Media Law Notes

Volume 39, No. 1 Law and Policy Division, AEJMC Fall 2010

Head Notes

Amy Gajda
Division Head
Tulane Law School

My library contains a great old book, Law of the Press, authored by William Hale and Ivan Benson, and published by West Publishing in 1933. Hale was dean of the law school and Benson was an associate professor of journalism at the University of Southern California at the time this second edition was published. Hale authored the first edition alone in 1923.

Amy Gajda

The 600-page book covers libel, privacy, contempt, copyright, and contracts. But to me, one of its most intriguing parts comes not in its legal analysis but in its preface. The three short paragraphs suggest in part that "collaboration with a trained journalist [had] brought about a careful revision" of the book. The journalism professor Benson, seemingly, had offered a helpful perspective that Hale apparently recognized had been lacking in the earlier work.

Perhaps Hale intended his collaboration phrase to be taken in a different way, but it says to me a law scholar was expressing the importance of a journalistic perspective in any "law of the press" analysis. Somehow, sadly, that sentiment has not caught on in any sort of uniform fashion.

Frequently, I've given talks to a legal audience — judges, lawyers, and law professors — and heard the same complaints: journalism is out of control, ethics have fallen by the wayside, something must be done to rein in journalists. I've tried to explain that ethics still matter to most journalists, that many of the proffered examples were based on Internet posts and not traditional journalism, that journalism, though admittedly feeling pressured by what was happening online, held fast to ethics provisions. Unfortunately, I have also read many opinions in which courts write things that seem surprisingly out of touch with what really happens in the process of journalism.

I'm not sure how we got here and why law distrusts journalism so much. There is, of course, a rich tradition of wariness. When Warren and Brandeis wrote The Right to Privacy, for example, they weren't spurred on by the transgressions of private detectives or of peeping toms. They felt that JOURNALISM was out of control and that something needed to be done about it. More than 100 years later, in my experience, the bench and bar have the same complaints.

How can we reach those who don't understand precisely how journalism works and yet have the future of freedom of the press in their hands? I think that the answer is us.

Just as Hale suggested in his preface in 1933, journalists who know the law or those lawyers who know intimately about the practice of journalism have much to offer media law and legal analysis. Imagine, for example, attempting to understand why a doctor made a certain medical decision without truly understanding how medicine is supposed to work.

Take journalism's ethics codes as one example: Those who know journalism understand that the provisions are not hard

(continued on page 2)

INSIDE THIS ISSUE:

Award-winning teaching idea draws criticism

By Jim Sernoe, winner,
2010 Best Ideas in the Teaching of Communication Law and Policy Competition

Winning the Law & Policy Division's award for teaching ideas was the cap to a two-year adventure with the "First Amendment Project." The goal of the First Amendment Project is for students to measure tolerance of free expression through an experiment of their design. The goal is to engage in legal forms of expression without getting arrested or starting a riot. When I started the project, I knew I would be "pushing the envelope" but did not expect quite the level of reaction that followed.

For Spring 2009, the students ended up in two groups, one that arranged a protest of a proposed ban on smoking on campus and one that arranged a sale of cookies in vulgar shapes and with vulgar sayings.

One student objected to the concept and proposed selling cookies with biblical sayings on them. This put a wrinkle in the rest of the students' plans, but it also forced them to work with someone whose views differed from their own. If they really believed in the First Amendment, I repeated, they had to work with the students sincere beliefs; they rose to the occasion by working out several logistical kinks. Each group would have a table in the Student Center, at opposite ends of the hall, with 100 identically priced cookies for sale.

Not everyone on campus was amused, as a dean went to the provost, and his wife, an adjunct instructor, went to the president. Another administrator expressed his disapproval to the students directly, while another mover and shaker on campus called me directly. An outraged parent, whose child happened to be on campus for a field trip, also called me.

(continued on page 2)

(Head Notes, continued from page 1)

and fast rules, like ethics rules for lawyers, but are designed to be exible guides to ethical behavior. Judges without experience in journalism may not understand this and may, therefore, nd the potential for liability, as did one federal judge, on the basis of the urging that journalists "[r]ecognize that gathering and reporting information may cause harm or discomfort." That suggestion is taken directly from the SPJ Code, but journalists understand that it cannot be a signi cant limitation on reporting because most stories of signi cance will cause some level of discomfort to someone. Not all members of the judiciary understand the distinction.

That, I think, is where we come in. The members of the Law & Policy Division are uniquely situated to bridge the gap between journalism and law. And I truly believe that if judges and lawyers better understood what journalism was about, we'd have better court decisions regarding journalism and not as many that seem somewhat out of touch with what really happens in a newsroom.

