

MEDIA LAW NOTES

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LAW AND POLICY DIVISION, AEJMC

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Head Notes

Amy Gajda
Division Head
Tulane Law School

See if you can figure out what is wrong with this partial legal citation: 84 S.Ct. 710.

If you're like me, obsessed with proper Bluebook form, you'll immediately recognize that the citation is wrong because the Bluebook requires a space between the S. and the Ct. This is Bluebook Rule 6.1, one that



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mandates separation between a capital letter (or ordinal) and any abbreviation that is more than a capital letter (or ordinal). That's why F. Supp. 2d has spaces and F.3d does not. Put in Rule 6.1 language, "[C]lose up all adjacent single capitals" but "[d]o not close up single capitals with longer abbreviations."

Okay, I'll admit that that and much within the Bluebook is as incredibly boring as

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Bluebooking itself can be. But it's also very important. As Clay Calvert points out in his insightful article about publishing in law reviews in this issue of Media Law Notes, proper Bluebook citation form, as tedious as it is, is one of the keys to getting published in any law review. Like most who teach legal citation, I'd always warn my law students that judges will doubt a lawyer's analytical abilities if that lawyer can't Bluebook with precision. And law students who have that notion drummed into them are the ones who go on to join law reviews and read, review, and accept or reject our law review submissions!

That nitpicky attitude is the same toward legal research, of course. If the research isn't appropriately deep, the article won't be accepted and a student-at-the-helm publication structure does not mean a more lackadaisical process. At a student-edited law review, the students reading a particular submission may be steeped in that particular area of law – privacy, for example – because they've taken law courses in the subject area or because they've researched and written their own related note or comment. In other words, it's likely that these students know the law and/or have access to databases to make sure that we authors know the law too. If we're not up to date on cases, statutes, and related law review articles, it's a quick toss to the reject pile which, as Clay notes, is a towering one that beckons alluringly should an editor find any small reason to add to it.

Moreover, a new trend at some student-run law reviews is to ask a professor who researches and teaches in that area of law to read a submitted article that has passed an initial student editorial review and offer the students some guidance about acceptance. Missing a key case or recent law review article on point? The professor is sure to notice even if the students do not.

This is why it's so great that Derigan has lined up a second excellent article for this edition of MLN, an article written by Stacey Bowers, a law librarian at the University of Denver Sturm College of Law. The article is devoted to legal research, as you'll (Continued on page 2)

The importance and process of publishing in law reviews

By Clay Calvert
University of Florida

In addressing the process and importance of publishing scholarly articles in law journals (as compared to publishing in venues with a refereed, blind-review process), it is useful to start from the foundational premise that there are two very different – even contrasting – reasons why professors typically publish such articles in the first place.

The first reason is grandiosely noble: to help inform and influence judges, legislators, attorneys and the legal system in general on matters of importance. Indeed, perhaps the highest form of external validation that legal scholars today can earn is when their works are cited approvingly by judges and justices in legal opinions and when their scholarship is used as an authority in briefs and memoranda filed by attorneys in major cases.

The second reason why professors publish articles is cynically selfish: to earn tenure, to garner raises and to win promotions. Unless one is independently wealthy or has a significant other who pays the bills, this reason can be just as important as the first. As a professor with tenure, I can safely write those last two sentences and say what many professors probably know and recognize but care not to publicly acknowledge. In brief, we often publish articles not for the general public, but for an insular, insider audience of fellow scholars who may be evaluating our tenure portfolios someday.

When it comes to the second reason, it remains true today that some journalism and communications programs do not look favorably at – in fact, some look down upon – publishing in non-refereed law journals. (Continued on page 2)

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see, and gives advice to those who may not have access to Westlaw and Lexis. It includes helpful links to research databases, some of which don't cost a thing! Stacey presented at the Law and Policy pre-conference session on legal research last August in Denver and the article covers what she talked about during her presentation . . . and more.

I hope that you'll find these articles as interesting and as helpful as I do. I also hope that you'll not look to me as a quick expert on proper Bluebook citation form. Despite my boastful knowledge of the capital-ordinal-no-space rule, I sheepishly admit that I still refer to my weathered Bluebook for pretty much anything else!

Research tips from a law school librarian

By Stacey Bowers

University of Denver

Have you ever wondered what resources to turn to when engaging in legal research when you do not have access to databases such as Westlaw or LexisNexis? There are a number of alternatives available, both fee-based and free, that you can utilize for legal research.

Fee databases

When looking for fee-based databases, check the database listings of all the libraries on your campus since each may subscribe to different databases. Keep in mind that your public library may also subscribe to databases that you can use as a patron.

