

# MEDIA LAW NOTES

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LAW & POLICY DIVISION, AEJMC

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## Head Notes



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This past spring we solicited feedback from Law & Policy Division members through an online survey. We learned a few things.

First, we learned that division members are either really busy or are relatively content with the status quo, because only 18 completed the survey. That's out of 270 division members, achieving a 7 percent response rate that would make quantoids shudder. Fortunately, we are a qualitative-friendly group, and the results, particularly the open-ended responses, are still helpful.

Second, we learned that members are relatively pleased with

how the division prioritizes its budget, showcases research, and communications. That's great to know.

### Money

Since the division has a little flexibility in its budget, we asked members to prioritize how the money is spent.

Nearly all those who responded (94 percent) agree it is important to continue providing annual contributions to the Student Press Law Center and Reporters Committee for Freedom of the Press. Last year we provided \$500 to each organization, and in previous years the donation was \$250 per organization.

Three-quarters expressed support for providing national conference travel scholarships to graduate students, which would be new. While there was support for writing amicus briefs (59 percent), some

## From the Research Chair

Derigan Silver  
University of  
Denver



This year the research competition for the Law and Policy Division continued to be extremely competitive, as our traditionally low acceptance rate was again below 50 percent.

In all, 71 papers were submitted, and 32 were accepted, a 45 percent acceptance rate. There were 42 faculty research paper submissions, and 21 accepted, a 50 percent acceptance rate, while there were 29 student research paper submissions, and 11 accepted, a 38 percent acceptance rate. In 2011, the division accepted 30 of the 71 papers submitted (42 percent). In 2010, the division accepted 32 of the 83 papers submitted (38.5 percent).

Thus, this year's competition was in line with previous years both in terms of the numbers of papers submitted and our acceptance rate. Although our acceptance rate has somewhat increased over the last two years, it was 45% in both 2008 and 2009. This year, AEJMC was clear that research chairs should focus on the quality of papers rather

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# Putting FOI to Work: Uncovering Challenged Books

By Charles Davis  
University of  
Missouri



Incorporating hands-on journalism into what once was a doctrinal graduate seminar on freedom of information law took a bit of

mental gymnastics. But now that I have several semesters under my belt, I can safely say that it has been one of the most professionally rewarding decisions I have made as a teacher.

Controls of Information – a seminar taught consistently at Missouri since the founding of the Freedom of Information Center in 1958 – is a

delight to teach. I am passionate about the topic and the students enjoy thinking about these issues. But after several years of teaching it as a straight-ahead legal seminar, I had a hunch that something was missing: journalism.

So I began to toy around with the idea of building in a reporting

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thought it could be done for free. Half the respondents thought it would be good to spend division funds to bring big-name speakers to the national conference. Also, one person suggested producing a second journal for the division, perhaps one as a traditional legal journal and the other a policy or social science journal, maybe online.

### Expenditure

Support SPLC and RCFP	94 percent
Grad student assistance	77 percent
Write amicus briefs	59 percent
Big-name speakers	50 percent
Faculty cash prizes	39 percent
Lower dues	18 percent

### Research

We also were curious what members thought about research activities at the national conference. By far, most of the respondents (88 percent) support continuing traditional refereed paper panel sessions, and a minority supported poster sessions (35 percent) or high-density sessions (31 percent). However, half did express support for replacing one traditional paper panel next year with a high-density session to see how it would work for law papers, particularly if the moderator is adept at holding people to time.

Other suggestions included eliminating discussants to leave more time for audience conversation, putting on panels with just a few papers on a specific topic, and initiating one special paper competition each year.

## Communication

Members who responded to the survey seem to like our current communication methods within the division. We have overwhelming support for keeping to the status quo through an emailed newsletter, email listserv and Website (<http://www.aejmc.net/law/>). There was less interest in starting up a Facebook page or blog for the division, and zero interest in going back to mailing a paper version of the newsletter, Media Law Notes.

