

Celebrating
35 Years

MEDIA
— and the —
LAW

UPSIDE —DOWN—

First Amendment in Flux?

April 20-21, 2023 • Kansas City, Missouri

Featured Topics

- Nuts & Bolts: Everything a New Lawyer Needs to Know about Counseling a Newsroom and Being a Media Lawyer, but is Afraid to Ask
- Witness for the Prosecution? Reexamining Journalists' Cooperation with Authorities
- Journalists Affiliated with Educational Institutions Under Attack
- Lying, Lawyers, Lying Lawyers, and Liar Libel: An Ethical Guide and Mashup
- Internet Law in Flux: The Future of Online Speech as Section 230 and State Social Media Laws Face Challenges
- Liars Who Lie and Naming Names

Upside Down: First Amendment in Flux?

April 20-21, 2023 • Intercontinental Hotel, Kansas City, Missouri

Program Overview

More than ever before, journalists and media lawyers are being confronted with legal arguments and judicial opinions that threaten to turn well-established First Amendment principles upside down. Truth may no longer be a defense against allegations of defamation. Social media platforms may no longer enjoy editorial control over their own content. Government agencies – not journalists – may be permitted to use open records laws against the public those laws were meant to serve.

This year's seminar highlights some of the most important issues journalists, lawyers, and insurers must overcome to traverse an increasingly murky First Amendment landscape. Topics include how journalists should respond to subpoenas from government agencies investigating matters in the public interest; how journalists affiliated with publicly funded educational institutions balance competing professional obligations; why the First Amendment does not protect lawyers who make false statements in court; how media organizations should cover the "Big Lie"; and more.

CLE Credit

A total of **nine CLE credit hours** are available, including two hours of ethics, approved by the Kansas CLE Commission, as well as in Missouri, New York, and California. The seminar support staff will provide on-site assistance to attendees who plan to apply for CLE credit from other jurisdictions which may compute credit hours differently. Please check with your state's CLE commission to see how many CLE credit hours are approved for the seminar

Luncheon Address



**Friday, April 21
11:30 a.m.**

Donna Brazile,
Veteran Democratic
Political Strategist;
Adjunct Professor;
Author; and ABC
News Contributor

Sponsors

- The Kansas City Metropolitan Bar Association Media Law Committee
- University of Kansas School of Law

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- KU School of Law - Media, Law and Technology Program
- Lathrop GPM
- Miller Korzenik Sommers Rayman LLP
- Thomas & LoCicero LP

Coordinated by



Thursday, April 20

4-5:45 p.m. **BONUS SESSION**

Nuts & Bolts: Everything a New Lawyer Needs to Know About Counseling a Newsroom and Being a Media Lawyer, but is Afraid to Ask

A program jointly sponsored by the KCMBA and the Media, Privacy, and Advertising Law Committee of the ABA/TIPS

2 hours CLE

New lawyers face many challenges when starting out, and this session is designed to give attendees a leg up by providing practical advice about how to counsel a newsroom, and more broadly, the observations of experienced practitioners gleaned from their careers representing the media. Among other things, the session will feature senior members of the bar and their perspective and advice regarding a life in media law, where every case is in the news, and is often complicated by the involvement of a celebrity litigant. It will also help new lawyers gain confidence in advising newsrooms, by providing practical tips from seasoned media lawyers, including the various pitfalls of doing so, and advice on how to move quickly and accurately to ensure that the publisher is protected. In this session, attorneys will learn about:

- Tips regarding legal resources to keep at hand for quick and accurate advice to newsrooms.
- The handling of confidential source requests.
- Evaluation and response to government inquiries into sources and reporters notes.
- Ethical concerns that can arise when counseling newsrooms on the fly.
- Challenges posed with respect to venue when representing a local or national celebrity.
- Advice for interacting with the press when in litigation with a high-profile individual.
- Experience with respect to dispositive motions when litigating a case involving a high-profile individual, particularly when in a venue that rarely sees such cases.

Moderator:

Nathan Sigel, Partner, Davis Wright Tremaine, Washington, D.C.

Panelists:

Jean Maneke, Attorney, Maneke Law Group, Kansas City, MO

Dan Margolies, Retired, Kansas City Business Journal, Kansas City, MO

Ashley Messenger, Media Lawyer/Journalist, NPR, Washington, D.C.

