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# MEDIA LAW NOTES

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Law Division, AEJMC

Summer 2005

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## Rhode Island Again Center of 1<sup>st</sup> Amendment Storm

By Karen Markin  
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Rhode Island's state Board of Elections has pulled the plug on a mayor's weekly radio show on the ground that the airtime represented an impermissible campaign contribution by a corporation.

The mayor filed suit in the federal District Court of Rhode Island; a judge refused to issue a temporary restraining order that would allow the mayor to continue the show. The judge framed the case as concerning commercial airtime rather than speech, and she mentioned criminal charges against the mayor. The case is now headed for the First Circuit of the U.S. Court of Appeals.

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### Head Notes

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Is the radio show an exercise of the right of free speech, or is it the valuable commodity of airtime?

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## Media Law Notes Column, Summer 2005

By Anthony L. Fargo  
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Why do people go to AEJMC conferences?

That is a rhetorical question, for the simple reason that this is a written medium and you can't answer me right away. But it is worth pondering, and I would like to hear your thoughts on the subject, as well as your answers to a companion question: Why do some people stay away from AEJMC meetings?

I've been thinking about those questions recently for two reasons: One, I've been reading the articles by Clay Calvert and Bob Richards in *Media Law Notes*. Clay and Bob have suggested some changes in the paper competition process and also argued that too much of the research presented at the convention never gets published and is therefore not of much use. As I'll demonstrate below, I don't completely agree with them, but I believe it's always healthy for any organization to look at itself from time to time to determine what it can do better. Certainly the paper competition system is not perfect. I think a conversation about what can be done better would be useful.

My second reason for thinking about why people attend AEJMC, or not, is more personal. I recently came to the end of the annual review process at my school. During that process I had to articulate what I had accomplished in the previous year in the areas of research, teaching, and service, but I also had to discuss how my accomplishments fit in with my philosophies for those three areas. I did a better job of listing accomplishments and writing research, teaching, and service philosophy statements than I did in linking the two together. Like many people, I often get so wrapped up in doing what needs to be done that day that I forget why I'm doing it.

*continued on page 6*

# The Baseball Metaphor and the Teaching of Media Law and Regulation

By Jeremy Harris Lipschultz,  
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Each spring semester for the past 16 years, I have taught a course in Telecommunication (once it was called Broadcast) Regulation. As a veteran of many seasons, I began to think about my interest in baseball and the use of it as a way to think about my teaching.



The triple-A team (4000/8000-level class of juniors, seniors and M.A. students) I was coaching this season came to the classroom with the usual mixture of strengths and weaknesses. There were a few superstars who had produced and anchored our student newscast or already worked in the field. There were the students with less ability but a lot of hustle. And, there were the bench-warmers who never seemed to get into the game.

As spring training began, we built a foundation of free expression theory and thought. Some students kept their eyes on the early fastballs (Hugo Black), sliders (Thomas Emerson), curves (*Texas v. Johnson*) and change-ups (*Miller v. California*). As we surveyed obscenity law and prepared for the first examination, I intentionally tossed some fat pitches in order to build student confidence on a challenging and sometimes difficult subject matter. The first exam went to extra innings, as we needed more time to grasp the concepts of strict and intermediate scrutiny. I am not above offering extra credit points, if I think it will help the group take their game to the next level. Essentially, I offered a modest few points in exchange for extra practice sessions.

With the season now underway, our middle innings began with discussions about broadcast regulation, cable rules and Internet technologies – the heart of the lineup. We had not lost any class periods to bad weather, and students had begun to watch the standings (Blackboard online gradebook). By this point, one student had left the team, one was on the disabled list, and one needed extra attention from the trainer. Nevertheless, the group mastered the concept of spectrum scarcity and understood the problem of print verses broadcast legal issues. They even seemed to be interested in the public interest standard.

The students would need to toughen-up for the final challenges late in the season. A group project required students to argue a case (revisiting *Pacific*) before a mock court. As the pennant race went down the stretch, they needed to finish and present a research paper. And then there was the take-home final examination. For some, the prospect of writing 10 more pages left them feeling like my beloved Chicago Cubs on a hot August afternoon.

