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I am submitting herewith a thesis written by Richard Barton Goins entitled "A Study of Opinions on Free Expression and Use of Personal Computers By Tennessee Attorneys and Newspaper Journalists." I have examined the final copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Science with a major in Communications.

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A STUDY OF OPINIONS ON FREE EXPRESSION AND USE OF PERSONAL COMPUTERS BY TENNESSEE ATTORNEYS AND NEWSPAPER JOURNALISTS

A Thesis
Presented for the
Master of Science Degree
The University of Tennessee, Knoxville

Richard Barton Goins
December 1997

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DEDICATION

This thesis is dedicated to my wife

Mary Lynn Pearce Goins

and

to my children

William Lawrence Goins

and

Mary Kathleen Goins

for their love, patience and understanding. Truly, I have been blessed.

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Abstract

Attorneys and newspaper journalists, through the practice of their professions, have been perceived historically to share similar beliefs concerning free expression and freedom of the press.

This research first examined the self-described views of Tennessee attorneys and newspaper journalists on free expression and the freedom of the press. It also surveyed their use of personal computers and the Internet.

Two hundred and thirteen attorneys and newspaper journalists from the state of Tennessee participated in a mail survey over a six-week period. Their responses form a baseline for discussion on free expression, freedom of the press and personal computer use by attorneys and newspaper journalists as the 21st century approaches.

With a response rate of 34.7 percent, the study found that attorneys and newspaper journalists were highly supportive of free expression. Aside from mutual indecision on the right to take up and bear arms, however, attorneys' opinions consistently gave more credence to the importance of issues concerning the Bill of Rights and the First Amendment. Both groups demonstrated working knowledge about personal computers but regarded the Internet more as a medium for sending and receiving electronic mail than a means for enhancing their personal and professional lives.

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CHAPTER I

INTRODUCTION

Attorneys and newspaper journalists, through the practice of their professions, have been perceived historically to share similar beliefs concerning the protections given by the First Amendment and Bill of Rights. In a changing world which has embraced Cyberspace[1], the Internet, World Wide Web, plus CNN, ESPN, and a host of other media and their web sites via interactive computing, attorneys and newspaper journalists have new freedoms to reach others. With that freedom has come new potential liabilities in such traditional areas of law as defamation, invasion of privacy, or copyright infringement. Fear of expensive litigation in areas of tort law or the copyright area of property law is a real thing, especially in the United States, where approximately two-thirds of the world's lawyers reside.[2]

It is a world where there are traps aplenty for haphazard, careless or callous users

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[1] William Gibson, *Neuromancer* (New York: Ace Books, 1984). *Neuromancer* marked the birth of the popular literary genre known as Cyberpunk and introduced the concept of technology being accessible to all, even punks and street gangs, and defined "cyberspace" as where all media converge; audio and video, telephone and television, wire and satellite.

[2] Dwight L. Teeter Jr., and Don R. Le Duc, *Law of Mass Communications, Eighth Edition.* (Westbury, N.Y.: The Foundation Press, Inc. 1995), 104.

of individual or mass mediated communication. Not even the most ordinary of e-mail messages is safe. Robert O. Wyatt, citing results of a 1995 survey of college faculty at Northwestern University, the University of Minnesota, the University of Tennessee, Middle Tennessee State University, Murray State University (Ky.) and Roanoke College (Va.), said that under one-third (29 percent) felt free to communicate with colleagues by e-mail.[3] The survey found that only 40 percent of professors said they felt free to speak in their department head's office and only half (49 percent) felt equally free talking to colleagues.

"Many people, no doubt, feel very comfortable communicating by e-mail," Wyatt said. "But others feel quite restrained, perhaps because e-mail is so explicit, perhaps because it leaves a more-or-less permanent record, perhaps even because it involves writing and many college faculty consider writing an art."[4]

Jeffery Michelman, a lawyer who concentrates on intellectual property and computer law for the St. Louis, Mo., firm of Blumenfeld, Kaplan & Sandweiss, told the *St. Louis Post-Dispatch*: "There's no question that e-mail can be defamatory. The question is, what's the liability of the e-mail provider?"[5]

With more than 13 million Americans households online in 1996, and the number

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[3] Press release, "University faculty don't feel free using e-mail," Midwest Association for Public Opinion Research, 5 Nov. 1995, 1-2.

[4] Press release, 1.

[5] Fred Faust, "Lawyer says your E-mail could stir up trouble," *St. Louis Post-Dispatch*, 2 March 1995, 1C.

expected to rise to around 40 million by 2001, there will doubtless be millions of potential litigants able to "surf the Internet" for lawyers.[6] "If you're not on the (World Wide) Web, you're not a law firm anymore," James Evans, a legal reporter for the *San Francisco Journal*, told the *San Jose Mercury News*.[7]

Academician Ithiel de Sola Pool had anticipated a world in which libel laws would be challenged by emerging new technologies. *Technologies of Freedom*, written in 1983 shortly before De Sola Pool's death, gave a timely perspective on the impact of new technologies on the mass media and communications law by providing what *New York Times* columnist William Safire called "the facts and arguments to help us fight for our freedom."[8] De Sola Pool founded the Political Science department at the Massachusetts Institute of Technology, wrote a history of American Telephone and Telegraph (AT&T) and studied the evolution of communications in Third World countries. He understood the task facing the mass media and those seeking to maintain free expression during the coming rise of computing technology:

> The onus is on us to determine whether free societies in the twenty-first century will conduct electronic communication under the conditions of freedom established for the domain

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[6] Edupage, "ISP Numbers Still Growing," 13 Nov. 1997, On-line, Available on Netscape @ www.educom.edu/web/pubs/pubHomeFrame.htm

[7] Elizabeth Wasserman, "Lawyers are jumping onto the Web faster than they can file a lawsuit," *San Jose Mercury News*, 2 Aug. 1995, A1.

[8] Ithiel de Sola Pool, *Technologies of Freedom: On free speech in an electronic age.* (Cambridge, Mass.: Belknap Press of the Harvard University Press, 1983), back cover.

> of print through centuries of struggle, or whether that great achievement will become lost in a confusion of new technologies.[9]

De Sola Pool reasoned that any new communications medium would come under attack by either prohibition or buyout by its competitors,[10] much as had happened in the newspaper industry -- clattering linotypes silenced by cold-process typesetting machines, the shouts and sweat of pressmen replaced by the cold hum of high-speed presses, the chattering teletypes and harried copyboys replaced by an electronic chime signaling a story's arrival and once-happy employees turning to litigation after their jobs were eliminated in the name of technology. He surmised that free speech might no longer be free because of electronic intrusion and expansion and a lack of human understanding of censorship:

> As computers become the printing presses of the twenty-first century, ink marks on paper will continue to be read, and broadcasts to be watched, but other major media will evolve from what now are but the toys of computer hackers ... Networks of satellites, optical fibers, and radio waves will serve the functions of the present-day postal system. Speech will not be free if these are not also free.[11]
>
> The danger is not of an electronic nightmare, but of human error. It is not computers but policy that threatens freedom. The censorship that followed the printing press was not entailed in Gutenberg's process; it was a reaction to it. The regulation of electronic communication is

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[9] De Sola Pool, 10.

[10] De Sola Pool, 50.

[11] De Sola Pool, 226.

> likewise not entailed in its technology but is a reaction to it. Computers, telephones, radio, and satellites are technologies of freedom, as much as was the printing press.[12]

The question for the communication field, De Sola Pool wrote, is defining a set of principles that could be easily understood if communications in the electronic era are to hold as fully to the terms of the First Amendment. "The technology does not make this hard. Confusion about principles may [make this hard]."[13]

In light of that perceived confusion, De Sola Pool developed 10 principles (Appendix A) to assure the guarantees of the First Amendment are maintained in the electronic age. While time and litigation will prove the merit of De Sola Pool's principles, the landmark *Cubby v. CompuServe*[14] and *Stratton Oakmont, Inc., v. Prodigy*[15] rulings have already nullified De Sola Pool's 8th principle. Those rulings shaped the arena for First Amendment protection in cyberspace for writers and on-line services and act as a not-to-subtle reminder for all that use the Internet that libel is still libel, no matter the medium.

De Sola Pool argued that the First Amendment, backed by courts that take it

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[12] De Sola Pool, 226.

[13] De Sola Pool, 246.

[14] *Cubby, Inc. v. CompuServe, Inc.*, 776 F.Supp. 135, 19 Med.L.Rptr. 1525 (D.C.N.Y., 1991).

[15] *Stratton Oakmont Inc. v. Prodigy Services Co.*, 23 Med.L.Rptr. 1794 (N.Y.S.Ct., Nassau County, 1993).

seriously, can handle the challenges by those bringing new technologies to our world. The real question is whether our world can handle those written or broadcast (or electronically mediated) communication properly when it comes to First Amendment challenges:

> The democratic impulse to regulate evils, as Tocqueville warned, is ironically a reason for worry. Lack of technical grasp by policy makers and their propensity to solve problems of conflict, privacy, intellectual property, and monopoly by accustomed bureaucratic routines are the main reasons for concern. But as long as the First Amendment stands, backed by courts that take it seriously, the loss of liberty is not foreordained. The commitment of American culture to pluralism and individual rights is reason for optimism, as is the pliancy and profusion of electronic technology.[16]

Rationale

In 1997, electronic information gathering has become commonplace.[17] Issues of electronic access to information and the security of that information are major concerns, carrying with them not only potential for great increased access to information but also worrisome new developments in libel, privacy, and copyright law. With libel law, for example, it was apparent that libel on the Internet was still libel.[18] Ithiel de Sola Pool's

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[16] De Sola Pool, 251.

[17] Wasserman, A1.

[18] Eugene Volokh. "Freedom of Speech in Cyberspace," *The Law of Cyberspace*, (Chicago: University of Chicago Legal Forum, 1996).

hope that a new delivery system would lead to fewer legal boundaries was only that: a hope. Libel is still libel, and even a broad definition of the term quickly indicates where problems may be encountered. Libel is defined, after all, as the written or broadcast communication which falsely exposes persons to hatred, ridicule, or contempt, lowers them in the esteem of others, causes them to be shunned, or injures them in their business or calling.[19]

Bound up in this definition are the traditional "elements of libel" – identification of the plaintiff, publication, and defamation (falsity plus damage to reputation), and – since the 1960s – "fault." Fault has to do with the standard of proof to be applied in determining damages in libel actions. One standard, from the legendary case of *New York Times v. Sullivan* (1964)[20] is the "constitutional" or "actual malice" standard -- defined as publication of a defamatory falsehood with knowledge of falsity[21] or with reckless disregard for truth.[22]

Since 1964, libel law has repeatedly come under attack by the media in what Lucas A. Powe, Jr., writing in *The Fourth Estate and the Constitution: Freedom of the Press in America*, said is media fascination with media interests -- "a myopic vision that

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[19] Teeter and Le Duc, 103.

[20] 376 U.S. 254, 84 S.Ct. 710 (1964).

[21] Teeter and Le Duc, 175.

[22] *Tavoulareas v. Washington Post Co.*, 817 F.2d 762 (D.C.Cir.1987), cert. denied, 484 U.S. 870, 108 S.Ct. 200 (1987).

what the press says is important to it is important to the public."[23] Insurers and those paying insurance premiums for newsroom staff would agree. Cooper & Kelley Attorney Tom Kelley noted that media defamation jury verdict awards in 1994 averaged $500,000, compared with $100,000 in the early 1980s.[24] Wes Goodman, writing in *USA Today (Magazine)*, found that nearly 63 percent of newspapers have been forced to defend themselves against libel.[25]

Statement of the Problem

While much research has been done on free expression, there has been limited research conducted about how attorneys and newspaper journalists on the statewide level view free expression. By 1997, there had been no research on how those same attorneys and journalists on the statewide level used personal computers or the Internet in their personal or professional lives.

Attorneys and newspaper journalists from the state of Tennessee were selected this research for three reasons. The first was the author's life experiences gained during a 13 1/2-year career at *The Chattanooga Times*, one in which he worked with attorneys and

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[23] George Bain, "The Fourth Estate and libel chill," *Maclean's*, 27 May 1991, 58.

[24] Brian Cox, "Media explosion spawns growing libel exposures." *National Underwriter Property & Casualty -- Risk Benefits Management*, 4 July 1994, 9-10.

[25] Wes Goodman, "Are Media Lawyers Enforcing or Chilling Free Speech," *USA TODAY* (Magazine), May 1993, 92-93.

newspaper journalists from across the state. The second was the author's observation of the travails of newspaper journalists transitioning to personal computers to produce *The Chattanooga Times.* Lastly, attorneys and newspaper journalists from Tennessee were chosen due to their geographical location to the author and to the University of Tennessee at Knoxville.

Purpose of the Study and Research Questions

The purpose of this study and research questions evolved in response to the work of Robert O. Wyatt, who conducted *Free Expression and the American Public,* the landmark free expression surveys commemorating the 200th anniversary of the First Amendment in 1991. Wyatt stated that the concern about infringement on free expression is limited to journalists and mass media members - and the public when queried.[26]

In response to Wyatt's contention, the first purpose of this study was to survey a sample of Tennessee attorneys and newspaper journalists on their views, broadly, on freedom of expression. These two significant aggregations of influential persons, through the practice of their professions, have been perceived historically to share similar opinions concerning freedom of expression and freedom of the press. (Note: The limited scope of this master's degree study did not lend itself to surveying broadcast journalists

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[26] Robert O. Wyatt, *Free Expression and the American Public.* (Washington, D.C.: American Society of Newspaper Editors Foundation, 1991), 33.

too.)

In addition, under the assumption of legal issues raised by journalists' and attorneys' use of the Internet, both groups were surveyed on some of their uses of and attitudes toward that medium. The computerization of the print media is ongoing. The 1996 survey, *The Media in Cyberspace III*, found that only 13 percent of newspaper journalists surveyed nationally did not have access to an Internet service provider in their newsroom.[27]

This study grew out of two research questions:

(1) Do attorneys and newspaper journalists share comparable opinions on selected questions concerning the Bill of Rights and the First Amendment?

(2) Do attorneys and newspaper journalists in Tennessee in 1997 have comparable levels of expertise in their use of personal computers and the Internet?

Limitations of the Study

This two-fold study does not attempt to draw a correlation between opinions concerning free expression and the First Amendment and the use of personal computers by Tennessee attorneys and newspaper journalists. It attempts to compare opinions of

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[27] Steven S. Ross and Don Middleburg. "The Media in Cyberspace III: A National Survey." Middleburg & Associates, November 1997, p. 3.

Tennessee attorneys and newspaper journalists concerning free expression and the First Amendment. It also attempts to measure, for the first time, the use of personal computers and the Internet by those two groups on the statewide level.

Limitations of time and resources prevented a sampling of all journalists in Tennessee. The author assumes that attitudes on free expression of broadcast journalists generally are similar to those of newspaper journalists.

While developing the survey instrument, the Internet was not characterized as either an interpersonal medium or form of mass media. In fact, it is both mass and interpersonal. As is the case with qualitative studies, conclusions drawn from the results of this survey are not based solely on statistics.

Organization of Chapters

Presented in five chapters, the following paragraphs outline the organization of this thesis and explain the intellectual framework and philosophy from which the study's methodology evolved.

This study examined Tennessee attorneys' and newspaper journalists' self-described viewpoints on free expression and a free press. It also examined their use of personal computers and the Internet.

Chapter I is the introduction to this study. It discusses the purpose of this study and presents the underlying research questions.

Chapter II reviews literature related to the history of free expression and libel law in particular with a review and analysis of First Amendment law readings of the kind that should be required reading for attorneys and newspaper journalists at the undergraduate and graduate levels. The second is a cursory review of some contemporary surveys on public opinion and free expression. The third is a cursory review of some contemporary writings on free expression and cyberspace issues confronting attorneys and journalists, with a focus on the Communications Decency Act, which may affect attorneys and newspaper journalists in the state of Tennessee.

Chapter III details the methods used to survey attorneys and newspaper journalists throughout the state of Tennessee.

Chapter IV presents the research findings and divides them according to findings in the areas of Bill of Rights, Free Speech Rights, Media Rights, and You, Your Computer and the Internet.

Chapter V contains the Summary, Conclusions and Recommendations for further research and limitations of the study.

CHAPTER II

REVIEW OF THE LITERATURE

To understand some possible ramifications of interactive communication on free expression and freedom of the press for mass media in the United States, three areas of literature will be reviewed. The first area will encompass selected First Amendment and historical readings of the kind that attorneys and journalists should have covered in college or law school. The First Amendment's 46 words guarantee numerous rights against governmental encroachment: religion, speech, press, assembly and petition. Journalists are perceived by some as remembering the second and third rights and ignoring, for the most part, the freedoms of religion, assembly and petition.

The second area is a cursory review of some contemporary and historical studies on public opinion and free expression. The third is a cursory review of some contemporary writings on free expression and the Internet that may affect attorneys and newspaper journalists, with a focus on the Communications Decency Act.

A Review and Analysis of First Amendment Law Readings

The modern intellectual history of the First Amendment began with Zechariah Chafee's *Free Speech in the United States.*[1] For policy reasons, Chafee argued in dramatic fashion that the meaning of the First Amendment was to rid the United States of the crime of seditious libel. That crime, in general, allowed punishment for criticism of government and government officials. Attorneys, journalists, and indeed, all citizens, need to understand the basics for living in a free society. If government can't be criticized, then -- effectively – there is little freedom.

Chafee offered a look at free speech in the pre-World War II years -- a time far removed from the arrival of *New York Times v. Sullivan.* In his introduction to the second edition, Chafee left no doubt about his admiration for "the framers of the First Amendment who gave them this privilege (of free speech), they owe it to all their fellow citizens and particularly to the few who share their own views, to think long and hard before they express themselves, so as to be sure they speak fruitfully. It is hopeless for the law to draw the line between liberty and license."[2]

Originally, Chafee wrote this work in 1920 to supply material to lawyers engaged in cases involving free speech; "until it was published, they had few sources of

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[1] Zechariah Chafee, Jr., *Free Speech in the United States.* (Cambridge, Mass.: Harvard University Press, 1954).

[2] Chafee, ix.

information on this branch of the law."[3] Thus, it began with a survey of freedom of speech in 1920, discussed the *Gilbert v. Minnesota* and *Gitlow v. New York* cases at some length, and provided an insightful look at the Sedition Acts of 1798, 1917 and 1940.

Margaret A. Blanchard, a journalism professor at the University of North Carolina at Chapel Hill, also researched the First Amendment before World War I. Blanchard found that there are two basic opinions that summarize American attitudes toward freedom of expression: those who would preserve the status quo generally favor quieting dissident speech; those who accept change support wider freedom of expression.[4]

Chafee's analysis, according to Norman L. Rosenberg in *Protecting the Best Men*,[5] followed the basic pattern of much of the twentieth-century's mainstream legal scholarship: it identified certain minor problems in major doctrines, suggested certain modifications, but pronounced the law, as a whole, in good health.[6] While Rosenberg had the luxury of seeing the impact of *New York Times v. Sullivan* and the cases that followed, Chafee wrote for the working lawyer -- or working journalist -- interested in defending against seditious libel.

Chafee's work is mainly of historical interest for today's attorneys. Now, the

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[3] Chafee, xi.

[4] Margaret A. Blanchard *Revolutionary Sparks: Freedom of Expression in Modern America.* (New York: Oxford University Press, 1992), x.

[5] Norman L. Rosenberg, *Protecting the Best Men: An Interpretive History of Libel.* (Chapel Hill: University of North Carolina Press, 1986).

