stories Contain Alleged Errors Of Fact.

Criminal defamation prosecutions increasingly are disfavored around the world. Many countries still have criminal defamation statutes, but few enforce them.

In many of the Republic of China's neighbors, prosecutions for criminal defamation have become rare. For example, in Hong Kong, "[d]espite the availability of . . . criminal sanctions, . . . the criminal defamation statute is rarely, if ever, invoked."⁵ It appears that Hong Kong never has actually imprisoned a journalist for defamation,⁶ and only one attempted criminal prosecution is even recorded in the Hong Kong case digests.⁷ The judge in that case noted that

"[t]here appears to be no local precedent for such an application," and expressed serious reservations regarding the appropriateness of imposing criminal penalties for defamation.⁸ Likewise, in Japan, criminal defamation prosecutions are uncommon, and even when such actions are brought, imposition of prison sentences or other penalties occurs only infrequently.⁹ Similarly, in the Republic of Korea "there has been a growing trend against [criminal] defamation actions" during the last fifteen years.¹⁰ Criminal prosecutions for defamation also are rare in the Philippines. The Philippines' Court of Appeals recently rejected a criminal defamation suit initiated by former President Corazon Aquino. Relying on the seminal United States case of New York Times Co. v. Sullivan, the court emphasized that "debate on public issues should be uninhibited, robust and wide-open, and it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."¹¹

Prosecutions of journalists for criminal defamation are virtually unheard of in Europe, even though numerous European countries' statutes still nominally permit such prosecutions. In England, "[f]or the best part of 50 years, the crime of defamatory libel has been dormant."¹² The European Court of Human Rights has held that because "freedom of expression is an essential element for the formulation of political opinion,"¹³ speech on political matters should be

accorded significant protection; a government or official who has been criticized in the press should engage in debate, rather than seek to impose criminal sanctions.¹⁴

Last year a judge in Croatia applied these principles and dismissed criminal defamation indictment proposals against two journalists based on their publication of an article and cartoon that the Croatian government had found offensive.¹⁵

In the United States, criminal defamation prosecutions are nonexistent as a practical matter. Twice in recent years the United States Supreme Court invalidated state criminal defamation statutes, observing that criminal defamation prosecutions have "virtual[ly] disappear[ed]" and noting that even as long ago as the 1800s, the justification for criminal defamation penalties had been "substantially eroded" by the preference for civil defamation actions.¹⁶ Courts have repudiated the doctrine of criminal defamation in at least 13 of America's 50 states,¹⁷ and the legislatures of at least ten states have explicitly repealed their statutes that formerly authorized criminal defamation prosecutions.¹⁸ In the rare instances where criminal defamation prosecutions have been initiated in recent years, these prosecutions ordinarily have been dropped because they are recognized as offensive to free speech values.¹⁹

B. Criminal Punishment Of Journalists Today Often Is The Tool Of Governments That Do Not Generally Respect Human Rights.

Among the countries that still criminally punish journalists for the content of their writings are several that have been criticized for frequent violations of basic human rights. At last report the People's Republic of China was imprisoning at least seventeen journalists for writings that criticized the government or government officials.²⁰ The People's Republic of China has been criticized by the United States Department of State for "continu[ing] to commit widespread and well-documented human rights abuses" and for imposing "severe restrictions on freedom of speech [and] press."²¹ Turkey, too, has earned international criticism by punishing journalists for the content of their writings.²² At latest count, seventy-eight journalists were imprisoned in Turkey, many of them for writing articles the government, or government officials, found objectionable.²³ Similarly, Ethiopia continues to imprison journalists because of writings deemed objectionable by the government, thus maintaining Ethiopia's reputation as a country with "serious problems" in meeting international human rights standards.²⁴ Defamation laws are among the means commonly used by the Ethiopian government to stifle free speech.²⁵

C. The Factors That Have Led To A Worldwide Reduction In Criminal Defamation Prosecutions Are Present In This Case.

Criminal defamation prosecutions have declined around the world for three reasons that all directly apply to this case.

First, it is internationally recognized that social order and personal liberty cannot exist without freedom of the press, including the right of journalists to publish on important public issues without fear for their own personal liberty. Freedom of the press has been recognized as a core democratic value in international treaties such as the U.N. Declaration of Human Rights²⁶ and the International Covenant on Civil and Political Rights;²⁷ is recognized in the constitutions of most democracies, including the Republic of China;²⁸ and has passed into customary international law.²⁹ Criminal penalties make it far more difficult for the press to fulfill its civic function: the risk of imprisonment inevitably will cause reporters to avoid writing controversial articles that, like the article at issue in this case, challenge the conduct of senior political officials or raise important questions of public policy.

Second, putting journalists in jail based on the content of their writings does not further the internationally recognized purpose of criminal law, which is to deter and punish violent, antisocial behavior such as physical attacks on persons or property.

