**Connie Davis Powell Nichols**



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**Professor of Law and Director**

**of the Baylor Law Intellectual Property**

**and Entrepreneurship Clinic**

**Partner – Munck Wilson Mandala**

**EDUCATION**

**Indiana University Mauer School of Law, Bloomington, Indiana**

Doctor of Jurisprudence, May 2000, *Cum Laude*

## **University of North Carolina, Chapel Hill, North Carolina**

# Bachelor of Arts in Biology, August 1997

**RESEARCH & TEACHING SUMMARY**

**Director of the Baylor Law Intellectual Property and Entrepreneurship Clinic**

**Research**

Intellectual Property

Privacy Law
Internet Law

**Citation Analysis**

Google Scholar Citation Total: 39; Average cites per article: 5; H-index: 4

Westlaw Citation Total: 33

**Teaching**

Appellate Advocacy
Contracts I and II

Copyright

E-Commerce

Information Privacy

Intellectual Property

Intellectual Property Law Clinic

Intellectual Property Litigation

Trademark and Unfair Competition

Trademark Practice and Disputes

**SCHOLARLY RESEARCH**

**Law Journal Articles**[[1]](#footnote-1) [[2]](#footnote-2)

**Nichols, C.\*\*, Moody, M.\*\*, Lewis, T., *Lies, Sex and Shaming: An Essay on the Beginning of the Call-out Culture and the Legal Response*, 4 Tex J. L. & Tech 69 (2020-2021).**

Using a collective case study approach, this essay examines three high-profile Internet shaming cases in the 21st Century. The first case highlights one of the first major U.S. cyber-bullying cases, which unfolded on MySpace (*Lori Drew vs. Missouri*). The next case study focuses on an attorney who sued Internet content providers for hosting former lover shaming content on DontDateHimGirl.com (*Todd Hollis v. Tasha C. Joseph-Cunningham*). The final case focuses on lawsuits against TheDirty.com, a gossip website and blog (*Sarah Jones v. Dirty World Entertainment Recordings, LLC*). Following an analysis of these case studies, the essay offers a cross-case analysis of each incident and implications for social media and privacy law in general. It is hoped that study implications and findings might serve as a guide to help this generation, which will be the first whose identities will be shaped while living in a digitally immersed culture. Students, mental health professionals, educators, and citizens must understand the nuances of the common issues of shaming and privacy law.

**Nichols, C., *Article 6BIS of The Paris Convention for Well-Known Marks: Does It Require Use or A Likelihood of Consumer Confusion for Protection? Did Belmora, LLC v. Bayer Consumer Care AG. Resolve This Question?* 30 Indiana Int’l & Comp. L. Rev. 235 (Fall 2019).**

This article explores whether Article 6bis of the Paris Convention requires use in commerce of the trademark in the member state where enforcement of rights is sought. The article suggests that the most recent case addressing the issue failed to provide consistent guidance on enforcement of well-known trademarks within the United States.

**Nichols, C., *Initial Interest Confusion “Internet Troika” Abandoned?  A Critical Look at Initial Interest Confusion As Applied Online*, 17 Vand. J. of Ent. & Tech. L. 883 (Summer 2015). [Intellectual Property Journal ranking: No. 7, Impact Factor: 0.87, journal citation, 737].**

This article suggests that the Ninth Circuit in *Network Automation* *v. Advanced Systems* sought to clarify its holding in *Brookfield* and to reject subsequent holdings that misapplied the likelihood of confusion test in order to eliminate divergent holdings, most evident within the Ninth Circuit itself, regarding the appropriate analysis of trademark infringement online. The Article concludes by arguing that the likelihood of confusion factors are flexible enough to address emerging technology without the cookie-cutter approach created by the misapplication or interpretation of *Brookfield* that was the “Internet Troika.” This article was highly acclaimed during its international presentation at the International Trademark Association Annual Meeting in Hong Kong and was sought for use and citation in international litigation prior to publication.

**Nichols\*\* & Carroll, *Trouble in Trademark Law: How Applying Different Theories Leaves Door Open for Trademark Abuse*, 17 SMU Sci. & Tech L. Rev. 1 (Spring 2014). [Intellectual Property Journal ranking: No. 46, Impact Factor: 0.21, journal citation rate, 119].**

This article examines the two established, yet conflicting, theories of trademark law: Source Theory and Quality Theory. The article suggests that aggressive enforcement actions by trademark owners are a direct result of the attempts to harmonize the two theories. The article affirms the need for trademark enforcement by owners but calls for relief to secondary mark users who are unfairly targeted in the name of trademark policing.

