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## **MNPA FEBRUARY 2020**

### **DEFAMATION**

- A photo with: “Have you seen this man.” UMass Boston student newspaper headline. A routine story from the police blotter that campus police were looking for an unidentified man allegedly taking photos of women around the university. Appeals Court agreed that since the police never arrested the man or issued a search warrant, the information is not protected, and the newspaper is liable. Under appeal to the SJC who will hear this case in November. GateHouse Media filed the brief on this fair reporting privilege case. MNPA filed an *Amicus* in *Butcher v. University of Massachusetts*.  
DECISION: On December 31, 2019, the SJC reversed the Appeals Court citing the fair report privilege shielded from liability the news editor. However, the SJC in its opinion made clear that the fair report privilege does not apply to every statement of any type contained in a police blotter. The court warned that the fair report privilege can be lost if a plaintiff can show that the publisher acted with malice or that the report is not a “fair and accurate” portrayal of official actions and statements.

## OPEN MEETINGS

- A.G. Maura Healey reported an increase of Open Meeting complaints in 2019 was at a record high with 351 resolutions, up from 235 in 2018.

## PUBLIC RECORDS

- Arrest Records, Mug Shots and Police Reports NOT exempt under CORI ruled Superior Court J. Wilkins on December 4, 2017, however, the Boston Police, DCJIS, and State Police have appealed the ruling to the SJC. *Boston Globe Media Partners v. Boston Police Department* heard on November 12, 2019. Also, State Police would not provide photographs of Police arrested saying protected by CORI; Boston Police redacted names. A.G. Maura Healey representing the Police.
- *Maura Healey v. Timothy Cruz*. Press/Public victory. Bulk data about criminal cases kept by District Attorneys' offices. SPR ruled public; but DA still said secret. Superior Court Judge ruled that because the data does not include names, it is not protected by CORI, therefore a public record.
- Non-Disclosure Agreements. A rash of public awareness on non-disclosure clauses in public settlement agreements. In Andover there are 6 secret contracts recently discovered.
- The Berkshire district attorney's general counsel resigned in January after she said the DA attempted to block the release of public records in a politically fraught case after The Eagle newspaper filed a public records request.

## ACCESS

- State Troopers Banned from Courtroom. Defendant struck and killed a State Trooper on the Mass. Pike in 2016. During the announcement of the manslaughter verdict the Superior Court Judge barred troopers in State Police attire from being in the courtroom during her announcement.

Judge stated she wanted neutrality in the courtroom. No rulings: no findings produced. No justification provided.

## **FREE SPEECH**

- Babson adjunct professor was fired for a satirical Facebook post that Iran's leader should "tweet a list of 52 sites of beloved American cultural heritage that he would bomb. Um ... Mall of America? ... Kardashian residence?" in response to President Trump's threat to target Iranian cultural sites. Asheen Phansey apologized as a "bad attempt at humor." Jeffrey Pyle is his lawyer.

## **NATIONALLY**

New Hampshire: House Bill 1157 proposed to require media outlets to update crime coverage, retract or correct an internet publication after notification by the named person of a not guilty, acquittal, or dismissal – if not, the media liable for damages.

Free Speech. Campus Speech restrictions. President Trump issued an executive order supporting free speech on campus. "under the guise of 'speech codes' and 'safe spaces' and 'trigger warnings,' universities have tried to restrict free thought, impose total conformity, and shut down the voices of great young Americans," he said at a White House ceremony. "If a college or university doesn't allow you to speak, we will not give them money. It's very simple."

Public Records. U.S. Supreme Court unsealed significant redacted legal briefs filed in a case about whether the use of midazolam would violate an inmate's Eighth Amendment protections against "cruel and unusual punishment." Under motions by NPR and RCFP.

Advertising. Political advertising law in Maryland requires newspapers who publish political advertisements must keep detailed records on them and release those records to the public within two days of publication. A coalition of 17 media organizations and the RCFP support the News Media Alliance argument.

**Public Records.** Revenues reported to the U.S. Dept. of Agriculture by businesses when they sell food under the Supplemental Nutrition Assistance Program (SNAP) are now secret ruled the U.S. Supreme Court. This overturned nearly 45 years of FOIA precedent that had required businesses to show they would suffer competitive harm if release. Justice Gorsuch wrote that when businesses consider information confidential and the government obtains it on a promise to keep the information confidential, then FOIA cannot force its release. Sioux Falls (South Dakota) Argus-Leader sought this information.

**Circulation.** Newspaper carriers specifically excluded from coverage as an employee or an independent contractor for purposes of unemployment benefits and/or unemployment taxes in Mississippi. Mississippi Press Association fought Mississippi Employment Security Department. Zinser Law Firm successful, again.

**Defamation.** Rep. Nunes sues CNN for \$435m claiming it published a “demonstrably false hit piece.” In March he sued Twitter for \$250 m. He sued the McClatchy news organization in August and Hearst Magazines October for \$77 million.

**Defamation.** Harvard Law professor Lawrence Lessig filed a lawsuit against the New York Times on January 13 for the headline: If you take Epstein’s Money, Do it in Secret.” And the story goes on to say: “It is hard to defend soliciting donations from the convicted sex offender Jeffery Epstein, But Lawrence Lessig, a Harvard Law professor, has been trying.” However, in his 3,500-word essay. Lessig twice called Epstein’s donations a mistake.

**Defamation.** Covington Catholic student Nick Sandmann, a young white man with pro-life beliefs, settles with CNN (Bill Maher). Also suing the New York Times Maggie Haberman and the Washington Post without any audio or video corroboration which published false statements. Also, the incorrect tweet from Rep. Ilhan Omar of Minnesota who later deleted her tweet. Initially, the Kentucky Catholic diocese condemned Sandmann. The Post case is ongoing.

## **INTERNATIONALLY**

“Right To Be Forgotten” or “Right To Erasure”

German Court ruled a man convicted of double murder cannot have his record erased from *Der Speigal*. BUT a higher German Federal Court ruled, wait

*die Minute*, remanded back “to provide some protection against search engines retrieving the articles in the context of searches related to the complainant’s name.” Involved a private citizen and a news organization.

A second case involving a private citizen and a search engine’s freedom to conduct searches found a different result. Former CEO subject to a TV show’s segment on “Dismissal: the dirty practices of employers,” in which a former CEO was accused of unfairly treating an employee for trying to establish a “works council.” Court ruled EU law governs, not local law as in the *Der Spiegel* case. So, CEO’s case dismissed. A search engine and a citizen does not directly implicate journalistic expression. EU’s Charter of Fundamental Rights.