EBSCO provides a number of useful database tools including Academic Search Premier/Complete, Business Source Premier/Complete, and Communication & Mass Media Complete. Academic Search Premier or Complete indexes and abstracts journals, many of which are full text. This resource covers most areas of academic study including law and journalism and mass communication. Business Source Premier or Complete provides access to the citations or full text of journals covering business, marketing, and management. You can also access market research, industry and country reports, as well as company profiles. Communication and Mass Media Complete indexes and abstracts over 570 journals and includes full text coverage of over 450 journals. This database provides broad coverage of communications, mass media, and related fields of study.

EBSCO databases provide a number of search filters including the ability to restrict by date, and to limit by full text and/or scholarly or peer reviewed journals. Your search results display will provide a list of additional subjects or thesaurus terms you might use to narrow the current results list or to create a new search. You can also move your relevant results to a folder so as not to interrupt the flow of your research process. This folder allows you to email, save, or print all of your saved articles at the same time.

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(Publishing in law reviews, continued from page 1)

That likely will not change any time soon, so a first piece of advice to younger scholars simply is this: Publish in whatever venue it is that will help you earn tenure, be promoted or simply keep your job at a time when colleges and universities face tremendous budgetary constraints.

In other words, if you already have a job, find out what your institution values in terms and scholarship and then publish in those venues. If you're seeking a job, be sure to inquire up front (and get it in writing) about the types of publishing venues that will count toward tenure and promotion.



Clay Calvert

Within the realm of AEJMC, that's one of the primary functions and values of Communication Law & Policy – it's one of the very few refereed law journals out there. As such, it becomes an excellent publication vehicle for legal scholars working within the AEJMC Law Division and who are employed in colleges and schools of communications that require blind-reviewed, refereed articles in the tenure and promotion

process. When cynically viewed, solely from the perspective of the second, selfish reason why people publish articles, *Communication Law & Policy* exists as a tenure-generating journal, filling a void that traditional law journals simply cannot.

I respect and understand this very well. To cover my own bases when starting as a new assistant professor at Penn State (when Joe Paterno was a mere septuagenarian), I published within my first two years in both *Communication Law & Policy* and *Journal of Communication*, knowing there likely would be one or two members of a review committee at PSU who wanted to see that I could publish in a "real" refereed venue.

If one is fortunate enough to work at an institution that values publication in traditional law journals – the venues where, of course, law school professors publish to earn tenure and promotion – then it is necessary to understand the process and importance of such journals.

A few items about the process are vital to understand.

First, multiple submissions to law journals are the norm. Given that most law journals receive hundreds of submissions each year (some even receive thousands, as rejection letters from both the *Virginia Law Review* and the *Southern California Law Review* have graciously informed me . . . several times), the competition is fierce. Thus, while *Communication Law & Policy* "will accept only manuscripts which have not been submitted to other journals for review," that is not the rule with the overwhelming majority of law journals.

Second, to facilitate the multiple-submission process, the online Express0 publication system exists. As the Express0 website, which is available at <http://law.bepress.com/expresso>, proclaims, the service "makes law review submissions fast and easy. Have your manuscript delivered to your choice of 550+ law school reviews, including all of the top 100, simply by uploading the

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(Research tips, continued from page 2)

When looking for law review or journal articles, two extremely useful databases to consult are HeinOnline and LegalTrac. Even though there is overlap between the databases, it is worth your time to search both as each also has unique content.

When you enter HeinOnline, the home screen will display the various database libraries to which you have access. The Law Journal Library within HeinOnline provides full text coverage of more than 1,400 law journals and periodicals from the first volume to relatively current issues. HeinOnline articles are in PDF format so that you are viewing the article as it was published in the print journal, which means that footnotes are at the bottom of the page instead of interspersed within the text, and charts and graphs are intact.

From the Law Journal Library home page, you can search by citation or you can create a keyword query and search a specific field, such as the text of articles. You can also select a specific journal and drill down to the volume you wish to access. Another option is to choose the advance search tab and create a more so-

phisticated search. From this screen you can create a keyword search and search across all law reviews or limit your query to a specific subject area and set of law reviews. You can also date restrict your search and select the types of content you want to view. When utilizing HeinOnline always remember to capitalize your Boolean operators (And, Or, Not).

LegalTrac indexes over 1,500 major law reviews, legal newspapers, bar journals, and international legal journals and provides full text coverage to 200 titles. From the home page you can perform a basic search. While the default is a keyword search, you might want to consider doing an entire document search as this option examines all the keyword fields plus the full text of documents. You can limit your search to full text and/or peer reviewed publications and you can date restrict your search. LegalTrac also provides a useful Browse Subjects option. You can select or search for a subject and LegalTrac presents a results list for that particular topic.

Another database to consult when undertaking legally oriented (Continued on page 4)

AEJMC Annual Conference call for papers

The Law and Policy Division invites submission of original research papers on communications law and policy for the 2011 AEJMC Convention in St. Louis. 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 convention 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.

