

Fall 1982

1982 Benton National Moot Court Competition 1982 Benton National Moot Court Competition: Preface, 16 J. Marshall L. Rev. 165 (1982)

George B. Trubow

Follow this and additional works at: <http://repository.jmls.edu/lawreview>

 Part of the [Legal Writing and Research Commons](#)

Recommended Citation

George B. Trubow, 1982 Benton National Moot Court Competition 1982 Benton National Moot Court Competition: Preface, 16 J. Marshall L. Rev. 165 (1982)

<http://repository.jmls.edu/lawreview/vol16/iss1/8>

This Symposium is brought to you for free and open access by The John Marshall Institutional Repository. It has been accepted for inclusion in The John Marshall Law Review by an authorized administrator of The John Marshall Institutional Repository.

1982 BENTON NATIONAL MOOT COURT COMPETITION

On October 21-23, 1982, the 1982 Benton National Moot Court Competition was held at The John Marshall Law School in Chicago, Illinois. Representatives from twenty-two law schools entered the Competition. The John Marshall Law Review is pleased to publish the best briefs for the petitioner and respondent, and the Bench Memorandum prepared for use by the Competition judges.*

PREFACE

Modern America has been described as an information society. One need but look around to find ample evidence supporting that characterization. Computers, keyboards, monitor screens, coded cards, and microwave transmission receivers are everywhere. The cablevision tube is also an "electronic newspaper;" home computers link data bases that may be hundreds or thousands of miles apart. Money and checks are being replaced by plastic cards which, via a terminal, can "move" funds from one account to another—leaving a data trail behind, of course. Indeed, a vast array of information, most of it personal and sensitive, is being collected, stored, manipulated, used and disseminated in dimensions never before contemplated, made possible by the rapid growth of computer and communications technology. Truly, we are experiencing an information revolution.

In the midst of this activity is the individual about whom much of the information is gathered, and for whom it is targeted. The individual today finds that personal information about him circulates freely, though the dimensions of his privacy rights are unclear. "Individuals have varying expectations of informational privacy: society lacks a clear and settled use of the concept. . . . The individual's informational privacy is relatively unprotected. . . ."**

* Note: The briefs are printed in substantially the same form as that submitted at the Competition. Title pages, tables of contents, "opinions below," jurisdictional statements and certificates of service have been omitted. References to the trial record have been deleted from the original briefs.

** Report: American Bar Association and American Federation of Information Processing Societies Symposium, Informational Privacy and Technology 14, 22 (1982) (findings of dialogue participants).

Yet, technology advances unchecked, improving the quality and quantity of personal information collected often at the sacrifice of individual privacy. What is critical now is that there be a continuing evaluation of information needs which balances the public's "right to know" against the individual's interest in personal privacy. Additionally, as the information revolution brings new challenges to a national lifestyle, the possibility of governmental or social regulation of technology is a matter of special importance to everyone.

The Benton National Moot Court Competition on Information Law and Privacy is an important element of a growing information law program at The John Marshall Law School. The Benton Foundation, named for its benefactor, William H. Benton, a United States Senator from Connecticut from 1949 to 1953, and founder of *The Encyclopedia Britannica*, is interested in examining and enhancing the process by which information is exchanged, as well as the content and quality of what is communicated. The goals of the Benton Foundation, and of The John Marshall Law School, are mutually supportive with respect to the development and examination of a national information policy. The first annual Benton Competition has just been completed, and marks a successful maiden voyage in pursuit of a legal construct for a rational information policy. Though the "golden fleece" still hangs from some undiscovered tree, the search is underway, and we are proud of the briefs from the first competition which are reproduced here.

The case problem developed for this year involved two questions as yet unresolved by the Supreme Court of the United States: (1) is cablevision to be classified as electronic or print media for the purpose of regulation?; and, (2) can the defense of truth be used in a tort action for invasion of privacy by publication of private fact? If cablevision is to be classified as print media it will be virtually free of content regulation with respect to its programming, whereas if it is classified as electronic media, then the content of programming can be subject to regulation and close scrutiny by federal and state authorities. A subsidiary issue involves cablevision's status as a public utility.

If truth is allowed as a defense to a tort action for invasion of privacy for publication of private fact, then that common law tort in its present form will be effectively destroyed; the individual will be without protection regarding accurate personal information about himself no matter how sensitive or embarrassing it may be. The problem invites counsel to fashion tests for balancing privacy against the media's freedom to publish news. A bench memorandum was prepared after extensive research and

was circulated to all the competition judges. The purpose of the memorandum is to identify the issues and discuss the principal relevant court cases.

George B. Trubow
Professor of Law
Chairman, Benton Committee