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## Foreword

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## FOREWORD

LOREN GHIGLIONE\*

Is media ethics an oxymoron? Are the news media increasingly suffering from ethical illiteracy and liberal bias, contributing to the downfall of democracy and begging by their misdeeds for more regulation by government?

Or are the news media, despite well-publicized ethical lapses in recent years and the Bush administration's disdain, still acting as the public's watchdog—monitoring government, religion, business, and other powerful institutions and pursuing the truth about them?

Whatever your answers to those questions, you will find support for them in this issue on *Media Ethics*. In *Sensationalism in the Newsroom*, Jessica E. Jackson attacks the media (used as a singular noun, as if there is a single, loathsome media).<sup>1</sup> She sees today's media as an echo of the yellow press of Joseph Pulitzer and William Randolph Hearst. Recalling the start of the Spanish-American War, she repeats the story of how Hearst told artist Frederic Remington, who had asked to be recalled because no war was taking place: "Please remain. You furnish the pictures, I'll furnish the war."<sup>2</sup> Historians question whether such an exchange actually occurred. Regardless, Jackson calls for legislatively imposed fines, courts tougher on press freedom, a strong, British-style Contempt of Court Act, and other penalties to combat what she perceives as today's especially sensational journalism.

Similarly, Marianne M. Jennings chastises a "perfidious media" (again, singular "media") and that media's "confused and misguided moral relativism."<sup>3</sup> She summarizes the sins of Dan Rather of *CBS News*, Jack Kelley of *USA Today*, and Jayson Blair of

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1. Jessica E. Jackson, Note, *Sensationalism in the Newsroom*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 789 (2005).

2. *Id.* at 792.

3. Marianne M. Jennings, *Where Are Our Minds and What Are We Thinking? Virtue Ethics for a "Perfidious" Media*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 637, 640 (2005).

the *New York Times*; she doubts reform will come from within journalism. She criticizes journalism textbooks, ethics codes, and commissions for making virtue in the news media “far too complex.”<sup>4</sup>

Just agree, she says, that absolute truth exists. Just insist that journalists must abandon the culture of “ethical collapse” (partisanship, ratings, superstars) for a “culture of virtue.”<sup>5</sup> That culture can be created within a news organization if it adheres to such principles as: fact check all journalists, create an anonymous hotline for consumers, pursue their anonymous complaints, enforce tough conflict-of-interest rules, and aim for diversity of political ideology among journalists.

But for other contributors to this edition on *Media Ethics*, news media is a very plural noun. The media take a variety of attitudes toward the definition of news (from celebrity gossip to investigative reports), toward neutrality/objectivity (some say a point of view is essential to a journalist), and toward accuracy (Matt Drudge of the *Drudge Report*, a popular Internet site of scandal and scoops, says he is eighty percent accurate, a rate unacceptable to other journalists).<sup>6</sup> And today’s media provide an amazing range of journalists or pseudo-journalists, from reporters for mainstream media (nicknamed MSM, which sounds like a debilitating disease), to syndicated columnists, to talk-show hosts (Armstrong Williams went from syndicated columnist to radio talk show co-host after it was disclosed that the Bush administration had paid him \$240,000 to promote its No Child Left Behind Act), to amateur bloggers, to left-vs.-right fulminators on cable television, to satirists (the *Onion*, the satirical newspaper, recently reported, *Bush Announces Iraq Exit Strategy: ‘We’ll Go Through Iran’*),<sup>7</sup> to Art Spiegelman and other writers and artists of graphic novels who have been dubbed comics journalists,<sup>8</sup> to *Saturday Night Live* comedians and “reporter” Jon Stewart of Comedy Central’s the *Daily Show*, sources of news, one polls says, for about one-fifth of young adults.<sup>9</sup> Jacob Weisberg, editor of *State*, writes that today “anyone who thinks he’s a journalist is a

4. *Id.* at 696.

5. *Id.* at 703.

