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# MEDIA LAW NOTES

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## Toronto a Grand Success

By Karen Markin,  
University of Rhode Island  
kmarkin@uri.edu

Toronto was the scene of exciting scholarly exchange as the Law Division sponsored sessions on topics ranging from getting published in AEJMC journals to comparing media regulatory systems around the world.

It was standing room only at many sessions, including the very last one of the convention, "Contemporary Libel Law and the Legacy of *New York Times v. Sullivan*." Discussion became quite lively in "A Conflict of Laws: American Media Coverage of Canadian Crimes" as a Canadian author discussed the pressures he has faced from law enforcement officials as he writes about crime in that country. The session on "Access to Campus Disciplinary Proceedings and Crime Reports" was an eye-opener. It revealed the huge imbalance between the powers of campus police and disciplinary panels compared with the very limited right of access to records of these essentially public functions.

The convention was a success because members came forward with these ideas and carried them to fruition. If you have an idea for a panel session at next year's convention in San Antonio, please contact this year's vice head and program chair, Tony Fargo at Indiana. Proposing and organizing a panel is a great way to get involved in the division.

*continued on page 3*

## The Importance of Public Research

By Robert D. Richards & Clay Calvert,  
Co-Directors, The Pennsylvania Center for the First Amendment  
cc45@psu.edu

Attendees of the general business meeting at Toronto's AEJMC convention heard more than the usual litany of committee reports and floor resolutions. They were treated to a provocative talk on the research process by Everette E. Dennis, one of the Association's most distinguished and – as the author, co-author and/or editor of many books and at least 200 published articles – prolific scholars.

Dennis, currently the Felix E. Larkin Distinguished Professor at Fordham Business School and formerly the dean of the School of Journalism and Mass Communication at the University of Oregon, was on hand to receive the Eleanor Blum Distinguished Service to Research Award. It was a fitting tribute for someone who has long contributed to the communications field in various capacities, including as a prominent First Amendment scholar.

His talk raised some points members of the law division should ponder. Dennis drove home the importance of making research public by getting the work into print. He cautioned scholars against growing discouraged and bogged down by journal rejections. His advice? Send the piece out again and again and again until it is finally published. In other words, don't give up. If the piece is worth writing, it's worth fighting to get it into print.

Dennis' almost assembly-line approach to discussant often picks apart the arguments and offers suggestions for making the work stronger. Audience participants add their own thoughts about the research. What happens next?

How many of the papers that grind through this time-consuming process each August ever see the light of print? How many of these papers are ever published in a refereed journal, law review, journalism review or commentary piece in a newspaper or magazine? If scholarship is a public enterprise, as Ev Dennis and others believe it is, then these are questions worth answering. Surely the discussion of a research paper in a room with 15 to 20 attendees is not meant to be an end unto itself.

Perhaps it would be useful, then, to track the progression of papers beyond the annual convention. The data would

*continued on page 2*

### INSIDE THIS ISSUE

- |   |  |
|---|--|
| 3 | Unorthodox Freedom of Religion               |
| 4 | Moving & Meiklejohn                          |
| 6 | Law Division Business Meeting Minutes        |
| 8 | Sharing Ideas for Assessment & Accreditation |

## Multiple Submissions Good

*Public Research, from 1*

help the law division assess the viability of its members' research outside the relatively narrow confines of the AEJMC. Indeed, if the data suggest that only a few papers each year eventually become published in other venues, then it may be time to take a hard look at the research presentation and acceptance processes. Such a finding would suggest that the other non-published papers present research that, essentially, dead ends at the AEJMC convention.

While the AEJMC serves a useful function in bringing scholars with shared interests together, the law division particularly needs to be cognizant of the expansive nature of this segment of the discipline. If the conference is the end of the line for much of the research trumpeted throughout the paper sessions, an entire audience – namely legal scholars and judges – is missed.

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*The quality of the law journal into which a paper is accepted is far less important today, given the fact that nearly all law journals can be found online...*

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It also might suggest the need to reconsider the paper judging process. By now, almost anyone who has submitted multiple papers over the years to the AEJMC law division competition is familiar with this result: one reviewer loves the paper, one reviewer hates the paper, and the other reviewer finds it so-so. It is this final reviewer, then, who controls and rolls the dice in the crapshoot that is paper judging. And because current judges are not allowed to submit papers themselves, one wonders what the credentials of some – certainly not all – of those reviewers are. One wonders what some – again, certainly not all – of their own research and publishing records look like. Parsed differently, just as the selection process of law journals is often criticized,<sup>1</sup> it is possible to criticize the judging process for papers.

