

**Subject:** Media Law Notes - Vol. 50, Issue 1

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**From:**

Dear Members and Friends of the AEJMC Law & Policy Committee,

Please find below the first issue of the *Media Law Notes* Newsletter for the 2021-22 academic year.

Your faithful servant in newsletter editing,

Brett

Brett Johnson, PhD  
Associate Professor of Journalism Studies  
School of Journalism  
University of Missouri

# Media Law Notes

Vol. 50, Issue 1  
AEJMC Law & Policy Division





## Headnotes

**Caitlin Carlson**  
*Associate Professor*  
*Seattle University*

I want to start my first Head Notes article by saying how happy I am to lead the team this year. The best part of this job is working closely with my colleagues to support our discipline, so thank you for entrusting me to serve in this role.

As you've likely seen, we've had a lot going on since our virtual conference in August. I'll do my best to outline all the developments and updates below, but first want to start with some well-deserved kudos.

### **Kudos**

A big thank you goes out to Amanda Reid, who organized our Fall PF&R panel, "Is the First Amendment Still Relevant in the Age of Social Media?" The event was well attended and featured our own Jasmine McNealy as a panelist.

I also want to acknowledge all of Amy Kristin Sanders' and Wat Hopkins' work to transition the Division's journal, *Communication Law & Policy*, into new hands. Amy will take over as the Editor in January. Check out her article in this issue of Media Law Notes detailing the opportunities available to support the journal, including as an editorial board member. Applications to the editorial board are open now.

### **Updates & Announcements**

I am so happy to announce that Kyla Garrett Wagner will be spearheading a new Division initiative to support graduate students. As many of you know, our dear friend and colleague Michael Hoefges of UNC passed away last year. Tori Eckstrand set up a fund in Michael's honor to support students, which many of you generously donated to. This year we'll be formally launching the Michael Hoefges Graduate Student Research Fund. We'll distribute three awards of \$500 each to support graduate student research in media law, free expression, or press freedom. The full call for applications is included in this issue, and submissions are due to Kyla by December 15.

We've also launched a Law & Policy Division listserv to allow members to communicate with one another. A big thank you to Genelle Belmas for getting this setup. To send a note to the list, use the email: [aejmc-lawp-list@googlegroups.com](mailto:aejmc-lawp-list@googlegroups.com).

## Meet the Team

Jared Schroeder will serve as Vice Head of the Division. He's in the process of planning our research, teaching, and PF&R panels for Detroit as we speak. Right now, the word from the home office is that the 2022 conference will be in person but I'll keep everyone updated as things develop.

Jon Peters will be serving as your Research Chair this year, so look for the call for papers from him in the coming months.

Brett Johnson has joined the team as the Newsletter Chair / Clerk and has already made a substantial impact. He's added a new feature to the newsletter that highlights member publications and other achievements, so please be sure to share those with him as they come up.

Mike Martinez will continue in his role as Chair of the Southeast Colloquium. The event is scheduled for March 17-19 and will be hybrid, which means you'll have the option of heading to the University of Memphis in person, or you can participate via Zoom.

Brooks Fuller will continue to serve as our Teaching Chair, and Amanda Reid will stay on as our PF&R Chair. Harrison Rosenthal will retain his role as Graduate Student Liaison, and Genelle Belmas will continue as our Webmistress.

New to the team is Leslie Klein, a graduate student at the University of Georgia who will be filling the big shoes left by Kriste Patrow as our Social Media Manager.

I know I speak for everyone when I say that the Division leadership is here to support you. COVID has made our jobs more complicated, so if we can do anything to make life a little easier, please don't hesitate to reach out.



## ***Communication Law and Policy's Next Chapter***

***Amy Kristin Sanders***

*Associate Professor*

*University of Texas-Austin*

Taking the helm of *Communication Law and Policy*, a journal that has played such an important role in my career, is both exciting and daunting. First, I want to thank the division membership for having faith that I could step into Wat Hopkins' big shoes. I also owe Wat a big thank you; his enduring patience with my never-ending string of email questions has been impressive.