6. Matt Drudge, Address Before the National Press Club (June 2, 1998), reprinted in MATT DRUDGE & JULIA PHILLIPS, DRUDGE MANIFESTO 203–04 (2000).

7. *Bush Announces Iraq Exit Strategy: ‘We’ll Go Through Iran’*, THE OILION, Mar. 9, 2005.

8. Kristian Williams, *The Case for Comics Journalism*, COLUM. JOURNALISM REV., Mar.–Apr. 2005, at 51–55.

9. HERBERT J. GANS, DECIDING WHAT’S NEWS: A STUDY OF CBS EVENING NEWS, NBC NIGHTLY NEWS, NEWSWEEK, AND TIME xii (25th Anniversary ed., Medill School of Journalism/Northwestern University Press 2004).

journalist.”<sup>10</sup> Weisberg might have added, anyone who is not a journalist may also be thought of as a journalist.

For such a diverse group of “journalists,” there are no education, training, or licensing requirements of the kind that face doctors and lawyers. So it becomes difficult to establish an effective blanket code of ethics. In *Ethics in Communications*, Archbishop John Foley, president of the Pontifical Council for Social Communications, calls not for state control of media but for “more regulation according to criteria of public service,” “greater public accountability,” and professional codes of ethics, developed in cooperation with public representatives, including religious groups.<sup>11</sup> But many of the “journalists” in today’s Internet Age, I suspect, see themselves less as professional journalists, responsible to journalism’s professional codes of ethics, and more as non-journalist citizens immune from codes of ethics and public censure.

This edition on *Media Ethics* focuses especially on the debate over journalists’ use of confidential sources. In *Journalists and Confidential Sources*, Robert Zelnick, a thirty-seven-year veteran of journalism and journalism education, worries about two recent cases—a \$1,000 daily fine and six-month house arrest for WJAR Providence television reporter Jim Taricani and a prosecutor’s pursuit of *New York Times* reporter Judith Miller and *Time* reporter Matthew Cooper for failure to disclose the names of confidential administration sources.<sup>12</sup> Zelnick concludes, “The scales are now tipped too far in the direction of forced disclosure.”<sup>13</sup>

Zelnick sees a need for a federal shield law to protect journalists from having to go to jail for reporting matters important for the public to know. Matthew V. Storin argues in *Politics, Law, and an Anonymous Source* for protection of anonymous sources remaining “a guiding principle for contemporary journalists . . . under virtually all circumstances.”<sup>14</sup> He points to the positive impact of state shield laws: a Reporters Committee for Freedom of the Press survey noted that the quash rate for subpoenas to

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10. Jacob Weisberg, *Who Is a Journalist? Anybody Who Wants To Be*, SLATE, Mar. 9, 2005, at <http://slate.msn.com/id/2114581/> (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

11. John P. Foley, *Ethics in Communications*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 487, 499 (2005).

12. Robert Zelnick, *Journalists and Confidential Sources*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 541 (2005).

13. *Id.* at 552.

14. Matthew V. Storin, *Politics, Law, and an Anonymous Source*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 589, 592 (2005).

news organizations was four and a half times greater in shield law states than in other states.

Laura R. Handman, author of *Protection of Confidential Sources: A Moral, Legal and Civic Duty*, makes the case for a federal shield law, noting, "Without the press's reliance on anonymous sources, the Abu Ghraib prison abuses would not have been reported to the public."<sup>15</sup> But Edward Wasserman's *A Critique of Source Confidentiality* questions whether promise-keeping by journalists to sources is purely an ethical concern deserving of special legal protection.<sup>16</sup> He quotes *USA Today* founder Al Neuharth: "The anonymous source, if in fact one exists, generally is a coward who tells more than he or she knows. The reporter permitted to use such sources often writes more than he or she hears."<sup>17</sup>