Law and Policy Division papers must be no longer than 50 **double-spaced** pages, 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 convention registration fees for the top three student paper presenters.

If you have questions, please contact:

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research is LexisNexis Academic (LNA). LNA provides access to more than 6,000 news, business, legal, medical, and reference publications. Legal coverage includes law reviews, U.S. case law, U.S. statutes, and some Canadian and European case law and materials. From the home page you can look up a legal case with a citation, the parties' names, or by topic in the Easy Search box. The other option is to click on the US Legal tab and from there you can search cases; federal or state statutes, codes, and regulations; law reviews; legal reference; and more. LNA also allows you to Shepardize a case so that you can obtain a list of all authorities, including cases, statutes, and regulations, that cite your particular case. Additionally, under legal reference you can access the legal encyclopedia American Jurisprudence 2d, which provides background information on over 400 legal topics, including references to other legal resources.

One last fee database to consider is JSTOR. It offers access to more than 1,000 leading academic journals in the humanities, social sciences, and sciences. While you can access the current issue of approximately 150 of these journals, most are older volumes. JSTOR provides access to a collection of 72 law titles. From the home page you can create a keyword search and restrict it to a specific discipline (such as law), as well as restrict your search by date.

Free resources

There is also a wealth of free resources available on the Internet to start your online legal research. Some of these websites are provided by the government, some by non-profit organizations, and others by for profit companies. Always be cognizant of who owns/produces the site, the timeliness of the information, and the quality and/or bias of the content.

A number of free websites provide access to federal and state laws, cases, and topical resources. Cornell University Law School produces the Legal Information Institute site (www.law.cornell.edu). From LII you can access federal and state statutes and cases, as well as search by popular topic. The topics provide a brief overview of that particular area of law and supply a list of relevant resources, including links to other websites. Megalaw (www.megalaw.com), Justia (www.justia.com), and the Public Library of Law (www.plol.org) also provide access to statutes, case law, and other pertinent legal resources. With Megalaw you can select a legal topic, such as First Amendment law, free speech law, or defamation law, and find other related links and resources pertaining to that topic. Megalaw also has an international law resource center categorized by country. Justia maintains a "cases in the news" section that discusses current, (Continued on page 7)

Call for reviewers

The Law and Policy Division needs your help in reviewing papers for the 2011 AEJMC conference in St. Louis. 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 will need about 75 reviewers for the St. Louis conference. Reviews will occur between April 1 and May 1, 2011. Last year we had enough reviewers to keep the paper load to a manageable level -- for most people, no more than three papers. 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 Kathy Olson, Research Chair, via e-mail at kko2@lehigh.edu or by phone at 610-758-5825.

Please note that graduate students may not review papers, and please be aware that 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,

Kathy Olson
Research Chair

(Publishing in law reviews, continued from page 2) electronic file to our site. We deliver, and you avoid the hassles and expenses of photocopying, assembling, and mailing.” One caveat is important here – it costs \$2 per journal. Thus, sending a submission out to ten journals will run \$20.

Third, one needs to be able to use *Bluebook* style, no matter how much of a pain or hassle it may be to learn. My own belief, having served as a law journal editor who had to do cite-checking during his second year at law school, is this: the better an article is Bluebooked, the greater the chance it will be accepted. Why? Because editors don’t want to waste time correcting and curing shoddily cited articles.

Fourth, writing a good cover letter is essential. It should be no more than one page in length and sell the article up front. The Express0 system allows the submission not only of one’s article, but also of an accompanying cover letter, abstract and vita.

Turning to the importance of publishing in law journal articles – at least the importance when viewed from the first, noble reason why scholars publish – it is vital to understand what might be called the flattening effect that Internet databases like LexisNexis and Westlaw have had on diminishing the significance of publishing in particular, elite law reviews.

For instance, when a California appellate court issued its recent opinion in the privacy-of-death case of *Catsouras v. Department of California Highway Patrol*, 181 Cal. App. 4th 856 (2010), *rev. denied*, 2010 Cal. LEXIS 3456 (Cal. Apr. 14, 2010), I was fortunate to have two of my solo-authored law journal articles both quoted and cited. Were those articles published in the *Harvard Law Review* or the *Yale Law Journal*? No, they were published in the *Loyola of Los Angeles Entertainment Law Review* and the *William & Mary Bill of Rights Journal*. Both are certainly good journals within their particular niches, but neither is an elite general-topic law review.

In other words, my thesis here is that it makes far less difference today for actual courts and jurists – tenure committees be damned – *where* an article is published, compared to the actual quality and credibility of the article itself. The California appellate court cared not one bit, I suspect, whether my two articles had been refereed, blind-reviewed or otherwise evaluated by a faculty member at another institution.

