

# Media Law Notes

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Law and Policy Division, AEJMC

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## Head Notes

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Every once in a while, the United States Supreme Court reminds us just how fluid the law really is, sending us all running to a fresh opinion that reorders an entire section of the mass media law course.

*Citizens United vs. Federal Elections Committee* — forever known as the “Hillary: The Movie” case — is just such an occasion.

Signaling an expansionist jurisprudence emerging from a newfound conservative majority intent on reaching down and selecting precedents to redraw, the Court led by Chief Justice Roberts — who at his nomination hearings described himself as a stalwart defender of judicial restraint and analytical modesty.



Charles Davis

At issue in *Citizens United* was whether federal campaign finance laws apply to a critical film about Senator Hillary Clinton intended to be shown in theaters and on-demand to cable subscribers. After hearing argument, the Court ordered re-argument, to focus on the constitutionality of limiting corporations’ independent spending during campaigns for the Presidency and Congress.

The Court held 5-4 that restrictions on independent corporate expenditures in political campaigns are unconstitutional, overruling *Austin v. Michigan Chamber of Commerce* and parts of *McConnell v. FEC*. It upheld the disclosure requirements 8-1 (Thomas dissenting), which require that if a political ad is not authorized by a candidate or a political committee, the broadcast of the ad must say who is responsible for its content, plus the name and address of the group behind the ad.

Clearly, the most important single conclusion the Court draws is that the identity of the political speaker cannot be the basis for restrictions on their independent political spending.

The majority opinion’s most compelling single line, to me: “The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing

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## Liberty Tree Initiative events make the First Amendment come alive

By Justin Brown  
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The Liberty Tree Initiative is a wonderful undertaking to bring awareness to campus and the local community about the five freedoms embedded within the First Amendment. Last semester, faculty, students and staff at Winthrop University planned a wide array of well-attended events that culminated in a tree planting on campus. As you’ll see below, the roots for a semester of programming were spread among a variety of topics at Winthrop University, a small liberal arts college in Rock Hill, S.C.

The Winthrop experience with the Liberty Tree Initiative was unique in that it was truly an interdisciplinary enterprise. The Mass Communication Department partnered with John C. West Forum on Politics and Policy, Winthrop University’s civic engagement initiative, to help coordinate the activities. Through this collaboration, we were able to attain an additional \$2,000 from the Charlotte Area Educational

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**Liberty Tree** (Continued from page 1)

Consortium to supplement the original \$5,000 Liberty Tree grant award.

Our programming began with a visit from Heather L. Weaver, an attorney from the American Civil Liberties Union Religion and Belief Program in Washington, D.C. She led two presentations, one evening lecture on "The First Amendment and the Religious Clauses" that reviewed the formation and purposes of the two religion clauses.

The following morning she presented "Religious Freedom and Public Education" a question and answer session with students and faculty. This topic was of particular interest to aspiring teachers in the College of Education and highlighted the delicate balance that educators play as agents of the state. For example, teachers and administrators may teach the literary, historical and cultural aspects of religion but must shy away from promoting religion while allowing students to freely express their views.

With help from faculty and students in the English Department, next we were able to "Celebrate the First Amendment: Read Banned Books" during the American Library Association's Banned Book Week. During this event, students gave dramatic readings from *Huckleberry Finn*, *Of Mice and Men*, and *Harry Potter* and shared information about the reasons that books are challenged or banned by local communities. This event was immensely popular and included more than 150 students in attendance.

Two events recognizing the role of the First Amendment in relation to civil rights took place in the month of October. First historian Dr. Janet Hudson from the University of South Carolina gave a lecture on "The First Amendment and the Civil Rights Movement" that reviewed how Civil Rights activists in the South used the under-appreciated First Amendment rights of as-



Justin Brown

sembly and petition in their pursuit of justice. She devoted special attention to events in South Carolina, including the Friendship Nine who were jailed during a sit-in at a local Rock Hill lunch counter in 1961. Two of the surviving members of the Friendship Nine attended and were recognized for their contributions to freedom.