As the United States Supreme Court has stated:

[P]enal sanctions cannot be justified merely by the fact that defamation is evil or damaging to a person in ways that entitle him to maintain a civil suit. Usually we reserve the criminal law for harmful behavior which exceptionally disturbs the community's sense of security. . . . [P]ersonal calumny . . . is therefore inappropriate for penal control[.]³⁰

Insofar as the world press community can detect, while the article at issue in this case may have offended Liu Tai-Ying, it has not "disturb[ed] the community's sense of security" in the way that a traditionally criminal offense such as assault or robbery does.

Third, countries around the world have determined that civil defamation remedies adequately maintain the balance between the press's need to publish freely and the right of those covered in the press to defend their reputations.³¹ Liu Tai-Ying has commenced such a civil action against these defendants. The availability of a civil remedy further suggests that criminal sanctions are neither appropriate nor necessary in this case.

Point Two

**THE COURT SHOULD CONSTRUE THE GOVERNING
STATUTE TO EXEMPT THESE REPORTERS FROM LIABILITY
IF THEY BELIEVED IN GOOD FAITH THAT THEIR ARTICLE WAS TRUE**

1. Equating The Defense Of "Good Intent"
With A Good-Faith Belief In The Truth Of The Article
Would Harmonize The Republic Of China's Law With
International Standards.

Defendants maintain that their article is true. Even if the article is determined to be false, we ask the Court to consider that no penalty should be imposed on these defendants if the Court determines that the defendants honestly believed their story to be true. In other words, even if it is proven at trial that Liu Tai-Ying did not offer a \$15 million contribution to President Clinton's campaign, criminal sanctions should not be imposed on the defendants unless it is also established that the defendants published the statements without good-faith belief in their truth.

Judicial recognition of this principle would be particularly appropriate in the Republic of China, where the statute at issue explicitly provides that "good intent" is a complete defense to this charge of criminal defamation.³² Courts in Asia and elsewhere have adopted standards that preclude liability for the publication of statements, honestly believed to be true, on matters of public interest.

In Japan, for example, the defamation provision of the Criminal Code has been interpreted to preclude criminal liability whenever the writer had a reasonable belief that statements made concerning a matter of public concern were true, even if that belief proves to be mistaken. As the Japanese Supreme Court held in Kochi v. Japan:

[E]ven if statements are not proved to be true, . . . criminal intent and a crime of defamation should not be deemed present . . . where the party mistakenly believed his statements were true and where there was sufficient reason for this mistaken belief in light of the concrete evidence presented.³³

Since Kochi, this defense has been reaffirmed by Japanese courts, and has been applied to civil as well as criminal defamation actions, even though the Civil Code contains no specific "public concern" provision. Emphasizing that "the freedom of expression, especially the freedom of expression relating to public matters, must be respected as a particularly important constitutional right in a democratic nation," the Supreme Court recently summarized the importance of a reporter's mental state in assessing liability:

When an act constituting civil and criminal defamation is found to relate to matters of public interest, and to have been done solely for the benefit of the public and when the truth of the alleged facts is proved, the expression is not illegal. Even if the truth is not proved, when there is good reason for the perpetrator of the act to have mistakenly believed that the article was true, the foregoing act should be construed to be not malicious or negligent.³⁴

Courts in South Korea also take into account the mental state of the author of an allegedly defamatory statement. In that country, "it constitutes no unlawful act for a newspaper to publish a defamatory story for a public interest when the newspaper has a sufficient reason to believe it to be true."³⁵ The court enunciating this rule noted that freedom of the press is the "foundation of democratic politics"³⁶ but can be chilled by overly restrictive defamation laws. This state of mind defense is applicable in both criminal and civil cases:

Under the Criminal and Civil Codes, when an injury to a person's reputation relates to a matter of public concern and is only for the public interest, verification of the defamatory statement justifies the injury. Further, even when there is no proof as such, *the defamation cannot constitute an unlawful act if the defamer has sufficient reasons for believing his statement to be true.*³⁷

Likewise, the Court of Appeals of the Philippines recently overturned the conviction of a journalist for the publication of an allegedly defamatory statement regarding former President Corazon Aquino. The court explicitly relied upon United States case law and held that the defendant journalist could not be punished because the statement was "fair comment on a public event" and because the defendant journalist did not know the statement was false, nor did he publish the statement with reckless disregard for the possibility that it was false.³⁸

The principle that a good-faith belief in the truth of one's news story is a complete defense has been further articulated by courts across the globe. Just last year in South Africa, for example, a court held that "a defamatory statement which relates to 'free and fair political activity' is constitutionally protected, even if false, unless the plaintiff shows that, in all the circumstances of its publication, it was unreasonably made."³⁹ This defense, the court held, applies in the first instance to defamatory statements concerning "the sphere of political activity."⁴⁰ Applying the rule, the court held that a defamation action brought by the Deputy Minister of Environmental Affairs was barred unless it could be established that the defendant publisher had acted unreasonably.⁴¹

The High Court of Australia, in a 1994 defamation action instituted against a newspaper by a member of the country's House of Representatives, confirmed that an author's mental state is a central area of inquiry in any defamation prosecution concerning political matters.⁴² In Australia, a "publication will not be actionable under the law relating to defamation if the defendant establishes that: (a) it was unaware of the falsity of the material published; (b) it did not publish the material recklessly, that is, not caring whether the material was true or false; and (c) the publication was reasonable in the circumstances."⁴³ As the High Court emphasized:

[T]o require more of those wishing to participate in political discussion would impose impractical and, sometimes, severe restraint on commentators and others who participate in discussion of public affairs. Such a restraint would severely cramp that freedom of political discussion which is so essential to the effective and open working of modern government.⁴⁴

The implied freedom of communication in relation to public affairs, the High Court held, "must extend to protect political discussion from exposure to onerous criminal and civil liability if [it] is to be effective in achieving its purpose."⁴⁵

Another example comes from the Supreme Court of India. In a 1994 decision, Rajagopal v. State of Tamil Nadu, that court held that "[i]n the case of public officials, it is obvious, . . . the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties." As the court explained:

This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true.⁴⁶

The internationally recognized principle that an honest belief in the truth of one's article precludes liability also has been well developed in the United States. In the landmark case of New York Times Co. v. Sullivan, the United States Supreme Court held that a public official cannot recover for defamation

unless he proves that a defamatory statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not."⁴⁷ The Court recognized that inherent in democratic government lies "the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."⁴⁸ Because "erroneous statement is inevitable in free debate," the Court declared, occasional errors "must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive.'"⁴⁹ The Court cited James Madison, one of the United States' founding fathers and one of the world's leading theoreticians of democracy: the power to prosecute defamation of public officials "ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication of the people thereon, which has ever been justly deemed the only effectual guardian of every other right."⁵⁰

Although Sullivan was a civil case, in Garrison v. Louisiana the United States Supreme Court explicitly extended to criminal defamation the principle that a good faith belief in the truth of one's story should preclude liability. In Garrison, the Court reversed a conviction for criminal defamation based upon statements by the defendant criticizing the performance of certain

judges. Emphasizing that "utterances honestly ~~be~~lieved contribute to the free interchange of ideas and the ascertainment of truth,"⁵¹ the Court held that "the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any except the knowing or reckless falsehood."⁵²

The principle that errors made in good faith should be protected performs a vital democratic function. If public officials too easily can punish the press, journalists will be dissuaded from reporting on matters of public concern. The press is the immediate victim in these cases, as reporters go to jail or pay huge monetary penalties, but democracy is the ultimate victim. When reporters stop covering controversial stories, the people are less informed and thus less able to participate in matters of state. Yet some error is inevitable in vigorous reporting on public affairs. To promote discussion on matters of public concern, it is essential to immunize errors made in good faith.

2. The Policy Concerns That Have Led To The International Recognition Of The State Of Mind Principle Are Present In This Case.

All of the policy factors that have led other countries' courts to exonerate defendants who honestly believed their news stories to be true are present on

the undisputed facts of this case;⁵¹ the presence of an important public issue that is covered by the article in dispute;⁵³ the ability of the injured party to gain access to the press in order to rebut the charges against him;⁵⁴ and evidence that the reporters prepared their story carefully.⁵⁵

First, defendants' article dealt with an issue that undisputedly is of great public importance: whether governments and persons from other countries attempted to influence the United States government through political campaign contributions. This issue currently is discussed in the lead stories of television and newspapers around the world every day. Full exploration of this issue should not be suppressed in a democracy, and full exploration requires some tolerance of alleged errors that reporters may make as they attempt to learn the facts. Indeed, the Republic of China's defamation statute itself suggests that the prominence of a public issue discussed in the article is

an important reason not to impose liability for defamation.⁵⁶

Second, by virtue of their stature, public officials have sufficient access to the press to restore their reputations by rebutting defamatory statements.⁵⁷ A defamation remedy merely punishes the journalist, while providing no necessary relief to the public official. Liu Tai-Ying is the business manager of the Kuomintang, which is not only the Republic of China's ruling party but also one of the country's dominant economic actors. Among its many holdings, the Kuomintang has substantial ownership interests in the Republic of China's largest television stations.⁵⁸ It seems likely that Liu Tai-Ying has every opportunity to make his version of the facts known to the public without the assistance of a court.

Third, there is evidence that the defendants acted with care and good faith in preparing their story.

It appears that Chen Chao-Ping, a participant in the meeting where Liu Tai-Ying allegedly offered the

campaign contribution, initially confirmed to the
reporters that the offer was made. This information
suggests that the reporters acted reasonably in
researching and publishing their story, even if the
story ultimately is determined to be false. At the very
least, there appears to be a substantial issue as to the
reporters' belief in the truth of their story, and this
issue merits full exploration by the Court.

Conclusion

We ask that the Court impose no penalty on the defendants on the grounds that criminal penalties for defamation are inappropriate in a democracy. We also ask that the Court consider exonerating the defendants on the grounds that they believed in good faith that their article was true.

