Levi on Transnational Libel

Lili Levi, who is a professor at the University of Miami Law School, has posted The Problem of Trans-national Libel on SSRN.

> *Forum shopping in trans-national libel cases – "libel tourism" – has a chilling effect on journalism, academic scholarship, and scientific criticism. The United States and Britain (the most popular venue for such cases) have recently attempted to address the issue legislatively. In 2010, the U.S. passed the SPEECH Act, which prohibits recognition and enforcement of libel judgments from jurisdictions applying law less protective than the First Amendment. On March 15, 2011, the British Ministry of Justice proposed a draft Defamation Act 2011 with provisions designed, inter alia, to discourage libel tourism. This Article questions the extent to which the SPEECH Act and the proposed Defamation Act 2011 will accomplish their stated aims. The SPEECH Act provides little protection for hard-hitting investigative and accountability journalism by professional news organizations with global assets. The proposed British bill has important substantive limits and, controversial in Britain, may well not be adopted. Even if Parliament approves it, the site of libel tourism may shift to other claimant-friendly jurisdictions. Global harmonization of libel law is neither realistically feasible nor desirable. Instead, this Article proposes a two-fold approach. On the legal front, it supports the procedural focus of Britain's proposed bill, but also calls for foreign courts to apply a governmental interest analysis to choice of law in trans-national defamation cases threatening core political speech in the United States. On the policy front, it calls for: 1) measures to improve the way in which the press does its job in order to reduce the number of trans-national libel cases; and 2) new approaches to help defend the claims when they are brought. The recommended press-improvement measures include expanded access to, and efficient use of, documents, journalistic self-criticism, and best-practices education. The defense measures explored include the development of alternative, community-based support for libel defense funds; the formation of pro bono libel review consortia; and the promotion of the availability of libel insurance by means designed to help insurers more accurately assess libel risk.*

The paper can be freely downloaded here.