Media Law Notes

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Head Notes

Amy Gajda
Division Head
Tulane Law School

My son rushed into my room one Sunday night a couple of weeks ago. "Turn on CNN," he urged, "President Obama is going to be making an announcement regarding national security."

Amy Gajda

My heart did ip- ops as I fumbled for the remote.

Why? What announcement would be important enough to warrant an address to the nation one sleepy Sunday night?

We now all know the focus of that announcement. Perhaps like many in our age group, my husband and I stood glued to CNN as Wolf Blitzer danced around what he probably knew to a near-certainty: that Osama bin Laden had been killed by someone or something with a connection to the United States military.

INSIDE THIS ISSUE:

- Head Notes
- 2011 Teaching competition winners
- 2011 AEJMC SE Colloquium division report
- Penn State University announces *The Journal of Information Policy*
- 2011 AEJMC Conference division schedule & panel preview
- Annotated bibliography

Meantime, my two sons, both teenagers, sat with their laptops open, listening to the audio from CNN but also scouring the web and discussing electronically with friends what was up and what others had heard. To be honest, as addicted as I may be to the internet and its bounty of news sources, I didn't want to log on to see what was being reported there. My inclination was to trust that live TV would have things rst.

I was at least somewhat wrong, of course. Reports are that the chief of staff for Donald Rumsfeld, the former defense secretary, was rst to tweet that bin Laden had been killed, probably as CNN was still dancing around what the subject of President Obama's address would be or even before it went on the air.

And it also came to light that some unsuspecting computer consultant in Pakistan was actually the one who rst reported the raid on bin Laden's compound, tweeting that it was unusual that a helicopter would be ying over Abbottabad at 1 a.m. The Guardian quoted a later tweet from the IT consultant this way: "Can't handle the rush ... I am JUST a tweeter, awake at the time of the crash. Not many twitter users in Abbottabad, these guys are more into Facebook. That's all."

You might wonder what this has to do with law.

I have been researching and teaching information privacy law for about a decade now, being a keenly interested witness to technological developments and the law's response. I'm especially interested in media, of course, and like to think of myself as fairly cutting edge in terms of my media usage and knowledge of technology. But my CNN-centric response to an important breaking story says an awful lot, I think. If only I'd been following the right Twitter accounts, I would have known things far earlier than I did. It's not that I didn't KNOW about the technology, it's just that I didn't THINK about it and put it to good use in the same way that my kids did.

And it took this news event to cause me to

(Continued on page 2)

2011 Teaching competition winners bring diversity to the classroom

By Minjeong Kim
Teaching Standards Chair
Colorado State University

Incorporating diversity in communication law and policy classrooms was the theme of our third-year teaching ideas competition. A total of eight ideas were submitted, and a committee of six judges reviewed them anonymously. All submitted ideas were creative and innovative, but three ideas were chosen as winning ideas.

Before I summarize the winning ideas—the three ideas will be also posted in their entirety on our division's website (http://aejmc.net/law/teaching.html)--I would like to offer my sincere thanks to those who submitted their teaching idea and to the judges who reviewed the submissions. We will award the winners their certi cates and prize money during our AEJMC convention business meeting. See you in St. Louis!

First place:

Summary Judgment: Is 'Gay' Libel Per Se?
Courtney A. Barclay
Assistant Professor
Syracuse University

Barclay found a way to incorporate direct discussions of diversity issues in her classroom by having her students explore the judicial con icts surrounding the nding of "gay" as a defamatory statement. Here is how she implemented her teaching idea.

(Continued on page 2)

(Head Notes, continued from page 1)
to recognize my knee-jerk media reaction and, therefore, limitations.

Now imagine if I were a judge, deciding some case involving communications technology. Even though I would think with great con dence that I was cutting edge in terms of my media, I would not be. And this technological bravado mixed with a lack of awareness would have the potential to seriously undermine media if I decided a case in a way that presumed, say, that live TV was still the best source for breaking news. I would think that my nger was on the pulse of media like others in the know, but I would be wrong.

It can be a real problem when this happens in a courtroom.

Two examples come immediately to mind from reported cases. The rst was an early opinion regarding e-mail in which a court could have decided that a wiretap statute applied to the interception of e-mail messages. The court instead applied a law with fewer consequences for e-mail interceptors, and some say the case was decided that way because the technology behind e-mail wasn't clear. The second was an opinion regarding passwords on computers. Must police assume that passwords exist on a computer? No, one court answered. That's an opinion that always riles my students who know that, in their world at least, passwords are ever-present.

Given those sorts of decisions, it's understandable that the Supreme Court has recently suggested a cautious approach in certain cases involving technology. *City of Ontario v. Quon* concerned an employee's personal text messages sent and received on a device provided by a government employer. The Court suggested that the judiciary "risks error" if it writes too broadly in a case involving the "implications of emerging technology." It used to be, the Justices suggested, that they themselves could freely analyze technology and the implications of a legal decision regarding it because the justices themselves had personal relevant experience, like using a telephone booth to make a phone call. Instead, the Court wrote, a narrower holding in such cases was more appropriate today because technology was moving forward at such a pace that it became obsolete almost as the case was being decided. Moreover, the Court wrote, society's acceptance or rejection of such technology could change quickly and make a broader opinion more far-reaching than the Justices ever recognized possible. All the more true, the Court suggested, when judges themselves don't use and therefore don't necessarily understand the technology at issue.

