Agency Publicity in the Internet Era

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Biography. I am the Adelfa Botello Callejo Endowed Professor of Law and Associate Dean for Research at the Southern Methodist University Dedman School of Law. My relevant courses include Administrative Law, Legislation, Health Law, and Food & Drug Law. My relevant articles include: *The Food and Drug Administration's Evolving Regulation of Press Releases: Limits and Challenges*, 61 FOOD & DRUG L.J. 623 (2006); *Can Speech by FDA-Regulated Firms Ever Be Noncommercial?*, 37 AM. J. L. & MED. 388 (2011); *Adverse Publicity by Administrative Agencies in the Internet Era*, 2011 BYU L. REV. 1371 (2011); *Do Graphic Tobacco Warnings Violate the First Amendment?*, 64 HASTINGS L.J. 1467 (2013); and *Regulating Disruptive Innovation*, 29 BERKELEY TECH. L.J. 173 (2014). I have presented my research to regulators, at industry conferences, and at various law schools, including Colorado, Harvard, North Carolina, Stanford, Texas, Wisconsin, and Yale, among others. I give frequent legal commentary to the media, including the Associated Press, CBS News, the Chicago Tribune, CNN, the Huffington Post, the Los Angeles Times, the New Republic, the New York Times, NPR, Slate, and WIRED. I earned my B.A. in Philosophy, Politics, and Economics from the University of Pennsylvania (1999) and my J.D. from Stanford Law School (2002). Before entering academia, I practiced at Arnold & Porter in Washington D.C., where I represented clients in front of federal and state agencies and Congress.

Contents

I. EXECUTIVE SUMMARY

A. *Traditional Publicity and Conference Recommendation 73-1.* Federal agencies have long used press releases and other public announcements to inform and warn the public. But agencies sometimes issue publicity that is premature, excessive, or intended to sanction identified parties—causing a range of harms. In 1973, the Administrative Conference recommended reforms to discourage such harms. Some agencies implemented Conference Recommendation 73-1, but most did not.

B. *Modern Challenges.* Today, agencies have more ways and perhaps also more incentives to publicize information that is adverse in some way to private parties. Modern agencies release copious amounts of information on their web sites, via social media, and via online databases, encouraged by recent "open government" and "smart disclosure" initiatives. As such, old problems with agency publicity are being presented in new forms.

C. *Methodology.* My basic methodology includes (i) a literature review, updated since my 2011 article, (ii) a survey of federal cases in which a private party challenged an agency's use of adverse publicity, again updated since 2011 (and to be attached as Appendix C), and (iii) case studies of three agencies (the FDA, FTC, and CFPB), including interviews with agency personnel.

D. *Findings.* This section will summarize the findings in Parts IV (Case Studies) and V (Agency Best Practices) below.

E. *Recommendations.* This section will summarize recommendations for potential reforms in Part VI below.

II. TRADITIONAL PUBLICITY AND RECOMMENDATION 73-1

A. Why Agencies Issue Adverse Publicity

1. *To Inform or Warn.* Most agencies must inform or warn the public—often by statutory mandate. This use of publicity confers clear public benefits and must not be taken for granted. The push for "smart disclosure" is the most recent expression of this core agency responsibility.

2. *To Pressure or Sanction.* A more controversial agency practice is using publicity to pressure alleged regulatory violators or to amplify the agency's investigatory or enforcement powers. I hope to put these uses in context by describing modern pressures on agencies, including stagnant budgets and increased jurisdiction.

B. Problematic Adverse Publicity

1. *Premature Publicity.* Publicity can be premature, such as when an agency publicizes that it has begun investigating a party without also clarifying that the allegations have not been fully adjudicated. For example, in 2010 the SEC Office of Inspector General investigated whether the SEC violated its own policies in publicizing a complaint against Goldman Sachs.[1] Of course, many agencies must also alert the public to health or consumer risks in the face of incomplete information and scientific uncertainty. But even these announcements can be premature.[2] For example, in 2008, the FDA and Centers for Disease Control and Prevention (CDC) incorrectly identified tomatoes (rather than peppers) as the source of a salmonella outbreak, costing the tomato industry an estimated $200 million.[3]