While some scholars would reject Dennis' notion of serial submissions after a rejection, it is an important suggestion. Getting a paper "out there" in the vast law journal marketplace of ideas is important; if the article goes cite-less over the years by other scholars and courts, then perhaps its value may not be significant. On the other hand, subsequent citations by scholars and courts are indicative of quality. The quality of the law journal into which a paper is accepted is far less important today, given the fact that nearly all law journals can be found online, than whether it is found useful by jurists and courts. Furthermore, online legal databases such as LexisNexis Academic Universe<sup>2</sup> should have the unintended consequence in the promotion and tenure process of substantially diminishing the importance of the

name of journal in which an article is published. As Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit has argued:

if ideas developed by legal academics are going to be more than just empty rhetoric - if they are going to affect the law, rather than merely talk about it - these ideas will eventually have to be accepted by the judiciary. For better or worse, it's in the courtroom and in legal opinions where the rubber meets the road - no, it's still not what you think; it's the old Firestone jingle that many of you here probably don't even remember.<sup>3</sup>

In summary, it would be an interesting endeavor to track both the publication and citation record, on an annual basis, of those papers accepted for presentation at the AEJMC annual convention. It also is suggested by the authors that individuals who have papers rejected by a troika of judges not be discouraged from submitting their papers to journals where their scholarship may become public and reach far beyond the confines a cookie-cutter conference room. As Everette Dennis admonished, send it out and make it public. Let the judges and scholars who then read it sort out its true value.

1. See, e.g., Ronald J. Krotoszynski, Jr., *Legal Scholarship at the Crossroads: On Farce, Tragedy, and Redemption*, 77 TEX. L. REV. 321, 321-31 (1998) (disparaging the law review article selection process).
2. <http://web.lexis-nexis.com/universe>
3. Alex Kozinski, *The Fourth Annual Frankel Lecture: The Relevance Of Legal Scholarship To The Judiciary And Legal Community: Address Who Gives A Hoot About Legal Scholarship?*, 37 HOUS. L. REV. 295, 297-98 (2000).

### MEDIA LAW NOTES

LAW DIVISION HEAD

Karen Markin

University of Rhode Island  
kmarkin@uri.edu

LAW DIVISION VICE HEAD

Anthony L. "Tony" Fargo  
Indiana University  
alfargo@indiana.edu

CLERK

Jennifer Jacobs Henderson  
Trinity University  
jhender4@trinity.edu

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Oklahoma State  
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## Law Division Officers

### Welcomed

*Toronto, from 1*

Speaking of this year's officers, in addition to Tony, we have Jennifer Henderson of Trinity as clerk and editor of Media Law Notes. Lillian Lodge Kopenhaver of Florida International will again serve as PF&R committee chair; Elizabeth Blanks Hindman of Washington State is our research chair; and Jeremy Harris Lipschultz of Nebraska-Omaha is teaching standards committee chair.

## Unorthodox Freedom of Religion

By Rick Peltz  
University of Arkansas at Little Rock  
[rjpeltz@ualr.edu](mailto:rjpeltz@ualr.edu)

Though time is at a premium in the introductory media law course, advanced offerings and seminars can provide students with a richer understanding of the First Amendment. Journalism professors might be reluctant to expose students to the religion clauses because of the vastness of the subject, but in fact, a fair overview can be conducted in as little as an hour.

My constitutional law survey students spend just one class-hour on three basic concepts: (1) the meaning of "religion"; (2) the (anti)"establishment" clause; and (3) the "free exercise" clause. With that foundation, students are adequately equipped to reconsider more complex cases of free speech-religion interplay.

The meaning of religion is nicely examined through *United States v. Seeger* (1965), approving of conscientious objection (CO) to combat, and *Wisconsin v. Yoder* (1972), permitting Amish home-schooling.