How can we do that? One key way is to write our way into legal precedence. The more our scholarship is read and appreciated, the more likely it is that courts will begin to understand the way journalism works and, hopefully, recognize the serious harm that can stem from a world in which media are too restricted.

Why journalism professors are not all that often part of the dialogue is somewhat of a mystery. One possibility is that work critical to that understanding is not being published. And, I myself might be one of the reasons behind this lack of publication.

Just a few days ago, I read an article under consideration for publication in a journal and felt that the article was seriously lacking in legal support. The author ultimately had some ne ideas but had not, in my opinion, fully supported them using legal precedent. I knew that cases and other supportive materials existed, but for whatever reason the author had not used them. Quite frankly, it made me wary of the author's analysis.

And that, is why I hope to increase the focus on legal research in our division this year. Those who are practicing lawyers, judges and law professors have access to Lexis and Westlaw and can, at the click of a mouse, access whatever case, published or unpublished, they want to read. Such access can be crucial. Without adequate research, it would be dif cult to convince this group that what we have to say is relevant. Without adequate research, it is dif cult to even begin to join the conversation.

So watch this publication for research tips and other research-related information over the next year. I recognize that most of us won't necessarily have the same sort of databases that judges, lawyers, and those who teach in law schools use, but access is possible in many law libraries and other resources exist that can help beef up articles. Our voices need to be heard and we can work to make that happen.

But back to my little book. Turns out that when Hale wrote the rst edition of Law of the Press, published in 1923, he was teaching at the University of Oregon. He wrote that he'd run his manuscript by journalism professors "from time to time" and that two had suggested certain "method[s] of treatment." But that cursory review wasn't enough for him ten years later; he apparently recognized the value a journalism co-author had brought to the project.

One down, many to go.

(Teaching idea, continued from page 1)

I also received several calls and e-mails from faculty in other colleges and staff members who thought it was great, including one who praised me for "upholding the Constitution" and two who were disappointed for not letting them know – by the time they found out, the nasty cookies were all sold out.

I used the next two class periods for debrie ng/analysis. The students came to understand that it is one thing to study cases in the safety of a classroom; it is another to be on the front lines when others disapprove, yet you know you are acting in an entirely legal way.

For Fall 2009, the ve projects included:

- two students standing in a campus building passing out pieces of paper with offensive sayings;
- one student standing at "the marriage table" in the Student Center, stating that the only acceptable form of marriage is between a man and a woman;
- ve students working at dueling "sex tables" in the Student Center, those at one table promoting abstinence as the only safe practice, while those at the other promoted "safe sex" and passed out free condoms;
- ve students arranging for a campus showing of the famous porn lm "Debbie Does Dallas;"
- seven students promoting the legalization of marijuana at a table in the Student Center.

I will limit my comments to "Debbie." While I don't consider myself some kind of radical, I must sadly conclude that what I thought was solid support for the First Amendment and academic freedom on this campus exists only in pockets and not among our upper administration.

I have spent who-knows-how-much time teaching students that controversial expressions garner more attempts to suppress them than expressions that are popular. I further stress that often the critics know the First Amendment protects the actual expression, so they attempt to nd a technicality that will help suppress the thoughts with which they disagree.

The students researched the campus rules regarding showing lms, adult materials, use of campus rooms, etc., and followed every last rule. They went through proper channels to procure the lm as well as permission to show it; obtained proper permission to post yers; required anyone entering to show proof of age; made it clear to those attending that they were free to leave in the middle of the lm if they were uncomfortable; and strictly enforced the re marshal limit. Not a single campus rule was violated.

Those who attended were asked to complete a brief survey regarding their attitudes toward pornography, and a brief discussion period was held after the screening.

As expected, the screening caused a campus and community uproar, though I was surprised at just how much uproar. The local television stations and newspaper ran stories about it, local blogs went bonkers, and word of mouth was huge.

My dean, fearing the organizational repercussions yet thoroughly understanding the educational and expressional goals, stood behind me.

I can't say the same for the upper administration, which re-

(continued on page 5)

Minutes of the Law and Policy Division Annual Meeting

Aug. 5, 2010
Denver, Colo.
By Kathleen Olson, division clerk

The meeting began at 6:45 p.m. with division chair Charles Davis presiding and 32 people present.

The minutes from last year's meeting were approved by acclamation.

Report from the division chair

Membership is static, perhaps down slightly. This may be due to budgetary constraints at universities. Because we no longer print the newsletter, however, we are " ush" with $3,583 in the division fund. Expenses for conference plaques will be less than $500 and total expenses this year less than $1,000. Income is something like $4,000 each year.