Dated: New York, New York
submitted,
April 10, 1997

Respectfully

DEBEVOISE & PLIMPTON

By: _____
Donald Francis

Donovan

Jeremy Feigelson
Harry Sandick
Robert J. Driscoll

875 Third Avenue
New York, New York 10022
USA
(212) 909-6230

~~25~~
Counsel for ABC, Inc.,
The Associated Press, CBS
Inc., Daily News LP,
Dow Jones & Company,
Inc., The Los Angeles
Times and The Times
Mirror Company, National
Broadcasting Company,
Inc., The New York Times
Company, Time Inc.,
The Washington Post
Company and the Committee
to Protect Journalists

*Additional Counsel Listed
On Next Page*

Additional Counsel

ABC, INC.
Legal Department
77 W. 66th Street
New York, New York 10023
USA
(212) 456-7387

Of Counsel:

John W. Zucker
Senior General Attorney

DAILY NEWS L.P.
Legal Department
450 W. 33rd St.
New York, New York 10001
USA
(212) 210-2341

Of Counsel:

Eve B. Burton
Assistant General Counsel

THE ASSOCIATED PRESS
50 Rockefeller Plaza
New York, New York 10020
USA
(212) 621-1500

Of Counsel:

Margaret Blair Soyster
ROGERS & WELLS
200 Park Avenue
New York, New York 10166
USA

DOW JONES & COMPANY, INC.
Legal Department
200 Liberty Street
New York, New York 10281
USA
(212) 416-2000

Of Counsel:

Nancy Gillespie
Counsel

CBS INC.
Legal Department
51 W. 52nd St.
New York, New York 10019
USA
(212) 975-8758

Of Counsel:

Susanna M. Lowy
Associate General Counsel

THE LOS ANGELES TIMES and THE TIMES
MIRROR COMPANY
Legal Department
Times Mirror Square
Los Angeles, California 90053
USA
(213) 237-3760

Of Counsel:

Karlene W. Goller
Associate General Counsel

NATIONAL BROADCASTING COMPANY, INC.
Law Department
30 Rockefeller Plaza
New York, New York 10112
USA
(212) 664-5373

Of Counsel:

Jon P. Fine
Broadcast Counsel

THE NEW YORK TIMES COMPANY
Legal Department
229 W. 43rd St.
New York, New York 10036
USA
(212) 556-1234

Of Counsel:

Adam Liptak
Senior Counsel

TIME INC.
Legal Department
Time & Life Building
Rockefeller Center
New York, New York 10020
USA
(212) 522-3217

Of Counsel:

Robin Bierstedt
Vice President and Deputy General
Counsel

THE WASHINGTON POST COMPANY
Legal Department
1150 15th Street N.W.
Washington, D.C. 20071
USA
(202) 334-7988

Of Counsel:

Katharine Weymouth
Assistant Counsel

Appendix

Information on the Signatories to This Brief

ABC, Inc. ("ABC") produces and distributes news, entertainment, and sports television programming throughout the United States (through the ABC Television Network of ABC-owned and affiliated stations) and around the world, including the Republic of China, through licensing agreements with local broadcasters and videocassette distributors. Programs produced by ABC News report regularly on developments in or affecting Asia, including the Republic of China. ABC News maintains full-time news bureaus in Hong Kong, Beijing, Tokyo, and Manila, and has news stringers in the Republic of China. The ABC News Web Site is accessible on the Internet worldwide.

The Associated Press ("the AP") is a not-for-profit mutual news cooperative which is the world's largest newsgathering organization. The AP gathers news of local, national and international significance and distributes it to member newspapers and broadcast stations around the world. The AP has offices in 93 countries, including Bangladesh, Burma, Hong Kong, India, Indonesia, Japan, Malaysia, Nepal, Pakistan, People's Republic of China, Philippines, Republic of China, Singapore, Sri Lanka, Thailand, and Viet Nam.

CBS, Inc. owns, among other things, the CBS Television Network, 14 television stations, a Radio Network, 80 radio stations, and several cable entities. CBS News, a Division of CBS, Inc., produces and broadcasts news programs, including the CBS Evening News, 60 Minutes, and 48 HOURS. CBS News maintains an office in Beijing, as well as in other major cities around the world. CBS Inc. delivers news and information at a variety of sites on the Internet, including up-to-the-minute news at <http://www.cnn.com>.

The Committee to Protect Journalists is an independent, nonprofit organization that documents, protests and publicizes violations of press freedom worldwide. It was founded in 1981 by journalists in the United States determined to help obtain greater press freedom for colleagues abroad who were threatened by authoritarian governments and other enemies of independent journalism. Since CPJ's establishment it has monitored thousands of press freedom abuses and grown into an institution of vital importance to journalists and news organizations worldwide. CPJ is the only U.S. organization with a full-time staff devoted solely to this important work. CPJ is funded entirely by private donations from journalists, news organizations and private foundations; CPJ does not accept government funding.

A professional staff of highly experienced regional specialists tracks press conditions through an extensive network of sources, reports from the field, and on-site fact-finding missions. CPJ has a strong history of involvement in press freedom issues in Asia. This includes a history of protesting the United Nations' ongoing refusal to grant press accreditation to Taiwanese journalists.

CPJ distributes information about its work on the Internet at www.cpj.org.

