Nineteenth Annual Seminar
Media and the LAW
2006

Media and Mayhem:
The BTK Investigation as a First Amendment Case Study

Friday
APRIL 7
2006

InterContinental
Kansas City at the Plaza
(formerly Fairmont Kansas City at the Plaza)

Kansas City, Missouri

7 CLE hours
(including 1 hour of ethics)

Kansas & Missouri

Sponsors: The University of Kansas School of Law, the Kansas City Metropolitan Bar Association Media Law Committee, the ABA TTIPS Media, Privacy and Defamation Law Committee, and University of Kansas Continuing Education

Contributors: Media/Professional Insurance, The Kansas City Star, and First Media Insurance Specialists, Inc.

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From 1974 until last year, the Wichita, Kansas, serial killer who called himself BTK (for bind, torture and kill), avoided capture as he sent taunting messages to police and the news media. After police finally caught BTK, the media reported on the killer’s identity—Dennis Rader, a suburban Wichita government employee and a church congregation president—and how his serial criminal career ended with a guilty plea and life imprisonment. The high-profile BTK case, continuing as it did over three decades, provides an unusually instructive opportunity to examine issues in press freedom. The case illuminates liability risks that accompany news coverage of publicity-seeking perpetrators of murder and mayhem—whether they are serial killers like BTK or international terrorists. At the same time, the case illustrates First Amendment implications of the media’s relationship with government officials—the kind of relationship that can range from significantly cooperative to sharply combative, as happened during the BTK investigation and other highly publicized cases across the nation in recent years.

This seminar brings media law experts together with journalists, on Friday, April 7, to discuss:

- Assessing the Risks: Murderers as Media Manipulators
- Police-Press Cooperation: What’s Wrong with That?
- When Journalists are Compelled to Speak: A Close Look at Government’s Subpoena Power
- Frozen Out? Responding to Government Retaliation and Threats
- Errors and Omissions Liability Insurance: Anatomy of a Coverage Dispute

LUNCHEON SPEAKER: Lee Salem

“Cartoons, Comics and Comments: Observations from the Battleground of Opinion”

Lee Salem is the editor and executive vice president of Universal Press Syndicate, home of such controversial cartoonists as Garry Trudeau, Pat Oliphant and Aaron McGruder.

CLE CREDIT

The Missouri CLE Commission has approved 7 hours of reducing continuing legal education credit.

Subject to Supreme Court Rule 803, this course has been approved by the Kansas Continuing Legal Education Commission for a maximum of 7 CLE credit hours, including 1 hour of ethics. The ethics CLE unit will comprise 5 discrete 10-minute segments. Participants must attend all five 10-minute segments to claim 1 ethics CLE credit.

REGISTRATION & FEES

The registration fee includes panel instruction, materials, luncheon and refreshments.

KCMA Lawyers .............................................................. $275
Non-KCMA Lawyers (registration by March 10) .................. $300
Non-KCMA Lawyers (registration after March 10) .............. $350
Journalists .................................................................... $100
Educators or members of the public ................................. $100
Full-time students ......................................................... $100
Luncheon only (available after March 10; preference will
be given to seminar registrants) ....................................... $45
Vegetarian Option available. Please indicate on registration form.

LOCATION & PARKING

The Media and the Law Seminar will be presented on Friday, April 7, at the InterContinental (formerly Fairmont) Kansas City at the Plaza, 401 Ward Parkway, Kansas City, Mo. The InterContinental offers valet parking for $15 per day or self-parking for $8 per day to hotel guests. For those participants commuting to the seminar, day parking at the InterContinental is complimentary.

KANSAS CITY ATTRACTIONS

First Fridays—The first Friday of every month, the art galleries of the Crossroads District stay open from 7 to 9 p.m. Ample parking, free trolley service and an abundance of restaurants are available. Visit www.crossroadscommunityassociation.org

Country Club Plaza—Across the street from the InterContinental (formerly Fairmont) Kansas City at the Plaza, the 15 block district is one of Kansas City’s popular retail, dining and entertainment destinations. Visit www.countryclubplaza.com

For additional information on Kansas City events visit: www.kansascity.com

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The University of Kansas is committed to providing programs and activities to all persons, regardless of race, religion, color, national origin, ancestry, sex, age, disability, and veteran status. In addition, university policies prohibit discrimination on the basis of sexual orientation, marital status, and parental status.

