



# Citizen Journalist, Defamation, and the Need for Judicial Reform

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Citizen Journalist, Defamation,  
and the Need for Judicial Reform

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A Thesis in the Field of Legal Studies  
for the Degree of Master of Liberal Arts in Extension Studies

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## Abstract

The hypothesis was that current law regarding defamation has not kept pace with the appearance of the citizen journalist. The research question that addressed the hypothesis asked, "Should the current laws on defamation treat the citizen journalist the same as the professional journalist"? The research indicates that the law treats the citizen journalist differently than it treats the professional journalist. For one thing, shield laws do not always protect the citizen journalist. Vanessa Leggett's situation is an example of this. Leggett is a citizen journalist who spent time in jail for refusing to reveal confidential sources. On the other hand, courts often give the citizen journalist more First Amendment protection than they give the professional journalist. Dorf & Tarrow (2017) make compelling arguments about this. In addition, Ribstein (2006) uses *Gertz v. Robert Welch, Inc* (1974) to illustrate the notion that the courts give citizen journalists a greater level of First Amendment protection than they give the professional journalist. In an examination of the 1996 Communications Decency Act, Ehrlich (2002) argues that, in the age of the Internet, the problem of defamation can only be solved via reducing anonymity for defamatory posts. The research supports the hypothesis and indicates that citizen journalists are not treated the same as professional journalists. The conclusion drawn from this is that the law

needs to keep up with current technology; in particular, judicial reform is needed so the law can fully address issues surrounding the citizen journalist. Yes, the law should be changed so the citizen and professional journalist are treated the same.

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## Chapter I

### Introduction

The nature of communication technology is rapidly changing. This in turn affects the notion of journalism, because the role of the journalist is to inform the public. The rapid pace of today's changing technology means that the professional journalist and/or citizen journalist both have the ability to impact the reputation of a person, private or public. Professional as well as citizen journalists disseminate accounts and images of newsworthy events. For instance, citizen journalists are now making serious contributions about newsworthy events, and are contributing these accounts and images to mainstream/traditional media.

To avoid confusion, this work uses the term "professional journalist" to refer to a person who produces accounts and images of newsworthy events, and who is employed by a media outlet, or one who sells accounts and images to media outlets. The term "citizen journalist" refers to a person who produces accounts and images of newsworthy events, but who is not employed by any media outlet, and who does not sell accounts or images to media outlets. Media organizations often have rules and regulations about the reporting of newsworthy events. Many media organizations have strict codes of conduct for journalists and for reporting of newsworthy events. For instance, the *Washington Post* has a code of ethics for reporting, and they require strict adherence to this

code.<sup>1</sup> This code is “The Seven Principles for the Conduct of a Newspaper,” the first of which states “[t]he first mission of a newspaper is to tell the truth as nearly as the truth may be ascertained.”<sup>2</sup> The seventh principle indicates that a newspaper should “not be the ally of any special interest.”<sup>3</sup> (See the Appendix for the full seven principles of the code of conduct.) The *Washington Post* acknowledges that the nature of a rapidly changing media environment entails a need to allow change in the ethical requirements. They refer to their policies and standards as a “living document”, subject to change as needed.<sup>4</sup>

Other media outlets do not have strict rules and regulations about verification before reporting. *Infowars*, the media outlet run by Alex Jones, is an example of a media outlet that has a minimal standard of verification. *Infowars* is a media outlet started by conspiracy theorist Alex Jones.<sup>5</sup> *Infowars* presents conspiracy theories as actual news.

This brings up the rise of fake news, where professional journalists as well as citizen journalists present fabricated information as news. Alex Jones is an example of a professional journalist who presents fake news as actual news. Jones is a media personality who is being sued by the families of the victims of the Sandy Hook mass shooting, because he has accused Sandy Hook families of

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<sup>1</sup> “Policies and Standards,” *Washington Post* online (January 1, 2016), accessed August 2, 2018. [https://www.washingtonpost.com/policies-and-standards/?noredirect=on&utm\\_term=.74bb4362996b#factchecking](https://www.washingtonpost.com/policies-and-standards/?noredirect=on&utm_term=.74bb4362996b#factchecking).

<sup>2</sup> “Policies and Standards,” *Washington Post* online.

<sup>3</sup> “Policies and Standards,” *Washington Post* online.

<sup>4</sup> “Policies and Standards,” *Washington Post* online.

<sup>5</sup> Jason Hanna, “What is Infowars?” *CNN* online (January 27, 2017), accessed August 2, 2018. <https://www.cnn.com/2017/01/27/politics/infowars-explainer/index.html>.



faking their family members' deaths.<sup>6</sup> The legal complaint says Jones does not believe the Sandy Hook shooting is a hoax, but that in order to increase his profits, Jones is insisting the families are faking deaths. He is being sued for defamation by the families of the children who died.

The spread of fake news is a serious issue in today's world. Advances in communication technology have ensured that the speed and scope of media outlets that disseminate fake news is equal to the speed and scope of media outlets that disseminate actual news. Social media platforms also contribute to the spread of fake news. In an attempt to combat the rise and spread of fake news, some social media platforms are revising their terms and conditions to prevent the deliberate spread of fake news on their platforms. Some social media platforms outright ban fake news purveyors.

The courts require that professional journalists make an attempt to verify accounts or images they present. As noted earlier, many media organizations require their journalists to adhere to a strict code of verifying facts before reporting. Professional journalists who do not adhere to this are subject to legal action. Alex Jones, for instance, is being sued for defamation because he presented fake news. Alex Jones is not considered a citizen journalist because he has a media outlet (*Infowars*) where he presents his views.

Citizen journalists, on the other hand, do not have to keep to the legal constraints regarding professional journalism's obligations. Ribstein argues that

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<sup>6</sup> Aaron Cooper, "Six More Sandy Hook Families Sue Broadcaster Alex Jones," *CNN* online, last modified August 6, 2018, accessed August 18, 2018. <https://www.cnn.com/2018/05/23/us/alex-jones-sandy-hook-suit/index.html>.

citizen journalists can disseminate material without verifying the accounts or images they present, and the courts do not require them to do so.<sup>7</sup>

The line between professional journalism and citizen journalism is often not clear in actual practice. For instance, is Kim Kardashian-West a professional journalist or is she a citizen journalist when she disseminates newsworthy information? She does not claim to be a journalist. However, she is a public personality, and she has a huge social media presence. Kardashian-West is also paid to endorse products.<sup>8</sup> Information that she presents on her social media platforms is disseminated to not only thousands, but millions of her social media followers.<sup>9</sup> When she tweets about newsworthy events, she has an audience measured in the mega-millions. This is a larger audience than many local professional journalists reach.

This uncertainty surrounding what, exactly, is a journalist (professional or citizen), is partly due to the fact that there is no unified definition of a journalist (professional or otherwise). In the field of journalism, there remains uncertainty about what exactly, are the rights and obligations of a journalist. There is no unified code in the field to precisely define what a journalist is.<sup>10</sup> As a result,

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<sup>7</sup> Larry E. Ribstein, "From Bricks to Pajamas: The Law and Economics of Amateur Journalism," University of Illinois Law & Economics Research Paper No. LE06-008; *William & Mary Law Review* 48 (2006): 185, accessed November 20, 2007, <https://ssrn.com/abstract=700961>. Also available at: <http://dx.doi.org/10.2139/ssrn.700961>.

<sup>8</sup> Jenna Goudreau, "Reality TV Stars Turned Entrepreneurs," *Forbes* online April 13, 2010, accessed August 28, 2018. <https://www.forbes.com/2010/04/13/reality-tv-celebrity-fame-forbes-woman-entrepreneurs-business.html#4bddc6ff3fca>.

<sup>9</sup> Elanor Morgan, "Why is Kim Kardashian famous? You asked Google – here's the answer," *The Guardian* online April 20, 2016, accessed August 28, 2018. <https://www.theguardian.com/commentisfree/2016/apr/20/why-is-kim-kardashian-famous>.

<sup>10</sup> Gina Barton, "What Is a Journalist?" *Quill* May 1, 2002, accessed October 20, 2017. [https://www.spj.org/quill\\_issue.asp?ref=306](https://www.spj.org/quill_issue.asp?ref=306).

there is confusion about what, exactly is a professional journalist, and what exactly, are the rights and responsibilities of a professional journalist.

This confusion affects not only the field of journalism, but also the courts as well. The field itself needs to come up with a unified definition of what a professional journalist is. Otherwise, as Barton points out, the government may step in to decide who gets to be a journalist.<sup>11</sup> When the government gets to decide who is qualified to report the news, then the watchdog aspect of journalism ceases to exist. A free society needs a free press. The field of journalism needs to come up with a clear definition of who gets to be a professional journalist.

In addition, the notion of a journalist is changing. Although the profession itself does not have a clear definition of who a journalist is, the general consensus is that a journalist is a professional employed to present accounts and images of newsworthy events, or a professional who may not be employed by any specific news agency, but sells accounts and images of newsworthy events to media outlets.<sup>12</sup> This notion has changed with the appearance of ordinary citizens who present accounts and images of newsworthy events. Citizen journalists are now making serious contributions to news media outlets. For instance, during the Iran elections of 2009, the mainstream media was excluded by the Iranian authorities. It fell to citizen journalists to provide accounts and

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<sup>11</sup> Gina Barton, "What Is a Journalist?"

<sup>12</sup> Gina Barton, "What Is a Journalist?"

images of the election and unrest during the election period. Reuters<sup>13</sup> and the BBC<sup>14</sup> used these accounts and images.

The lack of a clear notion of who is or is not a professional journalist has ramifications in court. Citizen journalists are held by the courts to a different standard than professional journalists are held. Consequently, citizen journalists who spread false information are often not held accountable. There needs to be judicial reform to make sure journalists, both professional as well as citizen, are held accountable for the information they disseminate.

The hypothesis was that current laws regarding defamation have not kept up with the appearance of the citizen journalist. The research question addressed this issue by asking, "Should the current laws on defamation treat the citizen journalist the same as the professional journalist"?

Both professional and citizen journalists are engaged in the dissemination of accounts and images of newsworthy events. However, the rights and responsibilities of professional journalists do not constrain citizen journalists. An example of this is that the courts often give citizen journalists more First Amendment protection. On the other hand, the protections of professional journalists do not always protect citizen journalists. Shield law, for instance, does not always protect the citizen journalist.

