

# Journalism and the Law

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# Preview

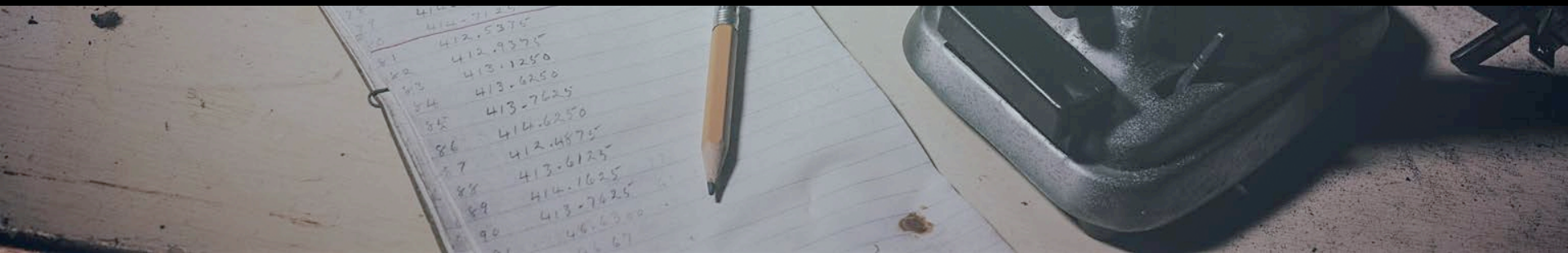
- ▶ First Amendment Freedoms of Press and Speech
- ▶ Copyright
  - ▶ Basics
  - ▶ Fair Use
  - ▶ Use of third-party content/licensing
- ▶ Freelancers/Independent Contractors
  - ▶ Contracts
  - ▶ Employment Considerations
- ▶ Privacy
  - ▶ Libel/Defamation
  - ▶ Rights of Interview Subjects





# First Amendment Freedoms

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# First Amendment Freedom

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech, or of the press;** or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.





# First Amendment Freedoms

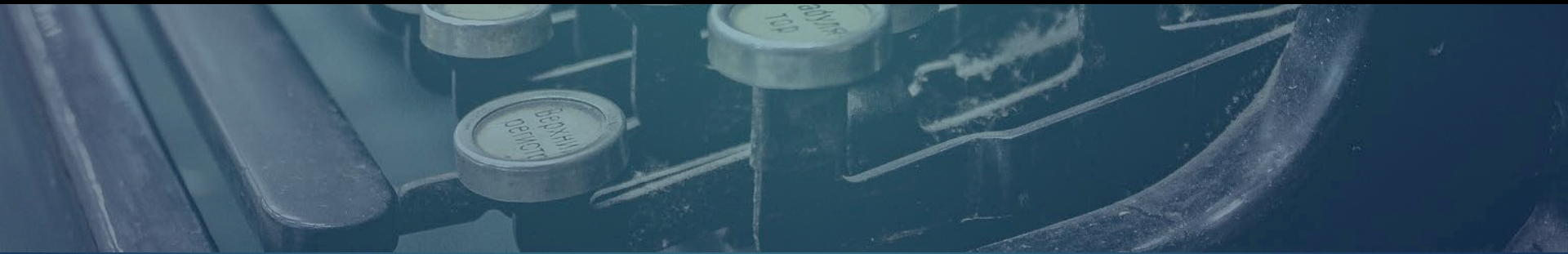
- ▶ Press
  - ▶ No federal constitutional privilege (*Branzburg v. Hayes*)
  - ▶ State reporter shield law (40 states)
- ▶ Speech
  - ▶ *New York Times v. Sullivan*
  - ▶ *New York Times v. U.S.*





# Copyright

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# Copyright

Congress has the power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Art. 1, Section 8, Clause 8, U.S. Constitution





# Copyright

Copyright protection subsists in original works of authorship fixed in any tangible medium of expression.

17 U.S.C. § 102 (c)







# Copyright

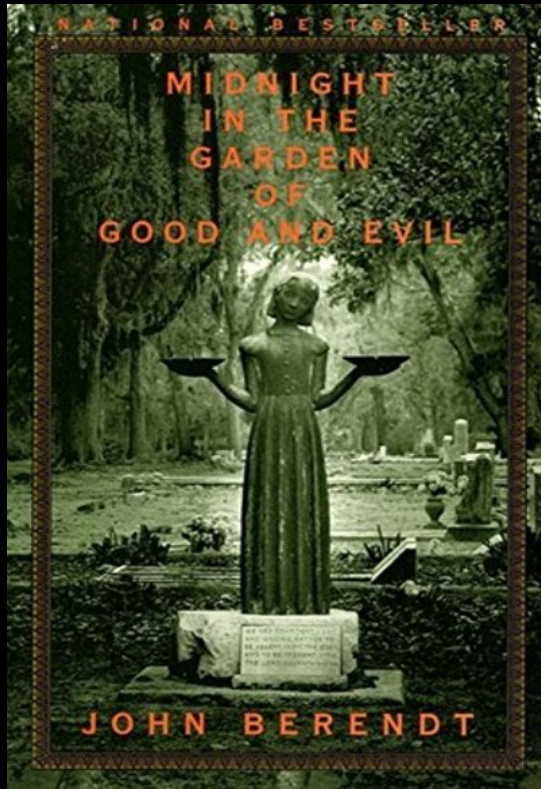
- ▶ Reproduction
- ▶ Adapt (derivative works)
- ▶ Distribution
- ▶ Public performance
- ▶ Public display
- ▶ Digital transmission (sound recordings)