Keeping you informed about the changes that will take place over the next few months as I transition into the editor role is very important to me. It's my goal to lead the journal with a mindset of transparency and inclusiveness. Along those lines, let me outline what has happened and what will be happening:

- I have spoken with dozens of authors, reviewers and editorial board members to better understand the journal's operation and their experiences with *CLP*— all with an eye to establishing some best practices. If you'd like to speak to me about your experiences, you can reach me here.
- *CLP* has joined Twitter. Follow the journal @CommLPoly and help me promote the great scholarship published in the journal!
- The journal has switched to a solely online submission and review system using Taylor and Francis' ScholarOne platform. I ask for your patience in this transition.
- I'll be working with the division officers to hire two associate editors to help with the journal's day-to-day production. If you're interested in serving as an Associate Editor, you can apply here. If you know someone who'd be great, you can nominate them here. Early career scholars and scholars from historically underrepresented groups are strongly encouraged to apply.
- Once the associate editors are in place, I'll be working with them to bring on an entirely new Editorial Board. These folks will play a key role not only in the peer review process but also in crafting a long-term strategy for the journal's future. If you're interested in serving on the Editorial Board, you can apply here. If you know someone who'd be great, you can nominate them here. Early career scholars and scholars from historically underrepresented groups are encouraged to apply.
- Based on my belief in mentoring, I'll be working with Editorial Board members to develop a coaching program that supports writers whose manuscripts hold promise but are not quite ready for peer review.
- Over the next year, my team be working to broaden our reach, with the goal of recruiting new readers, authors and reviewers from around the world. I encourage you to help us spread the word about *Communication Law and Policy* as you attend conferences and workshops or encounter great papers being presented.

My team and I will work tirelessly to further the legacy that Wat, Tom Schwartz and Bob Trager have built. I sure hope you'll join us as we work to set *Communication Law and Policy* up for its next 25 years of success.

## Interested in reviewing for *Communication Law and Policy*?

Please complete this [brief survey](#). We aim to send reviewers no more than 1-2 articles per year. Thanks!



## **Return of the Taliban: The Death of Freedom of Speech and Press in Afghanistan?**

***Shugofa Dastgeer***  
*Assistant Professor*  
*Texas Christian University*

On August 15, 2021, the Taliban returned to power in Afghanistan after 20 years of democracy in the country. On the first few days, with all the chaos and uncertainties, the Afghan media and journalists appeared brave in covering the life under Taliban, with female journalists and TV anchors interviewing the Taliban both in studio and on the streets of Kabul. Soon, the Taliban took control of all media outlets and challenged the 20-year-old reign of free speech and press in the country.

After the fall of the Taliban regime in 2001 and the establishment of a democratic government with the help of the U.S. and its allies, Afghans started a new era of freedom of speech and press with dozens of TV and radio stations, hundreds of print publications, and many websites alongside unlimited access to social media platforms. Thus, a new generation grew up with all these freedoms, accessibility, and information choices and often talked about the Taliban era (1995-2001) as “the dark era” of the past.

In the first Taliban era, there was no freedom of speech and press and all media activities were banned to an extent that watching movies and listening to music and owning a TV, VCR, and cassette player was a crime that could put people in jail for months. Radio Afghanistan operated as “Radio Sharia,” which was the main mouthpiece of the regime. The BBC and VOA radios were the only windows to the outside world for Afghans.

After the fall of Taliban regime, the Taliban continued their direct attacks on the journalists and other media workers in Afghanistan with suicide bombings, target assassinations, and kidnaps throughout their years of exile in Pakistan. The Taliban labeled journalists and media workers as “the spies,” and their violence against journalists made Afghanistan one of the most dangerous places for journalists in the world according to Reporters without Borders.

During the U.S. peace talks with the Taliban in 2020, there were concerns about the return of the Taliban and the future of freedom of speech and press. However, some argued that the Taliban have changed and have become more moderate toward human rights such as freedom of speech and

press. The Taliban relied heavily on social media to communicate with their target groups as well as with the international community. Zabehullah Mujahid, the Taliban spokesperson, has been using Twitter for years. In a public opinion survey that I conducted in 2019, the participants widely agreed that the return of the Taliban to power will affect democracy and women's freedom negatively, but they agreed with the statements that the Taliban would not pose the same kinds of restrictions that they imposed on free speech and media during their first era.

Nevertheless, in summer 2021, as the Taliban took more cities, journalists, media, and celebrities were among their main targets. On July 16, they captured and killed a photojournalist in Kandahar, Danish Siddiqui, a Pulitzer Prize winner Indian national. A few days later, the Taliban killed Nazar Mohammad, known as Khasha Zwan, a famous comedian in Kandahar province. A few days after coming to Kabul, the Taliban took control of all media stations (both government-owned and private) and disarmed their guards. The coverage of all media outlets became in favor of the Taliban, which banned the coverage of anti-Taliban resistance. One talk show went viral with the host interviewing a member of the Taliban surrounded by seven armed fighters. In August, images of two photojournalists from *Etilaatroz* newspaper went viral who were arrested and beaten by the Taliban for covering the women's protests in Kabul. One of the journalists partially lost both his hearing and eyesight after the Taliban's torture. Another photojournalist who the Taliban accuse of spying was in Taliban's custody in Herat province for several weeks. On the government-owned Afghanistan Radio Television (RTA), suicide bombing is framed as a patriotic act now. The question is, how long will this oppression of free speech and press continue in Afghanistan?