[6] Rosenberg, 229.

received wisdom is that the American Revolution – despite Chafee's assertions – did not get rid of seditious libel. As Leonard W. Levy said in his revisionist 1960 work, *Legacy of Suppression*,[7] a long and arduous war for independence is scarcely time for the birth or nurturing of civil liberties. Levy contended that the War for Independence, instead of securing freedom of speech and press, almost got rid of them. His argument was overdrawn, and ignored much lively sedition that went unpunished in the newspapers of the War for Independence (1776-1783). Then, you could be both dissident and safe if you accepted the Revolution and if you did not criticize George Washington.[8]

However, Chafee's reflections on law as World War I war began are impressive, and carry a timeless message. His treatment of the Espionage Act of 1917 and the Sedition Act of 1918 offered important insight into the power of government in wartime, or nearing wartime, in the *United States v. Abrams* case and in *Schenck v. United States*.

> The ... chapter has been written in support of this danger-test as marking the true limit of governmental speech and writing under our constitutions. 'Freedom of speech and of the press' is to be unabridged because it is the only means of testing out the truth.[9]

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[7] Leonard W. Levy, *Legacy of Suppression: Freedom of Speech and Press in American History*. (Cambridge, Mass.: Belknap Press of the Harvard University Press, 1960).

[8] Dwight L. Teeter, Jr., "Decent Animadversions: Notes Toward a History of Free Press Theory," *Newsletters to Newspapers: Eighteenth Century Journalism*. Eds. Donovan H. Bend and W. Reynolds McLeod. (Morgantown, W.Va.: School of Journalism, West Virginia Univ., 1977).

[9] Chafee, 138.

Chafee's basic argument for freedom of speech was that it should be "fruitful as well as free" and that "we must do more than remove the discouragements to open discussion."[10] He stated that the argument of Milton and John Stuart Mill "that only through open discussion is truth discovered and spread still holds good. The efforts to lessen the friction on which side does Truth stand is essential to the success of freedom of speech." Chafee assumed that the First Amendment got rid of seditious libel and was challenged on this judgement in Levy's *Legacy of Suppression.* Chafee held that freedom of speech "creates the happiest kind of country. It is the best way to make men and women love their country. Let us not in our anxiety to protect ourselves from foreign tyrants imitate some of their worst acts, and sacrifice in the process of national defense the very liberties which we are defending." Or, as Levy wrote, "In the long run, the public gets as much freedom of speech as it wants."[11]

An Analysis of Levy's Contributions

The study of Levy's *Legacy of Suppression* and *Emergence of a Free Press*[12] brought concern about Levy's research techniques. Dwight L. Teeter, Jr., in his

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[10] Chafee, 559.

[11] Levy, 566.

[12] Leonard W Levy. *Emergence of a Free Press.* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1985).

dissertation "A Legacy of Expression: Philadelphia Newspapers and Congress During the War for Independence 1775-1783," studied freedom and control of the press during the American Revolution – which is an area of controversy among historians spawned, in part, by Levy's *Legacy of Suppression.*[13] Teeter contended that Levy looked at the law of seditious libel, but did not research the colonial, pre-Revolutionary and Revolutionary newspapers to prove his preconceived idea that seditious libel was not rampant in those publications. Instead, those newspapers were filled with seditious libel then – with free expression being denied to Tories and to Quakers.[14]

Levy had challenged Chafee's widely accepted pronouncement that the First Amendment was written to eliminate the common law of sedition.[15] The challenge grew from Levy's lack of belief that the Revolution, or First Amendment got rid of the English common law of sedition libel and his notion that "speech and press were not free anywhere during the Revolution. A long war for Independence is scarcely a propitious time for the birth and nurturing of civil liberties."[16]

Merrill Jensen, in the preface to the 1963 soft cover publication of *Legacy*, joined

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[13] Dwight L. Teeter, Jr., "A Legacy of Expression: Philadelphia Newspapers and Congress During the War for Independence," (Ph.D. diss., University of Wisconsin, 1966), 1-2.

[14] Richard B. Goins, Interview with Dwight L. Teeter Jr., Dean of the College of Communications, the University of Tennessee at Knoxville, 26 July 1996.

[15] Teeter, *A Legacy of Expression*, 3.

[16] Teeter, 2.

the fray. He praised the work but chided Levy for overestimating the power of law and undervaluing the amount of press freedom in practice – he should have looked more carefully in what was being published in the newspapers of Revolutionary America.[17] Teeter also noted, in "Decent Animadversions: Notes Toward a History of Free Press Theory," that the work of eighteenth century printers Francis Bailey and Eleazer Oswald refuted the Levy's claim that "he could find no evidence that Americans had attempted to set down, systematically, a libertarian theory of speech and press until Tunis Wortman's 1800 treatise. . . . Such propositions were not only in the air; they were in print in at least some American newspapers in the 1780s."[18]

After consideration of Teeter's work and a subsequent David M. Rabban review essay on *Emergence,*[19] one could conclude that Levy had a change of heart from the writing of *Legacy* in 1960 to *Emergence* in 1985:

> I was wrong in asserting that the American experience with freedom of political expression was as slight as the conceptual and legal understanding was narrow.... My original interest lay with law and theory; I had paid little attention to press practices. I searched the newspapers only for statements on the meaning of freedom of the press and had ignored the nearly epidemic degree of seditious libel that affected American newspapers after Independence.... Whether they did or did not, their presses

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[17] Dwight L. Teeter, Jr. "Protecting the Best Men: An Interpretive History of the Law of Libel," *Constitutional Commentary* 4 (1987): 439.

[18] Teeter, *Decent Animadversions*, 239.

[19] David M. Rabban, "The Ahistorical Historian: Leonard Levy on Freedom of Expression in Early American History," *Stanford Law Review* 37 (1985): 795-857.

> operated as if the law of seditious libel did not exist. To one whose prime concern was law and theory, a legacy of suppression came into focus; to one who looks at newspaper judgments on public men and measures, the revolutionary controversy spurred an expanding legacy of liberty.... If a legacy of suppression (the premise of his earlier work) had existed at all, the realms of law and theory had perpetuated it, not the realm of practice.[20]

It was a stunning confession. Yet, Levy wrote that the basic premise of *Legacy* had not changed with the passage of time in his research for *Emergence*:

> My principal thesis remains unchanged. I still aim to demolish the proposition formerly accepted in both law and history that it was the intent of the American Revolution or the Framers of the First Amendment to abolish the common law of seditious libel. James Madison himself, the "father" of the Constitution and of the Bill of Rights, explicitly argued that proposition, and it has been reiterated in our own time by our greatest judges, as well as by distinguished constitutional scholars.[21]

(When Levy wrote *Emergence*, it seemed he still was "anticipating the past" by viewing the eighteenth century through twentieth-century lenses. One wondered how Levy could know what eighteenth century citizens were thinking in terms of seditious libel when he admitted not considering all historical writings available. Was it due to tunnel vision in trying to refute criticism of his earlier work? Possibly, it was "historical revisionism," which Levy touted in the preface to *Legacy* and *Emergence*.)

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[20] Levy: *Emergence of a Free Press*, x-xii.

[21] Levy, xv.

Rabban, in *The Ahistorical Historian*, concluded that Levy substantially revised *Legacy* in light of criticism and, additional research and further reflection and -- fortunately for the mass media member -- provided a superb summary of Levy's viewpoints in the preface of *Emergence*.[22]

Levy made two concessions in *Emergence*, according to Rabban:

> He no longer believes that the history of political expression in America before 1798 constitutes a 'legacy of suppression.'...First, Levy acknowledges that the press actually enjoyed remarkable freedom, which 'spurred an expanding legacy of liberty.' The American people regarded a free press as a prerequisite to the republican government they desired. The people expected the press, unofficially recognized as the 'Fourth Estate,' to check abuses of power by the three official branches of government. Second, Levy abandons his controversial prior assertion that the framers equated the first amendment with Blackstone's declaration that the common law prohibits only prior restraints on publication. He concedes that the framers intended to protect some publications from subsequent legal liability. Levy now emphasizes the problem of uncovering the original test for determining when government can constitutionally punish expression.[23]

Levy concluded, in both *Legacy* and *Emergence*, that the framers of the First Amendment did not intend to abolish the law of seditious libel and that true freedom of the press in a democracy is incomprehensible with this crime.[24] Yet, in *Emergence*, he

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[22] Rabban, *The Ahistorical Historian*, 799.

[23] Rabban, 802.

[24] Levy, *Emergence of a Free Press*, xvii.

contradicted himself by saying it is impossible to determine the intent of the framers.[25]

Rabban concluded that Levy's lack of consideration of research into the Radical Whig tradition and the popular societies of the 1790s point to sources that must be examined. Otherwise, Rabban wrote, Levy's works are incomplete. "Levy's lack of attention to these connections prevents him from recognizing the significant extent to which libertarian views about freedom of political expression were incorporated into the United States Constitution and elaborated before the Sedition Act of 1798."[26]

Rosenberg's Historical Review

Rosenberg's *Protecting the Best Men* proved a framework for study of the history of libel and the cases surrounding its evolution. He admitted that his study of political libel found there was no line of development and no evolutionary pattern.[27] However, his analysis found the basic legal-constitutional question was still appropriate: how much critical speech can a supposedly open, liberal society permit? He found that a defined area of protected and unprotected speech is unavailable to the most ardent observer.

A key event throughout Rosenberg's analysis of the libel laws in the eighteenth and nineteenth centuries was the outcome of the infamous *Zenger* case as defended by

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[25] Levy, 281.

[26] Rabban, *The Ahistorical Historian*, 856-57.

[27] Rosenberg, 258.

Alexander Hamilton. Printer John Peter Zenger was jailed for printing, among other materials, *Cato's Letters* -- which expressed distaste for the social changes that accompanied an expanding commercial economy and the Whig aristocrats who dominated the nation's political system.[28] Zenger, whose supporters embroiled him in the dispute, ran afoul of the eighteenth-century British common law proscription criminalizing effective criticism of established authority.

Sir William Blackstone, characterized by Rosenberg as "a . . . constitutionalist for arguing that common law reason dictated that *all* libelous criticism of governmental and public officials should be subject to postpublication criminal penalties," articulated this reading of the common law of England three decades later with the publication of his *Commentaries on the Law of England* (1765).[29]

Throughout Zenger's defense, Hamilton, the original Philadelphia lawyer, asserted two basic themes: the potential for a corrupted executive ("a bad administration") to crush individual liberties; and the necessity for "the people" zealously to guard their "right to complain" about executive chicanery. Zenger was victorious due in part to James Alexander's development of the "Zengerian principles," truth as a defense and jury determination of the "law of the case" and the effrontery of a runaway jury, which found Zenger "not guilty of publishing" when the jurors had been instructed on the law which was the determination of "fact of publishing."

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[28] Rosenberg, 36.

[29] Rosenberg, 259.

The principle of truth as a defense, suggested by Andrew Hamilton, was not the law at the time -- seditious libel was the law of the land and the old English principle of "the greater the truth, the greater the libel" applied in criminal speech matters.

Rosenberg treated the development of the Sedition Act of 1798 with great pains, as did James Morton Smith's *Freedom's Fetters,*[30] which is considered the leading work on the Alien and Sedition Acts. This was not because the Sedition Act of 1798 was born out of the political criticisms and conflicts between the Federalists and Jeffersonians, but because it extended the debate on developing the limits of legitimate free speech in a republican society. This led to the use of civil and criminal libel as weapons used to silence political speech. Rosenberg wrote: "Yet many Federalists raised a question that still troubles observers of the media: how can citizens be certain that, largely freed from public controls, a private system of communication will throw up a countervailing truth for every innocent or deliberate political lie?"[31]

Alexander Addison, in *Liberty of Speech and of the Press* (1798), wrote "effective libel laws prevented scurrilous newspaper writers and pamphleteers from robbing upright citizens of their reputations and, more important, from depriving the nation of the services of the best men."[32]

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[30] James M. Smith, *Freedom's Fetters* (Ithaca: Cornell University Press, 1956).

[31] Rosenberg, 86.

[32] Alexander Addison, *Liberty of Speech and of the Press.* (Washington, Pa..: n.p., 1798), 20.

When the use of libel as strictly a political tool began to wind down in the mid-nineteenth century, the writings of Thomas Cooley became the model for free expression and the boundary for the task of common law. Rosenberg characterized Cooley as "a student of the self-regulating intellectual marketplace in his youth because, in later years after he moved to the bench of the Michigan Supreme Court, Mr. Justice Cooley's final opinion found that the boundary drawn was much more grey [sic] than earlier thought in referring to developments in urban journalism and in the general system of public communication."[33]

The colorful journalism of the late nineteenth century brought a clash of the moral and intellectual marketplaces. It was a period in which a newspaper, through its help-wanted columns and entertainment, provided an inexpensive window into public life and an escape from workplace cares through thoughtful and provocative writing. The journalism of the period also brought a clash of the moral and intellectual marketplaces, a battle that was won time and again -- in the Cooley court of judicial decision -- by the moral issue.[34]

Rosenberg found another turning point in libel law following the American Law Institute debates of 1934, when libel law became the primary concern of those interested in the mass media and of specialists in tort law.[35] Libel cases did not disappear; he wrote,

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[33] Rosenberg, *Protecting the Best Men*, 184.

[34] Rosenberg, 188.

[35] Rosenberg, 261.

but the law of libel seemed to pose few problems that could not be managed within the confines of traditional common law battlegrounds. Then came 1964 and *New York Times v. Sullivan*, which Rosenberg said changed the law of libel into the law of free speech.[36]

Rosenberg noted that the Court's opinion in *New York Times v. Sullivan*, written by Justice William Brennan, aimed at three general goals: (1) to eliminate yet another weapon in the arsenal of segregationists in the South; (2) to reformulate the law of libel and thereby eliminate what Justice Brennan called "the chilling" effect of traditional defamation laws; and, (3) most ambitiously, to link the changes in libel law to a new constitutional approach to free-speech issues, one that supposedly broke away from old legal formulas.[37] Rosenberg said the Court's opinion did not meet those goals:

> The stated policy goal of *Times v. Sullivan*...missed many of the basic issues in the relationship between the channels of mass communication and movements for social change. Despite Justice William Brennan's attempt to announce the central meaning of free-speech questions, his defamation-oriented focus ultimately proved too narrow, even for a primarily legal analysis.[38]

While Sullivan and its progeny are important, the underlying questions of the real value of legal guarantees for rights such as free speech and application of those laws in the face of emerging technologies lingered. Rosenberg offered no answers, only the challenge that continued questioning of "old faiths and certainties may be able to offer

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[36] Rosenberg, 266.

[37] Rosenberg, 243.

[38] Rosenberg, 265.

clearer avenues for thought and action."[39]

Sack and Baron's Benchmark

Robert D. Sack and Sandra S. Baron have provided a "stay-out-of-trouble" book about libel and privacy and "related problems" with a primer of legal developments in *Libel, Slander and Related Problems* (1994).[40] The first edition, written by Sack, began with this admonition on the importance of free expression: "Whatever is added to the field of libel is taken from the field of free debate."[41]

Libel provided information on Supreme Court of the United States rulings following *New York Times v. Sullivan*. The major developments in Supreme Court of the United States rulings on *Philadelphia Newspapers Inc. v. Hepps*, the shifting of the burden of truth or falsity to the plaintiffs in most public-figure cases, the limitation by the *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* Court of Gertz's reach in restricting recoverable damages, and the *Milkovich v. Lorain Journal Co.*, elimination of *per se* immunity for expression of statements of opinion are but three cases that fell under the *Libel* microscope.

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[39] Rosenberg, 268.

[40] Robert D. Sack and Sandra S. Baron. *Libel, Slander and Related Problems.* (New York City: Practising Law Institute, 1994).

[41] *Sweeney v. Patterson*, 128 F.2d 457, 458 (D.C.Cir), cert. den. 317 U.S. 619 (1942) (Edgerton, J.) quoted in *New York Times v. Sullivan*, 376 U.S. 254-281 (1962).

Sack found "the law of defamation is supposed to provide vindication and redress for injury to reputation. As a system for doing so, the law works badly... Since 1964, the history of the law of defamation has in large measure been the history of First Amendment doctrine to govern the torts of libel and slander, and the application of that doctrine to long-established, frequently contrary, common-law principles."[42]

Beginning with an analysis of *New York Times v. Sullivan* ruling, the authors provided a literal case-by-case look at the development of the law of libel. An interesting analysis of Sullivan: Sack and Baron noted that the common law definition of "actual malice" was not adopted by the Court in its ruling:

> The choice of the common law term 'actual malice' to describe the new standard was unfortunate. It had been used previously to refer to 'ill will' or 'bad motive,' not knowing or reckless falsity. The choice of the term 'actual malice' to describe the constitutional standard has bedeviled lawyers and judges ever since.[43]

Lofton and the Press

Is the press a legitimate guardian of the First Amendment, or merely a weathervane for popular political and social movements? John Lofton, writing in *The Press as Guardian of the First Amendment*,[44] argued that one clear impression emerged

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[42] Sack and Baron: *Libel, Slander and Related Problems.* 1.

[43] Sack and Baron, 7.

[44] John Lofton. *The Press as Guardian of the First Amendment.* (Columbia, S.C.:

in his survey of 175 years of press reaction to free expression issues in the U.S.:

> Except when their own freedom was discernibly at stake, established general newspapers tended to go along with efforts to suppress deviations of the prevailing political and social orthodoxies of their time and place rather than to dissent.[45]

Lofton added that strong support of the First Amendment's role in protecting the right to dissent from prevailing public opinion has been left largely to dissenting publications.

With a strongly written history covering the brouhaha over the Stamp Act of 1765 and concluding with the pre-publication censorship controversy covering *The Progressive*'s intent to publish an article on the hydrogen bomb, Lofton provided an insight on free expression that did not differ from Chafee and Rosenberg. He writes:

> "The efficacy of the First Amendment depends on the people's acceptance of the validity of the philosophical premise on which it is based -- that, without scrutiny and criticism of government and even the disclosure of official secrets by the press, the people will be more vulnerable to misrule and abuse of power."[46]

The Internet, however, could circumvent cautiousness or cowardice of big media if excessive regulation or litigation does not burden it. According to Teeter, fear of

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University of South Carolina Press, 1980).

[45] Lofton, 279.

[46] Lofton, 291.

freedom will ensnare those who would be free. "Arguments will be heard that irresponsible, defamatory statements must be filtered so they cannot reach the Internet, be punished by criminal sanctions or discouraged by civil litigation."[47]

Wyatt's Public Opinion Research on Free Expression

The research questions for this study were developed in response to the work of Robert O. Wyatt, who conducted *Free Expression and the American Public*. Wyatt contended that the concern about infringement on free expression is limited to journalists and mass media members - and the public when queried. "Based on what we now know, it seems clear that most members of the public lack legal literacy and have only a passing interest in the rights of journalists and the media of mass communication... the fact that members of the public may be uninformed, uninterested or unsophisticated regarding such issues does not, however, limit their ability or willingness to offer opinion when survey questions are put to them. But many such questions, when asked, tend to 'create' opinion that never existed before rather than 'measure' opinion that already exists."[48]

Wyatt's study was conducted in two waves. The first wave, conducted in 1990 by surveying 1,500 randomly selected Americans ages 18 and over, found that Americans rated free speech as their second-most precious First Amendment right and regarded a

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[47] Dwight L. Teeter, Jr., E-mail to author, 3 Feb.1997.

