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## Synergy and Serendipity

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## Introduction

# Synergy and Serendipity

Joan S. Howland†

*“But such is the irresistible nature of truth that all it asks, and all it wants, is the liberty of appearing.”*<sup>1</sup>

*“You can only protect your liberties in this world by protecting the other man’s freedom.”*<sup>2</sup>

Great events rarely occur without the fortuitous intersection of synergy and serendipity. One of the earliest documented examples of this dynamic is the Greek mathematician Archimedes’ (287 B.C.–212 B.C.) discovery of the principle of buoyancy while he was soaking in a hot bath, inspiring him to jump up and run naked through the streets of Syracuse shouting “Eureka!”<sup>3</sup> This serendipitous discovery may easily have been eclipsed by the public outcry surrounding Archimedes’ unconventional behavior. Coincidentally, however, his close friend King Hieron of Syracuse had just been cheated by a goldsmith and was able to use the newly defined principle of buoyancy to prove the deception.<sup>4</sup> The king immediately brought Archimedes’ discovery to the attention of his court scientists who, in turn, spread this news enthusiastically throughout the Ancient World.<sup>5</sup> Perhaps more appropriate illustrations for a scholarly legal journal are the drafting of the U.S. Constitution

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1. THOMAS PAINE, *THE RIGHTS OF MAN* 151 (Everyman’s Library ed. 1958) (1791).

2. IRVING STONE, *CLARENCE DARROW FOR THE DEFENSE* 378 (1941) (quoting Darrow’s summation in the trial of William Bross Lloyd).

3. E.J. DIJKSTERHUIS, *ARCHIMEDES* 9–12 (C. Dikshoorn trans., Princeton Univ. Press 1987) (1956); Jim Loy, *Serendipity* (2003), at <http://jimloy.com/science/serendip.htm>.

4. Loy, *supra* note 3.

5. *See id.*

and the rise of the American transcendentalist movement, both transformative events in our nation's history which resulted from the fact that brilliant, visionary, and energetic individuals were by happenstance living in close proximity to one another at a time of political ferment and intellectual debate. A final example of the merging of synergy and serendipity, one particularly close to my own heart, is the legendary racehorse Seabiscuit who was born with raw talent at a time when the American public was desperately seeking a symbol of hope, equine or otherwise.<sup>6</sup> By pure chance, this potentially great horse fell under the stewardship of a skilled trainer who knew how to bring out Seabiscuit's best within a national field of thoroughbreds that complemented and challenged his talents.<sup>7</sup>

I would not necessarily equate the significance of a recent symposium held on a rainy Friday at the University of Minnesota Law School with the discovery of a scientific principle, the drafting of our federal constitution, the rise of American transcendentalism, or, although some may disagree, with the celebrated career of Seabiscuit. The Faegre & Benson Symposium: Law, Information, and Freedom of Expression, presented on October 22, 2004, however, was a truly momentous event resulting from an exceptionally fortunate convergence of events, people, circumstances, and luck.

## I. SYNERGY

No great academic law library, regardless of its size, extensive collections, technological riches, or national prominence, can stand in splendid isolation selfishly defining its own priorities and determining its own physical, institutional, and philosophical boundaries. Failing to integrate itself aggressively into all aspects of a law school's mission certainly dooms a library to mediocrity and more likely to irrelevancy. Therefore, in the spring of 2004 as the University of Minnesota Law Library neared the acquisition of its millionth volume, a milestone that would place it within an elite group of only seven other American academic legal research facilities,<sup>8</sup> the Law Li-

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6. LAURA HILLENBRAND, SEABISCUIT, at xi (2001).

7. *Id.* at xii.

8. Arthur W. Diamond Law Library, Columbia Law School; E.B. Williams & John Wolff Law Libraries, Georgetown University Law Center; Harvard Law School Library, Harvard Law School; Lillian Goldman Law Library, Yale Law School; New York University School of Law Library, New York University School of Law; Tarlton Law Library, University of Texas School of

brary had both an opportunity and an obligation to use this auspicious occasion to foster the natural and necessary synergy between a world-class research collection and legal scholarship.

The concept of a symposium originated during a discussion between Dean Alex M. Johnson, Jr.; Associate Dean Jim Chen; and me as we strategized about how to incorporate the millionth volume celebration into the intellectual life of the Law School and that of the broader communities of legal education and the practicing bar. Within minutes, if not seconds, we all came to agreement that nothing goes to the heart of libraries more than freedom of expression, the unfettered distribution of information, and the laws that protect these axioms. What logically followed was the idea of utilizing the millionth volume celebration as a catalyst to develop a symposium, featuring presentations by academic leaders in the areas of constitutional law, regulatory policy, information science, and technology. It was at this point in the conversation that true synergy took hold. The names of the distinguished and prolific legal scholars Frederick Schauer, Daniel Farber, Lillian BeVier, and Robert Post came to our minds immediately. Within moments our discussion expanded to include scholars with expertise in First Amendment issues associated with information science and emerging technologies; the name of the eminent law professor and law librarian Robert Berring arose, quickly followed by that of one of the rising stars in law librarianship, Michael Hannon. Simultaneously, we had the inspiration to enhance the symposium program with a panel consisting of several of the University of Minnesota's own constitutional law experts including Dale Carpenter, Guy-Uriel Charles, Miranda McGowan, and David McGowan.

