
MEDIA LAW NOTES

Volume 33, No. 3

Law Division, AEJMC

Spring 2005

Finding Funding for Media Law Research

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Researchers in biomedical science can go to the National Institutes of Health to tap into its \$27 billion in funding. Institutes support research on specific issues, such as cancer, aging and drug abuse. It's pretty straightforward for those faculty members to identify a funding source.

Media law scholars need to be more resourceful. I have yet to run across a program or organization that explicitly states support for media law research. However, if you think creatively, you may be able to obtain funding from other programs. Here are some you might want to check out.

Be sure to contact the agency before preparing a full-blown proposal so you can confirm the appropriateness of the funding source for your project.

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First Amendment Boosterism

By Anthony L. Fargo
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I've been thinking a lot lately about the proper public role of the communication law scholar.

A few years ago, I got back the reviews on a paper I had sent to another division of AEJMC on a communication law topic. I often tell graduate students and new professors that they will often get reviews on refereed papers and articles that will remind them of the Three Bears story: One will think the paper is too long and poorly written; another will think it's too short and stylistically suspect but salvageable; and the third will think it's just right as it is. If you read these reviews carefully you can determine what you should do to improve the article so that all three bears are happy. In this case, the "Mama Bear" in the group thought the paper had promise but complained that it displayed too much "First Amendment boosterism."

I wore that label of "First Amendment booster" proudly; someone has to be, I told my colleagues and friends, so it might as well be me. Why would someone who is not a "First Amendment booster" be teaching in a journalism program? I asked rhetorically.

But the reviewer had a point, and I knew full well what it was: my paper had not been balanced enough for an academic work. I had tilted the lit review and case review too much in favor of the journalists and had given scant attention to the countervailing arguments against extending a particular advantage – a privilege from testifying – to journalists. I had not even realized I was doing that, but it became clear when I re-read the reviewer's comments and the paper.

The realization that my sympathy for journalists, borne of my 13 years in the profession and my own undergraduate education in the immediate afterglow of Watergate, had led me to be less than academically objective at least once made me pay better attention to presenting the other side in

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Where to Find Research Funds

Funding, from 1

National Science Foundation (NSF)

www.nsf.gov

Dollar amounts and duration for these grants vary. Your sponsored projects office can help you with all those forms that accompany the research project proposal. These are standing programs at NSF with semiannual deadlines.

Law and Social Science: This program “supports social scientific studies of the law and law-like systems of rules, institutions, processes and behaviors.” It seeks proposals that advance fundamental knowledge about legal interactions, and about the processes of local and international legal institutions. Topics can include research on social control, legal and social change, and regulatory enforcement.

Sociology: This program supports research that explains fundamental social processes. This includes research on organizations, social groups, and the sociology of science and technology. Projects can employ quantitative or qualitative methods.

Political Science: This program supports research that “advances knowledge and understanding of citizenship, government and politics.” Topics can include American government and politics, campaigns and elections, and democratization.

National Endowment for the Humanities (NEH)

www.neh.gov

Fellowships: This program supports work in the humanities that contributes to either the body of scholarship or to public understanding of the humanities. Jurisprudence falls within the agency’s definition of the humanities.

These awards are for six to twelve months of full-time work. NEH will provide awards of \$24,000 for a six- to eight-month grant period, and \$40,000 for nine- to twelve-month grant period. Recipients are not permitted to teach or take on other major responsibilities during the grant period. Applications will be accepted from March 1 to May 1, 2005.

This is an annual program, so don’t worry if you can’t make that deadline.

State Justice Institute

www.statejustice.org

This organization offers “Judicial Branch Education Technical Assistance Grants.” Grants of up to \$20,000 are

available for development or delivery of education programs for judges. The program has supported several projects that examined the relationship between courts and the media. There is still time to submit a proposal for the current fiscal year.

MacArthur Foundation

www.macfound.org

The foundation’s General Program currently is providing support for its special interest, Intellectual Property and the Public Domain. The foundation states, “While new technologies promise greater access to information, the potential exists that the amount and quality of information available for free and uncontrolled use will actually decrease.” With that in mind, the foundation is supporting policy analysis and scholarly research on this topic, for which it expects to award \$2 million a year for the next three years. The foundation invites letters of inquiry from prospective applicants.