[48] Wyatt, 33.

free press highly in the abstract. When questioned about specifics in the first wave in 1990, respondents had "an alarming willingness to remove legal protection from forms of free expression they disagree with or find offensive. That is, they only believe *that* they believe in free expression (emphasis in the original)."[49]

The results from a second wave, conducted by surveying more than 1,000 Americans age 18 and over during the debate preceding the Persian Gulf War in 1991, led to a conclusion by Wyatt that "the First Amendment is in very deep trouble if it must depend on the citizenry for its continued health." The findings were also corroborated, Wyatt wrote, by a parallel study by the University of Virginia's Thomas Jefferson Center for the Protection of Free Expression.[50]

Wyatt found that the study results raised "fear" that those responsible for initiating legislation and administering the laws might seek, for political gain, to undermine the freedoms of a democracy. Only about one-third of those surveyed in the first wave would protect absolutely the right to buy magazines with nude pictures – a legal right if obscene depictions are avoided. Only one-fifth would protect at all times the use of slang words referring to sex – a legal right. "That is, Americans seem to believe that they have a broad 'right not to be offended,' a right that would allow them to

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[49] Wyatt, 87.

[50] Thomas Jefferson Center for the Protection of Free Expression, "Public Attitudes Toward Censorship and Free Expression," (Charlottesville, Va., 1990), 3, 6, 7.

suppress expression that they merely disagree with or find objectionable.[51]

In Wyatt's study, media rights rated lower than individual rights. In the first wave, for example, more than one-fourth of Americans would offer no protection whatever to newspapers that editorialize during campaigns. During the war debate, the number rose to one-third, although a shift from 34 percent to 46 percent is evident in those that supported editorializing absolutely.

Demographically, the Wyatt study found that males are more tolerant of most free expression rights than females and females are far more fearful of social and psychological forces inhibiting communication. Respondents over age 65 were less protective of rights than members of younger age groups and are more likely to feel inhibited or intimidated. Groups with higher education were found to be more protective of free expression and less inhibited. Blacks were somewhat less protective of a few free speech rights than whites and were considerably more fearful of speaking out. Thus, Wyatt wrote, "the most secure groups in our society – males, people in the prime of their livelihood, the well-educated and the well-off – not only felt freest to speak out but were also most tolerant of others."[52]

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[51] Wyatt, 88.

[52] Wyatt, 88.

Previous Free Expression Research

As Wyatt said upon reflection on his own efforts, "Many Americans, it seems, see no need for more than they have and wish others had considerably less."[53] His comments are borne out in public opinion polling on public support for free speech that began being conducted in the 1930s. For example, in a 1936 nationwide survey of attitudes toward liberty of the press, the American Institute of Public Opinion (AIPO) found that 55 percent of American citizens responding said the press should have the right to say anything it wants about public officials.[54]

The next year, a *Fortune* poll found that almost 9 out of 10 Americans (88 percent) thought the government should not tell newspapers what news to print or not to print. Coincidentally, but not surprisingly, nearly 42 percent of respondents to another *Fortune* poll said they believed the press "abused" its power.

According to Wyatt, the benchmark survey of public opinion and free speech in theory and practice was the 1938 AIPO study of Public Support for Free Speech.[55] When asked, "Do you believe in freedom of speech?" 96 percent of respondents said yes. However, only 38 percent said they would allow radicals to meet and speak, 35 percent said they would allow Communists to meet and speak and 34 percent would allow

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[53] Wyatt, 88.

[54] Wyatt, 36.

[55] Wyatt, 36.

Fascists to meet and speak! Only a few months earlier, another *Fortune* sample found 61 percent of respondents favored a law permitting police to padlock places where Communist literature was printed. In 1939, another *Fortune* sample found that nearly 40 percent of respondents said newspapers and magazines should not be allowed to attack President Franklin Delano Roosevelt.

Studies on free expression continued throughout the 1940s with similar inconsistencies evidenced. In a 1940 Gallup poll, 92 percent of an adult sample said they had a "relatively clear" understanding of the meaning of "free speech," but only 50 percent favored extending free speech rights to everyone.[56] In an 1941 AIPO survey, almost three-quarters of the American public (73 percent) opposed a law that would forbid newspapers from taking sides in editorials during an election campaign. At the same time, however, only 58 percent supported editorial endorsement by newspapers during an election campaign.[57]

Wyatt cites Stouffer's McCarthy-Era Study of Civil Liberties as a landmark study of American attitudes about civil liberties. The study, conducted at the height of the stormy Army-McCarthy hearings in 1954, was undertaken by Harvard sociologist Samuel Stouffer with field work by two research organizations: the National Opinion Research Center at the University of Chicago and the American Institute of Public

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[56] George Gallup and S.F. Rae, *The Pulse of Democracy*. (New York: Simon and Shuster, 1940).

[57] Hadley Cantril, ed., *Public Opinion 1935-1946* (Princeton, N.J.: Princeton University Press, 1951), 417.

Opinion (the Gallup Poll).

Stouffer was worried that Americans anxious about an alleged "Communist conspiracy" inside and outside the country might sacrifice "some of the very liberties which the enemy would destroy."[58] Stouffer's fears were confirmed. Almost one-third (31 percent) said a Socialist should not be allowed to speak in their community. Sixty percent said an atheist should not be allowed to speak and 68 percent said an admitted Catholic should not be allowed to speak.[59] One indirect measure of indifference toward civil liberties by Americans was a 1954 Gallup Poll that asked a nationwide sample of adults what the first 10 Amendments to the Constitution were called. Only 33 percent knew the correct answer.[60]

During the 1960s, researchers studied the "anti-democratic" attitudes of 1,000 high school seniors toward freedoms guaranteed by the Bill of Rights. Researchers found that 29 percent of the high school seniors believed "newspapers and magazines should be allowed to print anything they want except military secrets." This percentage was a sharp decline from the 45 percent who agreed in a 1951 Purdue Opinion Panel poll.[61]

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[58] Samuel Stouffer, *Communism, Conformity, and Civil Liberties: A Cross-section of the Nation Speaks Its Mind* (Garden City, N.Y.: Doubleday, 1955), 13.

[59] Stouffer, 29, 32, 40.

[60] George Gallup Jr., *The Gallup Poll: Public Opinion 1935-1971*, vol. 2, (Wilmington, Del.: Scholarly Resources, 1953), 1191.

[61] H. H. Remmers, ed., *Anti-Democratic Attitudes in American Schools* (Evanston, Ill.: Northwestern University Press: 1963), 62.

Stouffer's research led to the inspiration for W. Cody Wilson's survey to describe national distribution of support for freedom of speech and the press in early 1970. Using data from face-to-face interviews with a nationwide probability sample of 2,486 adults, Wilson found that a minority of adults "fully accepted that the principle of free speech and press in the 1970s."[62]

The Stouffer study, which was marked by the impact of anti-Communist sentiment on public opinion, was revisited in 1973 following another wave of emotional change brought about by the Vietnam War and Watergate scandal. In 3,546 interviews of adults in 1973, researchers found that "Americans' commitments to civil liberties' principles were changing, generally in a more libertarian direction."[63] In 1973, some 54 percent of the general public were classified as "more tolerant" – the figure was 31 percent in 1954. Increases in tolerance for political and religious nonconformity were also evident, however, a quarter of the population would not allow a Socialist to speak, more than one-third would not allow an atheist to speak and half would not allow a Communist to speak.[64]

In 1983, researchers Herbert McCloskey and Alida Brill published their study,

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[62] W. Cody Wilson, "Belief in Freedom of Speech and Press," *Journal of Social Issues*, 31:69-76 (1975), 72.

[63] Clyde Z. Nunn, Harry J. Crockett, Jr., and J. Allen Williams, Jr., *Tolerance for Nonconformity: A National Survey of Americans' Changing Commitment to Civil Liberties*. (San Francisco: Jossey-Bass, 1978), 168.

[64] Nunn, 7.

"Dimensions of Tolerance: What Americans Believe About Civil Liberties." While survey evidence "testifies to the importance of free speech as an American ideal, it should not be taken at face value. As soon as one moves from questions about freedom of speech in the abstract to questions about the exercise of free speech in particular situations, the level of support drops off sharply."[65] The researchers reported that 58 percent of the mass public agreed with the statement "Free speech should be granted to everyone, regardless of how intolerant they are of other people's opinions." However, just 41 percent said "foreigners who dislike our government and criticize it" should be allowed to visit or study here. Eighteen percent said a community should allow the American Nazi Party to use their town hall for a public meeting. Thirty-two percent said that "crackpot" ideas "sometimes have to be censored for the public good," and 57 percent said a group's request to use a public meeting for a meeting to denounce the government should be denied.[66] McCloskey and Brill's study also found that the public was more willing to censor the media than special interest groups. Fifty-five percent said that, "to protect its moral values, a society sometimes has to forbid certain things from being published," and 83 percent said that newspapers should not be allowed to publish its opinions if it "twists the facts and tells lies."[67]

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[65] Herbert McCloskey and Alida Brill, *Dimensions of Tolerance: What Americans Believe About Civil Liberties* (New York: Russell Sage Foundation, 1983), 48.

[66] McCloskey, 53.

[67] McCloskey, 63-64.

Four major studies of press credibility were conducted in 1985: the American Society of Newspaper Editors' *Newspaper Credibility: Building Reader Trust*; the Times Mirror's *The People and The Press*; the Gannett Center for Media Studies' *The Media and The People: Soundings from Two Communities;* and the Los Angeles Times' "Media Poll." According to Wyatt, these studies were implemented after several highly publicized and embarrassing media episodes "heightened media concern about public opinion" in the 1980s.[68] As in previous studies, the opinion polls revealed underlying inconsistencies in the attitudes of the American public.

The American Society of Newspaper Editors study surveyed 1,600 adults, of whom 1,002 also completed a mail questionnaire and read back their responses in a second telephone interview. MORI Research, Inc., of Minneapolis conducted the study.[69] The Times Mirror study, conducted by the Gallup Organization, consisted of personal interviews with a nationally representative sample of 2,104 adults.[70] A "re-check" survey of another 1,018 adults and a "double-back" telephone of 1,002 of the original respondents were also conducted. The Gannett Center study, conducted during the summer of 1985, surveyed 116 residents of Baltimore, Md., in person and another 103 by

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[68] Cecilie Gaziano. "How Credible is the Credibility Crisis?" *Journalism Quarterly* 65 (summer 1988), 262-278, 375.

[69] American Society of Newspaper Editors, *Newspaper Credibility: Building Reader Trust* (Washington, D.C., 1985), 16.

[70] Times Mirror, *The People & the Press: A Times Mirror Investigation of Public Attitudes Toward the News Media* (Los Angeles, 1986), 24, 35.

mail; 101 residents of Toledo, Ohio, were interviewed in person and another 86 responded by mail.[71]

In 1990, a nationwide survey commissioned by the Thomas Jefferson Center for the Protection of Free Expression found more evidence of Americans' attitudes about free speech and a free press. While 90 percent of respondents said government should not tell citizens what to say, 31 percent said network TV should be restricted; 29 percent said cable TV should be restricted and 28 percent said newspapers should be restricted.

A *Times Mirror Center for People and the Press* study in January 1994 found that Americans trust TV news more than they do newspapers, religious leaders, the President and the Congress.[72] However, 52 percent said they favored censorship of TV violence and 59 percent said they favored censorship of explicit sex. Some 60 percent also said they supported censorship if it led to discouraging terrorism. Only 29 percent said they favored restrictions on what newspapers and TV news programs can report. Americans also said they favor censorship to protect military secrets (69 percent) but not to avoid embarrassing public officials (23 percent). Wrote Wyatt. "Over and over again, Americans show themselves to be of two minds with regard to the issue of free speech

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[71] Gannett Center for Media Studies, *The Media and the People: Soundings from Two Communities* (New York, 1985), 27.

[72] "Public Attentiveness to Major News Stories," Pew Research Center for the People and the Press, 1996, On-line, Available from Netscape @ www.people-press.org./database.html

and a free press."[73]

Free Expression and the Internet

Ithiel de Sola Pool, in the eighth of his 10 principles (Appendix A) to assure the guarantees of the First Amendment are maintained in the electronic age, wrote that "government and common carriers should be blind to circuit use. What the facility is used for is not their concern. What customers transmit on the carrier is no affair of the carrier."

Then came two landmark court cases, *Cubby v. CompuServe*[74] and *Stratton Oakmont, Inc., v. Prodigy,*[75] that have shaped the arena for First Amendment protection in cyberspace for writers and on-line services. These cases act as a not-to-subtle reminder for all that use the Internet that libel is still libel, no matter the medium.

In *Cubby, Inc. v. CompuServe, Inc.*, Cubby – publisher of an electronic newsletter – sued CompuServe and others, claiming disparaging information had been circulated on "Rumorsville, USA," an electronic newsletter offered by CompuServe under its "CIS" – CompuServe Information Service. CompuServe escaped liability because it was held in summary judgement by the Southern District of New York that CompuServe is less like a

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[73] "Public Attentiveness," 49.

[74] *Cubby, Inc. v. CompuServe, Inc.*, 776 F.Supp. 135, 19 Med.L.Rptr. 1525 (D.C.N.Y., 1991).

[75] *Stratton Oakmont Inc. v. Prodigy Services Co.*, 23 Med.L.Rptr. 1794 (N.Y.S.Ct., Nassau County, 1993).

publisher than like a bookstore owner or distributor.[76] Teeter concludes that the ruling will not "chill" the distribution of books or information on-line and will re-define the obligations and liabilities for computer system operators under the law.

The other case, *Stratton Oakmont Inc. v. Prodigy Services, Inc.*, redefined the title "electronic publisher" and thus found Prodigy liable for libel.[77] Stratton Oakmont filed suit for $200 million in damages against Prodigy, saying its practice of screening content for obscenity before airing on the network made it susceptible to libel in other areas. Unlike *Cubby v. CompuServe*, the *Stratton Oakmont v. Prodigy* case is based on premise that the Prodigy was acting more like a traditional publisher. It screened the stories that it posted; it promised that it would. While this might be a difficult task to do, no one forced Prodigy to exercise editorial control.

The New York Supreme Court held that Prodigy was indeed an electronic publisher and liable for libel because, in this case, someone using someone else's account on Prodigy posted a message calling the investment firm "a cult of brokers who either lie for a living or get fired" and accusing the firm of fraud. Prodigy did not delete the posting in a bulletin board for discussion of investments until Stratton Oakmont filed suit.[78]

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[76] Dwight L., Teeter Jr., Don R. LeDuc and Bill Loving, *Law of Mass Communications*. Eighth Edition, 1997 Supplement. (Westbury, N.Y.: The Foundation Press, 1997), 52.

[77] Teresa Anderson, "Judicial decisions: electronic communications," *Security Management*, August 1995: 85-86.

[78] John Byczkowski, "Libel decision asks too much of on-liners," *Cincinnati Enquirer*, 6 June 1995, B7.

Technically, *Prodigy* was a more limited decision than *Cubby*.[79] The court did not hold that Prodigy was responsible for every false fact published on their service. The court found that Prodigy would remove offensive and uncivil comments, whether true or not, and this was what they had failed to do. It was only because Prodigy undertook to screen content that the court considered Prodigy more a publisher than a bookstore.

The authority of *Stratton Oakmont* was made questionable by the Communications Decency Act of 1996, when part of that statute attempted to limit indecency online by saying that service providers would not be considered "publishers" of material that they did not write. That seemed to say the *Cubby* decision was law, and that *Stratton Oakmont* was not.[80]

The Communications Decency Act

The Communications Decency Act, signed into law on February 8, 1996, under Title V of the Telecommunications Act of 1996, extended an earlier law that was originally intended for television and radio. The changes as written would impose fines or prison sentences on anyone transmitting "indecent" material with an electronic device. "Indecent" is defined as anything depicting "sexual or excretory activities or organs."

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[79] Eugene Volokh, "Freedom of Speech in Cyberspace from the Listener's Perspective: Private Speech Restrictions, Libel, State Action, Harassment, and Sex," *The Law of Cyberspace*, (Chicago: University of Chicago Legal Forum, 1996): 403.

[80] Volokh, 409.

The action sparked protests online and off. The most visible of these was the Blue Ribbon Campaign sponsored by the Electronic Frontier Foundation and Voters' Telecommunication Watch, organizations that seek to apply civil liberties to new technologies. It convinced thousands of publishers to turn their Web pages black as a sign of defiance. Soon after the protest, the American Civil Liberties Union filed suit against the government for violating the First Amendment, arguing the "indecent" standard is far broader than the "obscene" standard applied to the print medium.

On June 12, 1996, a district court in Philadelphia struck down the CDA as unconstitutional. A three-judge federal court in New York also struck down the law. The U.S. Department of Justice appealed the rulings to the Supreme Court of United States on November 1, 1996.

On June 26, 1997, the Supreme Court of the United States overturned the Communications Decency Act with a 9-0 opinion.[81] It was the first time that the Supreme Court had the opportunity to take a close look at the Internet and decide how principles of First Amendment law applied to the medium.

All nine justices found the CDA largely unconstitutional. Seven of the Justices completely struck the prohibitions on "indecent" and "patently offensive" expression from the CDA. The justices agreed that prohibitions on obscene expression in the CDA were consistent with existing law and precedent and not protected by the First

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[81] *American Civil Liberties Union, et al, v. Janet V. Reno, Attorney General of the United States, et al.* (96-511, 26 June 1997).

Amendment. The CDA's ban on Internet obscenity was not challenged.[82]

The furor surrounding the formation of the Act, its passage under the sponsorship of Senator Jim Exon (D., Neb.) as part of the Telecommunications Act of 1996 and its failure proved a topic of discussion for those studying public opinion. The CDA made it a felony to transmit "indecent" or "patently offensive" material over computer networks. Violators were subject to up to two years in prison and $250,000 in fines.

Leading the charge to have the CDA deemed unconstitutional was the Citizens Internet Empowerment Coalition (CIEC) (Appendix B). The coalition represented a broad spectrum of Internet users, Libraries publishers, content providers and access providers (Appendix C) and was coordinated by the Center for Democracy and Technology, America Online, and the American Library Association, and others, including People for the American Way.[83] Its members included libraries, book publishers, newspaper publishers, editors, advertisers, commercial online service providers, ISP's, non-profit groups, and civil liberties advocates. Some 55,000 "Netizens," or Internet users, had signed on with CIEC since it originally filed suit on February 26, 1996, in federal court in Philadelphia to have the CDA overturned. Many of those same "Netizens" participated in the 48 hours of protest with World Wide Web

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[82] Alan Lewine, Larry Lessig, David Post and Eugene Volokh. "Cyberspace Law for Non-Lawyers No. 80," Cyberspace Law Institute, 1997, on-line, available from Netscape @ www.cli.org

[83] Steven Helle, "Libel in cyberspace: attorney weighs the various possibilities," *Editor & Publisher*, 24 Dec.1994, 16.

home pages blackened following congressional passage of the Act.

Obscenity, Indecency Defined via *Roth*

"Indecency" was defined in the Communications Decency Act as "any comment, request, suggestion, proposal, image or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs." Its definition of "obscene" came from a Supreme Court poised to impose its own federal guidelines on obscenity laws on the eve of what many have called the "sexual revolution" in *Miller v. California,*[84] one of five obscenity cases decided on June 21, 1973, that introduced a "contemporary community standards" test to determine what was obscene.

The Supreme Court of the United States did not decide to review the constitutionality of existing obscenity laws until 1957, 115 years after the first federal anti-obscenity law had been enacted in the Tariff Act of 1842 (U.S. Public Statutes at Large, Vol. 5, Ch 270).[85] What the Communications Decency Act did, Le Duc wrote, was to ladle the 1873 Comstock Act (18 U.S.C. Sec. 1461), under which the Victorian courts classified material about sex or abortion as obscene, into interactive computer services.

In *Roth v. United States* (354 U.S. 476, 77 S.Ct. 1304), the Supreme Court held

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[84] 413 U.S. 115, 93 S.Ct. 2680 (1973).

[85] Teeter and Le Duc, 340.

that obscenity is not constitutionally protected expression. It also held that all anti-obscenity laws contain specific safeguards to limit their application solely to those forms of expression that could *properly* (Italics added) be classified as obscene.