### Communication mode

Newsletter emailed	88 percent
Email listserv	88 percent
Website	78 percent
Facebook page	41 percent
Blog	35 percent
Newsletter mailed	0 percent

In summary, it appears members are relatively content with the division spending priorities, research activities and communications. At the members meeting in Chicago (7-8:30 p.m. Saturday, Aug. 11), we will open the floor to proposals if the membership would like to consider these or any other ideas, such as providing travel scholarships for graduate students, scheduling a high-density session at the 2013 conference, or trying a few panels without discussants.

If you have further thoughts or comments, feel free to contact me before the conference ([cuillier@email.arizona.edu](mailto:cuillier@email.arizona.edu)). Thanks for being a member!

# Teaching Competition Winners Announced

By Cheryl Ann Bishop  
Quinnipiac University



The Law and Policy Division is pleased to announce the winners of the fourth annual teaching ideas competition. This year's competition theme was *Beyond the Classroom: Using experiential learning to bring communication law to life*. Experiential learning is the process of gaining knowledge and insight through direct experiences – learning by doing.

We received many outstanding submissions this year. Submissions were judged based on creativity, innovation, practicality and overall value in teaching

communication law and policy to our students. The following are the winning ideas for 2012:

- First Place: “Exploring Limits for Free Expression With Middle School Students,” Erin K. Coyle, Louisiana State University
- Second Place: “Presumed Prejudice in Pre-Trial Publicity,” Kevin Qualls, Murray State University
- Third Place: “Exploring the Law Landscape with New Media: An Enhanced Podcast Project,” Melinda Rhodes, Ohio Wesleyan University

The winning submissions are posted on the division website: <http://www.aejmc.net/law/teaching.html>. Winners will receive a certificate and a cash prize - \$100 for first; \$75 for second; and \$50 for third.

*Research, continued from page 1*

than an overall acceptance rate; however, our division has been doing this for several years.

After each paper was scored by three blind reviewers, z-scores were used to determine ranking. Congratulations to our three faculty winners: first place, **Yong Tang, Western Illinois**; second place, **Dean Smith, North Carolina at Chapel Hill**; and third place, **Edward Carter, Brigham Young**. Our student competition featured a sweep by students from **North Carolina at Chapel Hill**: first place, **Jeanne-Marie DeStefano**; second place, **Lisa Barnard**; third place, **John Remensperger**. Congratulations to all of winners. Please plan on attending the Law and Policy members meeting to accept your award and be recognized for your achievements by the division. The meeting will be held at the conference on Saturday, Aug. 11 at 7 p.m.

The selected papers were clustered into thematic panel sessions; Campaign finance law, copyright & claims of trade secrets (for those of you who like *Jeopardy*, I like to call this the “Law and Policy pot-pourri” session); Regulatory agencies & communication law; “Bad” speakers & “bad” speech; Legal history; Contemporary questions about the First Amendment & freedom of expression; and Anonymity, confidentiality and privacy. Papers that didn't fit into any topic were selected for the Scholar-to-Scholar poster presentations. Selection for the poster presentation was not a reflection on the quality of the paper what-

soever, and this session is an excellent opportunity to spend time with the authors on a one-to-one basis.

We have a great line up of moderators and discussants and we'll moderators will be asked to save time for audience participation so you should look forward to lively discussions and question and answer session.

In addition to having a high number of quality papers submitted, the division was fortunate to have a large number of volunteer reviewers. We had 64 judges, nearly all of whom completed their reviews in a timely manner. I'm particularly grateful to our reviewers, as the competition would not be possible without them. Reviewers will be listed in the conference program and those who expressed interest in serving as moderators and discussants were given priority, although we were unfortunately unable to find a position for everyone who volunteered to serve.

On a final note, as has been true for the last three years, a number of papers were disqualified for author-identifying information that was either in the body of the paper or in the digital properties of the paper. Unfortunately, although authors were reminded to check the PDF version of their paper after it was posted to All-Academic, several submitters failed to notice digital author-identifying information was added to their file after it was converted from Word to PDF format. According to AEJMC rules these papers had to be disqualified.

