

43.4  
Summer 2015

# Media Law Notes

## AEJMC Law & Policy Division

### Scholars should embrace roles as public intellectuals, advocates



#### Head Notes

**Chip Stewart**

Texas Christian University  
d.stewart@tcu.edu

Recently, I was thrilled to see one of our esteemed colleagues, Tori Ekstrand, [writing in the online magazine Slate urging online accessibility for everyone](#), making the argument that the Americans with Disabilities Act should apply to make the Web more accessible, for example, to those with visual or hearing impairments.

It's an important topic, one that Dr. Ekstrand has become a visual and vocal

advocate for the disabled community regarding online access, an area of her expertise as a scholar. This crucial role of the professor -- the public intellectual and advocate -- is one that we in the Law and Policy Division are particularly suited for, and one that I urge our members to take on.

I'm not alone in hoping that professors will reclaim their role as cultural critics and public intellectuals. Professors Nicholas Behm, Sherry Rankins-Robertson and Duane Roen, writing for the American Association of University Professors in 2014, called on universities and scholars to branch beyond our usual constituencies -- other scholars in our own fields

-- to engage more effectively with the public and policy makers, to ["collaborate with constituencies to make the country more just and equitable."](#)

New York Times columnist Nick Kristof [called on professors to reclaim their role as public intellectuals last year](#) as well. And in May, Emory professor Mark Bauerlein, [in an opinion piece in The New York Times earlier this year](#), noted with concern the shifting role of professors, away from the 1960s model of serving as students' guides for "moral and worldly understanding" to that of accreditors to the modern student, to whom "paycheck matters more than

*See Head Notes, 2*

### Bambauer wins inaugural Stonecipher Award

Jane Bambauer, an associate professor at the University of Arizona College of Law, is the first recipient of the Harry W. Stonecipher Award, recognizing top scholarship in communication and free speech law in the previous year.

Professor Bambauer received the award for [her article "Is Data Speech?", published in 2014 in Stanford Law Review](#). In the article, Professor Bambauer argues that First Amendment protection should extend to data, which has the ability to create knowledge and inspire new opinions. As such, data would be protected against sweeping privacy regulations, though Professor Bambauer suggests that reasonable regulations should still be possible under proper Constitutional scrutiny.

This article was chosen among dozens of nominees by the selection committee, comprising communication law scholars from Law and Policy Division of AEJMC. The award comes with a \$1,000 prize.

The award was established by professors Kyu Ho Youm and Doug Anderson to honor Dr. Stonecipher, their friend and

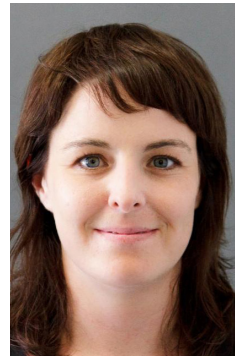
teacher and a renowned scholar of First Amendment and communication law at Southern Illinois University.

"I am thrilled that Professor Bambauer has been chosen as the inaugural

recipient of the Stonecipher research award," Youm said.

"She is a most worthy awardee, given that her article is an incisive analysis of a truly game-changing topic in First Amendment law."

Bambauer will receive her award at the members meeting of the Law and Policy Division at 6:45 p.m. Friday, Aug. 7, at the annual conference of AEJMC in San Francisco.



### In This Issue

#### PF&R

San Francisco panels set 2

#### AEJMC Programming

Division partners for panels 3

#### Southeast Colloquium

Paper Competition Call 3

Call for Reviewers 3

Baton Rouge information 10

#### Bibliography

Reviews of Volokh, LoMonte, Anderson, Decker & Lakier 4-5

#### Teaching

Contest winner announced 6

#### Division Schedule

Complete final schedule for AEJMC Law & Policy Division 7-9

wisdom.”

I'm glad to report that our colleagues in the Law and Policy Division have been engaging with the public successfully in a variety of ways. For example, our longtime member and former AEJMC president Kyu Ho Youm is an extremely valuable resource on happenings in communication and free speech law, particularly at the international level, and a must-follow on [Twitter](#) and Facebook, where he posts regularly. Renowned scholar Clay Calvert frequently posts about new First Amendment legal challenges at [The Huffington Post](#), and he earned an impressive badge of honor last year when one of his posts was [retweeted with a note of support by the rapper Ice T](#). Erica Salkin writes about journalism and education for [PBS MediaShift](#). Our division's teaching chair, Jonathan Peters, is a regular contributor to [Columbia Journalism Review](#). And I'm always pleased -- and educated -- when I see Woody Hartzog writing about privacy law in forums such as [Forbes](#).

I had the good fortune as a graduate student at Missouri to have a mentor -- Charles Davis, now dean of the Grady School of Journalism and Mass Communication at the University of Georgia -- who was also an ideal blend of scholar and public intellectual, a forceful advocate for the right to know as head of the National Freedom of Information Coalition.