17 U.S.C. § 106(1)-(6)





# Copyright



*Leigh v. Warner Bros.* (11th Cir. 2000) (the “bird girl” case)







# Fair Use

Defense to a copyright infringement claim (not an exemption)

- ▶ the purpose and character of the use (transformative)
- ▶ the nature of the copyrighted work
- ▶ the amount and substantiality of the portion taken
- ▶ the effect of the use upon the potential market for the copyrighted work





# Fair Use

- ▶ How much is too much?
  - ▶ Amount and substantiality used.
  - ▶ “Heart” of the work.
- ▶ Parody
  - ▶ Transformative
  - ▶ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)
- ▶ Bible Translations
  - ▶ Copyright protected
  - ▶ Publisher guidelines







# Fair Use

“If . . . the commentary has no critical bearing on the substance or style of the original composition, which the alleged infringer merely uses to get attention or to **avoid the drudgery in working up something fresh**, the claim to fairness in borrowing from another's work diminishes accordingly (if it does not vanish).” (emphasis added)

Campbell v. Acuff-Rose Music, 510 U.S. 569 (1994)





# Fair Use

“Moreover, the numerous [copyrighted photos appearing in the book] do not transform anything, they are **merely aesthetically pleasing** to the reader.” (emphasis added)

Toho co., Ltd. v. William Morrow & Co., Inc.,  
33 F .Supp.2d 1206 (C.D. Cal. 1998)







# Copyright: License Terms for Existing Content

- ▶ Images subscription sites (e.g. Getty Images)
- ▶ Newswire subscription (e.g. Reuters or AP)
- ▶ Creative Commons Licensing
  - ▶ Images/videos available to freely use (e.g. Unsplash)
  - ▶ Unsplash license terms: irrevocable
- ▶ Best practices/record-keeping:
  - ▶ Date used
  - ▶ Terms as of that date
  - ▶ Copyright owner (photographer/videographer)







# Copyright: License Terms



Di Tzeitung, Hillary Clinton  
and the Situation Room



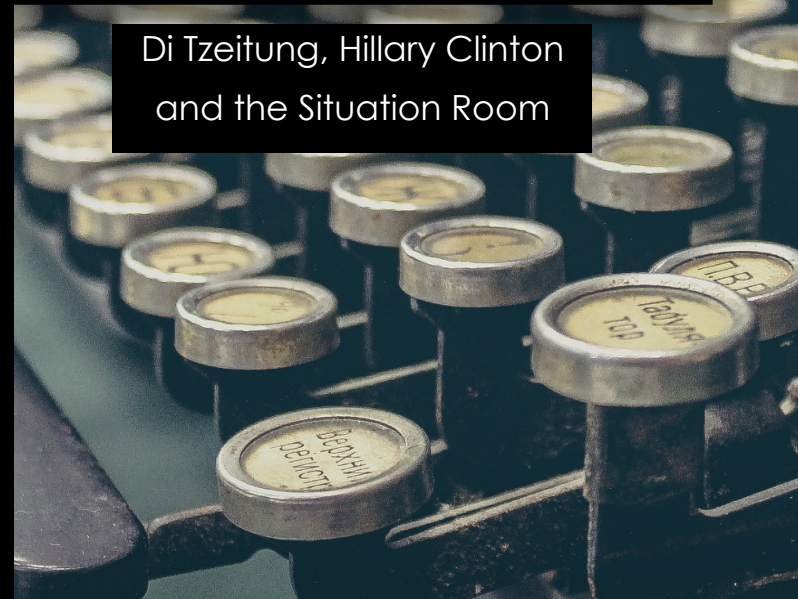


# Copyright: License Terms

This official White House photograph is being made available only for publication by news organizations and/or for personal use printing by the subject(s) of the photograph. The photograph **may not be manipulated in any way** and may not be used in commercial or political materials, advertisements, emails, products, promotions that in any way suggests approval or endorsement of the President, the first family, or the White House.



Di Tzeitung, Hillary Clinton  
and the Situation Room







# Freelancers / Independent Contractors

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# Freelancer / Independent Contractor

An exclusive license is not valid unless in writing and signed by the party conveying rights.