2. *Excessive Publicity.* Publicity can be excessive when an agency uses pejorative language or goes beyond factual reporting. The most commonly cited example is a 1959 press conference at which the Secretary of Health, Education, and Welfare (the precursor to HHS) warned the public to not eat cranberries suspected of containing carcinogens. The Secretary punctuated his warning by declaring that he would not be eating cranberries that Thanksgiving,[4] and failed to clarify that only cranberries from Washington and Oregon might be unsafe. The episode cost the industry $21.5 million in lost surplus—$8.5 million of which was indemnified by Congress.[5] More recently, in 2010, a plaintiff challenged a press release by the SEC in which the agency announced a civil enforcement action against an individual for running a "Ponzi scheme." The person argued that the SEC press release included two gratuitous (and false) references to an alleged mail order pornography business.[6] Recommendation 73-1 directed

[1] SEC OFFICE OF INSPECTOR GEN., REPORT OF INVESTIGATION NO. OIG-534: ALLEGATIONS OF IMPROPER COORDINATION BETWEEN THE SEC AND OTHER GOVERNMENTAL ENTITIES CONCERNING THE SEC'S ENFORCEMENT ACTION AGAINST GOLDMAN SACHS & CO. (Sep. 30, 2010), *at* http://www.sec.gov/foia/docs/oig-534.pdf.

[2] Administrative Conference of the United States (ACUS), Conference Recommendation 73-1 ¶ 3 (adopted June 8, 1973); 38 Fed. Reg. 16,389 (Jun. 27, 1973); 1 C.F.R. § 305.73-1 (recommending that adverse publicity, except in certain limited circumstances described in paragraph 2, "should issue only after the agency has taken reasonable precautions to assure that the information stated is accurate and that the publicity fulfills an authorized purpose.").

[3] Denis G. Maki, *Coming to Grips with Foodborne Infection—Peanut Butter, Peppers, and Nationwide Salmonella Outbreaks*, 360 NEW ENG. J. MED. 949 (2009).

[4] Ernest Gellhorn, *Adverse Publicity by Administrative Agencies*, 86 HARV. L. REV. 1380, 1408 (1973).

[5] *Id.* at 1409-10 n.118.

[6] Barry v. SEC, 2012 WL 760456 (E.D.N.Y. 2012) (finding the press release to be non-reviewable under the APA).

agencies to limit adverse publicity to factual content that is accurate and does not contain disparaging terminology.[7]

3. *Punishment via Publicity.* There is also a long history of agencies using publicity to punish or pressure alleged regulatory violators, often as an extrastatutory form of "arm-twisting."[8] Publicity can be a particularly effective sanction, but the damage is often indeterminate, as agencies cannot easily define the upper limit or otherwise calibrate the damage. In 2003, for example, the FDA publicly reprimanded a company for misrepresenting the benefits and risks of its drug, without first warning the company in private. The company's stock lost 25% of its value that day.[9] Publicity is particularly problematic when primarily intended to coerce rather than inform.[10]

4. *Inaccurate Publicity.* Finally, agency announcements may be inaccurate, as demonstrated by the 2008 FDA and CDC announcements above,[11] or by the series of inaccurate product safety warnings by the CPSC that led Congress to amend the Consumer Product Safety Act in 1981.[12] Recommendation 73-1 urges agencies to issue retractions or corrections in such cases.[13]

C. *Recommendation 73-1*. This section will briefly summarize how Conference Recommendation 73-1 proposed to address these problems and the response by federal agencies, using the Conference's Implementation Binder and interviews with staff who were at various agencies after 1973.

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[7] Recommendation 73-1, *supra* note 2, at ¶ 1.

[8] The example cited in a 1941 report of the Attorney General's Commission on Administrative Procedures alleged that the Federal Alcohol Administration abused its power by threatening to issue adverse publicity as an extra-legal sanction "even when the validity of its dictates was not free from doubt." FINAL REPORT OF THE ATT'Y GEN.'S COMM'N ON ADMIN. PROCEDURES, S. DOC. NO. 77-8, at 135 (1941). Lars Noah also examined the use of publicity as an extrastatutory tactic in *Administrative Arm-Twisting in the Shadow of Congressional Delegations of Authority*, 1997 WIS. L. REV. 874.

[9] FDA, Talk Paper T03-18: FDA Warns Public About Misrepresentations in Marketing Claims About Drug to Treat Cancer (Mar. 14, 2003). Typically, before the FDA publishes a Warning Letter or similar public notice of alleged regulatory violations, the FDA will contact the party privately to offer a chance to come into compliance. The lack of prior notice may increase the punitive impact of adverse publicity, or perhaps reveal the agency's punitive intent.