Daily News L.P. publishes the New York Daily News, which is one of the largest newspapers in the United States and the largest newspaper in New York City. Mortimer Zuckerman, the Co-Publisher of the New York Daily News, also owns and publishes U.S. News and World Report, a newsmagazine with bureaus in Asia and throughout the world, as well as the Atlantic Monthly, a political and cultural magazine of international circulation. Daily News L.P.'s online news service, found on the Internet at www.mostnewyork.com, is accessible to computer users around the world. Yuen Ying Chan, a defendant in this case, is employed as a reporter for the New York Daily News.

Dow Jones & Company, Inc. publishes, among other things, The Wall Street Journal, a daily newspaper of international circulation that also has the largest circulation of any newspaper in the United States; The Wall Street Journal

Europe; and The Asian Wall Street Journal, a ~~daily~~ newspaper circulated primarily in Asia that maintains news bureaus throughout Asia, including the Republic of China. Dow Jones also publishes the Far Eastern Economic Review, the most widely circulated English-language news magazine focusing on Asian issues; Barrons, a weekly financial newspaper of national and international circulation; and, with The Associated Press, the AP/DJ News Service, a 24-hour international newswire with bureaus in the Republic of China and other Asian countries. Dow Jones also publishes news and financial information at a variety of sites on the Internet, most prominently The Wall Street Journal Interactive Edition at www.wsj.com, which is subscribed to by computer users around the world.

The Los Angeles Times is a newspaper of international circulation that is among the largest metropolitan daily newspapers in the United States with a daily circulation of over one million. The Los Angeles Times is published by The Times Mirror Company, an international news and information company which also publishes Newsday, the Baltimore Sun, more than a dozen other newspapers, eleven magazines, and other publications engaged in newsgathering and reporting. The Los Angeles Times maintains news bureaus in Hong Kong, Beijing, Shanghai, Tokyo and in other major cities around the world, as do Newsday and the Baltimore Sun. The Los Angeles Times Syndicate is one of the

world's largest editorial services, providing information to more than 3,000 newspapers and magazines in 120 countries around the world and directly to consumers through evolving technologies such as online, facsimile and telephone services. Together with the Washington Post, the Los Angeles Times operates the Los Angeles Times-Washington Post News Service, which transmits photographs and more than 170,000 words of copy daily to more than 650 newspaper, magazine and broadcast clients around the world, including in Asia. Together, the news service's products are seen or heard by more than 110 million people. The Times Mirror Company and the Los Angeles Times also publish news and information worldwide on the Internet at www.latimes.com and www.newsday.com, among other sites.

National Broadcasting Company, Inc. (NBC) produces and distributes news, entertainment, and sports television programming throughout the United States through the NBC Television Network, which is comprised of over 200 television stations. In addition, NBC programming reaches a worldwide audience through NBC channels in Europe and Asia, the CNBC financial news service, the MSNBC news and information service and on the Internet via MSNBC at msnbc.com. NBC has news bureaus in Asia and regularly reports on issues in and affecting Asia, including the Republic of China.

The New York Times Company publishes The New York Times, a newspaper of international circulation that also has a weekday circulation in the United States of approximately 1.1 million, making it one of the largest newspapers in the country, as well as a Sunday circulation of 1.7 million. The New York Times Company also publishes the Boston Globe and 21 other newspapers, and owns several television and radio stations. Along with The Washington Post Company, The New York Times Company also publishes the International Herald Tribune, a newspaper of international circulation. The New York Times Company maintains news bureaus in Hong Kong, Beijing, Shanghai, Tokyo, Bangkok and in other major cities around the world. The New York Times Company also distributes news worldwide on the Internet at www.nytimes.com, and on the America Online computer service.

Time Inc. is the largest publisher of general circulation magazines in the United States and also has a significant international presence. Among the U.S. magazines it publishes are Time, Fortune, Sports Illustrated, People and Life. In Asia, Time Inc. publishes Asiaweek, as well as Asian editions of Time and Fortune. In Japan, Time Inc. publishes President and Dancu. Time Magazine has 18 foreign bureaus, including New Delhi, Beijing, Hanoi, Hong Kong and Tokyo.

Time Inc. also provides a wide variety of news services on the Internet at www.pathfinder.com.

The Washington Post Company, a communications company, owns publications and broadcast properties engaged in newsgathering and reporting. The Washington Post, published by The Washington Post Company, is a daily newspaper of general circulation primarily in the states of Virginia and Maryland and the city of Washington, D.C., where it is read on a daily basis by leaders in American government. The Washington Post has a daily circulation close to 800,000 and a Sunday circulation over 1.1 million, making it one of the largest newspapers in the United States. The Washington Post Company maintains news bureaus in Tokyo, Hong Kong, and Beijing, among other locations in Asia and around the world. Through its subsidiary Newsweek Inc., The Washington Post Company also publishes Newsweek, one of the world's largest and most widely circulated newsmagazines. On the Internet, The Washington Post Company provides news and information at numerous sites, including www.washingtonpost.com and www.newsweek.com.