17 U.S.C. § 204(d)





# Freelancer / Independent Contractor

- ▶ Employees v. Independent Contractors
- ▶ Master Work for Hire or Assignment
  - ▶ Statutory list of types of works (17 U.S.C. § 101)
    - ▶ Contribution to a collective work, part of a motion picture or other audiovisual work, translation, etc.
  - ▶ BEFORE commencement of work
  - ▶ Include assignment language too
  - ▶ Warranties and Indemnification





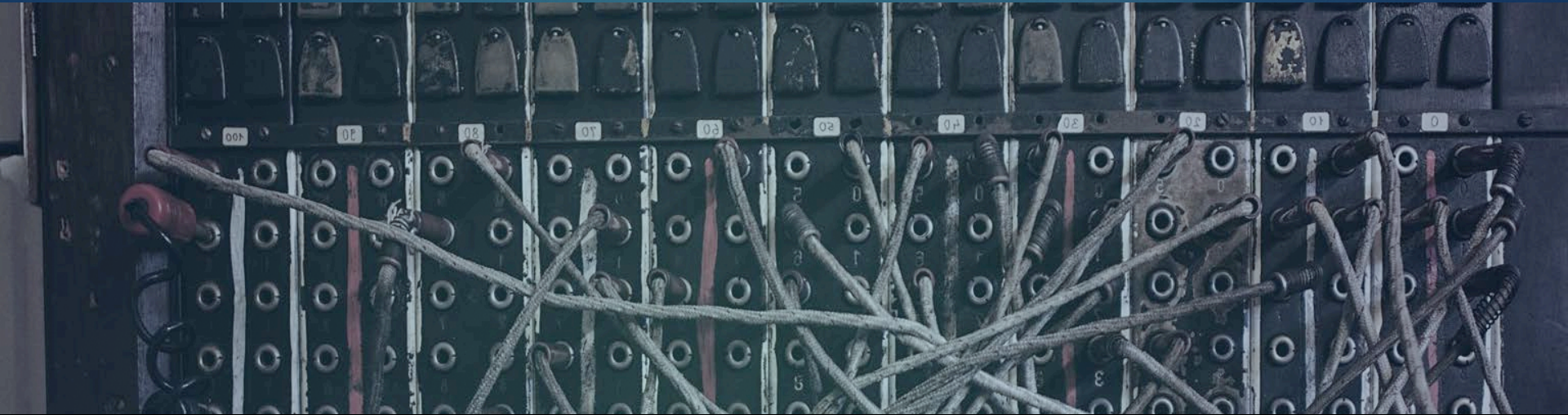


# Freelancer / Independent Contractor

- ▶ What about employees?
  - ▶ Course and Scope Of Employment
  - ▶ Job Description?
  - ▶ Presidents/CEOs
- ▶ Labor/Employment Law
  - ▶ California Exception (Labor & Employment Law)
  - ▶ California A.B. 5







# Privacy

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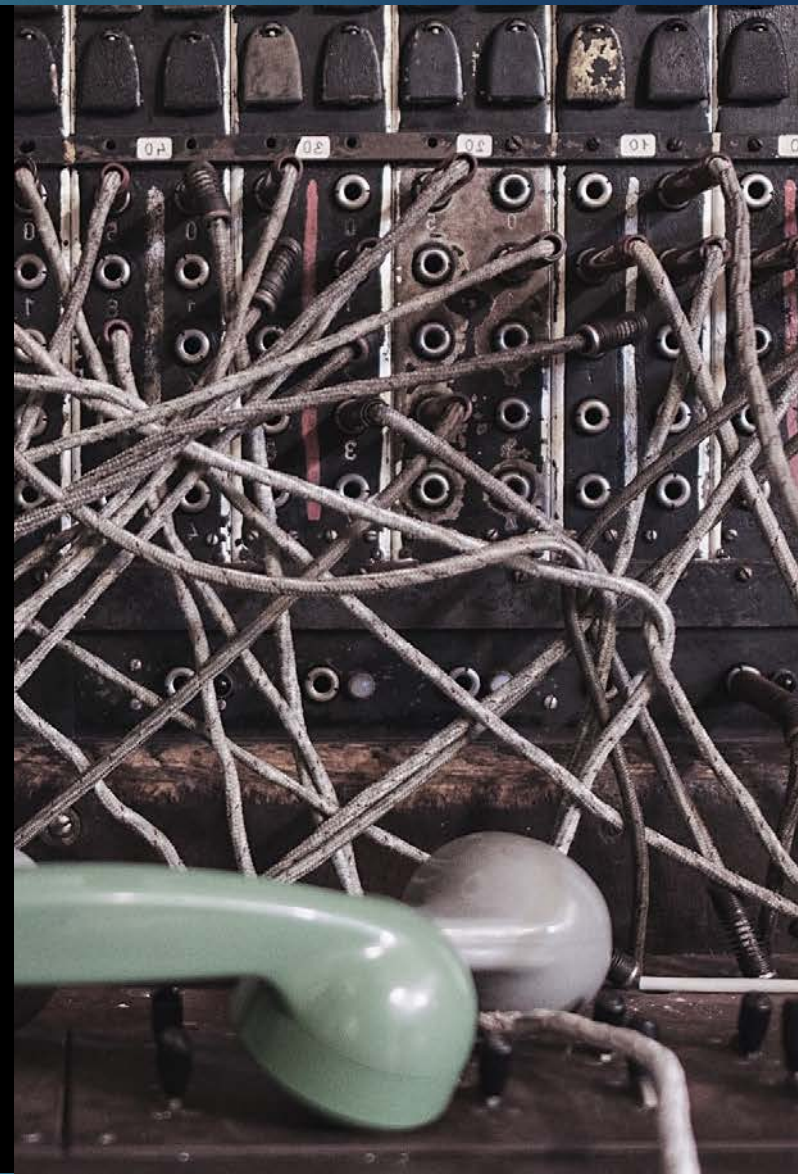