Which takes me back to that Sunday night as we awaited the news on Osama bin Laden. Ultimately, of course, it's of great interest to me that my son's initial reaction upon getting the news of the President's address to the nation was to suggest that we all turn on CNN. But he rst heard about it on Facebook and both my sons grabbed their laptops on their way in to watch TV with us to gure out what was happening. They were using the internet to research, to learn, and to communicate with others about what was known and what wasn't. I felt media moving forward and me eating its dust.

As I was in the process of writing this, one of my sons sent word that a campus in Missouri was on lockdown because of a

(Continued on page 3)

(Teaching competition winners, continued from page 1)

After going over the basics of libel law in class, Barclay assigned her students a scholarly article by Robert Richards that discusses contradicting approaches in the courts regarding the question of whether "gay" constitutes libel per se. In addition, students were asked to nd and read at least two other scholarly articles on the issue. Then, students were asked to (1) submit a written decision to a motion for summary judgment in a case where a self-identi ed heterosexual man sued for a blog post detailing an alleged sexual encounter between the plaintiff and another man; and (2) present their ndings on this case to the class. The class, after a class debate, voted on the motion.

Barclay reports this project enabled her students to understand not only how a libel case works—especially the scope of defamation—but also how court decisions impact society at large and minorities. Moreover, her students were able to have an engaging, informed class debate through summarizing and synthesizing scholarly legal arguments in advance.

Second place:

Expanding Our Horizons: A Comparative Law Self-Study
Holly Kathleen Hall
Assistant Professor
Arkansas State University

In a graduate-level "Advanced Communications Law" class that focuses on U.S. communication law, Hall devotes a week every semester to comparative media laws. Students are asked to choose a country and an area of media law in that country, research that legal topic and compare it with U.S. law, and present their ndings to the class.

Hall started implementing this idea partly because her school has been observing an increased presence of international students. But, she also felt, perhaps more importantly, that it is essential to acknowledge that we live in a global society and need to be aware of different cultural philosophies and approaches in media laws. She reports that the "self-discovery" aspect of this project is critical and that this project enables students not only to recognize but also to celebrate the differences in perspectives, cultures, and philosophies around the world.

Third place:

The Diversity Principle in Theory and Practice
Jeffrey Layne Blevins
Associate Professor
Iowa State University

Blevins teaches an undergraduate elective course entitled "Electronic Media Technology and Public Policy" and instructs his students to explore the principles of diversity in three phases. The rst phase is a short survey that invites students to re ect on their own electronic media consumption habits and the reasons for their choices. After the ndings from the survey are presented

(Continued on page 3)

(Head Notes, continued from page 2)
pected shooter. I asked him where he'd read it and he explained that it wasn't yet in the news but that a helpful Reddit poster had provided a link to the college's webpage announcing the lockdown. Reddit, mind you, is a website calling itself "the voice of the internet" and promising "news before it happens."

A new day has dawned. And another new day is right around the corner. We'll see where the law takes us.

(Teaching competition winners, continued from page 2)
to the class, the class discusses what type of audience these programs and networks are designed to appeal to, as well as ownership and control of these networks. The second phase asks students to choose a speci c diversity issue and raise public awareness about that issue through various forms of public communication (e.g., writing a blog, producing a photo essay, creating a short documentary, planning an event). The nal phase is the submission of an analytical paper that assesses the need and ef cacy of public policy for the diversity issue that was chosen for the second phase of this project.

Blevins reports the following learning outcomes associated with his approach: "First, students are not just learning about the concept of diversity, they are practicing it through some form of public communication. Second, students discover their own interest in supporting the principle of diversity. Ultimately, students realize that diversity is not just a 'minority' issue that only serves minority interests. Rather, the principle serves the public interest by enhancing the diversity of electronic media networks and content."

Penn State University announces the *Journal of Information Policy*

By Benjamin W. Cramer
Pennsylvania State University

A rst-of-its kind, peer-reviewed online journal – an effort to bring contemporary scholarly research and analysis of signi cant information policy issues to the attention of policymakers in a timely fashion – has been launched by Penn State University, with its inaugural issue published in February 2011.

The Journal of Information Policy is available for free online at www.jip-online.org and unsolicited submissions are being accepted. The journal is produced by the Institute of Information Policy (IIP) in the College of Communications at Penn State, and is edited by IIP co-directors Amit M. Schejter and Richard D. Taylor. Post-doctoral fellow Benjamin W. Cramer, a former student editor for *Media Law Notes*, is the journal's managing editor. *The Journal of Information Policy* is supported by a generous grant from the Ford Foundation.

The journal's advisory and editorial boards consist of researchers from across the globe. The journal represents a change in the traditional approach and interaction between researchers and policymakers.

"Academic research, while focused on topics of interest to the researchers, tends to be lengthy, opaque, produced gradually and subjected to extended review," said Taylor, who holds the Palmer Chair of Telecommunication Studies and Law. "Policymakers need research to be brie y summarized, address current issues in terms they understand and be available in real time. This project is designed to bridge that gap and to stimulate new voices."

The primary audience for the journal includes policymakers; leaders in government, industry, and academia; legislators and their staffs; regulators; attorneys; standards bodies; and other participants in American and international policy discourse on information, communication, media, telecommunications and the information society.

With a broad interpretation of the term "information policy," the editors believe that research published in the journal can make an important impact on a rapidly changing society. Relevant topic areas include telecommunications law and policy, the information society, and government information policy, including citizen access to information.