Barbara Wall, retired General Counsel, Gannet, Washington, DC

6 p.m. **SPEAKER'S SOCIAL EVENT**

AXIS Insurance Office: 4622 Pennsylvania Ave., Suite 1200

Please join us after the Thursday bonus session at AXIS Insurance's new office overlooking the Country Club Plaza for drinks and hors d'oeuvres. All seminar panelists and attendees are invited to join.

Friday, April 21

8 a.m. **WELCOME**

Katie Studt, Media and the Law Committee Chair, AXIS Insurance, Kansas City, MO

Seminar Moderator: Max Kautsch, Attorney, Kautsch Law, LLC

8:10 a.m. **PANEL 1**

Witness for the Prosecution? Reexamining Journalists' Cooperation with Authorities

Relying on the protection of shield laws, journalists have customarily refused to cooperate with prosecutors and other authorities. On occasion, though, journalists have shared material with and testified for prosecutorial authorities. Is this a trend? When and how are these decisions being made? This panel will examine the state of shield laws, case studies of cooperation, and any resulting legal and institutional risks.

- What is the status of state shield laws protecting journalists from subpoenas and other compulsory process?
- Are states continuing to adopt such statutes?
- How do they work? What are common exceptions?
- How will the new (Nov 22) Department of Justice guidelines regarding interaction with journalists work?
- How do these protections apply to different categories of journalists e.g., daily reporters, documentarians, book authors, and citizen-journalists?
- Who makes the decision for a reporter to cooperate?
- What is the role of inside and outside counsel at a news organization?
- Does a reporter need their own counsel?

- What are the legal implications of a decision to cooperate or not?
- How are ongoing relationships between authorities and news organizations affected by decisions to cooperate or not?
- Statutes and guidelines aside, what are the First Amendment implications of journalist cooperation?

Moderator:

Carol LoCicero, Partner, Thomas & LoCicero, Tampa, FL

Panelists:

Jean Peters Baker, Jackson County Prosecutor, Kansas City, MO

Damon E. Dunn, Attorney, Funkhouser Vegosen Liebman & Dunn, Chicago, IL

Alex Holder, Filmmaker, AJH Films, Los Angeles, CA

Russell Smith, Partner, SmithDehn, Los Angeles, CA

9 a.m. **PANEL 1 Q&A**

9:10 a.m. **PANEL 2**

Journalists Affiliated with Educational Institutions Under Attack

With the decline of traditional for-profit news organizations, non-profit news organizations are filling the gap. Many of those organizations are affiliated with educational institutions and are confronted with unique challenges. These include the challenge of reporting on the institution itself, insecurity of funding, lack of training, censorship, etc. Reporters at such organizations also confront questions about the applicability of shield laws and, on the flip side, attempts to use state open records law to obtain access to their reporting records. This panel will examine these and the many other challenges faced by reporters affiliated with educational institutions.

- Are journalists affiliated with education institutions covered by reporter shield laws?
- What limitations can educational institutions place on reporters – both reporters for the institution and outside reporters seeking information about the institution?
- Can educational institutions censor publications associated with the institution – does it matter if the reporters are students or professionals?
- How should journalists affiliated with educational institutions work with confidential sources – should they?

- What legal resources are available to reporters associated with educational institutions?
- Can state open records laws be used to obtain the files of a reporter affiliated with a public educational institution?

Moderator:

Lindsie Rank, Student Press Counsel, Foundation for Individual Rights and Expression, Philadelphia, PA

Panelists:

Dr. Genelle Belmas, Associate Professor, William Allen White School of Journalism and Mass Communications, Lawrence, KS

Steve Vockrodt, Investigative Editor, KCUR, Kansas City, MO

Sen. Barbara Anne Washington, Sponsor of the Cronkite Act, Missouri Senate, Kansas City, MO

10 a.m. **PANEL 2 Q&A**

10:15 a.m. **BREAK**

10:30 a.m. **PANEL 3 (Ethics)**

Lying, Lawyers, Lying Lawyers, and Liar Libel: An Ethical Guide and Mashup

Lawyers have an ethical obligation not to lie. But this seemingly simple proposition raises a host of questions. This two-hour panel will explore the ethical dimensions of lawyer lying, particularly as reflected in recent high-profile cases like that of Rudy Giuliani. It will also explore the question of how media law treats accusations of lying and the phenomenon of “liar libel,” made famous by cases involving such high-profile figures as Bill Cosby and Donald Trump. Issues to be discussed include:

- What counts as a lie?
- If a lie is a knowing falsehood, then when do we know we’re saying something false?
- Why do we think lying is wrong? Is lying always wrong?
- Are there times when a lawyer is not only permitted to lie, but expected to do so?
- When does an accusation of lying amount to defamation?
- Is such an accusation one of fact or opinion? Does it matter who’s doing the accusing?