Question: Should we build up a reserve with our money and/or spend it down by additional donations to causes or by raising the monetary awards for student papers or something else? The division should decide this sometime down the line.

Council of Divisions meeting

The Council of Divisions has requested feedback regarding the location for the 2014 annual conference. Each division should rank these locations: Atlanta; Miami; Jacksonville, Fla.; Tampa, Fla.; and Montreal, Quebec. A straw poll of the room resulted in a lopsided victory for Montreal, with Miami and Atlanta taking second and third place.

Communications Law & Policy journal report

Wat Hopkins noted that he was not able to attend the conference last year due to illness, so he had a two-year summary this year:

Submissions are the same since his last report or up a little bit. There were 39 submissions over the last two years, with a "quirk" in the ow of manuscripts – see his report for details.

The number of pages went down, to 427. One article was on hold; its inclusion would have given the volume 50 more pages.

As of the business meeting, ve papers were out for review; one had been accepted.

A call was announced for a special issue on privacy in the digital age.

Wat's term will be ending. The protocol, based on the recommendation of the publication committee, is that following the second term of the editor, the division will advertise for applications for the editorship. The call for applicants will go out soon, and Wat plans to apply for a reappointment. The publication committee will review the applications and make a recommendation to the division; a year from now the division will vote on the recommendation of the publication committee.

Our liaisons with Taylor & Francis – the publisher of the journal – are happy with us, as we're meeting deadlines. Individual subscriptions to the journal have dropped (re ecting the drop in division membership).

In the next year, Taylor & Francis will work with Wat to set up a system for the journal to post articles on SSRN once they have been accepted. (SSRN is the Social Science Research Network, an online publication that is a repository of papers, at http://www.ssrn.com.) This will help the pro le of the journal amid some of the challenges we face as a peer-reviewed law journal without simultaneous submission. (The division looked at changing the submission rules and decided not to a few years ago.)

Taylor & Francis is "skeptical" of posting to SSRN, so Wat will have to work to implement it. The procedure: Once he gets page proofs (after articles are typeset), the author gets them, too, and sends corrections to Wat. Wat and his editorial assistant then make corrections and Taylor & Francis makes the corrections for publication. This corrected version does not have volume-specific page numbers (just 1 through whatever). Wat then gets a second set of page proofs and he compares them to the corrections he indicated to be sure the corrections were made. These proofs include the nal journal page numbers. That is when Wat (or perhaps the author) could post the article to SSRN — both in draft and pre- and post-publication. They would be posted with permission of the law journal as advance copies.Some blogs publish the table of contents of law journals and have hot links to SSRN to the PDF of the article – Wat is trying to convince the folks at Taylor & Francis that this is a good idea.

Taylor & Francis has also agreed to help get the journal included in SSI – the Social Sciences Index (social science side of ISI). We tried to be included and were denied before – they indicated that one of the reasons was that in our statement of purpose, we indicated we publish international material but didn't have enough of that in the three issues we sent them for review. There also weren't enough international members of the editorial board – and that means at a foreign school – Kyu doesn't count.

There are some vacancies on the editorial board so Wat will ll them and we will go back to SSI to see if we can be listed.

A sign-up sheet for reviewing for the journal was sent around – if you missed it and would like to volunteer, send Wat your name, e-mail address and topic(s) you are willing to review.

Charles thanked Wat for his service to the division, and a hearty round of applause ensued.

Report from the teaching chair

Minjeong Kim, the teaching chair, reported on this year's teaching competition:

(conitnued on page 4)

(Minutes, continued from page 3)

This was the second year of the competition, and it was successful. The biggest theme in the entries was experiential learning. The winning entries were: Jim Sernoe of Midwestern State University (rst place), Dinah Zeiger of the University of Idaho (second place) and Susan Keith of Rutgers (third place). Descriptions of their ideas are available on the Web site. Jim and Susan were at the meeting to get their plaques; hearty applause ensued.

Report from the research chair

Dave Cuillier, research chair, announced the winners of the research competition after making a plug for his DVD, copies of which were stacked in the back of the room.

The best poster competition winner was announced: Laura Hlavach of Southern Illinois University, Carbondale. The poster for her paper, "Fairey v. AP: Is the 'Obama Hope' Poster a 'Fair Use' or a Copyright Infringement?" included an interactive display that allowed people to vote on whether the Obama poster was copyright infringement or not. Dave said he would mail the certi cate to her.

This year's research competition was "the most competitive year I know of," Dave said, with a 40 percent acceptance rate – one of most competitive at AEJMC. There were more than 80 reviewers, and no one had more than three papers to review. A list of the reviewers is in the back of the conference program, and he thanked everyone for their help.

