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Summer 2017

# Media Law Notes

AEJMC Law & Policy Division

## Head Notes: Thoughts from Division Head



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I can't believe how quickly the summer passed! But I am looking forward to seeing many of you in Chicago August 8 – 12. In this issue of MLN, we are previewing all of the great programming available to you this year. So please mark your calendars to attend the diverse set of panels programmed under the leadership of Jason Martin, Jared Schroeder, and Jonathan Peters.

Jared and Jon have put together another outstanding lineup for our preconference, including a Q&A session with Judge Posner beginning at 1 pm on Tuesday. We'll also hear from our teaching ideas competition winners on Tuesday in an interactive session. This is perfectly timed for us all to incorporate some of the techniques and assignments into our fall syllabi! And you can keep updating those syllabi with key media law developments from 2017 as we end our pre-conference events with a hot topics panel.

Jason partnered with several other divisions to program panels focusing on public relations, new technology, international communications, and more. Throughout the conference these panels will offer a variety of perspectives on issues that affect our research and teaching.

And of course don't forget about our excellent refereed paper sessions. Many thanks to Kearston Wesner for coordinating our paper competitions this year. We have panels on speech regulation, defamation, privacy law, FOIA, and newsgathering. On Thursday, five Law & Policy scholars will be presenting their work in the Scholar-to-Scholar session – always a favorite of mine! Be sure to join us on Friday evening at 5:15 for our featured panel with the winners of our research competitions.

Following the top papers session, we'll convene the division business meeting. I'll provide an update on the status of the division and several key developments. And, as always, we will have a peaceful transition of power to welcome Jason Martin as the incoming head of the division.

*See Head Notes, 2*

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## No One Has Taught The Perfect Class, Right?



Jared Schroeder  
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No one has ever, start to finish, nailed it – every area of the class, conveyed perfectly and clearly, from Day 1 until the final, right? Honestly, we seldom come close. I don't. There's always something I feel like I failed to cover clearly or completely enough. Maybe a new

*See Perfect Class, 2*

*Head Notes, continued from 1*

The real fun will start when the meeting adjourns. We can all take the short walk to Jake Melnick's for our sponsored social. We'll have drinks and appetizers to accompany the camaraderie. Many thanks to our generous donors for supporting this opportunity for networking: Amicus – Paul Siegel; Cum Laude – Clay Calvert, Jon Peters, Hubbard School of Journalism and Mass Communication at the University of Minnesota, and the Silha Center for the Study of Media Ethics and Law at the University of Minnesota; Magna Cum Laude – Jasmine McNealy, and the Tully Center for Free Speech at Syracuse University. Special thanks to our Summa Cum Laude sponsor – UNC Center for Media Law & Policy.

With so many great Law & Policy sessions on my calendar, it will be hard to squeeze in any sightseeing! I'll see you in Chicago!

### **Call for Bibliographers**

The Law & Policy Division will appoint a Bibliographer to provide synopses of significant law journal scholarship pertinent to our division. The article appears quarterly in the division's Media Law Notes. Law & Policy Division members are encouraged to apply. If you are interested, contact Courtney Barclay at [barclay@ju.edu](mailto:barclay@ju.edu).

*Perfect Class, continued from 1*

assignment didn't work out like I hoped or a part of the class just wasn't up to date enough.

I used to make mental notes to myself. I'd tell myself, "I'll fix that part of the class next summer." Then summer would come. You know where I'm going with this. By the time August comes around, all I remember is that something didn't work. What was it? I usually can't remember. After all, that mental note from April, that was like one full journal article, a trip to the beach, and way too many embarrassing losses to my sons on the basketball court ago.

To combat this problem, a few years ago I started taking a quick minute to make notes in my syllabus file as I encountered the problems. I'd dash notes such as, "Need more time for privacy" or "revise Podcast 3, it's pretty terrible." Those were some of my actual notes from last spring. The scary thing is, at some point, I thought Podcast 3 was good. I guess my students last spring were just a little more honest than those from previous semesters?