There is some reason for optimism. Although the Taliban may have killed freedom of speech and press that Afghans and international community nourished for two decades, they cannot completely silence people and the media. Social media are other powerful platforms where people can spread the news about issues and events that are not covered in the media inside Afghanistan. Despite the Taliban's threats to punish their opponents, Afghans inside and outside Afghanistan have been using social media to fight the oppression of free speech and media. First, people actually talk about the evils of the Taliban such as beheadings, hangings, lashing, and playing soccer with human heads after beheading. Second, people make fun of the Taliban by sharing and spreading videos and photos that Taliban members post about their experience with modern urban life in Afghanistan's cities. Third, people use social media to discuss rules, orders, and ideas of the Taliban and question their usefulness.

The Taliban may have developed a stronger public relations savvy and try to build a good image for themselves, but they still have oppressed freedom of speech and press and even warned about surveillance of social media. However, social media such as WhatsApp and Telegram are hard to control.

Thus, there is some hope for Afghan citizens to communicate their problems with the world.



# Rethinking Hate-Speech Pedagogy

**Harrison Rosenthal**

Doctoral Candidate

University of Kansas

Law & Policy Graduate Student Liaison

Debates about whether and how traditional marketplace-of-ideas doctrine serves (or fails) the public good are common in graduate First Amendment courses. But these discussions do not often occur at the undergraduate level, and if they do, they must fight for time and space with ever-expanding social media or privacy issues. Journalists, and journalism educators, should understand the marketplace doctrine and its neoliberal justifications, but it is a disservice to the undergraduate class to stop there without introducing its growing list of weaknesses—particularly related to hate speech.

The marketplace of ideas presupposes an equality of status such that no idea, regardless of absurdity, can be false. This argument, made famous by Yale Professor Robert Post, holds that all ideas— notwithstanding their tendencies to wound (see Mari Matsuda), to undermine the public good (see Jeremy Waldron), or to pit First Amendment liberty against Fourteenth Amendment equal protection (see Owen Fiss)— must be allowed to compete for public acceptance in an open marketplace.

The rationale for this unconditional, absolutist approach turns on the public's fundamental distrust of government actors to moderate speech dispassionately. Furthermore, even the most outrageous rhetoric may contain droplets of truth to be expounded. Holocaust denial/revisionism, rigged/stolen elections, 9/11 trutherism, Obama birtherism, and other demonstrably false notions are allowed to compete on equal footing because the truth of the matter is best determined by the marketplace.

The value of invisible-hand (non)regulation, according to Alexander Meiklejohn and Zechariah Chafee, is in the ability to promote collective self-determination and democratic self-governance. Free speech fosters participatory democracy by allowing the public to raise the issues and set the agenda for expert debate. This is a fundamental tenant of John Dewey's *The Public and Its Problems*: "The man who wears the shoe knows best that it pinches and where it pinches, even if the expert shoemaker is the best judge of how the trouble is to be remedied." Because "the government," which is constitutionally subservient to "the people," must entertain policy issues identified by the public, U.S. policy makers, including Supreme Court justices, have adopted an increasingly libertarian/light-touch model of speech regulation so as not to stifle public debate. But this is perhaps the *only* context in which this type of *laissez-faire* regulation occurs.

Outside the marketplace metaphor, speech is tolerated only to the extent it adheres to, and promotes, objectives and values underlying specific institutions. Take the following examples: free speech in the medical community is tolerated to the extent it facilitates competent, compassionate, and respectful medical care. Free speech in the legal community is tolerated to the extent it maintains the respect due courts of justice. Free speech in the academic community is tolerated to the extent it facilitates knowledge production and dissemination. If speakers deviate substantially from axiological standards of the profession—e.g., doctors giving faulty diagnoses, attorneys giving bad advice, or professors teaching debunked content outside their discipline's standards—they are de-licensed, disbarred, or not tenured. Even so, the Supreme Court's marketplace theory has begun to seep into professions where libertarian First-Amendment orthodoxy should not be tolerated. A recent NPR [investigation](#) looked at censorship records for sixteen doctors with robust track records for promoting medical misinformation, finding all but one had licenses in good standing.

The professions, including the Fourth Estate, have duties partially to reject the marketplace metaphor and preclude harmful ideological discourse. Journalists cannot strictly subscribe to the marketplace of ideas because the profession's gatekeeping and agenda-setting functions require practitioners to make epistemological judgments, separating justified belief from unjustified opinion. Speech, in the context of journalism education and professional training, should be tolerated to the extent it promotes our profession's underlying values.

