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Articles

Introduction: Defamation Discussion Forum

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Every two years, the First Amendment Discussion Forum meets to discuss matters relating to speech and (sometimes) religion. In 2005, the forum met at the University of Leeds School of Law (June 1st and 2nd at Leeds, England) where the topic was “Free Speech, the Internet and the Challenge of Advancing Technology,” and the Mainz Media Law Institute at Johannes Gutenberg University (June 8th and 9th at Mainz, Germany), where “Defamation and Privacy” were discussed. Additional co-sponsors included the The Washington & Lee University School of Law and the University of Louisville’s Louis T. Brandeis School of Law.¹

As with prior fora, the English and German fora were designed to bring together a small group of free speech and defamation scholars and practitioners to discuss matters of common interest. The papers published in this symposium are “discussion papers” that were submitted by the participants prior to the meeting and that formed the basis for the discussions.

A number of the fora papers deal with free speech and the Internet.

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1. All schools wish to express special thanks to LexisNexis for its financial support of the forum.

Some articles argue for greater restrictions on Internet content. Professor Diane Rowland's *Griping, Bitching and Speaking Your Mind: Defamation and Free Expression on the Internet* argues the dark side of the Internet is that, far from providing the perfect forum for free speech in which all citizens can participate equally, unfettered by barriers of race, class and religion, "the participatory nature of the Internet and the ease of anonymous communication" fosters "anti-social, malicious and immoral behaviour . . . such that others may be deterred from entering the conversation."² Professor John Knechtle's *When to Regulate Hate Speech* discusses the contrast between the United States' approach to so-called hate speech and the approach followed in other countries, and concludes that the United States should expand "hate speech regulation beyond the 'incitement to imminent violence' standard to include hate speech that intimidates or threatens unlawful acts."³ Similarly, Professor William Funk's article, *Intimidation and the Internet*, argues that:

[C]urrent First Amendment doctrine does not directly address the problem raised by the Nuremberg Files site: speech that is neither a direct threat nor an incitement, but nevertheless—because of its particular character, including its publication on the Internet—is intended to and does have the immediate effect of intimidating persons from engaging in lawful, even constitutionally protected, behavior.⁴

He concludes that:

[T]he speech involved in *Planned Parenthood* that targeted particular individuals by identifying them with names, addresses, and other particular details in order to induce fear in these persons for their physical safety, under circumstances in which the identified persons would reasonably become afraid, is not protected speech under the First Amendment.⁵

Finally, Professor Robin Barnes' *The Caroline Verdict: Protecting Individual Privacy Against Media Invasion as a Matter of Human Rights*

2. Diane Rowland, *Griping, Bitching and Speaking Your Mind: Defamation and Free Expression on the Internet*, 110 PENN ST. L. REV. 519, 520 (2006).

3. John C. Knechtle, *When to Regulate Hate Speech*, 110 PENN ST. L. REV. 539, 578 (2006).

4. William Funk, *Intimidation and the Internet*, 110 PENN ST. L. REV. 579, 580 (2006).

5. *Id.* at 597.

focuses on European cases which she argues are “leading the way in recognizing the continuing duty of democratic societies to protect the sphere of privacy that not only leaves its citizens secure in their person and property, but also cultivates family dignity, privacy and opportunities for self-determination.”⁶

By contrast, a number of papers question the need and desirability for content regulation of the Internet. For example, Professor Eric Segall’s *Internet Indecency and Minors: The Case for Parental and School Responsibility not Congressional Regulation* argues:

[The] near universal availability of the Internet, as well as its prominent place in the home, makes both state and national regulation troubling as a matter of policy and difficult as a constitutional matter. The freedom of speech is too important, and the Internet too vast and useful, for the government to dictate policy.⁷

Professor Clive Walker’s *Cyber-Terrorism: Legal Principle and Law in the United Kingdom* takes a similar tack in dealing with issues relating to cyber-terrorism. He argues that “the Government must engage British Muslims in its anti-terrorist strategy.”⁸ He concludes that this “engagement should take place in cyberspace, since it has become one of the front lines in the fight against terrorism.”⁹

A couple of articles call for more study and reflection on Internet issues. For example, Professor David Myer’s article, *Defamation and the Quiescent Anarchy of the Internet: A Case Study of Cyber Targeting*, takes a similar tack. However, he focuses on the problem of “bullying” in high schools, and cyber targeting on the Internet, and suggests that there is an urgent need for “those who work in academia and in the practice of law to focus on possible solutions to this problem.”¹⁰ Likewise, Professor Kate Williams’ article *On-Line Anonymity, Deindividuation, and Freedom of Expression and Privacy* takes a similar tack arguing that “extensive research into the effects of anonymity and

6. Robin D. Barnes, *The Caroline Verdict: Protecting Individual Privacy Against Media Invasion as a Matter of Human Rights*, 110 PENN ST. L. REV. 599, 599 (2006).

7. Eric J. Segall, *Internet Indecency and Minors: The Case for Parental and School Responsibility not Congressional Regulation*, 110 PENN ST. L. REV. 615, 623 (2006).

8. Clive Walker, *Cyber-Terrorism: Legal Principle and Law in the United Kingdom*, 110 PENN ST. L. REV. 625, 665 (2006) (citing TERRORISM AND COMMUNITY RELATIONS, 2004-05, H.C. 165 at para. 225).

9. *Id.* at 665.

10. David A. Myers, *Defamation and the Quiescent Anarchy of the Internet: A Case Study of Cyber Targeting*, 110 PENN ST. L. REV. 667, 668 (2006).

its links with harmful behaviours”¹¹ is needed.

The remaining three articles deal with other aspects of the Internet. My article, *Speech and Technology*,¹² discusses developments in speech technology, governmental responses to that technology, and governmental attempts to respond to the Internet. Professor Michael Polelle’s article, *Proposed Model Statute on Group Defamation*,¹³ discusses the unintended consequences and obligations of free speech and suggests a potential statute prohibiting group defamation. Finally, Professor Eric Barendt focuses on *Jurisdiction in Internet Libel Cases*.¹⁴

11. Katherine S. Williams, *On-Line Anonymity, Deindividuation and Freedom of Expression and Privacy*, 110 PENN ST. L. REV. 687, 700 (2006).

12. Russell L. Weaver, *Speech and Technology*, 110 PENN ST. L. REV. 703 (2006).

13. Michael J. Polelle, *Proposed Model Statute on Group Defamation*, 110 PENN ST. L. REV. 717 (2006).

14. Eric Barendt, *Jurisdiction in Internet Libel Cases*, 110 PENN ST. L. REV. 727 (2006).