Wasserman says confidentiality conflicts with other ethical priorities of a journalist, accountability and verifiability, to which it should sometimes yield. Dishonest or inaccurate informants need to be held accountable for the information they provide to reporters. And publication of the identities of sources helps, Wasserman says, "to determine that the words were spoken, just as reported, by the person who was said to have uttered them."<sup>18</sup>

Many articles in this *Media Ethics* edition focus on the unethical behavior of individual journalists, including Stephen Glass, fired in 1998 by the *New Republic* magazine for fabricating at least two dozen articles. In *Hollywood and Journalistic Truthtelling*, Matthew C. Ehrlich suggests that the 2003 movie about the Glass case, *Shattered Glass*, and news organizations themselves avoid examining the social, economic, and cultural factors that contribute to individuals' aberrant behavior.<sup>19</sup>

Ehrlich quotes journalism educator James Carey: "The culture of journalism professes loyalty to truth, thoroughness, context and sobriety but actually rewards prominence, the unique take, standing out from the crowd and the riveting narrative."<sup>20</sup> Ehrlich also asks whether the profit-driven culture of news organizations undermines good journalism. He cites Robert McChesney who favors policies and subsidies that encourage "a vibrant

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15. Laura R. Handman, *Protection of Confidential Sources: A Moral, Legal and Civic Duty*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 573, 576 (2005).

16. Edward Wasserman, *A Critique of Source Confidentiality*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 553 (2005).

17. *Id.* at 564 n.33.

18. *Id.* at 563-64.

19. Matthew C. Ehrlich, *Hollywood and Journalistic Truthtelling*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 519 (2005).

20. *Id.* at 529.

nonprofit and noncommercial media sector” and “a strong policy bias toward encouraging more competitive markets.”<sup>21</sup>

Other articles in this *Media Ethics* edition also shed light on today’s culture of journalism. In *The FCC and Media Ownership: The Loss of the Public Interest Standard*, U.S. Senator Byron L. Dorgan decries the growth of media conglomerates that “do not consider or reflect local community standards” and the FCC’s retreat from strict enforcement of its public interest standard and its ownership limits.<sup>22</sup> New rules permit one company to own in a large market the daily newspaper, three television stations, and eight radio stations. Dorgan calls for the imposition of new media ownership limits “with the public interest, and not corporate favors, as a guide.”<sup>23</sup>

In *Regulating Televised News: A New Season for the Public Interest Standard*, Mark Emery worries about the “commercialized blend” of reporting, opinion-based programming, and self-advertising by the networks that makes up their televised news today.<sup>24</sup> The scope of news coverage may be shrinking while Bill O’Reilly’s *No Spin Zone* spin and other ideological content may be expanding. Despite the FCC’s current philosophy of deregulation, Emery advocates use of the FCC’s public interest standard to regulate, but not censor, the quality and scope of televised news coverage.

Bob Wright, Chairman of NBC Universal, worries about another form of government regulation, the Copyright Clause that authorizes Congress to grant “authors and inventors the exclusive right to their respective writings and discoveries.”<sup>25</sup> In *Technology and the Rule of Law in the Digital Age*, Wright notes that digital technology makes possible new on-demand services that permit the public to easily access video. But Wright looks at a recording industry “decimated by illegal downloads” and asks whether the digital technology will merely encourage video theft (and lost jobs and taxes) or will, by adequately protecting property rights, stimulate commerce.<sup>26</sup>

Russell Shaw, information director of the National Conference of Catholic Bishops/United States Catholic Conference for almost two decades and author of *Dealing with Media for the*

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21. *Id.* at 537.

22. Byron L. Dorgan, *The FCC and Media Ownership: The Loss of the Public Interest Standard*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 443, 450 (2005).

23. *Id.* at 454.

24. Mark Emery, Note, *Regulating Televised News: A New Season for the Public Interest Standard*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 737, 738 (2005).

25. Bob Wright, *Technology and the Rule of Law in the Digital Age*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 705, 707–08 (2005).

26. *Id.* at 706.