AEJMC guidelines frame free speech diachronically through negative and positive legal perspectives, noting that "[f]ree expression is a fundamental right and responsibility" and should be understood "intellectually, historically and legally." Free expression as a negative right precludes state actors from content-based regulations. An absence of state-sanctioned censorship, to a certain neoliberal extent, promotes freedom of information. Free expression as a positive right obligates the speaker to act in accordance with underlying morals and values—e.g., SPJ's mandate to "seek truth" and "minimize harm" to promote public enlightenment as the forerunner of justice and the foundation of democracy.

Journalism students and instructors, under normative professional standards, should conceptualize free expression as both a negative right and a positive responsibility. This acculturation typically happens at the graduate level through discussions of Richard Delgado, Jean Stefancic, Alexander Tsesis, and Karl Popper. But depriving undergraduates of these ideas—especially Popper's notion that a tolerant society has a categorical imperative to suppress intolerance—may promulgate incomplete understandings of marketplace libertarianism and the extent to which it must be counterbalanced by equal protection and human dignity.



## 2022 AEJMC Southeast Colloquium

**The 46th annual AEJMC Southeast Colloquium, scheduled for March 17-19, 2022, will take place as a hybrid event. You are welcome to join us at University of Memphis or via Zoom.**

Do you have some research in progress you would like to workshop? A paper ready to roll? What about a panel idea that is so current you can't wait to make it happen? You don't have to wait until Detroit. Authors are invited to submit their work for the 47th annual AEJMC Southeast Colloquium, March 17-19, 2022, at the University of Memphis and online.

Planned as a hybrid conference, submitters will have the option to present in person or online. Panels will be conducted in person and shared on the conference platform.

Six AEJMC divisions will participate in the annual event: Electronic News, History, Law and Policy, Magazine Media, Newspaper and Online News, and Visual Communication. And there is an Open division as well, so everyone is welcome to participate.

In addition to the research competition, the conference will host a session about academic citizenship to help graduate students and early-career scholars learn some of the skills of presenting at a conference, reviewing research, and networking. We'll also have a session with Great Ideas For Teaching presentations.

Come to the home of blues and birthplace of rock 'n' roll! You will be just in time for the start of spring, so, you can drink iced tea and eat Memphis barbecue while enjoying the warm spring Southern breeze, live music on Beale Street, the National Civil Rights Museum, Graceland, Sun Studios, Stax Records, the Rock and Soul Museum, and maybe even see an Elvis or two.

Acceptance of papers to colloquium competitions does not prevent authors from submitting to AEJMC divisions for AEJMC's annual conference in Detroit. Graduate students are especially encouraged to submit their work.

### **Colloquium at a glance | Important dates**

**Paper & Panels Due: 5 p.m. Central, Saturday, December 18, 2021**

For more information, contact 2022 Colloquium Coordinator: **Matt Haught**.

Research chairs:

Electronic News: **Volha Kananovich (kananovichv@appstate.edu)**

History: **Scott Morton (smorton17@catawba.edu)**

Magazine Media: **Andrea Hall (andreaehall@gmail.com)**

Newspaper and Online News: **Chang Sup Park (cpark2@albany.edu)**

Law and Policy: **Michael Martinez (mtmartinez@utk.edu)**

Visual Communication: **Matt Haught (mjhaught@memphis.edu)**

Open: **Tom Hrach (thrach@memphis.edu)**

Submit here:

[https://memphis.co1.qualtrics.com/jfe/form/SV\\_eXoDf56aKvEcfS6](https://memphis.co1.qualtrics.com/jfe/form/SV_eXoDf56aKvEcfS6)

Authors should prepare submissions as either a PDF or Word file. All submissions must be completed by no later than 5 p.m. CT on December 18, 2021. Submissions must be original and must not have been previously presented at a conference. Students and faculty should indicate their status for consideration of faculty and student top paper awards. Do not include any author identifying information on any page of the paper submission. Authors also should redact identifying information from the document properties. On the cover page of the attached paper, only the title of the paper should appear. Following the cover page, include a 250-word abstract. Length of full papers should not exceed 30 pages including references and tables (50 pages for Law and Policy papers).

The author of each accepted paper (at least one author in the case of a co-authored paper) must present the paper at the Colloquium or it will not be listed in the final program. Acceptance and/or submission of papers to Colloquium paper competitions does not prevent authors from submitting to AEJMC divisions for the AEJMC Annual Conference in August in Detroit. Complete contact information and a complete list of (all) authors must be submitted with other material (and on deadline) or a paper will be disqualified. For online instructions on "how to submit a clean paper" for blind review, [see this link](#). Authors of accepted papers will be notified by February 1, 2022.

