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**LAW STUDENTS TACKLE CYBERCRIME CASE
WITH CENTRAL ISSUE OF E-MAIL PRIVACY**

DAYTON, Ohio — It's a hot-button issue: How private is e-mail and who should have access to messages stored in a central server?

Those questions are at the heart of a legal appeal to be argued by several dozen law school students from across the country at the first annual Carl A. Stickel Cybercrimes National Moot Court Competition to be held Friday and Saturday, March 19 and 20, at the University of Dayton School of Law.

As is the case with many legal questions in cyberspace, the students won't have clear-cut precedents on which to base their arguments. "Like the development of the postal system or the telegraph or telephone, as the technology evolves, so does the law," says Rebecca Cochran, associate professor of law at UD and chief organizer of the Cybercrimes National Moot Court, the only competition of its kind in the country.

"Is an e-mail message like a telephone call on a party line? Is it like a postcard or a sealed letter? What expectation is there for privacy?" Cochran asks.

One of the judges for the competition will be Stevan Mitchell, a trial attorney in the computer crime and intellectual property section of the U.S. Department of Justice. He has dealt with emerging technology and law on a daily basis since 1992.

The moot court case facing the students is a realistic example of the changing face of law in terms of technology, Mitchell says. "If you took this case to courts across the country, you'd get different answers to the problem," he says. "These issues are especially difficult. But issues become clarified when you have people talking about a common problem and writing about it."

In the competition, each team of two or three students will argue both sides of a fictional appeal, which questions a ruling that the government had the right to search a central server for stored messages sent by a suspected child pornographer. It was a misprocessed e-mail message with an unmistakable message — offering pornographic photos of children — that tipped off the authorities.

Matt Powell sent his message to the correct e-mail address for Kathy Gibbs, but it was misprocessed by his online provider and delivered to another customer, Kassie Gibbs, who called in the authorities. Officials went to Powell's service provider, and the system operator gave them permission to see Powell's archived electronic mail.

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The court found that “e-mail is susceptible to misaddresses, ... misprocessing and misdelivery, and viewing by hackers and/or sysops” so Powell did not have a reasonable expectation that his messages would be private. The court also ruled the sysop’s consent to search the stored e-mail was valid.

The students in the moot court competition will appeal those rulings. But whether the appeal is real or not, the preparation that goes into the event is exhaustive, Cochran says. “Moot courters are a pretty intense bunch and will pour their hearts and souls into researching and writing these appellate briefs,” she says.

Some real-life attorneys and courts have found the moot court research invaluable. When some real cases that resembled some of Cochran’s past moot court competition for her second-year moot court class — one concerning the rights of the homeless and another about wiretaps — came before local judges and attorneys, they found a use for past UD moot court research.

“We said ‘This is great, you’re welcome to what we found’ and gave them our binders full of stuff. It’s like pro bono service for us when someone needs the research we have and can put it to use,” Cochran says.

The event is “educational and exciting” for students, she says. For the competition, 12 teams of second- and third-year students will compete before volunteer judges. Based on the scores for written briefs and oral arguments in the preliminary rounds, four teams will be chosen to compete in the semi-final on Saturday, March 20. The final round, which will be open to the public, will be held before a three-judge panel at 4 p.m. Saturday in Keller Hall at UD.

The Cybercrimes National Moot Court Competition is part of a UD School of Law focus on cybercrime. Students in the cybercrimes seminar, a virtual, online class taught by Susan Brenner, associate dean and professor of law, have developed a model code that details penalties for computer crimes. Speakers on campus have talked about subjects such as children and the Internet.

The University of Dayton Cybercrimes Web site is located at www.cybercrimes.net.

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