The electronic submission process seemed to go well for our division; AEJMC is seeking feedback from members about their experiences with it. Several division members commented that they thought it went smoothly. Amy Gajda asked if there were any problems with names being embedded in les and revealing the author. Dave replied that AEJ reported that 34 out of 1,800 papers had been disquali ed outright. Dave had to disqualify four or ve division papers that included properties with names embedded, a number he thought on the high side for a division.

He also had to eliminate some papers because they didn't follow the formatting guidelines – "nobody wants to read a 70-page paper" – and some submissions ended up as such because of single-spacing. Dave said he felt bad that he had to disqualify the papers and encouraged everyone to be sure to follow the rules for submission.

If anyone else has feedback about the electronic submission process, let him know and he will pass it on.

Dave then handed out the awards for the paper competition winners.

The student winners were: Laurie Phillips of UNC-Chapel Hill (rst place), Christina Cerutti of Boston College (second place) and Rebecca Ortiz of UNC-Chapel Hill (third place). Laurie, Christina and Rebecca were at the meeting to get their plaques; hearty applause ensued.

Faculty paper winners were: Clay Calvert of Florida and Matt Bunker of Alabama (rst place), Chip Stewart of Texas Christian (second place) and Stephen Bates reviewers – we were "swarmed" with papers, he said, with 56 submissions and 28 acceptances. The division needed seven panels, the papers were that good. The high number of submissions forced Chip to ask some reviewers to review a fourth or even a fth paper over winter break – thanks again for the help. He said he would be calling on reviewers again for next year, when the Colloquium will be in Columbia, S.C. He had a handout about the Colloquium and invited everyone to submit a paper, adding that the division always has a very strong presence at the Colloquium.

Election of new of cers

Those present voted on the uncontested slots rst. Chip Stewart moved to elect the group as a whole and Amy Kristin Sanders seconded the motion. Amy Gajda was elected division head, Dave Cuillier was elected vice-head, Kathy Olson was elected research chair and Derigan Silver was elected clerk/newsletter editor. Minjeong Kim will serve as teaching chair again and Cheryl Ann Bishop re-upped as Webmaster.

The position of PF&R chair had two nominees. Amy Kristin Sanders of the University of Minnesota noted that next year's host city, St. Louis, is her hometown and that she is looking forward to having the conference there and thinks she can use some of her connections to provide some good division programming.

Beverly Merrick was also a nominee but wasn't present to speak. Division members voted by paper ballot, and Amy was elected PF&R chair. Hearty applause ensued.

Other division business

Charles offered congratulations to Kyu Ho Youm on his election as vice president of AEJMC. Kyu had to leave the meeting early so he was congratulated in absentia and Charles asked division members to give him their support.

Susan Keith said newspaper division membership and funds are "way down" and they have not been able to give as much as they usually do to the Reporters Committee for Freedom of the Press and the Student Press Law Center. The law division then voted to give $250 each to SPLC and the Reporters Committee. For the Reporters Committee, this represents an increase of $100 from last year's donation; for SPLC, the amount stayed the same.

Of cer transition

Charles passed the symbolic torch to Amy Gajda, who thanked him for being "an amazing division head" who provided the division with "fantastic service" this year and had "a wonderful attitude toward going to Jacksonville, Fla., for the chip auction." The applause that ensued was hearty.

With no new business, a move to adjourn was made, seconded and passed, and the meeting concluded.

(Teaching idea, continued from page 2)
mains a deep disappointment to me. The president was silent, at least publicly, on the questions of the First Amendment and academic freedom, a silence, to use the cliché, that was deafening. They also summoned my dean to a meeting, for which I requested attendance but was told I was not welcome, at which he was told the question was not the First Amendment nor academic freedom, but MSU's Human Subjects Review Committee.

What? That obscure committee that approves research projects?

I was told that any time there is a survey, this committee must approve it in advance. So the problem was not "Debbie," it was that my students asked the other students what they thought about it? But I was also told the problem was that the project put the students "at risk." What if things turned violent? What if the students were ridiculed?

So which was it? The survey? The "risk" and potential "ridicule"? Neither, really. I believe they just had to come up with something.

I understand that MSU's administration was caught between their many constituencies. I further understand that we are in the "Bible belt." I also understand that the president of the university would look foolish defending "Debbie Does Dallas" as a valid educational activity. However, he might have defended the First Amendment Project as a valid educational activity.