*Seeger* sets out the classic test of sincerity and meaningfulness of belief *parallel to* belief in God. Especially in light of the war on terror, *Seeger* plays nicely into a "slippery slope" line of questioning. Students may be told that the Court later drew a line allowing denial of CO status to those who object to a particular war. Meanwhile *Yoder* provides a context to discuss how far religious belief may embrace exercise. The Court seems almost admiring of the Amish way of life. Does cultural paternalism motivate the Court to give the Amish a break that less socially acceptable religious sects might not get?

*Yoder* segues nicely to free exercise, where my survey students meet *Employment Division v. Smith* (1990) and *City of Boerne v. Flores* (1997). Both these cases may be heavily edited. *Smith*, the famous case of Native American peyote use, serves chiefly as necessary background for *Flores*, which exhibits constitutional doctrine on several issues in addition to free exercise.

The salient question in these free exercise cases is *how* the Court should test facially neutral impingements on religious exercise. When government singles out religion—the professor might cite the later *Church of Lukumi Babalu Aye v. Hialeah* (1993), in which a Florida city impermissibly targeted religious animal sacrifice—the Court brings to bear a form of strict scrutiny—compelling interest analysis, at least—a test students will recognize from speech jurisprudence. The question of facially neutral impingement on religion invites analogy to content-neutral speech restrictions, but the Court does not go that way.

*Smith* exemplifies the Court's resurgent rejection of heightened scrutiny in the religion area. This neutrality stance is consistent with pre-Civil Rights-era tolerance of neutral laws, such as (arguably) the prohibition of polygamy. Congress reacted unhappily to *Smith* and tried, through the Religious Freedom Restoration Act of 1993 (RFRA, "rif'rah"), to restore

*continued on page 5*

# Moving & Meiklejohn

By Tony Fargo  
Indiana University  
alfargo@indiana.edu

I'm sitting in the study of my new home, amazed at how neat it is now that the boxes are unpacked and everything is in its place, more or less.

This summer, I moved again. I say "again" with a sigh. I never intended to be nomadic, and I was not brought up this way. My parents often expressed perplexity at how two people who rarely left their county in eastern Kentucky managed to raise a son whose address they had to record in pencil so it could be changed easily every couple of years.

But I chose to enter the newspaper profession, where moving to a bigger paper was often the only way to move up. Ironically, I switched careers and became an academic in part to achieve a more settled existence. How I ended up moving three times in five years is a long story, and, as we say in our writing sometimes, beyond the scope of this article.

A friend recently suggested that I should write a book about moving. I think he was kidding. If I were to write such a book, however, the first thing I would tell my readers is that every move has three stages: the preparation, the actual move, and the settling-in process.

During the preparation process, your excitement about going to a new place and getting a fresh start is tempered by the practicalities: turning off the utilities in your old place, arranging to get them turned on in the new place, packing, making trips to Goodwill and/or the garbage bin, packing, coordinating the movers or the rental truck, more packing, saying goodbye to your friends, more packing, turning in the apartment keys or going to closing, etc.

Finally, the big day arrives, and after an exhausting process of getting boxes and furniture in the truck – it is always either blistering hot or raining, or both, when I move – and cleaning up the mess you made, you get in the car and head off. Depending upon how long the move is, there is lots of time in the car to think about where you've been and where you're going, in between food and rest stops and fumbling with the radio, trying to find a non-country station.

You arrive at your destination, and sooner or later unpack all the stuff you packed, figure out what goes to the office and what stays at home, argue with the phone company or electric company or water company about why service didn't start on the day you requested, and learn how to get from home to work and back. You deal with the baffling demands of the driver's license bureau, get your parking permit, meet your new colleagues, tell your life story over and over again, and try to figure out where on the continuum between J. Crew and Brooks Brothers the unofficial office dress code falls.

My favorite part is the middle. I enjoy that feeling of being "stateless" as I drive from old place to new place. I crank up the CD player and keep my small but eclectic collection, spanning Vivaldi to Gershwin to Ricki Lee Jones to Norah

Jones, within easy reach. I have lots of time to think (assuming the traffic is not too heavy), and I always begin by reviewing past moves. What I remember best are the emotions that accompanied the moves instead of specific landmarks seen along the way. I have moved with a mix of fear and joy (first move to the college dorm); sheer excitement (going from Kentucky to Florida for my third newspaper job); vast uncertainty (last newspaper job to Gainesville for graduate school); sadness (going back to Kentucky to say final goodbyes to my parents); a mix of curiosity and disappointment (going from first academic job to second one); and, most recently, a sense of finality, because I hope to retire my book boxes.