Ultimately, each legal scholar must strike a balance between the two reasons reason to publish, with that balance depending upon his or her institution’s particular guidelines and, in turn, that legal scholar’s own fiscal realities. There simply is no one-size-fits-all formula when it comes to where to publish one’s scholarly articles.

Clay Calvert is Professor and Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida. He has published more than 100 articles in traditional, non-refereed law journals. In Spring 2011, he is teaching Constitutional Law at the University of the Pacific McGeorge School of Law in Sacramento, Calif.

Legal annotated bibliography

By Michael T. Martínez, PhD candidate
University of Missouri

Free speech

Griffin, L. C. (2010). “*Snyder v. Phelps*: Searching for a Legal Standard.” 2010 Cardozo L. Rev. De Novo 353.

The case of *Snyder v. Phelps* offers an array of legal issues in search of clearer legal standards. The original lawsuit by plaintiff Albert Snyder, father of the deceased soldier Matthew Snyder, against defendants Fred W. Phelps, his Westboro Baptist Church, and other church members for their picketing of Matthew’s funeral and their website’s “epic” account of Matthew’s life, pleaded five tort causes of actions under Maryland law for defamation, intrusion upon seclusion, publicity given to private life, intentional infliction of emotional distress and civil conspiracy. The district court dismissed the defamation and publicity claims. The jury found the defendants liable on the other three theories and awarded plaintiff \$ 2.9 million in compensatory damages and \$ 8 million in punitive damages. The district court remitted the punitive damages award to \$ 2.1 million. On appeal, the Fourth Circuit reversed, ruling that the First Amendment required a judgment for the defendants as a matter of law “[b]ecause the judgment [incorrectly] attaches tort liability to constitutionally protected speech” Snyder’s petition for a writ of certiorari presented three questions for the Supreme Court to decide. The three questions presented and the underlying opinions suggest that the case is about religion, tort law and free speech. *Snyder v. Phelps* concerns tort law and free speech, and offers the Court an opportunity to clarify the constitutional law of defamation and privacy lawsuits involving speech. But it should not be a case about religion.

Volokh, E. (2010). “Freedom of Speech and the Intentional Infliction of Emotional Distress Tort.” 2010 Cardozo L. Rev. De Novo 300.

The defendants’ speech in *Snyder v. Phelps* is uncommonly contemptible. But many more ideas than just the Phelpsians’ would be endangered if the Court allowed the intentional infliction of emotional distress tort to cover the expression of offensive ideas. Many statements might be labeled “outrageous” by some judge, jury, university administrator, or other government actor. Publishing the Mohammed cartoons outrages millions. So does burning an American flag. So might stepping on a Hamas flag, which contains a passage from the Koran. So might saying that “affirmative action results in a situation where minorities are competing with people who are better prepared to be there” (a statement that could be seen as applying to an offended person personally, as well as to minorities generally). So might arguing that a government program director is unfit for a job because

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Law & Policy Division

2011 AEJMC Conference schedule

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

Here is the line-up:

Tuesday, August 9: Pre-conference sessions

- 8 a.m.-12 p.m. Access to Information in Latin America, with International Communications Division
- 1-5 p.m. Teaching Media Law

Wednesday, August 10

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

Thursday, August 11

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

Friday, August 12

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

Saturday, August 13

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

Pre-conference workshop on teaching communication law

What: **Everything You Need to Know about Teaching Communication Law**

When: 1 to 4 p.m. on Tuesday, August 9, 2011

Overview

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

The workshop, to be held from 1 to 4 p.m. on Tuesday, August 9, 2011, will consist of three 50-minute sessions. Featured panelists, ranging from authors of communication law textbooks to experienced communication law teachers, will share their experience and suggestions. Each panelist will present for 10-12 minutes, leaving time for questions and discussion with the audience. The details of each session are listed below.

Session 1: Conversations with textbook authors

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

Moderator: Minjeong Kim, Colorado State University

Panelists:

Clay Calvert, University of Florida, author of *Mass Media Law*

Kent Middleton and Bill Lee, University of Georgia, authors of *The Law of Public Communication*

Paul Siegel, University of Hartford, author of *Communication Law in America*

Session 2: Tips on teaching methods and projects

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

Moderator: Dan Kozlowski, Saint Louis University

Panelists:

Dave Cuillier, University of Arizona

Steven Helle, University of Illinois

Cynthia Mitchell, Central Washington University

The winner of this year's teaching ideas competition

Session 3: Challenging Issues Related to Teaching Communication Law

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

Moderator: Amy Sanders, University of Minnesota

Panelists:

Jasmine McNealy, Syracuse University

Bob Richards, Penn State University

Karon Speckman, University of Missouri

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important cases. You can also search by practice area in Justia, such as constitutional law or communications and Internet law.