Refund and Cancellation Policy

A full refund of registration fees, less a $50 administrative fee, will be available if requested in writing and received by March 31, 2006. No refunds will be made after that date. A $30 fee also will be charged for returned checks. (Please note that if you fail to cancel by the deadline and do not attend, you are still responsible for payment.) KU Continuing Education reserves the right to cancel the Media and the Law seminar and return all fees in the event of insufficient registration. The liability of the University of Kansas is limited to the registration fee. The University of Kansas will not be responsible for any losses incurred by registrants, including but not limited to airline cancellation charges or hotel deposits.
Welcome, Chad Milton, Chair, Media & the Law Committee, Lawyer, National Practice Leader—Media, Marsh, Kansas City, Mo.

Seminar Moderator, Mike Kautsch, Professor, Media, Law and Policy, University of Kansas School of Law, Lawrence, Kan.

Panel 1. Assessing the Risks: Murderers as Media Manipulators
While eluding police, the serial killer known as BTK kept himself in the news by sending messages to the media and others in Wichita, Kansas. He achieved notoriety as a news manipulator—a “master puppeteer.” The discussion will focus on how BTK’s pursuit of publicity over three decades signifies the media’s challenge when serial killers, hostage-takers or terrorists seek news coverage to magnify themselves or their causes. The discussion will focus on legal and public policy implications of reporting on criminals who aim to spread fear or glorify violence. Issues include:
- Liability risks associated with criminals’ publicity demands
- Laws to deter media from inciting or negligently causing violence
- “Son-of-Sam” law limitations on crime books and movies

Mike Kautsch, Chair, Professor, Media, Law and Policy, University of Kansas School of Law, Lawrence, Kan.

Robert Beattie, Lawyer and author, Wichita, Kan.

Larry Hatteberg, Anchorman, KAKE-TV, Wichita, Kan.

Kurt Wimmer, Lawyer, Covington and Burling, Washington, D.C.

Legal Ethics—Assessing the Risks: Murderers as Media Manipulators
Bruce Johnson, Lawyer, Davis Wright Tremaine LLP, Seattle, Wash.

Q & A, Assessing the Risks: Murderers as Media Manipulators

Panel 2. Police-Press Cooperation: What’s Wrong with That?
Media and law enforcement may cooperate because of a mutual interest in seeing criminals brought to justice. At police request, media in Wichita, Kansas, did not publicize any information about the BTK serial killer. Media passed messages to police from BTK. Police tried to communicate with the killer by placing an ad in a newspaper, and a television station aired a police-provided subliminal message to BTK. When police conducted a “DNA sweep” to identify or eliminate suspects, some journalists agreed to be tested. The pros and cons of police-media cooperation will be discussed. Issues include:
- Legal risks of media-ride-alongs with police
- Hazards of publicizing a high-profile police search for suspects
- Advising the journalist who reports on “persons of interest”
- Privacy implications of covering “perp walks”

Sandy Baron, Chair, Director, Media Law Resource Center, New York, N.Y.

Ron Lowen, former executive news producer, KAKE TV, Wichita, Kan.


David Vigilante, Lawyer, CNN, Atlanta, Ga.

Legal Ethics—Police-Press Cooperation: What’s Wrong with That?
Bruce Johnson, Lawyer, Davis Wright Tremaine LLP, Seattle, Wash.

Q & A, Police-Press Cooperation: What’s Wrong with That?

Panel 3. When Journalists are Compelled to Speak: A Close Look at Government’s Subpoena Power
When law enforcement authorities were investigating the BTK serial killings in Wichita, Kansas, they issued a subpoena to a news organization. The authorities used the subpoena to gather information about persons who anonymously had posted messages concerning BTK on an Internet message board. With the BTK case as a starting point, the panel will examine implications of the government’s use of subpoenas in various circumstances, including controversial federal investigations into leaks of information related to national security. Issues include:
- Trends in the law of reporter’s privilege
- The pros and cons of a federal shield
- Confidentiality waivers by sources
- Chilling effects of government efforts to trace leaks

Lee Levine, Chair, Lawyer, Levine Sullivan Koch & Schulz, Washington, D.C.

