

# MEDIA LAW NOTES

VOLUME 40, No. 2

LAW & POLICY DIVISION, AEJMC

WINTER 2012

## Head Notes



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Free speech is as free as Survey-Monkey, and here's your chance to speak freely.

We are conducting an online survey of Law & Policy division members to help us prioritize for the next 100 years, at least in three key areas: budget priorities, research presentation, and division communications.

The survey is available at <http://www.surveymonkey.com/s/FHBN2CL> and takes about five minutes to complete.

It is open to all members and answers are anonymous. The survey will close April 30, and then I will summarize the results in the next

*Media Law Notes.* The findings could lead to proposals at the members meeting to be held at the national conference in Chicago this August.

We are interested hearing from you regarding three overall areas:

\* **Budget priorities.** The division is currently in a healthy and stable state of budget affairs, with about \$4,000 in reserves. Some members have recommended spending division dues on a variety of different initiatives, such as for bringing in big-name speakers for the national conference, providing cash prizes for top faculty papers, or for preparing amicus briefs for key court cases. Maybe you have other ideas.

\* **Research presentation.** Presentation of research at the national

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## Chip auction successful at winter meeting

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No, I didn't hit the bucket. After a near-miss in an early round, nobody even got close to putting their allotted poker chips into the bucket in the middle of the floor at the AEJMC Winter Meeting in Louisville.

Still, the meeting was a success: The division has an impressive roster of research, teaching and PF&R panels scheduled for Chicago, and I won't need Tommy John surgery. With Dave Cuillier's experience and savvy wheeling and dealing, we entered into co-sponsorship with three divisions, two interest groups and the Council of Affiliates for programming that runs the gamut from legal history to the law of social media.

Starting us off will be a full day of pre-conference programming on Wednesday, Aug. 8. In the morning, Amy Sanders will lead a panel to get you ready for your undergraduate law class in the fall. Called

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“Summer Vacation is Over: A Year’s Worth of Communication Law in 180 Minutes,” the session will include a Supreme Court update, a panel on social media law and a discussion of the changing landscape of privacy law.

The afternoon pre-conference session, also on Aug. 8, was put together by Geanne Rosenberg of CUNY-Journalism and Baruch College, who is the director of a project called “Journalism Schools as News Providers: Limiting Legal Risk.” Funded by the Carnegie Corporation and the Harnisch Foundation, the project has focused on studying the question: How can journalism schools protect and advance their own journalism while planning for and mitigating legal risk? Project participants have met with representatives of the Shorenstein Center and the Berkman Center for Internet & Society at Harvard, the Poynter Institute and journalism programs at UNC, American University, USC and CUNY, and will present their findings at the session.

Co-sponsored by the Community Journalism and Civic & Citizen Journalism interest groups, the session will feature project participants providing specific recommendations for protecting and supporting journalism programs in their roles as news providers. Among the panelists will be Lucy Dalglish of the Reporters Committee for Freedom of the Press, Karen Dunlap of Poynter, Jane Kirtley of the University of Minnesota, Frank LoMonte of the Student Press Law Center and Geneva Overholser of USC-Annenberg. The session will run from 1 to 5 p.m., with a reception afterward. Pre-registration is required, and a fee of \$45 will be charged, payable when you register for the conference.

We’ll start the conference itself with two refereed research sessions Thursday morning and not stop until Sunday afternoon (note that this year’s conference has almost a full day of programming scheduled for Sunday). Among the offerings are a PF&R panel on the possible implications of the Supreme Court’s decision in *FCC v. Fox*, a panel on teaching the combined law and ethics class and panels on legal history, trial coverage, high school journalism and legal issues needing classroom attention. Look for more details and a full schedule in the next newsletter, and direct any pointers on chip-tossing to Derigan Silver, next year’s program chair.

The full schedule of Law & Policy Division events at the annual conference is on page 5.