McCormick Tribune Foundation

www.rmtf.org

This organization has a priority area called “Freedom of Expression.” It supports programs that examine restrictive laws and regulations, as well as programs supporting freedom of expression for all news media. ✂

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Media Law Notes is published quarterly by the Association for Education in Journalism and Mass Communication, 234 Outlet Pointe Blvd., Suite A, Columbia, SC 29210-5667. Vol. 33 is produced by Jennifer Jacobs Henderson at Trinity University, San Antonio, TX using Microsoft Word. If you have comments or suggestions for article ideas, please contact Dr. Henderson at (210) 495-4446 or via e-mail at the address listed above.

COMMAND LINES: THE EMERGENCE OF GOVERNANCE IN GLOBAL CYBERSPACE

The Center for International Education at the University of Wisconsin-Milwaukee is pleased to announce: Command Lines: The Emergence of Governance in Global Cyberspace - a colloquium at the Hefter Conference Center, University of Wisconsin-Milwaukee, April 29-30, 2005, organized by Sandra Braman (communication) and Thomas Malaby (anthropology).

The transfer of many realms of social life to the global domain of cyberspace presents numerous challenges to formal governance through law and law-making while increasing the relative importance of other approaches to "the conduct of conduct." While governments struggle to develop and apply laws to cyberspace, the producers of the internet (its users and programmers) create their own parameters, norms, practices, and rules that control life online. Experience within cyberspace, whether building a virtual world, making or participating in games, or learning how to communicate congenially and productively in a listserv, is becoming the most important training in political life for many. Governance systems being developed within cyberspace in turn are providing models for, or interact with, the laws of governments. This colloquium will examine the diverse ways in which governance is developing within cyberspace and the effects of such approaches to governance in the off-line world. Sessions will cover the entire range of types of governance mechanisms, from the formal laws of government through the formal and informal governance mechanisms of both state and non-state actors to the cultural practices of governmentality that sustain and enable both governance and government.

The conference is free and open to the public.

Website:

<<http://www.uwm.edu/Dept/CIE/CommandLines>>
www.uwm.edu/Dept/CIE/CommandLines

For more information, contact:

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What Kind of Public Scholars Should We Be?

Boosterism, from 1

subsequent papers about the journalist's privilege. But the realization did nothing to resolve a different conflict arising from my position as a university professor. To what extent should I strive to be what our friend Barbara Petersen calls "a public scholar?" I tend to agree with Barbara that we should strive to fulfill that role, but what should our public face be? What does a public scholar do, exactly?

In February, I had the honor of taking part in the Robert S. Vance Forum at the Emory University Law School in Atlanta. Each year the forum, named after a federal appellate judge who was slain by a critic of his civil-rights decisions, examines a different civil rights issue. This year it was the reporter's privilege. Joining me on the panel were a prominent media attorney; a reporter who had spent time in jail for contempt; a journalism professor from Emory; and a defense attorney representing a client who was demanding reporters' testimony for a civil suit. The forum was sponsored by the Atlanta chapter of the Federal Bar Association.

As I focused on what I wanted to say, I decided to lead off with a quote from Justice Douglas's dissent in *Branzburg v. Hayes*. Justice Douglas warned, in the penultimate paragraph of his movingly written, passionate dissent, that the majority opinion rejecting journalists' claims of a First Amendment privilege when subpoenaed by grand juries was a symptom of "the disease of this society." Those in power, he wrote, wanted only to consolidate and increase their power and use it to smother both people and causes. The majority opinion, Justice Douglas wrote, would aid them in that quest. It was a "tragedy," he said, that he thought the First Amendment was designed to prevent.

