

# Tricky Law

**By Reg P. Wydeven  
March 30, 2014**

One of my favorite movies has been on cable a lot lately – ‘The Departed.’ Martin Scorsese nabbed the Oscar for directing this classic and the Academy voted it the picture of the year.

The film has an all-star cast, including Jack Nicholson, Martin Sheen, Alec Baldwin and Mark Wahlberg. The movie focuses, however, on Matt Damon and Leonardo DiCaprio. Damon plays an underling to Nicholson’s crime boss that becomes a mole in the Massachusetts State Police Department. DiCaprio portrays an undercover State Police officer who infiltrates Nicholson’s crime syndicate.

As an undercover cop, DiCaprio has to do despicable things to avoid blowing his cover. DiCaprio is so stressed out by his double life that he is ordered to meet with a department psychologist.

While the movie has an awesome ending, the moral of the story is that if you go deep enough undercover, the line between your cover and your true identity can become so blurred you may lose sight of yourself.

I just hope the Honolulu police department keeps this in mind in the line of duty.

The Hawaii state House of Representatives recently passed a bill intending to crack down on prostitution. The measure would increase penalties for pimps and their customers. The legislation was also meant to remove a longstanding exemption that allows undercover officers to have sex with prostitutes during investigations.

To many people’s surprise, the Honolulu police department asked lawmakers to leave the exemption alone, claiming it is necessary to catch lawbreakers in the act. Honolulu Police Major Jerry Inouye explained to the House Judiciary Committee that, “the procedures and conduct of the undercover officers are regulated by department rules, which by nature have to be confidential.” Inouye went on to explain that if prostitutes and pimps have access to these rules, “they’re going to know exactly how far the undercover officer can and cannot go.”

Upon hearing Inouye’s appeal, Representative Karl Rhoads deferred to the department’s expertise and amended the appeal. He conceded, however, that allowing police officers to have sex with prostitutes is “a really murky area.”

Opposition to the legislation quickly surfaced. Critics include other police departments and human trafficking experts. They claim that the exemption is the only one of its kind and is not only unnecessary, but may further victimize the prostitutes, many of whom may have been forced into it. They also fear that prostitutes will be coerced into giving sexual favors to police officers to avoid arrest.

Police officials counter by insisting that internal policies and procedures are in place to prevent officers from taking advantage of the exemption.

The debate is especially heated in light of several recent incidents across the country involving police officers victimizing prostitutes. It is impossible to determine if any such incidents have occurred in Hawaii, as the state’s disclosure laws conceal whether on-duty officers have faced discipline or accusations of having sex with a prostitute.

I think Scorsese could use this law as the basis for a new Hollywood blockbuster.

*This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2014 McCarty Law LLP. All rights reserved.*