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Communications

Law 2007



- Will reporters behave differently with their sources in the post-*Libby* era?
- What constitutes lawful obtaining and disclosure of an illegally recorded conversation in the wake of *Boehner v. McDermott*?
- Are the Court's decisions in *Wisconsin Right to Life* and *Morse* good or bad for the press?
- Can Google and YouTube take advantage of the DMCA's safe harbors?

plus

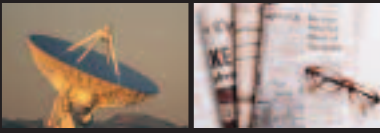
- Where does the FCC's policy regulating "fleeting expletives" stand?
- Can Congress act constitutionally to restrict violence in entertainment?
- Must audiotapes played in court be made public—and when?

and much more... look inside!

New York City, Crowne Plaza Manhattan, November 8-9, 2007

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Communications Law 2007



New York City, Crowne Plaza Manhattan,
November 8-9, 2007

Why You Should Attend

Get updated on the hottest issues in media, First Amendment and communications law at the 35th edition of this seminar, one of PLI's most popular. Hear leading Supreme Court practitioners and media lawyers talk about the impact of the *Libby* trial on the reporter's privilege, how John Boehner's victory over Jim McDermott may affect future leak cases, and the copyright challenges facing Google. Also learn what reporters and news organizations can expect in the wake of *Boehner* and *Hatfill*. If you need to know what changes loom on the horizon in media/communications law, be sure to attend this program.

What You Will Learn:

- Will plaintiffs' big scores in *Murphy* and *Thomas* chill reporting about judges?
- Can the government close the courtroom doors in a state secrets case?
- Can an Internet service provider be held liable when its users express a discriminatory preference in roommates?
- Will *Boehner* impact the court's decision in *Rosen*?
- Can the right of privacy trump the ability of scientists and journalists to investigate the validity of repressed childhood memories?
- Does the First Amendment permit a municipality to prohibit some, but not all, outdoor solicitation?



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Program

First Day: 9:00 a.m. – 5:00 p.m.

Morning Session: 9:00 a.m. – 12:15 p.m.

9:00

Libel

- Will plaintiffs' big scores in *Murphy* and *Thomas* chill reporting about judges? *Murphy v. Boston Globe*; *Thomas v. Page*
- How far can a talk radio host go in interpreting materials that "bristle with ambiguity"? *CACI v. Air America Radio*
- Do journalists have the leeway to identify suspects when they comment on ongoing investigations? *Hatfill v. The New York Times Co.*
- Can the fair report privilege be defeated by a showing of actual malice? *Thomas v. Telegraph Publishing Co.*
- Is there a prior restraint when a court issues an injunction against defamatory speech after a trial on the merits? *Balboa Island Village Inn, Inc. v. Lemen*
- Does the Second Circuit's certification of the personal jurisdiction issue in *Mahtouz* give some hope that U.S. courts are willing to short-circuit U.K. libel actions against U.S. publishers? *Ehrenfeld v. Bin Mahtouz*

Speaker: Jack M. Weiss

Panel Moderator: James C. Goodale

Sandra Baron, Robin Bierstedt, Bruce W. Sanford

10:30 **Break**

10:45

Access

- What is the difference between the First Amendment and the common law right of access?
- Is there a common law or First Amendment right of access to jurors' names or addresses? *Commonwealth v. Long*; *Commonwealth v. Silva*; *United States v. Black*
- Can the government close the courtroom doors in a "classified" information case? *United States v. Rosen*
- Should the public have access to information about pork-barrel spending? *Hearst v. Silver*
- Letters to the sentencing judge: Public or private? *United States v. Libby*; *Commonwealth v. Martinez*; *United States v. Sattar*
- Must audiotapes played in court be made public — and when? *United States v. Libby*; *United States v. Padilla*; *Commonwealth v. Ushur*
- Are sealed dockets constitutional? *In re Amendments to Fla. Rule of Judicial Admin.*; *In re Sealing Litigation Ref. Nos. 101-140*
- Show cause hearings: Are they like the grand jury? *Eagle-Tribune Publishing v. Clerk-Magistrate*

Speaker: Joseph D. Steinfield

Panel Moderator: James C. Goodale

Herschel P. Fink, Richard J. Ovelmen, Mary-Rose Papandrea, Conrad M. Shumadine

12:15 **Lunch**

Afternoon Session: 1:45 p.m. – 5:00 p.m.