## Law & Policy Division Call for Reviewers

The Law and Policy Division needs your help in reviewing papers for the 2012 AEJMC conference. As the popularity of the division continues to grow, so does the demand for paper reviewers. To ensure that only the highest quality papers are presented at the upcoming conference and to keep the number of papers per reviewer at a manageable level, we need your help.

We are still in need of about 20-25 reviewers for the Chicago conference. Reviews will occur between April 1 and May 1, 2012. Last year we had enough reviewers to keep the paper load to three papers per reviewer. We will make every effort to keep it that way this year, too, but will need your help.

If you would be willing to serve as a reviewer, please contact Derigan Silver, Research Chair, via e-mail at [Derigan.Silver@du.edu](mailto:Derigan.Silver@du.edu) or by phone at 303-871-2657.

Please note that graduate students may not review papers and you may not both review for and submit a paper to the Law and Policy Division. If you aren’t sure if you will submit a paper, please volunteer to review and we can take you off the list when the time comes. If you submit a paper to other AEJMC divisions, you are still eligible to judge for Law& Policy.

Papers will be pre-screened for eligibility and will be eliminated if they exceed 50 pages or have information that identifies the author(s), including in the data properties.

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

Sincerely,  
Derigan Silver  
Research Chair, Law and Policy Division

## Law & Policy Division teaching competition call focuses on experiential learning

Cheryl Ann Bishop  
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The Law and Policy Division is pleased to announce our fourth-year teaching ideas competition. This year we are looking for your best and most innovative ideas for incorporating experiential learning in communication law and policy classes. Experiential learning is the process of gaining knowledge and insight through direct experiences – learning by doing. Submissions could include an innovative assignment, activity, or lesson plan, or a particularly original approach to teaching through experiential learning.

Winning submissions will receive a certificate and a cash prize - \$100 for first prize; \$75 for second prize; and \$50 for third prize. Winners also will be recognized during our AEJMC convention business meeting, and we'll showcase the winning ideas on our division Web site and in our newsletter. The winning ideas of the last three years are available at <http://aejmc.net/law/teaching.html>

All submissions must be received by Monday, April 16, 2012. Submissions should be sent as an e-mail attachment to Cheryl Ann Bishop at [cbishop@quinnipiac.edu](mailto:cbishop@quinnipiac.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 first page of your submission should be a cover sheet that includes your name, affiliation, contact information, and the title of your teaching idea. Please do not include author name or identifying information anywhere else in your submission.

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

A panel of judges will blind review each submission based on a teaching idea's creativity, innovation, practicality, and its overall value in teaching communication law and policy to our students. Your submission will be acknowledged but not returned. Winners will be notified by May 15, 2012. If you have any questions, please do not hesitate to contact me at the email address above.

*Head Notes, cont. from p. 1*

convention is a core part of the division work each year. Traditionally, the Law & Policy Division has focused its efforts on refereed paper panel sessions. We are interested in knowing whether division members would like more high-density and poster sessions to allow more paper presentations.

Substituting traditional panels with high-density or poster sessions would increase the number of law papers that could be presented, however, it would also require boiling down a law paper quickly or within a visual poster. How do you feel about programming the following types of sessions at convention?

**\* Communications.** We want to know the best way to facilitate scholarly conversation among members. Currently we have a website, send emails to division members occasionally, and email the *Media Law Notes* newsletter, which is also posted as a pdf on the division website. How strongly do you feel toward using those and other methods (e.g., Facebook page, blog) to foster division communication?

Maybe you have other things on your mind that you would like to convey anonymously. Feel free to go to the survey and complete the final open-ended question for expressing other suggestions and thoughts.

Thanks in advance for taking the five-minute survey. Every voice counts!

# Call for Papers: AEJMC Annual Conference

The Law and Policy Division invites submission of original research papers on communications law and policy for the 2012 AEJMC Conference in Chicago. Papers may focus on any topic related to communications law and/or policy, including defamation, privacy, FCC issues, intellectual property, obscenity, freedom of information, and a myriad of other media law and policy topics. Papers outside the scope of communications law and policy will be rejected.