## Pre-Conference Events for AEJMC Annual Conference in Chicago

### Wednesday, August 8

- 8:30 a.m.-noon PFR panel: Summer Vacation is Over: A Year's Worth of Communication Law in 180 Minutes (Amy Sanders, coordinator and moderator)
- 8:30 to 9:30 a.m.: The Supreme Court Did What?!: Decisions from the 2011/2012 Term  
Clay Calvert, Florida; Dan Kozlowski, St. Louis; Derigan Silver, Denver
- 9:45 to 10:45 a.m.: Texts, and Tweets and Flickr, Oh My: Social Media Law Update  
Robert D. Richards, Penn State; Woodrow N. Hartzog, Samford; Chip Stewart, TCU
- 11 a.m. to Noon: What Happened to "Don't Be Evil": Privacy Law Update  
T. Barton Carter, Boston University; Amy Gajda, Tulane; Eric Easton, University of Baltimore
- 1- 5 p.m. Teaching Panel: Journalism Programs As News Providers: Legal and Other Protections (Geanne Rosenberg, coordinator and moderator)  
(Co-sponsored with Community Journalism and Civic and Citizen Journalism Interest Groups)

#### Panelists:

Fred Bayles, Boston University  
Christopher Beall, Levine Sullivan Koch & Schulz, LLP  
Joe Bergantino, Boston University  
Lucy Dalglish, Dean, Maryland  
Steve Doig, Arizona State  
Karen Dunlap, Poynter Institute  
Howard Finberg, Poynter Institute  
George Freeman, veteran New York Times lawyer  
Bill Grueskin, Columbia University Graduate School of Journalism  
Jeff Hermes, Citizen Media Law Project  
Jane Kirtley, Minnesota  
Frank LoMonte, Student Press Law Center  
Ed Madison, Oregon  
Nikhil Moro, North Texas  
Eric Newton, Knight Foundation  
Geneva Overholser, Director, Southern California-Annenberg  
Cathy Packer, North Carolina at Chapel Hill  
Earnest Perry, Missouri  
Jonathan Peters, Missouri

Reception to follow. Thank you for the support of the Carnegie Corporation, the McCormick Foundation and the Harnisch Family Philanthropies. Pre-registration is required.

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## Law & Policy Research Papers at AEJMC

**Covering the Cs: Campaign Finance Law,  
Copyright & Claims of Trade Secrets  
Thursday, Aug. 9, 8:15-9:45 a.m.**

Who are the Media? The Media Exemption to Campaign Finance Law\*

John Remensperger, North Carolina at Chapel Hill

Surveying the Post-Apocalyptic Landscape: Campaign Finance Reform and Free Speech After Citizens United

Matthew Telleen, South Carolina  
Carmen Maye, South Carolina  
Erik Collins, South Carolina

Online News Aggregators, Copyright, and the Hot News Doctrine

Robert G. Larson III, Minnesota

Who owns your friends?: *PhoneDog v. Kravitz* and business claims of trade secret in social media information

Jasmine McNealy, Syracuse

Moderating: Roy Moore, Middle Tennessee  
Discussant: Eric Easton, Baltimore School of Law

\*Third place student paper

**Regulatory Agencies & Communication Law  
Thursday, Aug. 9, 11:45 a.m. – 1:15 p.m.**

Policy development under uncertain regulatory capture conditions: An insiders' perspective

Amy Sindik, Georgia

The Calm Before the Storm? Indecency Regulation in the 1990s

Amy Kristin Sanders, Minnesota  
Natalie Hopkins-Best, University of Minnesota

The Triangle of Minority Ownership, Employment and Content: A Review of Studies of Minority Ownership and Diversity

Dam Hee Kim, Michigan

Determinants of Broadband Competition and Service Quality in the United States

Robert LaRose, Michigan State  
Anthony Grubestic, Drexel  
Johannes M. Bauer, Michigan State  
Wenjuan Ma, Michigan State  
Hsin-yi Sandy Tsai, Michigan State

An Analysis of FTC Cases Involving Substantiation of Health Claims in Food Advertising\*