[10] Gellhorn, *supra* note 4, at 1383, 1419-20.

[11] Maki, *supra* note 3.

[12] Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 703 (1981) (amending the Consumer Product Safety Act); *see also* James T. O'Reilly, *Libels on Government Websites: Exploring Remedies for Federal Internet Defamation*, 55 ADMIN. L. REV. 507, 542-43 (2003).

[13] Recommendation 73-1, *supra* note 2, at ¶ 5.

III. MODERN PUBLICITY

A. *Types of Modern Publicity*. This section will detail modern methods of disseminating publicity, including agency web sites, social media, and online databases. It will discuss how these communication methods differ from traditional press releases.

B. *Additional Problems Posed by Modern Publicity*.

1. *More Agency Incentives to Use Adverse Publicity*. Today, agencies struggling with resource constraints and increased regulatory burdens may find that issuing publicity is even more convenient and effective than using traditional statutory enforcement tools that must satisfy multiple procedural requirements.[14]

2. *More Ways to Issue Adverse Publicity*. Modern agencies can also use their web sites and social media platforms to disseminate adverse publicity more quickly and more casually than traditional press releases to the lay media or trade press.

3. *More Opportunities to Misinterpret Publicity.* Announcements via social media also tend to be extremely truncated (such as Twitter's 140-character limit), increasing the risk that audiences will misread or mischaracterize the message.

4. *Hyper-Responsive Capital Markets.* The Internet also enables capital markets to process agency announcements more swiftly and perhaps more hastily, multiplying the magnitude for potential damage to company reputation, stock price, and the like. In the 2003 FDA publicity example discussed above, the affected company's stock price dropped almost 25% within hours of the FDA's announcement.[15]

5. *Recent "Open Government" and "Smart Disclosure" Initiatives*. A more recent development worth examining is the Obama Administration's "open government," "smart disclosure," and "open data" initiatives that encourage agencies to post more information online.[16] For example, online databases that publish

[14] I posit that there is a connection between increased agency responsibilities under stagnant budgets and the use of relatively low-cost tools like adverse publicity. Testing the causal connection empirically, however, may be difficult without a control or a baseline. Still, I hope to reveal agency rationales for relying on adverse publicity during interviews with agency personnel.

[15] *FDA Responds in Kind to SuperGen: Talk Paper Answers Press Release*, "THE PINK SHEET," Mar. 17, 2003, at 7.

[16] Executive Office of the President, National Science and Technology Council, Smart Disclosure and Consumer Decisionmaking: Report of the Task Force on Smart Disclosure (May 2013), *at* http://www.whitehouse.gov/sites/default/files/microsites/ostp/report_of_the_task_force_on_smart_disclosu

consumer complaints and other preliminary reports on agency web sites and can be adverse to identified parties. Examples include the Occupational Safety and Health Administration's (OSHA's) proposal to publish workplace injury records[17] and the Consumer Financial Protection Bureau's (CFPB's) consumer complaint database, [18] among others. Note, however, that Conference Recommendation 73-1 was careful to distinguish agency statements that "invite public attention … from the mere decision to make records available to the public rather than preserve their confidentiality,"[19] as those decisions are governed by the Freedom of Information Act (FOIA). Similarly, my 2011 article excluded from analysis "reverse FOIA" cases in which private parties sued to prevent agencies from publishing information, often in response to FOIA requests. Although my 2011 article observed that the distinction between active publicity and more passively releasing information to the public was a less meaningful one than in 1973,[20] most courts conclude that FOIA responses by agencies do not carry the same "government imprimatur on the document" as affirmative statements by agencies.[21] I seek input on whether this distinction remains meaningful.

IV. CASE STUDIES

A. *Food and Drug Administration (FDA).* The FDA is worth studying for a few reasons. First, the FDA seemed to be the only agency to propose a rule in response to Recommendation 73-1. Second, the FDA is a frequent litigant in these matters. Third, the agency must alert the public to health risks in the face of incomplete facts and scientific uncertainty. Finally, FDA was also the focus of my 2011 research—I reviewed over 1500 FDA "press announcements" from 2004 to 2010.

B. *Federal Trade Commission (FTC).* The FTC is notable because its internal policies and procedures were praised by Professor Gellhorn's report for ACUS, and because it is a traditional enforcement agency frequently involved in litigation surrounding press announcements. The FTC is also

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re.pdf.