The Division welcomes a variety of theoretical orientations and any method appropriate to the research question. 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 conference to present accepted papers.

Paper authors should submit via the online submission process as described in the Uniform Paper Call.

Please see submission criteria and instructions at [www.aejmc.org](http://www.aejmc.org).

Law and Policy Division papers must be no longer than **50-double-spaced** pages with one-inch margins and 12-point font, including cover page, appendices, tables, footnotes and/or endnotes, and end-of-paper reference list, if applicable. (Footnotes and/or endnotes and reference list may be single-spaced.) Papers that exceed 50 total pages or are not double-spaced will be automatically rejected without review. Although Bluebook citation format is preferred, authors may employ any recognized and uniform format for referencing authorities, including APA, Chicago, or MLA styles. Papers that include author-identifying information within the text, in headers, or within the embedded electronic file properties will be **automatically rejected** (review the instructions on the AEJMC

Web site for stripping identifying information from the electronic file properties). There is no limit on the number of submissions authors may make to the Division.

**Student authors of single-authored papers should clearly indicate their student status on the cover page.** Student submissions will be considered for the \$100 Whitney and Shirley Mundt Award, given to the top student paper. The Law and Policy Division will also cover conference registration fees for the top three student paper presenters.

**Special call for legal history papers.** As part of AEJMC's 100<sup>th</sup> Anniversary celebration in Chicago, the Law and Policy Division will be hosting a special call for papers dedicated to **legal history**. Research papers for the special call should focus on the study of

the history of law in the field of communication, broadly defined. Legal history is closely connected to the development

August 9-12, 2012



of society and papers should be set in the wider context of social, cultural, and political history. Papers should be uploaded via the special call link on the All-Academic submission site, and should conform to all requirements of the Law and Policy Division Paper Call and the AEJMC Uniform Paper Call. Papers will be judged together with papers from the Law and Policy Division Paper Call. Submitters who qualify for presentation at the AEJMC 2012 conference will present their research at a special research panel dedicated to legal history.

If you have questions, please contact: Derigan Silver, Law and Policy Division Research Chair, Department of Media, Film and Journalism Studies, University of Denver, 2490 S. Gaylord St., Denver, CO 80208-5000, Phone: (303) 871-2657; e-mail: [derigan.silver@du.edu](mailto:derigan.silver@du.edu)

## Law & Policy division schedule at the 2012 AEJMC conference

### Wednesday, August 8

Pre-conference sessions:

8:30 a.m.-12:30 p.m. PFR panel: Summer Vacation is Over: A Year's Worth of Communication Law in 180 Minutes (Amy Kristin Sanders, coordinator)

1- 5 p.m. Teaching panel: Journalism Schools As News Providers: Challenges and Opportunities (co-sponsored with Community Journalism Interest Group and Civic and Citizen Journalism Interest Group; Geanne Rosenberg, coordinator) (With reception afterward; \$45 fee)

### Thursday, August 9

8:15-9:45 a.m. Refereed research session

1:30-3 p.m. Refereed research session

3:15-4:45 p.m. Teaching panel: Teaching Law and Ethics Together: Mixing Oil and Water (co-sponsored with Ethics; Jack Breslin, coordinator)

5 - 6:30 p.m. Research panel: Neither Fish Nor Fowl? Legal History and its Place in Research, Teaching and AEJMC (co-sponsored with History; Derigan Silver, coordinator)

### Friday, August 10

1:30-3 p.m. Scholar-to-Scholar session for our division

3:15-4:45 p.m. PF&R panel: Is it in the Public Interest? FCC v. Fox and the Implications on Indecency and Culture (co-sponsored with Ethics; Jason Zenor, coordinator)

### Saturday, August 11

8:15-9:45 a.m. Research panel: A Scholastic Journalism Census of Today's High Schools (co-sponsored with Scholastic Journalism; Candace Perkins Bowen, coordinator)