Yet with the rapid advance of communication technology, professional journalists and citizen journalists alike now have the ability to instantly

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<sup>13</sup> Dean Wright, "Citizen Journalism, Mainstream Media, and Iran," in *For the Record*, Reuters. Reuters blog July 2, 2009, <http://blogs.reuters.com/fulldisclosure/2009/07/02/citizen-journalism-mainstream-media-and-iran/>.

<sup>14</sup> Dave Lee, "The Rise of Iran's Citizen Journalists," in *Digital Planet*, BBC World Service, July 30, 2009, accessed October 22, 2017, <http://news.bbc.co.uk/2/hi/8176957.stm>.

disseminate information. For instance, social media allows a person to make comments or provide images, and to do this almost instantaneously. Social media allows one to have friends or followers who see content as soon as it is posted. A follower may see a post and then send it on to their own followers, and so on. When the person who posts has a large following, the accounts or images are spread extensively, as social media allows people to share information with others.

This spread of unverified accounts or images aids the proliferation of misinformation as well as fake news. Citizen journalists use social media platforms to provide accounts and images of newsworthy events, often without verification. This allows false and defamatory statements to be published, seemingly without legal consequence. This is because the rights and responsibilities of the professional journalist do not apply to the citizen journalist. A private person can post an account or image of a newsworthy event and not be required to verify the information in the way a professional journalist is required to verify information.

The speed and scope of information that is disseminated on the Internet gave rise to the 1996 Communications Decency Act. This was an attempt to regulate pornography on the Internet. Section 230 of this Act provides immunity from liability for providers and users of an interactive computer service who publish information provided by others. However, as Ehrlich points out, this leaves a victim of defamation little recourse.<sup>15</sup> If the Internet provider is immune from liability, then the victim needs to seek redress from the original content

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<sup>15</sup> Paul Ehrlich, "Communications Decency Act 230," *Berkeley Technology Law Journal* 17, no. 1 (2002): 401-419. <https://doi.org/10.15779/Z384X12>.

poster. However, this cannot be done if the original content poster is anonymous.

The case of *DiMeo v. Max* illustrates this. For instance, in 2005, Anthony DiMeo III gave a New Year's Eve party that was widely ridiculed on tuckermax.com.<sup>16</sup> DiMeo sued Tucker Max for defamation, arguing that Max was responsible for the content his website presented.<sup>17</sup> The courts decided in favor of Max, on the grounds that Max's website was an interactive service, not a media or news outlet. Consequently, tuckermax.com was protected from liability from third-party expression.<sup>18</sup> Why did DiMeo not sue the original posters? Section 230 of the Communications Decency Act provides immunity for Internet providers. However, when the original content poster is anonymous, there is little the victim can do. Anthony DiMeo III suffered widespread ridicule; his reputation was ruined and there was little he could do about it.

Another key element in issues surrounding defamation in the age of the Internet, is that the notion of public and private is changing. This is important, because notions of defamation and invasion of privacy depend on notions of public and private. Advances in surveillance technology have moved what was previously considered private information into the realm of public information. For instance, Global Positioning System (GPS) software is routinely installed on

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<sup>16</sup> Martin Samson, "Anthony DiMeo, III v. Tucker Max," from [http://www.internetlibrary.com/cases/lib\\_case433.cfm](http://www.internetlibrary.com/cases/lib_case433.cfm).

<sup>17</sup> Larry E. Ribstein, "From Bricks to Pajamas: The Law and Economics of Amateur Journalism," University of Illinois Law & Economics Research Paper No. LE06-008; *William & Mary Law Review* 48 (2006): 185, accessed November 20, 2007, <https://ssrn.com/abstract=700961>. Also available at: <http://dx.doi.org/10.2139/ssrn.700961>.

<sup>18</sup> Ribstein, "From Bricks to Pajamas," 234.

cell phones. There are apps that allow people to track someone else's movements throughout the day. Every step is tracked. Heat-sensing technology also enables one to see exactly how many people are in a room, even when the room is not viewable from outside. These activities would have been inconceivable just a few years ago and considered as breaches of privacy. Now they are accepted as the norm. When notions of public/private change, notions of defamation and invasion of privacy also change. Defamation law has not kept up with these changes.

One critical element in this issue is the speed with which the information is spread. As mentioned earlier, a citizen journalist does not have to verify an account or image before they post it on a social media platform. A citizen journalist can also use several different social media platforms to post unverified accounts or images of a newsworthy event. Their followers can then re-post these unverified accounts or images, often as soon as they receive these unverified accounts or images. The amount of people who read or see these unverified accounts/images rises exponentially. The speed and scope that social media platforms have is astounding.

The rapid pace of today's changing technology means the professional journalist and/or citizen journalist has a greater ability to impact the reputation of a person, private or public. For centuries, professional journalists have published a combination of true and false statements, but until very recently, it took time for their statements to reach a wide audience. The Romans, for instance, managed to get news out to millions of Roman citizens via the *cursus*

*publicus*.<sup>19</sup> Even though the news item could travel very quickly by standards of the time (by some accounts 170 miles per day), it still took time for the *cursus publicus* to get information to the entire empire.<sup>20</sup> This is not the case with contemporary news/information dissemination. Nowadays, a professional journalist or citizen journalist can make a statement via social media and reach thousands or even millions of people in seconds. The users of the *cursus publicus* never even dreamed about speed like this.

Social media platforms play a role in this instantaneous dissemination of information. Even mainstream media outlets have social media accounts on Facebook, Twitter, etc. For instance, the news outlets *ABC*, *CBS*, *NBC*, and *CNN* all have Facebook accounts that are updated regularly. In addition, private individuals may have social media accounts that have thousands of followers. When these followers forward or re-post information, the result is that millions may have access to the original posted information.

Adding confusion to the mix is that the ethical and legal rights and obligations of professional journalism constrain a professional journalist, but do not always constrain the citizen journalist. For instance, the *Washington Post* has a code of ethical conduct that illustrates this notion (“The Seven Principles for the Conduct of a Newspaper.”<sup>21</sup>) In addition to these ethical obligations, there are

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<sup>19</sup> William Smith, William Wayte, and G. E. Marindin, eds., “Cursus Publicus,” in *A Dictionary of Greek and Roman Antiquities*. Albemarle Street, London: John Murry (1890). *Perseus Digital Library Tufts University*, accessed October 22, 2017, <http://www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999.04.0063:entry=cursus-publicus-cn>.

<sup>20</sup> Andrew C. Brix, “Postal System,” in *Encyclopaedia Britannica*. Encyclopaedia Britannica, Inc. (April 20, 2017), accessed October 22, 2017, <https://www.britannica.com/topic/postal-system>.

<sup>21</sup> “Policies and Standards,” *Washington Post* online.



also legal rights of professional journalists. One major legal protection is the shield law. Shield laws allow the professional journalist to protect confidential sources. These shield laws are legal rules that protect journalists against the government requirement to reveal sources or other information. Professional journalists rely on shield laws to protect them when they are asked to reveal confidential sources.

Shield laws do not always protect someone if they are not a professional journalist.<sup>22</sup> The case of Vanessa Leggett illustrates this. Vanessa Leggett was not a professional journalist. She spent time in jail for refusing to reveal confidential sources.<sup>23</sup> Leggett learned the hard way that citizen journalists are not always protected by shield laws.

The citizen journalist may not be protected by shield laws, but neither is the citizen journalist bound by the legal rights and responsibilities of the professional journalist. This is a two-edged sword. As Leggett found, the citizen journalist is not protected by shield law. However, the law also provides considerable Fifth Amendment protection to a citizen journalist. Dorf and Tarrow point out that, as construed by the Supreme Court, the First Amendment offers little protection to the citizen journalist when they go undercover to showcase events (or as Leggett found, when the citizen journalist gathers confidential information that the government wants).<sup>24</sup> However, Dorf and Tarrow also argue

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<sup>22</sup> Gina Barton, "What Is a Journalist?"

<sup>23</sup> Gina Barton, "What Is a Journalist?"

<sup>24</sup> Michael C. Dorf and Sidney Tarrow, "Stings and Scams: 'Fake News,' the First Amendment, and the New Activist Journalism," Cornell Legal Studies Research Paper No. 17-02 (2017), accessed November 20, 2017, <https://ssrn.com/abstract=2906444>.

that the law provides considerable protection for the spread of untruths.<sup>25</sup> A citizen journalist can present a false bit of information with little or no legal repercussions in a way that the professional journalist cannot. This is because the courts do not hold the citizen journalist to the same responsibilities of the professional journalist. Dorf and Tarrow argue that the citizen journalist is given substantial First Amendment protection in a way that the professional journalist is not.<sup>26</sup>

Defamation is another issue that illustrates the differences between the citizen journalist and the professional journalist. Ribstein, for instance, argues that in defamation cases, the citizen journalist is not held to the higher standards of professional journalism.<sup>27</sup> Ribstein argues that the courts give the citizen journalist a higher level of First Amendment protection than the professional journalist on the grounds that the citizen journalist has fewer motives for disseminating information than the professional journalist.

Cases that will be discussed illustrate the different standards to which the citizen journalist and professional journalist are held. Still other cases to be discussed involve issues of expression over the Internet, ones that raise questions about Internet defamation law. There are other cases where the courts have ruled that the owner(s) of a website are liable for views/information disseminated on the website.

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<sup>25</sup> Dorf and Tarrow, "Stings and Scams."

<sup>26</sup> Dorf and Tarrow, "Stings and Scams."

<sup>27</sup> Ribstein, "From Bricks to Pajamas," 231.