# Libel/Defamation

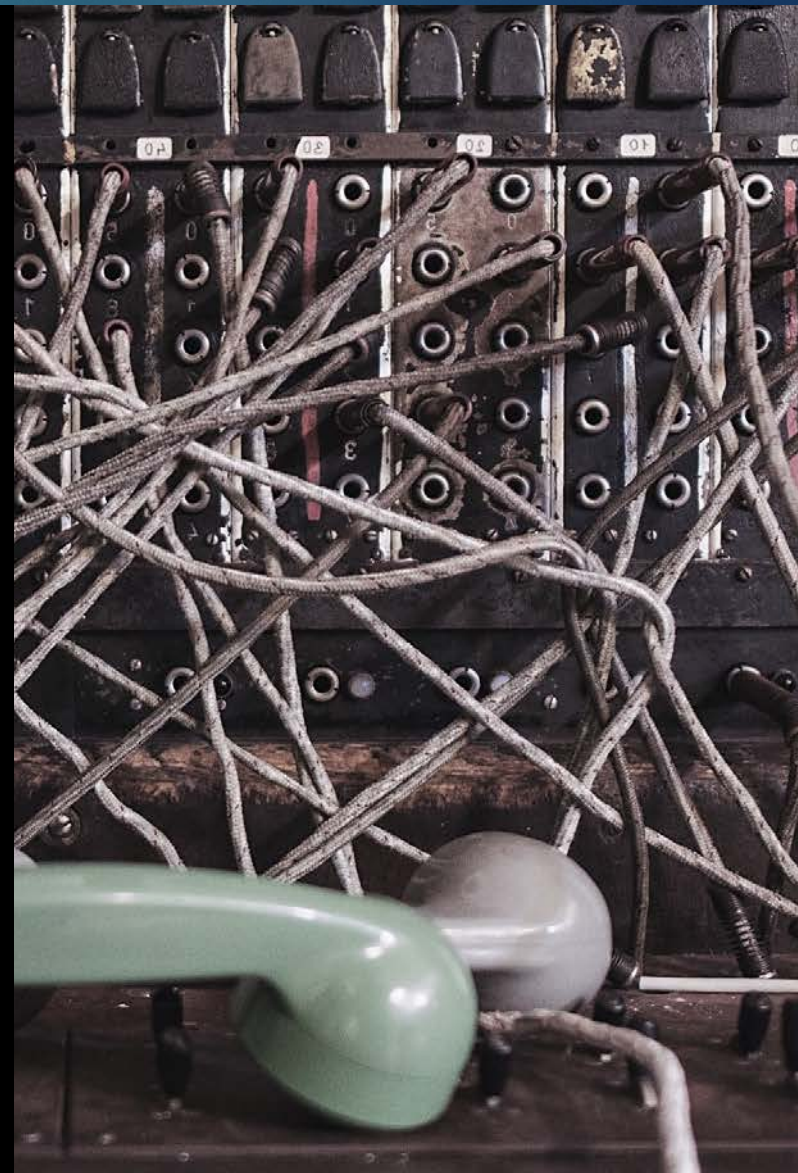
- ▶ Defamation: injuring a person's reputation by making a false statement
  - ▶ Libel: Defamatory statement in print or graphic form
  - ▶ Slander: Defamatory statement communicated orally
- ▶ Governed by state law and common law





# Libel/Defamation

- ▶ False and defamatory statement of fact (opinions not actionable)
- ▶ Published to a third party
- ▶ Publisher was **NEGLIGENT** in publishing the statement (private figure)
- ▶ Damages