## PANEL PROPOSALS

Panel proposals should be submitted to Matt Haught ([mjhaught@memphis.edu](mailto:mjhaught@memphis.edu)) by December 18, 2021, and should include a brief description of the panel along with proposed panelists. Proposals should not exceed three double-spaced pages.

## RESEARCH-IN-PROGRESS

The Colloquium will include a research-in-progress roundtables as an opportunity for researchers to share and get feedback on projects that are in some stage of development. Authors must submit a synopsis of the project, with some research questions or hypotheses and a paragraph explain what stage of development the project is in. The extended abstracts must be at least 750 words long but no more than 1,500 words. Extended abstracts must include a reference list and a 75-word summary of the abstract (the reference list and summary are not included in the word count). Research chairs will determine how many abstracts can be programmed based on development of research strategy, clarity of research goals and available slots in the roundtable.

Research-in-Progress abstracts are NOT eligible for Colloquium research awards.

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## 47<sup>th</sup> AEJMC Southeast Colloquium: Call for Reviewers

The Law and Policy Division has a proud tradition of hosting an engaging research paper competition at the AEJMC Southeast Colloquium each year, and we anticipate that 2022 will be no different. With our growing number of papers comes a need for an equally vigorous team of reviewers. For us to limit reviewers to three papers each, we'll need approximately 25 reviewers. If you are not submitting a paper to the colloquium this year, the division invites you to help with the competition. Reviewers will receive a package of papers in December, with a mid-January deadline for returning reviews. For more information, please contact Dr. Michael T. Martínez by phone at (865) 314-5256 or via e-mail at [mtmartinez@utk.edu](mailto:mtmartinez@utk.edu).

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## Recent Research by Division Members

Below is a record of recent research published by Division members. This is a new feature for Media Law Notes. Caitlin Carlson and Clay Calvert deserve credit for the idea. The goal of this section is to recognize the diversity of research produced by Division members, prompting the rest of us to read their work, assign it for class, and cite it in our future research.

Great work, everyone!

Jonathan Anderson and Sarah K. Wiley, "Freedom of the Database: Auditing Access to Structured Data," 3(1) *J. Civic Info* 30 (2021).

*This study assessed how public universities respond to records requests of varying complexity for structured data. Sampled universities produced responsive structured data without a fee in slightly more than a quarter of requests, meaning the vast majority of requests failed to yield the information sought in a structured format and for free. Legal, policy, and practical implications are discussed.*

Garrett Wagner, K. P. & Fuller, P. B. "The three conundrums: Doctrinal, theoretical, and practical confusion in the law of sexually explicit speech." 43 *Hastings Communications and Entertainment Law Journal* 135 (2021).

*This study revives the question "What is the value of sexually explicit speech?" to reveal three conundrums plaguing the Court's jurisprudence: categorizing restrictions on sexually explicit speech; interpreting the value and harms of sexually explicit speech; and assessing the evidence (or lack thereof) for restrictions on sexually explicit speech. Recommendations on how to resolve these conundrums are discussed with an emphasis on adopting an analytical framework that requires substantiation similar to intermediate constitutional scrutiny as in commercial speech cases.*

Juwayeyi, M. M. (2021). "Congressional concerns over partisanship and a lack of professional independence: Critical junctures and the evolution of U.S. government information agencies." *Journalism & Communication Monographs*, 23(3), 164-233.

*The study shows that lawmakers in Congress have historically had concerns about the professional independence of U.S. government information agencies, such as the Committee on Public Information (CPI), the Office of War Information (OWI) and, currently, the United States Agency for Global Media (USAGM). Lawmakers were concerned that these agencies would be used to advance the partisan political agenda of whoever occupies the White House. The study concludes that such concerns are likely to persist.*

Liu, C.Y., Li, W.P., & Tu, Y.P. (2021). "Privacy perils of open data and data sharing: A case study of Taiwan's open data policy and practices." *Washington International Law Journal*, 30(3), 545-597.

*This article overviews Taiwan's open data policy history and its current practices by analyzing cases in which data sharing practices between different sectors have given rise to privacy controversies, including the Taiwanese' government's use of data surveillance during the COVID-19 pandemic. This article flags problems related to an open data system, including the protection of sensitive data, de-identification, the right to consent and opt-out, and the ambiguity of "public interest."*

Amanda Reid & Alex Kresovich, "Copyright as a Barrier to Music Therapy Telehealth Interventions: Qualitative Interview Study," 8 *JMIR Formative Research*, e28383, doi: 10.2196/28383, PMID: 34319241

*Music therapy harnesses the power of music to treat a wide range of patient populations, and a therapist who plays music in a private room for a patient is not subject to copyright restrictions on public performances. However, in the wake of the COVID-19 pandemic, music therapy is no longer strictly confined to the face-to-face setting. This study explores music therapists' perceptions of copyright law with respect to their ability to provide mediated services to their clients.*

Harrison M. Rosenthal & Genelle I. Belmas, "Cyber-Recapitulation? What Online Games Can Teach Social Media About Content Management," 61 *Jurimetrics J.* 331–78 (2021).