It's a challenge to find the time with so many other things on our plates as professors. Last month, an editor from LinkedIn's Pulse reached out to me to write something up after seeing some of my tweets and quotes in a story about Gawker's participation in the blackmail involving the outing of a media executive seeking an extramarital liaison. And while I was concerned about having enough time to write up something that offered a meaningful contribution, I spent a couple of hours one morning [drafting a column](#), and I was stunned

to see its reach -- more than 10,000 page views in the first day.

Free speech and press issues are critical to democracy, and we are in a unique position to contribute to important discussions about communication in the digital age. Our scholarship is of tremendous importance to our colleagues and peers in the academy, but we must not forget the opportunity we have to reach out to the general public and have a voice in the issues of the day. I am proud of the efforts of our division members on this front, and I hope to see even more from us in the future.

Shifting gears, this is my last round of Head Notes, and I have many thanks to offer to our leadership in our accomplishments as a division this year. I gladly pass the leadership baton to Dan Kozlowski, who we all have to thank for putting together an amazing program of panels, and to whom I personally thank for keeping me organized and on task (as much as that is possible) in the past year. Courtney Barclay ran a smooth research paper competition for the conference, which is one of the hallmarks of our division. Jason Martin, as our clerk and newsletter editor, successfully put these issues into your digital hands each quarter. The leadership of our division is in great hands, and I can't say thanks enough to these folks. Thanks to webmaster Matt Telleen. Also, to PF&R chair Jasmine McNealy and teaching chair Jonathan Peters, thanks for helping to put together our preconference sessions, and Mike Martinez, our Southeast Colloquium chair, thanks for again representing our division well.

I realize as I write this that I've been in some kind of service to the division -- from Southeast Colloquium research chair to the four-year leadership track -- for the past seven years. Though I'm rotating off as division head, I know I'll continue to serve our division however I can. I thank you all for your support over the years, and I look forward to seeing you in San Francisco for the conference.

## PF&R panels set for AEJMC



**Jasmine E. McNealy**  
PF&R Chair  
University of Florida  
jmcnealy@jou.ufl.edu

San Francisco is a tech and legal hub, with opportunities to interact with some of those with significant expertise in business, policy and technology. Your Law & Policy Division officers have worked hard to bring panel discussions and workshops that will allow the critical examination of topics relevant for both the classroom, research, and practice.

Of particular interest are the Profession Freedom and Responsibility sessions scheduled throughout both pre-conference and conference time-slots. PF&R sessions are designed to assist with preparing students for careers in the media professions, as well as allowing AEJMC members to engage in research and service in relation to the professions.

During the pre-conference, Wednesday, August 5, the L&P Division has a two-part teaching panel packed with faculty and professional experts. Part I of the workshop offers an overview of the recent media law cases ripe for discussion, including those dealing with rap lyrics, copyright infringement and the use of social media. Part II of the workshop focuses on privacy and free speech in digital media. This panel includes noted legal practitioners including Ninth Circuit Judge Alex Kozinski, noted copyright and privacy attorney Cathy Gellis, Peter Scheer from the California First Amendment Coalition, and William B. Turner, faculty at UC-Berkeley law school.

Both Thursday, August 6 and Friday, August 7 offer PF&R sessions. Thursday, the topic of both panels are social and digital media, albeit from different foci. The morning session, co-sponsored with the Visual Communication Division, examines issues of copyright in the sharing of images. The afternoon session, co-sponsored with the Electronic Communication Division, analyzes hacking, reporting and citizen privacy. Friday's afternoon panel, co-sponsored with the Participatory Journalism Interest Group, examines the lasting impact of the Josh Wolf case. Mr. Wolf is participating in the panel discussion.

The division's schedule is packed with interesting and well-designed PF&R pan-

## 2015 program marked by division partnerships



**Dan Kozlowski**  
Vice Head/Program Chair  
Saint Louis University  
dkozlows@slu.edu

I'm excited about the programming scheduled for the conference. It's going to be an energizing five days! We partnered with some of typical co-sponsors (e.g., Scholastic Journalism) but also forged some new partnerships too (e.g., Entertainment Studies Interest Group) to produce an eclectic, stimulating lineup of panels.

Our PF&R panels explore topics ranging from image sharing and new challenges to copyright law, to tensions between online security and privacy, to state laws protecting student expression, to an examination of lessons learned from the Josh Wolf case (which includes an appearance by Wolf!).

We'll also feature two teaching panels: One, co-sponsored with the Public Relations Division, will investigate the ethical and legal considerations relevant when faculty ask students to complete social media assignments. The other delves into practical lessons for teaching "taboo topics."

We have two outstanding preconference panels on Wednesday, thanks to the hard work of Jonathan Peters and Chip Stewart. The first preconference panel, from 1:15 to 2:45, will catch us up on the past year of major communication law cases. The second panel, from 3 to 4:30 and titled Privacy, the Right of Publicity, and Free Speech in the Digital Age, will feature Chief Judge Alex Kozinski of the 9th Circuit.

