

Exam Number \_ \_ \_ \_ \_

Instructor	:	<b>J. Pielemeier</b>
Course Title	:	<b>Mass Media Law</b>
Format	:	<b>Self-Scheduled</b>
Total Time for Exam	:	<b>3 hours</b>
Total Number of Pages	:	<b>10</b>

**Reference Materials Allowed**

Closed Book (no reference materials allowed)

**General Instructions**

Please count the number of pages. **All** pages are sequentially numbered at the bottom right corner. If you are missing a page, you need a new exam. Contact the Office of the Registrar (or your proctor) as soon as possible.

Do not write your name on **any** examination materials. Write your five-digit 2006 Fall final exam number on the top right corner of the first page of this exam. If you don't know your exam number, get it from the Office of the Registrar (or your proctor).

**If you are using Secureexam** to write your exam answers, please read the start-up instructions before you start your laptop. If your laptop becomes inoperative you should start writing in a bluebook immediately. If you choose to restart the laptop you will lose time as **you will not be allowed extra time** to complete the examination. There is no technical assistance available during the examination. If you still choose to restart, you will need a proctor key: ask the room proctor or come to the Office of the Registrar.

**If you are using a bluebook** to write your exam answers, please fully complete the cover information for all bluebooks. Before you turn them in, sequentially number and nestle them so that the first bluebook has any others inside.

At the conclusion of the examination place all examination materials (including scratch paper) in the plastic bag, seal it and give it to the proctor; if this is a self-scheduled examination, please return the sealed bag to the Office of the Registrar.

**Instructions Specific to This Examination**

- This examination consists of six questions. Suggested amounts of time to spend are stated with each question. These suggested times total two hours and fifty minutes, leaving you an extra ten minutes to allocate as you wish. Questions I and II total 60 minutes, questions III and IV total 60 minutes, and questions V-VI total 50 minutes.
- Answers containing only your own conclusions will receive little credit. Taking into account the amount of time recommended for each question, state fully the reasons supporting your answers. In addition, discuss all issues reasonably raised by each question, even though your resolution of one issue may render the others moot.
- The fact scenarios in the questions are not set in any particular state. You should discuss all issues reasonably raised based on general principles of law (including constitutional law) that were discussed in this course.

**Exam Misconduct**

The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted by the exam or proctor, prohibited conduct includes:

Discussing the exam with another student;

Giving, receiving, or soliciting aid;

Using electronic devices (other than a laptop running Secureexam);

Referencing unauthorized materials;  
Reading the questions before the examination starts;  
Exceeding the examination time limit;  
Removing **any** examination materials from the room (including scratch paper); and  
Ignoring proctor instructions.



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**Question I (30 minutes)**

In light of the increased issuance of subpoenas to reporters over the past year, a group of Democrats and Republicans introduced a bill in the Senate in 2006 entitled “The Free Flow of Information Act of 2006.” It is in effect a federal “shield law,” limiting the circumstances under which federal courts may subpoena journalists. A similar bill is likely to be introduced in Congress in 2007.

Discuss your views on the following, explaining your reasoning: (1) whether such a bill should be enacted into law; (2) assuming it will be enacted, whether the standards governing when such subpoenas may issue should differ depending on whether the subpoena seeks information relevant to a criminal proceeding or it seeks information relevant to a civil proceeding, and in general terms what the standard or standards should be; (3) whether it should protect journalists against having to testify regarding information that was not obtained under a promise of confidentiality; and (4) whether those protected by the law should be limited to traditional professional journalists or whether it should protect anyone purporting to disseminate information to the public, including those writing “blogs” on the World Wide Web.

**Question II (30 minutes)**

The Gaffney News is a daily newspaper published in the City of Gaffney. It publishes a column on a page next to its editorial page called “What’s Your Beef?” The column states that “This is an opinion column where we will occasionally publish reader comments made by telephone. Readers are invited to call and tell the paper what they think on an answering machine. You are not required to identify yourself.” It then provides a telephone number.

One day the following was published in the “What’s Your Beef?” column.

Caption: Are the Drug Dealers Paying?

I'd like to know what the people think about this. The Chief of the Gaffney Police Department knows that these people are selling illegal drugs and they have been selling them many years and he hasn't done anything about it. Now I often wonder if the drug dealers are paying off the Chief of Police. Don't we have enough money to hire Gaffney police to do their jobs?

As a result of the article, Wayne Elder, the Chief of the Gaffney Police Department, brought suit against the Gaffney News for defamation.

The editor of the paper, Cody Swift, made the decision to publish the item, which was phoned in by an anonymous caller. Although Swift wrote the caption, he will testify he did not intend to suggest an answer to readers. He will also testify that he did no independent investigation into whether drug dealers were in fact paying Elder. He will testify that he himself believed it was possible that drug dealers could be paying Elder, because Chief Elder had previously notified Swift that a newspaper employee was “hanging out” with a drug dealer who was going to be arrested.

Assume Elder will introduce evidence tending to establish that the allegation that drug dealers are paying him is false. He will also introduce evidence that Swift had treated Elder’s spouse “rudely” on a couple of occasions and that the newspaper had published an editorial endorsing Elder’s opponent in the most recent election for Chief of Police (the position is elected). Also assume the newspaper will assert all defenses it might reasonably raise. Discuss the likelihood of Elder prevailing in the defamation suit.