*Attorney and Ph.D. Candidate Harrison Rosenthal and Associate Professor Genelle Belmas's article "Cyber-Recapitulation? What Online Games Can Teach Social Media About Content Management" was published in Jurimetrics—the peer-reviewed academic journal of the American Bar Association Science & Technology Law Section. The authors analyze online games and social media platforms as fora for user communication. They conclude that social media companies can learn from the experiences of online gaming groups in how to involve their users in their own speech regulation.*

Amy Kristin Sanders, "The 'Exceptionalist Trap': Why the Future First Amendment Must Take Fundamental Human Rights into Account," 65 *Wash. U. J. of L. & Pub. Pol'y*, 61-89 (2021). <https://tinyurl.com/65WUJLP61>

*The United States' unwillingness to consider alternatives to its current approach to free speech can no longer be justified in a global society. This Article explores the possibility of better aligning U.S. free expression jurisprudence with that of liberal democracies around the world as a means of elevating other human rights including privacy, dignity, and autonomy.*

Jared Schroeder, "Fixing False Truths: Rethinking Truth Assumptions and Free-Expression Rationales in the Networked Era," 29 *Wm. & Mary Bill Rts. J.* 1097 (2021).

*The First Amendment makes no mention of truth. Assumptions about truth, however, have become the foundations for free-expression rationales, the very bases for such freedoms in a democratic society. This Article examines, in light of massive, widespread adoption of networked technologies and AI and Supreme Court decisions that have undermined the distinctive role of truth, whether truth should be removed or replaced as a crucial, justifying concept in freedom of expression.*

Christopher Terry, Eliezer J. Silberberg & Stephen Schmitz, "Throw the Book at Them: Why the FTC Needs to Get Tough with Influencers," 29 *J. L. & Pol'y* 406 (2021).

*The FTC has struggled to employ a coherent enforcement strategy for deceptive practices by Social Media Influencers. The agency's failure to take a hardline approach with influencers, as the FTC did with native advertising online, represents a parting with the manner with which the agency has traditionally enforced the deception standard in endorsement ads. This Article argues that the agency's inaction is undermining the FTC's consumer protection role.*

Wagner, A. (2021). "Inherent Frictions and Deliberate Frustrations: Examining the Legal Variables of State FOI Law Administration." *Journal of Civic Information* 3(2), 29-49.

*The study examined legal elements of FOI laws through an exploratory field study, or audit, of nine state FOI laws. Among the study's findings are two uniquely strong predictors of better FOI results: The existence of an independent FOI advocacy organization in the state and a legislature subject to the law.*

Rosalie C. Westenskow and Edward L. Carter, "Journalism As a Public Good: How the Nonprofit News Model Can Save Us From Ourselves," *25 Comm. L. & Pol'y* 1 (2021).

*At a time when many U.S. newspapers find themselves at the edge of a financial precipice, The Salt Lake Tribune's recent transformation into a 501(c)(3) public charity represents a promising route to economic safety. This article argues that journalism is a public good and a natural fit for the non-profit model.*

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## **Minutes from AEJMC Law & Policy Division Business Meeting (Aug. 6, 2021)**

**(As recorded by outgoing Newsletter Chair Jonathan Peters)**

### **Approval of 2020 minutes.**

Moved: Chip Stewart.

Seconded: Amy Sanders.

### **Report from Nina Brown, as division head.**

Council of Divisions reported that fewer papers were submitted, overall, to this year's conference: full papers (1,037) and extended abstracts (553). These numbers are down roughly 30-40 papers, overall, compared to the year before.

Council of Divisions reported that we don't yet have final numbers regarding registrants, but as of August 1, the conference had roughly 2,000—on par with Toronto's conference and significantly higher than last year.

Division membership grew in spite of COVID, from 167 members to 175 members.

The division is in good financial standing, with a current balance of \$15,699. But that number is misleading, because AEJMC's home office made errors last year by not charging the division for certain things (e.g., award payments, plaques, and conference registrations). Those will soon be deducted from the balance, meaning it will probably decline by \$3,000-\$4,000.

We also have \$2,870 in contributions to the Michael Hoefges Memorial Fund, which is intended to help students afford to present their work at AEJMC conferences.