Yeah, I know, there I go again, being Mr. First Amendment Booster. But I quickly determined, as I waited on the brightly lighted stage for my turn to make opening remarks, that I was the moderate in the group. The defense attorney wanted reporters to tell his client something, anything, that would aid his lawsuit, and if they didn't, he hinted, he might have to sue them for interference with process (the civil version of obstruction of justice). The reporter wanted other reporters to resist, resist, resist, even if it meant going to jail. And there I was, reminding people that we needed to think about the purpose of a free press, which was to check government power and expose government secrets to the public, at a time when the demands for secrecy seemed particularly persuasive. But I also found myself disagreeing with the reporter about the relative merits of the Judith Miller case, which, ironically, the D.C. Court of Appeals decided the same day we were in Atlanta. I was not convinced, from an ethical standpoint if not a legal one, the reporters should be protecting a source who exposed a CIA agent's identity just to smear a critic of the Bush

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Combining Research, Teaching & Advocacy

Boosterism, from 3

administration. I wasn't sure this was someone worth going to jail for, I said, although I agreed, a bit reluctantly, that it was important to protect the journalist's privilege as a legal principle even if I disagreed with its usefulness in this case.

Later, I wondered how I had ended up being so ... well, academic. It occurred to me that I had internalized my critic's statement a bit and had perhaps stumbled onto a role that we scholars can play in public controversies without abandoning our academic detachment. Let the lawyers and the journalists fight over whether *Branzburg* completely rejected the existence of a journalist's privilege, as some prosecutors, defense attorneys, and tort attorneys argue, or left the question unanswered, as journalists and their attorneys will argue. We can play the role of teacher – explaining what the opinion actually said, for example, and how it had been interpreted, and why there was something for both sides in the various opinions in that case. We can, in short, combine our roles as teachers and researchers and offer a clearer understanding of what we know about a particular controversy in the law. Perhaps our public role is to shed light on issues of the day without advocating one side or the other. Perhaps we can even help the public navigate around the “shoutfests” that too often pass for intellectual debate on television “news” programs.

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At the same time, I think it is appropriate and necessary for communication law scholars, individually or as a group, to take sides when First Amendment rights clearly are threatened. I support the stand that AEJMC's Law Division has taken to sign onto amicus briefs in First Amendment cases when the issues are clear-cut and the traditions that support academic as well as journalistic freedom seem to be in peril. So far, no one has asked us to assume that role, but when or if someone does, I believe that it is appropriate for us to be heard.

I am still trying to sort out my feelings about what it means to be a public scholar on communication law issues. I suppose that if I'm invited to be on *Hardball* and the only other guest is Patrick Fitzgerald, the federal prosecutor who subpoenaed Judith Miller and other reporters in the CIA case, I'll revert to being Mr. First Amendment Booster. Someone has to be. But I don't foresee that invitation

coming soon. Academics make bad guests on these shows – we don't shout enough. ✂

2005 Southeast Colloquium

By Richard J. Peltz
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The Law Division administered 15 paper presentations and one panel at the 30th Southeast Colloquium at the University of Georgia, March 3-5. The 15 law papers represented an acceptance rate of about 50 percent, based upon scoring by 31 judges. Topics ranged from advertising regulation to the bibliometrics of media law research.

Top student paper honors went to Julie Lellis, North Carolina–Chapel Hill, for *Tough Enough? Trends in FTC Regulation of Deceptive Weight-Loss Advertising*. Lellis examined FTC enforcement actions to demonstrate a trend in liability exposure creeping toward media entities that carry weight-loss ads and do not check their veracity.

Top faculty honors went to Tony Fargo, Indiana–Bloomington, for his paper on confidentiality waivers and the journalist's privilege. Fargo discussed developments in the Miller-Cooper case and asserted that dangers flow from a privilege that allows disclosure upon a source's apparent consent.

In a panel presentation, Amy Reynolds, Indiana–Bloomington, and Bob Jensen, Texas–Austin, discussed the modern state of academic freedom. They made the case that decades-old standards of academic freedom, despite their incorporation into the legal culture, are today at risk, and that faculty must take responsibility to reassert the vitality of academic freedom to protect their speech on and off campus.

The Colloquium at its business session thanked hosts Diane Murray and the University of Georgia for a program that included a visit to the Grady College and an opportunity to explore the savory dining and colorful nightlife of college-town Athens.

The business session included discussion of the paper deadline policy. Problems this year arose from an awkward Sunday deadline, inconsistent lateness policies across divisions, and new postage purchasing systems, such as Stamps.com, that do not generate dated postmarks. It was agreed that the Colloquium should favor a weekday deadline, that all divisions should enforce the deadline, and that calls for papers should state a requirement that entrants obtain postmarks.