Recently, I've started to do the same things with assignment sheets. As I grade the assignment, there's usually something I wish I had done differently, especially on new assignments. Were the directions clear enough? Is the rubric just right? As I grade, I open the assignment documents and put the necessary changes for next time at the top. So, next fall, when I open one of the new assignments I experimented with last spring, for example, I'll see the note: "Change to not allow any part of the Miller Test. Make it 800 words, not 500." By making those notes, I'll remember to fix the assignment before

I hand it out and make the same errors I did the semester before.

It's likely many of you have your own methods for remembering the changes that need to be made to syllabi or assignment sheets each semester, but this approach has worked for me.

Something else we can do to improve our classes each year is to attend the Law & Policy Division's pre-conference sessions at AEJMC in Chicago on Aug. 8.

This year's pre-conference schedule is pretty outstanding. The schedule includes three sessions, which begin at 1 p.m. with a question-and-answer session with Seventh Circuit judge and legal scholar Richard Posner.

Afterward, starting at 2:25 p.m., the division's teaching-competition winners, as well as Tori Ekstrand, will present great ideas for teaching. The session will be organized in a small-group format, allowing everyone involved to interact with the presenters and with others who attend. Chip Stewart, Texas Christian University; Benjamin Holden, University of Illinois; Nina Iacono Brown, Syracuse University; and Ekstrand, University of North Carolina, will present.

The final session, beginning around 3:45 p.m., will cover important recent and upcoming developments in communication law. The panel will include Wat Hopkins, Virginia Tech; Rachel Jones, Jack Nelson/Dow Jones Legal Fellow at the Reporters Committee for Freedom of the Press; Ashley Messenger, Senior Associate General Counsel for National Public Radio; Matt Topic, Loevy & Loevy/Outside General Counsel, Better Government Association; and Ekstrand.

# Transitioning from Graduate Student Life to an Academic Career



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At the outset, it is important to note that each student, each academic program, and each student's relationship to their academic program is unique. Students emerge from graduate school having experienced profoundly different successes and failures. Their stressors and sources of rejuvenation are as personal and unique as they are peculiar. And although uniform standards constrain our definitions of ultimate success on the tenure track, the great academic job is not a monolith. Therefore, there is no formula for a successful transition from graduate school life to one's first academic job. Also, this column may be woefully premature in that I've yet to experience life on the "other side." But if the readership of Media Law Notes will forgive me, I have just a bit of unsolicited, general advice for students preparing to embark on this journey and for the advisors who have committed to shepherding them through.

To students: First, the membership of the Law and Policy Division deserves your attention. The members of this body are each a font of experience and advice. Linger for a few moments at the bar in the conference hotel this August

(no drink required) and you'll see what I mean. The winners of the teaching ideas competition were announced in the spring edition of Media Law Notes, but you can mine these great ideas with their inventors over coffee or cocktails. With comfort and confidence, you can recruit co-authors, fresh eyes for your works in progress, and outside committee members for your dissertations or theses. You can build a ready support structure. Without a stable of informal advisors and collaborators, I don't believe I'd have the solid footing required to start my position at LSU this fall. Second, don't shirk the business meeting at AEJMC this August in Chicago. If recent experience is a guide, division head Courtney Barclay will keep the meeting in efficient and good order. But you will learn a few valuable things, namely key information about the state of our flagship journal, Comm. Law and Policy, ways you can collaborate to support the division, and opportunities to contribute to the programming and panels at upcoming conferences. In doing so, you'll be a known actor as soon as you start your first academic job.

To faculty, specifically advisors: While it is not your responsibility to facilitate any of the graduate student activities discussed above, know that such an investment can pay tremendous dividends for students, especially those who are not natural extroverts. Keep in mind that you might serve as both a connection and a catalyst for a student's involvement in the division and ultimately their first academic job. You may know just the person to serve as that outside committee member. And while you might take such knowledge and expertise for

granted, your students likely do not. Speaking for my cohort at the University of North Carolina, we are ever grateful for the professors who choose to invest in our social, intellectual, and emotional growth as we transition from student to candidate to graduate. Thanks to all of you who have chaired dissertations and theses. From my perspective, that is the highest form of service in this field. Thank you for answering the call.