#### **Report about *Communication Law and Policy*, delivered by Nina Brown on behalf of Wat Hopkins.**

In the last year, the journal had 42 submissions (compared to 46 the year before), and it published 7 of them—for an acceptance rate of 16.6 percent.

Taylor & Francis changed the publication schedule, making it more difficult for Wat to prepare a full report in time for the conference. The hope is that the next editor will be able to work this out.

This is the last year of Wat's editorship. Many thanks to Wat for his dedication to the journal and the division, which owes him a huge debt of gratitude.

#### **Report about the Stonecipher Award, delivered by Dean Smith.**

This is the fifth year Dean has led the selection process. The award has grown in reach and prominence each year, with growing outreach to more and more schools.

This year's committee included Dean Smith, Katie Blevins, Eric Easton, Tori Ekstrand, Emily Erickson, Patrick File, Roy Gutterman, and Jasmine McNealy.

Genevieve Lakier, an assistant professor of law at the University of Chicago, won the award for her article "The First Amendment's Real *Lochner* Problem." The Stonecipher judges applauded Lakier's ability to breathe new life into the long-running debate about negative and positive rights.

Steven Shiffrin's article "Morality and the First Amendment" earned a special mention from the Stonecipher judges.

All of the finalists were outstanding and should be read and discussed within the division and beyond.

#### **Report about Southeast Colloquium, delivered by Mike Martinez.**

For the second year in a row, the Southeast Colloquium was held virtually. It was hosted by Elon University.

There were 16 full papers submitted: seven faculty and nine students. Eight full papers were accepted for a rate of 50 percent. There were seven research-in-progress abstracts submitted: four faculty and three students. Four R-I-P's were accepted for a rate of 57 percent.

The Law and Policy division was well represented with two PF&R panels, two research panels, and one research-in-progress roundtable. On average, there were 15 people in each of the Zoom sessions.

W. Wat Hopkins, Virginia Tech, was awarded the top faculty paper for "*Times v. Sullivan*

Revisited: Interment or Resurrection,” and Erin McLoughlin, University of Florida, was awarded the top student paper for “Some Lessons from *United States v. Bolton* about *United States v. Snepp* in the Internet Era.”

The University of Memphis will return in 2022 to host the Southeast Colloquium, this time in person. The dates are yet to be determined.

#### **Report about Teaching Ideas Competition, delivered by Kyla Wagner on behalf of Brooks Fuller.**

We had 8 submissions this year, down a little from past years. Kyla then gave out the awards.

Brett Johnson won third place for his submission “Read and Reflect on Your School’s Speech Policies,” which invites students to do just that. Students learn about key student speech precedents and apply them to their university’s policies.

Alan Goldenbach won second place for his submission “Objection!” He invites his students to pick a case they disagree with and write a short paper arguing why the case is wrong based not only on precedent but on historical facts and context.

Roy Gutterman won first place with his submission “Say (Swiss) Cheese: Lawyer and litigate this article.” The assignment calls for students to assume the role of a journalist, editor, or press photographer, and to dissect a news piece for potentially defamatory or privacy-violating content. Students then craft legal arguments around the issues.

#### **Report about PF&R activities, delivered by Amanda Reid.**

There were two pre-conference panels, both well attended. One was about increasing DEI in curricula. The other was about securing grant funding for collaborative research. Both panels were highly interactive.

Earlier in the year, we did panel on facial recognition technology. It generated interest in AEJMC programming outside of the normal conference times. It was well attended, and it had a stellar cast of panelists.

Amanda also wrote an article for the newsletter about copyright as it applies in virtual spaces.

#### **Report about the division’s website, delivered by Genelle Belmas.**

She says not much to report. She wants to update the site to a better theme, but she has been having trouble coordinating this with AEJMC, which controls the site credentials to do so.

Contact Genelle if you have any ideas of how to make the site better or more useful.

#### **Report about the division’s newsletter, delivered by Jon Peters.**

Four issues went out, in addition to assorted announcements. Thanks to all of the contributors.

He moved to an electronic format, and generally it went well. But there were challenges. He used Mailchimp to design and distribute the newsletter, but each time he needed to experiment with different features and functions to try to route around the spam filters at various institutions.

By the time he reached the last newsletter, he was basically using Mailchimp as a design tool, while manually emailing out the newsletter to all division members. He plans to talk with the next newsletter chair about this experience and how to design and distribute the newsletter

going forward.

### **Report about the research competition, delivered by Jared Schroeder.**

There were 31 paper submissions (low compared to recent years, in which we had 51 in 2020 and 42 in 2019). There were 26 faculty submissions and 5 student submissions, of which 13 and 2, respectively, were accepted. There were 7 extended abstracts submitted, of which 4 were accepted.