*Church*, agrees with those who describe the elite news media as secular institutions, covering the Church as it would Congress or another political institution.<sup>27</sup> Shaw says journalists look at the ordination of women, clerical celibacy, contraception, and other issues as stories about conflict—the views of, say, the authoritarian Church hierarchy versus those of egalitarian lay Catholics. As for the clergy sex abuse scandal, Shaw acknowledges mistakes by the Church in withholding information. But he says “journalists are guilty of gross abuses of their own, and up to now, their willingness to recognize these faults has been virtually nil.”<sup>28</sup>

Neil Henry’s article, *Picture Power: The Image in Wartime and the Digital Age*, draws attention to a media corporate culture that encourages the control and censor of images.<sup>29</sup> When Ted Koppel of ABC’s *Nightline* spent a thirty-minute program reciting the names and showing the faces of all 786 Americans who had been killed in action to that point in Iraq, the Sinclair Broadcasting group, a supporter of the Iraq War, prohibited the program’s broadcast over its six ABC affiliates.

Two essays bring to mind George Orwell’s attack in his classic 1946 essay, *Politics and the English Language*, on “euphemism, question-begging and sheer cloudy vagueness.”<sup>30</sup> In *What’s In a Name?*, Kenneth Woodward examines the newsroom culture of the *New York Times* and the influential newspaper’s avoidance of the term “partial birth” and substitution for it of “‘type of abortion’ and similarly vague formulations in its news headlines.”<sup>31</sup> Woodward also looks at how *Times* reporters define and describe “partial birth”—solely, he says, as a term used by those opposed to abortion—and asks whether the pro-choice editorial position of the *Times* “colors the way it reports the news.”<sup>32</sup> He concludes that at the *Times*, yes, “on the issue of ‘partial-birth’ abortion, those who edit the news and those who comment on it appear to be joined at the hip.”<sup>33</sup>

William J. Drummond, in *Neutral or Negative, Accuracy or Appeasement: Nouns of Choice in the Iraqi Conflict*, draws attention to the culture of understatement that exists within many news orga-

27. Russell Shaw, *The News Media and the Catholic Church*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 455 (2005).

28. *Id.* at 466.

29. Neil Henry, *Picture Power: The Image in Wartime and the Digital Age*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 475 (2005).

30. GEORGE ORWELL, A COLLECTION OF ESSAYS 166 (1953).

31. Kenneth L. Woodward, *What’s In a Name? The New York Times on “Partial Birth” Abortion*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 427, 429 (2005).

32. *Id.* at 430.

33. *Id.* at 441.

nizations as to the use of language.<sup>34</sup> While President Bush is more likely to talk about enemy forces in Iraq as “terrorist,” the Associated Press prefers “militant” and “insurgent” to “terrorist” in ninety percent of its captions. But Drummond also cites exceptions to news organizations’ understatement. The *National Post*, a conservative newspaper in Canada, says the use of terms such as “militant” or “insurgent” in place of “terrorist” merely serves “to apply a misleading gloss of political correctness.”<sup>35</sup>

The focus of articles on the culture of news organizations makes me wonder whether the Bush administration’s apparent culture of anti-news organizations also deserves examination. While all administrations attempt to neutralize the press, the current administration apparently seeks to delegitimize the press, portraying it as more a special interest than a protector of the public interest. President Bush says he peeks at newspaper headlines “just to get kind of a flavor” but rarely reads the articles. “The best way to get the news is from objective sources,” he says. “And the most objective sources I have are people on my staff.” Bush’s chief of staff, Andrew Card, is quoted in the *New Yorker* as contending that the press is not a check-and-balance body representing “the public any more than other people do.”<sup>36</sup>

In *How the Government Makes News*, two *New York Times* reporters, David Barstow and Robin Stein, described a television news segment that talked about “another success” in the Bush administration’s “drive to strengthen aviation security”: “The ‘reporter’ covering airport safety was actually a public relations professional working under a false name for the Transportation Security Administration.”<sup>37</sup> In the past four years, at least twenty federal agencies have spent \$254 million to create hundreds of television news segments, “many . . . broadcast on local stations across the country without any acknowledgment of the government’s role in their production,” Barstow and Stein reported.<sup>38</sup> They also noted that the Government Accounting Office has said the video news releases sent to television stations to promote administra-

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34. William J. Drummond, *Neutral or Negative, Accuracy or Appeasement: Nouns of Choice in the Iraqi Conflict*, 19 NOTRE DAME J.L. ETHICS & PUB. POL’Y 509 (2005).