"On numerous occasions in the past few years we have heard the pleas of senior administration of cials for contemporary and relevant research that can guide their communications policy decisions," said Schejter, an associate professor in the College of Communications. "The turn-around time from rst submission of papers to publication has been less than ve months, and we think we can do even better. This assures the best research will be available when it's needed."

Articles in *The Journal of Information Policy* will be published on a rolling basis, enhancing its timely impact. Articles can be published in as little as ve weeks from submission, depending on the results of the expedited double-blind peer review. The journal is committed to publishing works by academic researchers, policymakers, industry of cials, and civil society leaders; and contributions are invited from both established and new voices.

Benjamin W. Cramer earned a doctorate in mass communications from Pennsylvania State University in 2009. He is the author of the book Freedom of Environmental Information *(LFB Scholarly Publishing, 2011) and is currently a post-doctoral scholar at the Institute for Information Policy at Penn State.*

2011 AEJMC Southeast Colloquium division report

By Daxton "Chip" Stewart
Southeast Colloquium Chair
Texas Christian University

The Law & Policy Division continued its tradition of excellence in scholarship at the 2011 AEJMC Southeast Colloquium, which was hosted at the University of South Carolina in Columbia over three beautiful days in mid-March.

Of the conference's 15 research sessions, ve were from Law & Policy, and of the 57 papers presented, 19 were from our division, meaning we were responsible for exactly one-third of the research sessions and papers.

If any one theme emerged from the Law & Policy research sessions, it was the application of media law principles to online tools and forums. Nearly half of our papers speci cally addressed online issues: Net neutrality, privacy, anti-SLAPP laws applied to social networking sites, and multiple copyright papers.

Jonathan D. Jones from the University of North Carolina-Chapel Hill won the top student paper award for his examination of internet libel jurisdiction, while Bill Hornaday from Indiana University won the third-place student paper award for his study of the legal implications of using Twitter as a news source.

Meanwhile, several faculty and students brought new looks to classic First Amendment topics, from a reevaluation of *New York Times v. Sullivan* by Wat Hopkins to papers on more recent cases such as *Snyder v. Phelps* and *U.S. v. Stevens*. Matt Bunker and student William Nevin from the University of Alabama joined with Clay Calvert from University of Florida for an award-winning paper on strict scrutiny. Calvert paired with University of Florida student Mirelis Torres examining a "right to lie" inherent in recent First Amendment cases, a paper that earned second-place faculty paper honors.

In many ways, our research competition was representative of past years. Calvert presented nearly enough papers for his own research session, having a hand in each of the three top faculty paper award-winners. University of North Carolina-Chapel Hill students had a strong showing in the student competition, presenting ve papers and bringing home the rst- and second-place student paper awards (Jones and Roxane Coche, respectively). And we drew several participants from colleges in the South: North Carolina, South Carolina, Florida, Florida State, Memphis, Georgia Institute of Technology, Alabama and Virginia Tech each brought at least one representative to the conference.

But we had plenty of presenters who traveled longer distances to get to the capital of the Palmetto State. Students also came from the Indiana University, Ohio University and Rutgers. Esteemed professors Bob Richards from Penn State and Tori Ekstrand from Bowling Green State University also presented papers. In one of our division's most compelling papers, Calvert partnered with Florida undergraduate student Jerry Bruno, who gave a great presentation on expunging criminal records while online records still exist, discussing his personal challenges with this situation.

Overall, the Law & Policy Division had a 54 percent acceptance rate (19 of 35 papers), with 25 student submissions (11 accepted) and 10 faculty or joint faculty-student submissions (8 accepted).

AEJMC President-Elect Linda Steiner from the University of Maryland attended several of the Law & Policy Division research sessions and mentioned to me how impressed she was with the quality of our research presentations and the thoughtful feedback provided by our discussants.

I'd like to take this chance to thank our discussants – Cathy Packer, Wat Hopkins, Tori Ekstrand and Jay Bender – who truly did a tremendous job. Similarly, thank you to our 35 reviewers, who each handled three papers with aplomb and in a timely manner.

The 2012 Southeast Colloquium will be hosted by Virginia Tech, March 8-10. Our research chair for the colloquium will be Courtney Barclay of Syracuse, who I'm sure will continue our run of strong showings at the conference.

Correction to the minutes of the Law & Policy Division 2010 annual meeting

The minutes from the 2011 Law and Policy Division meeting published in the Fall edition of Media Law Notes were incorrect. On page four, the nal paragraph of the **Report from the research chair** subsection should read:

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 of UNLV (third place). The rst-place winners each won a plaque and Clay was at the meeting to receive his, as were Chip and Stephen. Hearty applause ensued.

The **Report on the southeast regional colloquium** should read:

Southeast Colloquium Chair Chip Stewart said it was a "great conference" this year and thanked UNC-Chapel Hill for being wonderful hosts. He thanked the paper 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.

Law & Policy Division
2011 AEJMC Conference schedule

Mark your calendars for August in St. Louis for research and panel sessions you won't want to miss at the AEJMC national conference. Some highlights include a four-hour workshop on Tuesday on teaching media law, featuring textbook authors and faculty who will provide news-you-can-use tips and exercises, as well as sessions on whether government should save journalism and the 40th anniversary of *New York Times vs. United States*.