12:15-1:30 p.m. Refereed research session

3:30-5 p.m. Teaching panel: Legal Issues that Need Classroom Attention (co-sponsored with the Council of Affiliates and History; Lillian Lodge Kopenhaver, coordinator)

5:15-6:45 p.m. Refereed research session

7-8:30 p.m. Division membership meeting

### Sunday, August 12

10-11:30 a.m. PF&R panel: Controversies in Trial Coverage: What the Media Have Done, What They Can Do Better (co-sponsored with the Council of Affiliates and History; John Watson, coordinator)

11:45 a.m.-1:15 p.m. Refereed research session

# First Amendment and Media Law Bibliography

By Michael T. Martínez  
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## Free Speech

Grose, J. P. (2010/2011). *Time to Bury the Tomahawk Chop: An Attempt to Reconcile the Differing Viewpoints of Native Americans and Sports Fans*, 35 Am. Indian L. Rev. 695.

The battle for the acceptability of Native American sports team names has origins preceding the initial filing of *Pro-Football, Inc. v. Harjo*. Native Americans began to protest the use of derogatory names as early as the 1960s, when the National Congress of American Indians (NCAI) expressed its distaste with the continued use of Native American team names and mascots in professional and collegiate athletics. Native Americans have long objected to the use of Native American stereotypes, even outside the sports context. Although the Supreme Court passed on the opportunity finally to resolve the issue of whether Native American sports team names are disparaging and have a detrimental effect on Native Americans as a whole, the issue was immediately revived after the denial of certiorari. A new group of plaintiffs filed a similar action claiming the disparagement of Native Americans because of the Washington Redskins logo. It is

hoped that this case may make it further in the courts because the procedural bar of laches that plagued the *Harjo* case is nonexistent.

Huq, A. Z. (2012). *Preserving Political Speech From Ourselves and Others*, 112 Colum. L. Rev. Sidebar 16.

A central concern in First Amendment jurisprudence is the proper scope of government authority to regulate speech on matters of national political concern. Such speech supposedly secures heightened protection via a "strict scrutiny" test long glossed as "fatal in fact." Strict scrutiny is thought to demand that measures be "narrowly tailored" to address a "compelling government interest." Recent scholarship, however, has demonstrated that strict scrutiny is internally variegated. Under its rubric, courts employ different methodologies and varying degrees of stringency. Courts also subtly alter the verbal formulation of scrutiny even within the political speech domain. This Essay is a case study of how the heightened judicial scrutiny of political speech regulation can vary even between cases decided by a single tribunal – the Roberts Court.

Lester, J. C. (2011). *Inculcation Into Indoctrination Predicting Justice Sotomayor's Impact on Teachers' Speech in the Public School Classroom*, 62 Ala. L. Rev. 663.

Beginning with *Tinker v. Des Moines Independent Community School District*, the Supreme Court has provided a full array of First Amendment jurisprudence regarding a student's right to free speech in public schools. Furthermore, the Court has also provided comprehensive opinions concerning a public employee's right to free speech in the workplace. There is a circuit split over the appropriate standard governing teachers' First Amendment protection in the classroom. The Supreme Court has thus far avoided addressing the scope of First Amendment protection for public school teachers' speech in the secondary classroom. Justice Sonia Sotomayor's First Amendment jurisprudence may differ significantly from the Justice she replaced, Justice David Souter, thus altering the First Amendment balance on the Supreme Court. Ultimately, a comprehensive analysis of Justice Sotomayor's First Amendment jurisprudence is needed to determine where the new Justice will likely fall in the debate over teachers' First Amendment protection in the classroom.

Maney Jr, J. R. (2011). *Burning*. 7 Crim. L. Brief 48.

On March 20, 2011, during a mock jury trial in which the Reverend Terry Jones presided from the pulpit as judge, the Koran was found guilty of crimes against humanity. Reverend Jones, dressed in a judicial robe, then ordered it

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torched and had the burning streamed live to Muslims around the world on the Internet with Arabic subtitles. Afghan President Hamid Karzai condemned this event on March 31, 2011, and the following day, violent rioting broke out across the Arab world. Before this rioting ended, over ninety people were injured and twenty-three lay dead, including two American soldiers. While burning the Koran in order to express an opinion about the Muslim religion is not a crime in the United States, it is a crime to burn it with the intention of inciting a riot. The distinction is subtle, but it is a distinction with a difference, and one that must be proved beyond a reasonable doubt.



