

Should SHOT advance amicus briefs and public comment?

Unconventional Session Proposal: 2023 meeting of the Society for the History of Technology
Comments to Glenn Bugos: Glenn@MomentLLC.com
Draft: 22 March 2023

This session will white-board how SHOT might decide whether and how to respond if a brief or comment is needed to clarify historical issues in American business and technology. Well before we identify a relevant case, SHOT might prepare for this possibility, organizationally, to assure the process is well-considered, democratic, and transparent.

The American Historical Association has over the past decade submitted amicus briefs in cases where historical fact needed clarification, as in the *Dobbs* decision on reproductive rights and *Haaland v Brackeen* on the Indian Child Welfare Act. The AHA also publicized amicus briefs submitted by individual members. Zachary Schrag recently submitted a declaration in a guns right case, *Duncan v Bonta*, specifically on issues of historical methodology. These cases all dealt with social, cultural, or political history; other cases might deal with the history of American business and technology.

In no way does this session commit SHOT to anything. It is only meant as a thought experiment to scope out possibilities in advance of actual action. The word “advance” in the title is intentionally vague, a placeholder as we decide on a more active verb like draft, endorse, or submit. To focus discussion, we will start with a hypothetical amicus brief, which are infrequently needed. This same process might also work for public comment on regulatory action, which is more frequently needed. This is a US-specific session. We would only meet in-person. Below are topics speakers might introduce:

For the chair: Reasons to advance briefs and comments: Why we gathered the session. Can we white-board a decision tree on when to involve SHOT as amicus?

The process for advancing briefs and comment. What do briefs and comment look like, research and formatting requirements, and how and when courts use them. Briefs tie historical context to legal history, thus requiring expertise in finding and citing case law

Do SHOT bylaws allow it? Do SHOT bylaws allow public comment? How would the SHOT Executive Council authorize it? Does this impact the SHOT budget or burden SHOT staff?

How to identify cases and draft briefs: How does SHOT organize, in advance of Executive Council action? Who receives queries or surveys the landscape for appropriate cases? Who decides if a significant body of historical literature exists to allow for clarifying comment? Would a SHOT working group draft a brief or comment? Is this work completed within three-year terms, or is a more permanent structure needed?

Finding allies in the process: SHOT might ally with AHA, BHC, SIGCIS, and ASLH, as needed. While this work is pro bono, SHOT may need support from philanthropic entities. Can we do anything without involving a bar-admitted attorney?

Exemplary cases and how SHOT comment might have been useful: To keep this session focused on SHOT process, and not action on current or future cases, these speakers might discuss a settled case where clarifying comment might have helped. That is, given the process discussed earlier in the session they might, for an actual case, discuss how they read the court record to identify key historical issues, how they determined the literature might allow SHOT to take a public stance, then how they might approach the drafting and advance of a brief.

Any SHOT member interested in joining the session should send an email to Glenn Bugos (Glenn@MomentLLC.com) with a statement on the expertise or interest you bring to the topic. We will then discuss the details of how the session might unfold.