Here is the line-up:

Tuesday, August 9: Pre-conference sessions
- 8 a.m.-12 p.m. Access to Information in Latin America, with International Communications Division
- 1-5 p.m. Teaching Media Law

Wednesday, August 10
- 10-11:30 a.m. The Law and Ethics of Social Media, with the Media Ethics Division
- 11:45 a.m.-1:15 p.m. Effects of *Citizens United*, with the Political Communication Interest Group
- 1:30-3 p.m. Should Government Save Journalism? With Media Management Division

Thursday, August 11
- 8:15-9:45 a.m. Refereed research paper session
- 11:45 a.m.-1:15 p.m. *Hazelwood* and Student Press Rights panel, with Scholastic Division
- 3:15-4:45 p.m. Refereed research paper session

Friday, August 12
- 8:15-9:45 a.m. Refereed research paper session
- 12:15-1:30 p.m. Scholar-to-Scholar poster session
- 1:45-3:15 p.m. *New York Times v. U.S.* panel, with History Division
- 5:15-6:45 p.m. Refereed research paper session
- 7-8:30 p.m. Law & Policy members meeting

Saturday, August 13
- 8:15-9:45 a.m. Refereed research paper session
- 10-11:30 a.m. Student Open Records Audits as a Teaching Tool panel, with Newspaper Division

2011 AEJMC Annual Conference Law & Policy Division panels

By David Cuillier
University of Arizona
Vice Head/Program Chair

This is an AEJMC conference where you will want to come early and stay often. Two pre-conference workshops will be held during Tuesday, one on freedom of information around the world and the other on teaching communication law. Panels about corporate speech, government intervention, social media law and ethics, and other topics will be throughout the week.

Here is the line-up for sessions co-sponsored by the Law and Policy Division, or of speci c interest to law members, not including the refereed research paper panels. Mark your calendars and plan your ights accordingly!

Tuesday, August 9: Pre-conference

9 a.m.-12 p.m. Freedom of Information Around the World: The International Communication and Law and Policy divisions are co-sponsoring three pre-conference panels that will focus on Freedom of Information legislation around the world, speci cally talking about FOI as a human right, comparing access in different regions, and the diffusion of FOI law in Latin America.

Panelists will include Cheryl Ann Bishop, Quinnipiac; Gregory Magarian, Washington University in St. Louis; Jane Kirtley, Minnesota; Nikhil Moro, North Texas; Sundeep Muppidi, Hartford; Maria de los Angeles Flores, Texas A&M; Rosental Alves, Texas at Austin; Jeannine Relly, Arizona; Sallie Hughes, Miami; and Manuel Chavez, Michigan State.
(See page 8 for more information.)

1-5 p.m. Everything You Need to Know about Teaching Communication Law: Whether you are a rst-timer or seasoned teacher of communication law, you will bene t from participating in this half-day pre-conference workshop on teaching communication law. This workshop will consist of three 50-miniute sessions focusing on textbooks, classroom teaching exercises, and overcoming challenges such as teaching to large lecture classes and combined law-ethics courses.

Panelists will include Clay Calvert, Florida; Kent Middleton and Bill Lee, Georgia; Joseph Russomanno, Arizona State; Paul Siegel, Hartford; Genelle Belmas, Cal State Fullerton; T. Barton Carter, Boston University; Roy L. Moore, Middle Tennessee State University and Michael Murray, University of Missouri, Saint Louis; David Cuillier, Arizona; Steven Helle, Illinois; Cynthia Mitchell, Central Washington; Jasmine McNealy, Syracuse; Karon Speckman, Missouri; Courtney Barclay, Syracuse; and Bob Richards, Penn State.
(See page 9 for more information.)

Wednesday, August 10

10-11:30 a.m. New Territory: Developing Social Media Law and Ethics Instructional Approaches: Co-sponsored with the Media Ethics Division, this panel will discuss the ethical implications of social media, guidelines for using social media tools in journalism, and intellectual property issues.

Panelists will include Patrick Plaisance, Colorado State; Chip Stewart, Texas Christian; Mac McKerral, Western Kentucky; and Shannon Martin, Indiana.

11:45 a.m.-1:15 p.m. How Much In uence Should Corporations Have on Political Campaigns?: The Effects of the Supreme Court's Ruling in the *Citizens United v. Federal Election Commission* Case: The division joins the Political Communication Interest Group to explore issues surrounding corporate speech and political in uence.

Panelists include Sandra Chance, Florida; Robert Kerr, Oklahoma; Jason M. Shepard, California State, Fullerton; Ed Carter, Brigham Young; and Gilbert Bailon, editorial page editor of the St. Louis Post Dispatch.

(Continued on page 7)

2011 AEJMC Annual Conference Law & Policy Division panels

Wednesday, August 10 (cont'd)

1:30-3 p.m. Should the Government Save Journalism?: Or is the answer simply reinvention? This panel, co-sponsored with the Media Management and Economic Division, will explore proposed U.S. government interventions to "rescue" the industry based on recent hearings at the Federal Trade Commission and new research from legal and communication scholars.

Panelists will include Sri Kasi, vice president and general counsel for The Associated Press; Eric Newton, Knight Foundation; Robert Picard, Oxford; Penny Abernathy, North Carolina at Chapel Hill; Josh Stearns, associate program director, Free Press; and Victoria Smith Ekstrand, Bowling Green State.