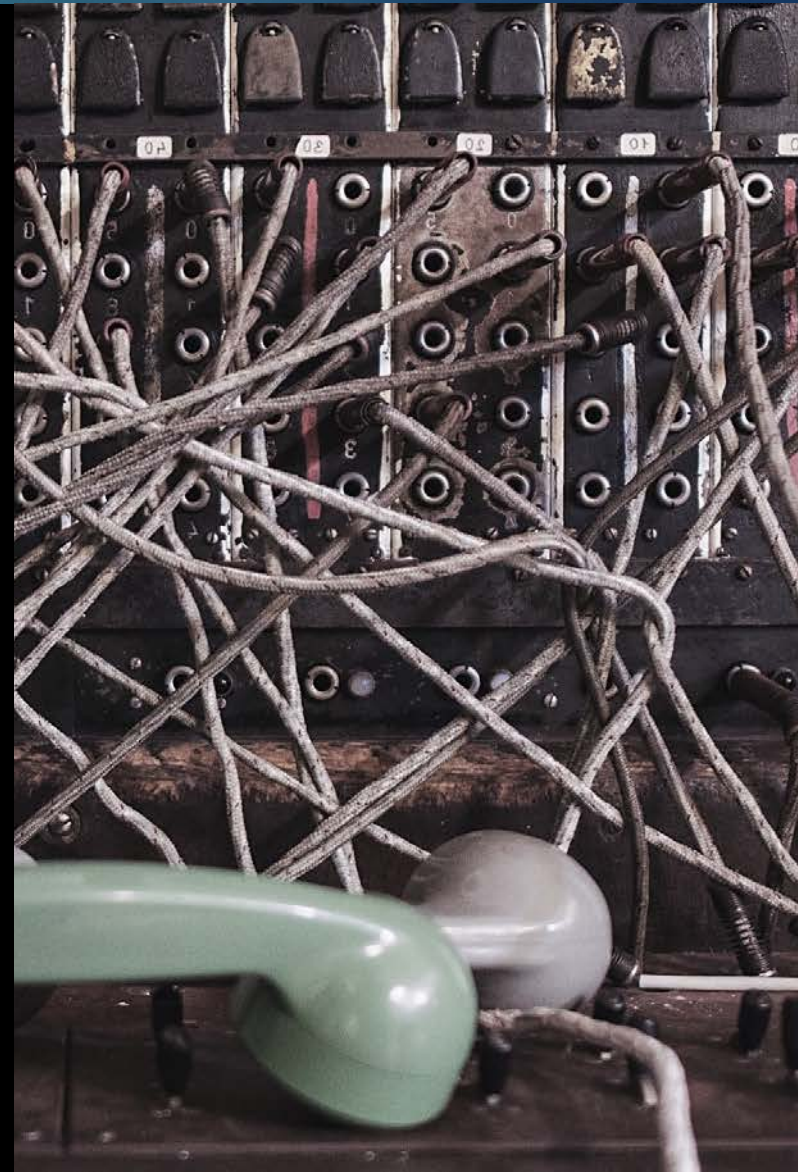






# Libel/Defamation

- ▶ Legal standards – negligence of publisher
  - ▶ Fact-checking/witness corroboration
- ▶ Status of subject
  - ▶ Subject of article: private figure, public official, or public figure
  - ▶ Public figures = actual malice (N.Y. Times v. Sullivan)
  - ▶ Private individual but matter of public concern = same negligent standard (Gertz v. Robert Welch, Inc.)
  - ▶ Private Individual and Private Matter = Presumed Damages (Dun & Bradstreet v. Greenmoss Builders)
- ▶ Quotations
- ▶ Theological statements (Harvest House Publishers v. The Local Church)





