

**CCDLA**  
"Ready in the Defense of Liberty"  
Founded in 1988

**Connecticut Criminal Defense Lawyers  
Association**  
P.O. Box 1766  
Waterbury, CT 07621-1766  
(860) 283-5070 Phone & Fax  
[www.ccdla.com](http://www.ccdla.com)

March 16, 2007

Hon. Andrew J. McDonald, Senator  
Hon. Michael P. Lawlor, House Representative  
Chairmen, Judiciary Committee  
Room 2500, Legislative Office Bldg.  
Hartford, CT 06106

**Re: Raised Bill No. 1239 *An Act Concerning Investigative Subpoenas.***

Dear Chairman McDonald, Chairman Lawlor and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of 300 lawyers dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not infringed.

**CCDLA strongly opposes Raised Bill No. 1239, *An Act Concerning Investigative Subpoenas.***

CCDLA continues to be strongly opposed to any legislation that would give, with or without judicial oversight, investigative subpoena power to prosecuting officials in criminal matters that are not pending in the Superior Court or before a grand jury, but simply are under investigation. Such officials already hold vast power. They have the power to apply for an investigatory grand jury, see General Statutes Section 54-76b, et seq., as amended by Public Act No. 03-273, to make application for immunity grants for witnesses, see Section 54-47a, to apply for search and seizure warrants, see Section 54-33a, et seq., to make application for wiretaps, see Section 54-41a, to request that material witnesses be detained, see Sections 54-82i and 82j, to engage in normal investigative techniques including taking written statements under oath, and to prosecute on complaint or information. See Section 54-46. With the legal means that currently exist, there is no crime that the State cannot adequately investigate and prosecute. Thus, there is no need for prosecutors to have this additional, unprecedented tool at their disposal.

Additionally, Raised Bill No. 1239 is seriously flawed in that, unlike other investigative measures, the issuance of the subpoena is not tethered to the probable cause standard, the time-honored legal benchmark utilized by courts to determine when the protection of privacy must give way. Here, the prosecutor is only required to establish "reasonable grounds" to believe 1) that a crime was committed, 2) that the person summoned to appear has information relevant or necessary to the investigation, and 3) that the person will not appear absent the issuance of a subpoena. No definition of the phrase "reasonable grounds" is provided. However it is defined, it clearly represents a much lower legal standard for intrusion (and compulsion) than the probable cause requirement provides. That the prosecutor can establish "reasonable grounds" in an *ex parte* proceeding only makes it that much easier for the State to obtain a subpoena.

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There appear to be no limits on what criminal offenses can be investigated by a prosecuting official: breach of peace, harassment, criminal mischief and shoplifting are all misdemeanors that can result in the issuance of subpoenas. While there is judicial oversight concerning the issuance of subpoenas, as well as the questions that are asked, it is all done in secret, without the presence of a suspect

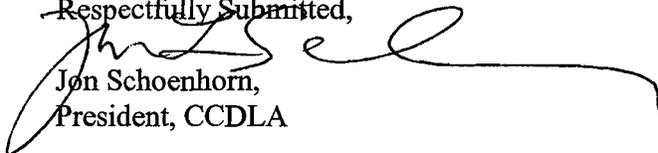
Notwithstanding the Chief State's Attorney's representations that the power sought herein will be exercised with self-restraint, passage of Raised Bill No. 1239 is ripe for abuse. No complaint will be immune from a secret investigation, even one instituted by a State's Attorney on his or her own. Coupled with another bill pending before the Judiciary Committee, see Raised Bill No. 7334, *An Act Concerning Pen Registers And Trap Or Trace Devices*, these laws will eventually lead to an erosion of our privacy and our liberty. The right of the citizenry to be free of such intrusions is one of our most cherished and essential rights. Absent the presence of probable cause, no intrusion should be allowed, even in the slightest manner. As Justice Brandeis stated in his famous dissenting opinion in Olmstead v. United, 277 U.S. 438 (1928),

“The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men.”

Accordingly, CCDLA remains committed to opposing investigative subpoenas. Respectfully, a joint favorable vote by the Judiciary Committee on Raised Bill No. 1239 is neither warranted nor appropriate.

Thank you for your consideration.

Respectfully Submitted,



Jon Schoenhorn,  
President, CCDLA

Thomas J. Ullman,  
President-Elect, CCDLA

Edward J. Gavin, V.P.  
Conrad O. Seifert, Sec.  
Jennifer Zito, Treas.  
Moiria Buckley  
Tara Knight  
John Walkley  
Leonard Crone  
Joseph Lopez