To the Law and Policy Division, thank you for allowing me to serve as your graduate student liaison. I hope this column ages better than 90 percent of political Twitter. Please feel free to contact me at any time at brooksfuller@lsu.edu.

## GA's Sonja West wins 2017 Stonecipher Award



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The Stonecipher Award for 2017 for the best media law and policy article published in the previous year will go to Sonja R. West, a professor in the University of Georgia School of Law, for her article "The 'Press': Then and Now." It was published in October in the Ohio State Law Journal and can be found at 77 Ohio St. L.J. 49 (2016).

West's article seeks to re-ignite discussion over the meaning of the Press Clause of the First Amendment with its deft melding of primary-source research focused on the founding era and acute

*See Stonecipher Award, 4*



Sonja R. West

analysis of existing literature that followed over 200 years. In her reading, West concludes that judges and scholars went astray in interpreting freedom of the press as a subservient subset of freedom of speech and seriously undervalued the role that freedom of the press — as a distinct institution worthy of protection — plays in the functioning of a democratic society as it was conceived by the founders.

In nominating West's article, Rodney A. Smolla, dean of the Delaware Law School at Widener University, said that West has laid out an "exhaustive and impressive exploration" of the views of scores of scholars and judges and that her analysis of their views is "even-handed, fair, and objective." However, he wrote, that analysis led her to a "fresh examination" of how the founding generation lived and viewed freedom of the press in a telling that he described as "riveting and exciting."

"It is among the most vivid, authentic, and insightful explorations of the American experience of the press ever written," Smolla wrote, "and it will triumph over time as one of

the most notable explorations by any scholar of this fascinating and important slice of the American colonial and revolutionary period."

The central thrust of West's article is that judges and scholars of the twentieth century cordoned off the Press Clause and diminished its importance as a crucial mechanism for participation in self-government. That, on her view, was the principal and considered reason that Madison, Jefferson and the rest took the time and care to enshrine freedom of the press as among the most cherished ideals of the American system of democracy. In making her case, West adds a dimension to our scholarly understanding by exploring, as she says, "the lived experience" of the founding generation by going beyond what they wrote about freedom of the press and exploring the role that the press played in their day-to-day lives and the life of the nation.

Judges for this year's award unanimously praised West's article for its acute analysis of existing literature and its elegant, readable prose, calling it a model for scholarly writing in the future. They also applauded the pungent timing of her research — at a time when the legitimacy of the institutional press is under fire, when accusations of "fake news" are flying and when there is a sitting president who openly attacks journalists like no other since Richard Nixon

One judge remarked that West's article "is the one mostly likely to ignite a meaningful debate in the field" and that it "explores an important question in an era of dramatically expanding media."

See Stonecipher Award, 5

## Call for Graduate Student Liaisons

The Law and Policy Division will appoint two graduate students to serve as liaisons for the division for the 2017-18 academic year.

The purpose of these liaisons is to work with the division leadership to reach out to graduate students who may be interested in becoming members of the division. Activities include service at the annual conference, contributing to the quarterly Media Law Notes newsletter, and outreach efforts throughout the year to let graduate students know the benefits of being a part of the Law and Policy Division community.

Law and Policy Division faculty members are encouraged to nominate top graduate students for these roles, and graduate students may apply if they are interested.

Contact Courtney Barclay at [barclay@ju.edu](mailto:barclay@ju.edu), to make nominations or for more information about applying.

## Do You Have News for the Division?

If you have any news or would like to contribute to the newsletter, please contact:  
Roy Gutterman by email (rsgutter@syr.edu)

*Stonecipher Award, continued from 4*

Another judge felt that West's article "best meets the considerations for the Stonecipher Award" and that "the breadth of treatment of the Press Clause is impressive."

"Of particular strength is the nuanced treatment of both primary sources and prominent scholars on First Amendment history," one judge remarked. "In the current political climate, the place of the press will take on even more prominence."

