1999

www.cybersex.firstamendment: Policing Obscenity and Pornography in an Online World (Program)

Institute of Bill of Rights Law at the William & Mary Law School

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The Institute of Bill of Rights Law Student Division Presents:

www.cybersex.firstamendment

Policing Obscenity and Pornography in an Online World

March 19, 1999
6:00 - 9:00 pm
William & Mary School of Law
McGlothlin Moot Court Room
About the Institute of Bill of Rights Law Student Division

The mission of the Institute of Bill of Rights Law is to contribute to the ongoing national dialogue about important issues relating to the United States Constitution. The Institute carries out this mission through a variety of activities, including its sponsorship of its Student Division, which conducts programs throughout the year to enhance the educational opportunities of students. The activities of the Student Division culminate in a yearly symposium conceptualized, organized, and conducted exclusively by students. Recent symposia have considered the juvenile justice system, the status of gays in the military, alien civil rights, and prayer in the schools.

Members of the 1998-99 Student Division Symposium Committee are Matthew L. Curtis (Chair), Joshua M. Herbst, Stacey A. Mollohan, Catherine R. Zaller, Steven T. Aase, Brian T. Holmen, and Matthew Frey.

Program

6:00 p.m.  Moot Court Competition
Flynt Hefner v. United States
Andrew R. Margrabe for the petitioner.
Martha J. Swicegood for the respondent.
McGlothlin Moot Courtroom

7:00 p.m.  Break

7:15 p.m.  Panel Discussion
ACLU v. Reno II: Policing Obscenity and Pornography in an Online World
Room 119

9:00 p.m.  Presentation of Award for Best Moot Court Oralist
Reception to Follow

Special Thanks
The Symposium Committee wishes to thank William and Mary School of Law Moot Court Team Members Mark R. Baumgartner, Cameron L. Coblen, Kindra L. Gromelski, Vivieon E. Kelley, Eunice E. Kim, Michael T. Pascual, and Gerald S. Smith for their generous assistance in judging the preliminary rounds of the symposium's moot court competition. In addition, the Committee would like to extend its thanks to each of the first-year students who competed in the preliminary round of our moot court tournament as well as to Professors Neal E. Devins, Michael Gerhardt, Trotter Hardy, John Levy, and Paul Marcus for their various advice and assistance. Thanks, too, are owed especially to the panelists, to Michael Hoagland, and to Professor Davison M. Douglas, Director of the Institute of Bill of Rights Law.
About the Panelists

**Ann Beeson** is staff counsel at the ACLU National Legal Department in New York City, where she works as a litigator to promote and to protect civil liberties in cyberspace. As counsel for plaintiffs in **ACLU v. Reno**, Ms. Beeson was a primary architect of the landmark case in which the Supreme Court, in 1997, declared the federal Communications Decency Act (CDA) unconstitutional. She is now lead counsel in **ACLU v. Reno II**, the challenge to the Child Online Protection Act (COPA), Congress' second attempt to regulate Internet speech. In February 1999, a federal court in Philadelphia issued a preliminary injunction against the enforcement of COPA after a weeklong hearing.

**Deirdre Mulligan** is staff counsel at the Center for Democracy and Technology, in Washington D.C. Ms. Mulligan specializes in developing legal and technological means to increase individual control over personal information held by commercial and governmental parties. Her current work involves examining the privacy, confidentiality, and security needs of automated health-care information systems under development across the country.

**Bruce Taylor** is President and Chief Counsel of the National Law Center for Children and Families. Most recently, he served as a Senior Trial Attorney for the Child Exploitation and Obscenity Section of the U.S. Department of Justice. In addition to having prosecuted over 85 obscenity cases in state and federal court, Mr. Taylor, in 1981, represented the State of Ohio before the U.S. Supreme Court in **Larry Flynt v. Ohio**.

**Bruce Watson** is President of Enough is Enough, a Virginia-based organization dedicated to making the Internet and computers safe for children to use without the intrusion of illegal sexual material. Since becoming president in early 1998, Mr. Watson has taken part in panel discussions on Internet regulation at, among others, the Cato Institute and the D.C. Bar Association, and he served as the principal author of an *amicus* brief cited by the Court of Appeals for the D.C. Circuit in its decision to uphold the Ensign Amendment's restrictions on pornography in the federal prison system.

**Jonathan Zittrain** is Executive Director of the Berkman Center for Internet & Society and Lecturer on Law at Harvard Law School. In addition to teaching and researching the growing body of law relating to cyberspace, Mr. Zittrain is the Berkman Center's liaison to the Internet Corporation for Assigned Names and Numbers (ICANN) Membership Advisory Committee.

About the Moderator

**Paul Marcus** is Haynes Professor of Law at William and Mary School of Law. He teaches courses on criminal law and copyright law.
About the Moot Court Problem*

_Procedural History_  
The United States Supreme Court has granted a writ of certiorari to review the following issues arising from the congressional passage of the Online Parental Assistance Act (OPAA), a response to the Court's ruling in ACLU v. Reno:  

1) Whether the Online Parental Assistance Act is vague in its "commercial" and "harmful to minors" definitions and thereby places a chilling effect on adults' First Amendment rights under the United States Constitution; and  
2) Whether the Online Parental Assistance Act is unconstitutionally overbroad on its face in that it inhibits access or dissemination of protected speech.

_Facts_  
Petitioner Flynt Hefner, through his Web site, The Erogenous Zone, is a purveyor of access to strip shows broadcast over the Internet's World Wide Web. Since going online, in 1997, the site has seen modest profits. Petitioner does not currently have in place any method to verify the ages of those visiting his Web site. While he does require those wishing to view a strip show to purchase access with a credit card, he advertises upcoming or on-going shows with still photographs from previous shows. Such advertisements appear on his site's home page; access to them is not restricted in any way.

The federal government filed charges against Petitioner in 1998, after the parent of an 8-year-old child notified police that her son had inadvertently followed a hypertext link to Petitioner's site and had been exposed to the sexually explicit advertisements on the site's home page. Petitioner was charged, under the guidelines of the Online Parental Assistance Act (OPAA), with failure to bar underage access to the sexually explicit material on his Web site. OPAA prohibits online commercial entities from knowingly transmitting material deemed harmful to minors or allowing access to material that is harmful to minors to anyone under seventeen years old. The Petitioner's conviction on this charge was upheld at the appellate level. He now appeals on the basis that the OPAA is vague and overbroad, and thus unconstitutional on its face.

The moot court portion of the Student Division Symposium is traditionally argued by first-year law students selected after several rounds of preliminary competition. This year, Andrew R. Margrabe will argue for the petitioner; Martha J. Swicegood will argue for the respondent. Adam P. Doherty and Audra A. Hale will serve as alternates.

*This problem is entirely fictitious.*