The University of Alabama will host the 2006 Colloquium in either Tuscaloosa or Birmingham. George Daniels and Wilson Lowrey will coordinate.

Academic Conferences in Perspective

By Robert D. Richards & Clay Calvert
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Perhaps the most significant change in recent years at the annual AEJMC conventions has been the subtle shift away from the traditional cloth bags handed out to all registrants upon checking in. In their place, we now have the newer, louder and more crinkly plastic versions. For all of those AEJMC bag-toting members who dutifully lug their loads of 50¢ papers around from panel to panel – papers they pledge to read upon returning to their home universities but that, more often than not, end up unread on a stack on the floor in their office – surely the change to plastic raised important issues with far reaching consequences. Questions, for instance, such as whether the new bags are environmentally friendly and just how many of those papers can one bag hold.

Okay, the change was not important and it really doesn't matter. And, for that matter, neither does much of what goes on at the conferences, although one wouldn't get that impression from the pseudo-intellectual seriousness with which many members carry themselves.

The goals of this article are, first, to point out the pomposity with which some members of the AEJMC law division seemingly take their professorial billet and, second, to suggest that, in the words of Sheryl Crow, we all lighten up and soak up some sun outside of the convention hall rather than sit in dimly light, windowless rooms while panelists drone on from powerpoint to powerpoint.

This is not to say, however, that we should not take the research or paper presentation process seriously. Quality is, of course, very important. Rather, it is to say that we need to keep a sense of perspective on the relative insignificance, in the larger scheme of life, in the things that take place at these conferences. If the law division were to be disbanded today, the world would go on and legal scholarship on media law issues would continue to be published in law journals.

Two examples of the feigned gravitas we have observed readily come to mind. During one law panel that we attended at the 2004 convention in Toronto, a well-respected paper presenter twice said that he/she was "horrified" by a recent decision issued by the United States Supreme Court. Horrified? Was it really that bad? One pictures Kurtz, deep in (and at the end of) the metaphorical heart of darkness, uttering those famed, Coppola-appropriated final words, "The horror, the horror." I'm sure the justices on the Court will take seriously this presenter's horror when they read his/her paper during their spare time.

The second example took place when another well-respected member of the law division, upon being told that a certain law professor would be unable to attend an event, responded, "I've known [blank] for twenty-seven years. What did he say about why he isn't coming?"

Wow. That's great. You've known him for twenty-seven years. And that has something to do about what again? Oh, yes, to impress us with your vast knowledge. It's like when a crab-cracking Tom Cruise queries Demi Moore in *A Few Good Men*, "Why are you always reading me your resume?" She responds, "Because I want you to think I'm a good lawyer." Clearly this individual wanted us to believe that, by association with someone who is a great scholar, that he/she too is a great scholar. The only problem, of course, is that a LEXIS-NEXIS Academic Universe search in August 2004 under law reviews for the past ten years reveals only one law review article published by this individual. And that was an article with multiple authors.



Robert D. Richards (left) and Clay Calvert

These examples not only illustrate the pretentiousness of many attendees but also provide a glimpse of the larger problem with legal scholarship in the division. We have all attended sessions where presenters arrogantly protest a court's decision, demand the immediate invalidation of a legal test or doctrine, or offer their own theory of recovery or remedy for adoption. Nothing is inherently wrong with any of these points or suggestions. Indeed, significant legal scholarship, at one time or another, will do all of these things. But what good does it do to proclaim this jurisprudential homily in a room that contains a dozen or so bored faculty colleagues, exhausted grad students, and academic ne're-do-wells?

For legal scholarship to have an impact, it must be digested by those who can do something with it – most notably, judges, lawyers and lawmakers. Consequently, it should be a goal for legal scholars to make sure their work product gets

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into the hands of the appropriate stakeholders. That can happen in a variety of ways, but it all starts with publication.

Once published, the article can easily be sent to those who matter – if, of course, it's on a timely issue. Reprints conveniently can be distributed to courts or legislators, often leading to citations in judicial opinions or invitations to testify before governmental bodies. In each of those instances, the faculty member's work is having some influence.