The settling-in process is similar each time but brings a new challenge in each new place. One constant on recent moves, however, has been that I have barely unpacked the boxes before it was time to pack a suitcase and go to AEJMC's annual convention. I dreaded the trip three years ago when there was so much still to do at the new apartment and new office, but I discovered something interesting. The trip to AEJMC helped me shift my focus from the practicalities of moving to my professional life, which in turn helped spur me to get my office settled when I got back so I could begin to work on all the ideas I got from the convention. That was especially true this time, as I left Toronto knowing that I still had an office to organize but also a Law Division program to begin planning for next year. So I found myself thinking of programming as I performed the relatively mindless task of putting books on shelves and files in file cabinets. Not completely mindless, of course – there is an alphabetical order to consider, if you ever want to find anything later. But that also worked to my advantage.

Immersed in the B's, for example, I found myself thinking of Peggy Blanchard. You couldn't go far in Toronto without running into someone whose badge was adorned with the phrase "Peggy Blanchard Made History." Yes, she did, but she also "made law." Although I never knew Dr. Blanchard, who died in May after many years in Chapel Hill, her fingerprints are all over my master's thesis, my dissertation, and several of my papers and articles. Her attention to detail and her gift for uncovering the forgotten places in First Amendment law have earned her a special place in our universe. Does her legacy earn her a spot on next year's program for a discussion of her contributions to the fields of media history and law?

Under the M's, I find Alexander Meiklejohn's "Free Speech" book and remember how happy I was when Amazon.com found a copy just when I was about to give up hope. In Toronto, we observed the 40<sup>th</sup> anniversary of *New York Times v. Sullivan*, but there's another 40<sup>th</sup> anniversary that might deserve our attention – the anniversary of Meiklejohn's death. The two events are inextricably linked, and not just by the same year. Meiklejohn's influence is abundantly evident in *Sullivan*, as Justice Brennan acknowledged in a 1965 law review article and as the concurring justices in *Sullivan* noted in a citation. I smiled when I thought about the somewhat dazed looks on my students' faces while I explained Meiklejohn's theory of free speech and self-government. I didn't understand why

*continued on page 5*

## Meiklejohn More Relevant Today Than Ever

*Meiklejohn, from 4*

students seemed so indifferent to my enthusiasm about Meiklejohn, until a student finally voiced what others must have been thinking: “You mean someone had to say that before people got it?” Yes, in the years after the dark days of World War II pointed out both what was great about our country and where our promise diverged from our reality, someone had to say that all ideas were valuable and deserved a hearing. As we slowly emerge from our own dark days of the soul in the wake of the unspeakable tragedy of Sept. 11 and our temptation to give in to our most repressive impulses, who will be the Meiklejohn of our time? Who will say what many of us believe is obvious, that our country works best when its citizens are well-informed and engaged, not kept in the dark in the name of security?

Looking back can be helpful, but we also must look forward. As Herb Terry of Indiana reminded a group of us at a BEA panel in April, academics have their best chance of influencing the future of communication regulation when they get involved at the policy-making level. As communication increasingly becomes a global concern with the spread of broadcast and Internet technology, it is at the policy level that many of the most important decisions about the future of the media will be made. What will those policies look like? To what extent will globalization require us to rethink our assumptions about how a communication system should be regulated, as we reach accommodations with cultures that don’t share our values and put a greater emphasis on equality than liberty? And how do we prepare our students for this world?

Those are a few of the thoughts I had as I moved and unpacked this summer and began to settle into my new home in Bloomington. I’d like to hear yours. Send me your programming ideas at [alfargo@indiana.edu](mailto:alfargo@indiana.edu) or give me a call at (812) 855-5420. It’s not too late; we won’t begin to set anything in stone until the Winter Meeting in December. But if you want to be sure that your idea has a good chance of getting on the program, you better get moving.

### LEGAL AND NON-LEGAL BIBLIOGRAPHIES WILL RETURN IN THE WINTER ISSUE.



If you have recently published work related to communication law or policy, please notify Jennifer Henderson at [jhender4@trinity.edu](mailto:jhender4@trinity.edu) so we can include a description of your work in an upcoming bibliography.