In the end, this was not my best team, but there were many teaching successes. Most of the students hit for average, and a few even challenged for the batting crown. My pitching staff was solid, and I was pleased with the closers. I released one student on waivers (“F”), but I also taught some that were clearly headed for the majors. We took the work seriously, but we also had some fun learning the material. Despite technological and social change over the past 16 years, students from my first class would still recognize this course. The rules have not changed. We have some new cases that are important, but the fundamentals of free expression thought are, like baseball, rather timeless. ✂

## MEDIA LAW NOTES

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# Radio Show Ruled Impermissible Campaign Contribution

*Storm, from page 1*

Rhode Island is known for Cross pens, Hasbro’s Mr. Potato Head and First Amendment cases. It’s the state that brought you 44 *Liquormart v. Rhode Island*, *Lee v. Weisman* and *Lemon v. Kurtzman*.

Now the case to watch is *Laffey v. Begin*, filed in U.S. District Court in Rhode Island in May. Here’s an account of the events based on court documents and press reports.

The plaintiff, Stephen P. Laffey, a Republican, is mayor of Cranston, a city of 79,000. Earlier this year, he hosted “The Steve Laffey Show,” a weekly talk show on local radio station WPRO. The station recruited the mayor after hearing him host a talk show on a competing AM station. Laffey declined to take compensation for the show.

The show on WPRO aired for about two months, featuring guests as well as phone calls from listeners. Topics discussed included local school spending and property taxes, the death of Pope John Paul II, Terry Schiavo and adolescent attire.

Then Aram Garabedian, a Democrat and president of the Cranston City Council who ran unsuccessfully against Laffey in 2002, filed a complaint with the state Board of Elections. Garabedian claimed the show represented an in-kind campaign contribution by the radio station. State law prohibits corporations from making campaign contributions or expenditures on behalf of candidates. The elections board agreed with Garabedian and issued an order prohibiting Laffey from hosting the show.

Laffey filed suit in federal court, making three claims. First, he alleged that the Board of Elections had violated his First Amendment rights by enjoining him from hosting the show. Laffey said the state statute under which the board enjoined his show was unconstitutionally vague, “unconstitutionally overboard” [sic] and not viewpoint-neutral.

Second, the mayor claimed his rights were violated under the Equal Protection Clause of the Fourteenth Amendment. In support of the claim, the suit cited several instances of office holders having regular access to the media, yet not being squelched by the board. For example, the governor has a monthly radio show; the mayor of Providence has a monthly radio show and a cable show; a state senator writes a weekly column for a local newspaper; and a city councilwoman has a weekly television show.

Moreover, the suit noted, the board had issued an

was different because “everyone has uninhibited access to the newspaper,” according to the lawsuit. Yet the board forbade Laffey, an as-yet unannounced candidate, from hosting a radio show. (The next mayoral race is in 2006.)

Finally, Laffey claimed the elections board does not have the power to prevent him from doing the radio show because radio broadcasting is regulated by the federal government. Curiously, Laffey did not claim that the election board’s action constitutes a prior restraint. Laffey sought a temporary restraining order that would allow him back on the air.

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*U.S. District Judge Mary M. Lisi ruled that there is no First Amendment right to commercial airtime*

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U.S. District Judge Mary M. Lisi refused to grant the restraining order. According to local press reports, the judge said there is no First Amendment right to commercial airtime and considered some of Laffey’s main arguments very weak. Lisi said any right the mayor had to do the show arose from his relationship with the radio station and was incidental to free speech, according to a local columnist. The judge also questioned the election board’s adherence to state law and mentioned the possibility of criminal charges against Laffey, according to the columnist.

Since then, the elections board has appealed to the U.S. Court of Appeals for the First Circuit from the judge’s refusal to grant its motion to dismiss. Stay tuned. ✂

## Law Division Officer Honored

Dr. Lillian Lodge Kopenhaver (Florida International University), long-time Law Division member, former Division Head and current Professional Freedom and Responsibility Chair, received the prestigious Distinguished Alumnus award from her alma mater, Rowan University (formerly Glassboro State College) on May 13, 2005. Dr. Kopenhaver received the award Rowan’s commencement ceremonies before a crowd of more than 14,000 people.