Jeanne-Marie DeStefano, North Carolina at Chapel Hill

Moderating: Michael D. Murray, Missouri - St. Louis  
Discussant: Paul Siegel, Hartford

\*Top student paper

**“Bad” speakers & “bad” speech: Libel, prior restraints and true threats  
Thursday, Aug. 9, 1:30—3 p.m.**

When "Ripped from the Headlines" Means "See You in Court": Libel By Fiction and the Tort Law Twist on a Controversial Defamation Concept

Robert Richards, Penn State

Re-Defining Defamation: Psychological Sense of Community in the Age of the Internet

Amy Kristin Sanders, Minnesota  
Natalie Hopkins-Best, Minnesota

Protecting citizen journalists with actual malice

Nikhil Moro, North Texas  
Deb Aikat, North Carolina at Chapel Hill

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*AEJMC Research Papers, continued*

True threats, fake warnings: Proscribing intimidating speech in a context of violence

Bastiaan Vanacker, Loyola Chicago

Past Bad Speakers, Performance Bonds & Unfree Speech

Clay Calvert, Florida

Moderating: SI Alexander, Loyola New Orleans

Discussant: Jane Kirtley, Minnesota

**Scholar-to-Scholar presentation**

**Friday, Aug. 10. 1:30-3 p.m.**

Facial Recognition vs. the Law

Robert G. Larson III, Minnesota

The "High Life" at "Mimi's": West Virginia's Wrongful Ban of Limited Video Lottery Advertising

Matthew Haught, South Carolina

Justices or Politicians in Robes? Using the Brandenburg Line to Examine Political Influence on Supreme Court Decisions

Jared Schroeder, Oklahoma

Mental illness, the news media and open justice: the Australian experience

Mark Pearson, Bond University

Discussant: Holly Hall, Arkansas State

**Legal History: The study of how law has evolved and why it changed**

**Saturday, Aug. 11, 12:15-1:30 p.m.**

The Real Story Behind the Nation's First Shield Law: Maryland, 1894-1897\*\*

Dean Smith, North Carolina at Chapel Hill

The Evolution of Canon 35 and the Two Maverick States That Did Not Follow Suit

Michael Martinez, Tennessee

The Closing of the Ether: Communication Policy and the Public Interest in the U.S. and Great Britain, 1921-1926

Seth Ashley, Boise State University

Secrecy and Transparency of the Chinese Government: A Historical Perspective\*

Yong Tang, Western Illinois

Moderating: Jon Bekken, Albright College

Discussant: Kathy Forde, South Carolina

\*Top faculty paper

\*\*Second place faculty paper

**Contemporary Questions about the First Amendment & Freedom of Expression**

**Saturday, Aug. 11, 5:15 – 6:45 p.m.**

Social Science, Media Effects & The Supreme Court: Is Communication Research Relevant After *Brown*?

Clay Calvert, Florida

Matthew Bunker, Alabama

Kimberly Bissell, Alabama

American Un-Exceptionalism: The Case of Copyright Law's Public Domain and Freedom of Expression\*

Edward Carter, Brigham Young

Spam and the First Amendment Redux: Free Speech Issues in State Regulation of Unsolicited Email

Jasmine McNealy, Syracuse

To Defer or Not to Defer? Deference and Its Differential Impact on First Amendment Rights in the Roberts Court

Clay Calvert, Florida

Justin Hayes, Florida

Getting Excited About the CALM Act: The First Amendment and Loud Commercials

Dale Herbeck, Boston College

Moderating: Jeannine Rely, Arizona

Discussant: William Lee, Georgia

\*Third place faculty paper

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*AEJMC Research Papers, continued*

## **Anonymity, Confidentiality and Privacy**

**Sunday, Aug. 12, 11:45 – 1:15 p.m.**

The Anonymous Speech Doctrine in the Internet Era: Developments in Libel, Copyright, and Election Speech

Jason Shepard, Cal State Fullerton

Genelle Belmas, Cal State Fullerton

To Reveal or Conceal? - An ISP's Dilemma: Presenting a New "Anonymous Public Concern Test" for Evaluating ISP Subpoenas in Online Defamation Suits