The Supreme Court, jointly hearing the *Roth v. United States* and *Alberts v. California* (352 U.S. 962, 77 S. Ct. 349 (1957)) obscenity cases, affirmed the conviction of both. In the affirmation of Roth, Justice William Brennan offered this definition of obscenity: "Obscene material which deals with sex in a manner appealing to prurient interest." "Prurient interest" refers to sexually oriented thoughts.

Justice Brennan then articulated the "Roth test" for judging whether or not material is obscene: "...whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."[86] Under *Roth*, a book could be declared obscene if it could be assumed it might induce obscene thoughts in a hypothetical average person (see *Dennis v. United States* 341 U.S. 494, 71 S. Ct. 857 (1951)).

That being said, the issues surrounding the Communications Decency Act were viewed with a much broader brush -- one that encompasses a cornerstone of this nation's history in free expression, Le Duc wrote.

> It started in England in the sixteenth century, and rose, at first, from the common law. (There had been some earlier striving, but it didn't amount to much.) Free expression was both an issue and a weapon in the English convulsions of the seventeenth century and in the contests between rulers and their opponents in eighteenth century

[86] Teeter and Le Duc, 347.

> England and America. Gains for free expression were legislated in the First Amendment, but the verbalization was general, necessarily, and the meaning of the guaranties remained to be decided.[87]

Charles Rembar asserted that, in the 50-year span between 1922 and 1972, the change, challenge and rapid definition of free expression came because America had grown freer and more populace. The growing populace "needs to hear the facts if our system is to work (and argument, too; the new importance of facts does not negate the importance of opinion). They can be reached through television, radio, newspapers, magazines and books."[88] Some 24 years after Rembar's article appeared, one could add that the growing populace could also be reached through the Internet and on-line service providers.

There were two competing ideas in the arena of controversy surrounding the tenets of the CDA: censorship or free expression. Throughout history, cries of censorship have echoed throughout the American landscape and the American public had been quick to wrap itself in the flag for free expression only to shed it when pressed on controversial issues.

In *Free Expression and the American Public,* Robert O. Wyatt agreed, saying "Americans believe that they believe in the First Amendment, until they are confronted

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[87] Charles Rembar. "The First Amendment on Trial: The Government, the Press and the Public." *The Atlantic Monthly*, April 1973, 47.

[88] Rembar, 48-49.

with expression that runs counter to the grain of their beliefs . . .. Over and over again, Americans show themselves to be of two minds with regard to the issue of free speech and a free press." [89] Moreover, he said it has become apparent in his research, only a minority of the American public has consistently endorsed the free speech rights of political radicals. Relatively few Americans, except during the most permissive spell during the Vietnam/Watergate era, have ever sanctioned publication of sexually explicit material, according to Wyatt.

The mention of censorship or free expression brought three major groups into the fray: the government (lawmakers), the press and the public. Lawmakers were driven by their constituents to get tough on issues such as access to sexually explicit material on the Internet by minors and proposed legislation to limit that possibility – while increasing their popularity with the voters. The press was seemingly driven by whimsy. While the press had the power to do agenda setting, rarely had the press joined the fray concerning free expression unless its "freedoms" were at risk. Public interest groups played a key role in the passage of the Telecommunications Act and the passage of the Communications Decency Act. These groups ranged from the political right to the radical left, all fighting for each group's own perceived interests in broadcast programming. In the public arena, Teeter wrote that private industry is a villain due to more permissive industry content standards that bring public pressure for control. "(P)ressure is mounting for laws to protect society from mass culture messages that demean certain groups, or

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[89] Wyatt, 35.

erode fundamental tenets of decency."[90]

For example, the motion picture industry developed standards imposed in 1968 that established a rating system to inform audiences of film content (G, for all audiences; PG, parents cautioned that some material may be unsuitable for children; R, no children under age 17 admitted without an adult; and, X, no one admitted under age 17. In 1990, the NC-17 class was added for the artistic cinema and X reclassified for hard core pornographic film.[91]

Another, more pertinent example was the cornerstone of the CDA: the alleged easy access of sexually explicit material on the Internet by minors. The hue and cry about access, from Senator Exon to special interest groups on and off the Internet, "activated" both the press and the government to take sides on the issue. Those "for" the Communications Decency Act were easily identified as the conservative right. Those "against" were a much more diverse group.

Led by the Christian Coalition and personalities such as the Rev. Pat Robertson, the "for" crowd stood behind the language of the Act and the restrictions on free expression that would result. However, there was infighting amongst the ranks of the right. Zondervan Publishing House, a Christian book publisher, created a derivative of the Blue Ribbon Campaign that rallied Internet users against the CDA: the Green Ribbon

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[90] Dwight L. Teeter Jr., and Don R. Le Duc, *Law of Mass Communications*, 8th edition. (Westbury, N.Y.: The Foundation Press, Inc. 1996), 368.

[91] Wyatt, 40.

Campaign for Responsibility in Free Speech. The introductory page of the Green Ribbon Campaign web site (www.zondervan.com/green.htm) said, in part, "the right to free speech is one of the most important and fundamental rights of liberty . . . .We support the right to free speech in all its forms. We also call for responsibility in exercising this right" without demanding censorship.

There was little but passing interest from the American public as a whole on the CDA. This was not surprising, as Wyatt wrote five years earlier when discussing his work in *Free Expression*: "Although a more libertarian embrace of free speech in the abstract can be detected over time in these surveys (from the 1930s through 1980s), major segments of American society today are unwilling to champion free expression in practice."

Conclusion

Free expression and a free press have been debated in the United States since the nation's infancy. Alexander Hamilton wrote in the Federalist No. 84:[92]

> [B]ills of rights, in the sense and to the extent that they are contended for, are not only unnecessary in the proposed constitution but would even be dangerous. They would contain various exceptions to powers not granted, and, on this account, would afford a colorable pretext to

[92] Edward Meade Earl, ed. *THE FEDERALIST*, (New York: Modern Library, 1937), 559-560.

> claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which such restrictions may be imposed?
>
> On the subject of liberty of the press, as much as been said, I cannot forbear adding a remark or two: in the first place, I observe, that there is not a syllable concerning it in the constitution of this state [New York]; in the next, I contend, that whatever has been said about in that of any other state amounts to nothing. What signifies a declaration, that 'the liberty of the press shall be inviolably preserved?' What is the liberty of the press? Who can give it any definition that would not leave the utmost latitude of evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.

Chafee, Levy, Lofton and Rosenberg argued that establishment media only fight for their establishment interests. In 1997, their arguments again hold merit – which is dismaying because it is important for journalists, and attorneys, to have an appreciation of First Amendment history. The ability to broadcast breaking news globally has given new emphasis on potential liabilities in such traditional areas of law as defamation, invasion of privacy, or copyright infringement. This emphasis is mirrored in continued revision of communication law texts[93] and the continuation of communications law

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[93] See, e.g., T. Barton Carter, Marc A. Franklin and Jay B. Wright. *The First Amendment and the Fifth Estate: Regulation of Electronic Mass Media*, fourth edition. (Westbury, N.Y.: Foundation Press, 1996); T. Barton Carter, Marc A. Franklin and Jay B. Wright. *The First Amendment and the Fourth Estate: The Law of Mass Media*, sixth edition. (Westbury, N.Y.: Foundation Press, 1994); Marc A. Franklin and David A. Anderson. *Cases and Materials on Mass Media Law,* fifth edition. (Westbury, N.Y.:

courses on undergraduate and graduate levels.

Using polling data noted in the areas of free expression since the 1930s, one could assume that there is inconsistency in public support for abstract ideas such as free expression and public willingness to endorse repressive actions in specific contexts. This should not be surprising, considering the record of debate that stretches from lower courts to the Supreme Court of the United States. However, one could not conclude that the public would have endorsed the Communications Decency Act. Unfortunately, the relatively short span of time (seven months) between the appeal of the Communications Decency Act to the Supreme Court of the United States and the Court's ruling was not sufficient to study public opinion about the CDA and its passage.

The passage of the Communications Decency Act demonstrated the importance of continued mass media vigilance on First Amendment issues. Although, the CDA was ruled unconstitutional by the Supreme Court of the United States, the failure of the CDA should sound a warning to the mass media, who have sometimes displayed uneasiness

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Foundation Press, 1995); Donald M. Gillmore. *Mass Communication Law: Cases and Comment*, fifth edition. (St. Paul: West Publishing Co., 1990); Kent Middleton and Bill F. Chamberlin, *Key Cases in the Law of Public Communication*, fourth edition. (White Plains, N.Y: Longman, 1997); Kent Middleton and Bill F. Chamberlin. *The Law of Public Communication*, fourth edition. (White Plains, N.Y.: Longman, 1997); Roy Moore. *Mass Communication Law and Ethics: 1996 Update*. (Hillsdale, N.J.: L. Erlbaum Associates, 1997); Wayne Overbeck and Rick D. Pullen. *Major Principles of Media Law*, 1995 edition. (Fort Worth, TX.: Harcourt Brace College, 1995); Don R. Pember. *Mass Media Law*, ninth edition. (Madison, Wis.: Brown & Benchmark, 1997); Thomas L. Tedford, *Freedom of Speech in the United States*, third edition. (New York: McGraw-Hill, 1997); Teeter, Dwight L. and Le Duc, Don. *Law of Mass Communications*: eighth edition. (Westbury, N.Y.: Foundation Press, 1995).

with possible infringements on its freedoms, including the freedom of the press and free expression. De Sola Pool sounded a warning for the mass media in his concluding chapter of *Technologies*:

> "The characteristics of media shape what is done with them, so one might anticipate that these technologies of freedom will overwhelm all attempts to control them. Technology, however, shapes the structure of the battle, but not every outcome. While the printing press was without doubt the foundation of modern democracy, the response to the flood of publishing that it brought forth has been censorship as often as press freedom. In some times and places the even more capricious new media will open wider the floodgates for discourse, but in other times and places, in fear of that flood, attempts will be made to shut the gates."[94]

[94] De Sola Pool, 251.

CHAPTER III

METHOD

Introduction

Attorneys and newspaper journalists in Tennessee were selected as the populations for this study to observe their self-descriptions of their views about free expression, the extent of their computer literacy and their use of the Internet.

By nature of their profession, attorneys and newspaper journalists are especially active stakeholders in the freedoms outlined in the Bill of Rights of the Constitution of the United States. Both lawyers and journalists have drawn criticism from many sides. Lawyers, however, are supposed to be "hired guns;" there seems to be a rough understanding of the role of legal advocates who defend unpopular people or causes. If this were not the case, Stephen Jones, lead attorney for Timothy McVeigh, convicted in 1997 of the bombing of the Murrah Federal Building in Oklahoma City, would be in constant fear for his own safety. The press, as summarized in the discussion of John Lofton's *The Press as Guardian of the First Amendment*, can be viewed as an inconsistent steward of civil liberties.[1] One of the press's strongest advocates, Justice

[1] John Lofton, *The Press as Guardian of the First Amendment*. (Columbia, S.C.:

William O. Douglas, once accused the press of being sensitive to its own First Amendment rights but doing little to advance First Amendment values.[2]

Such values, it is assumed, should transcend time and place and changing modes of distribution of information. Because of technological advancement, according to Lydia Wallace Meek's thesis *New Technology in Newspapers from the 1920s to the 1970s: Response of Newsworkers*, newspaper journalists and attorneys in the state of Tennessee have perceived themselves to be on the cutting edge of the new technology.[3] However, Meek's study did not include the rise of personal computer use and the development of the Internet – which is the foundation for this research.

While much research has been done on free expression and freedom of the press, there has been limited research conducted on how attorneys and newspaper journalists on the state level view those freedoms. As of November 1, 1997, there has been no published research on the personal and professional use of the Internet by the attorneys and newspaper journalists in the state of Tennessee.

However, two studies by Dorothy Bowles of editorial commentary on key First Amendment rules by the Supreme Court of the United States through examination of

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University of South Carolina Press, 1980).

[2] William O. Douglas, *The Court Years 1939-1975: The Autobiography of William O. Douglas* (New York: Random House, 1980), 208.

[3] Lydia Wallace Meek. "New Technology in Newspapers From the 1920s to the 1970s: Response of Tennessee Newsworkers." (M.S. thesis, University of Tennessee, Knoxville, TN. August 1993), 94.

newspaper editorials merit discussion as reference points for this thesis. The first study, "Newspaper Attention to (and Support of) First Amendment Cases, 1919-1969," found that support of the First Amendment was not always forthcoming in times of domestic crisis on the editorial pages of 24 randomly selected newspapers.[4] A companion study of the same 24 newspapers also found through its historical examination of how editorial writers explained important First Amendment decisions by the Supreme Court of the United States that readers did not receive a thorough discussion of free expression issues and values.[5]

Research Methodology and Sample Selection

This study used a mail survey, defined by Michael Singletary as the primary data-collection technique in mass media studies today,[6] and two follow-up reminder mailings using postcards. The survey instrument, developed in part from Robert O. Wyatt's *Free Expression and the American Public*[7] study in 1991, is both descriptive and analytical

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[4] Dorothy Bowles, "Newspaper Attention to (and Support of) First Amendment Cases, 1919-1969," *Journalism Quarterly* 66, no. 3, (autumn 1988): 579-586.

[5] Dorothy Bowles, "Missed Opportunity: Educating Newspaper Readers About First Amendment Values," *Newspaper Research Journal* 10, no. 2, (winter 1989): 39-53.

[6] Michael Singletary. *Mass Communication Research.* (New York: Longman, 1994), 10.

[7] Robert O. Wyatt, *Free Expression and the American Public.* (Washington, D.C.: American Society of Newspaper Editors Foundation, 1991).

(Appendix D). The analytical portion of the survey, covering the first three sections, is based primarily on the Wyatt survey and draws on its straightforward discussion of the issues facing attorneys and newspaper journalists in 1997 and the impact of those issues on freedoms espoused in the Bill of Rights of the United States Constitution. Wyatt gave permission for use of selected portions on questions concerning the Bill of Rights and Media Rights portions of the 1991 survey.

The descriptive portion of the survey, covering the fourth section, was primarily developed to determine the characteristics of the sample in reference to age, education, computer literacy and Internet usage on a weekly basis.

The survey was pre-tested twice, using University of Tennessee at Knoxville Distance Learning classes which included 11 former newspaper journalists and five pre-law students. The first pre-test was given to students in the Communications 512 class of Don Scroggins in February 1996. The second pre-test was given to students of the Journalism 525 class, led by M. Mark Miller, in February 1997. Following both tests, the survey instrument was refined. It was refined again following consultation with Wyatt.

The sample was drawn from Tennessee Bar Association member attorneys and Tennessee Press Association member newspapers, totaling 613 potential respondents. Some 312 attorneys, or five percent of the TBA 1997 membership, were randomly drawn. The sample was drawn from an alphabetized list of 6,240 TBA members by TBA personnel and supplied to the author on mailing labels. There were 301 potential respondents from TPA member newspapers, broken down as follows: one survey to each

of the state's 114 non-daily newspapers, five surveys to each of daily newspapers under 40,000 daily circulation and twenty surveys to each of the daily newspapers over 40,000 daily circulation. The survey mailing was weighted toward the state's larger newspapers (the *Memphis Commercial-Appeal, Jackson Sun, Nashville Banner, Nashville Tennessean, Chattanooga Free Press, Chattanooga Times, Knoxville News-Sentinel, Kingsport Times* and *Bristol Herald-Chronicle)* due to much larger and diverse staffing. The newspaper surveys were mailed to the managing editor of each newspaper with instructions to randomly distribute the surveys.

After the initial mailing on March 26, 1997, there were two follow-up postcard mailings to both samples as a reminder to return the survey and as a thank-you for participating. Attorneys received surveys printed on blue stock and journalists' were on yellow stock to ascertain if each group attained a minimum response of 100 each for validity.

Survey data were collected by the author via return of self-addressed, stamped envelopes. Data were collected for use with the Statistical Package for Social Sciences (SPSS-X) for cross-tabulation and analysis. Cross-tabulation provides great interpretive power and should be widely used in mass media audience studies.[8] Chi-Square (x2) tests,

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[8] Singletary, 195.

the most common of the many nonparametric (or "distribution free") tests, were used to evaluate the statistical significance of cross-tabulations.[9] The 2 x 2 Chi-Square tests, or "simple chi-square" by Bruning and Kitz (1987), were used exclusively.[10]

[9] Singletary, 244.

[10] Singletary, 245.

CHAPTER IV

RESULTS

This study looked at the self-described opinions of randomly selected attorneys and newspaper journalists in the state of Tennessee on free expression and freedom of the press. It also described the extent of their computer literacy and the use of the Internet. The survey instrument was divided into four sections: Importance of Rights in the Abstract, The Practice of Free Speech Rights, The Practice of Media Rights and You, Your Computer and the Internet (Appendix C). The results are divided into four sections and include cross-tabulations on the specific findings for attorneys and newspaper journalists. Chi-square tests, the most common of the nonparametric tests, were used to evaluate the statistical significance.[1] In cases where cell sizes are equal to or less than 5, the resulting chi-square may not be accurate.[2]

The first section examines opinions of attorneys and newspaper journalists on issues concerning the Bill of Rights. Next comes an examination of opinions of attorneys and newspaper journalists on the importance of protection for individual rights and media

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[1] Michael Singletary. *Mass Communication Research.* (New York: Longman), 244.

[2] Wright, Daniel B. Wright, *Understanding Statistics: An Introduction for the Social Sciences.* (London: SAGE Publications, 1997), 160.

rights. The third section examines opinions of attorneys and newspaper journalists on the importance of protection for individual rights and media rights that are not always protected under the law. The results conclude with reports on the gender, age, computer literacy and use of the Internet of attorneys and newspaper journalists. It also addresses opinions of attorneys and newspaper journalists on issues of professional and personal conduct: the use of the Internet to advertise services of attorneys; the use of World Wide Web sites for information delivery; on some aspects of privacy on the Internet, and, on the importance of free expression on the Internet.

Response Rates

Three hundred and twelve attorneys and 301 newspaper journalists in the state of Tennessee were surveyed by mail questionnaires. There were 213 respondents: 108 attorneys and 105 newspaper journalists (Table 1). Surveys were printed on blue paper for attorneys and on yellow paper for newspaper journalists to determine response.

TABLE 1
RESPONSE RATES

	Response				Total	
	Attorneys		Journalists			
Surveys	N	Percent	N	Percent	N	Percent
Mailed	312	50.9	301	49.1	613	100
Returned	108	34.6	105	34.8	213	34.7

$X^2 = .39307$ df = 1 p. = .53069

Importance of Rights in the Abstract

The Bill of Rights of the United States Constitution protects certain things. Not all people take advantage of each right, and not everyone considers them important. Respondents were asked to rate each right, with a "1" response being low importance and a "10" being high importance. Responses from 1-5 were rated of low importance and those from 6-10 were rated of high importance.

Attorneys and newspaper journalists were divided on the importance of the right to own and use firearms (Table 2). However, the responses were not statistically significant between response and profession.

Attorneys and newspaper journalists rated the right to assemble, march, protest or petition the government in support of causes of high importance (Table 3). Nine of 10 attorneys opined that the right was of high importance. There was statistical significance between response and profession.

The right to talk freely was given high importance in the opinion of attorneys and newspaper journalists (Table 4). Attorneys, at 96.3 percent, and newspaper journalists, at 87.5 percent, rated the right of high importance. There was statistical significance between response and profession. With a cell size equal to or less than 5, however, the resulting chi-square may not be accurate.