# Law Division Program Schedule for San Antonio

By Anthony L. Fargo  
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This year, the Law Division is co-sponsoring one pre-conference workshop and 10 professional freedom and responsibility (PF&R), research, and teaching panels at the annual convention in San Antonio. In addition, the Division is running three “traditional” refereed paper sessions, one scholar-to-scholar session and a new high-density paper session. I suggest you pack comfortable shoes so you can get from one exciting session to another without blistering your feet.

## TUESDAY, Aug. 9

1:00 to 5:00 p.m.

### ***Court-ing News: Essentials for Journalists and Those Who Teach Them to Cover the Courts***

This pre-conference workshop will feature journalism and mass communication educators, judges, lawyers, and journalists in three discussion panels. The panels will examine what research says about the effects of media coverage on trials and the judicial process; what the media get right and, far too often, get wrong when they cover the courts; and the basic information that every journalist – and journalism educator – needs to know about the legal system. With courthouse coverage spreading to every beat in news organizations, from sports (Kobe Bryant, for example) to lifestyles (Martha Stewart), it is more important than ever that journalism students understand the judicial system. The \$10 cost for this workshop, which Newspaper Division is co-sponsoring, will cover a textbook that participants will receive.

## WEDNESDAY, Aug. 10

8:15 to 9:45 a.m.

### ***Anonymous Voices in the Marketplace of Ideas***

This panel will examine legal and ethical issues raised by the participation of undisclosed special interests in United States policymaking. Are existing laws and professional standards in public relations and journalism sufficient to ward off corrupting influences on government processes by anonymous sources of communication? The Media Ethics Division is lead sponsor of this panel.

1:30 to 3:00 p.m.

### ***Getting Published in Journals***

A sequel to last year’s highly popular session with editors of

AEJMC-sponsored journals, including Wat Hopkins of *Communication Law and Policy*. The Mass Communication and Society Division is lead sponsor for this panel.

5:00 to 6:30 p.m.

### **High Density Refereed Paper Session**

#### ***21<sup>st</sup>-Century Challenges in 1<sup>st</sup> Amendment Law***

Discussants: Tom Schwartz, Ohio State, Paul Siegel, Hartford, Jennifer Henderson, Trinity

Moderator: Elizabeth Blanks Hindman, Washington State

“Step Out of Line and the ‘Man’ Will Come and Take You Away: Using “Speech Zones” to Control Public Discourse in 21<sup>st</sup> Century America,” Paul Haridakis and Amber Ferris, Kent State

“Soldier or Citizen in the Digital Age? How Access to Technology and the Embedded Media Program Effect First Amendment Protections for Speech and the Military’s Authority to Restrict It,” Anaklara Hering, Florida

“Non-Discriminatory Access and Compelled Speech: Drawing the Distinction in the Cable Open Access Debate,” Nissa Laughner, Florida

“[Bleep], Lies and Videotape: Motion Pictures Edited for Content as a Window on the Control of Culture,” Joshua Lewis, Louisiana State (Second place student paper)

“Social Norms and the Copyright Law: An Analysis of Fan Web Sites,” Kathleen K. Olson, Lehigh

“Out of the Closets and into the Courtroom: The Evolving Law of Outing,” Holly Shapiro, Minnesota

“Reporters Skating on Judge Posner’s Thin Ice in a Branzburg Maze,” Samuel A. Terilli, Miami

“Humanitarian Law Project v. Ashcroft: National Security in the Homeland and Human Rights Elsewhere”, Roxanne S. Watson, Florida

“Vicarious Liability and the Private University Student Press,” Nancy J. Whitmore, Butler

## THURSDAY, Aug. 11

8:15 to 9:45 a.m.

### ***Consolidation in the Media and Telecommunications Industries and its Impacts***

Media Management and Economics Division is chief sponsor for this panel, which examines a two-year progress report of the Media Management and Economics Division’s Bibliography Project on consolidation of ownership in the media industries. The panel also examines Federal Communications Commission efforts to regulate media ownership and the effects of media consolidation on news and public policy.

**THURSDAY, Aug. 11 (Continued)**

**11:45 a.m. to 1:15 p.m.**

***The WLBT Case: Toward Free Expression and Diversity in the Media***

This panel examines the landmark case in which public outcry about a television station's performance established that the public could participate in issues before the Federal Communications Commission. The successful public challenge to WLBT's license renewal in Mississippi over issues of racist coverage helped give rise to the public interest communication movement, which was reinvigorated by recent debates over FCC efforts to change ownership regulations. The History Division is co-sponsoring.