Table of Contents

	<u>Page</u>
Statement of Interest.....	2
Summary of Argument.....	4
Statement of Facts.....	5
Argument.....	6
Point One CRIMINAL PENALTIES FOR DEFAMATION AREGENERALLY DISCREDITED IN DEMOCRACIES	6
A. Democracies Generally Do Not Put Journalists In Jail Merely Because News Stories Contain Alleged Errors Of Fact.....	7
B. Criminal Punishment Of Journalists Today Often Is The Tool Of Governments That Do Not Generally Respect Human Rights.....	9
C. The Factors That Have Led To A Worldwide Reduction In Criminal Defamation Prosecutions Are Present In This Case.....	10
Point Two THE COURT SHOULD CONSTRUE THE GOVERNINGSTATUTE TO EXEMPT THESE REPORTERS FROM LIABILITY IF THEY BELIEVED IN GOOD FAITH THAT THEIR ARTICLE WAS TRUE.....	12
A. Equating The Defense Of "Good Intent" With A Good-Faith Belief In The Truth Of The Article Would Harmonize The Republic Of China's Law With International Standards.....	12
B. The Policy Concerns That Have Led To The International Recognition Of The State Of Mind Principle Are Present In This Case.....	18
Conclusion.....	20

Appendix Information on the Signatories to This Brief..... A-1

SIXTEENTH CRIMINAL TRIBUNAL
LOCAL COURT OF TAIPEI, REPUBLIC OF CHINA

-----X
LIU TAI-YING, :
 :
 Private Prosecutor, :
 :
 - against - :
 :
 YUEN YING CHAN, CHUNG-LIANG HSIEH, :
 and WANG SHU-YUAN, :
 :
 Defendants. :
 :
-----X

**BRIEF OF ABC, INC., THE ASSOCIATED PRESS, CBS INC., DAILY
NEWS LP, DOW JONES & COMPANY, INC., THE LOS ANGELES
TIMES AND THE TIMES MIRROR COMPANY, NATIONAL
BROADCASTING COMPANY, INC., THE NEW YORK TIMES
COMPANY, TIME INC., THE WASHINGTON POST COMPANY, AND
THE COMMITTEE TO PROTECT JOURNALISTS, AS _____
FRIENDS OF THE COURT IN SUPPORT OF DEFENDANTS**

Of Counsel:

DONALD FRANCIS DONOVAN
JEREMY FEIGELSON
HARRY SANDICK
ROBERT J. DRISCOLL

DEBEVOISE & PLIMPTON
875 Third Avenue
New York, New York 10022-6225
USA
(212) 909-6000

Attorneys for Friends of the Court

Dated: April 10, 1997

New York, New York

(Additional Counsel Listed On Inside Cover)

Additional Counsel

ABC, INC.
Legal Department
77 W. 66th Street
New York, New York 10023
USA
(212) 456-7387

Of Counsel:
John W. Zucker
Senior General Attorney

THE ASSOCIATED PRESS
50 Rockefeller Plaza
New York, New York 10020
USA
(212) 621-1500

Of Counsel:
Margaret Blair Soyster
ROGERS & WELLS
200 Park Avenue
New York, New York 10166
USA

CBS INC.
Legal Department
51 W. 52nd St.
New York, New York 10019
USA
(212) 975-8758

Of Counsel:
Susanna M. Lowy
Associate General Counsel

DAILY NEWS L.P.
Legal Department
450 W. 33rd St.
New York, New York 10001
USA
(212) 210-2341

Of Counsel:
Eve B. Burton
Assistant General Counsel

DOW JONES & COMPANY, INC.
Legal Department
200 Liberty Street
New York, New York 10281
USA
(212) 416-2000

Of Counsel:
Nancy Gillespie
Counsel

THE LOS ANGELES TIMES and THE TIMES
MIRROR COMPANY
Legal Department
Times Mirror Square
Los Angeles, California 90053
USA
(213) 237-3760

Of Counsel:
Karlene W. Goller
Associate General Counsel

NATIONAL BROADCASTING COMPANY, INC.
Law Department
30 Rockefeller Plaza
New York, New York 10112
USA
(212) 664-5373

Of Counsel:

Jon P. Fine
Broadcast Counsel

THE NEW YORK TIMES COMPANY
Legal Department
229 W. 43rd St.
New York, New York 10036
USA
(212) 556-1234

Of Counsel:

Adam Liptak
Senior Counsel

TIME INC.
Legal Department
Time & Life Building
Rockefeller Center
New York, New York 10020
USA
(212) 522-3217

Of Counsel:

Robin Bierstedt
Vice President and Deputy General
Counsel

THE WASHINGTON POST COMPANY
Legal Department
1150 15th Street N.W.
Washington, D.C. 20071
USA
(202) 334-7988

Of Counsel:

Katharine Weymouth
Assistant Counsel

Endnotes

-
1. Garrison v. Louisiana, 379 U.S. 64, 75 (1964).
 2. United States Department of State, Bureau of Democracy, Human Rights, and Labor, Taiwan Report on Human Rights Practices for 1996 (1997).
 3. Hong Kong Polytechnic University v. Next Magazine Publishing Ltd., 1995 No. A328 (Supreme Court of Hong Kong, High Court, December 10, 1996).
 4. Castells v. Spain, Eur. Ct. H.R. (Ser. A, No. 236) (1992) ¶ 72; Lingens v. Austria, Eur. Ct. H.R. (Ser. A, No. 103) (1986) ¶ 42.
 5. Melissa K. Bauman, Note, Defamation in Hong Kong and the People's Republic of China: Potential Perils of Two Standards of Free Speech, 15 *Hastings Int'l & Comp. L. Rev.* 671, 679 (1992).
 6. Statement by Hong Kong Journalists Association to Yuen Ying Chan, reported by Yuen Ying Chan on the Internet at <<http://www.yingchan.com/note1222.html>>.
 7. Bauman, *supra* note 5, at 679-680.
 8. Chiu Chut-fong v. Law Chup, 1973 H.K.L.R. 36, 38; *id.* at 42 (in many instances "a criminal prosecution for libel ought not to be instituted and, if instituted, will probably be regarded with disfavor by judge and jury").
 9. Ellen M. Smith, Note, Reporting the Truth and Setting the Record Straight: An Analysis of U.S. and Japanese Libel Laws, 14 *Mich. J. Int'l L.* 871, 882 (1993).
 10. Kyu Ho Youm, Libel Law and the Press: U.S. and South Korea Compared, 13 *UCLA Pac. Basin L.J.* 231, 247 (1995).
 11. Cory Aquino Loses Libel Suit Against Philippine Star, *The Filipino Express*, November 26, 1995, Vol. 9, No. 47, at 1; quoting New York Times Co. v. Sullivan, 376 U.S. 254, 271 (1964).

-
12. J.R. Spencer, Criminal Libel -- A Skeleton in the Cupboard, 1977 *Crim. L. Rev.* 383, 383.
 13. Castells v. Spain, Eur. Ct. H.R. (ser. A., No. 236) (1992) ¶¶ 68, 72; see also Lingens v. Austria, Eur. Ct. H.R. (ser. A, No. 103) (1986) ¶¶ 42.
 14. Castells, ¶¶ 68, 72.
 15. County Court, Zagreb, Croatia; Indictment Proposal No. KT-8848/96; Committee to Protect Journalists, Attacks on the Press in 1996, at 263 (Alice Chasan ed., 1997).
 16. Garrison v. Louisiana, 379 U.S. 64, 69-70 (1964); see also Ashton v. Kentucky, 384 U.S. 195 (1966) (invalidating criminal defamation statute as unconstitutional because of vagueness).
 17. See, e.g., Tollett v. United States, 485 F.2d 1087, 1096 (8th Cir. 1973) (describing harm to reputation as a "weak and questionable basis for governmental intrusion into the delicate area of regulating expression"); Fitts v. Kolb, 779 F. Supp. 1502 (D.S.C. 1991); United States v. Handler, 383 F. Supp. 1267 (D. Md. 1974); State v. Powell, 839 P.2d 139, 143 (N.M. 1992) ("[c]riminal libel laws serve very little, if any, purpose."); Velasco v. Municipal Court, 147 Cal. App. 3d 340, 350, 195 Cal. Rptr. 108, 114 (1983); Gottschalk v. State, 575 P.2d 289, 290 (Alaska 1978); State v. Anonymous, 360 A.2d 909 (Conn. Cir. Ct. 1976-78); Eberle v. Municipal Court, 55 Cal. App. 3d 423, 433, 127 Cal. Rptr. 594, 600 (1976).
 18. See generally Libel Defense Resource Center, 50-State Survey 1996-1997: Current Developments in Media Libel Law (citing repealed statutes in several states).
 19. See, e.g., George E. Stevens, Criminal Libel After Garrison, 68 *Journalism Q.* 522, 526-27 (Fall 991) ("[F]or the mass media criminal libel today is a largely unenforceable offense. . . . [P]rosecutors have long been reluctant to enforce [criminal libel] laws, and there is nothing to suggest that many are changing their minds."); Libel Charge Against Ex-Sheriff Is Dropped, *St.*

-
- Petersburg Times 8B, March 28, 1990 (prosecutor in Florida dropped criminal defamation charges against newspaper owner and writer); Charges of Libel Dropped, Bergen Record A12, July 3, 1988 (prosecutor in South Carolina dropped criminal defamation charges against newspaper editor only a week after initiating the case).
20. Committee to Protect Journalists, Attacks on the Press in 1996, at 317.
 21. United States Department of State, Bureau of Democracy, Human Rights, and Labor, China Country Report on Human Rights Practices for 1996 (1997).
 22. United States Department of State, Bureau of Democracy, Human Rights, and Labor, Turkey Country Report on Human Rights Practices for 1996 (1997).
 23. Committee to Protect Journalists, Attacks on the Press in 1996, at 336.
 24. United States Department of State, Bureau of Democracy, Human Rights, and Labor, Ethiopia Country Report on Human Rights Practices for 1996 (1997).
 25. Id. at 50.
 26. G.A. Res. 217 (III 948), art. 19.
 27. 999 U.N.T.S. 171 (entered into force on March 23, 1976), art. 19.
 28. See Constitution of the Republic of China, Article 11 ("The people shall have freedom of speech, teaching, writing and publication."); Declaration of the Rights of Man, August 26, 1789, Article 11, as incorporated into French Constitution of October 4, 1958; German Constitution, Article 5; Japan Constitution, Article 21; Constitution of the Republic of Korea, Article 21; United States Constitution, amend. I; Constitution of the Republic of South Africa, paragraph 16; Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Article 27; Constitution of the Republic of the Philippines, Art. III, Sec. 4; see also Theophanous v. Herald & Weekly Times Ltd. ((1994), 124 A.L.R. 1)

(recognizing an implied freedom of communication in relation to political discussion in Australia).