TABLE 2
RIGHT TO OWN AND USE FIREARMS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	54	50.5	48	46.2	102	48.3
High	53	49.5	56	53.8	109	51.7
Total	107	100.0	104	100.0	211	100.0

X^2 = .39307 df = 1 p. = .53069

Mean = 6.070 Median = 6.000

TABLE 3
RIGHT TO ASSEMBLE, MARCH, PROTEST OR PETITION

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	7	6.5	20	19	27	12.7
High	101	93.5	85	81	186	87.3
Total	108	100.0	105	100.0	213	100.0

X^2 = 7.59486 df = 1 p. = .00585

Mean = 8.873 Median = 10.000

TABLE 4
RIGHT TO TALK FREELY

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	4	3.7	13	12.3	17	8.0
High	104	96.3	91	87.3	195	92.0
Total	108	100.0	105	100.0	213	100.0

X^2 = 5.55788 df = 1 p. = .01840

Mean = 9.042 Median = 10.000

Attorneys and newspaper journalists were in agreement on their opinion concerning the right to practice the religion of one's choice (Table 5). There were 105 of 108 attorneys (97.2 percent) who accorded the right to practice religion with high importance, which was statistically significant between response and profession. With a cell size equal to or less than 5, however, the resulting chi-square may not be accurate.

Ninety-two percent of respondents rated the right to a speedy and public trial as having high importance (Table 6). Attorneys' responses were statistically significant to those of newspaper journalists with regard to response and profession. The resulting chi-square may not be accurate due to a cell size less than or equal to 5.

As was the case for all rights in the first section of the survey instrument, attorneys and newspaper journalists shared similar opinions on the importance of rights in the abstract. Attorneys held the right to a free press in slightly higher esteem than did newspaper journalists at 94.4 percent, which was characteristic of the response on the preceding questions (Table 7). There was statistical significance between response and profession. Due to a small cell size, the resulting chi-square may not be accurate.

The Practice of Free Speech Rights

Free speech is protected by the First Amendment to the United States Constitution and by other laws. However, the law recognizes that certain kinds of expression are not

TABLE 5
RIGHT TO PRACTICE RELIGION

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	3	2.8	12	11.4	15	7.0
High	105	97.2	93	88.6	198	93.0
Total	108	100.0	105	100.0	213	100.0

$X^2 = 6.08623$ df = 1 p. = .01362

Mean = 9.366 Median = 10.000

TABLE 6
RIGHT TO A SPEEDY AND PUBLIC TRIAL

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	4	3.7	13	12.3	17	8.0
High	104	96.3	92	87.3	196	92.0
Total	108	100.0	105	100.0	213	100.0

$X^2 = 5.54823$ df = 1 p. = .01948

Mean = 9.262 Median = 10.000

TABLE 7
RIGHT TO A FREE PRESS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	6	5.6	11	10.4	17	8.4
High	102	94.4	93	89.3	195	91.6
Total	108	100.0	104	100.0	212	100.0

$X^2 = 1.83261$ df = 1 p. = .17837

Mean = 9.278 Median = 10.000

always protected. Covering 24 examples, attorneys and newspaper journalists were asked if they thought they should be protected all of the time, some of the time, not at all or did not know (Table 8).

The freedom to yell "fire" in a crowded theater as a prank should not be protected, according to attorneys and newspaper journalists. There was no statistical significance between the response and profession.

Almost 9 in 10 respondents said that the freedom to speak out in favor of any candidate for public office should not be protected. There was no statistical significance between the response and profession.

The freedom to disagree with the President of the United States or any other high government official should be protected all the time, according to almost 9 in 10 respondents. There was no statistical significance between the response and profession.

Almost two in three respondents (67.1 percent) said the freedom to publicly discuss other people's sexual habits should be protected at least some of the time. There was no statistical significance between the response and profession.

Respondents were divided on the freedom to disagree publicly with one's boss about political issues with five in 10 respondents saying it should not be protected. There was no statistical significance between the response and profession.

Sixty percent of respondents said the freedom to burn the U.S. flag in protest should be protected some or all of the time. (The wording of the First Amendment does not include "march" or "protest." It talks of the right of people peaceably to assemble,

TABLE 8: THE PRACTICE OF FREE SPEECH RIGHTS

TOPIC	RESPONSE	ALL THE TIME Count (%)	SOMETIMES Count (%)	NOT AT ALL Count (%)	DID NOT KNOW Count (%)	TOTAL Count (%)
YELLING "FIRE" AS A PRANK	Attorneys Journalists Total	3 (1.4) 4 (1.9) 7 (3.3)	7 (3.3) 13 (12.4) 20 (9.4)	98 (46) 86 (40.4) 184 (86.4)	0 (0) 2 (.9) 2 (.9)	108 (50.7) 105 (49.3) 213 (100)
SPEAKING OUT FOR CANDIDATE	Attorneys Journalists Total	94 (44.1) 100 (46.9) 194 (91.1)	14 (6.6) 5 (2.3) 19 (8.9)	0 (0) 0 (0) 0 (0)	0 (0) 0 (0) 0 (0)	108 (50.7) 105 (49.3) 213 (100)
DISAGREE WITH GOVT. OFFICIALS	Attorneys Journalists Total	89 (41.8) 98 (46) 187 (87.8)	14 (6.6) 7 (3.3) 21 (9.9)	3 (1.4) 0 (0) 3 (1.4)	2 (1.9) 0 (0) 2 (1.9)	108 (50.7) 105 (49.3) 213 (100)
DISCUSSING SEXUAL HABITS IN PUBLIC	Attorneys Journalists Total	11 (5.2) 12 (5.6) 23 (10.8)	65 (30.5) 55 (25.8) 120 (56.3)	27 (12.7) 37 (17.4) 64 (30)	5 (2.3) 1 (0.5) 6 (2.8)	108 (50.7) 105 (49.3) 213 (100)
CHILDREN CURSING PARENTS	Attorneys Journalists Total	21 (9.9) 11 (5.2) 32 (15)	30 (14.1) 36 (16.9) 66 (31)	54 (25.4) 54 (25.4) 108 (50.7)	3 (1.4) 4 (1.9) 7 (3.3)	108 (50.7) 105 (49.3) 213 (100)
DISAGREE WITH BOSS OVER POLITICS	Attorneys Journalists Total	70 (32.9) 65 (30.5) 135 (63.4)	30 (14.1) 35 (16.4) 65 (30.5)	4 (1.9) 3 (1.4) 7 (3.3)	4 (1.8) 2 (.9) 6 (2.8)	108 (50.7) 105 (49.3) 213 (100)
WORDS OFFENSIVE TO GROUPS	Attorneys Journalists Total	32 (15) 19 (8.9) 51 (23.9)	55 (25.8) 40 (18.8) 95 (44.6)	19 (8.9) 35 (16.4) 54 (25.4)	2 (0.9) 11 (5.2) 13 (6.1)	108 (50.7) 105 (49.3) 213 (100)
BURNING FLAG AS A PROTEST	Attorneys Journalists Total	48 (22.5) 36 (16.9) 84 (39.4)	22 (10.3) 22 (10.3) 44 (20.7)	35 (16.4) 44 (20.7) 79 (37.1)	2 (0.9) 4 (1.9) 6 (2.8)	108 (50.7) 105 (49.3) 213 (100)
REPORTING EMPLOYER MISDEEDS	Attorneys Journalists Total	71 (33.3) 80 (37.6) 151 (70.9)	35 (16.4) 22 (10.3) 57 (26.8)	0 (0) 0 (0) 0 (0)	2 (0.9) 3 (1.4) 5 (2.3)	108 (50.7) 105 (49.3) 213 (100)
ADVOCATE HOMO-SEXUAL BEHAVIOR	Attorneys Journalists Total	41 (19.2) 36 (16.9) 77 (36.2)	33 (15.5) 32 (15) 65 (30.5)	30 (14.1) 31 (14.6) 61 (28.6)	4 (1.8) 6 (2.8) 10 (4.7)	108 (50.7) 105 (49.3) 213 (100)
LIES THAT DAMAGE REPUTATION	Attorneys Journalists Total	3 (1.4) 16 (7.5) 19 (8.9)	19 (8.9) 10 (4.7) 29 (13.6)	84 (39.4) 79 (37.1) 163 (76.5)	2 (0.9) 0 (0) 2 (0.9)	108 (50.7) 105 (49.3) 213 (100)

TABLE 8 (continued)

TOPIC	RESPONSE	ALL THE TIME Count (%)	SOMETIMES Count (%)	NOT AT ALL Count (%)	DID NOT KNOW Count (%)	TOTAL Count (%)
ADVOCATE SATANISM OR OTHER CULTS	Attorneys Journalists Total	51 (23.9) 36 (16.9) 87 (40.8)	29 (13.6) 28 (23.1) 57 (26.8)	25 (11.7) 35 (16.4) 60 (28.2)	3 (1.4) 6 (2.8) 9 (4.2)	108 (50.7) 105 (49.3) 213 (100)
OBSCENE GESTURES IN PUBLIC	Attorneys Journalists Total	34 (16) 18 (8.5) 52 (24.4)	44 (20.7) 39 (18.3) 83 (39)	26 (12.2) 47 (22.1) 73 (34.3)	3 (1.4) 2 (0.9) 5 (2.3)	108 (50.7) 105 (49.3) 213 (100)
ADVOCATE INTERRACE DATING	Attorneys Journalists Total	79 (37.1) 72 (33.8) 151 (70.9)	21 (9.9) 15 (7) 36 (16.9)	5 (2.3) 5 (2.3) 10 (4.7)	3 (1.4) 13 (6.1) 16 (7.5)	108 (50.7) 105 (49.3) 213 (100)
SEXUALLY SUGGESTIVE DANCING	Attorneys Journalists Total	39 (18.3) 31 (14.6) 70 (32.9)	54 (25.4) 52 (24.4) 106 (49.8)	12 (5.6) 16 (7.5) 28 (13.1)	3 (1.4) 6 (2.8) 9 (4.2)	108 (50.7) 105 (49.3) 213 (100)
NUDE DANCING	Attorneys Journalists Total	40 (18.8) 34 (16) 74 (34.7)	52 (24.4) 43 (20.2) 95 (44.6)	14 (6.6) 24 (11.3) 38 (17.8)	2 (.9) 4 (1.9) 6 (2.8)	108 (50.7) 105 (49.3) 213 (100)
DAMAGING NATIONAL SECURITY	Attorneys Journalists Total	15 (7) 14 (6.6) 29 (13.6)	72 (33.8) 69 (32.4) 141 (66.2)	12 (5.6) 16 (7.5) 28 (13.1)	9 (3.2) 6 (2.8) 15 (7)	108 (50.7) 105 (49.3) 213 (100)
CLASSIFIED INFO TO FOREIGN GOVT.	Attorneys Journalists Total	1 (.5) 9 (4.2) 10 (4.7)	13 (6.1) 13 (6.1) 26 (12.2)	91 (42.7) 79 (37.1) 170 (79.8)	3 (1.4) 4 (1.9) 7 (3.3)	108 (50.7) 105 (49.3) 213 (100)
USING SLANG FOR SEXUAL ACTS	Attorneys Journalists Total	40 (18.8) 26 (12.2) 66 (31)	50 (23.5) 45 (21.1) 95 (44.6)	14 (6.6) 31 (14.6) 45 (21.1)	4 (1.8) 3 (1.4) 7 (3.3)	108 (50.7) 105 (49.3) 213 (100)
TAKING GOD'S NAME IN VAIN	Attorneys Journalists Total	54 (25.4) 35 (16.4) 89 (41.8)	30 (14.1) 26 (12.2) 56 (26.3)	22 (10.3) 33 (15.5) 55 (25.8)	2 (.9) 11 (5.2) 13 (6.1)	108 (50.7) 105 (49.3) 213 (100)
WORDS OFFENSIVE TO RACIAL GROUPS	Attorneys Journalists Total	50 (23.5) 28 (13.1) 78 (36.6)	45 (21.1) 42 (19.7) 87 (40.8)	10 (4.7) 31 (14.6) 41 (19.2)	3 (1.4) 4 (1.9) 7 (3.3)	108 (50.7) 105 (49.3) 213 (100)
SEXUALLY EXPLICIT PHOTOS ON INTERNET	Attorneys Journalists Total	50 (23.5) 38 (17.8) 88 (41.3)	38 (17.8) 42 (19.7) 80 (37.6)	15 (13.9) 18 (17.1) 33 (15.5)	5 (2.3) 7 (3.3) 12 (5.6)	108 (50.7) 105 (49.3) 213 (100)
BUYING BOOKS WITH NUDE PICTURES	Attorneys Journalists Total	64 (30) 52 (24.4) 116 (54.5)	31 (14.6) 41 (19.2) 72 (33.8)	10 (4.7) 11 (5.2) 21 (9.9)	3 (1.4) 1 (.5) 4 (1.9)	108 (50.7) 105 (49.3) 213 (100)
READING BANNED BOOKS	Attorneys Journalists Total	85 (39.9) 85 (39.9) 170 (79.8)	18 (8.5) 18 (8.5) 36 (16.9)	3 (1.4) 1 (0.5) 4 (1.9)	2 (0.9) 1 (.5) 3 (1.4)	108 (50.7) 105 (49.3) 213 (100)

significance between response and profession.

One in five attorneys said the freedom of children to curse at their parents in public, which is not a right, should be protected all the time (Table 9). There was statistical significance between response and profession. However, the resulting chi-square may not be accurate due to three cell sizes equal to or less than 5.

Attorneys and newspaper journalists were divided on the freedom to use words or phases that offend people from a different race or ethnic group (Table 10). One in four attorneys said it should be protected all the time – and 1 in 4 newspaper journalists said the freedom to use words or phases that offend people from a different race or ethnic group should not be protected. There was statistical significance between response and profession. With one cell size less than 5, the resulting chi-square may not be accurate.

Ninety-eight percent of respondents said the freedom of employees to report misdeeds by their boss or employer should be protected at least some of the time. There was no statistical significance between response and profession.

Almost two-third of respondents believed that the freedom to advocate homosexual behavior should be protected some or all of the time. There was no statistical significance between response and profession.

Attorneys and newspaper journalists agreed that the freedom to spread lies and untruths that damage the reputation of another person should not be protected (Table 11). There was statistical significance between response and profession as newspaper

TABLE 9
FREEDOM OF CHILDREN TO CURSE THEIR PARENTS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	21	19.4	11	10.5	32	15.0
Sometimes	30	27.8	36	34.3	66	31.0
Not At All	54	40	54	51.4	108	50.7
Don't Know	3	2.8	4	3.8	7	3.3
Total	108	100.0	105	100.0	213	100.0

$X^2 = 10.63031$ df = 4 p. = .03105

TABLE 10
FREEDOM TO USE WORDS OFFENSIVE TO GROUPS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	32	29.6	19	18.1	51	23.9
Sometimes	55	50.9	40	38.1	95	44.6
Not At All	19	17.6	35	33.3	54	25.4
Don't Know	2	1.9	11	10.5	13	6.1
Total	108	100.0	105	100.0	213	100.0

$X^2 = 20.71808$ df = 4 p. = .00036

TABLE 11
FREEDOM TO SPREAD LIES THAT DAMAGE REPUTATION

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	3	2.8	16	15.2	19	8.9
Sometimes	19	17.6	10	9.5	29	13.6
Not At All	84	77.8	79	75.2	163	76.5
Don't Know	2	1.9	0	0	2	0.9
Total	108	100.0	105	100.0	213	100.0

$X^2 = 13.80170$ df = 3 p. = .00319

journalists felt more strongly that the freedom to spread lies and untruths that damage the reputation of another person should be protected all the time. With three cell sizes less than 5, the resulting chi-square may not be accurate.

Almost 2 in 3 respondents believed that the freedom to advocate one's religion – including those who practice Satanism or other deviant cults – should be protected. There was no statistical significance between response and profession.

Two in three respondents said the freedom to make obscene gestures in public should be protected at least some of the time. There was no statistical significance between response and profession.

Seventy-three percent of attorneys and 68.6 percent of journalists opined that that the freedom to advocate dating or marriage of people of different races should be protected all of the time (Table 12). There was statistical significance between response and profession. With two cell sizes of 5, the resulting chi-square may not be accurate.

TABLE 12
FREEDOM TO ADVOCATE INTERRACIAL DATING

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	79	73.1	72	68.6	151	70.9
Sometimes	21	19.4	15	14.3	36	16.9
Not At All	5	4.6	5	4.8	10	4.7
Don't Know	7	6.5	13	12.8	13	6.1
Total	108	100.0	105	100.0	213	100.0

$X^2 = 10.92544$ df = 4 p. = .02741

One in three respondents said the freedom to dance in a sexually suggestive manner should be protected all of the time. There was no statistical significance between response and profession.

Eight in 10 respondents said the freedom to dance nude, including the "strip tease," should be protected some or all of the time (Table 13). Attorneys' opinions on this freedom were statistically significant from those of newspaper journalists, with 9 of 10 attorneys saying it should be protected some or all of the time. With two cell sizes of 5, the resulting chi-square may not be accurate.

Two in three respondents said the freedom to make statements that the President says that may damage national security should be protected some of the time. There was no statistical significance between response and profession.

Eight in 10 respondents said the freedom to give classified information to foreign governments should not be protected. There was no statistical significance between response and profession.

TABLE 13
FREEDOM TO DANCE NUDE

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	79	73.1	72	68.6	151	70.9
Sometimes	21	19.4	15	14.3	36	16.9
Not At All	5	4.6	5	4.8	10	4.7
Don't Know	7	6.5	13	12.8	13	6.1
Total	108	100.0	105	100.0	213	100.0

$X^2 = 10.92544$ df = 4 p. = .02741

Eight of 10 respondents said the freedom to use slang words that refer to sexual acts should be protected at least some of the time (Table 14). Attorneys' opinions on this freedom were statistically significant from those of newspaper journalists, with 9 of 10 attorneys saying it should be protected some or all of the time. With two cell sizes less than five, however, the resulting chi-square may be inaccurate

Four in 10 respondents said the freedom to take God's name in vain or say other sacrilegious things should be protected all the time (Table 15). Attorneys' opinions on this freedom were statistically significant from those of newspaper journalists, with 8 of 10 attorneys saying it should be protected some or all of the time. The chi-square may be inaccurate, however, with one cell size less than 5.

Eight in 10 respondents said the freedom to use words or phrases that may offend people from different racial groups should be protected either all the time or some of the time (Table 16). Attorneys' opinions were statistically significant from those of newspaper journalists, with 9 of 10 attorneys saying it should be protected some or all of the time. Due to cell sizes less than 5, the resulting chi-square may be inaccurate.

Eight in 10 respondents said the freedom to view sexually explicit pictures on the Internet should be protected at least some of the time. There was no statistical significance between response and profession.

Almost 55 percent of respondents said the freedom to buy magazines or books that feature nude pictures should be protected all the time. There was no statistical significance between response and profession.

TABLE 14
FREEDOM TO USE SEXUAL SLANG WORDS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	40	37.0	26	24.8	66	31.0
Sometimes	50	46.3	45	42.9	95	44.6
Not At All	14	13.0	31	29.5	45	21.1
Don't Know	4	3.8	3	2.9	7	3.3
Total	108	100.0	105	100.0	213	100.0

$X^2 = 11.81517$ df = 4 p. = .01878

TABLE 15
FREEDOM TO USE GOD'S NAME IN VAIN

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	54	50.0	35	33.3	89	41.8
Sometimes	30	27.8	26	24.8	56	26.3
Not At All	22	20.4	33	31.4	55	25.8
Don't Know	2	1.8	11	10.5	13	6.1
Total	108	100.0	105	100.0	213	100.0

$X^2 = 19.50351$ df = 4 p. = .00063

TABLE 16
FREEDOM TO USE WORDS OFFENSIVE TO RACIAL GROUPS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	50	46.3	28	26.7	78	36.6
Sometimes	45	41.7	42	40.0	87	40.8
Not At All	10	9.3	31	29.5	41	19.2
Don't Know	3	2.7	4	3.8	5	2.3
Total	108	100.0	105	100.0	213	100.0

$X^2 = 20.82655$ df = 4 p. = .00034

Attorneys and newspaper journalists were in agreement that the freedom to read books that have been banned from the local library should be protected all the time. There was no statistical significance between response and profession.