West has taught at UGA's law school since 2006 and is now the holder of the school's Otis Brumby Distinguished Professorship in First Amendment Law, a post shared by the Grady College of Journalism and Mass Communication. Prior to joining the Georgia Law faculty, West taught as the Hugo Black Faculty Fellow at the University of Alabama School of Law and served as a judicial clerk for U.S. Supreme Court Justice John Paul Stevens. She holds a bachelor's degree from the University of Iowa and a J.D. from the University of Chicago. Before going into law and academe, West worked as a journalist in Illinois, Iowa and Washington, D.C.

Judges for this year's prize were Dean Smith, High Point University, chair; Kathryn Blevins, University

of Idaho; Victoria Ekstrand, UNC-Chapel Hill; Michael Hoefges, UNC-Chapel Hill; Jasmine McNealy, University of Florida; and Ken Paulson, dean, Middle Tennessee State University.

West's winning article can be found online at:  
[http://moritzlaw.osu.edu/students/groups/oslj/files/2016/06/Vol.-77\\_1-49-105-West-Article.pdf](http://moritzlaw.osu.edu/students/groups/oslj/files/2016/06/Vol.-77_1-49-105-West-Article.pdf).

## What's in a Name? Free Speech



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*A version of this column ran in the Syracuse Post Standard and Syracuse.com.*

Amid all the talk about whether any Supreme Court justices would retire and how the court would handle President Donald Trump's travel ban litigation, the end of the court's 2016-17 term brought an important First Amendment decision about the words we use

and how we use them.

In a June 19 decision, the court invalidated a section of the federal Trademark Act which allowed the government to deny trademarks that involve words or phrases that disparage or insult ethnic groups. Like many legal challenges and Supreme Court cases, there are abstract principles and real-life issues at play. Both deal with the extent to which government regulations can invade individual speech or expression.

"We now hold that this provision violates the Free Speech Clause of the First Amendment," Justice Samuel Alito wrote for the majority in the case, *Matal v. Tam*. "It offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend."

We are constantly bombarded by commercial images, slogans and trademarks, often not contemplating the implications posed by intellectual property protections. When the federal Patent and Trademark Office allows a company to register a trademark, it means the owner has exclusive use of that mark, slogan or image can use it for commercial purposes.

In this case, a Portland, Oregon, dance-rock band challenged the

*See Free Speech, 6*



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denial of its trademark application for an offensive, derogatory racial slur, also the band's name. The band, called The Slants, sought to reclaim the slur in its name and music. The Patent and Trademark Office rejected the application because of a section of the trademark law barring registration of derogatory terms.

The government argued that its authority also extended to denial based on the content under the disparagement clause of the trademark act. In essence, it argued that the trademark law amounted to government speech, which would have empowered the PTO to make decisions based on content.

The government speech analogy failed. Just two years ago, the Supreme Court ruled that license plates, which have grown into a venue for self-expression, were an area of government speech. This meant the government could deny certain "vanity plate" requests that may be offensive or contrary to the government's public policy initiatives.

But Simon Tam, the band's leader and the primary force behind the court case, had argued that the denial of his trademark application infringed on his free speech rights, which include his right to re-appropriate the slur. The band even made fun of the controversy, titling its latest album, "The Band Who Must Not Be Named."

The controversy sprang up in 2014, after the PTO stripped the NFL's Washington Redskins of its trademark protection under the same section of the law. In addition to the team's First Amendment

## **Law & Policy Division Officers**

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rights, the loss of trademark protection put the team at risk of losing millions of dollars, the team argued.

It is important to note that just because you have the right to use offensive terms in many settings, it does not mean that you should. It also does not remove your right to protest the offensive term's use or limit your ability to refuse to use it altogether. Some media outlets have taken to referring to "the Washington football team" while avoiding its team name, which is offensive to many.

After the opinion, Tam issued a statement, "This journey has always been much bigger than our band: it's been about the rights of all marginalized communities to

determine what's best for ourselves ... The Supreme Court has vindicated First Amendment rights not only for The Slants, but all Americans who are fighting against paternal government policies that ultimately lead to viewpoint discrimination."