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

**Scholar to Scholar Session**

Discussants: Brian Thornton, Northern Illinois, Stan Tickton, Norfolk State

"Protecting the Public Policy Rationale of Copyright: Reconsidering Copyright Misuse," Victoria Smith Ekstrand, Bowling Green State

"The Protection of an Author's Work: Press Coverage of the Emergence of Copyright During the Mid-Nineteenth Century," Gary C. Guffey, Georgia

"Blocking the Sunshine: How the FOIA's 'Opaque' Deliberative-Process Exemption Obstructs Access to Government-Held Information," Martin E. Halstuk, Penn State

"Telemarketing Regulation and the Commercial Speech Doctrine," R. Michael Hoefges, North Carolina at Chapel Hill (First place faculty paper)

"Son of Sam' Goes Incognito: Emerging Trends in Criminal Anti-Profit Statutes," Christina M. Locke, Florida (First place student paper)

"The Sky is Not Falling: The Media Community Must Stop Automatically Crying 'Trend' When a Court Rejects a Reporter's Privilege Claim," Fabian James Mitchell, Louisiana State (Third place student paper)

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

***Decisive Years in American Journalism***

History Division is lead sponsor for this panel, which examines key years in journalism history, including 1964 and the Supreme Court's landmark ruling in *New York Times v. Sullivan*.

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

***Freedom of Information and Scientific Data Post 9/11***

Panelists will examine the status of freedom of information efforts, with particular attention to press and public access to government-held information about health and environmental issues. The Science Communication Interest Group is co-sponsoring.

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

**Law Division Business Meeting**

**FRIDAY, Aug. 12**

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

***Information or Misinformation: Prescription Drugs in the Marketplace of Ideas.***

Science Communication Interest Group is the lead sponsor for this session examining the issues raised by news coverage and marketing communication dealing with prescription drugs. The panel will examine agenda setting in news coverage, pharmaceutical companies' public relations efforts, and regulatory issues in drug advertising, marketing, and communication.

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

***Do Reporters Have a Right to Protect Sources?***

The Newspaper Division is lead sponsor for this discussion of the recent controversies over journalists' attempts to shield the names of confidential sources from disclosure and what these controversies mean for the future of the privilege.

**6:45 to 8:15 p.m.: *Role of the Media Adviser: Ensuring First Amendment Rights While Protecting Student Press Freedoms.***

This panel, co-sponsored by Scholastic Journalism, examines the stresses on campus media advisers. How can one balance quality student journalism, the First Amendment rights of students, and job security for the adviser? You can learn what to do before the next crisis over student media content comes to your campus.

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

**Refereed Paper Session**

***International Law***

Discussant: Victoria Smith Ekstrand, Bowling Green  
Moderator: John Watson, American

"First Amendment and Libel in Emerging Democracies: Case Study of Kyrgyzstan," Svetlana Kulikova, Louisiana State

"File-Sharing in Canada vs. the United States: A Laissez-Faire Alternative or a Different Path to the Same Place?" Bryce J. McNeil, Georgia State

"Publish at Your Peril: International Law Inconsistencies Present Legal Conundrums for Media Interests," Ashley Packard, Houston-Clear Lake (Third place faculty paper)

"The Clash Between U.S. and French Law in Cyberspace: Judicial Line-drawing on First Amendment Boundaries," Kyu Youm, Oregon

## Why Attend?

*Why Attend, from 1*

In a way, my annual pilgrimage to some hot, humid place every August to attend AEJMC is also a no-brainer I register, I reserve a room, I book a flight, I get copies of my paper(s) made, etc., and don't really stop to think: Is this trip really necessary?

I can't answer the question of why people go to AEJMC, but I can, now that I've put some thought into it, explain why I do.

My research philosophy statement emphasized my belief that research should be useful. I define "useful" rather broadly. I want my research to be read, quoted, and cited by judges, lawyers, policymakers, and other scholars. But even research that is never published can be useful to the community of scholars. I always learn something new or get a new perspective on something old when I attend paper and panel sessions at AEJMC. I always leave AEJMC feeling recharged and eager to use what I've learned about legal issues or methodologies in my research or in the classroom. Even if that research never gets published, it has been of use to me.