29. Karel Vasak, The International Dimensions of Human Rights 106 (1982) (emphasizing the authoritative force of the Universal Declaration of Human Rights and stating that "no responsible member of the international community may disregard an appeal to the rights enshrined in it").
30. Garrison, 379 U.S. at 69-70 (quoting Model Penal Code, Tent. Draft No. 13, 1961, § 250.7, Comments, at 44).
31. E.g., id.
32. Republic of China Criminal Code, Chapter XXVII, Article 311 ("A person who makes a statement with good intent under one of the following circumstances shall not be punished," and listing "fair comment on a fact subject to public criticism" as one of the circumstances where there will be no liability).
33. 23 Keishu 7 at p. 259, Supreme Court, Grand Bench, June 25, 1969 (English translation at H. Itoh & L. Beer, The Constitutional Case Law of Japan 175-178 (1978)).
34. Hoppo Journal Co. v. Kozo Igarashi, Case No. (O)-609 of 1981, Supreme Court, Grand Bench, June 11, 1986 (reprinted in General Secretariat, Supreme Court of Japan, Series of Prominent Judgments of the Supreme Court upon Questions of Constitutionality, No. 22 (1988)). See also Judgment of June 23, 1966, Saikosai Supreme Court, 20 Minshu 1118 (Japan) (rejecting civil defamation action brought by candidate for public office against newspaper, where reporters had grounds for reasonable belief in truth of story).
35. Judgment of April 11, 1984, Yi Ui-hyang v. Dong-A Ilbo-Sa, Minsa Chibang Popwon, [Civil District Court] 82 Kahap 4734 (reprinted in Kungnae Ollon Kwangye Pallyechip [Collection of Court Decisions on Korean Press at 229, 233]).
36. Id. at 234.

-
37. Judgment of Oct. 11, 1988, Taebopwon, 85 Taka 29 (reprinted in Kungnae Ollon Kwangye Pallyechip [Collection of Court Decisions on Korean Press] at 224, 227) (emphasis added).
38. See Antonio C. Campo, Archaic Libel Laws in RP, Filipino Reporter 21 (Nov. 30, 1995), and John Dikkenburg, Aquino Libel Case Rejected By Court, South China Morning Post 15 (Nov. 19, 1995) (both describing court's reliance on the United States Supreme Court's decision in New York Times Co. v. Sullivan, 376 U.S. 254 (1964)).
39. Holomisa v. Argus Newspapers Ltd., Supreme Court, Witwatersrand Local Division, 1996 (6) BCLR 836 (W).
40. Id.
41. Id.
42. Theophanous v. Herald & Weekly Times Ltd. (1994), 124 A.L.R. 1.
43. Id.
44. Id.
45. Id.
46. Rajagopal v. State of Tamil Nadu, AIR 1995 Supreme Court 264 (October 7, 1994).
47. New York Times Co. v. Sullivan, 376 U.S. at 280.
48. Id. at 271.
49. Id. at 271-72 (quoting NAACP v. Button, 371 U.S. 415, 433 (1963)).
50. Id. at 274 (citation omitted).
51. Garrison, 379 U.S. at 73.
52. Id.

-
53. E.g., Sullivan, 376 U.S. at 281-282; Hoppo Journal Co. v. Kozo Igarashi, Case No. (O)-609 of 1981, Supreme Court, Grand Bench, June 11, 1986; Theophanous v. Herald & Weekly Times Ltd. (1994), 124 ALR 1.
 54. See Gertz v. Robert Welch, Inc., 418 U.S. 323, 344 (1974) (explaining that public figures have greater access to means of communication than average persons, and thus are able to rebut false statements).
 55. Kochi v. Japan, 23 Keishu 7, Supreme Court, Grand Bench, June 25, 1969; Judgment of April 11, 1984, Yi Ui-hyang v. Dong-A Ilbo-Sa, Minsa Chibang Popwon, 82 Kahap 4734; Holomisa v. Argus Newspapers Limited, Supreme Court, Witwatersrand Local Division, 1996 (6) BCLR 836 (W); Theophanous v. Herald & Weekly Times Ltd., (1994), 124 ALR 1; Rajagopal v. State of Tamil Nadu, AIR 1995 Supreme Court 264 (October 7, 1994).
 56. Republic of China Criminal Code, Chapter XXVII, Article 310 (providing that there can be no punishment for the offense of defamation "unless the fact [published] concerns private life and is of no public concern").
 57. See Gertz, 418 U.S. at 344.
 58. United States Department of State, Bureau of Democracy, Human Rights, and Labor, Taiwan Report on Human Rights Practices for 1996 at 4 (1997).