Cayce Myers, Georgia

The Life, Death, and Revival of Implied Confidentiality

Woodrow Hartzog, Cumberland School of Law at Samford

Tracking, Technology, and Tweens: Better Regulation to Protect Children's Privacy Online\*

Lisa Barnard, North Carolina at Chapel Hill

Public Interest . . . what Public Interest? How the Rehnquist Court Created the FOIA Privacy Exceptionalism Doctrine

Martin E. Halstuk, Penn State  
Benjamin W. Cramer, Penn State  
Michael D. Todd, New Hampshire

Moderating: Jason Martin, DePaul  
Discussant: Jennifer Henderson, Trinity

\*Second place student paper

# First Amendment and Media Law Bibliography

By Michael T. Martínez  
University of Tennessee School of Journalism & Electronic Media



## **Privacy**

Abril, P. S., A. Levin, et al. (2012). "Blurred Boundaries: Social Media Privacy and the Twenty-First-Century Employee." 49 *American Business Law Journal* 63.

Privacy law in the United States has traditionally been defined by physical and social establishments. The reasonable expectation of privacy analysis, which is endemic to privacy jurisprudence, is firmly rooted in the experience of physical space and its surrounding normative circumstances. The evaluation of whether privacy expectations reasonably exist is present in nearly every assessment of privacy under U.S. law, from torts to statutory rights. In a recent case, *City of Ontario v. Quon*, the U.S. Supreme Court was charged with qualifying the privacy expectations of an employee in a social establishment not defined by physical boundaries: text messages. Officer Quon claimed a violation of privacy when his employer searched the personal text messages he sent on his employer-provided pager.

The Court eschewed making

what it deemed would be premature legal conclusions regarding privacy and technology, stating that "rapid changes in the dynamics of communication and information transmission [are] evident not just in the technology itself but in what society accepts as proper behavior." It admitted having "difficulty predicting how employees' privacy expectations will be shaped by those changes or the degree to which society will be prepared to recognize those expectations as reasonable." Like the U.S. Supreme Court, other tribunals and lawmakers around the world are having trouble conceptualizing privacy in new technologies. In Europe, courts and legislatures alike are debating the wisdom of a proposed "right to be forgotten," an individual right that allows citizens to delete unwanted information online about them. The Canadian Supreme Court has echoed the U.S. Supreme Court's reticence, opting to "leave the privacy implications of the more evolved technology to be decided when a comprehensive evidentiary record has been developed."

Shackelford, S. J. (2012). "Fragile Merchandise: A Comparative Analysis of the Privacy Rights of Public Figures." 49 *American Business Law Journal* 123.

Should a politician's sex life be protected under privacy law? Is it in the public interest? How far

does freedom of expression extend? Should it include the right to report on a mother of octuplets or Tiger Woods' marital problems? Does a heroic firefighter deserve to have a long-standing drug addiction exposed?

Answers to these questions depend on the legal system in which one resides, though many jurisdictions themselves often give contradictory answers. Once rather parochial understandings of privacy are now being reinterpreted in the face of two contemporary forces. The first is the emergence of both international treaties and national laws that have increasingly recognized a right to privacy, which is often compromised in the name of e-commerce or security. Second is an



increase in privacy violations, facilitated by new advanced surveillance technologies, which are feeding the appetites of people who want to know more about public figures of all types.

As a result of these factors, privacy rights are being challenged in legal systems around the world, often with varying results both between and within jurisdictions. This article argues that, due to advancing technology facilitating the public's fascination with celebrity, jurisdictions in the United States and Europe are reinterpreting privacy rights leading to divergent defini-

tions of both public figures and the public interest. This, in turn, is adversely impacting personal privacy in the United States, as well as the legal environment of newspapers, in particular, and multinational businesses, such as Google, generally.

### Free Speech

Allsup, T. L. (2012). "United States v. Cassidy: The Federal Interstate Stalking Statute and Freedom of Speech." 13 *North Carolina Journal of Law & Technology, Online Edition* 227.