The "First Amendment and Public Reconciliation: A Panel Discussion" event described how the local community has undergone a period of public reconciliation fostered by the spirit of the First Amendment, including efforts to preserve key historical sites with markers and ceremonies in the area. Susan Kocsis of Search for Common Ground in Washington D.C. described the importance of public apologies and how her organization recently honored Rock Hill resident Elwin Wilson for his efforts to reconcile. Columnist Andrew Dys of the Rock Hill Herald described how Elwin Wilson apologized in the newspaper to the Friendship Nine for heckling them during their sit-in. The panel also detailed how Elwin Wilson traveled to Washington, D.C. to apologize to Rep. John Lewis, D-Ga., for his role in beating him as a freedom rider while in Rock Hill. Wilson also attended the panel discussion and provided unsolicited remarks to the audience about the motivations behind coming for-

ward to apologize and his ill-informed rationales for his abusive behavior in the 1960s.

Ken Paulson, president and chief operating officer of the Freedom Forum, Newseum and Diversity Institute, as well as former editor of USA Today, served as a keynote speaker for our capstone event providing a talk entitled "Rebooting American: The First Amendment for a New Generation." With more than 100 in attendance, Mr. Paulson discussed the First Amendment's role in preserving the watchdog and self-governing functions in society. He also discussed the particular challenges facing newspapers in light of digital technology, such as the Internet and social media and encouraged students to use these tools to exercise and preserve their range of First Amendment rights. A reception and dinner honoring Ken Paulson and the Liberty Tree Initiative followed. While the initial tree planting ceremony with Ken Paulson got rained out, the tree has since been rooted along with two plaques, one with the entire language of the First Amendment and the other recognizing the tree as a symbol to preserve freedom on campus.

The success of the Liberty Tree Series at Winthrop is due in large part to getting students and faculty involved

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Ken Paulson of the Freedom Forum and Newseum served as the keynote speaker for Winthrop University's Liberty Tree Series capstone event on Nov. 10 in Rock Hill, S.C.

**Liberty Tree** (Continued from page 2)

in planning and marketing the events. Students in two Integrated Marketing Communication (IMC) classes spent a significant portion of the semester developing press releases, flyers, brochures, posters for all of the events. Even though only one or two items for each event were selected for use on campus, students were able to effectively build their own portfolio of items surrounding the Liberty Tree events and in the process learn a considerable amount about the First Amendment. In addition, another IMC class undertook planning the Liberty Tree Dinner with Ken Paulson as their event for the semester. With a limited budget, they did an outstanding job coordinating the formal program, presentations, entertainment, layout and decorations. In addition to IMC classes, journalism students also covered and reported on the events.

Another effective tool to encourage involvement was the use of social networking, namely Facebook. It's amazing to see just how many individuals you can reach in a day with a simple event posting, especially if you encourage students to pass it along to their "friends." In all of our promotional items, students were informed that they would receive cultural event credit for attending any of the programs that took place. Winthrop University requires students to attend 18 different approved cultural events before they graduate. In some instances, faculty also encouraged participation by awarding an extra credit assignment to attend one of the events.

We feel very fortunate to have had the Liberty Tree experience at Winthrop. Admittedly none of this would have worked if I didn't have "buy-in" and support from colleagues in my department and across campus. I encourage you to check out a few of our highlights on the Liberty Tree Initiative Facebook page and please don't hesitate to contact me if you find yourself with seeds to plant your own Liberty Tree experience.



## Five more tips for a successful event

The University of North Carolina at Chapel Hill also received a Liberty Tree Initiative grant and hosted their First Amendment Day in October. Organizer Cathy Packer of the UNC Center for Media Law & Policy shares her insights into how to plan a successful program:

1. **Get students involved.** We had two panel discussions, the topics for which were selected by undergraduates. They knew what First Amendment issues they were interested in, so this worked well. Students organized the panels, and other students showed up.
2. **Get other units on campus to agree to organize events.** We got great help from the university library and the campus bookstore. They really care about the freedom to read.
3. **Ask for ideas.** Next time I'll try to get some publicity ahead of time in order to find students who want to help plan events. One of our best events was a reading of banned children's books. This was organized by gay and lesbian students, who also served milk and cookies at the event. Seventy-five students were there. One of them heard about First Amendment Day and took the initiative to offer to plan the event.
4. **Make T-shirts!** We gave away 100 T-shirts, and there were many requests for more. People even offered to pay for the shirts. If you have a good design, you could sell the shirts at cost. If everyone wears them on First Amendment Day, it's great advertising. Our shirts created some buzz in the J-School. We had a great design — done by a master's student. We paid her for that and for other design work.
5. **Relax.** Despite our initial fears, six weeks was enough time to plan the event. (Of course, getting a few things in place earlier would have made it smoother.) We also had plenty of money for everything we wanted to do, which surprised me.