Norris Jr., R. B. (2011). *It's Always Fun and Games Until Someone Gets Hurt: Brown v. Entertainment Merchants Association and the Problem of Interactivity*, 13 N.C. J.L. & Tech. On. 81.

In *Brown v. Entertainment Merchants Association*, the Supreme Court struck down a statute restricting the access of minors to games containing violent conduct and, in doing so, established First Amendment protection for violent video games. The Court further refused to make violence a new restricted category of speech and will now sub-

mit any law restricting violence in video games to strict scrutiny.

While the Court's ruling may very well be applicable to the medium in its current incarnation, video game technology is constantly evolving and thus may challenge the staying power of the *Brown* decision. This Recent Development criticizes the Court's failure to fully comprehend the interactive nature of video games due to the majority's cursory examination of a developing medium, demonstrates how interactivity in future games may necessitate a reevaluation of the Court's decision, and addresses the tension between interactivity and speech in video games. It also explores the impact of *Brown* on trademark law and examines the effect that a reevaluation of interactivity may have on intellectual property jurisprudence post-*Brown*.

Radack, J. & K. McClellan (2012). *The Criminalization of Whistleblowing*, 2 Am. U. Labor & Emp. L.F. 57.

The year 2009 began a disturbing new trend: the criminalization of whistleblowing. The Obama administration has pursued a quiet but relentless campaign against the news media and their sources. This Article focuses on the sources who, more often than not, are whistleblowers. The vast majority of American citizens do not take issue with the proposition that some things should be kept secret, such as sources and methods, nuclear designs, troop movements, and undercover identities. However, the campaign to flush out media sources smacks of retaliation and intimidation. This Article explains

how strengthening legal protections for whistleblowers will serve to stop leaks of properly secret information, actually enhancing national security.

## Privacy

King, K. F. (2011). *Personal Jurisdiction, Internet Commerce and Privacy: The Pervasive Legal Consequences of Modern Geological Technologies*, 21 Alb. L.J. Sci & Tech. 61.

Modern geolocation technologies allow Internet sites to automatically and accurately identify a user's geographic location. This capability – unavailable just a few years ago – has begun to revolutionize Internet commerce and communication by enabling content localization, customization, and access regulation on a scale previously thought to be impossible. Yet thus far, the law has reacted inadequately to these technologies, or in some cases, failed to react at all. This article provides an in-depth analysis of the problems geolocation technologies pose for personal jurisdiction, Internet commerce, and privacy law; as well as ways those problems can be resolved.

## Freedom of Information

Bishop, C.A. (2012). *Access to Information as a Human Right*. El Paso: LFB Scholarly Publishing.

Conceptualizing access to government information as a human right is a new development in the global trend promoting institutional

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transparency. Bishop provides a comprehensive examination of international human rights law and explains four conceptualizations of access to information as a human right. Rights to information have been linked to the right to free expression, the right to privacy, and the right to a healthy environment, and the right to the truth about human rights abuses. She concludes that a human right to access information is evolving in disparate ways. The current evolution of access rights creates a patchwork system of guarantees; nonetheless, the freedom-of-expression conceptualization holds the most promise for proving a broad right of access.

Kwoka, M. B. (2011). *The Freedom of Information Act Trial*, 61 Am. U.L. Rev. 217.

This article examines the paucity of Freedom of Information Act (FOIA) cases that go to trial and courts' preference for resolving these disputes at the summary judgment stage. Using traditional legal analysis and empirical evidence, this article explores whether we should expect FOIA cases to go to trial and how the scarcity of FOIA trials compares to the trial rate in civil litigation generally. It concludes that the unusual use of summary judgment in FOIA cases has unjustifiably all but eliminated FOIA trials, which occur in less than 1 percent of FOIA cases. It further examines how conducting FOIA trials in appropriate cases might increase the frequency of pro-transparency case outcomes as intended under the Act, using both empirical analysis and qualitative conclusions from interviews with attorneys.