35. *Id.* at 510.

36. Michiko Kakutani, *After Years of Taking Heat, Spokesman Takes Potshots*, N.Y. TIMES, Mar. 1, 2005, at E1.

37. David Barstow & Robin Stein, *The Message Machine: How the Government Makes News*, N.Y. TIMES, Mar. 13, 2005, at 1.

38. *Id.*



tion policies may constitute illegal "covert propaganda" when they fail to make clear the government's role.<sup>39</sup>

Regardless of the ethics of the Bush administration, the ethics of news organizations require them to abide by at least four sets of principles:

1. First, they must adopt and enforce strict codes of journalism ethics and business practices that hold journalists to the highest standards. Too many news organizations continue to allow employees, for example, to accept free food and other gifts that create at least the appearance of a conflict of interest, or something much worse. In *The Endemic Reality of Media Ethics and Self-Restraint*, Blake D. Morant focuses on codes of ethics and other self-restraint mechanisms to help achieve a "culture of responsible journalism."<sup>40</sup> To reinforce ethics codes, Morant proposes (1) journalists' continuing education on such codes and how they should be applied, and (2) media coverage of codes focused on informing the public (and gaining its confidence) as to news organizations' employment of ethical standards.

As an example, Morant cites an open letter from the executive editor of the *Washington Post* explaining the newspaper's revision of its policy on corrections and its ethical guidelines about the use of direct quotations, attribution, and use of confidential sources. In *Newsroom Conversations About the Craft*, Don Wycliff, public editor of the *Chicago Tribune*, describes the efforts of the *Tribune* to achieve the kind of continuing education Morant recommends: Editor Ann Marie Lipinski has been meeting with her seven hundred or so editorial department staff members in groups of about twenty-five to discuss ethics and the parent company's ten-page Code of Editorial Principles.<sup>41</sup>

In addition, *Tribune* employees must also abide by a seven-page Code of Business Conduct and sign a Statement of Compliance about, for instance, possible conflicts of interest, confidentiality, and political contributions. In 2003, the Tribune Company also started the Confidential Ethics Line program, administered by Global Compliance Services, a third-party provider. A company memo to employees said the service "was implemented to provide an additional, straightforward method for employees to report suspected illegal or unethical behavior or violations of

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39. *Id.*

40. Blake D. Morant, *The Endemic Reality of Media Ethics and Self-Restraint*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 595, 619 (2005).

41. Don Wycliff, *Newsroom Conversations About the Craft*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 467 (2005).

Tribune's Code of Business Conduct on a confidential and anonymous basis."

2. News organizations and journalists must also support an environment in which self-criticism is encouraged. The self-criticism can come in the forms of organizations and individuals that monitor the news media—ombudsmen, journalism reviews, press councils, and public editors. For example, Dan Okrent, public editor of the *New York Times*, asked in a column whether the *Times* is a liberal newspaper. His honest answer: "Of course it is." He cited "implicit advocacy" in what the *Times* reported and failed to report about such hot-button social issues as abortion and gay marriage.<sup>42</sup> And reporters and editors can practice self-criticism. A recent front-page apology in the *Washington Post* and a letter "from the editors" of the *New York Times* criticized the papers' coverage of the build up to the war in Iraq. The *Post* acknowledged "strikingly one-sided" coverage that downplayed questions about evidence of weapons of mass destruction.<sup>43</sup> The *Times* concluded: "We consider the story of Iraq's weapons, and of the pattern of misinformation, to be unfinished business. And we fully intend to continue aggressive reporting aimed at setting the record straight."<sup>44</sup>