Thursday, August 11

11:45 a.m. to 1:15 p.m. Shifting Away from Courts: A Conversation about Sound Educational Policy and Training for Scholastic Journalism: Scholastic Journalism Division teams with us to provide a panel exploring pressing issues of scholastic press rights, hearing from those in the trenches.

Panelists include Gerard Fowler, Saint Louis; Frank LoMonte, Student Press Law Center; Aaron Manfull, adviser of the Francis Howell North High School paper, St. Charles, Mo.; Charles McCormick, JEA's 2010 Administrator of the Year; and Nikki McGee, former editor-in-chief, The Wolf's Howl, Wentzville, Mo.

1:30-3 p.m. How Do We Teach Young Journalists about First Amendment Law in a Rapidly Evolving Media World?: Most laws involving the First Amendment do not distinguish between journalists and non-journalists. In fact, advancing technology allows anyone with a computer to be a "journalist." Is it still necessary to teach basic First Amendment principles to aspiring journalists? The Council of Af liates is organizing this panel of national experts to provide answers.

Panelists will include Lucy Dalglish, executive director, Reporters Committee for Freedom of the Press; Ken Paulson, president of the American Society of News Editors and president of the First Amendment Center; and Charles Davis, facilitator of the Media of the Future Initiative for Mizzou Advance, University of Missouri.

Friday, August 12

1:45-3:15 p.m. *New York Times v. United States*: The Pentagon Papers Case 40 Years After: The History Division co-sponsored this panel to examine the importance of this landmark case, even four decades later.

Panelists include Jeffrey Smith, Wisconsin-Milwaukee; Christina Wells, Missouri-Columbia; Arnie Robins, editor, St. Louis Post-Dispatch; and Chuck Tobin, media law attorney, Holland & Knight.

7-8:30 p.m. Law and Policy Division Members meeting: Make sure to show up to vote for of cers, honor top paper winners, and vote on division matters.

Saturday, August 13

10-11:30 a.m. Student Open Records Audit as a Teaching Tool: This panel, co-sponsored by the Newspaper Division, will provide practical tips for conducting public record audits in any community, either as a class project or teamed with professionals for statewide audits.

Panelists with rst-hand experience in access audits include Carolyn Carlson, Kennesaw State; Charles Davis, Missouri; Jason Shepard, California State, Fullerton; and Steve Stepanek, Georgia Southern.

Pre-conference workshop on freedom of information around the world

What: **Freedom of Information Around the World**
When: 9 a.m. to noon on Tuesday, August 9, 2011

Overview

Freedom of information laws are spreading around the world with about 90 countries protecting the rights of citizens to access their government information. But laws differ and the way they are applied even more so.

The workshop, from 9 a.m. to noon on Tuesday, August 9, 2011, will feature three 50-minute sessions, led by experts in international FOI law and include panelists who can speak to developments in this growing area of law. The workshop is co-sponsored by the Law and Policy Division and International Division.

Session 1: Freedom of information as a human right

In the rst session, experts will discuss the growing body of work making the case that freedom of information is a human right necessary for individuals to live and govern. This is the basis for many countries' choices to adopt access laws.

Moderator: Charles Davis, Missouri
Panelists:
Cheryl Ann Bishop, Quinnipiac University
Gregory Magarian, Washington University in St. Louis
Kyu Youm, University of Oregon

Session 2: Comparative/foreign law approach to freedom of information

This session will look at the growing body of legal research that compares freedom of information laws from around the world. Panelists have examined, for example, South Korea's freedom of information law in relation to the United States.

Moderator: Jeannine Relly, Arizona
Panelists:
Jane Kirtley, University of Minnesota, Europe and Eurasia FOI law
Nikhil Moro, University of North Texas, India FOI law
Sundeep Muppidi, University of Hartford, India and Singapore FOI law
Kyu Youm, University of Oregon, South Korea FOI law

Session 3: The diffusion of freedom of information legislation in Latin America

Freedom of information laws are taking off in Latin America - El Salvador, for example, just passed its FOI law. This session will focus on FOI law in Mexico and other countries that could affect government transparency in the Western Hemisphere.

Moderator: Celeste Gonzalez de Bustamante, Arizona
Panelists:
Rosental Alves, University of Texas at Austin
Manuel Chavez, Michigan State University
Sallie Hughes, University of Miami
Jeannine Relly, University of Arizona
Juliet Pinto, Florida International University
Maria Flores, Texas A&M

Pre-conference workshop on teaching communication law

What: **Everything You Need to Know about Teaching Communication Law**
When: 1 to 4 p.m. on Tuesday, August 9, 2011

Overview

Teaching communication law is challenging especially when law is not your research area. Whether you are a rst-timer or seasoned teacher of communication law, you will bene t from participating in this pre-conference workshop on teaching communication law.

The workshop, to be held from 1 to 4 p.m. on Tuesday, August 9, 20011, will consist of three 50-miniute sessions. Featured panelists, ranging from authors of communication law textbooks to experienced communication law teachers, will share their experience and suggestions. Each panelist will present for 10-12 minutes, leaving time for questions and discussion with the audience. The details of each session are listed below.

Session 1: Conversations with textbook authors

In the rst session, communication law textbook authors will share their suggestions on how to best use their textbook for a class. The authors will also address issues including the strengths of their book, the challenges of writing a textbook in a eld that constantly changes, and if there are certain chapters they feel must be covered in classroom.