The rise of the citizen journalist has created a situation where citizen journalists are now claiming reporter's privilege. In addition, the number of subpoenas issued to journalists (both citizen and professional) have risen in the past few years.<sup>28</sup> For this reason, some authors argue that the rights and obligations of journalism need to be reconsidered. For instance, Papandrea argues that due to the changing notion of the journalist, the laws regarding journalist privilege need to be reassessed.<sup>29</sup> Ribstein also argues that the citizen journalist raises significant legal issues that need to be resolved.<sup>30</sup>

Defamation law is not the only area where the law has not kept pace with technology. This is not only seen in intellectual property disputes (for instance, in the contributory copyright infringement lawsuit against Napster<sup>31</sup>), but it is seen in previously unthinkable surveillance issues surrounding notions of privacy. Technology enables the invasion of privacy with surveillance devices that were previously impossible.<sup>32</sup> For instance, heat sensors can detect previously unknowable information. Other types of surveillance devices routinely take photos of speeding offenders. Face scanning occurs in casinos, large sporting

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<sup>28</sup> Mary-Rose Papandrea, "Citizen Journalism and the Reporter's Privilege," *SSRN*, accessed July 26, 2017, [ssrn.com/abstract=932681](https://ssrn.com/abstract=932681).

<sup>29</sup> Mary-Rose Papandrea, "Citizen Journalism and the Reporter's Privilege."

<sup>30</sup> Ribstein, "From Bricks to Pajamas," 218.

<sup>31</sup> *A&M Records, Inc., a corporation; Plaintiffs-Appellees, v. Napster, Inc., Defendant-Appellant*. Argued and Submitted Oct. 2, 2000, Filed Feb. 12, 2001, As Amended April 3, 2001.

<sup>32</sup> Judith DeCew, "Privacy," in *The Stanford Encyclopedia of Philosophy* (Spring 2015 Edition), ed. Edward N. Zalta, accessed October 20, 2017, <https://plato.stanford.edu/archives/spr2015/entries/privacy/>.

events, and airports. These faces are then matched with database records of felons. Rental cars now have GPS devices that tell the rental company exactly where and when the car is driven. We have now entered an era where surveillance makes previous notions of privacy obsolete. Since the notion of defamation relies on notions of privacy, laws about defamation need to acknowledge this changing notion of privacy.

The hypothesis was that current law regarding defamation has not kept up with the appearance of the citizen journalist. Professional as well as citizen journalists need to be held accountable for the information they disseminate. The research question that will address this issue is, "Should the current laws on defamation treat the citizen journalist the same as the professional journalist"?

The rapid changing technology allows the professional as well as the citizen journalist to disseminate information to thousands or even millions in seconds. As citizen journalists are not constrained by the obligations of professional journalism, this allows the citizen journalist to publish indiscriminately without verifying. The laws regarding defamation and the right to privacy are struggling to keep up with current technology. Laws regarding the rights and obligations of journalism (professional as well as citizen) need to keep up with current technology.

Chapter Two discusses methodology and limitations. Chapter Two also presents a list of terms to be defined. Chapter Three presents the literature reviewed in the course of the research. Chapter Four is a discussion of the

findings of the research. Chapter Five is a summary and conclusion. Chapter Five also discusses implications for future research.

## Chapter II

### Methods and Limitations

Research methods consisted of an examination of scholarly works that addressed the issues of citizen journalism, defamation, current technology and the law, and the rights/obligations of professional and citizen journalists. These scholarly works were found by searching the references section of works already used. Scholarly works were also found by doing searches in legal/law/case study databases. **Keywords and key phrases included:** *First Amendment, free speech, blog, defamation, journalist, citizen journalist, private individual/citizen, social media, current technology and the law.*

Also examined were case studies that involved citizen journalists, journalists, and issues surrounding defamation, reporter's privilege, and the rights and responsibilities of professional and/or citizen journalists. These cases were examined to see how the law keeps up (or does not keep up) with current technology. Many of these cases were found in scholarly works. These cases were also found by doing searches in legal/law/case study databases. **Keywords and key phrases included:** *defamation, journalist, citizen journalist, reporter's privilege, private individual/citizen, blog.*

There were limitations surrounding the examined scholarly works. The examined scholarly works were limited to those published within the last thirty years, unless there was some clearly stated reason to include an article outside those limits. The scholarly works were not limited to works published by U.S. academics/scholars, because notions such as “reporter’s privilege” are notions inherent in a free press. Many countries have or promote a free press. Scholarly works that discuss a free press in other countries often provide food for thought about the legal issues surrounding the free press in the United States.

A major limitation to the methodology was that the cases selected to study were limited to cases argued in United States courts. Both the hypothesis and research question address United States law. Consequently, even though the research examines the notion of a free press in countries other than the United States, the research does not examine international court cases. Another limitation involves the date of the cases that were studied. Cases that were studied occurred in a specific time frame. The research was limited to cases within the last thirty-five years. This is because as soon as people started to use the Internet, issues of defamation and free speech were raised. Commercial Internet service providers (ISPs) emerged in the 1980’s.

### Definition of Terms

*Blog:* As used in this thesis, the term “blog” means a regularly updated website or web page. Blogs can be an online journal or diary. Blogs are written in informal or conversational style. An individual, a small group, or individuals writing for their company/organization can write blogs.

*Citizen Journalism:* Accounts and images of newsworthy events that are produced by a citizen journalist.

*Citizen Journalist:* For the purposes of this thesis, the term "citizen journalist" refers to a person who produces accounts and images of newsworthy events, but who is not employed by any media outlet, and who does not sell accounts or images to media outlets.<sup>33</sup> Citizen journalists are not covered by shield law, and the courts often do not hold the citizen journalist to the legal obligations of the professional journalist. Citizen journalists often have little or no training in journalism, and they often have no professional journalism qualifications.

*Fake News:* A type of journalism or propaganda that consists of deliberate misinformation or hoaxes spread via mainstream media. Professional journalists as well as citizen journalists are involved in the spread of fake news.

*Friend/friending:* *Friending* is the act of adding someone to a list of *friends* on a social networking service. The notion does not necessarily involve the concept of friendship. Friends on a social media site can share information or content with each other, and can post on each other's site.

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<sup>33</sup> Chris Atton, "Citizen Journalism," in *The International Encyclopedia of Communication*, edited by Wolfgang Donsbach. Blackwell Publishing (2008). *Blackwell Reference Online*. Accessed 22 October 2017  
[http://www.blackwellreference.com/public/tocnode?id=g9781405131995\\_chunk\\_g97814051319958\\_ss28-1](http://www.blackwellreference.com/public/tocnode?id=g9781405131995_chunk_g97814051319958_ss28-1).



*Following/follower:* *Following* is where a person (*follower*) chooses to add content from another person or organization's page to his or her own newsfeed. Unlike friending, following is not necessarily mutual. A person can unfollow (stop following) another user at any time without affecting that user's following status. A follower can also re-post content to their own friend list.

*Journalism:* For the purposes in this thesis, journalism is the collection, preparation, and distribution of accounts and images of newsworthy events, along with related commentary and feature materials through such print and electronic media as newspapers, magazines, books, blogs, webcasts, podcasts, social networking and social media sites, and e-mail as well as through radio, motion pictures, and television. There are professional journalists as well as citizen journalists.

*Online Community:* As used in this thesis, the term "online community" refers to a virtual community whose members interact with each other via the Internet.

*Privacy:* For the purposes of this thesis, the notion of privacy is defined as a person's information, accounts, or images that a person does not want publicized or disseminated to others.

*Private Life:* For the purposes of this thesis, the notion of private life is defined as the personal life of a person; the information, accounts, or images of a person's personal life that the person does not want publicized or disseminated to others.

*Professional Journalism:* Accounts and images of newsworthy events that are produced by a professional journalist.

*Professional Journalist:* For the purposes of this thesis, the term “professional journalist” is used to refer to a person who produces accounts and images of newsworthy events, and who is employed by a media outlet, or one who sells accounts and images to media outlets. The laws regarding the rights and obligations of the journalism profession protect as well as constrain a journalist. For instance, shield law protects a professional journalist. Professional journalists usually have training in journalism and professional journalism qualifications.

*Public Figure:* For the purposes of this thesis, a public figure is a person who holds great public interest, one with whom the public is familiar. For instance, government officials or actors are considered public figures.

*Reporter’s Privilege:* The legal protection that a reporter has from being compelled to reveal confidential sources or information.

*Shield Laws:* Laws that provide statutory protection for reporter’s privilege. Shield laws are legal rules that protect journalists against government requirement to reveal confidential sources or information. The District of Columbia and 49 states have

some level of protections from local and state agencies. No statutory protection exists at the federal level.

*Small World Effect:* According to Marvel et al., The "small-world effect" is the observation that one can find a short chain of acquaintances, often of no more than a handful of individuals, connecting almost any two people on the planet.<sup>34</sup>

*Social Media:* For the purposes of this thesis, social media is online social networking. It is the collective of online communication sites/channels devoted to community-based and participatory interaction with content sharing of accounts or images. Examples of social media are Facebook, Twitter, Instagram, LiveJournal, etc.

This chapter (Chapter II) discusses the methodology and limitations of the literature selected for review. This chapter also presents a list of terms and their definitions as used in this thesis. The following chapter (Chapter III) presents the review of the literature examined in the course of the research.

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<sup>34</sup> Seth Marvel, Travis Martin, Charles Doering, David Lusseau, and M.E.J. Newman, "The small-world effect is a modern phenomenon," in: Cornell University Library. Accessed July 29, 2018: arXiv:1310.2636v1

## Chapter III

### Literature Review

The hypothesis was that current law regarding defamation has not kept pace with the appearance of the citizen journalist. The research question that addressed the hypothesis asked, "Should the current laws on defamation treat the citizen journalist the same as the professional journalist"? The literature that was reviewed in the course of this research addressed the hypothesis and research question. Concepts and issues that were considered included: The 1996 Communications Decency Act, especially section 230, and how the courts use this section of the Act in considerations of online activity. Also considered were the notion of a journalist, the changing role of the journalist, and the rise of the citizen journalist. The speed and scope of social media platforms was also examined. The changing notion of what constitutes public and private was another area of interest. These issues led to an appraisal of the role of technology in these changing notions, and how the law has not kept pace with the advance of technology. Also reviewed were scholarly discussions on the laws regarding the rights and obligations of journalists, as well as scholarly works on the laws regarding defamation.