It will be interesting to see the flood of applications to register a range of offensive terms and slogans. Similarly, it will be interesting to see the reaction to what will likely be a river of offensive and ugly trademarks. Just because someone can register offensive terms, does not mean anyone must pay attention to them or support the products. Avoiding or even boycotting offensive content also is protected by the First Amendment.

# AEJMC LAW & POLICY DIVISION EVENTS

Chicago, August 8-12

## Tuesday

**1-5 pm** – Pre-Conference

**1-2:15 pm:** Q&A with Judge Richard Posner

Moderated by Jonathan Peters, Kansas

**2:15-3:30 pm** – Teaching Award Winners

Tori Ekstrand, University of North Carolina

Chip Stewart, Texas Christian University

Benjamin Holden, University of Illinois

Nina Iacono Brown, Syracuse University

**3:30-5 pm** – Key Developments in Communication Law, 2016-17

Wat Hopkins, Virginia Tech

Tori Smith Ekstrand, University of North Carolina Chapel Hill

Rachael Jones, Jack Nelson/Dow Jones Legal Fellow, Reporters Committee for Freedom of the Press

Ashley Messenger, Senior Associate General Counsel, National Public Radio

Matt Topic, Loevy & Loevy/Outside General Counsel, Better Government Association

Moderated by Jonathan Peters, University of Kansas/Columbia Journalism Review

**5 pm** – Off-Site Pre-Conference Happy Hour (Jake Melnick's, 41 E. Superior)

## Wednesday

**8:15 am** – Research paper session

**10 am**– Panel w/ PRDV

Can communication and legal get along? Examining tensions and cooperation between legal counsel and communication practitioners

This panel discusses recent salient issues, developments and interactions involving communication professionals and legal professionals in a corporate context. The panelists will focus on such issues as, the benefits of clear and transparent communication and business practices to the success of the enterprise, its stakeholders and society as a whole, versus working within legal and regulatory constraints and protections. Several recent tangible examples of effective collaboration between the communications department, legal department and related corporate functions within organizations will be provided for discussion. Importantly, senior communications and legal professionals from the same corporation will participate on the panel, thereby adding a dimension of external validity to the discussion.

As such, an issue for discussion will focus on social media and recent legal developments on the regulation of stakeholders' social media content. Specifically, this discussion will provide an overview of the Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), and National Labor Relations Board's (NLRB) regulations that affect when and how stakeholders can communicate content about their organizations on professional and personal social media accounts. Many internal stakeholders also have access

to sensitive and proprietary information about an organization, and their use of that information on social media accounts can have major reputational impact. Compounding this issue is that posts by stakeholders are frequently part of an organization's social media strategy, because it allows for increased content and impact for online presence. Controlling these types of communication is a struggle for organizations, and represents a tension between public relations practitioners and legal departments.

Matt Ragas, DePaul University

Courtney Barclay, Jacksonville University

Cayce Myers, Virginia Tech

Susan Fleming, SVP marketing and communications, OptumRx, UnitedHealth Group

Kirsten Hines, Deputy General Counsel, OptumRx, UnitedHealth Group

Alexander Laskin, Quinnipiac University, moderator

**11:45 am** – Panel w/ CTEC

When the Bots Speak: Considering the Technological and First Amendment Implications of the Growth of Artificial Intelligence

This panel draws together technology and legal experts who can address the increasing part artificially intelligent communicators are playing within virtual spaces. Bots make up about one in ten Twitter accounts and there are millions of them on Instagram. The bots are helping people get out of parking tickets ([www.donotpay.co.uk/](http://www.donotpay.co.uk/)) and providing information about political candidates (@EveryTrumpDonor). Microsoft is developing software to make it easier for people who do not have programming skills to create bots and Facebook recently incorporated bots into its Messenger tool. The goal for the panel will be to address technology-related questions about how bots function and how they are being used, as well as legal questions about potential defamation, invasion of privacy, copyright, and other legal concerns that may result when artificially intelligent communicators are left to compose messages, scan data, and respond to messages that are written by others.