## Religion & Free Speech Intertwined

*Religion, from 3*

the compelling interest test. The Court in *Flores* ruled the RFRA unconstitutional, at least as applied. *Flores* occasioned debate in the justices’ opinions over which approach after all, deference or heightened scrutiny, is appropriate in vexing cases of neutral laws alleged to impair free exercise.

Political science-oriented classes with more time can run with *Flores*; it could be a seminar unto itself. The decision centers on the limits to Congress’s Fourteenth Amendment enforcement powers, and it invites discussion of separation of powers, including the scope and finality of the Court’s authority to interpret the Constitution. What’s more, Congress followed *Flores* with another attempt to override *Smith*, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA, “ar-loop’ah”), a scaled-down RFRA, currently wending its way through the courts. Congress even entertained a bill that would have denied the Supreme Court jurisdiction to decide the constitutionality of the RLUIPA: the sort of Article III problem that keeps political scientists up at night.

Besides the problem of the neutral law, *Smith* suggests an inverse problem: whether accommodationist exceptions to neutral laws are permissible. This problem lies at the heart of the tension between the free exercise and establishment clauses and serves well to segue to the latter.

The establishment clause provides a platform to discuss the principal theories animating interpretation of both religion clauses, namely, separationism, accommodationism, and neutrality. For the establishment clause, I employ a sizeable excerpt from *Lee v. Weisman* (1992). The *Lee* Court disapproved of religious prayer at a public high school ceremony, a context to which many young college students will relate well.

*Lee* and its concurring opinions introduce students to the *Lemon* test, infamous in establishment clause jurisprudence, and further distinguish the competing endorsement and coercion variations on the test. The test from *Lemon v. Kurtzman* (1971) asks whether the government has a secular objective, whether the primary effect of the government action serves to inhibit or advance religion, and whether the government action prompts excessive entanglement with religion. As evidenced in *Lee*, the Court is almost uniformly dissatisfied with the *Lemon* test, but continues to employ it for lack of a sound alternative.

Students should observe that the prayer in *Lee*, because it was school sponsored, was problematic no matter which principal theory applies. But more nuanced cases prompt deeper discussion. Can students pray on their own? (Yes, of course.) Can students form groups to initiate and lead non-school-sponsored prayers at football games? (Yes, per the oft misconstrued *Santa Fe v. Doe* (2000).) Can the school afford such groups formal recognition and a place at the pep rally? (No, for the separationist; likely yes for the neutrality

*continued on page 7*

# Law Division Business Meeting Minutes

By Anthony L. Fargo  
Indiana University  
alfargo@indiana.edu

The annual Law Division business meeting began at 6:45 p.m. on Aug. 5 at the Sheraton Centre hotel in Toronto, Ontario, Canada. Division Head Penny Summers of Northern Kentucky called the meeting to order.

Summers announced that the division had reached all of its goals for 2003-04 and had been praised by the Council of Divisions for its programming and organization. She noted that for the third straight year, the Law Division had received the most AEJMC funding for programming of any division.

Summers also praised the efforts of panel sponsors who reached out to other organizations and divisions for co-sponsorship of sessions. She thanked Lillian Lodge Kopenhagen (Florida International) and others for their hard work in programming PF&R panels, and she also said she was pleased to see that many senior faculty members had been involved in teaching-related panels.

For the 2004 convention, Summers noted that the acceptance rate for research papers was 47.5 percent overall, near AEJMC's goal of 50 percent. Interestingly, she said, 39.4 percent of faculty papers were accepted but 57.7 percent of student papers were accepted, a reversal of usual trends. Summers praised Jennifer Henderson of Trinity (Texas) for her work as research chair.

Summers suggested that one new goal for the division should be to recruit more members, which helps with funding and with subscriptions for *Communication Law and Policy*. She also noted that division finances were in good shape for now, with a balance of \$2,744.62.

Wat Hopkins of Virginia Tech, editor of *Communication Law and Policy*, reported that the journal had a good year in terms of articles and acceptance rates. He urged more senior faculty to send articles to the journal and noted that more such articles had been received in the past year. He also reported that the journal had been invited to apply for inclusion on the ISI Index, a prestigious index of scholarly journals, but had been turned down for inclusion in part because of a lack of international scholars among authors and editorial board members. Hopkins said he hoped that greater cooperation between AEJMC and International Communication Association (ICA) Communication Law and Policy Division members might help attract more international scholars. Summers later announced that AEJMC and ICA members would meet on Saturday to discuss working together.