We're also thrilled about our Global Connections special session, which will take place Friday from 1:30 to 3. AEJMC issued a special call back in the fall for these sessions, hoping to encourage divisions to think globally. Division member Woody

Hartzog took the lead in organizing a panel we proposed focusing on the right to be forgotten, with Communication Technology as the co-sponsor. Our idea was competitively selected. It will feature a superb lineup of panelists who are engaged in the conversation about the right to be forgotten, including Rigo Wenning, the legal counsel for the World Wide Web Consortium, an international community where member organizations, a full-time staff, and the public work together to develop Web standards, including technologies and standards related to privacy.

My only disappointment about the conference going in is that we weren't able to program all of the great panel ideas I received. We received numerous panel proposals – far more proposals than available slots. AEJMC instituted a new online system this year (the conference planning process is still evolving as the association transitions away from the old process where we threw actual chips into a bucket in the middle of the room) meant to more efficiently facilitate co-sponsorships as divisions and interest groups allocate their precious few slots they have available for their conference programming. The online system displayed a heart when two groups reached a deal and agreed to co-sponsor a panel. And while the new system worked well overall, it led to a furious rush and exchange of emails when it was launched, as program chairs looked for co-sponsors for their myriad panel ideas. I did my best to help plan an exciting lineup, but I was sorry that I couldn't slot all of your proposals. It was heartening to see so many engaged division members eager to contribute ideas to the planning process. Please submit again next year if your idea wasn't selected!

In addition, we'll also feature seven research sessions, including including our top papers session Friday from 5 to 6:30.

## 41st Annual AEJMC Southeast Colloquium Call for Papers

The Law and Policy Division of AEJMC invites scholars to submit original papers for the annual AEJMC Southeast Colloquium, which is scheduled to take place March 3-5, 2016 at the LSU Manship School of Mass Communication in Baton Rouge, Louisiana. Papers may focus on any topic related to communications law and/or policy, including defamation, privacy, freedom of information, commercial speech, FCC issues, copyright, obscenity and other issues regarding freedom of speech and press. Judges will blind referee all submissions, and selection will be based strictly on merit. Authors need not be AEJMC or Law and Policy Division members, but they must attend the colloquium to present accepted papers.

Law and Policy Division papers must be no longer than 50 double-spaced pages (including appendices, tables, notes and bibliography). Although Bluebook citation format is preferred, authors may employ any recognized and uniform format for referencing authorities. There is no limit on the number of submissions authors may make to the Division. The top three faculty papers and top three student papers in the Law and Policy Division will be recognized. Student authors of single-authored papers should clearly indicate their student status to be considered for student paper awards.

Authors should submit each paper as an email attachment (documents may be submitted in Word or PDF formats). In the body of the email, please provide the title of the paper, and the name, affiliation, address, office phone, home phone, fax and e-mail address for each author. This is where students and faculty should indicate their status for consideration of the faculty and student top paper awards. Do not include any author identifying information on any page of the attached paper submission. Authors also should redact identifying information from the document properties. On the cover page of the attached paper, only the title of the paper should appear. Following the cover page, include a 250-word abstract.

Submissions should be emailed to [mtmartinez@utk.edu](mailto:mtmartinez@utk.edu). The deadline for paper submissions is Monday, Dec. 7, 2015, at midnight Eastern Standard Time.

If you have any questions about the submission process or the paper contest, please contact Dr. Michael T. Martinez by phone at (865) 687-2564 or via e-mail at [mtmartinez@utk.edu](mailto:mtmartinez@utk.edu).

### Southeast Colloquium: Call for Reviewers

The Law and Policy Division has a proud tradition of hosting an engaging research paper competition at the Colloquium each year, and we anticipate that 2016 will be no different.

With our growing number of papers comes a need for an equally vigorous team of reviewers. For us to limit reviewers to reviewing three papers each, we'll need approximately 40 reviewers.

If you are not submitting a paper

to the colloquium this year, the division invites you to help with the competition. Reviewers will receive a package of papers in mid-December, with a mid-January deadline for returning reviews.

For more information, please contact Dr. Michael T. Martinez by phone at (865) 687-2564 or via e-mail at [mtmartinez@utk.edu](mailto:mtmartinez@utk.edu).

See the 2016 Southeast Colloquium website: <http://melresearch.com/aejmc/>



# Legal Annotated Bibliography, Summer 2015



**David Wolfgang**

Doctoral Student

University of Missouri

jdwolfgang@mail.missouri.edu

## OFFENSIVE SPEECH

Volokh, E. (2015). "Gruesome speech." 100 Cornell Law Review 901.