What to tell the donors? How to diffuse that public relations nightmare? How about this:

"Dr. Sernoe has been here 15 years. He's in his mid-40s, which means he's devoted a third of his life to this place. He's pretty good at what he does – good enough, in fact, that we've tenured him, we've promoted him to associate professor, and we've had him serving as chair of the department since 2004. This course is one of the most popular he teaches. We don't approve of pornography, but it is legal under the First Amendment, and his students violated no rules in showing the film. We support the First Amendment as well as the rights of Dr. Sernoe and his students to the cherished value of academic freedom."

However, instead of defending those who merited their defense, these men caved in to the loudest, rather than most reasoned, voices. Knowing they couldn't win a debate with me (not to mention the ACLU) on the First Amendment, knowing the AAUP and other organizations would have a field day were they to punish me for a classroom project, they decided that this was somehow a matter of human subjects.

I later spoke to two members of this committee, who unequivocally told me this is not the type of thing they routinely deal with.

As for the meeting from which I was excluded, what of the academic value of civil debate? Shouldn't the chief academic officer at a university allow all sides to participate in reasoned debate? Were they afraid I might have some valid things to say?

I realize things could have been worse, with someone demanding my resignation or dismissal, trying to remove me as chair or trying to revoke my tenure. This fact doesn't decrease my disappointment that when the chips were down, my administrators' spines disappeared. Perhaps this is just the burden we in the First Amendment trenches must carry?

Now onto the most pressing question: Should I assign the First Amendment Project next time I teach Mass Communication Law?

Legal annotated bibliography

By Michael T. Martinez, PhD candidate
University of Missouri

Campaign Finance

Brandenburg, B. (2010). "Big Money and Impartial Justice: Can They Live Together?" 52 Arizona Law Review 207.

Many Americans believe that justice is for sale. Over the past decade, polling data has shown that a majority of Americans believe campaign contributions can tilt the scales of justice by influencing courtroom decisions. Two recent U.S. Supreme Court cases, *Caperton v. A.T. Massey Coal Company* and *Citizens United v. Federal Election Commission,* have once again drawn attention to this trend in public opinion and, in particular, to the influence of campaign contributions on judicial decision-making. This article provides an overview of fundraising, spending, and advertising in judicial campaigns, discusses public confidence in the courts, and explores reform efforts to protect the impartiality of the judiciary.

Free Speech

Majeed, A. (2010). "Putting Their Money Where Their Mouth Is: The Case for Denying Qualified Immunity to University Administrators for Violating Students' Speech Rights." 8 Cardozo Public Law, Policy & Ethics Journal 515(Summer).

The First Amendment rights of students at our nation's public colleges and universities have long been afforded protection in the courts, recognizing time and again that the university campus "is peculiarly the 'marketplace of ideas.'" Universities play a unique and critical role in society as a place where students enjoy robust speech rights and are free to discuss and debate a wide range of viewpoints in an endless search for truth and knowledge. Yet our nation's institutions of higher education, either in ignorance or defiance of the law, frequently violate the free speech rights of their students. When university officials take these actions, not only do they deprive students of some of their most cherished freedoms, they also contradict well established constitutional law principles.This article argues that, given the protections the judiciary has given to expressive rights at public colleges and universities, courts should deny qualified immunity to university administrators when they violate students' freedom of speech.

Park, D. W. (2009/2010). "Government Speech and the Public Forum: A Clash Between Democratic and Egalitarian Values." 45 Gonzaga Law Review 113.

For the last quarter century, the public forum doctrine has been

(continued on page 6)

(Bibliography, continued from page 5)
the dominant paradigm for resolving questions about the right of access to government property or support. That dominance may be coming to an end as the Supreme Court increasingly relies on and expands the government speech doctrine. Although the government speech doctrine is a relative newcomer to First Amendment jurisprudence, any doubts to its importance were dispelled by the Supreme Court's unanimous embrace of the doctrine over the more established public forum doctrine in the recent case of *Pleasant Grove City v. Summum*. This article assesses the implications of the government speech doctrine's displacement of the public forum doctrine as the dominant First Amendment paradigm for government-subsidy cases.

Pauli, C. (2010). "Killing the Microphone: When Broadcast Freedom Should Yield to Genocide Prevention." 61 Alabama Law Review 665.

When powerful radio broadcasts exhort listeners to kill their neighbors, may outside nations or international organizations legally interrupt the signals to prevent genocide? International law has no legal framework for assessing and responding to such broadcasts. This article attempts to create one. The article draws on empirical research in the eld of communication to identify conditions in which media messages become so powerful that they can mobilize audience members. Using this research, it constructs a framework for determining when speech constitutes incitement to genocide such that it loses any protection under international law and perhaps even triggers an af rmative duty on the part of other states to intervene.