If you are seeking information regarding current or past legislation at the federal level, you should access GPO Access (<http://www.gpo.gov/fdsys/>) or Thomas (<http://thomas.loc.gov>). Both sites allow you to research federal legislation and its history, including proposed bills, actual bills, congressional testimony, and more. Additionally, you can access the U.S. Code, Code of Federal Regulations, and Federal Register from both of these sites.

The Google Scholar site (<http://scholar.google.com>), which is still in beta form, provides access to case opinions and law journal articles. In some instances, when performing a search at your university, you will receive links that you can click and access the full text of a referenced journal article. When you locate a case on point to your issue, you can click on the “cited by” link and receive a list of other cases that cite to your particular case.

There are many websites dedicated to specific issues and causes.

The First Amendment Center (www.firstamendmentcenter.org) offers information regarding how courts understand and apply the First Amendment. It covers key issues and topics relating to the First Amendment, including commentary and analyses of cases and policies. The Electronic Frontier Foundation (www.eff.org) addresses issues related to free speech and privacy. This organization brings and defends lawsuits related to these issues. It maintains a section dedicated to free speech on its website and an archive of white papers on various topics.

The Electronic Privacy Information Center (www.epic.org) is a public interest research center dedicated to issues dealing with privacy, the First Amendment, and constitutional values. You can access information regarding current policy issues related to these areas of law. The Chilling Effects website (www.chillingeffects.org) addresses issues regarding online rights. Its goal is to help people understand the First Amendment as it pertains

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Law and Policy Division teaching competition call

How to incorporate diversity in a law and policy classroom

The Law and Policy Division is pleased to announce our third-year teaching ideas competition. This year we are looking for your best and most innovative ideas for incorporating diversity in communication law and policy classroom. Submissions could include an innovative assignment, activity, or lesson plan – or a particularly original approach to teaching the subject in general.

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

All submissions must be received by Thursday, April 1, 2010. Submissions should be sent as an e-mail attachment to Minjeong Kim at Minjeong.Kim@colostate.edu (please mention “teaching ideas competition” in the subject line of your submission). Submitters need not be Law and Policy Division members. Both faculty and graduate students are welcome to submit.

Submissions should follow these guidelines:

- (1) The 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 10, 2011.

Please direct any questions to:

Dr. Minjeong Kim
Teaching Standards Chair 2010-11
Colorado State University
Minjeong.Kim@colostate.edu
Phone: 970-491-3807

Law & Policy Division research papers

2011 AEJMC Southeast Colloquium

“Rosetta Stone, Rescuecom and Search Engine Marketing: A look at trademark law and the conflict within Google’s AdWords,” Valerie C. Aquila, Indiana University

“Crushing Animals: The Latest Judicial Protections for Violence in the Media,” Evan Barton, Ohio University

“Strict in Theory, But Feeble in Fact? First Amendment Strict Scrutiny and the Protection of Speech,” Matthew D. Bunker, University of Alabama; Clay Calvert, University of Florida; and William C. Nevin, University of Alabama [THIRD-PLACE FACULTY PAPER]

“Putting the Shock Value in First Amendment Jurisprudence: When Freedom for the Citizen-Journalist Watchdog Trumps the Right of Informational Privacy on the Internet,” Clay Calvert and Mirelis Torres, University of Florida [TOP FACULTY PAPER]

“Low-Value Expression, Offensive Speech and the Qualified First Amendment Right to Lie: From Crush Videos to Fabrications About Military Medals,” Clay Calvert and Rebekah Rich, University of Florida [SECOND-PLACE FACULTY PAPER]

“When Cleansing Criminal History Clashes With the First Amendment and Online Journalism: Are Expungement Statutes Irrelevant in the Digital Age?” Clay Calvert and Jerry Bruno, University of Florida

“Blurring and Tarnishment: How Federal Courts Have Applied the 2006 Trademark Dilution Revision Act Standards,” Roxanne Coche, University of North Carolina [SECOND-PLACE STUDENT PAPER]

“The Copyright Wars, the Free Culture Movement, and Second Wave Critical Legal Studies,” Victoria Smith Ekstrand and Cynthia Nicole Shipman, Bowling Green State University, and Andrew Famiglietti, Georgia Institute of Technology

“The Captive Audience Doctrine in a Picketing Funeral Case: *Snyder v. Phelps*,” Yi-Hsing (Paul) Han, Florida State University

“*Times v. Sullivan* Revisited: The Slow and Horrible Death of the Actual Malice Rule,” W. Wat Hopkins, Virginia Tech

“Tweeting the Police Scanner: The Rediscovered Liabilities,” Bill W. Hornaday, Indiana University [THIRD-PLACE STUDENT PAPER]

