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### ■ **"Googling Freedom"**

*California Law Review, Forthcoming*

*UC Davis Legal Studies Research Paper No. 217*

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While GM and GE are rushing in to China, why are so many Americans cheering the possibility of Google pulling out? The answer to this puzzle lies in Google's special role as new media. Television once moved the free speech paradigm from the local street corner to the national platform of CBS; the Internet has shifted it further to the global stage offered by Google and its peers. Free speech theory – and Western media corporations – must now grapple with the reach of this media into unfree societies. While a growing chorus has denounced Western new media enterprises for betraying their obligations to the people of China and other authoritarian regimes, no one has yet explained what those obligations are or why these companies might have them. Corporate social responsibility theory has focused largely on the risks of a global supply chain in goods, neglecting the questions raised by the rise of global information services. The notion of corporate obligations to people around the world seems especially perplexing in juxtaposition with the familiar mandate to maximize shareholder wealth at home. Drawing from theories of Foucault and Habermas and the history of the underground press, I argue that information service providers bear a special responsibility to unfree people. What might have been mutually beneficial transactions in a free society can become, in an unfree society, predicate offenses leading to years of hard labor. New media can either help give voice to dissidents or help perfect totalitarianism.

### ■ **"Global Warming and the Management-Centered Corporation"**

*Wake Forest Law Review, Vol. 44, No. 3, p. 671, 2010*

*UC Davis Legal Studies Research Paper No. 212*

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Corporate governance power is heavily concentrated in upper management, not in shareholders. With respect to social problems, including global climate change, that may be a good thing. Public company shareholders are overwhelmingly financial investors who are unlikely to see themselves as responsible for a corporation's effect on

society. Corporate managers, in contrast, have some degree of moral accountability for industry's effect on climate, as well as self-interested reasons to care about the shape of regulation. The weakness of shareholders gives managers room to make social choices without shareholder input.

Whether and how corporations respond to the challenge of global warming, then, will not depend primarily on shareholder participation in governance. Rather, it will depend on outside forces that appeal to the moral conscience and the self-interest of corporate executives and boards. Chief among these forces will be federal and global regulation. Regulation and lawsuits by state governments are currently running ahead of the federal government. Private parties have also filed lawsuits against major greenhouse gas emitters. These developments by themselves are of course insufficient to address global, systemic problems like climate change. But they may pave the way for comprehensive federal and global regulation. First, lawsuits and state laws may increase public awareness, increasing political support for regulation and moral pressure on the individual executives and directors who are the public face of corporations. Second and moreover, the specter of piecemeal state regulation and state and private litigation may convince corporate leaders to cooperate with federal and perhaps global regulation.

### "Travel Insurance: Protecting Lesbian and Gay Parent Families Across State Lines"

*Harvard Law & Policy Review*, Vol. 4, p. 31, 2010  
*UC Davis Legal Studies Research Paper No. 218*

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Until recently, when a lesbian couple had a child through artificial insemination, only one member of the couple was considered the legal parent of the resulting child at the moment of birth. Today, in a small but growing number of states, this is no longer the case. Instead, in this small group of states, from the moment of birth, both members of the couple are treated as legal parents of a child born to the couple through artificial insemination. While this advancement in state law is tremendously important for many children, the resulting protections are extremely tenuous. These children are assured protection only so long as they and their families remain in one place, never crossing state lines. This essay explores why this legal vulnerability exists and offers a proposal for mitigating this potentially harmful state of affairs.

### "Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense"

*Arizona Law Review*, Vol. 52, No. 219, 2010  
*UC Davis Legal Studies Research Paper No. 216*

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This Article, written for a symposium on "Funding Justice," maps legal conceptions of (in)equality onto the socio-geographic conception of spatial inequality in relation to indigent defense services in Arizona. In particular, we examine county-to-county variations in funding and structures for providing this constitutionally mandated service. We conclude that the State of Arizona's current system for delivering indigent defense services puts it at serious risk of violating the U.S. Constitution's Sixth Amendment right to counsel and/or the Equal Protection Clause of the Fourteenth Amendment. We outline county-level, legislative and judicial solutions to the problems we identify.

Like more than a third of U.S. states, Arizona delegates to counties the responsibility of providing counsel to indigent criminal defendants. Individual Arizona counties must finance this service, and each also has the autonomy to determine how best to provide it, e.g., by establishing a Public Defender office, paying contract attorneys, and/or appointing counsel. Inequalities and problems associated with underfunding of indigent defense arise, however, because county governments in Arizona are financed primarily by local tax revenue, leaving counties with dramatically differing capacities to provide both discretionary and mandatory services. These disparities occur in part because Arizona is unevenly developed to a dramatic degree. For example, more than 60% of the state's residents live in Maricopa County, while five of the state's remaining 14 counties are each home to as little as 1% or less of the state's population. Further, poverty rates and income levels vary dramatically from county to county, with non-metropolitan counties typically featuring the highest poverty rates and the lowest per capita and median household incomes. Because the fiscal capacity of a local government is limited by its residents' per capita income, this uneven development - coupled with an emphasis on local tax revenue to finance county government and virtually no effort at redistribution of tax revenue at the state level - creates severe spatial inequalities in service provision among counties.

To illustrate the county-to-county variations in the funding and delivery of indigent defense services, we discuss in detail the economic and demographic profiles of five Arizona counties: metropolitan behemoth Maricopa County, with a population of 4 million and a diverse economy; sparsely populated, barely metropolitan and amenity-rich Coconino County, home of the Grand Canyon and a tourism-driven economy; persistent poverty Navajo and Apache counties, both with significant American Indian lands and American Indian populations, who consume state justice systems services at a lower rate than non-Indians; and Arizona's most rural county, Greenlee, with only 8,000 residents, a dearth of lawyers, and a surprisingly affluent, mining-dependent economy.

In addition to focusing on disparities in funding of indigent defense among these five Arizona counties, we also assess the counties' provision of indigent defense for several problems commonly associated with underfunding: caseloads and competency, financial conflicts of interest, lack of parity with prosecution, and the risk that a single case will overwhelm a county's defense system. Despite some gaps in publicly available information detailing the funding and provision of indigent defense - information that could be developed through discovery should litigation be initiated - we find sufficient evidence of significant county-to-county variations in funding and delivery of indigent defense to suggest constitutional violations. At particular risk from a systemic standpoint are non-metropolitan counties that do not have Public Defenders but instead rely entirely on lawyers with whom county governments contract to provide indigent defense. To the extent that these lawyers are supervised or their caseloads monitored, that task falls to local Superior Courts, a situation which itself raises problems.

While Arizona's dramatically uneven development and heavy reliance on local taxation to finance indigent defense make it a particularly interesting case study, we assert that the legal arguments we formulate could apply to any of the 18 states that fund indigent defense primarily or entirely at the county level.

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