[17] Jenna Greene, "OSHA's Proposed Database Draws Fire," THE AMERICAN LAWYER (Jan. 27, 2014), *at* http://www.americanlawyer.com/id=1202639865807/OSHA's-Proposed-Database-Draws-Fire.

[18] CFPB, Consumer Complaint Database, *at* http://www.consumerfinance.gov/complaintdatabase/. *See also* Ian Ayres, Jeff Lingwall, & Sonia Steinway, *Skeletons in the Database: An Early Analysis of the CFPB's Consumer Complaints* (draft), *at* http://islandia.law.yale.edu/ayres/CFPB%20paper%20v10.pdf.

[19] 1 C.F.R. § 305.73-1(a); 38 Fed. Reg. 16,839 (Jun. 27, 1973).

[20] Nathan Cortez, *Adverse Publicity by Administrative Agencies in the Internet Era*, 2011 BYU L. REV. 1371, 1439.

[21] Pierce & Stevens Chem. Corp. v. CPSC, 585 F.2d 1382, 1388 (2d Cir. 1978) (holding that the Consumer Product Safety Act's disclosure procedures did not apply to proactive disclosures pursuant to FOIA requests).

presently involved in FOIA litigation over non-disclosure of consumer complaint information that it aggregates in an internal database.[22]

C. *Consumer Financial Protection Bureau (CFPB).* The CFPB is worth studying because it is a new agency operating under a new statute and in some ways is leading the "smart disclosure" trend.[23] For example, the Bureau's consumer complaint database, http://consumerfinance.gov, allows customers to submit complaints identifying companies that provide mortgages, bank accounts, student loans, consumer loans, credit reporting, debt collection, money transfers, and payday loans.[24] The database lists the type of product, the primary and secondary complaints, the name of the company, the company's response, and whether the company's response was timely and further disputed by the customer. The Bureau states on the site that "We don't verify all the facts alleged in these complaints but we take steps to confirm a commercial relationship between the consumer and company."[25] In July 2014, the Bureau proposed publishing the narrative comments by consumers, with a public comment period that ended September 22, 2014.[26] This proposal is being contested by several industry and free-market groups, which questioned the Bureau's statutory authority and raised other concerns similar to the ones raised about adverse publicity, such as unnecessary harm to a company's reputation.[27] I will examine the parallels and assess the adequacy of the Bureau's proposed procedures, particularly its proposal to also publish company responses along with consumer narratives within 15 days.[28]

D. *Consumer Product Safety Commission (CPSC).* I seek input on whether to include a fourth case study of the CPSC. This agency is one of the more frequently litigators in agency publicity cases, and was mentioned several times during our October 2014 Judicial Review Committee meeting.

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[22] Complaint, *Ayuda, Inc. v. Fed. Trade Comm'n*, No. 1:13 Civ. 1266 (D.D.C. filed Aug. 20, 2013).

[23] A 2001 law required the Office of Management and Budget (OMB) to publish guidelines to help agencies ensure the "quality, objectivity, and integrity of information" published by agencies online. *See* 44 U.S.C. §§ 3504(d)(1), 3516. This became known as the "Data Quality Act" or "Information Quality Act." Although OMB guidelines exclude agency press releases and charges made during adjudications, 67 Fed. Reg. 369, 371 (Jan. 3, 2002), they might cover online databases.

[24] *See* CFPB, Consumer Complaint Database, at https://data.consumerfinance.gov/dataset/Consumer-Complaints/x94z-ydhh? (last visited Nov. 4, 2014).

[25] CFPB, Consumer Complaint Database, at http://www.consumerfinance.gov/complaintdatabase/ (last visited Nov. 4, 2014).

[26] Disclosure of Consumer Complaint Narrative Data, Notice of Proposed Policy Statement with Request for Public Comment, 79 Fed. Reg. 42,765 (Jul. 23, 2014).

[27] *See, e.g.*, Public Interest Comment, Mercatus Center, George Mason University (Sep. 10, 2014), at http://mercatus.org/sites/default/files/Peirce-Soliman-CFPB-Consumer-Complaint-PIC-091014.pdf.

[28] 79 Fed. Reg. at 42,768.