A series of special reports began July 4, 2004, in the *Lexington Herald-Leader* (Ky.) with the provocative lead-in: "CLARIFICATION: It has come to the editor's attention that the Herald-Leader neglected to cover the civil rights movement. We regret the omission." The series described the first sit-in and other civil rights protests that took place locally in the 1960s and challenged a misimpression that the paper's lack of coverage had encouraged, that the city had escaped racial division in the '60s. *Newsday* reporters, in more than seventy-five articles in 2004, investigated their newspaper's claim that its overstated circulation was caused by promotional campaigns and "inadequate recordkeeping." The reporters uncovered auditing scams, kick-backs, and a phony street hawker program. They made clear by their example that their news organization is willing to subject itself to criticism of its behavior and ethics.

3. News organizations must also encourage a transparency built on a new interactive relationship with their readers, viewers, and listeners. They need to explain how they make news decisions and to invite their readers, viewers, and listeners to see

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42. David Okrent, *Is The New York Times a Liberal Newspaper?*, N.Y. TIMES, July 25, 2004, at WK2.

43. *The Post on WMDs: An Inside Story*, WASH. POST, Aug. 12, 2004, at A1.

44. *The Times and Iraq*, N.Y. TIMES, May 26, 2004, at A10.

themselves not only as news consumers but also as partners in pursuit of the truth. The editors of the *Ventura County Star* (Cal.) make their decisions at 9 a.m. and 3 p.m. meetings about what stories, photos, and graphics will go on Page One of the next morning's paper. The newspaper setup a blog that allows readers to "sit in on those discussions." It encourages readers to "pull up a chair and let us know if you agree or disagree with our choices."<sup>45</sup> The Internet also permits news sources and experts to quickly send news organizations corrections of fact and interpretation, which can contribute to the news organizations' credibility.

4. News organizations must behave as if their first priority is reporting the news. Yes, they are businesses expected to make money. But the drive to raise ratings and increase profits cannot be allowed to compromise their journalistic duties. Perhaps the biggest danger facing news media is not their bias but, in the pursuit of profit, what they choose to leave out or otherwise ignore. In *Bad News: The Decline of Reporting, the Business of News, and the Danger to Us All*, Tom Fenton, CBS News senior foreign correspondent, writes that in the two decades before 9/11 "American newspaper editors and television executives reduced their coverage of foreign news by 70 to 80 percent." Even after Usama bin Laden's 9/11 wake-up call, Fenton says, "There was no mass reopening of foreign bureaus, no large-scale hiring of skilled journalists."<sup>46</sup> The security of the nation, Fenton argues, demands that news organizations provide the American public with less "junk news" about weight loss programs and celebrities' sex lives and more hard news and context that anticipate key world events. The fall of the Soviet Union, Saddam Hussein's invasion of Kuwait, the rise of bin Laden, and the 9/11 attacks "came out of nowhere" for most Americans, Fenton concludes, because news organizations failed to warn the public of the "storm clouds approaching our shores."<sup>47</sup>

Excellent journalism—thorough, thoughtful coverage of what citizens in a democracy need to know about the world—has an important ethical dimension to it. Archbishop Foley wrote that "the largest ethical question of all may be how to balance

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45. *Ventura County Star*, About, at <http://blogs.venturacountystar.com/vcs/vcsblog/> (last visited Mar. 24, 2005) (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

46. TOM FENTON, *BAD NEWS: THE DECLINE OF REPORTING, THE BUSINESS OF NEWS, AND THE DANGER TO US ALL* 17 (2005).

47. *Id.* at 3.

profit against service to the public interest."<sup>48</sup> The public interest requires an informed public and that requires more money be spent on shoe-leather reporting here and abroad.

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48. Foley, *supra* note 11, at 497-98.