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*I go to AEJMC to see what I can learn from paper presenters and panelists in the formal sessions and from my fellow scholars in social settings. I go to recharge my academic batteries before the Fall semester begins. I go to be of service.  
I go to have fun...*

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There are practical realities to the tenure and promotion processes at many schools that favor getting published over stopping at conference presentation. But again, a conference presentation is useful even if it is not valued highly on a particular institution's list of research activities for tenure. For me, presenting a paper at a conference is the beginning of the publication process. The feedback I receive from reviewers and from those who see and hear the presentation at the conference helps me far more often than not in honing the paper into what I hope will be a publishable article. Sometimes I decide after hearing the feedback that the paper should probably go into a drawer somewhere. Sometimes I send the paper out to journals, get rejections back, and decide it's not worth the trouble to bring it "up to code," so to speak, or I lose interest in the topic, or I fold that paper into something else I'm writing. But the conference presentation is always an important part of the

process, and it is always a learning experience.

When I was a graduate student, I valued being on panels in paper sessions with faculty members who had been doing conference presentations for much longer than I had and who had much to teach me. Now that I am a faculty member, I still have much to learn, but I also hope that I can teach graduate students and junior faculty the ropes of giving smooth presentations, listening to discussant comments with grace, and fielding difficult questions from the audience with poise. My best conference moment so far came at a Southeast Colloquium in Tampa when I was presenting a paper on the same panel with a graduate student of mine – a first for me. I was so distracted by worrying about her that I didn't give one of my better presentations, but I was very proud of her and the way that she learned not only from what I had taught her in class but from her fellow presenters.

In my service philosophy statement, I wrote quite a bit about my belief that those of us lucky enough to do what we do for a living need to give back to both the community at large and the community of scholars. One of the reasons I volunteered to move into Law Division leadership several years ago when the opportunity arose was because I wanted to give back to the community of scholars who had nurtured me through graduate school and the early years of my career. Just as going to the convention is an annual re-energizing experience for my teaching and research, serving in the Law Division leadership gives me a chance to show gratitude to the organization and the people who helped me get started in this career.

Of course, no organization is perfect. I sometimes am baffled or angered by reviewer comments that seem ill-informed or mean-spirited. I have sat through paper presentations or panel discussions that made root canal look attractive. I have run into a few faculty members or guests who should have their pictures next to the word "pompous" in the dictionary. But what I gain from belonging to AEJMC and attending the conferences far outweighs the negatives.

I go to AEJMC to see what I can learn from paper presenters and panelists in the formal sessions and from my fellow scholars in social settings. I go to recharge my academic batteries before the Fall semester begins. I go to be of service. I go to have fun, or as much fun as you can have in a hot, humid city in August. And, truth be told, I go because it pads my CV, even now that I'm teaching at what we used to call a "Research I" institution. Those are my reasons. Why do you go? And if you don't go, why not? ✂

# Law Division Should File Amicus Briefs

By Clay Calvert & Robert D. Richards  
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In our article in the previous issue of *Media Law Notes*, we contended that “if academics want to be influential and, at the same time, helpful to courts grappling with the legal issues of the day, *amicus curiae* briefs provide the perfect mechanism for putting one’s research into a practical format.”

To the best of our knowledge, however, the Law Division of the AEJMC has never submitted an amicus brief or joined in a friend-of-the-court brief written and filed by other organizations. If it has submitted such a brief, it either has not been in the past decade or has not been well known.

The Reporters Committee for Freedom of the Press often files amicus briefs in cases. Take a look, for instance, at the United States Supreme Court’s opinion in *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988). On page 47 of the case, one finds the RCFP’s name, along with that of its then-leader, Jane Kirtley, prominently mentioned. Other organizations filing briefs in the case included the American Civil Liberties Union and the Association of American Editorial Cartoonists.