“Personal Jurisdiction and Internet Libel: Why the First Amendment Should Have a Role in the Decision to Exercise Jurisdiction,” Jonathan D. Jones, University of North Carolina [TOP STUDENT PAPER]

“Don’t Be ‘Too’ Evil: An Analysis of Verizon and Google’s Joint Policy Proposal Regarding Network Neutrality, the Protection of an Open Internet, and the Creation of a New, Premium Network,” Matthew LeHew, Florida State University

“Adjudicating Libel: Freedom of Expression Theory in the Digital Age,” Nikhil Moro, University of North Texas, and Debashis “Deb” Aikat, University of North Carolina

“Does ‘Free Press’ Mean It’s Free to Use? Fair Use and the Unauthorized Reproduction of News Content Online,” Scott Parrott, University of North Carolina

“A SLAPP in the Facebook: Assessing the Impact of Strategic Lawsuits Against Public Participation on Social Networks, Blogs and Consumer Gripe Sites,” Robert D. Richards, Pennsylvania State University

“Balancing the Four Factors on Campus: Fair Use and the Electronic Distribution of Copyrighted Materials in the GSU Lawsuit,” Robert N. Spicer, Rutgers University

“Space to Breathe Falsely: Reexamining the balance between commercial speech and defamation 20 years after *U.S. Healthcare v. Blue Cross*,” Matthew Telleen, University of South Carolina

“Retransmission Consent: An Exploration of its Past, Present and Future,” Gillian Wheat, University of North Carolina

“Felony Use of an Audio-Enabled Video Phone or Political Speech? All-Party-Consent Anti-Wiretapping Statutes and the Public’s Right to Monitor Police Work,” Lydia E. Wilson, University of North Carolina

The Law and Policy Division would like to thank the 35 reviewers who took time out of their busy schedule to review 3 papers each. The acceptance rate for the paper competition was 57% (20/35).

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she's not a U.S. citizen. So might arguing in favor of a government policy of retaliating against civilians during wartime. So might harsh, *Hustler-v.-Falwell*-like ridicule of a university professor, a community activist, or someone who was convicted of a crime but who nonetheless arouses the sympathy of a jury or a university administrator (perhaps because of the political valence of the criminal statute that the person had violated). If Snyder allows liability for supposedly outrageous statements that recklessly inflict severe emotional distress, then all the speech mentioned above could lead to liability, university disciplinary sanctions, or in principle even jail time (should a state choose to criminalize such speech). And such liability may become especially likely because denying such liability might itself seem outrageous, once liability in Snyder is allowed.

Weisberg, R. (2010). "Two Wrongs Almost Make A "Right": The 4th Circuit's Bizarre Use of the Already Bizarre "Milkovich" Case in *Snyder v. Phelps*." 2010 *Cardozo L. Rev. De Novo* 345.

The Fourth Circuit's decision in *Snyder v Phelps* gives a boost to a seriously wrong-headed High Court opinion, now 20 years old: the otherwise under-examined Rehnquist decision in *Milkovich v Lorain Journal Co.* The Snyder majority overturns for First Amendment reasons a \$ 5 million judgment awarded after a full jury trial to the bereaved family of an American soldier who had been killed in Iraq. The Snyder majority opinion performs acrobatically. It tries to somersault over at least five relevant Supreme Court cases to find that such outrageous and targeted speech is protected. Most shocking to the knowledgeable viewer of this defendant-favorable tumbling act is Snyder's reliance on *Milkovich*, one of the few plaintiff-favorable First Amendment decisions of the past 20 years. Even the present defendant-favorable Court, epitomized in its recent *Citizens United* decision, is not going to tolerate the mis-reading and will allow the plaintiff's judgment to stand, at least with regard to the First Amendment.

Captive audience

Hartley, R. C. (2010). "Freedom Not to Listen: A Constitutional Analysis of Compulsory Indoctrination Through Workplace Captive Audience Meetings." 31 *Berkeley J. Emp. & Lab. L.* 65.

Workplace captive audience meetings are assemblies of employees during paid work time in which employers compel employees to listen to anti-union and other types of proselytizing. This article argues that employers' First Amendment free speech rights do not preclude a ban on captive audience meetings. Instead, employees are a "captive audience" whom the Constitution protects from being force-fed the employer's religious and political ideology at the workplace. Employers, accordingly, have no free speech right to coerce workplace ideological listening.

Government speech

Jacobs, L. G. (2010). "What the Abortion Disclosure Cases Say About the Constitutionality of Persuasive Government Speech on Product Labels." 87 *Denver U.L. Rev.* 855.