Content-based restrictions on political speech in a public forum are almost always forbidden. Yet recent years have seen a striking, though little-noticed, departure from this norm: some courts have concluded that such restrictions on the public display of "gruesome images," usually of aborted fetuses, are permissible. Indeed, courts have sometimes even upheld restrictions on gruesome verbal references, such as materials calling abortion providers "murderers." The restrictions are defended on various grounds: preventing violent reactions against the speakers, preventing distraction of drivers, preventing offense to passersby, and (most often) shielding children. These restrictions offer a good opportunity to think afresh about some important First Amendment issues. When may political speech be restricted in order to protect children? Should speech that has a visceral, emotional impact be less protected than supposedly more rational speech? Should restrictions on particular images or words be treated as generally permissible "manner" restrictions, or should they be treated as content-based and thus almost always unconstitutional? Are there particular places where speech may be more constrained, even in content-based ways? And, of course, besides these broader questions, there is also the narrower but important concrete issue: Are these restrictions improperly restricting vivid criticism of abortion - and, increasingly, vivid criticism of the supposed mistreatment of animals?

This article aims to address all these questions. It begins by describing why gruesome speech merits full First Amendment protection and why restrictions on such expression are generally properly treated as subject to strict scrutiny. It then discusses the kinds of "gruesome speech" restrictions that governments have recently imposed, and that some courts have allowed, and concludes that most such restrictions

should be viewed as content-based.

The article then turns to the justifications that have been offered for restricting such speech: preventing offense, preventing violent attacks by angry viewers, preventing driver distraction and thus traffic accidents, and protecting children from emotional disturbance. These justifications, the article argues, do not suffice to justify such speech restrictions. The article ends with a discussion of restrictions limited to government-owned property (other than parks and sidewalks), including fairs, advertising spaces, and the special case of public colleges and universities.

## FIRST AMENDMENT

LoMonte, F. (2014). "Fouling the First Amendment: Why Colleges Can't, and Shouldn't, Control Athletes' Speech on Social Media." 9 Journal of Business & Technology Law 1.

College athletic programs are enforcing curbs--or even wholesale bans--on how athletes use social networking sites. What makes social media novel and empowering--that it is an immediate, unfiltered way to "speak" with thousands of people at once--is also what makes it frightening to campus regulators. The ability to build a vast online audience with no financial investment also brings with it the ability to widely broadcast intemperate remarks revealing prejudices, ethically dubious behavior, or simply a lack of good taste.

Interjecting school authority into what student-athletes say on social media even in their personal, off-campus hours implicates a host of constitutional uncertainties. The rationales offered for this incursion into individual liberty range from protecting the school (against harm to its image, or from NCAA sanctions for illicit athlete behavior) to protecting the athlete (against self-inflicted reputational damage, or from speech by ill-intentioned outsiders). At a public institution, the First Amendment protects students' ability to express themselves free from government sanction, and the Due Process Clause protects against the removal of public benefits in an arbitrary way or without adequate notice. Outside the realm of athletics, a public university would be constitutionally estopped from penalizing speech--especially speech that takes place on a personal computer on

personal time--merely because it projects an unfavorable image of the student or the school. Is there something so unique about the college/athlete relationship that it justifies discarding well-established constitutional principles?

This article looks both at the significant burdens that a college would face in justifying restrictions on athletes' use of social media in the event of a constitutional challenge, as well as the hurdles that an athlete plaintiff might encounter in trying to persuade a court to entertain this relatively novel claim not perfectly analogous to any of the more familiar First Amendment fact patterns. It concludes that only in narrowly limited circumstances may a public institution force an athlete to accept constraints on the content of lawful off-campus speech.

## FREEDOM OF THE PRESS

Anderson Jones, R. (2014). "What the Supreme Court Thinks of the Press and Why it Matters." 66 Alabama Law Review 253.

Over the last fifty years, in cases involving the institutional press, the United States Supreme Court has offered characterizations of the purpose, duty, role, and value of the press in a democracy. An examination of the tone and quality of these characterizations over time suggests a downward trend, with largely favorable and praising characterizations of the press devolving into characterizations that are more distrusting and disparaging. This essay explores this trend, setting forth evidence of the Court's changing view of the media--from the effusively complimentary depictions of the media during the Glory Days of the 1960s and 1970s to the more skeptical, tepid, or derogatory portrayals in recent years. It considers possible causes of this change in rhetoric and then explores the potential First Amendment consequences of the change. The essay argues that there is a very real risk that these trends could lead to the impoverishment of a wider array of First Amendment rights. Because the jurisprudential pattern has long suggested that general speakers and press speakers rise and fall together, wider First Amendment values that have been enhanced in U.S. Supreme Court cases brought by the positively

*Continued on 5.*

*Bibliography, continued from 4.*

characterized media could be diminished as the Court's view of the media diminishes. The downward trend in press characterizations may therefore be cause for broader concern about the vitality and stability of First Amendment rights.

**SOCIAL NETWORKS**

Decker, J.R. (2014). "Facebook Phobia! The misguided proliferation of restrictive social networking policies for school employees." 9 *Northwestern Journal of Law and Social Policy* 163.