Once this dream list of speakers was compiled, the synergy behind the concept of the symposium was galvanized by the generous support of the Faegre & Benson law firm to financially underwrite the costs of the symposium and the generous offer of the editorial staff of the *Minnesota Law Review* to publish a special symposium issue. And finally, through what can only be termed a miracle, all the scholars on our dream list not only received our invitation to speak with genuine enthusiasm, but were able to adjust their frenetic schedules to ensure that they could be with us on the day of the symposium.

One only needs to review the papers included in this symposium issue to discern the energizing dynamic that occurs when great scholars come together in a spirit of mutual respect for an intellectual exchange that is characterized by astute and creative, albeit widely divergent, approaches to a common topic. Each author addresses the tension between First Amendment protections and government regulation of free speech and access to information, and the failure, in many instances, of the courts to resolve this tension adequately. This is a tension that has heightened with the technological developments of the last twenty years and the events of September 11, 2001.

Professor Schauer leads off the symposium with a provocative attack on existing First Amendment doctrine, questioning its narrow and frequently ineffectual reliance on the category "speech."<sup>9</sup> He identifies the courts' unwillingness to move away from this traditional approach as likely to distort First Amendment doctrine and underprotect freedom of speech precisely in the situations where it deserves the greatest protections. Professor Schauer proposes an institution-based approach to the First Amendment that incorporates institutional realities and demarcations.<sup>10</sup> Professor Farber follows with an intriguing analysis of how Thomas Jefferson's and Alexander Hamilton's historical debate regarding the role of government in industry and business is being played out in a new arena—the digital domain. The battles now, however, are fought over software and the Internet instead of over factories and banks.<sup>11</sup> Professor Farber contrasts the arguments of present-day Jeffersonians, who advocate that rights traditionally protected by intellectual property laws are critical to "reconciling" copyright and freedom of expression, with those of the Hamiltonians, who postulate that protecting the rights of the creators of intellectual property is a more certain method of encouraging free speech.<sup>12</sup> Incorporating an analysis of the recent Supreme Court decision *Eldred v. Ashcroft*<sup>13</sup> into his analysis, Professor Farber emphasizes that these different viewpoints are a reflec-

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9. Frederick Schauer, *Towards an Institutional First Amendment*, 89 MINN. L. REV. 1256 (2005).

10. *Id.* at 1259–60.

11. Daniel A. Farber, *Conflicting Visions and Contested Baselines: Intellectual Property and Free Speech in the "Digital Millennium,"* 89 MINN. L. REV. 1318, 1319 (2005).

12. *Id.* at 1319–20.

13. 537 U.S. 186 (2003).

tion of dissimilar baseline perspectives on the status quo.<sup>14</sup> Professor Farber concludes with the observation that in light of the rapid and continually changing terrain of the technological world it is clearly too early to predict whether the Jeffersonians or the Hamiltonians will emerge victorious in the twenty-first century.<sup>15</sup>

Professor BeVier enhances this discussion in her article arguing for a consistent approach to First Amendment doctrine.<sup>16</sup> Skeptical of the proliferation of new First Amendment theories, Professor BeVier contends that it has, until recently, been possible for both scholars and the courts to point to clearly identifiable and justifiable components of First Amendment jurisprudence.<sup>17</sup> This consistency, however, has been eroded over the past decade. She particularly identifies the balancing and proportionality analysis espoused in a litany of opinions by Justice Stephen Breyer as a serious threat to the settled meaning of First Amendment doctrine and to the traditional methods of First Amendment decision making.

Two other contributors to this issue specifically examine libraries, in their roles as collectors and distributors of information, as prominent agents in the ongoing debates regarding First Amendment doctrine. Professor Berring focuses his discussion on the evolving nature of libraries as they have migrated from mere buildings, most clearly defined by books and other material objects, to entities without physical boundaries or limitations.<sup>18</sup> Through the power of the Internet, wireless connectivity, and electronic formats, libraries can access, acquire, organize, and distribute information with growing elasticity, greater efficiency, and fewer constraints. Professor Chen examines the law of librarianship as an aspect of First Amendment jurisprudence.<sup>19</sup> In examining the traditional library function of acquiring and freely distributing information as opposed to legislative mandates that control access to information, Professor Chen concludes that any conflicts that arise

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14. Farber, *supra* note 11, at 1322–23.

15. *Id.* at 1360.