Stalking is a crime that affects millions of people each year, with profound mental, physical, and financial effects for victims. In a technological world, new forms of stalking arose through online interactive mediums such as Twitter, blogs, Facebook, and email. Cyberstalking has many of the same ramifications as traditional stalking but with some new twists.

As shown in *United States v. Cassidy*, activity that would be considered stalking, if done offline, may be protected speech if accomplished through an online medium. In *Cassidy*, the court found the federal interstate stalking statute, which makes many forms of cyberstalking illegal, unconstitutional as applied to tweets and blog postings about a public, religious leader. This Recent Development considers the ramifications of *Cassidy* on cyberstalking laws and argues that these laws must be reexamined in light of First Amendment protections. Specifically, it argues that the best possible solutions to protect stalking victims may, in fact, be

extralegal rather than legal in nature.

Tillman, S. B. (2012). "Citizens United and the Scope of Professor Teachout's Anti-Corruption Principle." 107 *Northwestern University Law Review Colloquy* 1.

The test of great scholarship is whether it changes the way people think and the way people live. That is also true for legal academic scholarship. But, for legal academics, perhaps the greatest sign of scholarly achievement is judicial reliance upon our craftsmanship. By any measure, Professor Teachout's 2009 Cornell Law Review publication, *The Anti-Corruption Principle*, is a success. In 2010, one short year after publication, *The Anti-Corruption Principle* was relied upon by Justice Stevens in his *Citizens United v. Federal Elections Commission* dissent, just as it was cited, disapprovingly, by Justice Scalia in his concurrence.

If that was not enough of an accomplishment, *The Anti-Corruption Principle* has also been cited in practitioners' Supreme Court briefs, in other federal and state appellate and trial court briefs, and in more than thirty academic articles. Finally, *The Anti-Corruption Principle* has entered the public discourse: George Will excoriated Teachout's article in his nationally syndicated column. Now that is an achievement.

### Intellectual Property

Balganesh, S. (2012). "The Uncertain Future of "Hot News" Misappropriation After *Barclays v.*



*Theflyonthewall.com.*" 112 *Columbia Law Review Sidebar* 134.

Ever since its genesis in the Supreme Court's famous decision in *International News Service v. Associated Press*, the "hot news" misappropriation doctrine has had to fight for its survival. First came Judge Learned Hand, who in a series of opinions, took the position that International News did not lay down a "general doctrine," but was instead meant to be limited to the peculiarities of the newspaper industry. Next came the Court's decision in *Erie Railroad Co. v. Tompkins*, where it abrogated all "federal general common law," the very body of law within which the hot news misappropriation doctrine had been developed.

The doctrine then appeared to have been resuscitated in 1997, when the Second Circuit breathed new life into it as a part of New York's state common law in *NBA v. Motorola, Inc.* Finding that the doctrine had managed to "survive," the court in that case sought to develop it into a viable cause of action, and parsed it into its constituent elements. Other courts seemed to then follow the Second Circuit's lead on this. Most recently, the Second Circuit, in *Barclays Capital Inc. v. Theflyonthewall.com* effectively reconsidered its decision in *NBA*, albeit in relation to different subject matter, and in so doing narrowed the doctrine even further.

Sun, H. (2012). "Can Louis Vuitton

Dance with Hipphone? Rethinking the Idea of Social Justice in Intellectual Law." 15 *University of Pennsylvania Journal of Law and Social Change* 389.

This article reconsiders the relationship between social justice and intellectual property through the lens of two conflicting cultural phenomena in China. The first cultural phenomenon, called shanzhai, legitimizes the production of inexpensive and trendy products like the HiPhone. The second phenomenon is the rise of China as the largest luxury market in the world, unleashing an unprecedented increase in the consumer demand for luxury brands such as Louis Vuitton.

The shanzhai phenomenon clashes with the IP protection that forms the foundation of the successful luxury market in China. By exploring the conflict between these two cultural phenomena, this article puts forward a new theory of social justice and intellectual property. This theory calls for intellectual property law to be redesigned to support the redistribution of three kinds of resources: benefits from technological development, cultural power, and sources of innovation. The focus on these three redistributive mandates functions to reorient the recent heated debate on social justice and intellectual property toward an inquiry about the redistribution of resources in intellectual property law.