Copyright

Boyajian, A. (2009-2010). "The Sound of Money: Securing Copyright, Royalties, and Creative "Progress" in the Digital Music Revolution." 62 Federal Communication Bar Journal 587.

As part of his technology and innovation platform, President Barack Obama broadly pledged to "update and reform" copyright laws in ways that strike a balance between promoting the public good and treating copyright owners fairly. Sweeping legal reforms are advocated by popular critics and leading copyright scholars alike. Recognizing market paradigm shifts in the ways we produce, distribute, publish, and consume music, this article argues that little change, if any, is necessary to achieve that beautiful balance. Consequently, as intellectual property becomes a more essential part of our national economy and infringement becomes easier, it is in the best interests of both artists and the public to maintain and enhance the existing "strong" copyright system.

(continued on page 8)

Southeast Colloquium Call for Papers

The Law and Policy Division of AEJMC invites scholars to submit original papers for the annual AEJMC Southest Colloquium, which is scheduled to take place March 17-19 at Universtiy of Southern Carolina's School of Journalism and Mass Communications in Columbia, South Carolina. Papers may focus on any topic related to communications law and/or policy, including degamation, privacy, freedom of information, FCC issues, copyright, obscenity and other issues regarding freedom of speech and press. A panel of 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 convention to present accepted papers.

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 Division will be recognized. Student authors of single-authored papers should clearly indicate their student status to be considered for the student paper awards.

Authors should submit one original and three copies of each paper. Each copy should include a 250-word abstract. On the cover page of the original, authors should include the title of the paper, and the name, af liation, address, of ce phone, home phone, fax and e-mail address for each author. Student submissions should clearly be indicated on the cover page of the original as well. On the cover page of the three copies, only the title of the paper should appear, with no information identifyng any author and no mention of the author's status as faculty or student. The originals and copies should be sent via rst-class U.S. mail, postmarked on or before Dec. 13, 2010, to:

Dr. Daxton "Chip" Stewart
Schieffer School of Journalism
Texas Christian University
TCU Box 298060
Ft. Worth, TX 76129
Phone: 817-257-5291
E-mail: d.stewart@tcu.edu

Southeast Call for Reviewers

The AEJMC Law and Policy Division has a proud tradition of hosting an engaging research paper competition at the Southeast Colloquium each year, and we anticipate that the 2011 competition will be no different. Last year, we had 56 paper submissions, with a good mix of faculty and student articles.

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 50 to 60 reviewers. If you are not submitting a paper to the colloquium this year, the division would like to invite you to help with the competition. For those who have served as reviewers in recent years, we thank you for your time and effort, and hope you will join us again this year.

Reviewers receive a package of papers in mid-December, with a mid-January deadline for returning reviews.

For more information, please contact Dr. Daxton "Chip" Stewart at d.stewart@tcu.edu.

Law and Policy Division Teaching Competition Call

How to Incorporate Diversity in Law and Policy Classroom

The Law and Policy Division is pleased to announce our third-year teaching ideas competition. This year we are looking for your best and most innovative ideas for incorporating diversity in communication law and policy classroom. 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 certi cate and a cash prize - $100 for rst 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 two years' winning ideas are available at http://aejmc.net/law/teaching.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 (please mention "teaching ideas competition" in the subject line of your submission). Submitters need not be Law and Policy Division members. Both faculty and graduate students are welcome to submit.

Submissions should follow these guidelines:

(1) The rst page of your submission should be a cover sheet that includes your name, af liation, contact information, and the title of your teaching idea. Please do not include author 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 noti ed by May 10, 2011.

Please direct any questions to:

Dr. Minjeong Kim
Teaching Standards Chair 2010-11
Colorado State University
Minjeong.Kim@colostate.edu

Phone: 970-491-3807

(Bibliography, continued from page 6)
Tsai, J. T. (2010). "The Unlitigated Case: A Study of the Legality of Guitar Tablatures." 2009 Boston College Intellectiual Property & Technology Forum 70502.

Guitar tablature Web sites, an annotation system that reduces to simple text how to play songs, have been the subject of recent cease-and-desist letters, forcing most to shut down. Litigation has been side-stepped with the arrival of new creative means to continue operation. Site owners cited problems with nding legal resources to ght the court action as well as dif culties their Internet service providers faced themselves from threatened action. The case that could have gone to court is discussed here, ranging from the appropriate legal claims of copyright infringement to the fair-use-defense arguments that would have been made. This hypothetical lawsuit would address the novel question of copyright interests and guitar tablatures. Policy solutions are considered to resolve the tension between the public's desire to use such tablatures and the copyright owners of the original artists.