Ashley Messenger, Senior Associate General Counsel, National Public Radio

Meg Leta Jones, Georgetown University

Kristen Thomasen, University of Windsor School of Law

Jeremy Littau, Lehigh University

Chip Stewart, Texas Christian University, moderator

**1:30 pm** – Research paper session

**5 pm** – Panel w/ ETHICS

Fake News, Trolling, & Cyberbullying: Debating Social Media Companies' Rights & Responsibilities

Since the election, concerns over fake news, trolling, and cyberbullying have escalated. This interdisciplinary panel brings together experts on media law and journalism to address the core question that these issues implicate: What, if any, ethical or legal accountability ought to exist for social media companies, which increasingly control the parameters of our public discourse? How would such accountability best be accomplished?

Consider the ongoing controversies over how Facebook, Google, and other companies can best combat fake news; Twitter's decision to shut down allegedly abusive users' accounts; and Facebook's curation of its trending news feed. These companies increasingly play the role of news curator and, potentially, news

editor, making decisions that implicate media ethics. This raises questions like: How should we curate headlines? What, if any, responsibility to our audience or users do we have, and how would that be implemented? Yet it is entirely unclear how social media companies are answering these ethical questions. It is likely that they, like the media companies before them, would embrace a privatized notion of ethics. At the same time, the legal regimes under which these companies operate similarly offers non-liability (or non-accountability) because of the robust protections afforded for by both the First Amendment and CDA 230.

Debating these contemporary issues opens an opportunity to investigate a deeper divide between media ethics and media law. That divide can be understood as a proxy of a deeper theoretical schism between freedom and accountability, or, put differently, the divide is indicative of the dominance of libertarianism, the ideology that informs the idea of press freedom. Thus, social media companies are positioned on the frontier of negotiating the relationship between media ethics and media law, potentially furthering the divide or, perhaps, repairing it.

Theodore L. Glasser, Professor of Communication, Stanford University

Jane E. Kirtley, Silha Professor of Media Ethics and Law, University of Minnesota

Neil Richards, Thomas & Karole Green Professor of Law, Washington University in St. Louis

Jay Edelson, Founder and CEO of Edelson P.C.; Adjunct Professor, UC Berkeley Law

Morgan N. Weiland, JD, Stanford (moderator)

## Thursday

**8:15 am**– Research paper session

**11:45 am** – Panel w/ HIST

Impartial Observers or Embedded Activists? Examining the Press as a Political Interest Group  
in Media History and Law

As an institution that has adopted impartiality and objectivity as core professional values, yet also benefits from the maintenance and expansion of particular legal rights and privileges, the press occupies an awkward position in American democracy. How has the press grappled with this tension in halls of legislature, courts of law, and the court of public opinion? When has the press been most or least successful in exerting influence on the democratic debate over the regulation of speech? How might the press' role change as it evolves as a social institution today? Important recent scholarship has examined these questions in a variety of historical and legal contexts, including the debate over shield laws beginning in the late nineteenth century, the effort to secure and expand access to public records in the mid-twentieth century, and the press' role as a strategic litigant in pivotal U.S. Supreme Court cases. This panel draws together new scholarship for comparison and synthesis because it illuminates an aspect of the press' role in democracy that is understudied and bucks conventional wisdom.

Dean C. Smith, High Point

Eric Easton, University of Baltimore

Emily Erickson, Cal State Fullerton

Lucy Dalglish, University of Maryland

Patrick File, University of Nevada, Reno, moderator

**1:30 pm** – Panel w/ INTC

Differing Definitions: Conceptualizing Freedom of Expression in Sub-Saharan Africa

This panel focuses on freedom of expression in Sub-Saharan Africa. A 2016 Freedom House report on press freedom listed only three countries in the region as being free. In the remaining 47 countries, a combination of restrictive laws and threats pose serious obstacles for anyone seeking or disseminating information. Drawing on empirical research and experiences in countries throughout the region, the panelists will explore how journalists and researchers navigate these complex constraints against freedom of expression. Furthermore, research in the region often approaches freedom of expression using concepts and definitions from a Western perspective. Panelists will also discuss how the concept of a “free press” differs from country to country in Sub-Saharan Africa, and how it compares to Western notions. All the panelists are either nationals of sub-Saharan Africa or conducted field research there.