## Libel

Cain, R. M. (2012). "Food, Inglorious Food: Food Safety, Food Libel, and Free Speech." 49 *American Business Law Journal* 275.

Recently, the movie *Food, Inc.* exposed issues about the food production industry in the United States. The Oscar-nominated documentary includes a scene in which a mother, whose child had died from food-borne illness, explains that she could not criticize the food industry without risk of being sued. The risk stems from special legislation in 13 U.S. states that protects agriculture and food production interests from criticism.

The most famous example of a case brought under one of these laws occurred in the late twentieth century, when Oprah Winfrey successfully defended a claim brought against her under the Texas food libel law based on comments she made during a show she aired on cattle management. This article analyzes the impact of food disparagement statutes in the United States and addresses the free speech concerns inherent in laws that limit criticism of any industry, but especially one that can affect lives and health.

Levi, L. (2012). "The Problem of Trans-National Libel." 60 *American Journal of Comparative Law* 507

**Law & Policy Division Members' Meeting**  
**AEJMC Annual Conference**  
**Saturday, Aug. 11, 7 to 8:30 p.m.**  
**Room 313**

Forum shopping in trans-national libel cases – "libel tourism" – has a chilling effect on journalism, academic scholarship, and scientific criticism. The United States and Britain (the most popular venue for such cases) have recently attempted to address the issue legislatively. In 2010, the United States passed the SPEECH Act, which prohibits recognition and enforcement of libel judgments from jurisdictions applying law less speech-protective than the First Amendment.

In Britain, the Parliamentary Joint Committee has issued its report on a broad-ranging libel reform bill proposed by the Government in March 2011. This article questions the extent to which the SPEECH Act and the Draft Defamation Bill will accomplish their stated aims. The SPEECH Act provides little protection for hard-hitting investigative and accountability journalism by professional news organizations with global assets. The proposed British bill has important substantive limits. Moreover, even if Parliament approves reform legislation discouraging libel tourism, such actions may shift to other claimant-friendly jurisdictions. Global harmonization of libel law is neither realistic nor desirable.

### Shield Laws

Dougherty, J. J. (2012). "Obsidian Financial Group, LLC v. Cox and Reformulating Shield Laws to Protect Digital Journalism in an Evolving Media World." 13 *North Carolina Journal of Law & Technology, Online Edition* 287.

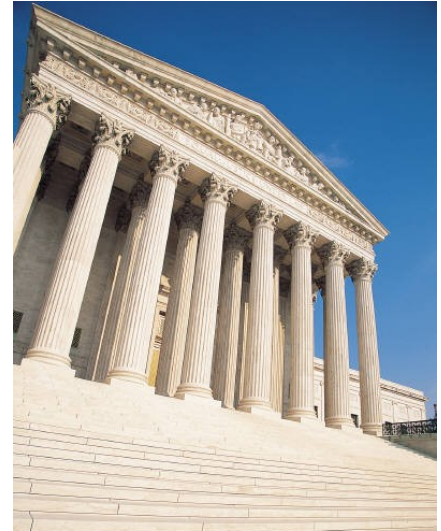
Though "journalism" is an amorphous term capable of various meanings, its traditional media are familiar. Yet, if the progression in media from print to radio to broadcast and cable teaches a lesson, it is that dissemination technology is rarely stagnant. As the seemingly endless procession of new media made possible by digital communication continues, the manner by which works of journalism are disseminated is also changing. Whether this evolution in media creates a better informed and more capable citizenry is a fair subject for debate. What is less debatable is that the blossoming of digital media is testing legal frameworks, particularly in the area of journalistic privilege.