Sherry Chisenthal, Editor, The Wichita Eagle, Wichita, Kan.

Jim Fleissner, Professor, Mercer University School of Law, Macon, Ga.

Legal Ethics—When Journalists are Compelled to Speak: A Close Look at Government’s Subpoena Power
Richard M. Goehler, Lawyer, Frost Brown Todd LLC, Cincinnati, Ohio

Q & A, When Journalists are Compelled to Speak: A Close Look at Government’s Subpoena Power

Police in Wichita, Kansas, sometimes were openly opposed to news media that covered the BTK serial killings. The police excluded a Wichita television news organization from a briefing about BTK. Also, the chief of police announced that police were considering “legal recourse” against the media. These incidents are not unique. For example, the Governor of Maryland once issued an edict that no gubernatorial employees could speak with reporters of the Baltimore Sun. Are government officials across the nation tending to retaliate against media, particularly by denying disfavored journalists access to information? Issues include:
- Press credentialing and equal protection for news gatherers
- Rights of access to law enforcement and military information
- The First Amendment as a shield against content-based government retaliation

Dale Cohen, Chair, former Vice President, Human Resources and Legal Affairs, The Baltimore Sun Company, Baltimore, Md.

Jeff Lanza, FBI Special Agent and Spokesman, Kansas City, Mo.

Bernie Rhodes, Lawyer, Lathrop & Gage, Kansas City, Mo.

Todd Spessard, News Director, KSN-TV, Wichita, Kan.

Chuck Tobin, Lawyer, Holland & Knight, Washington, D.C.

Legal Ethics—Frozen Out? Responding to Government Retaliation and Threats
Richard M. Goehler, Lawyer, Frost Brown Todd LLC, Cincinnati, Ohio

Q & A, Frozen Out? Responding to Government Retaliation and Threats

Panel 5. Errors and Omissions Liability Insurance: Anatomy of a Coverage Dispute
While reporting about sensational crimes, such as the BTK serial killings in Wichita, Kansas, the news media run the risk of being sued for allegedly making damaging mistakes. If sued, the media depend on their errors and omissions insurance for protection against liability. However, disputes sometimes arise between insurers and insureds over whether a policy actually provides coverage. This panel will examine the anatomy of a coverage dispute, discussing issues in the order in which they typically arise. Attention will be given to problems that develop when there is divergence among the interests of counsel on the underlying claim, coverage counsel for the insured, and counsel for the insurer. Other issues include:
- Coverage for specific and unusual causes of action
- Timely notice to insurers
- Coverage for events happening long in the past
- The effect of statutes of limitations on an insurer’s duty to defend

Duffy Carolan, Chair, Lawyer, Davis Wright Tremaine LLP, San Francisco, Calif.

Richard M. Goehler, Lawyer, Frost Brown Todd LLC, Cincinnati, Ohio


Ron Lowen, former executive news producer, KAKE TV, Wichita, Kan.


Legal Ethics—Errors and Omissions Liability Insurance: Anatomy of a Coverage Dispute

Closing Remarks

Adjourn

5:00–7:00 p.m.
Beer and wine reception sponsored by TTIPS Media, Privacy, and Defamation Law Committee at the InterContinental (formerly Fairmont) rooftop lounge.
Media and the Law 2006
Friday • April 7, 2006 • Kansas City, Missouri
The InterContinental Kansas City at the Plaza (formerly The Fairmont Kansas City at the Plaza)

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Susan Grogan Faller, Frost Brown Todd LLC, Cincinnati, Ohio

“An outstanding, well organized seminar year after year.”

Robb Harvey, Waller Lansden Dortch & Davis PLLC, Nashville, Tennessee

Fees

- KCMBA Lawyer ........................................................................................................................................... $275
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- Journalist .......................................................................................................................................................... $100
- Educator or member of the public .................................................................................................................... $100
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Luncheon vegetarian option

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