## Section 230

### of the Communications Decency Act of 1996

Any discussion that involves notions of defamation and online activity must consider the Communications Decency Act of 1996, especially in regards to Section 230. This legislation provides immunity from liability for providers and users of interactive computer services who publish content provided by someone else. A key part of this piece of legislation contains an immunity clause, which states that no provider or user of an interactive computer service shall be treated as the content provider (i.e., as the publisher or speaker) of information supplied by another content provider. The intent of this section of the Act was to provide broad immunity to Internet service providers, because when faced with potential liability for each or every message posted, the Internet service provider might choose to severely restrict the type of content in order to avoid liability. This could have a harsh and restrictive effect on speech. In order to avoid this restrictive effect, the Act immunizes service providers. The dividing line is between an Internet *service* provider and an Internet *content* provider, and this involves editorial/publisher function. For instance, AOL is considered an Internet service provider because it does not have editorial/publishing control over content. On the other hand, the online newspaper the *Washington Post* is considered an Internet content provider, because it retains editorial/publishing control over the content it provides.

Paul Ehrlich (2002) argued that this section of the Act muddles the issue.<sup>35</sup> On his view, immunity for Internet service providers is better than making them liable for content they provide, but this is not enough to prevent defamatory speech.

Ehrlich argued that there are two ways to combat Internet defamatory speech. The first involved a return to Internet service provider liability. This is not recommended, because of the chilling effect it would have on free speech. The second involved reducing anonymity for defamatory posts. Ehrlich preferred this, as giving full immunity to Internet service providers leaves victims with no recourse against anonymous posters. He argued that the law should grant immunity to providers, and at the same time, reduce anonymity. This would allow the victim to reach the anonymous poster. If the post is defamatory or otherwise unlawful, anonymity should be removed to reveal the identity of the poster.

### The Notion of a Journalist

The notion of a journalist has been around since the beginning of news dissemination. However, there is no consistent definition of what a journalist is. The discipline itself has no precise definition of "journalist". Gina Barton

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<sup>35</sup> Paul Ehrlich, "Communications Decency Act 230," *Berkeley Technology Law Journal*. Volume 17, issue 1. p.401-419. (2002). <https://doi.org/10.15779/Z384X12>.

discusses this dilemma in her work, "What Is a Journalist"?<sup>36</sup> There is a reluctance to precisely define the term "journalist" for fear of leaving out important aspects of what, exactly, a journalist does. On the other hand, when laws concerning journalists (and journalism) are made, there needs to be a clear understanding and definition of "journalist". Barton pointed out that if the discipline itself does not come up with a clear definition, the government will, because in order to have clear laws regarding journalists, there needs to be a clear definition of what a journalist is. Of key concern is that when a government gets to decide who gets to be a journalist, the freedom of the press is curtailed. A free society needs a free press.

Many news organizations have strict ethical guidelines. For instance, the *Washington Post* has their "Seven Principles for the Conduct of a Newspaper."<sup>37</sup> The first principle is that the very first mission of a newspaper is to tell the truth. The seventh principle states that a newspaper should not promote special interests. (See the Appendix for the full seven principles of the *Washington Post's* code of conduct.) The *New York Times* also has strict ethical guidelines presented in their "Standards and Ethics" statement.<sup>38</sup> According to this statement, the

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<sup>36</sup> Gina Barton, "What Is a Journalist?"

<sup>37</sup> "Policies and Standards," *Washington Post* online (January 1, 2016), accessed August 2, 2018. [https://www.washingtonpost.com/policies-and-standards/?noredirect=on&utm\\_term=.74bb4362996b#factchecking](https://www.washingtonpost.com/policies-and-standards/?noredirect=on&utm_term=.74bb4362996b#factchecking).

<sup>38</sup> "Standards and Ethics," *New York Times* online (2004), accessed November 20, 2018. <https://www.nytc.com/who-we-are/culture/standards-and-ethics/>.

goal of the *New York Times* is to present the news fairly and accurately, and there are ethical guidelines to which its reporters must adhere.

In addition, the notion of journalist is changing. Now there is the citizen journalist as well as the professional journalist. Karin Deutsch Karlekar and Courtney Radsch discussed the changing notion of "journalist" and the arrival of the citizen journalist.<sup>39</sup> Ordinary citizens are now reporting on and providing accounts and images of newsworthy events. Deutsch Karlekar and Radsch argued that these ordinary citizens who report on and provide accounts/images of newsworthy events are to be considered journalists. The dividing line between profession versus citizen journalist is also vague. Mörä and Päivi argued that it is now difficult to differentiate between the professional and citizen journalist.<sup>40</sup> In their work, "Reporter's Privilege in the Era of the Internet", Mörä and Päivi pointed out that with the rise of the citizen journalist, it is not at all clear who is a journalist. This affects the notion of reporter's privilege, because laws regarding reporter's privilege need to have a clear definition of who a reporter (journalist) is. If anyone can be a journalist, then anyone can invoke reporter's

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<sup>39</sup> Karin Deutsch Karlekar and Courtney C. Radsch, "Adapting Concepts of Media Freedom to a Changing Media Environment: Incorporating New Media and Citizen Journalism into the Freedom of the Press Index" (July 1, 2012). *ESSACHESS Journal for Communication Studies* 5, No. 1 (2012). Accessed November 20, 2017, SSRN. <https://ssrn.com/abstract=2161601>.

<sup>40</sup> Tuomo Mörä and Korpisaari Päivi, "Reporter's Privilege in the Era of the Internet," *TRPC* (2012). Accessed October 20, 2017, SSRN. <https://ssrn.com/abstract=2031491> Also available at: <http://dx.doi.org/10.2139/ssrn.2031491>.



privilege. As Barton notes, if anyone can be a journalist, the result will likely be the elimination of legal protection for journalists.<sup>41</sup>

Adding more confusion to an already muddled arena is that the citizen journalist is now making serious contributions to legitimate news. Citizen journalists are now providing accounts and images of newsworthy events. Not only are these posted to private social media/Internet sites, these are also posted to mainstream media outlets. For instance, during the Iran elections of 2009, the mainstream media was excluded by the Iranian authorities. It fell to citizen journalists to provide accounts and images of the election and unrest during the election period. Media outlets such as Reuters<sup>42</sup> and the BBC<sup>43</sup> used these accounts and images.

### Rights and Responsibilities of Professional and Citizen Journalists

As beneficial as citizen journalism may seem, there a downside to it. The citizen journalist is not given the same legal protections that the professional journalist is given. Turner argued that the citizen journalist is not protected by

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<sup>41</sup> Barton, "What Is a Journalist?"

<sup>42</sup> Dean Wright, "Citizen Journalism, Mainstream Media, and Iran," in *For the Record, Reuters*. *Reuters* blog July 2, 2009, <http://blogs.reuters.com/fulldisclosure/2009/07/02/citizen-journalism-mainstream-media-and-iran/>.

<sup>43</sup> Dave Lee, "The Rise of Iran's Citizen Journalists," in *Digital Planet, BBC World Service*, July 30, 2009, accessed October 22, 2017, <http://news.bbc.co.uk/2/hi/8176957.stm>.

shield law, but they should be.<sup>44</sup> Turner argued that the citizen journalist is now providing legitimate accounts and images of newsworthy events, and should be protected by shield law, just as professional journalists are protected by shield law. West argued that the citizen journalist is a return to what the notion of a journalist originally meant, and as such, the citizen journalist needs the legal protection of the professional journalist.<sup>45</sup>

Barton used the case of Vanessa Leggett to illustrate the need for a shield law for citizen journalists.<sup>46</sup> Vanessa Leggett served 168 days in jail for refusing to disclose confidential information she gathered while researching and writing a book on the 1997 murder of a Houston socialite.<sup>47</sup> Leggett was a part-time college instructor and was writing a true crime story. When a federal grand jury demanded she reveal her sources, she refused. Leggett was held in civil contempt and went to jail for refusing to turn over the information she had uncovered in the course of her investigation.

Other authors discussed the notion that the citizen journalist has little or no protection under current law. Dorf and Tarrow pointed out that the First Amendment offers little protection to the citizen journalist when they go

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<sup>44</sup> Stephanie B. Turner, "Protecting Citizen Journalists: Why Congress Should Adopt a Broad Federal Shield Law," *Yale Law and Policy Review* 30(November 8, 2011). Accessed November 20, 2017, *SSRN*. <https://ssrn.com/abstract=1956870>.

<sup>45</sup> Sonja West, "The 'Press,' Then & Now" (March 17, 2015). 77 *Ohio State Law Journal* 49 (2016).; UGA Legal Studies Research Paper No. 2015-6. Accessed November 20, 2017, *SSRN*. <https://ssrn.com/abstract=2579687>.

<sup>46</sup> Barton, "What Is a Journalist?"

<sup>47</sup> Barton, "What Is a Journalist?"

undercover to showcase events.<sup>48</sup> Or, as Leggett found, there is little protection for the citizen journalist when she gathers confidential information that the government wants.

The courts require that professional journalists verify accounts and images before disseminating them. Some media organizations have strict guidelines for reporting that follow these requirements. The *Washington Post*<sup>49</sup>, and the *New York Times*,<sup>50</sup> for instance, require their journalists to follow a strict code of conduct for reporting, and this includes verification before publishing. Some media outlets ignore these responsibilities and allow their journalists to present fake news. Alex Jones of *Infowars* is an example of this. *Infowars* presents conspiracy theories as actual news.<sup>51</sup> In an attempt to combat the rise and spread of fake news, YouTube, Facebook, and Apple have also taken steps to remove content by Alex Jones.<sup>52</sup>

On the other hand, there is no legal journalistic standard to which the citizen journalist must adhere. The citizen journalist is not bound by the legal rights and responsibilities of the professional journalist. Dorf and Tarrow argued

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<sup>48</sup> Dorf and Tarrow, "Stings and Scams."

<sup>49</sup> "Policies and Standards," *Washington Post* online.

<sup>50</sup> "Standards and Ethics," *New York Times* online (2004), accessed November 20, 2018. <https://www.nytc.com/who-we-are/culture/standards-and-ethics/>.

<sup>51</sup> Jason Hanna, "What is Infowars?" *CNN* online (January 27, 2017), accessed August 2, 2018. <https://www.cnn.com/2017/01/27/politics/infowars-explainer/index.html>.

<sup>52</sup> Bill Chappell, "YouTube, Apple and FaceBook Ban Infowars, Which Decries 'Mega Purge'," *NPR* online, accessed August 8, 2018. <https://www.npr.org/2018/08/06/636030043/youtube-apple-and-facebook-ban-infowars-which-decries-mega-purge>.

that the law actually provides considerable protection for the spread of untruths.<sup>53</sup> This is because the citizen journalist is not bound by the responsibilities of the professional journalist. The citizen journalist is given considerable First Amendment protection in a way that the professional journalist is not.