Obscenity

Gray, M. J. (2010). "Applying Nuisance Law to Internet Obscenity." 6 I/S: A Journal of Law and Policy for the Information Society 317.

The current use of criminal law to prosecute Internet obscenity is both ineffective and unfair. While prosecution of obscenity over the Internet is extremely rare, when a prosecution does occur, the punishment is extremely harsh. This article advocates the use of nuisance law injunctions as a better alternative in responding to Internet obscenity. Nuisance law provides the advantage of allowing for wider enforcement of obscenity law on the Internet while simultaneously reducing the penalty for violating the subjective Miller test for obscenity. This article also explores recent applications of nuisance law to the Internet and the standards for the antiquated tort of moral nuisance.

Privacy

Ham, P. (2010). "Warrantless Search and Seizure of E-mail and Methods of Panoptical Prophylaxis." 2008 Boston College Intellectiual Property & Technology Forum 90801.

U.S citizens are in a constant battle for their rights to privacy, ghting the government's increasingly pervasive surveillance and justicial needs. One area where court opinions con ict with the public's expectation of privacy is over the realm of personal electronic communications. The general public believes electronic communications must be afforded a certain level of privacy that is not currently recognized by case law or statutes. Under current case law, warrantless searches and seizures of your personal e-mail are not prohibited by the Fourth Amendment. Congress did not anticipate the widespread, various uses of electronic communications when they drafted much of the applicable legislation. Furthermore, most courts rely upon legal reasoning that only tenuously analogizes between traditional methods of communication or privacy protections in light modern electronic communications. Based upon this legal backdrop, courts generally refuse to recognize society's expectation of privacy over electronic communications. Courts still hold onto outdated legal analyses for outdated technologies--and apply them as best they can to the burgeoning world of new technologies. As a result citizens must turn to extralegal protections, such as implementing various technologies to circumvent legal prescriptions. Individuals must work with these new technologies to protect their Fourth Amendment rights.

Lipton, J. D. (2010). "Digital Multi-Media and the Limits of Privacy Law." 42 Case Western Reserve Journal of International Law 551.

While digital video and multi-media technologies are becoming increasingly prevalent, existing privacy laws tend to focus on text-based personal records. Individuals have little recourse when concerned about infringements of their privacy interests in audio, video, and multi-media les. Often people are simply unaware that video or audio records have been made. Even if they are aware of the existence of the records, they may be unaware of potential legal remedies or unable to afford legal recourse. This article concentrates on the ability of individuals to obtain legal redress for unauthorized use of audio, video, and multi-media content that infringes their privacy.

Masson, S. T. (2010). "The Presidential Right to Publicity." 2010 Boston College Intellectual Property & Technology Forum 12001.

Characterized as "a self-evident legal right, needing little intellectual rationalization to justify its existence," the right of publicity has been de ned in various ways over the years. Although politicians rarely bring right of publicity actions, that does not mean they are actually barred from bringing them. Despite the disincentives to bring these claims, however, the right of publicity has been raised in connection with the use of President Obama's image. Before President Obama embarks on a right of publicity claim, he should be careful not to wield it with a heavy-hand or to vigorously attack infringers. Rather, this right ought to be used as a shield to protect against false advertising, fraud, or similar conduct. However, if by not enforcing his right in a timely fashion President Obama has implicitly authorized the use of his image or will be barred by the forum state's statute of limitations from bringing his claim, then using the right as a sword while he is still in of ce would not only be appropriate, it would be unavoidable.

O'Connor, K. M. (2010). "OMG They Searched My TXTS: Unravelling the Search and Seizure of Text Messages." 2010 University of Illinois Law Review 685.

With billions sent each month, more and more Americans are using text messages to communicate with each other. Yet when it comes to protecting the privacy of these messages, courts, legislators, and commentators have struggled to apply outdated
(continued on page 9)

(Bibliography, continued from page 8)
statutes and common law doctrine to the realities of this new technology. Exploring the ever-present tension between privacy concerns and law enforcement tactics, this article examines the privacy issues presented by text messaging technology, focusing on the ability of criminal defendants to suppress text messages seized without warrants.

Royal, D. B. (2010). "Jon & Kate Plus the State: Why Congress Should Protect Children in Reality Programming." 43 Akron Law Review 435.

"MOM TO MONSTER" roared the June 2009 cover of the tabloid magazine, Us Weekly. Inside, the reader discovers in large type: "Rocked by scandal and infatuated with fame, Kate Gosselin has cut a swath of terror." Juxtaposed next to this harsh accusation is a photograph of an angry woman yelling at her husband while her little children look on in the background.This article argues that the use of children in reality programming constitutes employment that is harmful to those children and society, and that the current legal regime is insuf cient to address this emerging problem. As executives continue to create more extreme programs, and parents continue to trade their children's best interests for fame and fortune, Congress must act.