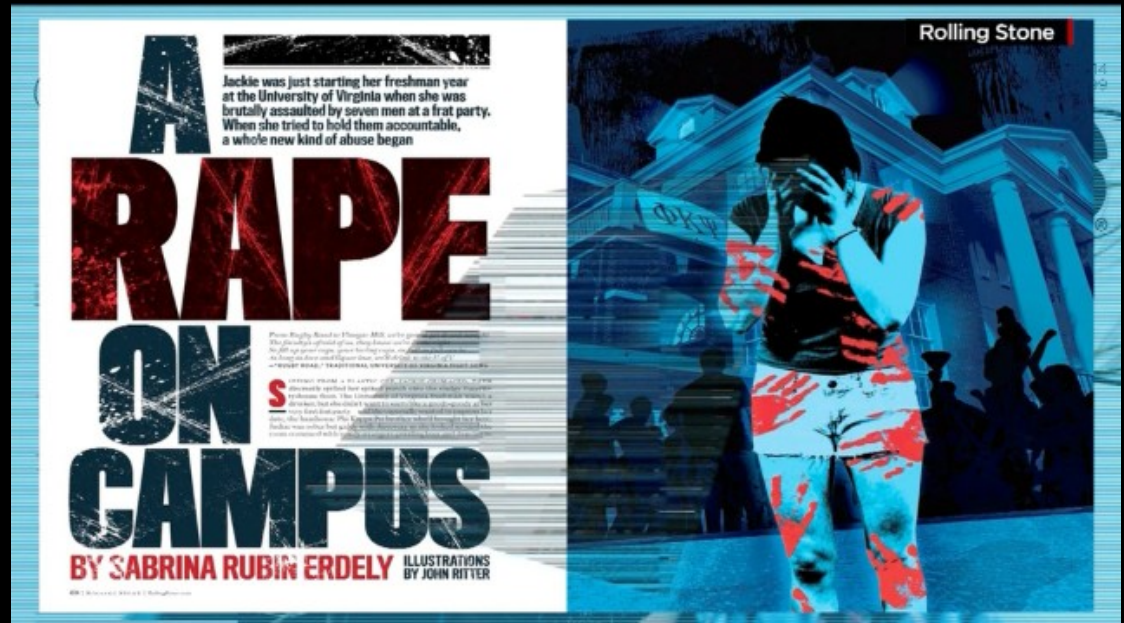
# Libel/Defamation



**The Apostate: Paul Haggis vs. the Church of Scientology**  
By Lawrence Wright (*The New Yorker* February 14, 2011)

## A Rape On Campus

By Sabrina Rubin Erdely (*Rolling Stone* December 4, 2014)







# Libel/Defamation

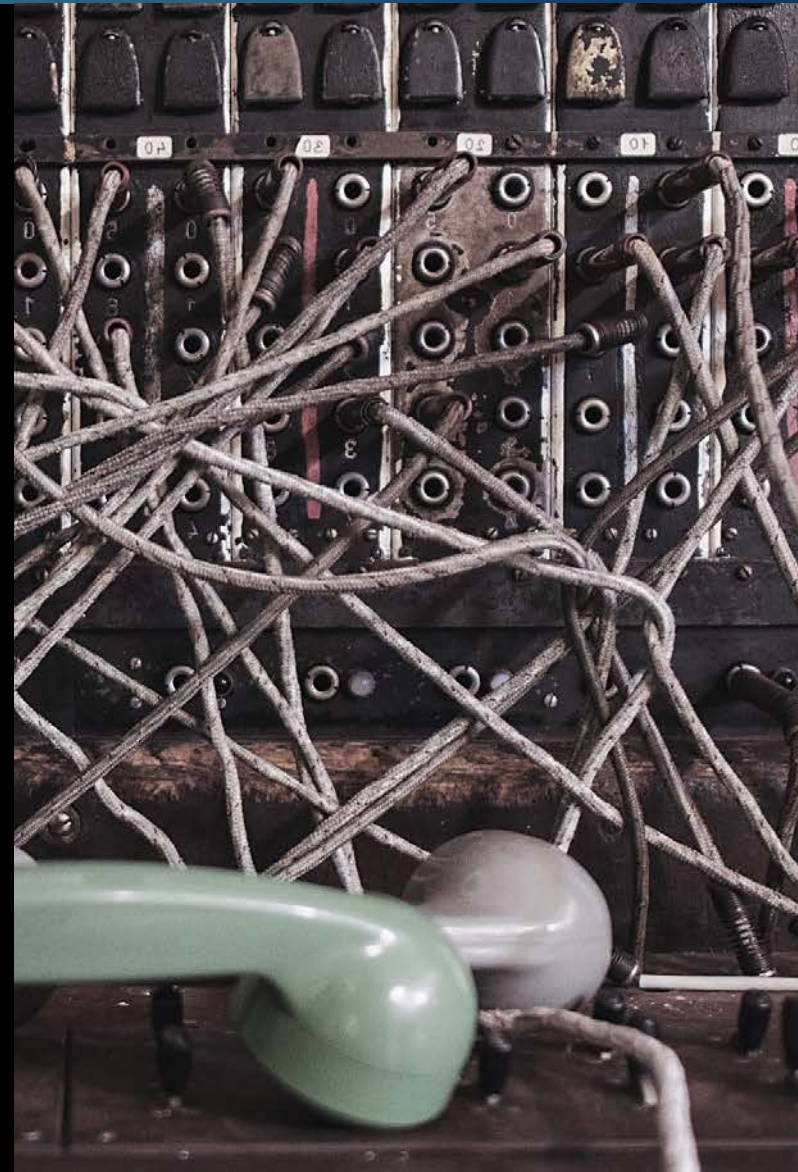
- ▶ Three Lawsuits:
  - ▶ University Administrator
    - ▶ Jury Awarded \$3 Million
  - ▶ Members of Fraternity
    - ▶ Dismissed; Revived on Appeal;  
Undisclosed settlement amount
  - ▶ Fraternity
    - ▶ \$1.65 Million Settlement





# Libel checklist

- ▶ Is the person or story recognizable to the reader?
- ▶ Is the person cast in a negative light?
  - ▶ Is the person cast in an “overly positive” light? Are we over dramatizing the story for effect?
- ▶ Have we corroborated the person’s story with other sources?
- ▶ Do we have a multi-step editorial policy in place?
- ▶ Have we followed our policy?