## What is the Liberty Tree Initiative?

The Liberty Tree Initiative's purpose is to build awareness of the First Amendment through education and information. It was founded in partnership with the American Society of Newspaper Editors, the Knight Foundation, the McCormick Foundation and the First Amendment Center at Vanderbilt University.

Along with Winthrop, other schools receiving \$5,000 grants from the Liberty Tree Initiative include Berry College, Eastern Kentucky University, Elon University, Lehigh University, California State University-Fullerton, UNC-Chapel Hill and Yale.

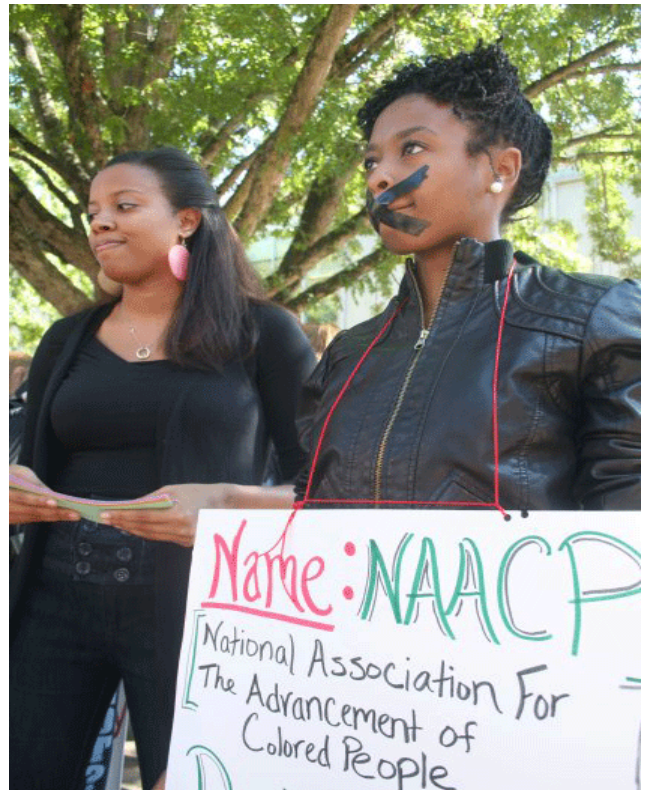
For more information about the Liberty Tree Initiative grant program, contact Sandra Chance at the University of Florida via e-mail at [schance@jou.ufl.edu](mailto:schance@jou.ufl.edu) or by calling 352-392-2273.



Dean Jean Folkerts of the School of Journalism and Mass Communication helps plant a liberty tree during Carolina's First Amendment Day, Oct. 1, 2009.



Lehigh students and faculty shovel dirt and plant signs saying "I support free expression" around their liberty tree as part of the university's Liberty Tree events.



At Carolina's First Amendment Day, students taped their mouths shut to symbolize the suppression of free speech during the Civil Rights Movement.

**Head Notes** (Continued from page 1)

research, or seek declaratory rulings before discussing the most salient political issues of our day."

It's a stark reminder, as noted by Jan Witold Baran in a Jan. 26 op-ed column in *The New York Times*, that "the First Amendment is not a license to regulate — it is a limitation on Congress."

It's also worth noting what the case did not do.

It did not knock down the bar on corporations giving money directly to candidates or political parties. It did not open the door for corporate money to flow to parties or candidates beyond current contribution limits. *Citizens United* deals only with "independent expenditures," which by definition are not coordinated with parties or candidates.

*Citizens United*, then, stands to

end bans on corporate spending for independent ads that contain statements that expressly advocate the election or defeat of a candidate.