16. Lillian R. BeVier, *The First Amendment on the Tracks: Should Justice Breyer Be at the Switch?*, 89 MINN. L. REV. 1280 (2005).

17. *Id.* at 1280–81.

18. Robert C. Berring, *Deconstructing the Law Library: The Wisdom of Meredith Willson*, 89 MINN. L. REV. 1381 (2005).

19. Jim Chen, *Mastering Eliot's Paradox: Fostering Cultural Memory in an Age of Illusion and Allusion*, 89 MINN. L. REV. 1361 (2005).

from these contrasting positions should be resolved in favor of the more liberal approach to information access and distribution.<sup>20</sup> He contends that the closely connected values of freedom of speech and freedom to research support the argument, especially in regard to the wealth of information available electronically, that libraries should be empowered to perform their traditional function within the marketplace of ideas as freely as possible.<sup>21</sup>

## II. SERENDIPITY

Just as Archimedes' serendipitous discovery of buoyancy occurred almost simultaneously with King Hieron's need for scientific proof to confirm the deception by his goldsmith, three fortuitous events transpired that contributed to making the Faegre & Benson Symposium a truly momentous occasion for both the Law School and the Law Library. In July 2004, prior to the symposium, a rare first edition of Thomas Paine's *Common Sense* became available on the antiquarian book market. Often referred to as the "single most influential political work in American history,"<sup>22</sup> this slim volume is credited with fanning the flame of rebellion which led to the American Revolution by advocating for many of the freedoms which eventually became the basis of the U.S. Constitution. Realizing the connection between this work, published in the winter of 1776, and the subject matter covered in the symposium, the Law Library purchased this rare item as its 999,999th volume. Almost before the ink was dry on the check for *Common Sense*, an even more serendipitous event occurred. The Law Library learned that the papers of Clarence Darrow, undoubtedly one of the most renowned lawyers of the twentieth century, were available. An early defender of racial equality, a staunch opponent of capital punishment, and a zealous advocate of freedom of expression, Darrow's character and career epitomized many of the ideals of the legal profession—courage, compassion, and conviction. Through significant good fortune, tenacity, and the incredibly generous support of both the Law School and the University of Minnesota, the Law Library was able to acquire this unparalleled collection of letters as its millionth volume.

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20. *Id.* at 1380.

21. *Id.* at 1376–78.

22. SCOTT LIELL, 46 PAGES: THOMAS PAINE, *COMMON SENSE*, AND THE TURNING POINT TO AMERICAN INDEPENDENCE 16 (2003).

The heart of the collection is formed by more than three hundred letters written by Darrow to his family and friends. Personal and informal in tone, they possess an intimacy attesting to and revealing the essence of Clarence Darrow's character. The letters span a period of sixty years, beginning with the earliest known letter written by Darrow as a teenager<sup>23</sup> and the last written shortly before his death.<sup>24</sup> These letters are complemented by other letters written to Darrow by many of his famous contemporaries, including Jane Addams, Eugene V. Debs, Theodore Dreiser, Mother Jones, Helen Keller, Sinclair Lewis, H.L. Mencken, Franklin D. Roosevelt, John Scopes, Upton Sinclair, Woodrow Wilson, and Frank Lloyd Wright.<sup>25</sup> Both in size and content, this collection surpasses all other compilations of Clarence Darrow material.

In a final event, which reflects the synergy that serendipity can create, Thomson-West, the world's leading publisher of legal information, offered to create a Clarence Darrow database specifically for the University of Minnesota Law Library. As a long time supporter and friend of the Law School, Thomson-West wanted to honor the Law Library's acquisition of its millionth volume by developing an electronic collection of primary and secondary sources related to Darrow's dynamic career and life. This electronic database became the Law Library's 1,000,001st volume. These three acquisitions, all exceptional in their own right, combined to form an extraordinary complement to the intellectual discourse that occurred throughout the Faegre & Benson Symposium.

During the dinner following the symposium and reception honoring the acquisition of the Law Library's millionth volume, Dean Johnson leaned over and told me that it had been the best day of his deanship. Although I know that the Dean has had many extraordinary days since his arrival at the Law School and that he may have been exaggerating a tad in his usual gracious and supportive manner, I do agree that the Faegre & Benson Symposium was a momentous event for the law school community. I am pleased and honored that the *Minnesota Law Review* has published this symposium issue, which

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23. Letter from Clarence Darrow to Everett Darrow (Jan. 24, 1873) (Clarence Darrow was fifteen years old).

24. Letter from Clarence Darrow to Paul Darrow (May 12, 1936) (Clarence Darrow was seventy-eight years old).

25. The Papers of Clarence Darrow (1873-1936) (Arthur C. Pulling Rare Books Collection, Riesenfeld Rare Books Research Center).

will be a significant addition to the scholarly literature available on law, information, and freedom of expression.