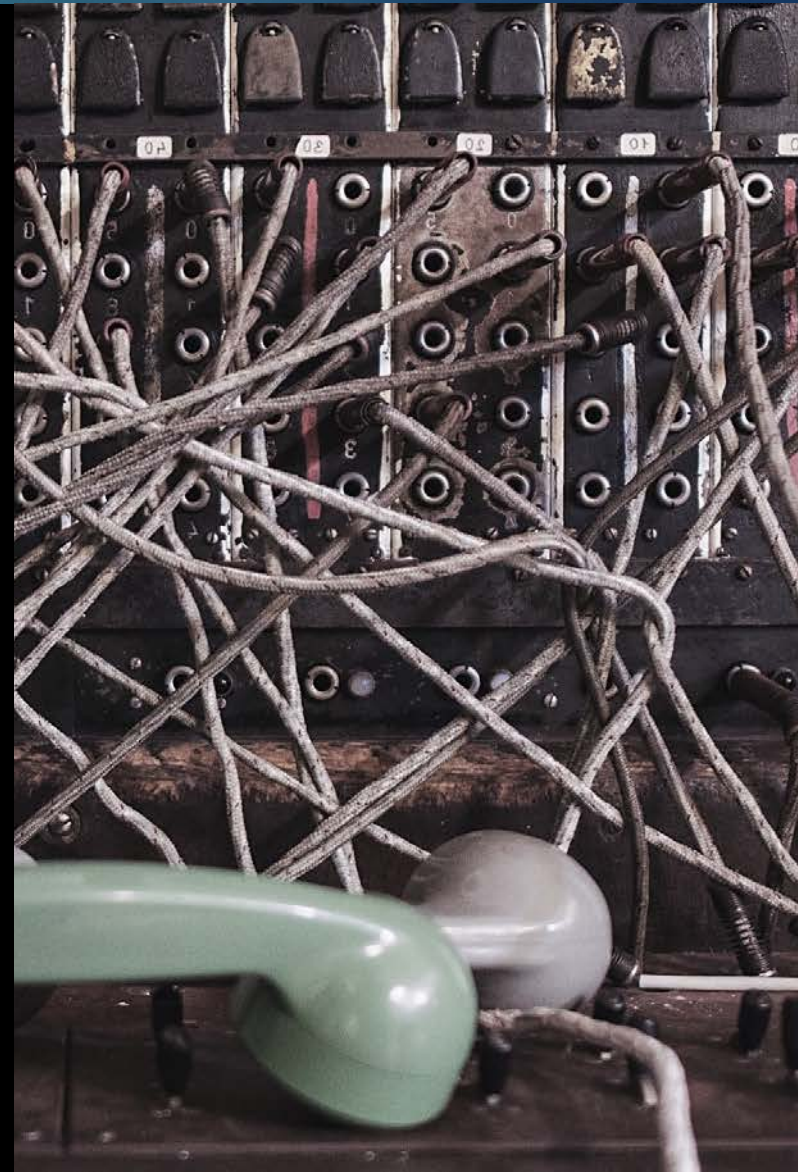






# Other Privacy Issues

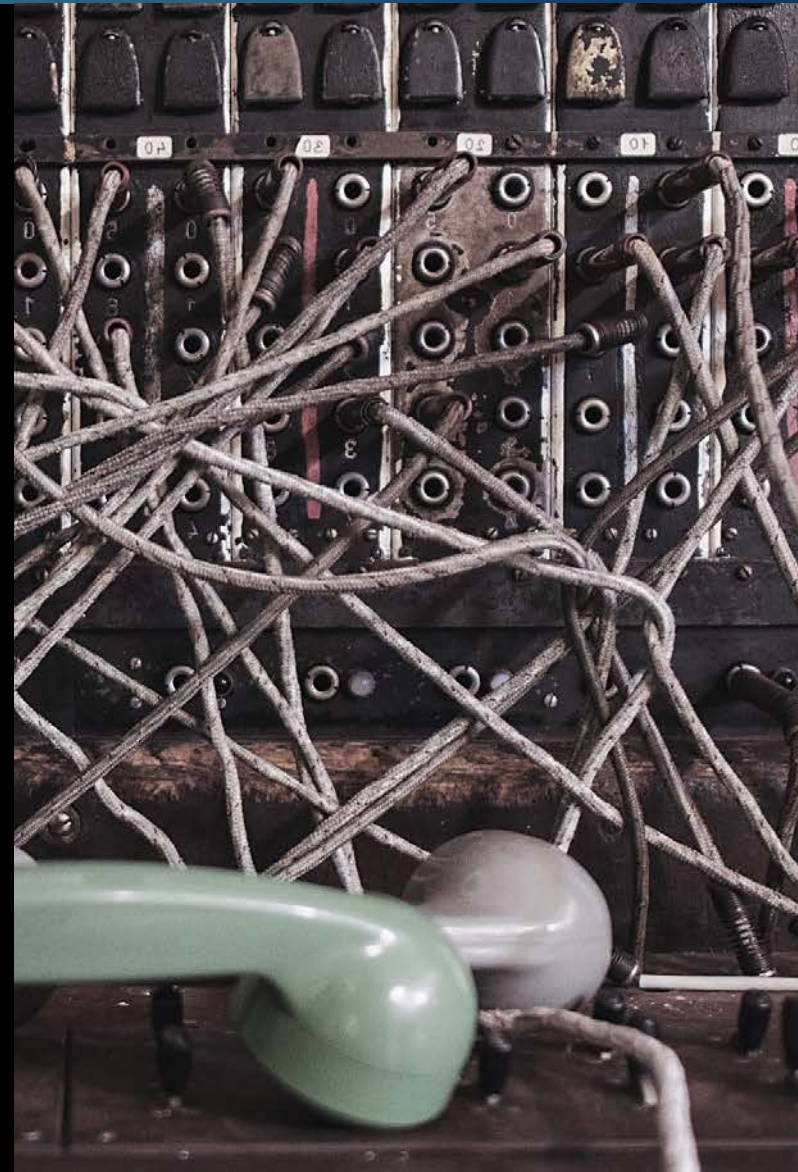
- ▶ Facts not protected by copyright or libel laws
  - ▶ Subject to private disclosure of private facts
- ▶ Interview subject grants implied consent for news use
- ▶ Need permission for promotional purposes (especially video/photo for use of likeness)
- ▶ Expectation of privacy: person photographed in public place