Dorf and Tarrow illustrated this notion with the case of the anti-Planned Parenthood operation carried out by Daleiden and Merritt in July 2015.<sup>54</sup> David Daleiden and Sandra Merritt were anti-abortion activists, and claimed to represent an organization called the Center for Medical Progress (CMP). They also claimed to represent a bogus California-based company, BioMax Procurement Services. Daleiden and Merritt met with an official of Planned Parenthood, and then tried to trick her into negotiating the sale of fetal body parts. Daleiden and Merritt secretly videotaped the meeting. They then edited it to show that Planned Parenthood was selling fetal body parts for profit. Daleiden and Merritt released the video, which caused a furor. Daleiden and Merritt faced prosecution when their scam was uncovered.

However, charges were eventually dropped. Daleiden and Merritt could not claim protection under shield law since they were not professional journalists, but neither could they be held to the customary ethical standards of professional journalism. They had not violated any journalistic responsibilities,

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<sup>53</sup> Dorf and Tarrow, "Stings and Scams."

<sup>54</sup> Dorf and Tarrow, "Stings and Scams."

because they were not considered professional journalists. If a reporter from NBC did what Daleiden and Merritt did, they would be liable for defamation. This is because a reporter from NBC is considered a professional journalist.

Professional journalists have a legal responsibility to verify claims, and so are held liable when they knowingly present false information. When Daleiden and Merritt presented knowingly false information (in the form of the edited video), they were not doing so as professional journalists. They could not claim reporter's privilege or claim neutral report privilege. The neutral report privilege is a professional journalistic privilege that immunizes the republication of defamatory statements from liability, but only as long as the statements were made about a public figure and were accurately and disinterestedly reported.

There are cases where a professional journalist or media outlet is held liable for knowingly presenting false statements. One such case that illustrates this is *Khawar v. Globe Int'l, Inc.*, where the courts found that a professional news outlet cannot rely on the neutral report aspect when they republish defamatory statements about a private individual.<sup>55</sup> In *Khawar v. Globe Int'l, Inc.*, the courts found that a professional news outlet (*Globe*) fell well below the profession's standard of ethical reporting, notably verification.

In 1989, Khalid Khawar sued *Globe*, which is a supermarket tabloid, but a professional news outlet nonetheless. *Globe* had published a story that repeated

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<sup>55</sup> "Neutral Report' Privilege Does Not Apply to Private Figures," *Reporters Committee*. Accessed November 20, 2018 at <https://www.rcfp.org/browse-media-law-resources/news/neutral-report-privilege-does-not-apply-private-figures>.

allegations published in a book written by former CIA agent Robert Morrow. Morrow alleged that the Shah of Iran's secret police collaborated with the Mafia to assassinate Robert F. Kennedy, and that the assassination was carried out by a man named Ali Ahmand. Morrow's book also contained a photograph of Khawar standing near Kennedy moments before the assassination. Khawar was a photojournalist at the time, on assignment for a Pakistani periodical. *Globe* illustrated its article with this photograph, which was enlarged and with an arrow pointing to Khawar, identifying him as Ahmand.

*Globe* insisted it was adhering to neutral report privilege. Among other things, the court found that Khawar was not a public figure. The court also found that *Globe* had acted with malicious intent, in part because it did not try to confirm the allegations before it republished them.<sup>56</sup>

The court was primarily interested in the neutral report aspect, but it is interesting to note that a citizen journalist would not have been held to professional journalist standards (unless there were compelling evidence that the citizen journalist was in fact not a citizen journalist.) This is because a citizen journalist cannot appeal to neutral report privilege. A profession's standard of ethics can only be applied to those who are professionals within that profession.

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<sup>56</sup> "'Neutral Report' Privilege Does Not Apply to Private Figures."

Shelly Rosenfeld discussed this and other cases where professional journalists were held accountable for their words.<sup>57</sup> These are cases where a citizen journalist would not face the same charges because a citizen journalist cannot claim reporter's privilege or neutral report privilege. For instance, in *Norton v. Glenn*, the courts held the professional journalists responsible for publishing content that they knew to be false. In this case, the plaintiffs filed a defamation suit against a newspaper for publishing an article in 1995 that claimed the plaintiffs were homosexuals and child molesters. The courts found that neutral report privilege did not hold, in part because the newspaper published content made outside city council meetings, and that the newspaper published defamatory remarks knowing they were not true.<sup>58</sup> If a citizen journalist had posted the comments, they would not be held to professional journalism's standards (a citizen journalist cannot appeal to neutral report privilege).

Karpf discussed the case of David Weigel, which is a case where a professional journalist was treated differently simply because he was a professional (and not a citizen) journalist.<sup>59</sup> In 2010, Weigel was a *Washington Post* journalist whose journalistic focus was on aspects of the conservative

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<sup>57</sup> Shelly Rosenfeld, "The Paper Case: The Neutral Reportage Privilege in Defamation Cases and Its Impact on the First Amendment," *Jeffrey S. Moorad Sports L.J.* 19 (2012):135-168. Accessed November 20, 2018. <http://digitalcommons.law.villanova.edu/mslj/vol19/iss1/4>.

<sup>58</sup> Rosenfeld, "The Paper Case."

<sup>59</sup> David A. Karpf, "Beyond Citizen Journalism: Weigelgate, JournoList, and the Shifting Media Ecology of America," (2010). *APSA 2010 Annual Meeting Paper* (2010). Accessed November 20, 2017, *SSRN*. <https://ssrn.com/abstract=1644140>.

movement. Weigel sent an email to JournoList, which was leaked to the public. Weigel wrote, "This would be a vastly better world to live in if Matt Drudge decided to handle his emotional problems more responsibly, and set himself on fire."<sup>60</sup> At the time, Drudge was within the circle of Weigel's journalistic focus. Consequently, Weigel's ability to remain objective was questioned. A citizen journalist making the same statement might not have caused the same furor, but since Weigel was a professional journalist, he was held accountable for his email. Increased complaints/questions about his ability to be objective led him to offer his resignation to the *Washington Post*, who accepted it.<sup>61</sup>

Other cases address the citizen journalist and journalist responsibility. The case of *Gertz v. Robert Welch, Inc* (1974) illustrates the notion that the citizen journalist is held to a lower standard than the professional journalist.<sup>62</sup> *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), was a case where the Supreme Court established the First Amendment standard of protection against defamation claims. The Court held that defamation claims against public figures must prove malice, whilst defamation claims against private individuals must show actual negligence or fault-based standards. This has ramifications in the professional v. citizen journalist issue. A defamation claim against a citizen journalist is not treated the same way in the courts that a defamation case against a professional

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<sup>60</sup> As quoted in Karpf, "Beyond Citizen Journalism," 5.

<sup>61</sup> Karpf, "Beyond Citizen Journalism." 8.

<sup>62</sup> Ribstein, "From Bricks to Pajamas," 228.



journalist is treated in the courts. This is because the citizen journalist cannot claim reporter's privilege, neutral report privilege, or appeal to shield law.

Still other cases illustrate the different standards to which the citizen journalist and professional journalist are held. Often the citizen journalist can be an anonymous poster. In *Doe v. Cahill* (2005), the Court granted First Amendment protection rights to an anonymous poster.<sup>63</sup> In this case, an anonymous poster (John Doe) allegedly posted statements on an Internet blog about Cahill that Cahill considered as defamatory. The Court ruled that there is considerable opportunity to refute a post on an Internet blog. Cahill had the ability to easily correct misinformation and set the record straight. Consequently, the Court granted the anonymous poster First Amendment protection rights.

*Mathis v. Cannon* (2003) involves issues of freedom of expression over the Internet, and raises questions about Internet defamation law, especially the distinction between professional and citizen journalists. Cannon was the president of a waste hauling company, and Mathis posted highly derogatory comments about Cannon on an Internet bulletin board. The Court observed that the Internet and readily available computer technology now made practically anyone with a computer a publisher. The Court also held that anyone reading the bulletin board would understand that the statements made by Mathis were rhetorical ramblings, and would not take them as presenting actual fact. Mathis

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<sup>63</sup> Ribstein, "From Bricks to Pajamas," 229.

was not writing as a professional journalist, but an argument could be made that Mathis was a citizen journalist.

Ribstein also argued that blogs or Internet bulletin board message services that allow comments fall within the category of an information service, and so are not liable for defamatory statements.<sup>64</sup> A case which Ribstein used to illustrate this is the case of *DiMeo v. Max* (2006).<sup>65</sup> This case addresses Internet defamation. On December 31<sup>st</sup>, 2005, Anthony DiMeo III threw a New Year's Eve party. DiMeo was a blueberry farm heir and operator of publicity firm Renamity. The party did not go well.<sup>66</sup> In fact, one judge called it "the New Year's Eve party from hell."<sup>67</sup> For one thing, the number of guests who actually showed up for the party greatly exceeded the expected number of guests. This was a New Year's Eve party, but venue ran out of food and drink well before midnight. Not surprisingly, the guests got unruly. Art was stolen and property was damaged. The party was widely ridiculed in posts on tuckermax.com. As the party had been organized by DiMeo's company Renamity, DiMeo suffered the brunt of the ridicule. The website tuckermax.com was owned and maintained by Tucker Max, an Internet celebrity.

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<sup>64</sup> Ribstein, "From Bricks to Pajamas," 234.

<sup>65</sup> Ribstein, "From Bricks to Pajamas," 234.

<sup>66</sup> Martin Samson, "Anthony DiMeo, III v. Tucker Max," from [http://www.internetlibrary.com/cases/lib\\_case433.cfm](http://www.internetlibrary.com/cases/lib_case433.cfm).

<sup>67</sup> *DiMeo v. Tucker* (2006) Case 2:06-cv-01544-SD Document 13-1 Filed 05/26/2006 p. 2.

DiMeo sued Max for defamation, arguing that Max was responsible for the content his website presented. DiMeo argued that Max was the content provider, as Max edited the content that appeared on tuckermax.com. The courts disagreed, and found that TuckerMax.com was considered as an interactive computer service, and so was protected from liability for third-party speech. The court acknowledged that tuckermax.com was a poster child for vulgarity, but nonetheless, Tucker Max was not responsible for the content his interactive computer service provided.