Moderator: Minjeong Kim, Colorado State University
Panelists:

Clay Calvert, author of *Mass Media Law*; Kent Middleton and Bill Lee, authors of *The Law of Public Communication*; Paul Siegel, author of *Communication Law in America;* Joseph Russomanno, author of *The Law of Journalism and Mass Communication;* Roy L. Moore and Michael Murray, authors of *Media Law and Ethics;* Genelle Belmas, author of *Major Principles of Media Law;* T. Barton Carter, author of *The First Amendment and the Fourth Estate*

Session 2: Tips on teaching methods and projects

This session will feature experienced communication law teachers sharing teaching methods and projects that have proved successful for them in the classroom.

Moderator: Dan Kozlowski, Saint Louis University
Panelists:

Dave Cuillier, University of Arizona
Steven Helle, University of Illinois
Cynthia Mitchell, Central Washington University
Courtney Barclay, Syracuse University

Session 3: Challenging Issues Related to Teaching Communication Law

The last session will address various challenges related to teaching communication law including teaching communication law as a large lecture (100+ students) course, teaching media law to non-journalism majors (Ad, PR, Telecom students), and teaching law and ethics in a combined class.

Moderator: Amy Sanders, University of Minnesota
Panelists:

Jasmine McNealy, Syracuse University
Bob Richards, Penn State University
Karon Speckman, University of Missouri

Legal annotated bibliography

By Michael T. Martínez, PhD candidate
University of Missouri

Corporate Speech

Boer, A. (2011). "Continental Drift: Contextualizing Citizens United by Comparing the Divergent British and American Approaches to Political Advertising." 34 *Boston College International and Comparative Law Review* 91.

There is perhaps no more vital an issue to a healthy democracy than its attitude towards political speech. Because political speech – and particularly political advertising – has a profound in uence on the outcomes of elections, most vibrant democracies recognize the need to avoid arbitrary distinctions among political advertisers that might sway elections for reasons other than the popularity of the candidates. The First Amendment avoids arbitrary distinctions by ensuring a free and open marketplace of ideas in the political speech realm, with almost no restrictions on political advertising. The United Kingdom, by contrast, addresses the problem by way of an outright ban on political advertising. This article explores the recent, and controversial, *Citizens United* decision in the context of avoiding such groundless distinctions. In particular, it compares the American approach to the British approach, and argues that *Citizens United* is a correct reaction, within American constitutional law and case law, to the problem of arbitrary distinctions in the political advertising realm.

Briffault, R. (2011). "Corporations, Corruption, and Complexity: Campaign Finance After *Citizens United*." 20 *Cornell Journal of Law and Public Policy* 643.

Few campaign nance cases have drawn more public attention than the Supreme Court's decision in *Citizens United v. FEC*. The Court's invalidation of a sixty-year-old federal law - and comparable laws in two dozen states - banning corporations from engaging in independent spending in support of or opposition to candidates strongly af rms the right of corporations to engage in electoral advocacy. Although anxiety about the role of corporate money in politics may be well-founded, the impact of *Citizens United* may ultimately have less to do with corporate spending and more with the changes the decision could lead to in other areas of campaign nance – including areas that the Court itself insisted were not at issue in the case.

Gardner, J. A. (2011). "Anti-Regulatory Absolutism in the Campaign Arena: *Citizens United* and the Implied Slippery Slope." 20 *Cornell Journal of Law and Public Policy* 673.

There is one corner of constitutional law where "no" means "no." In the eld of campaign speech, and in the closely allied area of campaign spending, the Supreme Court has construed the Constitution to permit essentially no government regulation at all. For more than thirty years, the Court has aggressively defended a constitutional policy creating a zone of virtually complete freedom from government-imposed limitations of either speech or spending undertaken with the aim of in uencing elections. In *Citizens United v. FEC*, decided last term, the Court went even further, revoking one of the very few forms of government authority to regulate campaign spending that the Court had previously held permissible. This raises an interesting question, not so much about the speci c shape of legal doctrine, but about the Court's general approach to this particular eld of constitutional law. It is strict and rigid. It eschews nuance. It is highly unusual in the annals of constitutional law. The question this article explores is: Why this approach? Why not something even a little bit more moderate? On what set of assumptions might it seem appropriate to the Court to permit not even the slightest legislative restriction of campaign spending?

Nichols, P. M. (2011). "The Perverse Effect of Campaign Contribution Limits: Reducing the Allowance Amounts Increases the Liklihood of Corruption in the Federal Legislature." 48 *American Business Law Journal* 77.

The regulation of campaign nance brings together vexing issues of democracy, corporate political speech, corruption, and the electoral system. Recent jurisprudence has engendered substantial commentary on those who perceive a "free corporate speech agenda" among the newer appointees to the United States Supreme Court, with particular attention paid to the distinction drawn between types of speech. *Citizens United v. FEC*, in which the Supreme Court struck down campaign nance provisions that regulated corporate speech differently than individual speech, has focused even more attention on the constitutional aspects of campaign nance.

Constitutional questions, while of fundamental importance, do not constitute the totality of issues encompassed by the regulation of campaign nance. Many of these issues are critical to business and the business environment. *Citizens United*, for example, raises questions about the very nature and de nition of a business organization. Less esoteric but just as important is the effectiveness of campaign nance regulation in producing a regulatory environment free of the in uences of corruption. Scholarly review of campaign nance regulation gives virtually no attention to the actual mechanism used by such regulation: limits on the amount that each actor can contribute to a particular campaign.