*In the end, scholarship does little good
in a vacuum – or a
small conference room at a hotel.*

Op-ed pieces in the nation's leading newspapers provide another way to maximize impact. The audience is different. It includes the general public – a group that often influences law and policy, particularly in the legislative branch – but it also encompasses the stakeholders mentioned above whose appetite for the research might be whetted by the capsule version. Using a variety of vehicles for the dissemination of research virtually assures the influence that a productive scholar should crave. Finally, if academics want to be influential and, at the same time, helpful to courts grappling with the legal issues of the day, *amicus curiae* briefs provide the perfect mechanism for putting one's research into a practical format. Once again, reprints of articles can be sent, along with a cover letter offering *amicus* support, to the appropriate attorneys in a case. Sometimes, it is useful to form a coalition of professors supporting a particular side of an issue that collectively will file the brief. The lawyers on the case will suggest the most appropriate approach.

In the end, scholarship does little good in a vacuum – or a small conference room at a hotel. If the annual convention is the end of the line for one's research, those few days in August would be better spent soaking up the sun – and with AEJMC's preferred locations, the humidity. For academics who would like to see some meaningful impact for their efforts, this field offers the chance to influence law and policy through cogent and well-timed legal scholarship. Embrace those opportunities, welcome the challenges they present and – oh, yes – recycle those plastic conference

bags. ✂

Law Reviews Alter Page Length Rules

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On February 9, 2005, *Harvard Law Review* Editor, Thiru Vignarajah sent a letter to law professors across the country announcing a change in policy regarding the length of submissions to their publication. Harvard, along with 11 other university law reviews have instituted a new policy giving “preference to articles under 25,000 words in length – the equivalent of 50 law review pages.” Vignarajah went further to explain that “the Review will not publish articles exceeding 35,000 words – the equivalent of 70-75 law review pages – except in extraordinary circumstances.” Authors who have recently submitted articles in excess of this length have been encouraged to resubmit their articles following the new guidelines.

In addition to Harvard, the new policy, found in the “joint statement regarding articles length” (www.harvardlawreview.org/articles_length_policy.html) is now being implemented by law journals at Berkeley, Columbia, Cornell, Duke, Georgetown, Harvard, Michigan, Stanford, Texas, U. Penn., Virginia, and Yale. At the present time, however, not all law journals have altered their page length requirements. Many still allow for longer submissions.

The policy change originated from a survey conducted by the *Harvard Law Review* staff. The survey, completed by almost 800 law professors, revealed that the most pressing concern regarding law journals was the excessive length of articles. Vignarajah reported in his letter, “nearly 90% of faculty agreed that the articles are too long.” In addition, he explained, “survey respondents suggested that shorter articles would enhance the quality of legal scholarship, shorten and improve the editing process, and render articles more effective and easier to read.”

While journals in many disciplines set strict page length guidelines for submission, this change is unprecedented among law reviews that often have allowed for substantially longer pieces. Before this announcement, law review articles in leading journals often ran 100 pages or more.

Only time will tell whether these change in article length will lead to, as the editors suggest, better written, more concise articles, or whether instead the change will restrict in-depth writing on complicated legal issues. If you have a strong position on this issue, I would encourage you contact the *Harvard Law Review* as they plan to “monitor this issue very carefully,” and acknowledge, “modifications may be needed in the years to come.” ✂

Letter to the Editor: A Reply to Calvert & Richards' Winter Article

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I have learned that, whenever Robert D. Richards and Clay Clavert speak, I should listen. Their proposal titled "Reforming Conference Research Panels" is no exception (33 *Media Law Notes* 3, 2004), and so, after studying it closely, I write a response.

Richards and Calvert assert that, other than adding lines to vitae, the paper presentations "offer relatively few other advantages or benefits," adding, "For most tenure processes, published articles count more than paper presentations today." As a faculty member at institution where teaching is more highly prized than research, I can say with great confidence that a juried paper presentation at the premier national organization for a given discipline counts more than a little toward not only tenure but also promotion.

They also point out that reviewers themselves "seldom publish," and yet "get to play of the role of all-knowing critic and cast aspersions on others." I suspect they correctly note that many, if not most, reviewers seldom publish, but that fact does not necessarily diminish significantly the value of and cast aspersions on others." I suspect they correctly note that many, if not most, reviewers seldom publish, but that fact does not necessarily diminish significantly the value of this process. Because I teach only one section devoted to law out of the eight I teach each year, I don't have the time to read as many communication law studies as does an law out of the eight I teach each year, I don't have the time to read as many communication law studies as does an instructor who teaches fewer sections and whose teaching load is primarily law-related. Nor do I have an opportunity to see the research that the best graduate students in journalism and mass communication law are doing. Reviewing papers for presentations and listening to those papers being read helps to fill these lacunae for me and probably for several others like me.