Section 230 of the Communications Decency Act makes a distinction between Internet *service* providers, and Internet *content* providers. On this distinction, tuckermax.com was considered an Internet service provider, not an Internet content provider. However, if *CNN* or the *New York Times* posted similar statements, they would be liable for defamation. *CNN* and the *New York Times* are not considered Internet service providers; they are considered Internet content providers. *CNN* and the *New York Times* are considered as professionals in the field of journalism.

### Inconsistency in Court Rulings

It does not help that the courts are inconsistent in their application of Internet defamation law. This adds to the confusion to the professional versus citizen journalist. For one thing, professional journalists are held to the ethical standards of the journalist profession. This allows a professional journalist to

make an appeal to journalist privilege, to neutral report privilege, or to shield law. Citizen journalists, on the other hand, cannot appeal to these.

The 2016 Gawker/Hulk Hogan invasion of privacy case illustrates a shift in a view of the freedom of the press.<sup>68</sup> This case is about a decades old video that shows Hulk Hogan (known by his real name as Terry Bollea) having sex with Heather Clem, who was the wife of Bollea's best friend at the time.<sup>69</sup> In 2012, Gawker was sent the video from an anonymous source, and it published a brief excerpt with an accompanying piece by Mr. Daulerio, then Gawker's editor. Stills from the video had been published elsewhere. Daulerio's post considered the fascination with celebrity sex tapes.

The issue of professional versus citizen journalist arises with the anonymous source. Gawker, however disreputable, was a professional media outlet. As noted earlier, citizen journalists make contributions to news. It could be argued that the anonymous source was a citizen journalist contributing an account/image of (however dubious) a newsworthy event.

Bollea publicly admitted on Howard Stern's radio that he slept with Ms. Clem with the blessing of her husband. Still, Mr. Bollea sued Gawker for invasion of privacy. Gawker countered that Bollea, known as Hulk Hogan, was a public figure, and sex tapes of public figures are newsworthy. Gawker said the tape was

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<sup>68</sup> Nick Madigan and Ravi Somaiya, "Hulk Hogan Awarded \$115 Million in Privacy Suit against Gawker," *New York Times* (Mar. 18, 2016). Retrieved 6/29/18 from: <https://www.nytimes.com/2016/03/19/business/media/gawker-hulk-hogan-verdict.html>.

<sup>69</sup> Ravi Somaiya, "Hulk Hogan v. Gawker: A Guide to the Trial for the Perplexed," *New York Times*. (March 17, 2016). Accessed July 7, 2018 at: <https://www.nytimes.com/2016/03/18/business/media/hulk-hogan-v-gawker-a-guide-to-the-trial-for-the-perplexed.html>.

newsworthy, as the activities of Bollea, in his persona of Hulk Hogan, was a matter of interest to the public. Bollea argued that Hulk Hogan was a fabricated persona, and that private activities of Bollea are not the activities of Hulk Hogan.<sup>70</sup> The jury sided with Bollea and awarded him \$115 million in damages.<sup>71</sup> Ultimately, Gawker and Bollea settled for \$31 million, and the case bankrupted Gawker.<sup>72</sup> The jury decided that even celebrities have a right to privacy, and this right outweighs the public's right to know.

There is considerable debate over this case. Zansberg argued that this case highlights the need for greater protection of freedom of the press.<sup>73</sup> For one thing, Zansberg noted that a legitimate argument can be made that Gawker's actions (however disreputable) were accounts and images of newsworthy events. In addition, Manta argued that this case illustrates the need to clearly address individual privacy in the age of the Internet.<sup>74</sup> Manta concluded that common law is better suited to address the heavily context-specific legal issues that arise from

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<sup>70</sup> Somaiya, "Hulk Hogan v. Gawker."

<sup>71</sup> Julia Greenberg, "Court Orders Gawker to Pay Hulk Hogan \$115M for Posting His Sex Tape," *WIRED* (Mar. 18, 2016), <https://www.wired.com/2016/03/jury-awards-hulk-hogan-115-million-gawker-sex-tape-post/>.

<sup>72</sup> Sidney Ember, "Gawker and Hulk Hogan reach \$31 million settlement," *New York Times*. (November 3, 2016). Accessed July 5, 2018 at: <https://www.nytimes.com/2016/11/03/business/media/gawker-hulk-hogan-settlement.html>.

<sup>73</sup> Steven D. Zansberg, "Recent High-Profile Cases Highlight the Need for Greater Procedural Protections for Freedom of the Press," (November 7, 2017). 33:2 Comm. L. 7 -14 (Am. Bar. Ass'n, Fall 2017). Available at SSRN: <https://ssrn.com/abstract=3067163> or <http://dx.doi.org/10.2139/ssrn.3067163>.

<sup>74</sup> Irina D. Manta, "Gawking Legally," *Harvard Journal of Law and Public Policy* 40 (117) 2018; Hofstra University Legal Studies Research Paper No. 2018-04. Available at SSRN: <https://ssrn.com/abstract=3113910>.

the actions of news sites like Gawker, especially the case involving Hulk Hogan, aka Terry Bollea.<sup>75</sup>

How does this apply to the distinction between the professional v. citizen journalist? For one thing, Gawker argued that it presented accounts and images of newsworthy events. A professional journalist as well as a citizen journalist will provide accounts and images of newsworthy events. Ribstein argued that the courts consider that a professional journalist has a much greater motive to present accounts and images than a citizen journalist.<sup>76</sup> However, current technology now allows the citizen journalist (whatever their motive) to present accounts and images to an audience as large as the professional journalist has. In the Hulk Hogan case, an anonymous sender (a citizen journalist) sent a tape to a media outlet that had a widespread audience. One consideration that the courts must address in defamation cases is the amount, speed, and spread of damaging information. The professional as well as the citizen journalist now have access to similar speed and spread of information.

#### Current Technology and the Speed/Spread of Information

Citizen journalists may be held to different standards than the professional journalist, but the citizen journalist is now disseminating information as quickly as the professional journalist. This is largely due to technological advances. For

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<sup>75</sup> Manta, "Gawking Legally."

<sup>76</sup> Ribstein, "From Bricks to Pajamas," 231.

instance, social media platforms allow accounts or images to be widely and quickly disseminated. Readers of the posts that contain the accounts or images can then re-post these accounts or images to their own followers or friends. This has an exponential spread effect.

In one study, Zheng et al. examined the ability of social media to spread and disseminate information.<sup>77</sup> They found that social media serves as a key ingredient for the dissemination of information. Other authors discussed the notion that social media helps in the speed of information dissemination. For instance, Marvel et al. discussed the small-world effect.<sup>78</sup> The small-world effect comes into play with social media. The small-world effect is the notion that there is a short chain of acquaintances connecting almost any two people. Easley and Kleinberg discussed the notion that widely diverse groups can be connected by very short paths via social media.<sup>79</sup>

The work by Zheng et al.<sup>80</sup>, Marvel et al.<sup>81</sup>, as well as Easley and Kleinberg<sup>82</sup> supported the notion that current technology aids in the spread of

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<sup>77</sup> Xiaolong Zheng, Yongguang Zong, Daniel Zeng, and Fei-Yue Wang, "Social Influence and Spread Dynamics," *Frontiers of Computer Science*, 6, no. 5 (2012): 611-620. Accessed June 29, 2018 at: <https://doi.org/10.1007/s11704-012-1176-1>.

<sup>78</sup> Seth Marvel, Travis Martin, Charles Doering, David Lusseau, and M. E. J. Newman, "The Small-World Effect Is a Modern Phenomenon," in: Cornell University Library. Accessed July 29, 2018: [arXiv:1310.2636v1](https://arxiv.org/abs/1310.2636v1).

<sup>79</sup> David Easley and Jon Kleinberg, "The Small-World Phenomenon," in *Networks, Crowds, and Markets: Reasoning about a Highly Connected World*, chapter 20. (2010). Cambridge University Press. Accessed July 29, 2018: <https://www.cs.cornell.edu/home/kleinber/networks-book/networks-book-ch20.pdf>.

<sup>80</sup> Zheng, Zong, Zeng, and Wang, "Social Influence and Spread Dynamics."

<sup>81</sup> Marvel, Doering, Lusseau, and Newman, "The Small-World Effect Is a Modern Phenomenon."

information as well as disinformation. Using social media platforms, the citizen journalist now has the ability to reach a wide-spread audience in a matter of minutes. Some social media personalities have a larger audience than local professional journalists. For instance, Kim Kardashian-West measures her followers in millions.<sup>83</sup> When she posts an account or image of something she considers newsworthy, it will reach millions of people in a matter of minutes. Kim Kardashian-West does not claim to be a journalist, citizen or professional. However, many professional journalists would love to have an audience as large as Kim Kardashian-West's audience.

This is problematical, because Lind et al. presented the notion that when information (or misinformation) spreads to this large a group, there is little anyone can do to suppress or stop the spread of misinformation or defamatory comments.<sup>84</sup> Once the information or misinformation reaches a large audience, the spread cannot be stopped.

In his work, "A Tale of Two Bloggers," Solove addressed this issue when he discussed the ability of a blogger to spread accounts and images.<sup>85</sup> Often bloggers are citizen journalists. Solove notes that when information, accounts, or

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<sup>82</sup> Easley and Kleinberg, "The Small-World Phenomenon."

<sup>83</sup> Morgan, "Why Is Kim Kardashian Famous? You asked Google – here's the answer."

<sup>84</sup> P.G. Lind, L. R. da Silva, J.S. Andrade, and H. Herrmann, "The spread of gossip in American schools: How gossip propagates," in *Europhysics Letters* 78(6):68005. doi: 10.1209/0295-5075/78/68005.

<sup>85</sup> Daniel J. Solove, "A Tale of Two Bloggers: Free Speech and Privacy in the Blogosphere," *Washington University Law Review* 84 (2006): 1195. Also at GWU Law School Public Law Research Paper No. 207; Berkman Center for Internet & Society - *Bloggership: How Blogs are Transforming Legal Scholarship Conference*. Accessed November 20, 2017, SSRN. <https://ssrn.com/abstract=901120>.



images are posted online, they become a permanent record, one that can be Googled at any time.<sup>86</sup> These accounts or images are spread beyond the poster's ability to stop the spread. Once defamatory statements have reached the blogosphere, they become a permanent record in cyberspace.