In 2003, the division agreed to a trial program in which executive board members could decide whether the division should be a signatory on amicus briefs in media-related cases. Summers announced that no one asked the division to sign on in 2003-04, so she suggested that the division allow the experiment to continue a year and discuss the issue of making the policy permanent in 2005.

Summers and Barbara Petersen of South Florida also asked for a one-year delay for the members to consider a resolution condemning the requirement at some universities that journalism projects must receive Institutional Review Board (IRB) approval. Petersen was spearheading a task force on that resolution that included Peggy Blanchard of North Carolina, who died in May, and Petersen lost her husband to cancer at about the same time. Members did not object to delaying action on the amicus briefs policy and IRB resolution. Petersen said she would work with Rick Peltz of Arkansas-Little Rock to develop a position paper on the IRB issue.

Summers also announced that Peltz and Joey Senat of Oklahoma State had worked together on developing a media law listserv. Members who want to be part of the listserv should e-mail Senat at [senat@okstate.edu](mailto:senat@okstate.edu) to get added to the list.

In new business, on a motion by Bill Chamberlin, Florida, that was amended by Sandi Chance, Florida, the members agreed unanimously to make official what had been unofficial policy for many years – who would serve as members on the Publications Board that oversees CL&P. The motion approved by the members sets the membership of the board at the three elected Law Division officers, two members of the CL&P editorial board, and two at-large Law Division members who are not members of the editorial board.

Members also voted unanimously to contribute \$1,500 to the Student Press Law Center and \$150 to the Reporters Committee for Freedom of the Press.

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*James R. Gaddy, Emily Erickson & Anita G. Day all of Louisiana State University won top student and faculty paper honors*

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The winners of the top faculty and student paper awards were recognized. James R. Gaddy of Louisiana State won top student paper honors for “Don’t Pooh-Pooh Our Poo Poo: Penalty, Subsidy, and Refusal to Fund in the Aftermath of *National Endowment for the Arts v. Finley*.” The top faculty paper award went to Emily Erickson and Anita G. Day of Louisiana State for “Disfavored Advertising: Telemarketing, Junk Faxes and the Commercial Speech Doctrine.”

Tony Mauro, Supreme Court correspondent for *Legal Times*, spoke to the members about concerns expressed by judges and reporters about the need to improve relationships between courts and the media. Mauro said he had become aware of the concerns through his participation in the National Center for Courts and the Media, which is part of the National Judicial College in Reno, Nev. He said judges believed that journalists needed better training in how courts function. Judges often express frustration about dealing with

## Interactions Between Judges & Reporters Encouraged

*Business, from 6*

news organizations that send their youngest and least experienced reporters to cover court proceedings. Given that many legal controversies concerning the media end up before those same judges, Mauro suggested that courts might be a place where the media want to put their best feet forward.

Mauro said that there was interest among judges in encouraging more interaction between judges and reporters. He suggested that some news organizations might try a “judge in residence” program or try teaming a judge and reporter for a day. He suggested that journalism programs might make covering the courts a teaching component in reporting or communication law courses. He said he was seeking members’ help in identifying programs that could do projects, and he said some grant money to develop projects might be available from the judicial college or other organizations.

Kathy Olson of Lehigh nominated Jennifer Henderson to be the division clerk for 2004-05, and the nomination was approved unanimously. Summers announced that Beth Blanks Hindman of Washington State had agreed to be research chair for 2005.

Summers then turned the gavel, figuratively speaking, over to Karen Markin of Rhode Island, the division head for 2004-05. Before adjourning the meeting, Markin asked for a sense of the members’ feelings about a favorite city for the 2008 AEJMC Convention. Choices included Chicago, Minneapolis, Louisville, Indianapolis, St. Louis, and Cincinnati. Members seemed to express the most interest in Chicago and Minneapolis. Markin said she would pass that on at the Council of Divisions meeting on Saturday morning.

The meeting was adjourned at 8:15 p.m.