**Nichols, C., *Trolls, Trolls Everywhere: Why Copyright Law’s Right For Trolling*, 22 Tex. Ent. & Sports L. J. 11 (Spring 2014). [A state bar regional journal that is well respected and highly read by practitioners in intellectual property.]**

This article proposes that copyright statutory damages, technology, and permissive joinder and other antiquated discovery laws have created the lucrative bridge for trolling and argues that neither the Ninth Circuit’s decision in *Righthaven v. Hoehn* nor the sanctions against Prenda Law (“Prenda”) ended copyright trolling. What will be necessary to curtail copyright trolling is a review of copyright laws’ provisions on statutory damages and courts taking a more critical review of pleadings before allowing massive defendant joinder.

**Powell,C., *We All Know It’s A Knock-Off! Reevaluating the Post-Sales Confusion Doctrine in Trademark*, 14, N.C. J. L. & Tech. l (Fall 2012). [Intellectual Property Journal ranking: No. 13, Impact Factor: 0.99, 446.]**

This article evaluates whether the post-sale confusion doctrine is a legitimate expansion of trademark law and argues that such a doctrine is no longer necessary in a sophisticated marketplace where other remedies are available to curtail the trade in counterfeit goods. This article received the lead placement in this top-ranked journal.

**Powell, C., *Privacy for Social Networking*, 34 U. Ark. Little Rock L. Rev. 689 (Summer 2012).**

This article examines privacy issues arising from social network sites and the loopholes with respect to a self-regulatory regime governed by contract law. These loopholes would be adequately addressed by tort law, which would provide incentives to discontinue their policy change practices through liability for behavior and compensation for ensuing harm.

**Scholars’ Amicus Curiae Briefs Authored**

Contributing Editor, Brief for Aereo, Inc. as Amicus Curiae, *Am. Broad. Companies, Inc. v. Aereo, Inc.,*134 S. Ct. 2498 (2014).

Contributing Editor, Brief for CLS Bank International, Inc. as Amicus Curiae, *Alice Corp. Pty. Ltd. v. CLS Bank Intern.,* 134 S. Ct. 2347 (2014).

Co-author\*\*, Brief of Amici Curiae Intellectual Property Law Professors in Support of Appellee, *In Re AutoHop Litigation: Dish Network L.L.C. v. American Broadcasting Companies, Inc., et al.* (2nd Circuit 2014).

Co-author\*\*,Brief of Amici Curiae Intellectual Property Law Professors in Support of Appellee, *Fox Broadcasting Company, et al. v. Dish Network L.L.C. et al.* (9th Circuit 2014).

**Works in Progress**

*Sampled! Revisiting Fair Use in Music Sampling*

*E-Lection: The Use of Social Media and Fake News in Political Campaigns & the Legal Response.*

*Notification Does Not Equal Protection: Personal Information Protection Standards the Missing Link Amidst Notification Statutes.*

**RESEARCH HONORS**

**Fellowships**

Discussant at the University of Houston Law Center Intellectual Property & Information Law Symposium on Intellectual Property and Information Law in a Global Context, May 30, 2015, Santa Fe, New Mexico.

Fellow to the George Mason School of Law, Law and Economic Center 2013 Law & Economics Center Program for Law Professors, July7-19, 2013, Avon, Colorado.

Fellow to the Cardozo School of Law “Anonymity and Identity in the Information Age” Law Symposium, May 4, 2012.

**SPEAKING ENGAGEMENTS**

Presentation titled, “*Privacy and Governmental Officials*” presented to the City of Corsicana Board of Commissioners, Corsicana, Texas, July 2019.

Presentation titled, *“Privacy and Board Ethics”* presented to TML Health Benefits Pool, Austin, Texas, April 2019.

Panelist at 2nd Annual Baylor Business Advertising Summit, “*Fierce, Fabulous, and Female in Advertising, Marketing, Entertainment, and Sports Part II*,” Hankamer School of Business, Waco, Texas, February 2019.

Panelist at 1st Annual Baylor Business Advertising Summit, “*Fierce, Fabulous, and Female in Advertising, Marketing, Entertainment, and Sports*,” Hankamer School of Business, Waco, Texas, January 2018.

Presentation titled “*Intellectual Property Primer for Scientists and Engineers”* presented at LeTourneau College, Longview, Texas, November 2018.

Presentation titled “*Protecting Your Creations as a Journalist in the Age of Blogs and Social Media*” to the National Black Journalists Association, Waco, Texas, October 14, 2015.