New national health reform legislation requires that fast food chains post calorie counts on signs and menus, and proposals continue to surface to mandate "cigarette-style" warnings on a range of other products because they pose a public health danger. Producers protest the labeling requirements and, frequently, succeed in defeating proposed regulation. But sometimes they don't; and then, increasingly, they go to court, arguing that the Constitution protects the integrity of their commercial message from government imposed speech. Specifically, cigarette sellers contend that, even if the purpose is public protection, Congress cannot force them "to disseminate a Government-drafted anti-tobacco message" or to "stigmatize their own product on their own packaging." The district court hearing the cigarette sellers' case has rejected this part of their challenge, but the parties will likely appeal. And other challenges to new labeling requirements will surely follow.

Norton, H. and D. K. Citron (2010). "Government Speech 2.0." 87 *Denv. U.L. Rev.* 899.

This article seeks to start a conversation about how courts--and the rest of us--might re-think our expectations about government speech in light of government's increasing reliance on emerging technologies that have dramatically altered expression's speed, audience, collaborative nature, and anonymity. It anticipates the next generation of government speech disputes in which certain associations and entanglements between government and private speakers complicate the government speech question. By adding to these challenges, government's increasing use of newer technologies that vary in their interactivity and transparency may give the Court additional reason to re-examine its government speech jurisprudence. "Government Speech 2.0" thus refers not only to the next generation of government speech, but also to the possibility that government's increasing reliance on emerging expressive technologies may help inspire the next generation of government speech doctrine: one more appropriately focused on ensuring government's meaningful political accountability for its expressive choices.

Copyright

Litman, J. (2010). "Real Copyright Reform." 96 *Iowa L. Rev.* 1.

A copyright system is designed to produce an ecology that nurtures the creation, dissemination, and enjoyment of works of authorship. When it works well, it encourages creators to generate new works, assists intermediaries in disseminating them widely, and supports readers, listeners, and viewers in enjoying them. If the system poses difficult entry barriers to creators, imposes demanding impediments on intermediaries, or inflicts

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to online activities.

The Committee to Protect Journalists site (www.cpj.org) is dedicated to defending journalists worldwide. The site contains news stories related to these issues and maintains an alert section regarding journalists who have been prevented from reporting the news.

Research tips

Now that you know some of the fee databases and free resources available, how do you commence your research project? You should start by brainstorming and listing your key terms and phrases. You should also consider and list potential synonyms for those terms. In legal research, the term you think is correct is often not the term used. Find a method to track your search terms that works for you. Make sure to add new terms and delete those that are not working from your list as you progress in your research.

It is also worth the few minutes it takes to examine the search tips for each database or website. The Boolean operators--and, or, and not--are generally standard and most databases and websites provide for their use. However, the truncation symbol, wildcard character, and proximity locator often differ. You can usually locate the search tips by looking for a tab labeled help, FAQ, search tips, or toolbox.

The truncation symbol, which is generally the asterisk (*) or exclamation point (!), is placed at the end of your term and allows you to find the variant roots of the word. For example "amend*" will find amend, amends, amendment, amending, etc. The wildcard character is a special symbol that represents one letter and is generally the question mark (?). For instance "wom?n" would find woman, women, or womyn. You can also include multiple wildcard characters within a search term. Proximity locators allow you to tell the database or website to find two words or phrases within so many words of each other, within the same sentence, or within the same paragraph. Proximity locators vary from database to database and are often not available when searching free websites. Something as simple as forgetting to capitalize the Boolean operators can derail your search results or produce off-point or no results.

Conclusion

While Westlaw and LexisNexis are password driven databases and generally only available to faculty, staff, and students of law schools, there are many other resources available to utilize for legal research. The databases and websites discussed in this article can lead you down a path to successful legally oriented research.

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burdensome conditions and hurdles on readers, then the system fails to achieve at least some of its purposes. The current U.S. copyright statute is flawed in all three respects. This article explores how the current copyright system is failing its intended beneficiaries. The foundation of copyright law's legitimacy is built on its evident benefits for creators and for readers. That foundation is badly cracked, in large part because of the perception that modern copyright law is not especially kind to either creators or to readers; instead, it concentrates power in the hands of the intermediaries who control the conduits between creators and their audience. Those intermediaries have recently used their influence and their copyright rights to obstruct one another's exploitation of copyrighted works. The concentration of copyright rights in the hands of intermediaries made more economic sense in earlier eras than it does today. The key to real copyright reform is to reallocate copyright's benefits to give more rights to creators, greater liberty to readers, and less control to copyright intermediaries.

Social networks and the courts

Nicolas, E. (2010). "A Practical Framework for Preventing "Mistrial By Twitter"." 28 *Cardozo Arts & Ent. LJ* 385.