## Libel

McCraw, D. E. (2010/2011). *Press Freedom and Private People: The Life and Times (and Future) of Chapadeau v. Utica Observer-Dispatch*, 74 Alb. L. Rev. 841.

A high school teacher in Utica, N.Y., was arrested for heroin possession, and a small revolution in the law of libel in the state of New York was set into motion. The teacher did not deny that he had been arrested or that police had found heroin and a hypodermic needle in his possession. Instead, Chapadeau complained that the *Utica Observer-Dispatch* libeled him by saying that he had been at a party in a Utica park where police found drugs and beer and made two other arrests. Over the preceding decade, the Supreme Court had wrestled with the issue of precisely what minimal standards the states had to set in their libel jurisprudence to comply with the First Amendment. It held that while the states could not impose strict liability in cases involving private plaintiffs and matters of public concern, the states were not required by the Constitution to apply the actual malice standard. What remained for the states was deciding what fault standard to use: negligence, Sullivan's actual malice, or some other test. Into that legal void wandered plaintiff Chapadeau. What emerged - with no apparent legal roots - was the "gross irresponsibility" standard. No New York case had previously employed such a term, and the Court cites no precedent for it.

## Child Pornography

Naso, C. (2011). *Sext Appeals: Re-Assessing the Exclusion of Self-Created Images From First Amendment Protection*, 7 Crim. L. Brief 4.

Typical child porn legislation forbids anyone to create, record, photograph, film, develop, reproduce, or publish any material that depicts a minor in a state of nudity or engaging in certain explicit sexual acts. Though this material has been described as "self-exploitation," or "autopornography," those words describe the method of production and do not create a requirement that the person creating the photo actually be the subject of the image. This Article contributes an important and timely analysis of the increased tension between the First Amendment and technological innovation, especially as recent Supreme Court decisions have reinforced the protection against Government regulation of speech and expression.

## Copyright

Storch, J. and H. Wachs (2010/2011). *A Legal Matter: Peer-to-Peer File Sharing, The Digital Millennium Copyright Act, and the Higher Education Opportunity Act: How Congress and the Entertainment Industry Missed an Opportunity to Stem Copyright Infringement*, 74 Alb. L. Rev. 313.

A palpable tension has existed between higher education and the content industry since the advent of

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## AEJMC Southeast Colloquium Law & Policy Sessions

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The 2012 AEJMC Southeast Colloquium was hosted by Virginia Tech and our own Wat Hopkins on March 9-10. As usual, the Law & Policy Division was well represented, with five research sessions of four papers each.

The division paper competition received 37 entries and accepted 20, for an acceptance rate of 54 percent.

### **A Second Look at the First: Free Speech and Censorship in the Courts**

Moderator/Discussant: Dean Smith, UNC – Chapel Hill

Roberts' Rules of Order: A Hermeneutical Analysis of How the Chief Justice Interprets Meaning in Freedom of Speech Cases

Jared C. Schroeder, University of Oklahoma

Big Censorship In The Big House A Quarter-Century After Turner V. Safley: Muting Movies, Music & Books Behind Bars

Clay Calvert & Kara Murrhee, University of Florida

Student Online Speech Rights: The Dissolution Of The “Schoolhouse Gate;” How Courts Have Ruled On Online Student Speech Cases

Cindy J. Austin, University of North Carolina at Chapel Hill

Of Burning Houses & Roasting Pigs: Why Butler V. Michigan Remains A Key Free-Speech Victory More Than A Half-Century Later

Clay Calvert, University of Florida

### **Defining Media Relationships and Privileges**

Moderator: Yong Tang, Western Illinois University  
Discussant: Ruth Walden, UNC – Chapel Hill