The Practice of Media Rights

The law protects the media such as television, newspapers, radio and magazines under certain circumstances, but not in others. Covering 25 areas, attorneys and newspaper journalists were asked if the examples should be protected all of the time, some of the time, not at all or did not know (Table 17).

Attorneys and newspaper journalists were in agreement that the freedom to advertise products that are illegal should not be protected. There was no statistical significance between response and profession.

Approximately 60 percent of respondents said the freedom to advertise pornographic or obscene material should be protected at least some of the time. There was no statistical significance between response and profession.

Three out of four respondents said the freedom to advertise products by making false or misleading claims should not be protected. There was no statistical significance between response and profession.

Approximately 50 percent of attorneys and newspaper journalists said the freedom to advertise guns for sale should be protected all the time. There was no

TABLE 17: THE PRACTICE OF MEDIA RIGHTS

TOPIC	RESPONSE	ALL THE TIME Count (%)	SOMETIMES Count (%)	NOT AT ALL Count (%)	DID NOT KNOW Count (%)	TOTAL Count (%)
ADVERTISE ILLEGAL PRODUCTS	Attorneys	1 (0.5)	25 (11.7)	79 (37.1)	3 (1.4)	108 (50.7)
	Journalists	3 (1.4)	24 (11.3)	71 (33.3)	7 (3.3)	105 (49.3)
	Total	4 (1.9)	49 (23)	150 (70.4)	10 (4.7)	213 (100)
ADVERTISE PORN AND/OR OBSCENITY	Attorneys	17 (8.0)	47 (22.1)	41 (19.2)	3 (1.4)	108 (50.7)
	Journalists	16 (7.5)	48 (22.5)	38 (17.8)	3 (1.4)	105 (49.3)
	Total	33 (15.5)	95 (44.6)	79 (37.1)	6 (2.8)	213 (100)
FALSE OR MISLEADING ADVERTISING	Attorneys	3 (1.4)	26 (12.2)	76 (35.7)	3 (1.4)	108 (50.7)
	Journalists	4 (1.9)	18 (8.5)	82 (38.5)	1 (0.5)	105 (49.3)
	Total	7 (3.3)	44 (20.7)	158 (74.2)	4 (1.9)	213 (100)
ADVERTISING LEGAL BUT HARMFUL PRODUCTS	Attorneys	44 (20.7)	48 (22.5)	14 (6.6)	2 (0.9)	108 (50.7)
	Journalists	52 (24.4)	42 (19.7)	5 (2.3)	6 (2.8)	105 (49.3)
	Total	96 (45.1)	90 (42.3)	19 (8.9)	8 (3.8)	213 (100)
ADVERTISING GUNS FOR SALE	Attorneys	55 (25.8)	43 (20.2)	6 (2.8)	4 (1.9)	108 (50.7)
	Journalists	48 (22.5)	50 (23.5)	5 (2.3)	2 (0.9)	105 (49.3)
	Total	103 (48.4)	93 (43.7)	11 (5.2)	6 (2.8)	213 (100)
REPORTING ON SEXUAL HABITS	Attorneys	41 (19.2)	58 (27.2)	7 (3.3)	2 (0.9)	108 (50.7)
	Journalists	40 (18.8)	55 (25.8)	9 (4.2)	1 (0.5)	105 (49.3)
	Total	81 (38)	113 (53.1)	16 (7.5)	3 (1.4)	213 (100)
REFUSING ADVERTISING ON PRODUCTS	Attorneys	59 (27.7)	41 (19.2)	5 (2.3)	3 (1.4)	108 (50.7)
	Journalists	71 (33.3)	28 (13.1)	5 (2.3)	1 (0.5)	105 (49.3)
	Total	130 (61)	69 (32.4)	10 (4.7)	4 (1.4)	213 (100)
NEWSPAPERS TAKING SIDES IN ELECTIONS	Attorneys	90 (42.3)	11 (5.2)	4 (1.9)	3 (1.4)	108 (50.7)
	Journalists	99 (46.5)	4 (1.9)	1 (0.5)	1 (0.5)	105 (49.3)
	Total	189 (88.7)	15 (7)	5 (2.3)	4 (1.9)	213 (100)
JOURNALIST SIDING WITH FOREIGN GOVT.	Attorneys	71 (33.3)	32 (15)	2 (0.9)	3 (1.4)	108 (50.7)
	Journalists	45 (21.1)	43 (20.2)	14 (6.6)	3 (1.4)	105 (49.3)
	Total	116 (54.5)	75 (35.2)	16 (7.5)	6 (2.8)	213 (100)
TV TAKING SIDES WITH FOREIGN GOVT.	Attorneys	76 (35.7)	22 (10.3)	7 (3.3)	3 (1.4)	108 (50.7)
	Journalists	80 (37.6)	18 (8.5)	4 (1.9)	3 (1.4)	105 (49.3)
	Total	156 (73.2)	40 (18.8)	11 (5.2)	6 (2.8)	213 (100)
CONFIDENTIAL SOURCES	Attorneys	25 (11.7)	63 (29.6)	18 (8.5)	2 (0.9)	108 (50.7)
	Journalists	65 (30.5)	36 (16.9)	2 (0.9)	2 (0.9)	105 (49.3)
	Total	90 (42.3)	99 (46.5)	20 (9.4)	4 (1.9)	213 (100)
REPORTING CLASSIFIED INFORMATION	Attorneys	15 (7)	62 (29.1)	27 (12.7)	4 (1.9)	108 (50.7)
	Journalists	20 (9.4)	75 (35.2)	9 (4.2)	1 (0.5)	105 (49.3)
	Total	35 (16.4)	137 (64.3)	36 (16.9)	5 (2.3)	213 (100)
REPORTING INACCURATE INFORMATION	Attorneys	22 (10.3)	64 (30)	18 (8.5)	4 (1.9)	108 (50.7)
	Journalists	34 (16)	38 (17.8)	24 (11.3)	9 (4.2)	105 (49.3)
	Total	56 (26.3)	102 (47.9)	42 (19.7)	13 (6.1)	213 (100)

TABLE 17 (CONTINUED)

TOPIC	RESPONSE	ALL THE TIME Count (%)	SOMETIMES Count (%)	NOT AT ALL Count (%)	DID NOT KNOW Count (%)	TOTAL Count (%)
HIGH SCHOOL REPORTING	Attorneys Journalists Total	46 (21.6) 45 (21.1) 91 (42.7)	50 (23.5) 51 (23.9) 101 (47.4)	9(4.2) 8 (3.8) 17 (8)	3 (1.4) 1 (0.5) 4 (1.9)	108 (50.7) 105 (49.3) 213 (100)
PROJECTING ELECTION VICTORS	Attorneys Journalists Total	51 (23.9) 32 (15) 83 (39)	26 (12.2) 26 (12.2) 52 (24.4)	28 (13.1) 39 (18.3) 67 (31.5)	3 (1.4) 8 (3.8) 11 (5.2)	108 (50.7) 105 (49.3) 213 (100)
GRAPHICS OF VIOLENCE	Attorneys Journalists Total	42 (19.7) 42 (19.7) 84 (39.4)	60 (28.2) 61 (28.6) 121 (56.8)	4 (1.9) 1 (0.5) 5 (2.3)	2 (0.9) 1(0.5) 3 (1.4)	108 (50.7) 105 (49.3) 213 (100)
REPORTING LONG AGO MISTAKES	Attorneys Journalists Total	62 (29.1) 48 (22.5) 110 (51.6)	40 (18.8) 55 (25.8) 95 (44.6)	4 (1.9) 1 (0.5) 5 (2.4)	2 (0.9) 1 (0.5) 3 (1.4)	108 (50.7) 105 (49.3) 213 (100)
REPORTING NAME OF JUVENILE	Attorneys Journalists Total	17 (8) 21 (9.9) 38 (17.8)	67 (31.5) 74 (34.7) 141 (66.2)	21 (9.9) 9 (4.2) 30 (14.1)	3 (1.4) 1 (0.5) 4 (1.9)	108 (50.7) 105 (49.3) 213 (100)
REPORTING NAME OF RAPE VICTIMS	Attorneys Journalists Total	16 (7.5) 18 (8.5) 34 (16)	41 (19.2) 40 (18.8) 81 (38)	47 (22.1) 42 (19.7) 89 (41.8)	4 (1.9) 5 (2.3) 9 (4.2)	108 (50.7) 105 (49.3) 213 (100)
VIDEOS PROMOTING DRUG USE	Attorneys Journalists Total	39 (18.3) 28 (13.1) 67 (31.5)	36 (16.9) 42 (19.7) 78 (36.6)	30 (14.1) 24 (11.3) 54 (25.4)	3 (1.4) 11 (5.2) 14 (6.6)	108 (50.7) 105 (49.3) 213 (100)
DISTRIBUTE PROVOCATIVE RECORDINGS	Attorneys Journalists Total	44 (20.7) 38 (17.8) 82 (38.5)	40 (18.8) 35 (16.4) 75 (35.2)	21 (9.9) 28 (13.1) 49 (23)	3 (1.4) 4 (1.9) 7 (3.3)	108 (50.7) 105 (49.3) 213 (100)
SALE OF NUDE MAGAZINES AND BOOKS	Attorneys Journalists Total	62 (29.1) 51 (23.9) 113 (53.1)	28 (13.1) 40 (18.8) 68 (31.9)	16 (7.5) 13 (6.1) 29 (13.6)	2 (0.9) 1 (0.5) 3 (1.4)	108 (50.7) 105 (49.3) 213 (100)
TEENAGERS WATCHING R-RATED MOVIES	Attorneys Journalists Total	22 (10.3) 16 (7.5) 38 (17.8)	49 (23) 45 (21.1) 94 (44.1)	34 (31.5) 33 (31.4) 67 (31.5)	2 (0.9) 12 (5.7) 14 (6.6)	108 (50.7) 105 (49.3) 213 (100)
KEEP OBJECTION-ABLE BOOKS	Attorneys Journalists Total	76 (35.7) 56 (26.3) 132 (62)	30 (14.1) 46 (21.6) 76 (35.7)	0 (0) 3 (1.4) 3 (1.4)	2 (0.9) 0 (0) 2 (0.9)	108 (50.7) 105 (49.3) 213 (100)
SALE OF OBJECTION-ABLE BOOKS	Attorneys Journalists Total	84 (39.4) 72 (33.8) 156 (73.2)	20 (9.4) 32 (15) 52 (24.4)	0 (0) 1 (0.5) 1 (0.5)	4 (1.9) 0 (0) 4 (1.9)	108 (50.7) 105 (49.3) 213 (100)

TABLE 18
FREEDOM TO ADVERTISE HARMFUL PRODUCTS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	44	40.7	52	49.5	96	45.1
Sometimes	48	44.4	42	40.0	90	42.3
Not At All	14	13.0	5	4.8	19	8.9
Don't Know	2	1.9	6	5.7	8	3.7
Total	108	100.0	105	100.0	213	100.0

$X^2 = 13.29021$ df = 4 p. = .00094

statistical significance between response and profession.

Approximately 88 percent of respondents said the freedom to advertise products that are legal but harmful to the public, such as tobacco and liquor, should be protected at least some of the time (Table 18). Newspaper journalists' opinions were statistically significant from those of attorneys, with 9 of 10 newspaper journalists saying it should be protected some or all of the time. The chi-square may be inaccurate, however, due to a cell size of 5.

Attorneys and newspaper journalists shared similar beliefs concerning the freedom to report about the sexual habits of public figures, as defined by the First Amendment. Nine in 10 respondents said it should be protected some or all of the time. There was no statistical significance between response and profession.

Attorneys and newspaper journalists were also in agreement that the freedom to refuse advertising about certain products, with 9 in 10 saying it should be protected at

TABLE 19
FREEDOM OF JOURNALISTS TO TAKE SIDES WITH FOREIGN GOVERNMENT

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	71	65.7	45	42.9	116	54.5
Sometimes	32	29.6	43	41.0	75	35.2
Not At All	2	1.9	14	13.3	16	7.5
Don't Know	3	2.9	3	2.9	6	2.8
Total	108	100.0	105	100.0	213	100.0

$X^2 = 19.40251$ df = 4 p. = .00065

least some of the time. There was no statistical significance between response and profession.

Nine in 10 attorneys and newspaper journalists agreed that the freedom of newspapers to take sides in editorials during an election campaign should be protected all of the time. There was no statistical significance between response and profession.

Attorneys felt more strongly that the freedom of journalists to take sides with a foreign government against the position of the United States should be protected all the time (Table 19). Attorneys' opinions on this freedom were statistically significant from those of attorneys, with 6 of 10 newspaper journalists saying it should be protected all of the time. With the cell sizes less than 5, the resulting chi-square may be inaccurate.

Attorneys and newspaper journalists were in overall agreement about the freedom of television stations to take sides with a foreign government against the position of the United States, with 9 in 10 saying it should be protected some or all of the time. There

was no statistical significance between profession.

Newspaper journalists felt more strongly that the freedom of journalists to keep their sources confidential if a court demands to know the identity of the source should be protected all the time – a basic tenet of press freedom (Table 20). Six in 10 newspaper journalists said the freedom should be protected all the time. With three cell sizes of 2, however, the resulting chi-square may be inaccurate.

Approximately 81 percent of respondents said the freedom of journalists to report on classified material that the government wants to keep secret should be protected at least some of the time. There was no statistical significance.

Newspaper journalists felt more strongly than attorneys that the freedom of journalists to report factually inaccurate information they believe to be true should be protected all of the time (Table 21). There was statistical significance between response and profession. The chi-square may be in accurate, however, due to cell sizes less than 5.

Nine in 10 attorneys and newspaper journalists said the freedom of high school students to report on controversial issues in their student newspapers without approval of school authorities is either protected all the time or some of the time. There was no statistical significance between response and profession.

Attorneys felt more strongly than newspaper journalists that the freedom of television stations to project winners of elections while people are still voting should be protected all the time (Table 22). Five in 10 attorneys said the freedom should be protected all the time, which was statistically significant. However, the chi-square may be

TABLE 20
FREEDOM TO KEEP SOURCES CONFIDENTIAL

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	25	23.1	65	61.9	90	42.3
Sometimes	63	58.3	36	34.3	99	46.5
Not At All	18	16.7	2	1.9	20	9.4
Don't Know	2	1.9	2	1.9	4	1.9
Total	108	100.0	105	100.0	213	100.0

$X^2 = 41.90748$ df = 4 p. = .00000

TABLE 21
FREEDOM TO REPORT FACTUALLY INACCURATE INFORMATION

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	22	20.4	34	32.4	56	26.3
Sometimes	64	59.3	38	36.2	102	47.9
Not At All	18	16.7	24	22.9	42	19.7
Don't Know	3	2.9	9	8.6	12	6.1
Total	108	100.0	105	100.0	213	100.0

$X^2 = 19.41762$ df = 4 p. = .00065

TABLE 22
FREEDOM OF PROJECT ELECTION VICTORS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	51	47.2	32	30.5	83	39.0
Sometimes	26	24.1	26	24.8	52	24.4
Not At All	28	25.9	39	37.1	67	31.5
Don't Know	3	2.9	8	7.6	11	5.2
Total	108	100.0	105	100.0	213	100.0

$X^2 = 17.11651$ df = 4 p. = .00183

inaccurate with a cell size less than 5..

Attorneys and newspaper journalists shared similar viewpoints on the freedom of newspapers and television stations to run graphic photographs of violent events. Approximately 40 percent of respondents said it should be protected all the time. There was no statistical significance between response and profession.

Attorneys and newspaper journalists shared similar opinions that the freedom of journalists to report on the mistakes a public figure made more than 20 years ago should be protected all the time. There was no statistical significance between response and profession.

Two in three respondents said the freedom of journalists to report the name of a juvenile charged with a crime should be protected some of the time. There was no statistical significance between response and profession.

Attorneys and newspaper journalists shared similar beliefs concerning the reporting of the name or identity of a rape victim. Four in 10 respondents (47 attorneys and 42 newspaper journalists), or 41.8 percent, said the freedom of journalists to report the name or identity of a rape victim should not be protected. There was no statistical significance between response and profession.

Attorneys felt more strongly than newspaper journalists that the freedom of television stations to show music videos that seem to promote drug use should be protected some or all of the time. There was no statistical significance between response and profession.

Almost 4 in 10 respondents said the freedom of record companies to distribute recordings that portray sexual themes, drugs or religious cults should be protected all the time. There was no statistical significance between response and profession.

Almost 5 in 10 respondents said the freedom to sell magazines or books that feature nude pictures should be protected all the time. There was no statistical significance between response and profession.

Approximately 44 percent of attorneys and newspaper journalists said the freedom of movie theaters to allow teenagers to view R-rated movies should be protected some of the time. There was no statistical significance between response and profession.

Attorneys felt more strongly than newspaper journalists that the freedom to keep objectionable books on library shelves should be protected all of the time (Table 23). Seven in 10 attorneys said the freedom should be protected all of the time, which was statistically significant between response and profession. With 4 of 8 cell sizes being less than 5, the resulting chi-square may not be accurate.

TABLE 23
FREEDOM OF LIBRARY TO KEEP OBJECTIONABLE BOOKS

	Response				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
All the Time	76	70.4	56	53.3	132	62.0
Sometimes	30	27.8	46	43.8	76	35.7
Not At All	0	0.0	3	2.9	3	1.4
Don't Know	2	1.9	0	0.0	2	0.9
Total	108	100.0	105	100.0	213	100.0

$X^2 = 11.35872$ df = 3 p. = .00994

Almost 3 in 4 respondents (73.2 percent) said the freedom to protect the publication or sale of a book, even if there are objections about its content, should always be protected. There was no statistical significance between response and profession.

You, Your Computer and the Internet

This section consisted of demographic information of respondents, their computer literacy and their use of the Internet. It also addressed opinions of attorneys and newspaper journalists on issues of professional and personal conduct: use of the Internet to advertise the services of attorneys and for information delivery; and privacy; libel protection and free expression on the Internet.

Respondents were asked their gender (Table 24). Males dominated the response, with 8 in 10 attorneys and 6 in 10 newspaper journalists being male. There was no statistical significance between response and profession.

Respondents were asked their age (Table 25). Attorneys and newspaper journalists displayed similar responses, which were not statistically significant. The youngest respondent was age 23, while the oldest was age 72. The mean was 42.7 years and the median was 42.0. There was no statistical significance between response and profession

Attorneys and newspaper journalists were asked their education (Table 26). As expected, there was statistical significance between response and profession with 106 of

TABLE 24
GENDER

	Profession				Total	
	Attorneys		Journalists			
Gender	N	Percent	N	Percent	N	Percent
Female	17	16.2	41	39	58	27.6
Male	88	83.8	64	61	152	72.4
Total	105	100.0	105	100.0	210	100.0

$X^2 = 13.72051$ df = 1 p. = .00021

TABLE 25
AGE

	Profession				Total	
	Attorneys		Journalists			
Age	N	Percent	N	Percent	N	Percent
40-Younger	42	38.9	50	47.6	92	43.2
41-Older	66	66.1	55	52.4	121	56.8
Total	108	100.0	105	100.0	213	100.0

$X^2 = 11.61050$ df = 2 p. = .00301

Mean = 42.7 Median = 42.0

TABLE 26
EDUCATION

	Profession				Total	
	Attorneys		Journalists			
Education	N	Percent	N	Percent	N	Percent
High School / Some College	0	0.0	20	19	20	19.0
Bachelor's Degree	1	0.9	66	62.9	67	31.5
Graduate School	106	99.1	19	18.1	125	58.7
Total	107	100.0	105	100.0	212	100.0

$X^2 = 140.7870$ df = 2 p. = .00001

108 attorneys (98.1 percent) reporting a graduate education including graduate study, the completion of a Master's degree and/or the completion of a Doctorate.