Policymakers and administrators continue to advocate for and enact restrictive policies prohibiting educators from using social network sites to interact with students. A Missouri law was struck down in 2011 by a state trial court for possible freedom of speech violations and was later repealed. Proponents of these policies believe they are necessary to regulate employees' undesirable online activity. In addition to concerns over controversial employee posts, many believe that social networking promotes inappropriate, and often secret, relationships between teachers and students.

This article explains why restrictive employee social networking policies should not be adopted. To provide necessary background for this issue, the article starts by describing the two main reasons schools have enacted restrictive policies. Then, examples of restrictive social networking policies found in state legislation, statewide guidance, and district policies are summarized. In order to examine whether restrictive policies are necessary, the article analyzes twenty-

six relevant cases. Based on the review of the case law, the author recommends that schools adopt permissive social networking policies because existing law already addresses the concerns driving the enactment of restrictive policies. The article concludes with an explanation of why the emphasis on social networking is misguided. Instead, the focus should be on preventing sexual abuse of students and educating employees about the limits to their online activity that already exist under state and federal law.

**LOW-VALUE SPEECH**

Lakier, G. (2015). "The Invention of Low-Value Speech." 128 *Harvard Law Review* 2166.

It is widely accepted that the First Amendment does not apply, or applies only weakly, to what are often referred to as "low-value" categories of speech. It is also widely accepted that the existence of these categories extends back to the ratification of the First Amendment: that the punishment of low-value speech has never, since 1791, been thought to raise any constitutional concern.

This article challenges this second assumption. It argues that early American courts and legislators did not in fact tie constitutional protection for speech to a categorical judgment of its value, nor did the punishment of low-value speech raise no constitutional concern. Instead, all speech -- even low-value speech -- was protected against prior restraint, and almost all speech -- even high-value speech -- was subject to criminal punishment when it appeared to pose a threat to the public order of society, broadly defined.

It was only after the New Deal Court

embraced the modern, more libertarian conception of freedom of speech that courts employ today that it began to treat high- and low-value speech qualitatively differently. By limiting the protection extended to low-value speech, the New Deal Court attempted to reconcile the democratic values that the new conception of freedom of speech was intended to further with the other values (order, civility, public morality) that the regulation of speech had traditionally advanced. Nevertheless, in doing so, the Court found itself in the difficult position of having to judge the value of speech even though this was something that was in principle anathema to the modern jurisprudence. To resolve this tension, the Court asserted -- on the basis of almost no evidence -- that the low-value categories had always existed beyond the scope of constitutional concern.

By challenging the accuracy of the historical claims that the Court has used to justify the doctrine of low-value speech, this article forces a reexamination of the basis for granting or denying speech full First Amendment protection. In so doing, it challenges the Court's recent claim that the only content-based regulations of speech that are generally permissible under the First Amendment are those that target speech that was historically unprotected. What the history of the doctrine of low-value speech makes clear is that history has never served as the primary basis for determining when First Amendment protections apply. Nor should it today, given the tremendous changes that have taken place over the past two centuries in how courts have understood what it means to guarantee freedom of speech.

## Law & Policy Division Officers

**Head**

Daxton "Chip" Stewart  
Texas Christian University  
d.stewart@tcu.edu

**Vice Head/Program Chair**

Dan Kozlowski  
Saint Louis University  
dkozlows@slu.edu

**Research/Paper Competition Chair**

Courtney Barclay  
Jacksonville University  
barclay@ju.edu

**Clerk/Newsletter Editor**

Jason Martin  
DePaul University  
jmart181@depaul.edu

**Teaching Chair**

Jonathan Peters  
University of Kansas  
jonathan.w.peters@ku.edu

**PF&R Chair**

Jasmine McNealy  
University of Florida  
jemcnealy@uky.edu

**Southeast Colloquium Chair**

Michael T. Martinez  
University of Tennessee  
mtmartinez@utk.edu

**Webmaster**

Matthew Telleen  
 Elizabethtown College  
telleenm@etown.edu

## Teaching winners span rules/standards, pop culture, commercial speech



**Jonathan Peters**  
Teaching Chair  
University of Kansas  
jonathan.w.peters@ku.edu

The Law and Policy Division Teaching Ideas Competition once again showcased a number of innovative strategies to bring to life a variety of legal concepts. Ten entries were submitted in response to a broad call for creative approaches to teaching media law and policy, and a double-blind review process produced a close finish.

Ultimately, the winners were selected for their ideas to help students understand the difference between rules and standards, to use pop-culture multimedia to illustrate abstract principles, and to break down the complexities of commercial speech by dissecting a Federal Trade Commission case.

Winners received certificates and monetary awards (\$100, \$75, and \$50) at the annual meeting in San Francisco.

Stephen Bates, of the University of Nevada, Las Vegas, won first place for his entry “Rule v. Standard.” He uses a PowerPoint to explain rules and standards, to discuss the pros and cons of each, to provide examples, and then to take students through an exercise in legal reasoning.