Citron addressed the problem of social media platforms and anonymous posters who spread defamatory statements online.<sup>87</sup> These often force victims to go offline or to assume pseudonyms to avoid harassment or physical violence. Citron also noted that these anonymous posters often manipulate search engines to fabricate and spread defamatory statements, which ruin reputations.<sup>88</sup> Citron argued that a more robust defense against online defamation is needed.

This notion that more protection against online harassment and defamatory speech is discussed by Marwick and Miller.<sup>89</sup> They noted that online speech (including obnoxious and offensive statements) is protected by the First Amendment. Marwick and Miller argued that existing law does not fully protect a

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<sup>86</sup> Solove, "A Tale of Two Bloggers: Free Speech and Privacy in the Blogosphere."

<sup>87</sup> Danielle Keats Citron, "Cyber Civil Rights," (December 18, 2008). *Boston University Law Review* 89 (December 18, 2008): 61-125. Also at U of Maryland Legal Studies Research Paper No. 2008-41. (2009). Accessed November 20, 2017, SSRN. <https://ssrn.com/abstract=1271900>.

<sup>88</sup> Citron, "Cyber Civil Rights."

<sup>89</sup> Alice E. Marwick and Ross W. Miller, "Online Harassment, Defamation, and Hateful Speech: A Primer of the Legal Landscape," (June 10, 2014). *Fordham Center on Law and Information Policy Report* No. 2 (June 10, 2017). Accessed November 20, 2017, SSRN. <https://ssrn.com/abstract=2447904>.

victim from online harassment and defamation.<sup>90</sup> They concluded that there are few legal remedies for victims of online harassment and defamation.

### Changing Notions of Public and Private

Adding complication to an already complex arena, the notions of public and private are changing. Previous notions of privacy are becoming obsolete. It used to be unthinkable to accept the fact that one was under video surveillance most of the day, but many public spaces have CCTV or other video security cameras 24/7. Anytime one goes shopping, there are usually CCTV or other security cameras providing video surveillance. In addition, smart home devices can now monitor all activity within a home.

Previously held notions of online privacy are now considered obsolete. Froomkin argued that it is now difficult (or impossible) to maintain online anonymity.<sup>91</sup> In fact, Froomkin noted that in many countries, online anonymity is actually illegal.<sup>92</sup> Equally important, DeCew noted that there is a consensus that the notion of privacy involves personal information, personal spaces.<sup>93</sup> However, what constitutes personal information or personal space is changing.

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<sup>90</sup> Marwick and Miller, "Online Harassment, Defamation, and Hateful Speech: A Primer of the Legal Landscape."

<sup>91</sup> Froomkin, "Anonymity and the Law in the United States."

<sup>92</sup> Froomkin, "Anonymity and the Law in the United States."

<sup>93</sup> DeCew, "Privacy."

What used to be considered personal information is now readily available for anyone who is looking. For instance, a person's exact location and travel through the day used to be considered private information. Yet most people carry cell phones, and cell phones can track every movement via GPS software. The notion of personal space is also evolving. It used to be the case that conversation between people in a room was private information. Smart home devices now have the ability to listen in and record conversation in all areas of the home. These recordings can be sent to others, often without the knowledge or permission of the persons speaking. Information that used to be considered private is now considered public.

Technology enables the invasion of privacy with surveillance devices that were previously impossible.<sup>94</sup> For instance, heat sensors can detect previously unknowable information. Law enforcement used heat sensors to detect marijuana growing behind walls. However, in *Kyllo v U.S.* (553 U.S. 27), the Court decided it is a violation of privacy rights and the Fourth Amendment to use thermal imaging devices that reveal information previously unknowable without a warrant.<sup>95</sup>

Solove argued that we must reconsider our notion of privacy.<sup>96</sup> He pointed out that, in a world where practically everything is public, can anything be

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<sup>94</sup> DeCew, "Privacy."

<sup>95</sup> DeCew, "Privacy."

<sup>96</sup> Daniel J. Solove, *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet*. Yale University Press (2007); *GWU Law School Public Law Research Paper 2017-4*; *GWU Legal Studies Research Paper 2017-4*. Accessed October 20, 2017, SSRN. <https://ssrn.com/abstract=2899125>.

private? The notion of what is public and what is private has changed. Solove argued that in order to protect privacy, we need to reexamine our understanding of privacy. Lior Strahilevitz also argued that it is not at all clear what constitutes private information and what constitutes public information<sup>97</sup>. This is an age of relentless and constant disclosure. How much disclosure is enough to make it public information?

These changing notions of personal information and personal space have an impact on notions of defamation. Notions of defamation rely on notions of public and private. When these notions change, notions of defamation change. In Robert Post's 1989 seminal work on the social foundations of defamation, he discussed the idea that notions of defamation have social origins.<sup>98</sup> When the social notions of public/private change, then the notion of defamation also changes. In his work, Post discussed the difficulty surrounding a precise definition of reputation.<sup>99</sup> Post pointed out that there is no single legal definition of reputation. The differing views of what, exactly, constitutes reputation give rise to different legal rulings. The blurring lines between public and private adds another layer of complexity to the situation.

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<sup>97</sup> Lior Strahilevitz, "A Social Networks Theory of Privacy," University of Chicago Law & Economics, Olin Working Paper No. 230; U of Chicago, Public Law Working Paper No. 79 (December 2004). Accessed November 20, 2017, SSRN. <https://ssrn.com/abstract=629283> Also available at <http://dx.doi.org/10.2139/ssrn.629283>.

<sup>98</sup> Robert C. Post, "The Social Foundations of Defamation Law: Reputation and the Constitution," *Faculty Scholarship Series* (1986) 217, accessed July 26, 2018, [https://digitalcommons.law.yale.edu/fss\\_papers/217](https://digitalcommons.law.yale.edu/fss_papers/217).

<sup>99</sup> Post, "The Social Foundations of Defamation Law: Reputation and the Constitution,"

In addition, the role of social media plays a key part in the notion of public and private. Social media openly presents and discusses information that previously was considered private information. Ardia argued that because of this, it is time to rethink laws about defamation.<sup>100</sup> He argued that the legal notion of privacy has its roots in an era that pre-dates the Internet. According to Ardia, current laws on defamation have roots in feudal times, and were intended to provide relief to the disruption caused by the printing press. Ardia stated that current laws on defamation are still rooted in the age of broadcast and print mass media. Current defamation law does not take into consideration the proliferation of information that also involves high social participation. Consequently, Ardia argued, current defamation law does not take current reality into account. Ardia maintained that defamation law needs to be reformed to provide the protection it is intended to provide. Ardia noted that because notions of privacy are changing, it is time to rethink laws about defamation.<sup>101</sup>

### Conclusion to Chapter Three

The literature review addressed the hypothesis and the research question. The hypothesis was that current law regarding defamation has not kept pace with the appearance of the citizen journalist. The research question that the

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<sup>100</sup> David Ardia, "Reputation in a Networked World: Revisiting the Social Foundations of Defamation Law," *Harvard Civil Rights-Civil Liberties Law Review* 45 (2010): 261, accessed July 26, 2017, [ssrn.com/abstract=1689865](https://ssrn.com/abstract=1689865).

<sup>101</sup> Ardia, "Reputation in a Networked World: Revisiting the Social Foundations of Defamation Law."

literature review addressed asked, "Should the current laws on defamation treat the citizen journalist the same as the professional journalist"? Issues and concepts that were considered in the literature review were: The notion of a journalist, the changing role of the journalist, and the rise of the citizen journalist. In addition, the speed and scope of social media platforms were considered. Also examined were the changing notion of what constitutes public and private. Another issue that was considered was the role of technology in all of this, and how current law has not kept pace with the advance of technology. Also reviewed were scholarly discussions on the laws regarding the rights and responsibilities of journalists (professional and citizen), and the laws regarding defamation in the Internet age. Chapter Four will discuss the findings of the literature review in the light of the hypothesis and research question.

## Chapter IV

### Discussion

The hypothesis was that that current law regarding defamation has not kept up with the appearance of the citizen journalist. The research question addressed this issue by asking, "Should the current laws on defamation treat the citizen journalist the same as the professional journalist?" The data uncovered by the research supported the hypothesis. Current law regarding defamation has not kept up with the appearance of the citizen journalist. Current law on defamation does not treat the citizen journalist the same as the professional journalist.

The review of the literature indicated that there is no clear definition of what a professional journalist is. The appearance of the citizen journalist has highlighted this problem. It is becoming more and more difficult to differentiate between the professional and the citizen journalist. Citizen journalists now have the ability to disseminate accounts and images of newsworthy events to large numbers of people, larger groups than some local professional journalists. As citizen journalists are not held by the courts to the same standard as professional journalists are held, the citizen journalist has considerable freedom to present misinformation or even fake news. In fact, Ribstein argue that the law allows the citizen journalist to spread lies and misinformation with impunity. Ardia argues

that laws regarding the rights and obligations of journalists need to be reassessed. Due to the increasingly blurred line between professional and citizen journalist, there is a need for a reevaluation of defamation law.

Advances in technology have made dissemination of information easier than ever before. Even ordinary citizens have the ability to post a message that will be seen by thousands, and eventually perhaps millions. Information, accounts, and images can be disseminated in a matter of hours or even seconds. In addition, the rise of the citizen journalist has complicated the issue. Citizen journalists are now making serious contributions to mainstream media/news outlets.

However, the courts provide citizen journalists more First Amendment protection than they do for the professional journalist. The research findings show that the law does not treat the citizen journalist the same as the professional journalist. The citizen journalist does not have to adhere to the same strict reporting standards of the professional journalist. This is of some concern since the citizen journalist is now making serious contributions to mainstream media outlets. As such, the citizen journalist should be treated the same as the professional journalist.