1:45

Newsgathering, Right of Privacy, and Related Torts

- What constitutes lawful obtaining and disclosure of an illegally recorded conversation in the wake of the divided en banc decision in *Boehner v. McDermott*?
- Will officials who received national defense information and discussed it with reporters be convicted of violating the Espionage Act, after the ruling in *Boehner v. McDermott*; *United States v. Rosen*
- Can the right of privacy trump the ability of scientists and journalists to investigate the validity of repressed childhood memories? *Taus v. Loftus*
- Protective orders and the right of privacy: does a matter of public concern become private once the court documents are sealed? *Lowe v. Hearst*
- Is the press obligated to follow the no-pictures restriction a mourning family places on a public funeral? *Showler v. Harper's Magazine Foundation*
- Can Marilyn Monroe claim a right of publicity? Application of descendible publicity statutes to individuals who pre-deceased the statute's passage. *Shaw Family Archives, Ltd. v. CMG Worldwide*
- Is an individual's likeness taken on the street without his consent for use in a work of art a violation of New York's right of publicity statute? *Nussenzweig v. DiCorcia*
- Is a 1986 stock photograph of a waitress used without her consent on the cover of a book actionable under the Illinois Right of Publicity Act? *Christianson v. Henry Holt*
- Is the Amazon.com display of a book cover featuring an unauthorized photograph a "commercial use" under the Florida right of publicity statute? *Almeida v. Amazon.com*
- Is the *Tony Twist* case all twisted up? *Twist v. McFarlane*

Speaker: Victor A. Kovner

Panel Moderator: James C. Goodale

Stephanie S. Abrutyn, Ted Boutrous, Jane E. Kirtley, Lee Levine, Barbara W. Wall

3:15 **Break**

3:30

Commercial Speech

- Are New York's lawyer advertising rules constitutional? *Alexander v. Cahill*
- Will New Jersey welcome back its "Super Lawyers"? *In the Matter of Attorney Advertising Opinion 39*
- May California empower consumers to prevent the dissemination of information in their credit history? *U.D. Registry, Inc. v. California*
- Does the First Amendment permit a municipality to prohibit some, but not all, outdoor solicitation? *ACLU v. City of Las Vegas*; *Wilson v. Lexington-Fayette*
- Is it constitutionally permissible for government to require male users of matchmaking Web sites to reveal their arrests or convictions for violent crimes? *European Connections & Tours, Inc. v. Gonzales*
- May New Hampshire bar "data mining companies" from collecting and marketing data identifying the prescribing practices of individual health care providers? *IMS Health, Inc. v. Ayotte*
- Does the Utah Child Protection Registry Act violate the First Amendment by creating a do-not-contact list for children with respect to sexually oriented products? *Free Speech Coalition v. Shurtleff*
- May Rhode Island prohibit liquor retailers from engaging in joint advertisements and sharing trade names? *Wine and Spirits Retailers, Inc. v. Rhode Island*

Speaker: Steven G. Brody

Panel Moderator: James C. Goodale

Bruce E. H. Johnson, Thomas R. Julin, Matthew L. Myers, Elaine S. Reiss

Schedule

Please plan to arrive sufficiently in advance of the conference start time to register. A continental breakfast will be available upon your arrival.

Second Day: 9:00 a.m. – 5:00 p.m.

Morning Session: 9:00 a.m. – 12:15 p.m.

9:00

Media and Telecommunications

- Where does the FCC's policy regulating "fleeting expletives" stand? *Fox Television Stations, Inc. v. FCC*
- Can Congress regulate violence in media without violating the First Amendment?
- Media Ownership: Any change ahead?
- DTV: The end of conventional TV looms
- What does the future hold for digital radio?
- Cable television and Sirius/XM radio: Will a la carte programming happen?
- Who's ahead in "Triple Play" competition?
- What are the partisan fault lines in the broadband and net neutrality debate?
- Universal Service Fund: Too much of a good thing?
- The 700 MHz auction: A new open access paradigm?