This article examines the ways the social networking application Twitter has recently presented a particular problem in the American jury system. Twitter is a relatively new techno-social phenomenon that pushes the boundaries of traditional rules concerning juror misconduct and technology in the courtrooms; it has been implicated as a means of undermining the systemic goal of fair trials by impartial jury. Because Twitter (or rather, a juror using Twitter to disclose or receive information about her case) could interfere with a verdict at any time from voir dire to post-judgment, "mistrial by Twitter" could potentially cause a tremendous waste of judicial resources.

Open records

Simpson, S. (2009-2010). "A Big Year for the First Amendment: *Doe v. Reed* and the Future of Disclosure Requirements." 2009-10 *Cato Sup. Ct. Rev.* 139.

In *Doe v. Reed*, the Supreme Court waded into the contentious politics of gay marriage to decide whether government-mandated disclosure of petition signatures in a referendum violates the First Amendment. The issue arose in the context of a Washington State referendum to repeal a recently enacted gay marriage law. Under Washington's version of the Freedom of Information Act, petition signatures must not only be disclosed to state officials for verification, they may also be publicly disclosed, along with the signers' addresses, to anyone who requests them. Fearing threats and harassment of the type that occurred during the debate over California's Proposition 8, the proponents of the Washington referendum and a group of petition signers sought to block public disclosure of the petitions, arguing that disclosure would violate
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the First Amendment. The Supreme Court answered the question narrowly. Construing the plaintiffs' challenge as a facial attack—a challenge to petition-signature disclosure as such, regardless of the subject of the referendum or the precise burdens plaintiffs face—the Court ruled against them and held that states have the authority to require the disclosure of the identities of those who sign petitions to have issues placed on the ballot. The Court sent the case back to the district court to allow the plaintiffs to try to prove, in a subsequent as-applied challenge, that disclosure would violate their First Amendment rights by chilling their speech and their ability to associate for political purposes.

Network neutrality

Vitello, C. (2010). "Network Neutrality Generates a Contentious Debate Among Experts: Should Consumers be Worried?" 22 *Loy. Consumer L. Rev.* 513.

It has been 40 years since the invention of the Internet, and like any aging technology, the Internet is not immune to the proverbial mid-life crisis. With 1.7 billion, or just over a fourth of the world's population using the Internet, and with the expectation that Internet traffic will quadruple by the year 2013, many

fear that the current antiquated system will not be able to support the rising level of demand without some form of data discrimination. This concern is only exacerbated by the fact that active mobile-phone Internet users have nearly doubled between 2006 and 2008. Popular economic literature is quick to point out that any finite resource facing increasing levels of demand will have to address its scarcity dilemma by imposing some form of allocation mechanism. Such allocation mechanisms, or network-management tools, employed by Internet service providers ("ISPs") to control traffic on their infrastructure is at the core of the network neutrality debate. Proponents of network neutrality contend that Internet traffic manipulation can, and ultimately will, adversely affect Internet users. These proponents call for the enactment of federal regulatory legislation that will mandate ISPs to treat all Internet traffic alike without any form of data discrimination. Conversely, network neutrality opponents contend that not only is data discrimination necessary, but it is also beneficial to the consumer. These opponents argue that our current regulatory framework will address unfair practices appropriately and any new legislation will only yield more harm than good. This article looks past the hysteria and contentious nature of the network neutrality debate and analyzes the issue by focusing on the economic and consumer welfare implications resulting from either side's position.

IAMCR Annual Conference call for papers

The theme of the 2011 conference of the **International Association of Media and Communication Research** is "Cities, Creativity, Connectivity." The full call for the conference, which will be in Istanbul from July 13-17, can be found at <http://iamcr2011istanbul.com/>. The deadline for submission of abstracts for consideration is February 8, 2011.

The **Law Section** of IAMCR welcomes papers and panels related to the conference theme, including such topics as:

- the legal context for creativity (eg, intellectual property rights, government support for and constraints on innovation and developments, etc.),
- adaptations of communication laws and regulations for specific types of city environments (eg, within free trade zones, along borders, or where violence is rife),
- the uses of laws and regulations to carve out different types of communicative spaces within cities (eg, zoning ordinances, laws pertaining to the use of large screens and other media in public spaces, public art, etc.),
- historical and contemporary effects of the increasing networking density of cities and changes in communication law and regulation,
- relationships between place as a medium for centers of creativity (as in innovation-rich environments like Silicon Valley) and intellectual property rights,
- differences in legal approaches to communication infrastructure and other issues in urban and rural environments, and
- the development of laws and regulations constraining and enabling speech in cities within virtual worlds and other online city-like environments.

Other paper and panel proposals pertaining to the section mission are also welcome. The section is open to all theoretical and methodological approaches, and particularly encourages attention to comparative, international, and global legal matters as well as research on communication law at the national and sub-national levels.

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