Moderator at Texas A&M School of Law Center for Law and Intellectual Property Annual Scholarship Roundtable, Fort Worth, Texas, October 9-10, 2015.

Panelist at the Open Government Seminar at the Texas State Bar Annual Meeting, “ *‘I Agree’ To What Exactly?*” on June 27, 2014.

Presentation titled “*Social Media Privacy in Schools”* to the Region 12 Education Service Center, Waco, Texas, May 30, 2014.

Panelist at 8th Annual Global Business Forum, “Big Data in A Shrinking World: Legal and Ethical Concerns” Baylor Business McBride Center for International Business, Waco, Texas, March 20, 2013.

Presentation titled “*Social Privacy Myths Debunked*” to the Central Texas Public Relations Society of America, Waco, Texas, November 14, 2013.

Presentation titled “*The Ethics of Social Networks”* to the Central Texas Public Relations Society of America, Waco, Texas, September 13, 2012.

**Scholarly Papers Presented**

*“E-Lection: The Use of Social Media and Fake News in Political Campaigns & the Legal Response,*” presented at the Conference on Innovation and Communications Law, Bocconi School of Law, Milan, Italy, May 2018.

“*E-Lection: The Use of Social Media and Fake News in Political Campaigns & the Legal Response,*” presented at the 48th Annual PCA Meeting of the Popular Culture Association/American Culture Association, March 2018.

“*Article 6Bis of the Paris Convention for Well-Known Marks: Is Use Required or A Likelihood of Consumer Confusion?*, presented at IP Scholars Asia 3rd Works-In-Progress Conference, Singapore Management University, March 2018.

“*Article 6Bis of the Paris Convention for Well-Known Marks: Is Use Required or A Likelihood of Consumer Confusion?*, presented at the 139th Annual Meeting of the International Trademark Association, Barcelona, Spain, May 2017.

“*Initial Interest Confusion “Internet Troika” Abandoned?  A Critical Look at Initial Interest Confusion as Applied Online,*” presented at the International Trademark Association Scholars’ Conference, Hong Kong, China, May 2014.

“*Play Your Part – The Role of Fair Use in Music Sampling,*” presented at the Law and Popular Culture Symposium, March 2013.

**Law School and University Committee Service**

**Law School Committees**

Curriculum Committee

* Developed plan for Intellectual Property concentration.
* Developed Innovation and Entrepreneurship Clinic proposal to operate in connection with Baylor Research and Innovation Collaborative (BRIC) Launch program.

Media/Communication Committee

Technology Committee

Advisor to Diversity in Law

Advisor to Intellectual Property Society

**Law School Advocacy Team Coach**

Baylor Law School ranks third in the nation in advocacy in the latest US News & World Report. One large factor in this ranking is our success at interscholastic competitions. Advocacy competitions are highly regarded by students and faculty at Baylor Law School. My advocacy teams have been successful and have won a number of awards.

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| **2020** | National Patent Drafting Competition |
| **2015** | Intellectual Property LawMeets Competition**Awards:** Western Regional Finalists; First Place, Negotiation; Advanced to National Rounds |
| **2014** | Intellectual Property LawMeets Competition**Awards:** Western Regional SemifinalistsThe INTA (International Trademark Association) Saul Lefkowitz Moot Court Competition |
| **2013** | John Marshall Law School International Competition in Information Technology and Privacy Law Competition**Awards:** Octofinalists |
| **2012** | John Marshall Law School International Competition in Information Technology and Privacy Law Competition**Awards:** Semifinalists; Best Oralists |
| **2011** | John Marshall Law School International Competition in Information Technology and Privacy Law Competition**Awards:** Semifinalists |

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| **2010** | John Marshall Law School International Competition in Information Technology and Privacy Law Competition**Awards:** OctofinalistsThe INTA (International Trademark Association) Saul Lefkowitz Moot Court Competition |

**University**

Participant in the Kaleidoscope Program

Baylor Roundtable—Co-Historian (2009-2011); Scholarship Fundraising Co-Chair (2011-2012)

Campus Advisor to Alpha Kappa Alpha Sorority, Incorporated, Pi Mu Chapter

**Community Service**

Junior League of Waco— Vice Chair of Deck the Halls Decorations, Past Chair of Deck the Halls Logistics

Susan G. Komen Central Texas—Honorary Race Chair

Alpha Kappa Alpha Sorority, Inc.—Immediate Past President: Developed multiple community programs earning five regional awards.

Making our Society Stronger Foundation—Organized HBCU college fair for Central Texas.