“I explain the legal norm that all fathers must pay child support, except for those who become fathers via artificial insemination performed in medical facilities. Is this a rule or standard? Students agree it’s a rule,” Bates wrote in his entry.

Then he runs through five scenarios, some outlandish but all authentic (e.g., a woman lies about using birth control, has sex, and gets pregnant), and for each one he asks if the father must pay child support.

“Students argue over which men ought to have to pay child support and why. After a debate, students vote on who must pay child support. Virtually everyone thinks that justice requires excusing some of the men from the obligation. At the end, I reveal which men were ordered to pay child support: all of them. Rules are rules.”



**The 2015 AEJMC Law & Policy Division Teaching Competition winners. From left, Stephen Bates, UNLV (first place); Peggy Watt, Western Washington (second); and Roy Gutterman, Syracuse (third).**

Bates said the exercise gets students engaged in a lively, sometimes raucous discussion.

“The absolutism of legal rules leaves many of them aghast,” he wrote in his entry. “We return to the rule-standard distinction in discussing pre-Sullivan libel law, the FCC’s indecency ban, statutes of limitation, and other topics.”

Peggy Watt, of Western Washington University, won second place for her entry “Media Law in Pop Culture and Multimedia.” She uses multimedia examples from pop culture to illustrate legal principles in a way that students find approachable.

“A little laughter helps one grasp a difficult concept,” Watt wrote in her entry. “And, in many cases, an example will help them better understand how these principles directly relate to their work as student journalists and, eventually, as professionals.”

She has amassed a selection of videos and other multimedia tools to introduce various concepts and to initiate class discussion regarding issues as varied as controversial speech and intellectual property.

For example, as Watt wrote in her entry, “Flag desecration is illustrated with a video of a scene from ‘The West Wing’ in which Penn and Teller ... burn a U.S. flag during a White House party. It opens a logical and sometimes heated discussion: Is this illegal? Why or why not? Why do the White House aides nearly have heart attacks as they watch the presentation? If you disagree with the current law, what is your recourse?”

Whatever the issue or video, Watt’s objective is to help students relate to thorny and otherwise abstract problems.

“Because many of [the videos contain] familiar characters, students instantly relate to them, even if they are seeing or hearing something new, or regarding it in a new way,” she said.

Roy Gutterman, of Syracuse University, won third place for his entry “A Case to Illustrate the Complexities of Commercial Speech.” He created an in-class group exercise using a real Federal Trade Commission case, in which the FTC brought an action against the manufacturer of two weight-loss products. They were advertised in publications in full-color ads, rife with textual promises, guarantees, and questionable photos.

“The litigation offers an opportunity to examine a wide array of commercial speech questions as well as questions of government power and regulation, private litigation, and First Amendment issues,” Gutterman wrote in his entry.

Students are broken into groups, and each is assigned a role. They dissect the ads and construct a legal argument for or against the ads—supported by statutes, common law, precedent, and so on. After doing so, the floor is opened for debate.

“The exercise offers the students an opportunity to compete in oral arguments and to confront legal doctrines that they may not have entertained before,” Gutterman wrote in his entry. “It also requires them to cite to specific law.”

At the end, Gutterman provides the groups with copies of the FTC’s lawsuit and injunction and the settlement decree. “While these legal documents are just that, legal papers, I also help explain some of the technicalities that may not have been developed in the arguments,” he said.

**Law and Policy Division schedule  
2015 AEJMC Conference  
San Francisco, CA  
August 5-9, 2015**

**Wednesday, August 5**  
Pre-conference sessions

**1:15-2:45 p.m.**

Blurred Lines, Facebook Rap, and Journalists in Jail:  
Bringing Major Communication Law Cases From the  
Past Year to the Classroom

Panelists:

David Greene, Electronic Frontier Foundation  
Joseph Russomanno, Arizona State  
Amy Kristin Sanders, Northwestern Univ.-Qatar  
Chip Stewart, Texas Christian  
Moderator: Jonathan Peters, Kansas

**3:00-4:30 p.m.**

Privacy, the Right of Publicity, and Free Speech in the  
Digital Age

Panelists:

Cathy Gellis, technology lawyer  
Alex Kozinski, Chief Judge,  
U.S. Court of Appeals for the 9th Circuit  
Peter Scheer, California First Amendment Coalition  
William Turner, UC Berkeley School of Law  
Moderator: Ashley Messenger,  
Senior Associate General Counsel, NPR

**Thursday, August 6**

**8:15-9:45 a.m.**

PF&R Panel: Just Off the Vine: Instantaneous Image  
Sharing and New Challenges to Copyright Law, Me-  
dia Practices and Marketing  
(co-sponsored with Visual Communication)

Panelists:

Margo Berman, Florida International  
Leslie-Jean Thornton, Arizona State  
Ashley Messenger, Senior Associate General Counsel,  
National Public Radio  
Kathy Olson, Lehigh  
Moderator: Derigan Silver, Denver

**10:00-11:30 a.m.**

Teaching Panel:

Approaches to Social Media Assignments Based on  
the Ethical Considerations and Legal Limits Every

Faculty Member Should Know  
(co-sponsored with Public Relations)

Panelists:

Melissa Dodd, Central Florida  
Karen Freberg, Louisville  
Jeremy Harris Lipschultz, Nebraska-Omaha  
Chip Stewart, Texas Christian  
Moderator: Mitzi Lewis, Midwestern State

**11:45 – 1:15**

Refereed Research Paper Session:  
First Amendment Perspectives

Begging the Question of Content-Based Confusion:  
Examining Problems With a Key First Amendment  
Doctrine Through the Lens of Anti-Begging Statutes  
Clay Calvert, Florida

Access to Information About Lethal Injections: A  
First Amendment Theory Perspective  
Emma Morehart, Kéran Billaud, & Kevin Brucken-  
stein, Florida

First Amendment Protection or Right of Publicity  
Violation? Examining the Application of the Transfor-  
mative Use Test in *Keller* and *Hart*  
Sada Reed, Arizona State

Examining the Theoretical Assumptions Found  
Within the Supreme Court's Use of the Marketplace  
Metaphor  
Jared Schroeder, Augustana College

Moderator: Brian Steffen, Simpson College  
Discussant: Jane Kirtley, University of Minnesota

**1:30-3:00 p.m.**

Refereed Research Paper Session: Right to Privacy

The "Right to be Forgotten" and Global Googling: A  
More Private Exchange of Information?  
Burton Bridges, Memphis

A Theory of Privacy and Trust  
Woodrow Hartzog, Samford University, and Neil  
Richards, Washington University School of Law

Differential Reasonableness: A Standard for  
Evaluating Deceptive Privacy-Promising Technologies  
Jasmine McNealy, Florida

The Digital "Right to Be Forgotten" in EU Law: In-  
formational Privacy vs. Freedom of Expression



Kyu Ho Youm, University of Oregon, and  
Ahnan Park, Seoul National University

Moderator: William Davie, Louisiana at Lafayette  
Discussant: Paul Siegel, Hartford

**5:00-6:30 p.m.**

PF&R Panel: Online Security: Hacking, Framing,  
News, and Citizen Privacy  
(co-sponsored with Electronic News)

Panelists:

Lin Allen, Northern Colorado  
Sandra Chance, Florida  
Dale L. Edwards, Northern Colorado  
Jane Kirtley, Minnesota

Moderator:

Dale L. Edwards, Northern Colorado

**Friday, August 7**

**8:15-9:45 a.m.**

Refereed Research Paper Session:  
Analyzing Protections for “Harmful” Speech

The Angry Pamphleteer: Borderline Political Speech  
on Twitter and the True Threats Distinction  
Under *Watts v. United States*  
Brooks Fuller, North Carolina at Chapel Hill

*Feiner v. New York*: How the Court Got it Wrong  
Roy Gutterman, Syracuse

The Value and Limits of Extreme Speech in a Net-  
worked Society: Revitalizing Tolerance Theory  
Brett Johnson, Missouri

Racial Slurs and ‘Fighting Words’: The Question of  
Whether Epithets Should Be Unprotected Speech  
William Nevin, University of West Alabama

Moderator: Jon Bekken, Albright College  
Discussant: Dean Smith, High Point

**1:30-3:00 p.m.**

**AEJMC Global Connections Special Session:**

Obscurity and the Right to Be Forgotten:  
The Promise and Peril of Digital Ephemera  
(co-sponsored with Communication Technology)

Panelists:

Kashmir Hill, Senior Editor, Fusion’s Real Future  
David Hoffman, Director of Security Policy & Global  
Privacy Officer, Intel Corporation

Rigo Wenning, Legal Counsel, World Wide Web  
Consortium (W3C)

Moderator: Woodrow Hartzog, Samford University’s  
Cumberland School of Law

**3:15-4:45 p.m.**

PF&R: The Josh Wolf Case: Lessons and Legacy  
for Reporter’s Privilege and Participatory Journalism  
(co-sponsored with Participatory Journalism Interest  
Group)

Panelists:

Anthony Fargo, Indiana  
Nikhil Moro, Consultant in Internet Law  
Debra Saunders, Columnist, San Francisco Chronicle  
Josh Wolf, Editor-at-Large, Journalism That Matters  
Moderator: Patrick File, Nevada, Reno

**5:00-6:30 p.m.**

**Law & Policy Top Papers Session**

Difficulties and Dilemmas Regarding Defamatory  
Meaning in Ethnic Micro-Communities: Accusations  
of Communism, Then and Now\*  
Clay Calvert, Florida

A First Amendment Right to Know For the Disabled:  
Internet Accessibility Under the ADA\*\*  
Victoria Ekstrand, North Carolina at Chapel Hill

Injunction Junction: A Theory- and Precedent-Based  
Argument for the Elimination of Speech Codes at  
American Public Universities\*\*\*\*  
Barry Parks, Memphis