V. AGENCY BEST PRACTICES

A. *Reiterating Recommendation 73-1*. This section will consider ways in which agencies currently adhere to Conference Recommendation 73-1:

1. *Written Agency Policies?* This section will examine which agencies have written policies to guide agency staff and what these policies entail. For example, do agency policies address (i) the content of adverse public announcements, (ii) procedures for making such announcements, and (iii) procedures for correcting or retracting mistakes?

2. *Advance Notice to Subjects?* This section will discuss whether, and under what circumstances, agencies provide advance notice to the subjects of adverse publicity. I will also look for exemptions made for emergencies and other justifications in the public interest. I will take care to consider the downsides (and possible abuses) of giving advanced notice to the parties publicly named in agency adverse announcements.

3. *Corrections and Retractions?* I will examine which agencies have policies that allow parties to request corrections or retractions to adverse publicity, and what those policies entail. Again, I will take care to consider the downside to agencies and the risk of parties abusing these procedures. Again, I will consider whether the Data Quality Act's provisions that require agencies to create mechanisms for affected parties to seek corrections apply to agency publicity.[29]

4. *Publicizing Investigations, Complaints, and Other Preliminary Actions?* How do agencies discipline themselves when publicizing preliminary actions like investigations and complaints, or the results of internal agency adjudications? Should there be different rules depending on whether the agency is discussing a criminal or civil matter? And again, what reasonable exemptions are there in the public interest?

B. *Best Practices for Modern Forms of Publicity*. This section will address current agency best practices surrounding newer forms of publicity, such as social media and online complaint databases.

1. *Social Media Announcements?* Do agency policies address negative announcements made via social media, like Twitter? If so,

[29] Jim Tozzi and the Center for Regulatory Effectiveness argue that the Data Quality Act does apply to agency press releases, notwithstanding the OMB's policy stating otherwise.

how do these policies operate in practice, and do they address the concerns posed here?

2. *Procedures Governing Smart Disclosure?* My main question here is whether the Data Quality Act of 2001 and resulting OMB rules govern these new online complaint databases. If so, the information would be subject to minimum standards for accuracy and objectivity, and would require procedures for parties to request corrections.[30] Otherwise, these databases might present problems akin to more traditional publicity.

VI. RECOMMENDATIONS FOR UPDATED REFORMS

A. *Reaffirming Conference Recommendation 73-1*. Given the persistent problems with agency publicity, this section may propose reaffirming Recommendation 73-1, which was not fully implemented by most agencies after 1973.

B. *New Recommendations*. This section will make new recommendations that focus on modern publicity practices, potentially based on the best practices identified in Part V. The academic literature concludes that neither current federal statutes nor judicial review provide effective remedies for private parties injured by agency publicity.[31] Possible recommendations might come in the following forms:

1. *Improving Agency Procedure*. Recommendations to improve agency procedures might come in three forms. First, the Conference might recommend improvements to internal agency practices and procedures. Both Professor Gellhorn's 1973 article and my 2011 article recommended guidelines that address (1) the content of agency announcements, and (2) the procedures by which agencies make announcements and consider requests to correct or retract information. My 2011 article tailored some of these new recommendations to new media. Second, the Conference might consider recommending Inspector General (IG) reviews of agency publicity as part of their routine monitoring of agency "abuse." Third, the Conference might consider making recommendations to the Office of Management and Budget (OMB), potentially including OMB review of agency publicity or reforms to the OMB's guidelines implementing the Data Quality Act that exclude from their coverage press releases.[32]

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[30] *See supra* note 23.

[31] *See, e.g.*, Noah, *supra* note 8, at 889-91; James T. O'Reilly, *The 411 on 515: How OIRA's Expanded Information Roles in 2002 Will Impact Rulemaking and Agency Publicity Actions*, 54 ADMIN. L. REV. 835, 838 (2002); O'Reilly, *Libels on Government Web Sites*, *supra* note 12, at 511-12.

[32] 67 Fed. Reg. 369, 371 (Jan. 3, 2002).

2. *Statutory Reforms*. Three statutes might be the targets for congressional reform. First, my 2011 article recommended that Congress amend the Administrative Procedure Act (APA) to clarify that agencies do have discretion to issue publicity, while requiring agencies to adopt written procedures and subjecting agency publicity to judicial review under an abuse of discretion standard in the APA. Second, Professor Gellhorn's 1973 article recommended that Congress amend the Federal Tort Claims Act (FTCA)[33] to compensate parties injured by agency publicity under certain circumstances,[34] although liability under the FTCA might present several problems.[35] Third, the Conference might recommend that Congress amend the Data Quality Act[36] to clarify that press releases and other forms of publicity are subject to the law's provisions requiring procedures to ask for corrections.