Karen McIntyre, Assistant Professor, Virginia Commonwealth University

Sally Ann Cruikshank, Assistant Professor, Auburn University

Meghan Sobel, Assistant Professor, Regis University

SUSI 2017 Scholars from East Africa and West Africa

Yusuf Kalyango, Jr., Professor, Ohio University., moderator

**Friday**

**1:45 pm** – Research paper session

**3:30 pm** – Panel w/ INTC

Media Regulations and Reforms in Latin America: A Comparative Perspective of Changes and Challenges

The current conditions of media regulations in Latin American countries are linked to economic, political, and social issues. Usually, reforms imply that new regulations will deliver wider and implied benefits to the public and consumers of multiple media formats. However, some reforms may represent the accommodation of elites, financial groups or political groups interested in more direct control of delivery and content. This panel presents updates on recent regulations and their experiences and impacts on a world region touted to become a “leading” example of market and government reforms.

Ed Carter, BYU

Juliet Pinto, Florida International

Heloiza Herscovitz, Cal State Long Beach

Manuel Chavez, Michigan State

Leonardo Ferreira, Florida International

Federico Subervi, Media Scholar & Consultant, moderator

**5:15 pm** – Best Research Papers session

**7 pm** – LAWP Members’ Meeting

**8:45 pm** – LAWP Social off-site – Jake Melnick’s, 41 E. Superior

**Saturday**

**11 am** – Research paper session

# Law & Policy Division Schedule 2017 AEJMC Conference

## Chicago, August 9-13

### **First Amendment Contours: Regulating Free Speech Today**

Wednesday, August 9 from 8:15-9:45 a.m.

Discussant: R. Michael Hoefges, UNC Chapel Hill

Moderator: Matt Telleen, Elizabethtown

#### **Papers in this session:**

- 1) Morgan Weiland - First Amendment Metaphors: From “Marketplace” to “Free Flow of Information”
- 2) Shao Chengyuan - Social Media Under Watch: Privacy, Speech and Self-Censorship in Public Universities
- 3) Lindsie Trego - Knowledge Will Set You Free (From Censorship): Examining the Effects of Legal Knowledge and Other Editor Characteristics on Censorship and Compliance in College Media
- 4) Kyla Garrett Wagner & Allison Lazard - Who Should Regulate? Testing the Influence of Policy Sources on Support for Regulations in Controversial Media

### **Current Issues in Defamation Law**

Wednesday, August 9 from 1:30-3:30 p.m.

Discussant: Derigan Silver, Denver

Moderator – Katie Blevins, Idaho

#### **Papers in this session:**

- 1) Matthew Bunker - “Famous in a Small Town”: Indeterminacy and Doctrinal Confusion in Micro Public Figure Doctrine
- 2) Meghan Menard-McCune - A Gap in the Shield? Reporter’s Privilege in Civil Defamation Lawsuits 2005-2016
- 3) Kenneth Pybus & Allison Brown - The Privilege That Never Was: The Curious Case of Texas’ Third-Party Allegation Rule

### **Personal Information and Concepts of the Self in Modern Privacy Law**

Thursday, August 10 from 8:15-9:45 a.m.

Discussant: Kyu Ho Youm, Oregon

Moderator: Jasmine McNealy, Florida

#### **Papers in this Session:**

- 1) Amy Kristin Sanders - The Protection of Privacy in the Middle East -- A Complicated Landscape
- 2) Tao Fu - China’s Personal Information Protection in a Data-Driven Economy: A Privacy Policy Study of Alibaba, Baidu and Tencent
- 3) John Wihbey & Mike Beaudet - State-Level Policies for Personal Financial Disclosure: Exploring the Potential for Public Engagement on Conflict-of-Interest Issues
- 4) Michael Park - The Medium is the Message: Digital Aesthetics and Publicity Interests in Interactive Media

### **Scholar-to-Scholar Refereed Paper Research Session**

Thursday, August 10 from 1:30-3:00 p.m.