Almost 96 percent of all respondents (99 attorneys and 94 newspaper journalists) were familiar or somewhat familiar with computers (Table 27). There was statistical significance between response and profession, however, with almost 7 in 10 newspaper journalists reporting they were very familiar or expert.

Attorneys and newspaper journalists, as expected, displayed statistical significance in preference of personal computers for the workplace (Table 28). Approximately 63 percent of attorneys used an IBM brand clone computer for their word processing needs. Newspaper journalists displayed a similar affinity for the Macintosh computer, which is noted for its ease of use in desktop publishing.

There was also statistical significance in preference of personal computers for use by attorneys and newspaper journalists in their homes, as expected, displayed statistical significance in preference of personal computers for the workplace (Table 29). Approximately 73 percent of attorneys used an IBM brand clone computer for their word processing needs. Newspaper journalists displayed a similar affinity for the Macintosh computer, which is noted for its ease of use in desktop publishing.

Attorneys and newspaper journalists were divided in their use of online services. Twenty-five percent of respondents used either America Online or did not use an online service (Table 30). There was no statistical significance between response and profession.

TABLE 27
COMPUTER EXPERIENCE

	Profession				Total	
	Attorneys		Journalists			
Experience	N	Percent	N	Percent	N	Percent
Never Used	8	3.8	1	0.5	9	4.2
Somewhat Familiar	48	22.5	31	14.6	79	37.1
Very Familiar	51	23.9	63	29.6	114	53.5
Expert	1	0.5	9	14.2	10	14.7
Total	108	100.0	104	100.0	212	100.0

$X^2 = 17.72709$ df = 4 p. = .00140

TABLE 28
COMPUTER USE AT WORK

	Profession				Total	
	Attorneys		Journalists			
Computer	N	Percent	N	Percent	N	Percent
IBM Brand	13	6.1	0	0.0	13	6.1
IBM Clone	68	31.9	38	17.8	106	49.8
Macintosh	3	1.4	47	22.1	50	23.5
IBM & Mac	3	1.4	17	8.0	20	9.4
Did Not Know	21	9.9	3	1.4	11	5.2
Total	108	100.0	105	100.0	213	100.0

$X^2 = 85.25795$ df = 5 p. = .00000

TABLE 29
PERSONAL COMPUTER USE

	Profession				Total	
	Attorneys		Journalists			
Computer	N	Percent	N	Percent	N	Percent
IBM Brand	13	6.1	7	3.3	20	9.4
IBM Clone	66	31.0	40	18.8	106	49.8
Macintosh	6	2.8	32	15	38	17.8
Mac Clone	0	0.0	1	0.5	1	0.5
IBM & Mac	3	1.4	2	0.9	5	2.3
Did Not Know	20	9.4	23	10.8	43	20.2
Total	108	100.0	105	100.0	213	100.0

$X^2 = 30.53063$ df = 6 p. = .00003

TABLE 30
ONLINE SERVICE PROVIDER

	Profession				Total	
	Attorneys		Journalists			
Service Provider	N	Percent	N	Percent	N	Percent
America Online	28	13.1	19	8.7	47	22.1
CompuServe	8	3.8	1	0.5	9	4.2
Prodigy	4	1.9	3	1.4	7	3.3
None	25	11.7	26	12.2	51	23.9
ISP	37	17.4	50	23.5	87	40.8
No Response	6	2.8	6	2.8	12	5.6
Total	108	100.0	105	100.0	213	100.0

$X^2 = 9.23242$ df = 5 p. = .10015

When respondents did choose to go online, approximately 36.2 percent of respondents (39.8 percent of attorneys and 32.4 percent of newspaper journalists) connected with the Internet at 28.8 kilobytes per second – or did not know which modem speed was being used (Table 31). There was no statistical significance between response and profession.

Almost 75 percent of respondents (72.3 percent) logged onto the Internet for five or less hours per week (Table 32). Attorneys, however, were more likely to log onto the Internet for five or fewer hours per week while newspaper journalists were likely to surf the Internet six or more hours. There was statistical significance between response and profession.

Approximately 50 percent of attorneys and newspaper journalists either strongly agreed or agreed that attorneys should be allowed to use World Wide Web sites to advertise their services (Table 33). There was no statistical significance between response and profession.

Approximately 84 percent of attorneys and newspaper journalists either strongly agreed or agreed that newspapers should be allowed to use the World Wide Web for information delivery (Table 34). There was no statistical significance between response and profession.

TABLE 31
INTERNET CONNECTION SPEED

	Profession				Total	
	Attorneys		Journalists			
Connection Speed	N	Percent	N	Percent	N	Percent
Local Area Network	4	3.7	5	4,8	9	4.2
T1/T3	0	0.0	10	9.6	10	4.7
28.8 kps	43	39.8	34	32.4	77	36.2
14.4 kps	14	13.0	10	9.5	24	11.3
9.6 kps	3	2.8	1	1.0	4	1.9
Under 9.6 kps	0	0.0	2	1.9	2	0.9
Don't Know	27	25.0	24	22.9	51	23.9
No Response	17	15.7	19	18.1	36	16.9
Total	108	100.0	105	100.0	213	100.0

X^2 = 15.07804 df = 8 p. = .05765

TABLE 32
HOURS PER WEEK ONLINE

	Profession				Total	
	Attorneys		Journalists			
Hours	N	Percent	N	Percent	N	Percent
Five or less	87	80.6	67	63.8	154	72.3
Six or more	21	19.4	38	36.2	59	27.3
Total	108	100.0	105	100.0	213	100.0

X^2 = 7.45493 df = 1 p. = .00633

TABLE 33
ATTORNEY'S FREEDOM TO ADVERTISE ON INTERNET

	Profession				Total	
	Attorneys		Journalists			
Agreement	N	Percent	N	Percent	N	Percent
Strongly Agree	21	19.4	15	14.3	36	16.9
Agree	31	28.7	42	40.0	73	34.3
Neutral	28	25.9	31	29.5	59	27.7
Disagree	12	11.1	4	3.8	16	7.5
Strongly Disagree	13	12.0	2	1.9	15	7.0
Don't Know	3	2.8	11	10.5	13	6.1
Total	108	100.0	105	100.0	213	100.0

$X^2 = 22.06964$ df = 6 p. = .00118

TABLE 34
NEWSPAPER PUBLICATION ON INTERNET

	Profession				Total	
	Attorneys		Journalists			
Agreement	N	Percent	N	Percent	N	Percent
Strongly Agree	47	44.4	47	44.8	95	44.6
Agree	40	37.0	43	41.0	83	39.0
Neutral	14	13.0	6	5.7	20	9.4
Disagree	1	0.9	1	1.0	2	0.9
Strongly Disagree	0	0.0	0	0.0	0	0.0
Don't Know	4	3.7	8	7.6	12	5.6
Total	107	100.0	105	100.0	212	100.0

$X^2 = 5.61115$ df = 5 p. = .34591

Internet use by respondents, or lack thereof, is chronicled in Table 35. Overall, attorneys and newspaper journalists showed a complete lack of utilization of the Internet – except for their use of electronic mail. In no case was there statistical significance between response and profession.

Results by category are as follows:

Seventy-four percent of attorneys and newspaper journalists did not use the Internet for telecommuting or for taking work home.

Attorneys and newspaper journalists were asked how many hours per week that they used the Internet for home business. Almost 9 out of 10 respondents had not used the Internet for home business.

Use of the Internet for electronic mail was the only area in which attorneys and newspaper journalists shared more than casual use, with newspaper journalists holding a decided edge. Approximately 48.4 percent of respondents (57 attorneys and 46 newspaper journalists) did not use the Internet for electronic mailing (e-mail) with friends and family. Almost the same number, 47.5 percent or 101 respondents (49 attorneys and 52 newspaper journalists) used the Internet for e-mailing for 1-2 hours per week.

Approximately 90.6 percent of respondents did not use the Internet for household administration via fax (financial statements, tax forms, etc.).

Almost 15 percent of respondents used the Internet for shopping at home.

Approximately 28.7 percent of attorneys and newspaper journalists used the Internet for academic research from 1-2 hours per week.

TABLE 35: INTERNET USE

HOURS	RESPONSE	NONE Count (%)	1-2 Count (%)	3-4 Count (%)	5-6 Count (%)	7-8 Count (%)	9-10 Count (%)	11-over Count (%)
TELECOM-MUTING	Attorney	84 (39.4)	18 (8.4)	3 (1.4)	3 (1.4)	0 (0)	0 (0)	0 (0)
	Journalist	74 (34.7)	23 (10.8)	3 (1.4)	2 (0.9)	1 (0.5)	2 (0.9)	0 (0)
	Total	158 (74)	41 (19.3)	6 (2.8)	5 (2.4)	1 (0.5)	2 (0.9)	0 (0)
HOME BUSINESS	Attorney	101 (47.4)	4 (1.9)	1 (0.5)	0 (0)	0 (0)	1 (0.5)	1 (0.5)
	Journalist	89 (41.8)	14 (6.5)	2 (0.9)	0 (0)	0 (0)	0 (0)	0 (0)
	Total	190 (89.2)	18 (8.4)	3 (1.4)	0 (0)	0 (0)	1 (0.5)	1 (0.5)
E-MAIL	Attorney	57 (26.8)	49 (23)	1 (0.5)	0 (0)	0 (0)	0 (0)	0 (0)
	Journalist	46 (21.6)	52 (24.5)	3 (1.4)	3 (1.4)	1 (0.5)	1 (0.5)	0 (0)
	Total	103 (48.4)	101 (47.5)	4 (1.9)	3 (1.4)	1 (0.5)	1 (0.5)	0 (0)
HOUSE-HOLD ADMIN.	Attorney	97 (45.5)	11 (5.1)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
	Journalist	96 (45.1)	9 (4.2)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
	Total	193 (90.6)	20 (9.4)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SHOP AT HOME	Attorney	94 (44.1)	14 (6.6)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
	Journalist	87 (40.8)	17 (8)	1 (0.5)	0 (0)	0 (0)	0 (0)	0 (0)
	Total	181 (85)	31 (14.5)	1 (0.5)	0 (0)	0 (0)	0 (0)	0 (0)
ACADEM-ICS	Attorney	72 (33.8)	26 (12.2)	6 (2.8)	1 (0.5)	0 (0)	1 (0.5)	1 (0.5)
	Journalist	64 (30)	35 (16.5)	3 (1.4)	3 (1.4)	1 (0.5)	0 (0)	0 (0)
	Total	136 (63.8)	61 (28.7)	9 (4.2)	4 (1.9)	1 (0.5)	1 (0.5)	1 (0.5)
SUBSCRI-BER SERVICS	Attorney	73 (34.3)	28 (13.2)	3 (1.4)	2 (0.9)	1 (0.5)	0 (0)	1 (0.5)
	Journalist	72 (33.8)	21 (9.8)	3 (1.4)	1 (0.5)	1 (0.5)	6 (2.8)	1 (0.5)
	Total	145 (68.1)	49 (23)	6 (2.8)	3 (1.4)	2 (0.9)	6 (2.8)	2 (0.9)
ORGANIZ-ATIONS	Attorney	103 (48.4)	4 (1.9)	0 (0)	1 (0.5)	0 (0)	0 (0)	0 (0)
	Journalist	95 (44.6)	9 (4.2)	1 (0.5)	0 (0)	0 (0)	0 (0)	0 (0)
	Total	198 (98)	13 (6.1)	1 (0.5)	1 (0.5)	0 (0)	0 (0)	0 (0)
GAMES	Attorney	95 (44.6)	13 (6.1)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
	Journalist	85 (39.9)	17 (8)	1 (0.5)	2 (0.9)	0 (0)	0 (0)	0 (0)
	Total	180 (84.5)	30 (14)	1 (0.5)	2 (0.9)	0 (0)	0 (0)	0 (0)
SPECIAL INTEREST	Attorney	79 (37.1)	28 (13.1)	1 (0.5)	0 (0)	0 (0)	0 (0)	0 (0)
	Journalist	80 (37.6)	21 (9.9)	1 (0.5)	2 (0.9)	1 (0.5)	0 (0)	0 (0)
	Total	159 (74.6)	49 (23)	2 (0.9)	2 (0.9)	1 (0.5)	0 (0)	0 (0)
NEWS GROUPS	Attorney	80 (37.6)	21 (9.9)	2 (0.9)	0 (0)	0 (0)	0 (0)	0 (0)
	Journalist	81 (38)	21 (9.9)	3 (1.4)	1 (0.5)	1 (0.5)	2 (0.9)	1 (0.5)
	Total	161 (75.6)	42 (19.7)	5 (2.4)	1 (0.5)	1 (0.5)	2 (0.9)	1 (0.5)

NOTE: ROWS FOR ATTORNEYS EQUAL 50.7 PERCENT; ROWS FOR JOURNALISTS EQUAL 49.3 PERCENT; AND, TOTAL ROWS EQUAL 100.0 PERCENT

Approximately 32 percent of attorneys and newspaper journalists used the Internet for subscriber services (news reports, stock market reports).

Approximately 7 percent of attorneys and newspaper journalists used the Internet for organizational, club or volunteer activity.

Approximately 14 percent of attorneys and newspaper journalists used the Internet for playing/downloading games.

Approximately 23 percent of attorneys and newspaper journalists used the Internet for special interest groups from 1-2 hours per week.

One in five attorneys and newspaper journalists accessed News Groups from 1-2 hours each week.

Three in four respondents said that the right to privacy on the Internet was of high importance (Table 36). Approximately 82 percent of attorneys rated Internet privacy of high importance, while 70 percent of newspaper journalists held similar opinions. There was statistical significance between response and profession.

Seventy-five percent of respondents rated libel protection on the Internet of high importance (Table 37). There was no statistical significance between response and profession.

Eight in 10 respondents rated the right to free speech on the Internet of high importance (Table 38). There was no statistical significance between response and profession.

TABLE 36
IMPORTANCE OF INTERNET PRIVACY

	Profession				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	19	18.1	30	29.7	49	23.8
High	86	81.9	71	70.3	157	76.2
Total	108	100.0	105	100.0	213	100.0

X^2 = 3.96308 df = 1 p. = .04651
Mean = 7.484 Median = 9.000

TABLE 37
IMPORTANCE OF INTERNET LIBEL PROTECTION

	Profession				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	47	43.5	35	33.3	82	38.5
High	61	56.5	70	66.7	131	61.5
Total	108	100.0	105	100.0	213	100.0

X^2 = 2.33263 df = 1 p. = .12669
Mean = 6.709 Median = 8.000

TABLE 38
IMPORTANCE OF FREE SPEECH ON INTERNET

	Profession				Total	
	Attorneys		Journalists			
Importance	N	Percent	N	Percent	N	Percent
Low	17	15.7	25	23.8	42	19.7
High	91	84.3	80	76.2	171	80.3
Total	108	100.0	105	100.0	213	100.0

X^2 = 2.18959 df = 1 p. = .13895
Mean = 8.070 Median = 10.000

CHAPTER V

SUMMARY, CONCLUSIONS and RECOMMENDATIONS

Summary

Attorneys and newspaper journalists, through the practice of their professions, have been perceived historically to share similar beliefs concerning the protections given by the First Amendment and Bill of Rights. This study sought the opinions of a random sampling of Tennessee attorneys and newspaper journalists on free expression and freedom of the press. It also sought to ascertain their use of personal computers and the Internet.

Three hundred and twelve attorneys and 301 newspaper journalists in the state of Tennessee were randomly surveyed. There were 213 respondents: 108 attorneys and 105 newspaper journalists.

This study asked two research questions. The first was to determine the self-described opinions of attorneys and newspaper journalists on free expression and freedom of the press. The second accessed if attorneys and newspaper journalists in Tennessee in 1997 had comparable levels of expertise in their use of personal computers and the Internet.

Question 1: Do attorneys and newspaper journalists share comparable opinions on selected questions concerning the Bill of Rights and the First Amendment?

Attorneys and newspaper journalists shared similar responses to First Amendment issues. Both groups were highly supportive of free expression. Aside from mutual indecision on the right to take up and bear arms, however, attorneys' opinions consistently gave more credence to the importance of issues concerning the Bill of Rights and the First Amendment. Newspaper journalists' opinions did not support the right to assemble, the right to talk freely, the right to practice religion, the right to a speedy and public trial and the right to a free press as strongly as attorneys.

In the area of free speech rights, the typical attorney and typical newspaper journalist shared similar views regarding the freedom to yell "fire" as a prank, speak out in favor of a political candidate, disagree with government officials, discuss sexual habits in public, allow children to curse their parents in public, disagree with the boss over politics, report the misdeeds of an employer, publish lies that damage reputation, advocate Satanism or other cults, dance in a sexually suggestive manner, report information that the United States Government says will damage national security and take God's name in vain.

However, attorneys may be construed as stronger civil libertarians than newspaper journalists on the issues of the freedom to use words offensive to special interest groups; burn the United States flag as a protest; advocate homosexual behavior;

use obscene gestures in public; advocate interracial dating; dance in the nude; use slang words for sexual acts; use words offensive to racial groups; view sexually explicit photographs on the Internet; and, buy books with nude pictures.

Disturbingly, newspaper journalists' opinions were less restrictive on civil liberties in the areas concerning the freedom to provide classified information to a foreign government with approximately nine percent of respondents saying it should be protected all the time. It is illegal to pass classified information to a foreign government.

Particularly puzzling were the responses to examples in free speech rights, where socially accepted norms consistently overrode constitutionally protected speech in several areas, including: discussing sexual habits in public; children cursing their parents; using words offensive to groups; burning the flag as a protest; advocating diverse religious interests, including Satanism; and, taking God's name in vain. In each case, the example should be protected constitutionally, but not socially acceptable.

In examples that were illegal, respondents' personal opinions were not always in agreement with the law. For example, 1 in 5 respondents said giving classified information to foreign governments should be protected some or all of the time. However, 2 in 3 of the same respondents said the right to make statements that the President says may damage national security should be protected sometimes -- and only 13.6 percent said it should be protected all the time.

Inconsistencies in the area of press freedom were also evident in respondents' personal opinions. Only 54.5 percent of respondents said that viewing books or

magazines with nude pictures should be protected all the time, while 41.3 percent said viewing sexually explicit pictures on the Internet should be protected all the time. However, 79.8 percent said that reading banned books should be protected all the time.

In the section on media rights, the inconsistencies in respondents' continued. Almost 25 percent of respondents said that advertising illegal products should be protected at least some of the time and 24 percent said that advertising products with false or misleading claims should be protected at least some of the time. Both cases are illegal. Respondents' opinions on protection for advertising pornographic or obscene material were unsure. It is illegal to advertise pornographic or obscene material.

Ethical questions, such as advertising legal but harmful products, such as tobacco and alcohol; the sale of guns; the refusal of advertising; the reporting of sexual habits of public figures; and, newspapers taking sides during elections, also brought mixed responses.

Other areas of ethical reporting practices, such as journalists siding with foreign governments, television taking sides in elections, confidentiality of sources and reporting classified or inaccurate information, brought mixed response rates. Additional examples on reporting practices, such as high school students reporting controversial issues in their student newspapers without approval of school authorities; newspapers or television stations running graphic photographs of violent events; reporting about the mistakes a public figure made more than 20 years ago; reporting the name or identity of a rape victim; and, reporting the name of a juvenile charged with a crime, were met with mixed

responses. Protection of broadcasting/publication rights for television, recording, cinema and magazines also met with mixed responses.