Jack and Jill of America—President: Hosted the 2013 S. Central Region Mothers’ Conference. Facilitated the 2015 Children’s Cluster with a focus on reading and writing and the theme of “Oh the Places You’ll Go.” We explored Waco and visited the city’s museums by trolley. Children in the community learned the basics of writing in traditional media and learned how to start a social media campaign: #ohtheplacesyoullgo. Organized the 2012 Children’s Cluster held at First Baptist Woodway Church, with a focus on financial literacy for all ages. A segment of the program was featured in the local news and *Dallas Morning News*. Organized 2009 Children’s Cluster held at the Doris Miller YMCA. We invited children in the community to participate in various art projects, and we encouraged mothers to attend a financial fitness workshop.

The Links, Incorporated—2nd Vice President responsible for community service and community outreach. Obtained a grant from AT&T to conduct STEM and Science, Technology, Engineering, Arts and Math (“STEAM”) activities with children living in the Estella Maxey housing development who participate in the Restoration Haven after-school program. Co-authored and implemented a community outreach program entitled “Fitness Inspiring Teens” (the “FIT Program”), which was designed to combat the growing rate of obesity and the diseases and disorders associated with obesity in African American Youth. The FIT Program provides education on proper nutrition, health, fitness and self-esteem. The Program won an award at the Links Regional Conference. Since 2008, the FIT Program has become an annual program partnership with the City of Waco and is presented on the first Saturday in October each year. The FIT Program is also presented annually at the Doris Miller YMCA.

Habitat for Humanity: Participated in the “Home is Where the Art Is” fundraiser for the Habitat for Humanity.

Carver Park Baptist Church: Served on the committee to plan the First Lady’s Luncheon during the church anniversary. Participate annually in Vacation Bible School. Served as the lead arts and crafts instructor for 2009 Vacation Bible School; participant in the Elementary School Reader program, a program designed to encourage and assist students who are reading below grade level.

Waco Civic Theater: Past member of Waco Civic Theater fundraising committee.

**PROFESSIONAL LEGAL EXPERIENCE**

**hyatt hotels corporation** Chicago, Illinois

***Corporate Counsel*** August 2005-February 2008

Counseled and advised business units on a variety of matters regarding intellectual property, marketing, advertising and consumer protection. Drafted, reviewed, and negotiated intellectual property license agreements, co-marketing and partnership agreements, advertising agreements, search engine marketing agreements, website design and hosting agreements, and a variety of other marketing and vendor agreements.

**Blockbuster Inc.** Dallas, Texas

##### Corporate Counsel-Intellectual Property & Marketing June 2004-May 2005

Counseled and advised North American business units on a variety of matters regarding intellectual property, marketing, advertising and consumer protection. Developed and implemented corporate policies regarding appropriate use and protection of intellectual property. Conducted training on intellectual property, marketing and consumer protection laws. Managed U.S. and international trademark portfolio and prosecuted applications for U.S. and international trademarks. Provided legal counsel to North American and international business units on all trademark matters.

**Winston & Strawn**, **llp** Chicago, Illinois

***Intellectual Property Associate***  September 2000-June 2004

Conducted legal research and drafted legal memoranda in various areas of intellectual property, marketing and advertising, and consumer protection law. Drafted and negotiated co-marketing agreements, sponsorship agreements, charitable solicitations, and commercial co-ventures agreements. Drafted website terms and conditions, privacy policies and linking agreements, and provided legal counseling on Internet privacy laws and regulations. Prosecuted U.S. and international trademark applications, which included responding to Office Actions and supervising opposition and cancellation proceedings. Contributed to a number of speeches and comments before the Federal Trade Commission and Promotion and Marketing Association.

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# **Professional Licensure**

# Illinois State Bar

# District of Columbia Bar

# Minnesota State Bar

Texas State Bar

Professional Affiliations

Copyright Law Society

American Intellectual Property Law Association

Former Member of Indiana University Alumni Board, Executive Committee

International Trademark Association

American Bar Association

District of Columbia Bar Association

Illinois Bar Association

McLennan County Bar Association

Minnesota Bar Association

**Indiana University Mauer School of Law (Student Awards)**

Senior Managing Editor, The Federal Communications Law Journal

Vice President and Charter member, Intellectual Property Group

President, Black Law Students' Association, 1999-2000

Phi Delta Phi Legal Fraternity

1. [↑](#footnote-ref-1)
2. \*\* All co-authored works assume distribution of workload based on first authorship order unless marked by “\*\*” which indicates major contributor. [↑](#footnote-ref-2)