Schotland, R. A. (2011). "The Post-*Citizens United* Fantasy-Land." 20 *Cornell Journal of Law and Public Policy* 753.

Now that we have the decision in *Citizens United*, the crucial next step is obvious: to enact the newly, acutely needed updating of federal and state disclosure requirements. The majority's opinion makes unarguably clear that disclosure of funding sources will, even in the new deregulated regime, continue to be constitutional. And given the majority's approach (not merely the Court's result on this case's hard-to-escape facts), assuring effective disclosure is more important than ever. Everyone who cares about protecting voters' ability to know who is giving or spending money to sway voters - and also about both the candidates' accountability for their nancial support and their supporters' accountability for ood-funding campaigns - must move beyond deploring the Court's decision. For at least several years before *Citizens United* came down, it was clear as could be that

(Continued on page 11)

(Bibliography, continued from page 10)

we needed to update disclosure laws that were obsolete in limiting coverage to only "express advocacy" efforts. We need to do, as soon as we can, what democracy needs, free of partisan or interest-group goals.

Wert, J. J., R. K. Gaddie, et al. (2011). "Of Benedick and Beatrice: *Citizens United* and the Reign of the Laggard Court." 20 *Cornell Journal of Law and Public Policy* 719.

The *Citizens United* decision struck down long-established prohibitions on the use of corporate funds to provide direct nancing for independent political advocacy campaigns. The decision stimulated a predictably dire response that wealthy corporations would now determine elections and, by extension, public policy. This article explains the behavior of the *Citizens United* Court as part of a larger pattern of behavior by a "laggard" or counter-majoritarian Court, where a 5-4 conservative majority rendered a decision that is part of a larger exercise in posturing and signaling to the other institutions of government. The actual consequences of *Citizens United*, much like previous conservative signaling decisions by this Court over the past decade, have few substantive policy consequences. These decisions instead articulate a set of principles held by the minimal winning coalition on the Court, and are mainly an effort of the counter-majoritarian Court to gather power to itself in a political system that moved away from the Court's core principles.

Copyright

Gard, E. T. (2011). "Copyright Law v. Trade Policy: Understanding the *Golan* Battle Within the Tenth Circuit." 34 *Columbia Journal of Law & the Arts* 131.

The Tenth Circuit seems to be in a battle with itself over the meaning and de nition of our copyright system with an internal split in deciding *Golan v. Gonzales* and *Golan v. Holder*. In the last two years, the Tenth Circuit de ned the public domain as a constitutionally protected component of the copyright system, and then reversing itself, de ned copyright (ignoring the public domain) as a tool for international trade, where treaty obligations outweigh tradition. The *Golan* case stands at the center of competing priorities and de nitions.

Gard, W. R. and E. T. Gard (2011). "The Present (User-Generated Crisis) is the Past (1909 Copyright Act): An Essay Theorizing the "Traditional Contours of Copyright Language." 28 *Cardozo Arts & Entertainment Law Journal* 455.

The 1909 Copyright Act, the 1976 Copyright Act, and even the late-twentieth century amendments like the Digital Millenium Copyright Act and the Copyright Term Extension Act, are trying to af x ownership interests in works. Each text grapples with perception of changing notions of copyright, particularly the impact of new technology both on exactly what is copyrightable and how to protect copyrightable works. While technology plays an important driving force in copyright law, what underpins any notion of con guring ownership is the ability to control the thing of value, and value is most directly related to exchange and circulation, not to xation of or publication of works. Thus, as modes of exchange change, a variety of conceptualizations of routing or rooting the ownership interests are introduced. The transformation throughout the twentieth century of the dynamics of exchange inherently introduced problems into these ownership interests that the 1976 Copyright Act tried to address, and yet, we found ourselves once again in a crisis where the law does not keep up with the cultural needs of the times, as value and concepts of circulation and exchange changed in ways that the 1976 Copyright Act had not been designed to address.

Storch, J. and H. Wachs (2011). "A Legal Matter: Peer-to-Peer File Sharing, The Digital Millenium Copyright Act, and the Higher Education Opportunity Act: How Congress and the Entertainment Industry Missed an Opportunity to Stem Copyright Infringement." 74 *Albany Law Review* 313.

The peer-to-peer le sharing regulations included in the Higher Education Opportunity Act ("HEOA") are the latest chapter in a story of an industry that has pressured colleges and their students, as well as an amenable Congress, to force higher education institutions to act against illegal le sharing and the technology that supports it. The Department of Education estimated that the written plan elements of the peer-to-peer provisions of the HEOA regulations will create an additional 92,544 hours of work, while the noti cation requirements will create an additional 1424 hours of work across higher education, for a total of almost 100,000 hours devoted to stemming illegal peer-to-peer le sharing by students. Colleges should consider the unique environment at each institution, and craft peer-to-peer compliance with an eye toward that environment and the lessons the institution wishes to impart to its students, while not demonizing any speci c technology.

Defamation

Bunker, M., Shenkman, D. E., & Tobin, C. D. (2011). "Not That There's Anything Wrong with That: Imputations of Homosexuality and the Normative Structure of Defamation Law." 21 *Fordham Intellectual Property, Media and Entertainment Law Journal* 581.