Speaker: Richard E. Wiley

Panel Moderator: James C. Goodale

Rick Cotton, Patrick J. Grant, Robert D. Joffe, Gigi B. Sohn

10:30 **Break**

10:45

Cyberliability and the Internet

- Can an Internet service provider be held liable when its users express a discriminatory preference in roommates? *Fair Housing Council v. Roommates.com*; *Chicago Lawyers' Committee v. Craigslist, Inc.*
- Is a filter, not government regulation, the constitutional solution to protecting children from indecency on the Internet? *ACLU v. Gonzales*
- Thumbnail images, inline links, and credit cards: New approaches to copyright infringement? *Perfect 10 v. Amazon.com*; *Perfect 10 v. Visa Int'l Service Association*
- Can Google and YouTube take advantage of the DMCA's safe harbors? *Viacom v. YouTube*
- Will spyware survive government crackdowns and anti-spyware software? *Zango Inc. v. PC Tools Pty Ltd.*
- Who should be liable when anonymous online speech turns ugly? *Doe v. Ciolli*

Speaker: Mary Snapp

Panel Moderator: James C. Goodale

Andrew Bridges, Jeffrey P. Cunard, Bruce E. H. Johnson, Madeleine Schachter, Gigi B. Sohn

12:15 **Lunch**

Afternoon Session: 2:00 p.m. – 5:00 p.m.

2:00

Reporter's Privilege

- Is this the year for a federal shield law?
- Are the subpoenas in the *Hatfill* case aimed at extorting money from the press? *Hatfill v. Ashcroft*
- Will reporters behave differently with their sources in the post-*Libby* era?
- What was the fallout of the *Libby* trial?
- Did Josh Wolf have to go to jail? *In re Grand Jury Subpoena to Joshua Wolf*
- Who won in BALCO? *In re Grand Jury Subpoena to Mark Fainaru-Wada and Lance Williams*
- Are more states adopting shield laws?
- Does Norman Pearlstine's book damage the reporter's privilege?
- Can the government block the publication of information already in the public domain? *Wilson v. McConnell*
- Should courts grant injunctions against Internet sites to protect a celebrity's privacy? *Hilton v. Bardia Persa*

Speaker: George Freeman

Panel Moderator: James C. Goodale

Floyd Abrams, Ted Boutros, Eve B. Burton, Lucy Dalglish, Anthony Lewis (schedule permitting)

3:45 **Break**

4:00

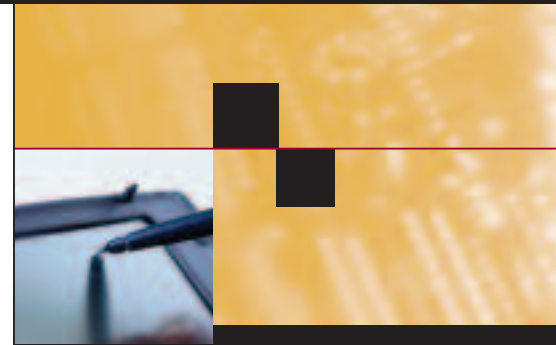
Supreme Court, First Amendment Review

- "My job is to call balls and strikes": Were Justices Roberts and Alito candid during their confirmation hearings?
- Are the Court's decisions in *Wisconsin Right to Life* and *Morse* good or bad for the press?
- Has the Court overruled *McConnell*?

Speaker: Burt Neuborne

Panel Moderator: James C. Goodale

Floyd Abrams, Ronnell Andersen Jones, Paul Smith



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New York City

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Floyd Abrams

Cahill Gordon & Reindel LLP
New York City

Stephanie S. Abrutyn

Senior Counsel
Home Box Office, Inc.
New York City

Sandra Baron

Executive Director
Media Law Resource Center
New York City

Robin Bierstedt

Vice President and Deputy General Counsel
Time Inc.
New York City

Ted Boutrous

Gibson Dunn & Crutcher LLP
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Washington, D.C.

Lucy Dalglish

Executive Director
Reporters Committee for Freedom of the Press
Arlington, Virginia

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RonNell Andersen Jones

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University of Arizona James E. Rogers College of Law
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