Attorneys and newspaper journalists differed in their support of two issues: allowing attorneys to advertise their services on the Internet and allowing newspapers to use the Internet for information delivery. Approximately 50 percent of respondents either strongly agreed or agreed that attorneys should be allowed to use World Wide Web sites to advertise their services – which is protected by the First Amendment. Approximately 83.6 percent of respondents said they strongly agreed or agreed that newspapers should use World Wide Web sites for information delivery.

Attorneys and newspaper journalists shared similar beliefs in the areas of privacy on the Internet, libel protection on the Internet and free speech protection on the Internet. The rights to privacy and to free speech on the Internet were found to be more important in the opinion of attorneys than newspaper journalists, giving credence to the thought that attorneys may be construed as stronger civil libertarians. Newspaper journalists rated libel protection more important than did attorneys, which was expected due to their inherent professional interest. In all three areas, however, there was no significance concerning the profession and its response.

Question 2: Do attorneys and newspaper journalists in Tennessee in 1997 have comparable levels of expertise in their use of personal computers and the Internet?

Demographics of each sample were defined to determine the level of computer

expertise. The typical attorney surveyed was a male at least age 41 with a graduate degree. The typical attorney was somewhat or very familiar with computers and utilized an IBM brand clone for personal and professional use. When the typical attorney wanted to access the Internet, he used an Internet Service Provider (ISP) or America Online (AOL) for access privileges at a modem speed of 28,800 bps. When he accessed the Internet in a typical week, he was online five hours or less and utilized the Internet for telecommuting, reading/sending electronic mail, academic services, subscriber services and fulfilling special interests from 1 to 2 hours a week. He also utilized News Groups to interact with others on the World Wide Web. The typical attorney agreed with his peers that it was permissible to the use the World Wide Web to advertise his services – which is allowed under the First Amendment – and for newspapers to be posted on the Internet.

The typical newspaper journalist was a male age 41 or older with a bachelor's degree. However, it was more likely for female newspaper journalists to respond than female attorneys, with 39 percent of newspaper journalists being female versus 16.2 percent being female attorneys. The typical newspaper journalist was very familiar with computers, with the preferred platform for professional use being the Macintosh. This was expected, as Macintosh computers are known for their desktop publishing abilities. The typical newspaper journalist had either an IBM brand clone or Macintosh for their personal use. When the typical newspaper journalist went online, he preferred an Internet Service Provider (ISP) and connected with the World Wide Web using a 28,800 bps modem. The typical journalist accessed the Internet for six or more hours per week.

When online, the typical journalist used the Internet for telecommuting (possibly transmitting free-lance work), sending/reading electronic mail, pursuing academic and special interests, playing games and utilizing subscriber services and News Groups.

For the study, the typical respondent was very familiar with computers, preferring an IBM clone for personal use and at work. The typical respondent had an Internet Service Provider, gaining access to the Internet with a 28.8 kps modem from one to two hours each week. When online, the typical respondent had little use of telecommuting, home business, household administration or organizational activities available on the World Wide Web. Instead, they spent their time sending/reading e-mail and accessing news groups and subscriber services in addition to shopping at home (15 percent) and advancing their education. Attorneys and newspaper journalists were also in agreement concerning their lack of use of the Internet. Attorneys and newspaper journalists were found to frequently use only one of 11 Internet features surveyed – the use of electronic mail to send/receive messages. In that case, approximately half of the 213 respondents used electronic mail. In the other 10 areas, no area reached 30 percent usage.

Conclusions

This research was to determine the opinions of two significant aggregations of influential persons – attorneys and newspaper journalists – in the state of Tennessee on free expression. It also studied, for the first time, the use of personal computers and the

Internet by those two groups.

With a response rate of 34.7 percent, the study found that attorneys and newspaper journalists were highly supportive of free expression. Aside from mutual indecision on the right to take up and bear arms, however, attorneys' opinions consistently gave more credence to the importance of issues concerning the Bill of Rights and the First Amendment. Newspaper journalists' opinions did not support the right to assemble, the right to talk freely, the right to practice religion, the right to a speedy and public trial and the right to a free press as strongly as those of attorneys. This was not expected. Due to the practice of their respective professions, it was assumed that attorneys and newspaper journalists would be "keepers of the faith." Instead, their mutual indecision lends credence to the possibility that attorneys and newspaper journalists may not be sufficiently grounded in the fundamental issues concerning the Bill of Rights of the Constitution of the United States. Lack of a perceived threat to their liberties may also be a reason for the inconsistencies.

As a whole, attorneys held higher regard for free expression and free press guarantees than newspaper journalists. This was affirmed statistically and by comparison with responses from newspaper journalists. Possibly, attorneys are stronger civil libertarians than newspaper journalists due to their daily use and familiarity with the law.

Newspaper journalists' relative lack of enthusiastic support of the right to assemble, the right to talk freely, the right to practice religion, the right to a speedy and public trial and the right to a free press is puzzling. These areas would be considered the

backbones of a free society and a free press. Yet, the current "keepers of the faith" did not support those rights. Newspaper journalists felt more strongly than attorneys in their support of two issues: allowing attorneys to advertise their services on the Internet and allowing newspapers to use the Internet for information delivery. Almost 27 percent of attorneys were neutral in their support of using the Internet to advertise their services. As these areas are protected under the First Amendment, one could surmise that attorneys have more faith in traditional forms of advertisement for their services.

The rights to privacy and to free speech on the Internet were more important in the opinion of attorneys than newspaper journalists. Newspaper journalists, who seemingly have a higher vested interest in those areas than attorneys due to the nature of their profession, did have a higher opinion of libel protection more important than did attorneys. Confusing is the fact that respondents were not unanimous in their beliefs concerning these issues. Possibly, these responses are the result of beliefs that the First Amendment is not threatened by the emerging technology of the Internet. However, it is more likely that the perceived lack of a threat has left respondents indifferent about these areas.

Both groups demonstrated working knowledge about personal computers but regarded the Internet more as a medium for sending and receiving electronic mail than a means for enhancing their personal and professional lives. This was a surprising finding for newspaper journalists in the state of Tennessee, who have the vast resources of the Internet available to support research interests and disseminate breaking news from

company home pages. With the typical attorney and newspaper journalist being age 41 or older, there may be some intimidation with the use of a new medium. However, the emergence of the personal computer with user-friendly software has likely eroded or eradicated that intimidation.

The ease of using the World Wide Web is likely another factor in the high usage of the Internet by attorneys and newspaper journalists. The key to continued use of the Internet will be the expansion of the role it plays in the personal and professional lives of attorneys and newspaper journalists. Evidently, attorneys and newspaper journalists are uneasy, or lack the incentive, to use the Internet as little more than an electronic mailbox or academic tool.

Recommendations for Further Research

This limited study raised several questions concerning the formal training of attorneys and newspaper journalists in communications law and their basic knowledge of the First Amendment and tort law in this area. While there are several outstanding communications law texts and communications law professors at major universities, the results of this study cast a shadow over the formal training of attorneys and newspaper journalists. This is particularly worrisome for newspaper journalists, who are highly exposed to possible violations of First Amendment guarantees, and for attorneys that would have to defend them.

This study may prove the catalyst for a review of the communications law requirements for journalism school and law school graduates in the state of Tennessee – and for those currently practicing in those respective fields. It is recommended that this study should be replicated to look for changes in the self-described viewpoints of samples of attorneys and newspaper journalists on free expression and their use of the Internet from a traditional standpoint. Due to limitations of time and resources, this study did not include broadcast journalists from the state of Tennessee. This, too, may prove an area for replication of the study to ascertain differences in opinions of broadcast and newspaper journalists on free expression and use of personal computers and the Internet. A national study would be in order to ascertain if attorneys and/or newspaper journalists in the state of Tennessee compare favorably with their peers.

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APPENDICES

APPENDIX A

Ithiel de Sola Pool's 10 Principles to Assure First Amendment Guarantees in the Electronic Age

1. The First Amendment applies fully to all media. It applies to the function of communication . . .. it applies to the electronic media as much as to print.

2. Anyone may publish at will. There may be no licensing, no scrutiny of who may produce or sell publications or information in any form.

3. Enforcement of the law must be after the fact, not by prior restraint.

4. Regulation is a last recourse. In a free society, the burden of proof is for the least possible regulation of communication.

5. Interconnection among common carriers may be required. The basic principle of common carriage, namely that all must be served without discrimination, implies that carriers accept interconnection from each other.

6. Recipients of privilege may be subject to disclosure.

7. Privileges have time limits. Patents and copyrights are for finite periods, and then the right expires. This is a way to favor infant industries but limit their privileges when they become giants.

8. The government and common carriers should be blind to circuit use. What the facility is used for is not their concern. What customers transmit on the carrier is no affair

of the carrier.

9. Bottlenecks should not be used to control. Under the First Amendment, no government imposition on a carrier should pass muster if it is motivated by concerns beyond common carriage, any more than the carrier should be allowed to use its service to control its customers.

10. For electronic publishing, copyright enforcement must be adapted for the technology.

APPENDIX B

Named Plaintiffs in the CIEC Challenge to the Communications Decency Act

American Library Association

America Online, Inc.

American Booksellers Association

American Booksellers Foundation for Free Expression

American Society of Newspaper Editors

Apple Computer, Inc.

Association of American Publishers

Association of Publishers, Editors and Writers

Citizens Internet Empowerment

Coalition

Commercial Internet eXchange

Compuserve, Inc.

Families Against Internet Censorship

Freedom to Read Foundation

HotWired Ventures Ltd.

Interactive Digital Software Association

Interactive Services Association

Magazine Publishers of America, Inc.

Microsoft Corporation

Microsoft Network

NETCOM On-Line Communications Services, Inc.

Newspaper Association of America

OpNet

Prodigy, Inc.

Society of Professional Journalists

Wired Ventures Ltd.

APPENDIX C

The Citizens Internet Empowerment Coalition

Association of American University Presses, Inc.

Association of National Advertisers

Association of Research Libraries

Center for Democracy and Technology

Coalition for Networked Information

Media Access Project

Media Institute

Microsystems Software, Inc.

National Association of State Universities & Land Grant Colleges

National Newspaper Association

People for the American Way

Recording Industry Association of America

Software Publishers Association

Special Libraries Association

Surfwatch Software, Inc.

University of California Santa Barbara Library

APPENDIX D

Free Expression and Internet Use Survey

This survey concerns your opinion regarding certain rights and freedoms and your use of personal computers and the Internet. Your answers are confidential, so please be as open and honest as possible.

I. Rights

The Bill of Rights of the U.S. Constitution protects certain things. Not all people take advantage of each right, and not everyone considers them equally important.

As I list each right, please rate its importance on a 1 to 10 scale, where 1 is oflittle importance and 10 is of the highest importance.

On a scale of 1 to 10, how important to you is:

1. The right to own and use firearms.
1 2 3 4 5 6 7 8 9 10

2. The right to assemble, march, protest or petition the government in support of causes you favor.
1 2 3 4 5 6 7 8 9 10

3. The right to talk freely about what you think or to say whatever you want.
1 2 3 4 5 6 7 8 9 10

4. The right to practice the religion of your choice freely or to practice no religion.
1 2 3 4 5 6 7 8 9 10

5. The right to a speedy and public trial if you are accused of a crime.
1 2 3 4 5 6 7 8 9 10

6. The right to have a free press.
1 2 3 4 5 6 7 8 9 10

II. Free Speech Rights

Free speech is protected in the United States by the First Amendment to the Constitution and by other laws. However, the law recognizes that certain kinds of expression are not always protected. In the following examples, do you think they should be protected all of the time; protected sometimes; or, not protected at all?

	All the Time	Sometimes	Not at all	Don't Know
1. Yelling "Fire" in a crowded theater as a prank.	1	2	3	4
2. Speaking out in favor of any candidate for public office.	1	2	3	4
3. Disagreeing with the President or any other high government official.	1	2	3	4
4. Discussing other people's sexual activities in public.	1	2	3	4
5. Children cursing at their parents.	1	2	3	4
6. Using words or phrases that offend people from a different race or ethnic group.	1	2	3	4
7. An employee differing publicly with his/her boss about political issues.	1	2	3	4
8. Burning the flag to protest actions of the government.	1	2	3	4
9. Employees reporting misdeeds by their boss or employer.	1	2	3	4
10. Spreading lies and untruths that damage the reputation of another person.	1	2	3	4
11. Advocating homosexual behavior in public.	1	2	3	4

	All the Time	Sometimes	Not at all	Don't Know
12. Advocating Satanism or other religious cults in public.	1	2	3	4
13. Using obscene gestures in public.	1	2	3	4
14. Dancing in a sexually suggestive manner.	1	2	3	4
15. Advocating dating or marriage of people of different races.	1	2	3	4
16. Nude dancing, including the "strip tease."	1	2	3	4
17. Making statements that the President says may damage national security.	1	2	3	4
18. Using slang words that refer to sexual acts.	1	2	3	4
19. Giving classified information to a foreign government.	1	2	3	4
20. Taking God's name in vain or saying other sacrilegious things.	1	2	3	4
21. Using words or phrases that may offend people from a different religious groups.	1	2	3	4
22. Buying magazines or books that feature nude pictures.	1	2	3	4
23. Downloading, uploading or viewing sexually explicit pictures on the World Wide Web.	1	2	3	4
24. Reading books that have been banned from the local library.	1	2	3	4

III. Media Rights

The law protects the media such as television, newspapers, radio and magazines under certain circumstances, but not in others. In the following examples, do you feel the media should be protected all of the time; protected sometimes; or, not protected at all?

	All the Time	Sometimes	Not at all	Don't Know
1. Advertising products that are illegal.	1	2	3	4
2. Advertising products by making false or misleading claims.	1	2	3	4
3. Advertising pornographic or obscene material.	1	2	3	4
4. Advertising products that are legal but harmful to the public, such as tobacco or liquor.	1	2	3	4
5. Advertising guns for sale.	1	2	3	4
6. Refusing to run advertising about certain products.	1	2	3	4
7. Reporting about the sexual activities of public figures, as defined by the First Amendment.	1	2	3	4
8. Newspapers taking sides in editorials during an election campaign.	1	2	3	4
9. Journalists taking sides with a foreign government against the position of the United States.	1	2	3	4
10. Journalists keeping their sources confidential if a court demands to know the identity of a source.	1	2	3	4
11. Television stations taking sides in editorials during an election campaign.	1	2	3	4

	All the Time	Sometimes	Not at all	Don't Know
12. Journalists reporting on classified material that the government wants to keep secret.	1	2	3	4
13. Journalists reporting factually inaccurate information they believe to be true.	1	2	3	4
14. Television stations projecting winners of elections while people are still voting.	1	2	3	4
15. High school students reporting controversial issues in their student newspapers without approval of school authorities.	1	2	3	4
16. Newspapers or TV stations running graphic photographs or violent events.	1	2	3	4
17. Journalists reporting about the mistakes a public figure made more than 20 years ago.	1	2	3	4
18. Journalists reporting the name or identity of a rape victim.	1	2	3	4
19. Journalists reporting the name of a juvenile charged with a crime.	1	2	3	4
20. Television showing music videos that seem to promote drug use.	1	2	3	4
21. Distributing recordings that portray sexual themes, drugs, or religious cults.	1	2	3	4
22. Movie theaters allowing teenagers to see R-rated movies.	1	2	3	4

	All the Time	Sometimes	Not at all	Don't Know
23. Selling magazines or books that feature nude pictures.	1	2	3	4
24. Keeping books in a school or public library, even if there are objections to content.	1	2	3	4
25. Protecting the publication or sale of a book, even if there are objections about its content.	1	2	3	4

IV. You, Your Computer and the Internet

1. Indicate your gender:
   1 Female
   2 Male

2. How old are you?



3. What is the last grade in school you completed?
   1 High school graduate
   2 Some college
   3 College
   4 Some graduate study
   5 Master's degree
   6 Doctorate

4. How experienced are you with computers?
   1 Never used one
   2 Somewhat familiar
   3 Very familiar
   4 Expert

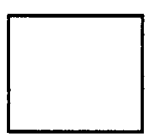
5. What type of computer do you use at work:
1 IBM
2 IBM clone
3 Macintosh
4 Macintosh clone
8 Don't know

6. Which of the following computers do you own or lease for personal or home use?
1 IBM
2 IBM clone
3 Macintosh
4 Macintosh clone
8 Don't know

7. Which online service do you use:
1 America Online
2 CompuServe
3 Prodigy
4 Delphi
5 Genie
8 None
9 Internet Service Provider

8. At what speed are you connecting to the Internet?
1 LAN (Direct connection)
2 T3
3 T1
4 28,800
5 14,400
6 9,600
7 Under 9,600
8 Don't Know

9. How often do you log onto the Internet, i.e., World Wide Web? (Use hours per week)



10. Do you think attorneys should use World Wide Web sites to advertise their services?
1 Strongly agree
2 Agree
3 Neutral
4 Disagree
5 Strongly disagree
8 Don't know

11. Do you think newspapers should use World Wide Web sites for information delivery?
1 Strongly agree
2 Agree
3 Neutral
4 Disagree
5 Strongly disagree
8 Don't know

12. How many hours a week do you use the Internet for:

1 Take home work and/or telecommuting

2 Self-employed business (free-lance work at home)

3 E-mail with friends and family

4 Household administration via fax (financial statements, tax forms, etc.)

5 Classified ads/shop from home

6 Academic research (receive data, discuss school assignments, etc.)

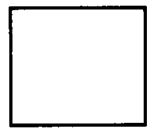
7 Subscriber services (news reports, stock market reports, etc.)

8 Organizational, club and volunteer activity (fund raising, planning)

9 Games (playing chess, downloading games, etc.)

10 Special interest groups (scuba diving, photography, etc.)

13. How many hours a week do you use News Groups?



Use a 1 to 10 scale, where 10 indicates a right of the highest importance to you and 1 represents a right that is of little importance. Numbers between 1 and 10 represent levels of importance in between.

13. On a scale of 1 to 10, how important to you is:

1. Privacy on the Internet.
   1 2 3 4 5 6 7 8 9 10

2. Libel protection on the Internet.
   1 2 3 4 5 6 7 8 9 10

3. Ability to talk freely about what you want on the Internet.
   1 2 3 4 5 6 7 8 9 10

VITA

Richard B. "Rick" Goins was born in Chattanooga, Tennessee, on May 13, 1960. He attended schools in the public system of Chattanooga, Tennessee, the Chattanooga Public School System, where he graduated as co-valedictorian from Kirkman Technical High School in June, 1978. He holds a Bachelor of Science in Engineering Management from the University of Tennessee at Chattanooga, which was received in May 1987.

He is employed by the Electric Power Board of Chattanooga as Communications Administrator. Previously, he was employed by *The Chattanooga Times* as a writer, reporter, editor, photographer, and layout and design artist. He also has worked as a free-lance writer for media outlets that include The Associated Press, *Cincinnati Enquirer*, *Cincinnati Post*, *The Sporting News*, *Baseball America*, *Atlanta Journal-Constitution*, *Knoxville News-Sentinel* and *Memphis Commercial-Appeal*. He has written two books, *Southeast Tennessee Outdoor Recreational Guide*, which was published by the Outdoor Writers Association of America in 1995, and *The Book: A Fan's Guide to Baseball*, which is unpublished.

He was chosen Outstanding Master of Science Student at UT-Chattanooga for the University of Tennessee at Knoxville Distance Learning program and was inducted into *Kappa Tau Alpha*, the national honor society for scholarship in communications, and *Phi Kappa Phi*, the national honor society for superior scholarship and excellence, in 1997.