Many thanks to the skilled discussants and moderators.

Jared gives out paper awards.

- Patrick McGrail and Ewa McGrail won Top Faculty Debut Paper for “The *ReDigi* Case and the Digital Challenge to the First Sale Doctrine.”
- Roy Gutterman won Third-Place Top Faculty Paper for “Liable, Naaah!: The Mockumentary: Litigation, Liability and the First Amendment in the works of Sacha Baron Cohen.”
- Anthony Fargo won Second-Place Top Faculty Paper for “Perilous in Seattle: The Dangers of Covering Protests and Implications for the Journalist’s Privilege.”
- Stephen Bates won Top Faculty Paper for “The Positive First Amendment in Constitutional History, Law, and Theory.”
- Hayley Rousselle won Second-Place Top Student Paper for “Social Media and the Economy of Hate.”
- Morgan Band won Top Student Paper for “A Meta-Analytic Review of the Effects of Pretrial Publicity on Jury Perception.”

AEJMC created a Top Reviewer Award, and the division created its own, too. It was given to Brett Johnson for his excellent, comprehensive, and constructive reviews.

### **Report from Caitlin Carlson, as vice head.**

Main responsibility has been planning the PF&R and teaching panels. We had lots of strong submissions. Many thanks to the people who ran the panels. Attendance has been phenomenal, averaging 35-40 per session—better than we often do at in-person conferences.

The virtual offsite event went well, the drag queen story hour with Harmonica Sunbeam.

We are trying to be more intentional about DEI, as encouraged by AEJMC. We did that partly by asking all panel proposals to take DEI into account (e.g., with regard to who is serving on a panel).

“Women in the Law Division” is growing and thriving.

### **Peaceful transfer of power**

Nina thanks all officers and members for their dedication and work this year.

Automatic elevation of officers (head, vice head, research chair).

Caitlin Carlson became head.

Jared Schroeder became vice head.

Jon Peters became research chair.

Now division head, Caitlin Carlson begins presiding over the meeting.

Brett Johnson was nominated (by Nina Brown, seconded by Genelle Belmas) to become newsletter chair, and he was approved by acclimation.

Amanda Reid self-nominated to continue in her role as PF&R chair (seconded by Nina Brown), and she was approved by acclimation.

Brooks Fuller was nominated (by Kyla Wagner, seconded by Caitlin Carlson) to continue as teaching chair, and he was approved by acclimation.

Genelle Belmas self-nominated to continue in her role as webmistress (seconded by Amy Sanders), and she was approved by acclimation.

Caitlin Carlson makes several appointments.

Carlson offers thanks to Kriste Patrow for her excellent service as social media coordinator. Carlson then appoints Leslie Klein as the new social media coordinator.

Carlson re-appointed Harrison Rosenthal as grad student liaison.

Carlson says that we will soon be appointing a new chair for the Stonecipher Award.

(No litigation is expected to challenge the peaceful transfer of power.)

### **Editorship of *Communication Law and Policy***

Caitlin Carlson explains that the division officers conducted a search for the journal's next editor (reviewing numerous applications and conducting a handful of interviews), and ultimately the officers selected Amy Sanders as the next editor.

Carlson reviews Sanders's professional background and her goals as editor, including to grow the journal's prominence on global stage, to create opportunities for more people to become involved in the journal, and to increase DEI priorities.

The search committee was unanimous in selecting Sanders, and Carlson asks for ratification of that selection. Jared Schroeder and Chris Terry offer strong endorsements. The members then vote (with no opposition or abstention) to ratify Sanders's selection as editor.

Amy thanks the members for their confidence and invites all member to get in touch with her to talk about the journal's future.

### **Plans for coming year**

Caitlin Carlson announces goals for the year. They include: Continuing to increase DEI efforts, increasing mentorship opportunities for grad students and junior faculty members, increasing the number of submissions to the research competition, creating opportunities to be in community with one another, creating a listserv for members to use, creating a travel grant to encourage grad students to participate in conferences.

Brett Johnson offers congratulations to Scott Memmel, who won this year's AEJMC dissertation award.

Carlson says it is probably a good idea for the division to continue accepting extended abstracts, in part as a way to attract more grad students to our research competition.

Amanda Reid, as PF&R chair, says she is planning an event related to Banned Books Week in late September. Asks members to send her any event ideas for the coming year.

Carlson asks for a motion to make the division's usual donations (\$250 each) to the Student Press Law Center and the Reporters Committee for Freedom of the Press. Mike Martinez so moves, seconded by Carlson. The members all vote yes, with Amy Sanders abstaining as a member of the SPLC's board.

Meeting is adjourned.

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208 Neff Hall  
Columbia Missouri 65211  
US

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