Adding another layer of complexity is that our notions of privacy are changing. Information that at one time would have been considered private is now voluntarily made public. For instance, dating sites ask members to state



their sexual orientation for prospective dating partners to know. Social media platforms allow people to discuss where they are at all times of the day, and what they are doing. People freely discuss that they are changing clothes (dressing room pictures are common), changing their hair/makeup (pictures are common on sites like Facebook), even that they are having sex. There are websites that allow members to freely discuss their obsessions with actors, fictional characters, musicians, or famous/infamous people. For instance, there are easily findable Tumblr blogs devoted to characters from the 2016 movie *Suicide Squad*. One such blog is *Obscure-Images*, which is devoted to the owner's obsession with fictional characters (one of which is the Joker character from the film *Suicide Squad*). *Obscure-Images* can be found on social media platform Tumblr.<sup>102</sup> Previously, these types of conversations or musings would be considered private, but now they are available for anyone to read/view.

The role of technology plays an important part in this changing notion of public/private. Information that was considered private information in the last century is now considered public information. For instance, advances in GPS technology now make it possible to see exactly where a person is, any minute of the day. There are tracking apps which track and show the path a person takes throughout the day. Surveillance technology now makes it possible to scan a

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<sup>102</sup> *Obscure Images*, blog, accessed 3 August at: <http://obscure-imagines.tumblr.com/tagged/joker-suicide-squad>.

building and gain information that was previously not available unless one conducted an onsite physical search. Televisions now have the ability to tell how many people are in the room. Just a few years ago, information like this was considered private information.

In addition, advances in technology has considerable impact in the speed and spread of information. Social media platforms now allow anyone with a device that has Internet access to give accounts and images of newsworthy events (or what they consider newsworthy events). Some social media personalities have more followers than local professional journalists. For instance, Kim Kardashian-West numbers her social media followers in the millions.<sup>103</sup> When she posts an account or image, it is disseminated to millions in a matter of seconds.

This is important, because the literature indicates that the larger a group is, the more difficult it is to stop the spread of information (or misinformation). For instance, Lind et al. indicates that when information (or misinformation) is disseminated to a large group, there is little anyone can do to suppress or stop it.<sup>104</sup> Many social media personalities now number their followers in the millions, and will post accounts and images of what they consider newsworthy events.

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<sup>103</sup> Morgan, "Why is Kim Kardashian famous? You asked Google – here's the answer."

<sup>104</sup> Lind, da Silva, Andrade, and Herrmann. "The spread of gossip in American schools: How gossip propagates."

Consequently, it is becoming increasingly difficult to stop the spread of misinformation or of fake news through social media.

When misinformation or fake news comes from a social media personality, this becomes a serious issue. When accounts and images of newsworthy events are disseminated by a social media personality, they can be considered a citizen journalist. The courts do not hold the citizen journalist to the same standard of reporting than a professional journalist is held. Professional journalists are held legally accountable for the information they present. A professional journalist must verify the accounts and images they disseminate. This accountability can be required by the employer. For instance, *the Washington Post* has strict guidelines for reporting.<sup>105</sup> Or, for media outlets with few accountability requirements, the courts will hold the professional journalist responsible. For instance, Alex Jones of *Infowars* is being sued for defamation.<sup>106</sup>

Ribstein argues that the citizen journalist is given a higher level of First Amendment protection than the professional journalist. Ribstein notes this is because the citizen journalist has fewer motives for disseminating information than the professional journalist. However, advances in technology may provide a challenge to this view. Social media platforms now disseminate information or misinformation to millions in a matter of seconds. The reach and scope of the

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<sup>105</sup> "Policies and Standards," *Washington Post* online.

<sup>106</sup> Cooper, "Six More Sandy Hook Families Sue Broadcaster Alex Jones."

citizen journalist is often as large or even larger than the reach and scope of the professional journalist. The motives for disseminating information may be just as strong in a citizen journalist as they are for the professional journalist.

It is not a new idea that the law has not kept pace with advances in technology. There are many areas that the law has not kept pace with advances in technology. For instance, intellectual property law is struggling to keep pace with digital property disputes. Advances in surveillance technology (face-scanning in casinos and airports, GPS in rental cars and phones, etc.) now readily provide information that could previously only be obtained with a warrant.

The information gained in the literature review supported the hypothesis. Current law regarding defamation has not kept up with the appearance of the citizen journalist. Current law on defamation does not treat the citizen journalist the same as the professional journalist. One problem is that there is no clear definition of what a journalist is, professional or otherwise. With the advances in technology, it is becoming more and more difficult to differentiate between the professional and the citizen journalist. The next chapter (Chapter Five) presents implications for future research. Chapter Five is also the summary and conclusion of this thesis.

## Chapter V

### Summary and Conclusion

One of the benefits of the advances in communication technology is the ability to instantly connect with others. Social media platforms now allow us to belong to and communicate with groups so large they were previously unthinkable. Some social media groups number in the mega-millions. This has drawbacks, however, because it also allows the spread of misinformation and fake news. The research indicates that the larger a group is, the harder it is to stop the spread of information, fake or otherwise.

Professional journalists used to be among the few who had the ability to disseminate accounts and images of newsworthy events, both quickly and to large numbers of people. This has now changed with the advent of social media platforms and other advances in communication technology. A citizen journalist can now disseminate accounts and images of (what they consider to be) newsworthy events to an audience of millions.

The courts hold a professional journalist to a higher standard of accountability than they do the citizen journalist. This is a problem, because the citizen journalist now has pretty much the same scope and speed to disseminate accounts and images as does the professional journalist. However, the research indicates that the courts provide more First Amendment protection to citizen

journalists than they provide to professional journalist. Since a citizen journalist can disseminate misinformation and/or fake news to millions of people, often in a matter of seconds, this is a serious issue.

The hypothesis was that that current law regarding defamation has not kept up with the appearance of the citizen journalist. The research question addressed this issue by asking, "Should the current laws on defamation treat the citizen journalist the same as the professional journalist?" The data uncovered in answering the research question supports the hypothesis that current law regarding defamation has not kept up with the appearance of the citizen journalist. The literature on this matter indicates that laws regarding defamation should treat the citizen and professional journalist the same. Judicial reform is needed so the law regarding defamation treats the citizen journalist the same as the professional journalist.

One surprising bit of information that arose from the research was that there is no precise definition of what a journalist is. The field of journalism does not have a standard or unified definition of what a journalist is. With the rise of the citizen journalist, it is becoming more important to define what exactly a journalist is. Since a citizen journalist now has the reach and scope of the professional journalist, this lack of a unified definition has created legal problems.

A critical element in this issue is the speed in which the information is spread. Another key element is that the notion of public and private is changing. Advances in surveillance technology have moved what was previously considered private information into the realm of public information. The laws have not kept up with the rapid advance of technology.

In order to achieve this, the profession of journalism must come up with a definition of "journalist", including "professional journalist". Currently, the profession is reluctant to give a precise definition of "journalist".<sup>107</sup> This is unfortunate, as legal rights and responsibilities are conferred to the professional journalist. If there is no precise definition of who or what a journalist is, the courts will have difficulty dealing with legal issues regarding journalists.

In addition, there is the danger that if the profession cannot or will not come up with a precise definition of what a journalist is, the government may step in to do so. If anyone can be a journalist, then anyone can claim reporter's privilege. One possible result of this is that no one will be granted reporter's privilege. Consequently, as Barton points out, if the profession does not come up with a precise definition of what a journalist is, the government will.<sup>108</sup> This is a serious concern, because once the government decides who gets to be a journalist, the press will lose its ability to be a watchdog over the government. In

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<sup>107</sup> Barton. "What Is a Journalist?"

<sup>108</sup> Barton. "What Is a Journalist?"

order to continue as a free press, the profession itself must shake its reluctance to define “journalist”, citizen or otherwise.

The research also supports the notion that legal reform is needed so that citizen and professional journalists are treated the same. One of the main differences that used to divide the professional from the citizen journalist was the speed and scope of information dissemination. It used to be the case that, unlike a citizen journalist, the professional journalist could present accounts and images of newsworthy events, both quickly and to large numbers of people. With advances in communication technology, the citizen journalist now has the ability to reach millions in a matter of seconds. Some social media personalities measure their followers in the mega-millions. Not many professional journalists can claim to match this.

In order to come to a precise definition of what a journalist is, further research is needed to explore the nature of journalism as well as the scope of the journalist (citizen as well as professional). The field of journalism can do this, but the legal field also needs to weigh in on the matter. This is because any unified definition of what a journalist is will have legal repercussions.

In addition, future research should explore the changing boundaries between public and private. This is because the notion of what is private has changed considerably in just a few years. Previously unthinkable invasions of privacy are now taken as part of a normal day. For instance, GPS in phones can



pinpoint exactly where a person goes. Face-scanning is accepted at casinos and airports. Legal matters surrounding defamation and invasion of privacy depend on a clear notion of what constitutes private information and what constitutes public information.

The hypothesis and research question for this thesis address a current issue in legal studies. The research indicates that legal reform is necessary in order to keep pace with current technology. The examination of the literature also indicated that further research is needed to come up with a definition of "journalist", both professional and citizen. If the journalism profession cannot or will not come up with a definition, then there is the risk that the government will step in to decide on who gets to be a journalist.

## Appendix

### The *Washington Post*

#### Seven Principles for the Conduct of a Newspaper<sup>109</sup>

The mission of the *Washington Post* is taken from a set of principles written by Eugene Meyer in 1935. (The gender references have been supplanted by The Washington Post's policy of inclusion.) These seven principles are:

1. The first mission of a newspaper is to tell the truth as nearly as the truth may be ascertained.
2. The newspaper shall tell ALL the truth so far as it can learn it, concerning the important affairs of America and the world.
3. As a disseminator of the news, the paper shall observe the decencies that are obligatory upon a private gentleman.
4. What it prints shall be fit reading for the young as well as for the old.
5. The newspaper's duty is to its readers and to the public at large, and not to the private interests of its owners.
6. In the pursuit of truth, the newspaper shall be prepared to make sacrifices of its material fortunes, if such course be necessary for the public good.

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<sup>109</sup> "Policies and Standards," *Washington Post* online (January 1, 2016), accessed August 2, 2018. [https://www.washingtonpost.com/policies-and-standards/?noredirect=on&utm\\_term=.74bb4362996b#factchecking](https://www.washingtonpost.com/policies-and-standards/?noredirect=on&utm_term=.74bb4362996b#factchecking).

7. The newspaper shall not be the ally of any special interest, but shall be fair and free and wholesome in its outlook on public affairs and public men.

Eugene Meyer, March 5, 1935

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