Unasked Questions and Unquestioned Answers: The Perils of Assuming Diversity in Modern Telecommunications Policy

Benjamin W. Cramer, Penn State

A Moving Target: The Attorney-Client Privilege  
Tom Eppes, University of North Carolina at Chapel Hill

Putting Media Contact Policies To The Facial Test When Media Contact Policies Are Constitutionally Permissible

April Raphiou, University of North Carolina at Chapel Hill

Who Are The Media? The Media Exemption To Campaign Finance Regulation (**Second Place, Student Paper Competition**)

John Remensperger, University of North Carolina at Chapel Hill

### **Protecting News: Shield Laws, Public Records, and Public Places**

Moderator: Elizabeth Woolery, Roy H. Park Doctoral Fellow, UNC at Chapel Hill

Discussant: Roy Gutterman, S.I. Newhouse School at Syracuse University

Taking Back the Streets: A Reporter Strategy for Challenging Access Barriers at Shopping Malls (**Third Place, Student Paper Competition**)

Jim DeBrosse, Ohio University

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The Not-Quite-Absolute Right to Record: Glik v. Cunniffe and the Future of Recording Police Activity in Public

Brett G. Johnson, University of Minnesota

The Real Story Behind the Nation's First Shield Law: Maryland, 1894-1897

Dean Smith, University of North Carolina at Chapel Hill

Florida's Anti-Faces Of Death Law: Protecting Personal Privacy or Rejecting The Public's Right To Know? (**First Place, Student Paper Competition**)

Kara Carnley Murrhee, University of Florida

### **Commercial Speech Matters: Food, Pharmaceuticals and Online Marketing**

Moderator/Discussant: Woodrow Hartzog, Samford University

Prescription Drug Marketing to Physicians and the First Amendment

Laura H. Marshall, University of North Carolina at Chapel Hill

Food Industry Response To Proposed Guidelines For Self Regulation Of Food Marketing Aimed At Children

Patrick Mustain, University of North Carolina at Chapel Hill

An Analysis Of FTC Cases Involving Substantiation Of Health Claims In Food Advertising: Is The Standard Tightening To The Level of FDA Labeling Standards

Jeanne-Marie DeStefano, University of North Carolina at Chapel Hill

Internet Advertising & Interactive Computer Services: Liability & Immunity As Provided By Section 230 of The Communications Decency Act

Christopher J. Vargo, University of North Carolina at Chapel Hill

### **Drawing a Line Between "Private" and "Public"**

Moderator: Cathy Packer, UNC – Chapel Hill

Discussant: Anthony L. Fargo, Indiana University

Defining "Public Concern" After Snyder V. Phelps: A Pliable Standard Mingles With News Media Complicity (**Third Place, Faculty Paper Competition**)

Clay Calvert, University of Florida

The Case for Online Obscurity (**First Place Faculty Paper**)

Woodrow Hartzog, Samford University, and Fred Stutzman, Carnegie Mellon University

A Dangerous Distinction: The Deconstitutionalization of Private Speech (**Second Place, Faculty Paper Competition**)

Derigan Silver, Denver University, and Ruth Walden, University of North Carolina at Chapel Hill

Facial Recognition vs. the Law: A Look at First and Fourth Amendment Jurisprudence, State Tort Law, and Their Application to Facial Recognition Technology

Robert G. Larson, III, University of Minnesota

*Media Law Bibliography, cont. from p. 8*

peer-to-peer (P2P) file sharing software. There have been several attempts by both higher education and the entertainment industry to negotiate a workable compromise, including the Joint Committee of the Higher Education and Entertainment Communities Technology Task Force and the Digital Citizen Project. No compromise was ever achieved. The P2P file sharing regulations included in the Higher Education Oppor-

tunity 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 file sharing and the technology that supports it. The unfortunate result of more than a decade of struggle over the issue is legal requirements that will create some additional work for colleges, but do little to stem the problem of illegal file sharing.

# Law & Policy Division Officers

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