Why do some courts continue to hold that a false statement that an individual is gay is defamatory? Even more, why do other courts still view this characterization as defamatory per se? What are the policy implications of these decisions on the direction of our society? This article sheds light on the tangled combination of the descriptive and the normative bases on which courts nd defamatory meaning. It examines a range of cases in which the central question was whether a false statement that the plaintiff was gay was defamatory. These decisions present a wide range of opinions, with some recent cases questioning whether an allegation of homosexuality should ever be construed as defamatory. The article proposes courts decline to nd defamatory meaning not only in statements involving imputations of homosexuality, but in other statements concerning an immutable characteristic or involuntary state where a nding of defamation would tend to stigmatize or promote discrimination against that class of persons.

(Continued on page 12)

(Bibliography, continued from page 11)

Indecent Speech

Hiserman, C. (2011). "Silencing Fox: The Chilling Effects of the FCC's Indecent Speech Policy." 52 *Boston College Law Review* 15.

On July 13, 2010, the U.S. Court of Appeals for the Second Circuit in *Fox Television Stations, Inc. v. FCC* struck down the FCC's indecent speech policy, reasoning that the policy was unconstitutionally vague. The Second Circuit's decision has been viewed as a victory for broadcasters and others who thought the FCC's indecent speech policy suppressed constitutionally protected speech. This article argues that the decision in *Fox* was correct and appropriately set the stage for the Supreme Court to overturn a seemingly outdated precedent set in the Court's 1978 decision, *FCC v. Paci ca Foundation*.

Anonymous Speech

Holden, B. (2011). "Who Was That Masked Man?" 1 *Reynolds Courts & Media Law Journal* 33.

This article focuses narrowly on the subject of when a judge in a "Public Discourse" libel lawsuit ought to order a third-party provider such as a newspaper or website to unmask the anonymous blogger. It attempts to balance the *New York Times* actual malice standard with the evolving reality of anonymity on the Internet and the practical cost and complication of identifying, serving and gaining jurisdiction over anonymous speakers who may be a state or a continent away.

Protected Speech

Hood, N. G. (2011). "The First Amendment and New Media: Video Games as Protected Speech and the Implications for the Right of Publicity." 52 *Boston College Law Review* 617.

Over the past four decades, video games have evolved from the niche market of arcade halls to a multibillion dollar home entertainment industry. At the same time, video games also advanced technologically from relatively simple forms of entertainment to a rich medium capable of communicating ideas and information. This article discusses the possibility that this new medium constitutes protected speech and the implications that protection may have on an individual's right of publicity.

"Hot News" Doctrine

Moon, J. (2011). "The "Hot News" Misappropriation Doctrine, the Crumbling Newspaper Industry, and the Fair Use as Friend and Foe: What is Necessary to Preserve "Hot News?"." 28 *Cardozo Arts & Entertainment Law Journal* 631.

We used to have to wait for the morning newspaper to update ourselves with the most recent news developments, which were still only as recent as yesterday. Today, we have access to breaking news virtually instantaneously and we have it, quite literally, at our ngertips. While advancements in technology have made breaking news, or so called "hot news," easily accessible mere moments after it occurs, it has also provided scrapers, those who copy and paste large portions, or even whole articles pertaining to breaking news onto their own websites, with the necessary tools to steal faster than ever. This article examines the current state of the newspaper industry as well as the misappropriation doctrine: the impact it has had in the past, the role it is playing in the present, and what it needs to become for the future of the industry. A legislative amendment to the Copyright Act would implement a necessary change that will save newspapers and creators of news content. Currently, the hot news misappropriation doctrine is only followed in certain states and rejected in others. Allowing the members of the newspaper industry to act in concert with each other by providing the same applicable standards across all the states is the greatest tool we can provide them in their ght for self-preservation.

Pornography

Sherman, M. (2011). "Sixteen, Sexting, and a Sex Offender: How Advances in Cell Phone Technology Have Led to Teenage Sex Offenders." 17 *Boston University Journal of Science and Technology Law* 138.

In 2007, a Florida state court prosecuted a sixteen-year-old girl, A.H., for electronically sending nude pictures of herself to her seventeen-year-old boyfriend. The court charged A.H. and her boyfriend with producing, directing, and promoting child pornography. Under Florida's child pornography laws, A.H. faces a severe prison sentence and may be required to register as a sex offender for the remainder of her life if convicted. This article focuses on how advancements in technology have surpassed the outdated child pornography laws meant to protect children, and discusses the appropriate legislative response to addressing the criminality of sexting. It analyzes possible solutions proposed by legal scholars and state legislators to address the issue of sexting. It also examines the constitutional issues that have surfaced as a result of child pornography charges being brought against teenagers for sexting and the impact the First Amendment may have on sexting legislation.

Free Speech

Webber, D. (2011). "Can We Find and Stop the "Jihad Janes"?" 19 *Cardozo Journal of International and Comparative Law* 91.

Colleen LaRose, an unassuming, pint-sized, blue-eyed, blonde from Philadelphia rst attracted the attention of law enforcement personnel in 2007 when she commented on YouTube, under the name "JihadJane," that she was "desperate to do something somehow to help" suffering Muslim people. Another American woman, Jamie Paulin-Ramirez, a trainee nurse from Colorado, converted to Islam and moved to Ireland. She was detained by authorities in Waterford, Ireland, in connection with the same terror plot, but, subsequently, was released. Homegrown terrorism and radicalization exist on both sides of the Atlantic with the Internet having a huge impact on these issues. The article examines the tools the United States and the United Kingdom have to nd and stop potential homegrown terrorists from perpetrating catastrophic acts of terror.

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