This spells the end of so-called "issue ads," the spawn of *Austin v. Michigan Chamber of Commerce*, the 1990 opinion that upheld a ban on corporate spending for such direct advocacy by corporate speakers (otherwise known as funders).

*Citizens United* will reverberate for years, but for now, at least, it means that all of us in the Law Division must return to our class notes, pen in hand, and change a great deal about how we address the subject.

I'd suggest that the doctrine underlying the majority opinion, that of the corporation as citizen, serve as the launching point for a robust discussion in all of classrooms. After all, this is one of those rare cases that our undergrads know about before we introduce it!



Have you checked out the division's new **media law blog digest**?

News and updates from the ACLU, Student Press Law Center, Reporters Committee for Freedom of the Press, FOI Advocate, Citizen Media Law Project, and a variety of professional and academic law blogs

Find it at

<http://media-law.alltop.com/>  
or linked from the division Web site

## Law & Policy Division Research Sessions 2010 AEJMC Southeast Colloquium

### When Words Hurt: New Frontiers in the Law of Defamation and False Light

Gay Labeling and Defamation Law: Have Attitudes Toward Homosexuality Changed Enough to Modify Reputational Torts? — Robert D. Richards, Penn State

Libelous Language Post Lawrence: Accusations of Homosexuality as Defamation — Laurie Phillips, UNC-Chapel Hill

A Dark Place for the First Amendment? The Continuing Danger of False Light Invasion of Privacy — Sandra F. Chance and Christina M. Locke, University of Florida

Protecting the Press's Right to "Influence and Inform": The Applicability of Moderate Anti-SLAPP Statutes to the Media Defendant's Right to Objectively Petition — Brendan R. Watson, UNC-Chapel Hill

\*\*Second Place Student Paper\*\*\*

### Who Are You? Emerging Law of Anonymous Speech

Motivations for Anonymous Speech: A Critical Legal Study — Victoria Smith Ekstrand, Bowling Green State University

David Doe v. Goliath, Inc.: Judicial Ferment in 2009 for Business Plaintiffs Seeking the Identities of Anonymous Online Speakers — Kayla Gutierrez, Karla Kennedy & Kara Carnly Murrhee, University of Florida

\*\*\*First Place Student Paper\*\*\*

Shielding Anon: An Analysis of Using Shield Laws to Protect Anonymous Commenters — Jonathan D. Jones, UNC-Chapel Hill

Let John and Jane Doe Go it Alone: Why News Organizations Should Think Twice Before Claiming Shield Laws Extend to Anonymous Online Comment Posters — Patrick C. File, University of Minnesota

### Intellectual Property 2.0: Copyright Issues in the Internet Age

Intellectual Property Ownership of Online News: A Moral Rights Copyright Alternative — Edward L. Carter, Brigham Young University

\*\*\*First Place Faculty Paper\*\*\*

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## Have a good teaching tip? Share it with the division!

By *Minjeong Kim*  
*Teaching Standards Chair*  
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"Love the law" was the motto that my former advisor included in every message that she sent to students in her communication law class. I believe she still uses the motto, and I sometimes use it to my students.

The motto tells us two things. First, we tell students to love the law because we love it. Those of us who teach communication law and policy are fortunate in that we get to teach a subject matter we are enthusiastic about. Second, we tell students to love the law because it deserves to be loved. How powerful and wonderful the First Amendment is does not need an explanation here.

I wonder, however, if our students feel the same way. What

can we do to share our love for free speech/press effectively with students in class? What can we do to make our students realize the First Amendment is a real thing that matters? If you have innovative ideas in teaching communication law and policy — assignments or activities or approaches that you have found to work well — please read the call below and consider submitting an idea.

### **Best Ideas in the Teaching of Communication Law and Policy Competition**

The Law and Policy Division is pleased to announce our second-year teaching ideas competition. We're looking for your best and most innovative ideas for teaching communication law and policy. Submissions could include an innovative assignment, activity,

or lesson plan — or a particularly original approach to teaching the subject in general.