While I confess I do make critical comments about the papers I review, I take great care not to "cast aspersions" on them, and I make sure I note aspects of the paper that I (sometimes greatly) admire. Though I fully agree "it is easier to be critical than correct," even they would admit, I am sure, that there exists fairly-easily-discovered flaws in even the most erudite essays.

I wonder. Could their partially alterative comment, "The paper competitions also expose students to the vexing vicissitudes . . . of the peer review process in which two

reviewers can interpret and understand the same text in radically different manners" be written with tongue in cheek? What more potently puissant power could be found to support the current process than to expose students to "vexing vicissitudes?"

Nevertheless, I support strongly their suggestions as a supplement instead of a replacement to the current paper presentation process. I also like very much their idea of inviting to members of the division attorneys who represented parties in recent cases of great interests. Finally, I agree that continual use of only theme-based sessions encourages "tortured" approaches designed to fit within a theme. ✂

CALL FOR PAPERS

Revolutionary Sparks: The Scholarship & Legacy of Margaret A. Blanchard

Dr. Margaret A. Blanchard's passion was freedom of expression. It was a passion that, for more than three decades, fueled her scholarship, teaching mentoring, and public service. Prof. Blanchard, who died May 25, 2004, was the author of *Revolutionary sparks: Freedom of Expression in Modern America*, which was nominated for the Pulitzer Prize in history; exporting the First Amendment: The Press-Government Crusade of 1945-1952, and twenty-five articles and book chapters, most of which dealt with the history of freedom of expression in America. She also edited *Mass Media History Encyclopedia*, named one of the twenty best reference books of 1999 by the New York Public Library.

Communication Law and Policy, the quarterly research journal of the Law Division of AEJMC, is devoting its Summer 2006 issue to Prof. Blanchard and her legacy. Scholars are invited to submit research articles or essays devoted to an exploration of the history of free expression in the United States.

There are no length requirements. Footnote style must follow *The Bluebook: A Uniform System of Citation* (17th ed. 2000). The first page of each manuscript should contain the article's title, but no authorship information. An accompanying cover page should contain the title and name, address, e-mail address and phone number of each author. Manuscripts should be accompanied by an abstract of approximately 125 words.

The deadline for submission is October 3, 2005. Four copies should be mailed to: W. Wat Hopkins, Editor, *Communication Law and Policy*, Department of Communication – 0311, Virginia Tech, Blacksburg, VA 24031.

Court-*ing* News Workshop Planned for San Antonio

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What is the difference between strict and intermediate scrutiny? ... between preponderance of evidence and beyond a reasonable doubt? ... between per curiam, majority and plurality? ... between criminal and civil contempt? Do all juries have to be unanimous? Which is the appellant and which is the appellee? If you find yourself searching for the answers to these questions, you are far from alone. Not only do a majority of the American public have no idea, but many working journalists (and some of your colleagues) would take pause before venturing an answer.

Journalism educators and journalists bear some responsibility in promoting public understanding of the American judicial process generally and of the

courts particularly. When educators get it wrong or ignore it, future journalists get it wrong, consequently, those who rely on media for understanding get it wrong as well.

To address the responsibility, the Law and Newspaper divisions are co-sponsoring an important pre-convention workshop you should make plans now to attend : **Court-*ing* News: Essentials for Journalists and Those Who Teach Them to Cover the Courts.**

With issues such as secret dockets, warrant less searches, national security letters, contempt charges for journalists, high profile trials, habeas corpus and due process emerging, educators and journalists may find themselves unequipped to explain accurately and fairly to the public what is happening. Judges find it frustrating to be providing civics lessons for journalists *after* a mistake has been made.

Please mark your calendar now to join us in San Antonio on Tuesday August 9 from 1 p.m. - 5 p.m. for a pre-convention session that will serve your teaching and public understanding. ✂

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