FoIA in the Age of “Open.Gov”: A Quantitative  
Analysis of the performance of the Freedom of  
Information Act under the Obama and Bush  
Administrations\*\*\* ^  
Ben Wasike, Texas at Brownsville

Moderator: Matt Duffy, Kennesaw State  
Discussant: Joseph Russomanno, Arizona State  
\* *Top Faculty Paper*

\*\* *Second Place Faculty Paper*

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

^ *Top Debut Faculty Paper Award*

\*\*\*\* *Top Student Paper*

**6:45-8:15 p.m.**

Division Membership Meeting

**8:30 p.m.** Off-site Division Social, Location: TBA



## Saturday, August 8

**12:15 – 1:30**

Refereed Research Paper Session:

A First Amendment Potpourri To Pray or  
Not to Pray: Sectarian Prayer in Legislative Meetings  
Mallory Drummond, High Point

Scrutinizing the Public Health Debates Regarding the  
Adult Film Industry: An In-Depth Case Analysis of  
the Health-Based Arguments in *Vivid Entertainment,  
LLC v. Fielding*

Kyla Garret, North Carolina at Chapel Hill

Facebook's Free Speech Growing Pains: A Case Study  
in Content Governance  
Brett Johnson, Missouri

A right to violence: Comparing child rights generally  
to child First Amendment freedoms  
William Nevin, West Alabama

This is Just Not Working For Us: Why After Ten  
Years on the Job - It Is Time to Fire Garcetti  
Jason Zenor, SUNY at Oswego

Moderator: Dean Smith, High Point  
Discussant: William Lee, Georgia

**1:45-3:15 p.m.**

PF&R Panel: State Laws Protecting Student Free  
Expression Revisited  
(co-sponsored with Scholastic Journalism)

Panelists:

Genelle Belmas, Kansas  
Steve Listopad, Valley City State  
Frank LoMonte, Student Press Law Center  
Sarah Nicholls, Whitney High School  
Wayne Overbeck, California State Fullerton  
Moderator: Mark Goodman, Kent State

**3:30-5:00 p.m.**

Teaching Panel: Teaching Taboo Topics: Practical  
Lessons for Teaching on the Edge  
(co-sponsored with Entertainment Studies Int. Group)

Panelists:

Clay Calvert, Florida  
Joel Campbell, Brigham Young  
Philippe Perebinosoff, California State-Fullerton  
Kathleen Fearn-Banks, Washington  
Moderator: Eric Robinson, Louisiana State

## Sunday, August 9

**11:00 a.m.-12:30 p.m.**

Refereed Research Session:  
Restricting Speech and Access

Calling Them Out: An Exploration of Whether  
Newsgathering May Be Punished As  
Criminal Harassment  
Erin Coyle and Eric Robinson, Louisiana State

Native Advertising: Blurring Commercial and Non-  
commercial Speech Online\*  
Nicholas Gross, North Carolina at Chapel Hill

Cultural Variation on Commercial Speech Doctrine:  
India Exhibits Stronger Protections than the U.S. \*\*  
Jane O'Boyle, South Carolina

The Government Speech Doctrine & Specialty Li-  
cense Plates: A First Amendment Theory Perspective  
Sarah Papadelias, Tershone Phillips, and Rich Shu-  
mate, Florida

Moderator: Laurie Lee, Nebraska at Lincoln  
Discussant: Jason Shepard,  
California State University at Fullerton  
\* *Second Place Student Paper*  
\*\* *Third Place Student Paper*

**12:45-2:15 p.m.**

Refereed Research Session: Internet Governance

Network Neutrality and Consumer Demand for "Bet-  
ter Than Best Efforts" Traffic Management  
Rob Frieden, Pennsylvania State

ISP Liability for Defamation:  
Is Absolute Immunity Still Fair?  
Ahran Park, Seoul National University

A Contextual Analysis of Neutrality:  
How Neutral is the Net?  
Dong-Hee Shin, Hongseok Yoon, and Jaeyeol Jung,  
Sungkyunkwan University

Internet Governance Policy Framework, Networked  
Communities and Online Surveillance in Ethiopia  
Tewodros Workneh, Oregon

Moderator: Barton Carter, Boston  
Discussant: Michael Martinez, Tennessee at Knoxville





# 41st ANNUAL Southeast Colloquium

**March 3 – 5, 2016    Baton Rouge, LA**

Hosted by the  
Manship School of Mass Communication  
Louisiana State University



## DIVISIONS

**Law & Policy    History    Magazine    Electronic News  
Newspaper & Online News    Open Division**

**PRE-CONFERENCE: Science Communication, March 3**

**For more information, please visit**

**[WWW.MANSHIP.LSU.EDU/COLLOQUIUM16](http://WWW.MANSHIP.LSU.EDU/COLLOQUIUM16)**

**or check for updates**  **@manshipschool**

**LSU**  
Manship School  
of Mass Communication