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*It is time for the Law Division of the AEJMC to play an active role in submitting friend-of-the-court briefs in matters of free speech and free press.*

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It is time for the Law Division of the AEJMC to play an active role in submitting friend-of-the-court briefs in matters of free speech and free press. Not only would such actions bring the benefit of actually contributing to the resolution of real-world issues, but they also would help to raise the profile of the work of both the Law Division, generally, and its members, more specifically, most of whom toil in communications programs and not in law schools. Visibility in a positive light is not a bad thing at all; in fact, it is a positive matter.

While the filing of friend-of-the-court briefs can be an expensive matter, it might be possible, initially, to partner with other organizations with similar interests and beliefs in order to spread both the financial burden and the workload.

How might this work? Initially, the heads of the Law

Division would track important freedom of speech and press issues working their way through the state and federal court systems. If they agreed that an issue was worthy of a friend-of-the-court brief, then they would identify the members of the law division who have a research specialization in that particular area of free speech or free press. For instance, the Law Division has many members who are interested in, as well as experts on, Freedom of Information Act (FOIA) matters. Those members of the law division would then collaborate on the brief writing process, in conjunction with other organizations interested in the matter. Keeping a current list of member expertise has other uses as well.

A secondary function of that collective knowledge is a structured contribution to public scholarship. By public scholarship we mean commentary to news organizations that educates the public on salient media law and First Amendment topics. Many scholars do this routinely – sometimes through the public information offices of their colleges and universities. Anyone who has done commentary for a while knows that it doesn’t take long to get into the Rolodex of reporters and producers.

The Law Division could develop a database of its members – based upon expertise – willing to comment to the media. It could be broken down by subject matter and regions of the country and would be made available from a link on the AEJMC homepage. Hundreds of potential experts on communications law topics would be just a click away from any reporter in the world. Of course, reporters would need to be made aware of this service. Advertisements in major trade publications and handouts at professional journalism conferences would be a good start to get the word out to those who will use the service.

This database would not only assist the news media but also serve the public by providing a ready supply of experts who can help unpack First Amendment issues – many of which often seem incomprehensible to the general population. Here again, research expertise would be promoted – and more important, useful – outside the annual convention.

The fact that the ideas proposed here are new and different is not a sufficient ground for their rejection. The Law Division must not be afraid of change and, in particular, change in a way that enhances and promotes its real-world relevance beyond conferences and classrooms.

**FRIDAY, Aug. 12 (Continued)**

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

**Refereed Paper Session**

***Gathering Information***

Discussant & Moderator: Barbara Petersen, South Florida

“When is an Invasion of Privacy Unwarranted Under the FOIA? An Analysis of the Supreme Court’s ‘Sufficient Reason’ and ‘Presumption of Legitimacy’ Standards,” Martin E. Halstuk, Penn State

“Unconstitutional Review Board? Considering a First Amendment Challenge to IRB Regulation of Journalistic Research Methods,” Robert L. Kerr, Oklahoma (Second place faculty paper)

“Media Access to Juvenile Courts: The Argument for Uniform Access,” Emily Metzgar, Louisiana State

“Narrow Lanes Ahead? An Examination of Public Access to Information about the Transportation of Hazardous Materials in a Post 9/11 World,” Amy Kristin Sanders, Florida

**SATURDAY, Aug. 13**

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

**Refereed Paper Session**

Blogs, Spam and Porn—Legal Challenges on the Internet”

Discussant: Kathleen K. Olson, Lehigh

Moderator: Brad Yates, West Georgia

“Press Protection in the Blogosphere: Applying a Functional Definition of Press to News Web Logs,” Laura J. Hendrickson, Texas House of Representatives

“A Multilevel Approach to Spam Regulation: Federal Preemption, State Enforcement, and CAN-SPAM,” Martin G. Kuhn, North Carolina at Chapel Hill

“Mandatory Internet Filtering in Public Libraries: The Disconnect Between Technology and the Law,” Barbara H. Smith, Kansas State

“The First Amendment and Internet Filters: A Study of Boston Area Public Libraries After Implementation of the Children’s Internet Protection Act,” Anne Trevethick and Dale Herbeck, Boston College

**11:45 a.m. to 1:15 p.m.**

***Integrating Social Science in the Communication Law Classroom.***

Discussion at this panel session will focus on integrating social science research, methodology, and approaches into the teaching of communication law at both the undergraduate and graduate levels. Communication Theory and Methodology Division is co-sponsoring.

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