Winning submissions will receive a certificate and a cash prize: \$100 for first prize, \$75 for second prize and \$50 for third prize. Winners will also be recognized during our AEJMC convention business meeting, and we'll showcase the winning ideas on our division Web site and in our newsletter. Last year's winning ideas are available at [http://aejmc.net/law/teaching\\_competition09.html](http://aejmc.net/law/teaching_competition09.html)

All submissions must be received by Thursday, April 1, 2010. Submissions should be sent as an e-mail attachment to Minjeong Kim at [Minjeong.Kim@colostate.edu](mailto:Minjeong.Kim@colostate.edu). (please mention "teaching ideas competition" in the subject line of your submission). Submitters need not be Law and Policy Division

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## Iona College invites entries for the second annual IP conference

**Keynote speaker:** James Boyle, professor at Duke Law School and co-founder of the Center for the Study of the Public Domain.

Iona College is proud to host the second annual Conference on Intellectual Property, April 30-May 1, 2010. In our second year, the Conference on Intellectual Property will continue to explore intellectual property in a cross-disciplinary context. What is it, how has it evolved as a concept, and in what ways do we feel its practical and theoretical impact upon academic, economic, legal and technological fields? From plagiarism, to patent law, to the Creative Commons and beyond, the conference is sure to offer a remarkable breadth and depth of insights and approaches to what may well be the defining issue of our time. Come join the conversation!

500-word papers/panel abstracts or complete papers should be submitted by Feb. 5, 2010, to Shannon Donlon at [sdonlon@iona.edu](mailto:sdonlon@iona.edu).

Selected essays will be published in a proposed collection for a peer-reviewed press. Questions? E-mail Amy Stackhouse, [astackhouse@iona.edu](mailto:astackhouse@iona.edu), or visit <http://www.iona.edu/cip>



(Joy Garnett, 'Leap' (2003), 54 x 60 inches, oil on canvas. Courtesy of the Winkelman Gallery, NY)

**Southeast Regional** (Continued from page 5)

Owning the News: Hot News on the Internet & The Commodification of News in Digital Culture — Clay Calvert, University of Florida

\*\*\*Third Place Faculty Paper\*\*\*

"Hot News": A Tort on the Brink — Melita M. Garza, UNC-Chapel Hill

\*\*\*Third Place Student Paper\*\*\*

Hunting for Parents: An Analysis of the Controversial and Nebulous Search Requirements for Potential Users of Orphan Works — Rebecca K. Prettyman, UNC-Chapel Hill

### **Sex, Tobacco and Videogames – The First Amendment Collides with Business and Entertainment**

Playing Politics or Protecting Children? Congressional Action & A First Amendment Analysis of The Family Smoking Prevention and Tobacco Control Act — Christina M. Locke and Wendy Allen-Brunner, University of Florida

Freeway Porn & The Signs of Sin: Sex, Cigarettes and Censorship of Billboards — Clay Calvert, University of Florida

A Gun by Any Other Name: The Right of Publicity in Electronic Arts Inc. v. Dillinger, LLC — Emily Ogilvie, UNC-CH

Do Collegiate Videogames Violate Student-Athletes' Rights of Publicity? — Jeremy Lee, Louisiana State University

### **You and Me and the FCC: Net Neutrality, Ownership Rules, and the F Word**

The Newspaper-Broadcast Cross-Ownership Rules: Content Neutral or Tools of Censorship — Lorna Veraldi, Florida International University

\*\*\*Second Place Faculty Paper\*\*\*

When Does F\*\*\* Not Mean F\*\*\*: *FCC v. Fox Television Stations* and a Call for Protecting Emotive Speech — W. Wat Hopkins, Virginia Tech

A Battle in a War of Network Neutrality — Ji won Kim, Indiana University

Mother Knows Best: Can Lessons Learned from the Ma Bell Breakup Be Applied to the Net Neutrality Debate? — Tom Vizcarrondo, Louisiana State University

### **First Amendment Matters: Political Speech, Obscenity, Privacy, and the Supreme Court**

The Framers' First Amendment: Originalist Citations in U.S. Supreme Court Opinions — Derigan Silver, University of Denver

In Defense of Free Speech: Rethinking Campaign Finance Reform — Matthew Thornton, Louisiana State University

Does Anti-Paparazzi Mean Anti-Press? First Amendment Implications of Privacy Legislation for the Newsroom — Christina M. Locke, University of Florida