3. *Judicial Review*. My 2011 article reviewed 26 federal court opinions in which a private party challenged a federal agency's use of adverse publicity. These cases confirm the 1973 warning by ACUS that such publicity "is almost never subject to effective judicial review."[37] Courts routinely hold that agency publicity is not reviewable because it is not "agency action" or is not "final," or both, under the APA.[38] A notable recent decision is *Trudeau v. FTC*, 456 F.3d 178 (D.C. Cir. 2006), in which an infomercial producer challenged a press release by the FTC describing its settlement with Trudeau for charges of false and misleading advertising. The D.C. Circuit held that Trudeau did not have a valid cause of action under the APA, observing that the circuit had "never found a press release of the kind at issue here to constitute 'final agency action' under the APA."[39] The D.C. Circuit did not categorically bar such an action, but found that the FTC's press release was neither false nor misleading, concluding that "no reasonable person could misinterpret the press release in the ways that Trudeau suggests."[40] My 2011 article criticizes some of these opinions (but not *Trudeau*), arguing that agency publicity intended as a sanction should qualify as "agency action" under APA §§ 551(13) and 551(10).[41] Although the D.C. Circuit has hinted that

[33] 28 U.S.C. §§ 1291, 1346, 1402, 1504, 2110, 2401–02, 2411–12, 2671–80.
[34] Gellhorn, *supra* note 4, at 1437-39.
[35] Cortez, *supra* note 20, at 1448.
[36] 44 U.S.C. §§ 3504(d)(1), 3516.
[37] Recommendation 73-1, *supra* note 2.
[38] 5 U.S.C. §§ 551(13), 704.
[39] 456 F.3d at 189.
[40] 456 F.3d at 192, 197.
[41] APA § 551(13) defines "agency action" to include "the whole or part of an agency rule, order, license, *sanction*, relief, *or the equivalent or denial thereof*" (emphasis added). APA § 551(10)(a), (g)

adverse agency publicity might be reviewable if a party could show that the agency intended it as a sanction, or that it was false, the court has never found publicity fit to review under these two criteria.[42] My review also found that courts are exceedingly reluctant to categorize adverse publicity as "final," as finality has been construed to mean the consummation of an agency's decisionmaking process that determines a party's legal rights or obligations, or otherwise imposes some legal requirement on a party.[43] Again, although the D.C. Circuit has hinted that adverse publicity that is intended to sanction, or is demonstrably false, could be "final," it has never encountered such a case.[44] Moreover, judicial review raises unresolved questions about exhaustion of administrative remedies, ripeness, the appropriate cause of action (including the suitability of the Federal Tort Claims Act), and sovereign immunity.[45] I argue, notwithstanding these questions, that courts should review agency publicity when the party can establish a prima facie case that the announcement was intended at least in part as a sanction. Of course, without congressional action to clarify these matters via statute, there remain significant doctrinal barriers to effective judicial review. I solicit the Committee's and Conference's thoughts on judicial review.

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defines "sanction" as a "prohibition, requirement, limitation, or other condition affecting the freedom of a person[, or] … taking other compulsory or restrictive action."

[42] Cortez, *supra* note 20, at 1442.

[43] *Id.* at 1443 (citing cases).

[44] *Id.* at 1444 (citing cases, including one possible exception, a 1976 case in Delaware District Court, *Kaiser Aluminum & Chem. Corp. v. CPSC*, 414 F. Supp. 1047, 1053-54 (D. Del. 1976)).

[45] *Id.* at 1445-51.

APPENDICES

Appendix A: Nathan Cortez, *Adverse Publicity by Administrative Agencies in the Internet Era*, 2011 BYU L. REV. 1371 (2011).

Appendix B. Administrative Conference of the United States, Conference Recommendation 73-1 (adopted June 8, 1973); 38 Fed. Reg. 16,389 (Jun. 27, 1973); 1 C.F.R. § 305.73-1

Appendix C: Table of Federal Cases (1974-2014)

Appendix D: Table of FDA Press Releases (2004-2010)

Appendix E: [Reserved for FTC case study]

Appendix F: [Reserved for CFPB case study]