Discussant: Chris Terry, Minnesota

#### **Papers in this Session:**

- 1) Krishna Jayakar & Eun-A-Park - Reforming the Lifeline Program: Regulatory Federalism in Action
- 2) Caitlin Carlson - Half the Spectrum: A Title IX Approach to Broadcast Ownership Regulation
- 3) Yoonmo Sang - Revisiting Copyright Theories: Democratic Culture and the Resale of Digital Goods
- 4) Austin Linfante - Depictions of Obscene Content: How Internet Culture and Art Communities Can Influence Federal Obscenity Law
- 5) Eric Robinson & Yicheng Zhu - Beyond "I Agree": Users' Understanding of Web Site Terms of Service

### **The Fantastic FOIA: Challenges in Information Gathering**

Friday, August 11 from 1:45-3:15 p.m.

Discussant: Jane Kirtley, Minnesota

Moderator: Erin Coyle, LSU

#### **Papers in this Session:**

- 1) A. Jay Wagner - A Secret Police: The Lasting Impact of the 1986 FOIA Amendments
- 2) A. Jay Wagner - Essential or Extravagant: Considering FOIA Budgets, Costs and Fees
- 3) Benjamin Cramer - Don't Bother: How Exemption 3 of the Freedom of Information Act Enables an Irrebuttable Presumption of Surveillance Secrecy
- 4) Daxton Stewart - Killer Apps: Vanishing Messages, Encrypted Communications, and the Challenges to Freedom of Information Laws

### **Top Papers in Law and Policy**

Friday, August 11 from 5:15-6:45 p.m.

Discussant: Paul Siegel, Hartford

Moderator: Jared Schroeder, SMU

#### **Papers in this Session:**

- 1) Tyler Prime & Joseph Russomanno - Lock or Key: Does FOIA Sufficiently Open the Right to Information?
- 2) Clay Calvert - Gag Clauses and the Right to Gripe: The Consumer Review Fairness Act of 2016
- 3) Nina Brown & Jon Peters - Say This, Not That: Government Regulation and Control of Social Media
- 4) Sebastian Zarate, Austin Vining & Stephanie McNeff - Fake News and the First Amendment: Reconciling a Disconnect Between Theory and Doctrine

### **New Frontiers in Newsgathering**

Saturday, August 12 from 11 a.m. – 12:30 p.m.

Discussant: Jason Shepard, Cal State Fullerton

Moderator – Michael Martinez, Tennessee—Knoxville Papers in this Session:

- 1) Kathleen Olson - Oligopoly of the Facts? Media Ownership of News Images
- 2) Kristen Patrow - Voting Booth or Photo Booth? Ballot Selfies and Newsgathering Protection for User-Generated Content
- 3) Roy Gutterman & Angela Rulffes - The Heat Is On: Thermal Sensing and Newsgathering: A Look at the Legal Implications of Modern Newsgathering

# Teaching Competition

The Teaching Awards Winners will present their innovative teaching ideas and exercises, Tuesday, 2:15-3:30:

**Chip Stewart**, of Texas Christian University, **first place** for “Joking about encryption: Teaching law, policy, and practicality of encrypted emails and messaging apps.”

**Ben Holden**, of the University of Illinois, **second place** for “Law students as player-coaches in undergraduate First Amendment education,” which addresses the eternal challenge of training students with no experience in issue-spotting or procedure to think like a lawyer.

**Nina Brown**, of Syracuse University, **third place** for “Creating the problem: looking at the law through student creative work,” which focuses on the legal issues facing strategic communications practitioners.



Law & Policy Division  
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Jake Melnick's Corner Tap  
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august 11  
@ 8:30 p.m.

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### Summa Cum Laude

UNC Center for Media Law & Policy

### Magna Cum Laude

Jasmine McNealy  
Tully Center for Free Speech, Syracuse

### Cum Laude

Clay Calvert  
Jon Peters  
Hubbard School of Journalism and Mass Communication  
at University of Minnesota  
Silha Center for the Study of Media Ethics and Law  
at University of Minnesota

AEJMC 2017

## Do You Have News for the Division?

If you have any news or would like to contribute to the newsletter, please contact:  
Roy Gutterman by email (rsgutter@syr.edu)



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