Defamation

Peled, E. (2010). "Should States Have a Legal Right to Reputation? Applying Rationales of Defamation Law to the International Arena." 35 Brooklyn Journal of International Law 107.

Various sources throughout the world, primarily the mass media and nongovernmental organizations, routinely publish reports on the conduct and circumstances of states. These reports shape states' reputations in the eyes of individuals, publics, organizations, and governments. While most reporting may be presumed accurate, disinformation inevitably nds its way into the international public domain. Whether such disinformation is a product of biased agendas, interests of political actors, omissions of relevant details, or merely a matter of honest mistakes, it might do injustice to the states concerned. This article calls for an acknowledgment of state reputational rights within international law through a novel normative framework parallel to established domestic defamation laws.

Broadcast Regulations

Mulligan V, E. B. (2009-2010). "Derailed by the D.C. Circuit: Getting Network Management Regulation Back on Track." 62 Federal Communication Law Journal 633.

As the Internet continues to play a more central role in the daily lives of Americans, concerns about how Internet service providers manage their networks have arisen. Responding to these concerns and recognizing the importance of maintaining the open and competitive nature of the Internet, the FCC has taken incremental steps to regulate network management practices. Perhaps the most signi cant of these steps was its August 2008 Memorandum Decision and Order in which the FCC condemned Comcast Corporation's network management practices as "discriminatory and arbitrary." Comcast responded by adopting a new practice and, in the alternative, ling an appeal with the United States Court of Appeals for the D.C. Circuit challenging the FCC's authority to regulate network management practices. On April 6, 2010, the D.C. Circuit issued its much-anticipated decision. In a narrow opinion, it vacated the Order, holding that the FCC had neither express nor "ancillary" authority to regulate network management practices. In the wake of the D.C. Circuit's decision is uncertainty about the path forward. The FCC has, however, reaf rmed its commitment to promote federal Internet policy. The rst step to getting Internet regulation back on track is to "reestablish" jurisdiction. As this article discusses, there are a number of ways in which the FCC can accomplish this. However, jurisdiction is merely the rst step. After taking a closer look at whether Comcast's post-2008 Order network management practices actually complied with the FCC's Order, this article recommends that the next step is to adopt clear rules for network management, backed by monitoring procedures and real consequences designed to ensure long-term compliance.

Law & Policy Speakers Bureau

Make yourself available for media interviews or speaking engagements in your area of expertise. Go to the division web site at http://www.aejmc.net/law and click on "Speakers Bureau" to nd out more information.

Law and Policy Division Of cers

Head
Amy Gajda
Tulane Law School
Tulane University
6329 Freret Street
New Orleans, LA 70118-8373
504-862-3527
gajda@tulane.edu

Vice Head/Program Chair
David Cuillier
School of Journalism
University of Arizona
334A Marshall
Tucson, AZ 87521
520-626-9694
Cuillier@email.arizona.edu

Research/Paper Competition Chair
Kathleen Olson
Department of Journalism and Communication
Lehigh University
33 Coppee Drive
Bethlehem, PA 18015-3165
kko2@lehigh.edu

Clerk/Newsletter Editor
Derigan Silver
Department of Media, Film and Journalism Studies
University of Denver
2490 S. Gaylord St.
Denver, CO 80208-5000
303-871-2657
Derigan.Silver@du.edu

Teaching Standards Chair
Minjeong Kim
Department of Journalism and Technical Communication
Colorado State University
C239A Clark Building
1785 Campus Delivery
Fort Collins, CO 80523-1785
970-491-3807
minjeong.kim@colostate.edu

PF&R Chair
Amy Kristen Sanders
School of Journalism and Mass Communication
University of Minnesota
111 Murphy Hall, 206 Church St. SE
Minneapolis, MN 55455
612-624-2438
sandersa@umn.edu

Southeast Colloquium Chair
Daxton "Chip" Stewart
Schieffer School of Journalism
Texas Christian University
Box 298060
Fort Worth, TX 76129
Phone: 817-257-5291
d.stewart@tcu.edu

Webmaster
Cheryl Ann Bishop
Department of Media Studies
Quinnipiac University
275 Mount Carmel Ave., SB-MCM
Hamden, CT 06518
203-582-5330
cbishop@quinnipiac.edu

NON-PROFIT ORGANIZATION
U.S. POSTAGE PAID
COLUMBIA, SC
PERMIT NO. 198

Media Law Notes
234 Outlet Point Blvd., Suite A
Columbia, SC 29210-5667