Judicial Erosion of Protection for Defendants in Obscenity Prosecutions? When Courts Say, Literally, Enough is Enough and When Internet Availability Doesn't Mean Acceptance — Clay Calvert, University of Florida

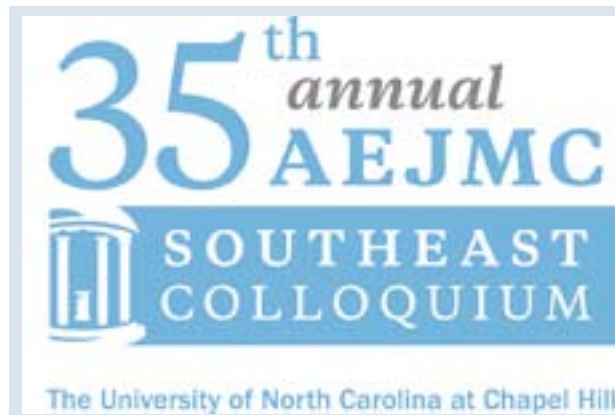
### **Media Law at Home and Abroad**

Potheads, Subpoenas and Non-Traditional Journalists: The Trial of Annette Buchanan on the Eve of Branzburg — Dean C. Smith, UNC-Chapel Hill

Just the Facts, Mademoiselle: Contrasting Canadian and American courts on freedom of speech for public school-teachers — Erica Salkin, University of Wisconsin-Madison

Ireland's new blasphemy law: Would the European Court of Human Rights sanction it from above? — Luisa Ryan, UNC-Chapel Hill

The New Price to Play: Are Passive Online Media Users Bound by Terms of Use? — Woodrow Hartzog, UNC-Chapel Hill



**March 11-13, 2010**  
**Chapel Hill, North Carolina**

Discounted registration available until Feb. 18.

For more information or to register, go to  
<http://www.jomc.unc.edu/SEC2010>

**Teaching** (Continued from page 5)

members. Both faculty and graduate students are welcome to submit.

Submissions should follow these guidelines:

(1) The first page of your submission should be a cover sheet that includes your name, affiliation, contact information and the title of your teaching idea. Please do not

include author's name or identifying information anywhere else in your submission.

(2) You should then describe your teaching idea in no more than two pages (single-spaced) according to the following format: title, an introduction, your rationale for the idea, an explanation of how you implement the teaching idea, and student learning outcomes.

A panel of judges will blind review each submission based on a teaching idea's creativity, innovation, practicality, and its overall value in teaching communication law and policy to our students.

Your submission will be acknowledged but not returned. Winners will be notified by May 10.

Please direct any questions to Minjeong Kim, the Law and Policy Division's Teaching Standards Chair.



## Call for Paper Judges

The Law and Policy Division needs your help in reviewing papers for the 2010 AEJMC conference in Denver. As the popularity of the division continues to grow, so does the demand for paper reviewers. To ensure only the highest quality papers will be presented at the upcoming conferences and to keep the number of papers per reviewer at a manageable level, we need your help.

We need approximately 75 reviewers for Denver. Reviews for the conference will occur between April 1 and May 1, 2010. Last year we had enough reviewers to keep the paper load to a manageable level – almost everyone had no more than three papers. It would be great to do that again this year.

If you would be willing to serve as a reviewer, please contact David Cuillier, Research Chair, via e-mail at [cuillier@email.arizona.edu](mailto:cuillier@email.arizona.edu) or by phone at 520-626-9694.

Please note that graduate students may not review papers, and please be aware that reviewers for the Law and Policy Division will not be allowed to submit papers to this division. Papers submitted to other AEJMC divisions, of course, are acceptable. Papers will be pre-screened by Cuillier and eliminated if they exceed 50 pages or have identifiable information, including in the data properties.

To help best match reviewers to paper topics, please specify in your e-mail or voice mail message your legal interests and methodological specialty (e.g., libel, freedom of information, broadcast regulation, survey research). Also, if you think you might want to serve as a discussant or moderator for the conference, feel free to let me know.

Thank you very much for your help with this very important work!

Sincerely,

David Cuillier, Research Chair



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