# Protecting Publications

- ▶ Freelancer/employment agreement with warranties of truth/journalistic ethics and indemnification
- ▶ Media insurance

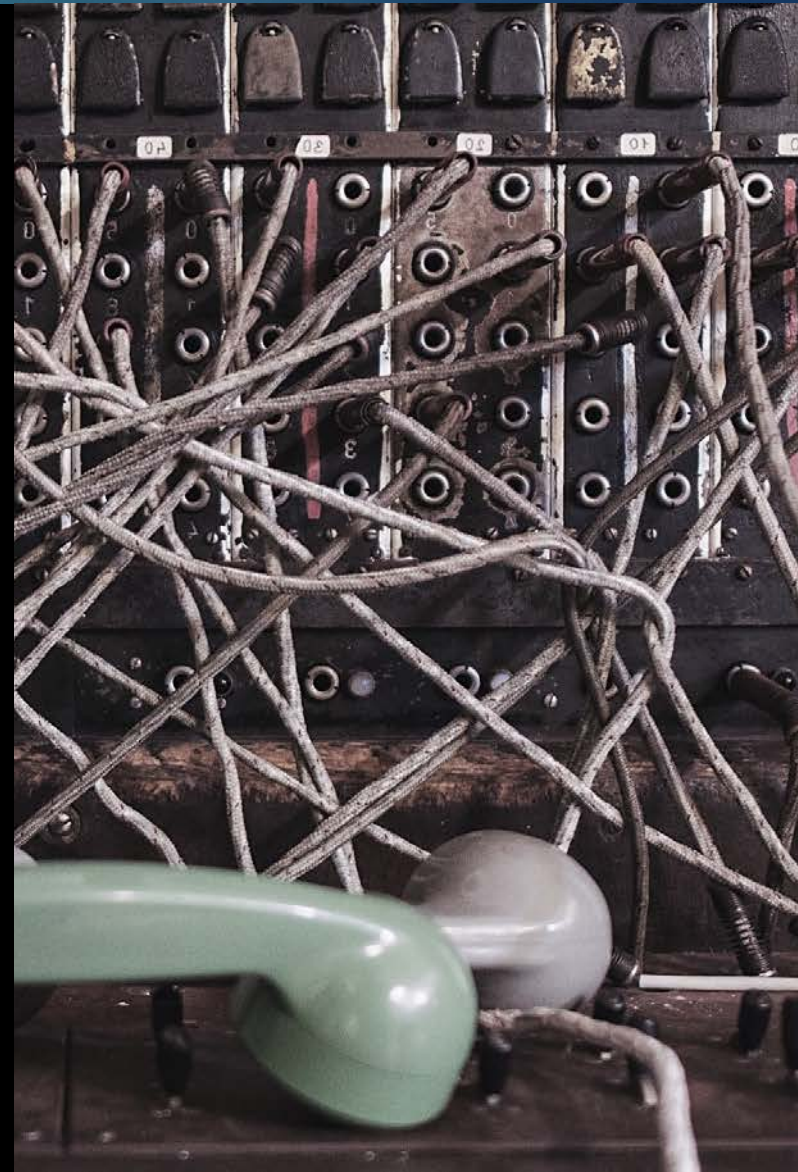






# EPA Legal Hotline

Up to 5 hours at 30% discount for  
EPA Members



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(541) 549-8401