Shield laws, also known as reporters' privileges, have existed in the United States for more than a century as a way to foster the free flow of information. While questions have long persisted about how to properly administer shield law protection, the rapid pace of media evolution is exposing the shortcomings in many existing statutory constructions and interpretations. This Recent Development casts a critical look at a 2011 Oregon shield law decision *Obsidian Financial Group, LLC v. Cox*. Presenting Obsidian as an example of problematic statutory drafting and interpretation, this Recent Development seeks to introduce a more sustainable, medium-neutral model for shield law protection.

### Supreme Court

Ray, L. K. (2012). "A Modest Memoir: Justice Stevens's Supreme Court Life." 107 *Northwestern University Law Review Colloquy* 23.

The title of Justice John Paul Stevens's new book, *Five Chiefs: A Supreme Court Memoir*, tells us several things about the author before we have read a single page. By deflecting attention from the author to his subject, the title makes clear that this book will not be a celebra-



tion or even an exploration of Stevens's long tenure on the Court. And by designating the book a memoir rather than an autobiography, the title also cautions us not to expect a detailed account of the author's path to the Court.

Instead, the modesty of the title prepares us for the modesty of the author, whose focus will be on the ways in which five Chief Justices ran their Courts. Stevens himself will be at the forefront only when needed to illuminate their successes and flag their occasional errors. Even this project is treated with self-deprecatory irony: the epigraph, borrowed from Lincoln's Gettysburg Address, announces that "[t]he world will little note, nor long remember, what we say here . . . ." This is, in short, a book about the Court itself rather than about the author.

*FOI, continued from page 2*

project as a central part of the class.

Several years later, the course now revolves around the reporting. What began as an additional piece of the curriculum now forms the core of the course, and an experience students routinely report as the most enjoyable part of the course.

We've done different things through the years, from a data inventory of 14 mid-Missouri counties to a federal agency FOIA review in conjunction with Sunshine Week. The hands-down favorite, however, is the Banned Books Project – a model project for any media law seminar.

We're just wrapping up the second iteration of the Banned Books Project, in which students sent FOI requests to all 567 Missouri school districts asking for records relating to challenges of library and classroom reading material. The students each had 50 or so requests to make, track and negotiate, a rich FOI learning experience. Every student in the class was confronted with stonewalling officials, ludicrous denials and pricing issues, and brought these examples into class to share with the group so we could all work on the responses.

FOI offers tangible results, which fueled our class meetings. Responses came to a central address, so every class began with "mail call" in which I handed back FOI responses. It was like Christ-

mas morning! We'd then spend a few minutes discussing the responses, formulating strategy and charting our progress.

The group work really paid off: we ended up with an 87 percent response rate!

The responses contained 55 challenges over the past three years. Missouri schools removed *Slaughterhouse-Five* and *The Kite Runner* from curricula, and fought back challenges to *Of Mice and Men*, *The Hunger Games* and other books.

After a budget meeting to discuss assignments around midterm, the students began reporting, visiting districts where dramatic challenges had taken place and talking to parents, students, librarians and superintendents. The records really opened doors for us, creating interview opportunities with officials who otherwise would have ignored us.

Our data also yielded a great online graphic, a Google map and audio with several authors for the web site of the *Columbia Missourian* and *Vox*, where the series is set to run this summer. We'll have a package with 15 stories, graphics and audio when all is said and done.

This project can be replicated anywhere in the country, and is a great way to build some journalism into your media law seminar. A few tips I have learned the hard way:

- You can never, ever start too early. The FOI requests take 6-8 weeks to run their course, and even at the 12-week mark, we were still wrangling with districts. So start the very first week of class!
- Start a master spreadsheet of FOI requests, and color-code by requester, then stick it on Google Docs and share with your class. This will make it much easier to track incoming responses.
- Establish a central mail address and e-mail address for responses, so everything is coming in to one place. You can then forward to the appropriate member of the team, but you know everything that's come in. Use the mail and e-mail address in the FOI request letters sent.
- Team up with a media outlet before you begin, and have an editor attend early class sessions as you plan the coverage. That provides critical buy-in and also excites the students, who see bylines in their future!

I'm a huge proponent of this kind of experiential learning. It embodies the very best of journalism education, and it is a lot of fun! If I can help you get started on a project of your own, don't hesitate to contact me.

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