In addition to the officers and those people already named, those in attendance at the meeting included Jack Breslin, Iona; Michael Cavanagh, SUNY-Brockport; Jane Kirtley, Minnesota; David Cuillier, Washington State; Shannon Martin, Maine; John R. Bender, Nebraska-Lincoln; Sam Terilli, Miami of Florida; Sig Splichal, Miami of Florida; Constance Davis, Northern Illinois; Jon Dilts, Indiana; Martin Kuhn, North Carolina-Chapel Hill; Jeanne Scaffella, Murray State; Ruth Walden, North Carolina-Chapel Hill; Susan Keith, Rutgers; Nancy Whitmore, Butler; Matt Jackson, Penn State; Sherry Alexander, Loyola-New Orleans; John Wright, Florida; Ed Carter, Brigham Young; and Beth Blanks Hindman, Washington State.

## Cases Involving Religion & Speech Engage Students

*Religion, from 5*

enthusiast.) May the school reorder the football schedule to work around Easter, but not Ramadan? (Likely yes for only the accommodationist.)

Because prayers are not unknown in legislative sessions, *Lee* points discussion as well to the legitimacy of “ceremonial deism.” That limited doctrine seems consistent with 1789 norms and likely protects the inscription on U.S. money, “In God We Trust,” but is difficult to reconcile with the first two prongs of *Lemon*.

With this foundation in religion, the professor with more time can revisit cases that involve interplay between the speech and religion clauses. A favorite is *Rosenberger v. UVA*, involving funding for religious publications. Free speech class focuses on the metaphysical public forum analysis of *Rosenberger*, but the case is significant for its neutrality position on establishment and free exercise. When might government compliance with the establishment clause serve as a compelling government interest under free-speech strict scrutiny?

For a real mindbender, check out *Walz v. Egg Harbor* (2003). That Third Circuit case, involving a pre-K youngster’s distribution of “Jesus Loves” pencils to his classmates, pulls together all of the hard problems in speech and religion analysis, and if that were not enough, then throws in the twists of juvenile and parental rights. It’s an exam taker’s nightmare.

For a fast but thorough grounding in the freedom of religion (or speech), I like no source better than Barron & Dienes’s *First Amendment Law in a Nutshell* (3d ed. 2004). To prepare materials for students, check legal case books and web sites. If one is careful, brief excerpts from *Seeger*, *Yoder*, *Smith*, *Flores*, and *Lee* can be compiled within fair use guidelines. Try starting your class by leading a Muslim prayer; it helps to put students in an antimajoritarian frame of mind.

**AEJMC SOUTHEAST  
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# Sharing Ideas for Assessment & Accreditation

By *Jennifer Jacobs Henderson*  
*Trinity University*  
*jhender4@trinity.edu*

Recently, the Accrediting Council on Education in Journalism and Mass Communication (ACEJMC) passed Principles of Accreditations that set forth as one of its professional values and competencies, the goal that all graduates in those programs seeking AEJMC accreditation should, “understand and apply the principles and laws of freedom of speech and press, including the right to dissent, to monitor and criticize power, and to assemble and petition for redress of grievances.” This is a very broad mandate considering the quantity and diversity of knowledge needed to “understand and apply” all legal issues as journalism and mass communication is clearly not a field with one, but rather many and varied “professional practices.” Even beyond the 104 AEJMC accredited program in the United States, many additional journalism and mass communication departments are also struggling to meet regional and university-wide assessment plans for accreditation.

Meeting all of these accreditation requirements, from federal and state governments, universities, regional educational commissions, and academic associations is a daunting task to most faculty members who are also juggling teaching, advising, service and a research agenda. In fact, selecting what knowledge, skills and assessment tools would best meet these criteria is a time-consuming and arduous task most faculty in the field have put off in lieu of other obligations. Unfortunately, as the deadlines for formal assessment plans by accrediting bodies draws nearer, it is time to begin the difficult work of assessment.

In the area of media law and policy, the task of establishing criteria for learning and tools to assess that learning most often falls to the one faculty member in a journalism and mass communication program charged with teaching all law-related courses. Sharing assessment goals, outcomes and tools with colleagues from other colleges and universities can help us all meet pending assessment requirements. If you are willing to share your assessment plan with colleagues please send a copy to me at [jhender4@trinity.edu](mailto:jhender4@trinity.edu), and in turn I will print examples of these plans for us all to consider.

Media Law Notes  
234 Outlet Pointe Blvd.  
Suite A  
Columbia, SC 29210-5667

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