Moderators:

Leonard Niehoff, Attorney and Professor, Honigman Law and University of Michigan, Ann Arbor, MI

Bruce Johnson, Media Lawyer, and Partner, Davis Wright Tremaine, LLP, Seattle, WA

Panelists:

Stan Hazlett, Retired Disciplinary Administrator and Of Counsel to Stevens & Brand, LLP, Lawrence, KS

Ashley Messenger, Media Lawyer/Journalist, NPR, Washington, D.C.

Nancy Snow, Professor, University of Kansas, Department of Philosophy, Lawrence, KS

Deanna Shullman, Media Lawyer, Shullman Fugate, West Palm Beach, FL

11:20 a.m. **PANEL 3 Q&A**

11:30 a.m. **LUNCHEON ADDRESS**

No CLE'S

Donna Brazile, Veteran Democratic Political Strategist; Adjunct Professor; Author; and ABC News Contributor

1 p.m. **PANEL 3 (Ethics) Continued**

1:50 p.m. **PANEL 3 Q&A**

2 p.m. **BREAK**

2:15 p.m. **PANEL 4**

Internet Law in Flux: The Future of Online Speech as Section 230 and State Social Media Laws Face Challenges

Internet law and online speech are at a crossroads. This year, the U.S. Supreme Court will interpret Section 230 of the Communications Decency Act for the first time and will likely review Texas and Florida's social media laws. In *Gonzales v. Google* and *Twitter v. Taamneh*, the Supreme Court will address whether Section 230 protects targeted recommendations and whether online platforms can be liable under anti-terrorism laws. Meanwhile, the Supreme Court is expected to determine the constitutionality of a pair of state laws that impose transparency requirements on social media companies and restrict them from moderating certain speech. These cases could significantly impact the current internet ecosystem and shape the future of online speech. This panel will discuss, among other topics:

- What is at stake in *Gonzales v. Google*, *Twitter v. Taamneh*, and the *NetChoice* cases?
- Could these cases impact online intermediary liability?
- Could they change content moderation decisions?
- Could they limit free expression and access to information online?
- Will Congress continue to stay silent?
- Will other states follow Texas and Florida?
- What are the practical implications for lawyers representing traditional and tech clients?

Moderator:

Michael J. Lambert, Attorney, Haynes and Boone, LLP, Austin, Texas

Panelists:

Caitlin Vogus, Deputy Director of CDT's Free Expression Project, Center for Democracy & Technology, Washington, D.C.

Scott Wilkens, General Counsel, Knight First Amendment Institute, Washington, D.C.

3:05 p.m. **PANEL 4 Q&A**

3:15 p.m. **PANEL 5**

Liars Who Lie and Naming Names

In an age of conspiracy theories, how might actors like Alex Jones, Mike Lindell, Project Veritas, and various high-profile public officials be chipping away at hard-won First Amendment precedents? How should journalists cover the mis- and dis-information they spew? Do we need a recalibration of defamation law to protect the media illiterate? Or is an absolutist view of the First Amendment still the best way to protect democracy? Join us for a discussion of these and other fascinating and difficult issues.

Moderator:

Leita Walker, Partner, Ballard Spahr, LLP, Minneapolis, MN

Panelists:

Elizabeth Williamson, New York Times Reporter and Author of *Sandy Hook: An American Tragedy*, Washington, D.C.

Steve Zansberg, Partner, Law Office of Steven D. Zansberg, LLC, Denver, CO

Clay Wirestone, Opinion Editor, Kansas Reflector, Lawrence, KS

4:05 p.m. **PANEL 5 Q&A**

4:15 p.m. **ADJOURN**

4:30 p.m. **COCKTAIL RECEPTION**