

Widener Law Review, Widener University Delaware Law School, presents

**THE FIRST AMENDMENT, DEFAMATION, AND PRIVACY
IN THE SOCIAL MEDIA AGE**

Friday, April 7, 2017

Symposium Agenda

8:15 a.m. Registration Check-In

8:45 a.m. Welcome & Introduction

9:00 a.m. – 10:30 a.m.

First Panel: Defamation, Privacy, and the Current State of Discourse

Are defamation and invasion of privacy modern “growth industries?” The internet and social media have made our public discourse more robust than ever. Everyone with a connection has a voice. No longer are mainstream media outlets the gatekeepers or the setters of discussion agendas. This is an epoch of democratization, few barriers to entry, virtually universal access, and (for those who choose it), anonymity. Yet this explosion of communication and discourse arguably has a dark side. The quality of public discourse may not increase with the quantity of public discourse. There may be less thoughtfulness, less reflection, less attention to factual accuracy. There may be a channeling tendency, through which like-minded people communicate with like-minded people, with less exposure or authentic dialogue across lines of affinity. Personal attacks, of the sort that tort law had traditionally addressed through actions for defamation or invasion of privacy, may also be on the rise. The first panel will explore these issues, in a wide-open, robust, yet civilized conversation.

10:30 a.m. – 10:45 a.m. Break

10:45 a.m. – 12:15 p.m.

Second Panel: The Legal Doctrines that Matter and Whether They Should be Changed

Defamation is an ancient tort. Invasion of privacy is of newer origins, but has also been part of our legal fabric for nearly a century. There are multiple privacy torts, not all recognized in all jurisdictions: false light, publication of private facts, intrusion, and appropriation / right of publicity. The First Amendment has been interpreted to alter the elements and defenses applicable to many of these causes of action. The stress points in defamation and privacy litigation are familiar. They include such doctrines as defamatory meaning, the distinction between fact and opinion, burdens of proving falsity, the distinction between public and private figures, fault standards, newsworthiness defenses, statutes of limitations, the single publication rule, liability for republication, the fair reports privilege, neutral reportage, and the immunities provided by § 230 of the Communications Decency Act, anti-SLAPP laws, and unmasking rules, as exemplars. What stresses do the internet and social media place on the complex matrix of substantive and procedural doctrines germane to defamation and privacy? In light of those stresses, what doctrines, if any, ought to be adjusted? Should they be adjusted to make recovery

easier, or more difficult? This panel, the most “hard law” segment of the symposium, will explore these issues.

12:15 p.m. – 12:50 p.m. Lunch – Barristers’ Club

1:00 p.m. – 2:00 p.m. Distinguished Speaker

Speech and Liability in the Global Arena—A Cautionary Tale

Professor Xiaoxing Xi, Laura H. Carnell Professor of Physics at Temple University, will discuss his experience as a person accused of espionage by the Department of Justice.

2:00 p.m. – 2:15 p.m. Break

2:15 p.m. – 3:15 p.m.

Concluding Forum: All the News that is Fit and All the News that Fits

What insights, observations, or new perspectives and discoveries were revealed in the morning and luncheon sessions? This forum will reflect on the subjects discussed earlier in the day, and invite additional comments on issues that exert enormous influence on the quality of discourse and redress for injury. Among other matters, this panel will explore the role of major social media and search engine providers, such as Facebook, Twitter, or Google; the role of private arrangements to curtail expression, such as settlements that limit discourse or future suits; and any and all other observations on the subject of the symposium, from all the news that’s fit to print to all the news that fits.

Moderator:

- **Rodney A. Smolla**, Dean and Professor of Law, Widener University Delaware Law School

Panel Speakers:

- **Clay Calvert**, Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project, University of Florida College of Journalism and Communications
- **Erin Daly**, Professor of Law, Widener University Delaware Law School
- **Alan E. Garfield**, Professor of Law, Widener University Delaware Law School
- **Henry R. Kaufman**, Principal, Henry R. Kaufman P.C., New York, New York
- **Ashley Messenger**, In-house Counsel, NPR; Adjunct Professor, American University School of Communication
- **John J. Walsh**, Senior Counsel, Carter Ledyard & Milburn LLP, New York, New York
- **Stephen Wermiel**, Professor of Practice in Constitutional Law, American University Washington College of Law
- **Xiaoxing Xi**, Laura H. Carnell Professor of Physics, Temple University