**Question III (40 minutes)**

Ray Bell grew up in Bloomerg. He was a very successful and prominent athlete in high school. During his senior year, he was the starting quarterback on his high school football team, which was ranked number one in the state, and he was also the star player on his high school basketball team, which won the state championship tournament. He then became a star basketball player for four years at a nearby university. After graduation from college, he spent two years as a player on a National Basketball Association professional team. Throughout this entire time period, his athletic achievements received extensive media coverage in Bloomerg and regular media coverage throughout the state.

After ending his professional basketball career, Bell was admitted to and graduated from medical school. Media coverage of him during that time was extremely limited. However, when he decided to return to Bloomerg to practice medicine as a surgeon, the local media headlines were to the effect of "Bloomerg Sports Star Is Coming Home."

During the first two years after he returned home, Bell received a small monetary stipend from a local television station, Channel 4, to be its "medical consultant." (Channel 4's offer was slightly better than a similar offer from the other local station, Channel 6.) In this capacity, he appeared on Channel 4 newscasts about six times a year, commenting on developments in the medical field. He eventually grew tired of this, however, and began devoting himself primarily to his medical work. Media coverage of him ceased.

After this time, Bell was part of a team that performed abdominal surgery on Jill Jones in Bloomerg Hospital. Jones experienced significant adverse consequences. It turned out that these were a result of the fact that the medical team had failed to remove 18 inches of gauze from her abdomen when the surgery was completed.

After eventually having the gauze removed, Jones filed suit against the Hospital and Bell for medical malpractice. Her initial complaint asserted that Bell had been negligent in failing to remove the gauze. Eight months after filing the lawsuit, however, Jones' attorney filed a motion to dismiss Dr. Bell from the lawsuit and the court, without stating a reason, signed an order dismissing him as a defendant. Jones then filed an amended complaint naming only the Hospital as the defendant. The amended complaint made no reference to Dr. Bell. The original complaint, however, remained in the court file (as did the amended complaint of course), which was accessible to the public.

Six months later, Channel 6 aired a story about the Jones lawsuit. The news anchor began the story stating "a woman had abdominal surgery but the doctors forgot to take 18 inches of gauze out of her body." There followed a video of Jones walking with a walker. There was then a shot of the outside of Bloomerg Hospital, with a Channel 6 reporter continuing, "Jones' tragedy began almost two years ago when she received an operation at this hospital. As a consequence of this supposed medical error, she has filed a million dollar lawsuit against the hospital and says her life will never be the same." This was followed by a shot of Dr. Bell's office with his name prominently displayed in front of it, with the reporter continuing, "We've looked at the court file and a legal document in it says that Dr. Ray Bell, who operated on Jones, left an 18 inch piece of gauze inside her. Jones says as a consequence, she's had a lot of pain and medical bills. Her affliction keeps her from doing the things she would normally do."

Dr. Bell sues channel 6 for defamation, contending that he was not at fault in the matter. Assume Channel 6 raises all defenses it might reasonably raise. Assuming Dr. Bell can prove that he was not at fault in the matter, discuss his likelihood of success.

**Question IV (20 minutes)**

Assume you have passed the bar exam and are practicing law. A small group of potential clients comes to your office and tells you the following.

Each of them regularly listens to a local radio station, WXYZ, which is broadcast on the 840 AM radio frequency. For a period of time, WXYZ broadcast paid advertisements for “George Flory’s guaranteed 10% income plus plan.” The ads stated that the plan “guarantees investors annual interest on principal that they invest equal to 10 percent or more for a period of five years.” The ads also provided a telephone number for listeners to call for more information about the plan.

Each person in the group invested thousands of dollars in the plan. But the plan did not perform as promised, and ultimately it was shown to be nothing more than a fraudulent investment scheme. Each person in the group lost the vast majority of the money they invested.

They hope to sue George Flory for fraud, but are concerned about his ability to pay any resulting judgment. They want your advice on their likelihood of success in a suit against WXYZ. What would be your advice to them? Explain the reasons for your advice.

**Question V (30 minutes)**

Edward Marks, a former teacher at public and private schools, pled guilty to criminal charges of sexually molesting several of his former students. A sentencing hearing was then scheduled.

The court invited individuals identified as have been Marks’ victims to testify at the sentencing hearing about the impact of the molestation and about the punishment Marks should receive.

At the hearing, where the courtroom was public and open to all interested members of the community, the judge ordered orally that “any reporters present are ordered not to identify any of the molestation victims in press accounts of this sentencing hearing.” No-one voiced an objection. Thirteen year old John Strith then delivered his victim impact statement at the proceeding, disclosing his name during the course of his testimony. Smith’s name had not been known or made public before the sentencing hearing.

The next day the local newspaper printed a story written by its reporter who had been at the hearing, identifying Strith by name and summarizing his testimony. Strith felt extremely humiliated and embarrassed by this disclosure.

Taking into account the amount of time recommended for this question, discuss (1) whether the court should be able to hold the reporter in contempt of court for violating the judge’s order and (2) the likelihood of whether Strith would prevail in an action for damages against the newspaper.

**Question VI (20 minutes)**

In *Turner Broadcasting v. F.C.C.*, which was covered in class, and its subsequent review of the case after proceedings on remand, the United States Supreme Court held that legislation requiring cable operators to carry the signals of a specified number of local broadcasting television stations is constitutionally permissible. Assume that in the near future, Congress passes legislation finding that the educational needs of children are not being sufficiently met by cable systems and (1) requiring that all cable operators devote at least one of their channels to the exclusive use of children's educational programming and (2) providing that if such cable operators are unable to find a programmer to produce such educational programming, they are required to produce and transmit it themselves, at their own expense.

Discuss whether such legislation would be constitutionally permissible.

# END OF EXAM