

The Committee on Media Law Presents:

Fair Trial/Free Press: From Both Sides of the Bench



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insure domestic Tranquillity, provide for the common
and our Posterity, do ordain and establish this Const
Article 1

Tuesday, January 26, 2016

Daniel Patrick Moynihan United States Courthouse,
500 Pearl Street, New York City, Ceremonial Courtroom



Fair Trial/Free Press: From Both Sides of the Bench

Chair Lynn Oberlander

General Counsel-Media Operations

First Look Media

New York City

A distinguished panel of federal and state judges, prosecutors, journalists, and defense and media counsel will dissect a hypothetical case involving issues surrounding libel, invasion of privacy, criminal subpoenas and the press, social media, police body cameras, cameras in the courtroom, press access to police actions and drones.

Moderators:

- George Freeman, Media Law Resource Center
- Corrine Irish, Squire Patton Boggs LLP

Panelists:

- Judge Ronnie Abrams, U.S. District Court for the Southern District of New York
- Lawrence Byrne, Deputy Commissioner for Legal Matters, New York City Police Department
- Dori Hanswirth, Partner, Hogan Lovells US LLP
- Marcia Kramer, Chief Political Correspondent, WCBS-TV
- Senior Associate Judge Eugene F. Pigott, Jr., New York State Court of Appeals
- Benjamin E. Rosenberg, General Counsel, Manhattan District Attorney's Office
- Robert Stolarik, Freelance Photographer, The New York Times
- Ted Wells, Partner, Paul Weiss Rifkind Wharton & Garrison

Agenda

5:00 – 5:45 p.m. Registration

5:45 – 5:55 p.m. Introductions to Panelists and to Hypothetical

5:55 – 6:20 p.m. Police–Press Relations in the Streets

Press Access to Demonstrations
and Police Body Cam Tapes

Use of Drones

6:20 – 6:55 p.m. Gag Orders/Libel/Invasion of Privacy

Subpoenas for Journalists’ Testimony

6:55 – 7:20 p.m. Social Media/The Right to Be Forgotten

Cameras in the Court

7:20 – 7:30 p.m. Conclusions and Q&A

For more information, contact: psearsdoherty@nysba.org

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Defamation—Can’t We All Just Get Along?**

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FAIR TRIAL/FREE PRESS: POLICE, POLITICS, PRIVACY; DRONES, DEMONSTRATIONS AND DEFAMATION—CAN'T WE ALL JUST GET ALONG?

A Hypothetical Case for the January 26, 2016 New York State Bar Association Committee on Media Law Program.

The Occupy Park Avenue movement (OPA) against income inequality is holding a major demonstration on Park Avenue between 72nd and 79th streets. The media is interested in covering the demonstration up close, but the NYPD has confined them to a “press pen” on Lexington Avenue between 74th and 76th streets. Though the police are blocking the Park Avenue protest site from the general public, residents, service workers, delivery men and others with business there will be given access to the buildings on Park between 72nd and 79th streets.

To get better photographs of the demonstration, WSLZ-TV sent up its drone to fly over the protest site. The station launched the drone from Central Park, but before it could get over the scene, it was downed by authorities using a net. Instead, WSLZ obtained video from a drone operator who happened to be flying his craft as a hobbyist.

During the demonstration, shots are heard, propelling a NY Trib photographer, Ima Lenz, to leave the pen area and approach the scene. She goes under the yellow tape that has been erected to bar the public from the demonstration area. As she starts snapping photos of the scene, a young black man, Jim Smith, apparently gets shot by police officer Krupke.

Ima then focuses on Smith, Krupke and the other policemen involved in the incident. She immediately gets pounced upon by six policemen who tell her to stop taking pictures and to get out of the area. She says she has a right to be there, retreats slowly while taking a few more photos and gets arrested by the police for Obstruction of Governmental Administration and Resisting Arrest.

The demonstration turns ugly and unruly, and the ensuing altercations lead to 50 protestors and 20 policemen being injured, as well as the arrests of 30 demonstrators. Since all the police officers were wearing police bodycams which taped all of their actions during the melee, the Trib immediately files a Freedom of Information Law request for those tapes.

The next day, amidst what has become a huge controversy as to whether the police overreacted, the Manhattan District Attorney's office begins an investigation. As part of the investigation, grand jury subpoenas are served on Ima Lenz, WSLZ-TV, the drone hobbyist and any other press and TV photographers who took photographs and tapes of the police-protestor altercation.

Jim Smith, who has already filed a civil suit against Krupke, the City and the NYPD, as well as Krupke, who claims he shot Smith because he was in fear for his life, also serve subpoenas. The subpoenas seek oral testimony of those who witnessed the riot, such as Ima, and all photographs and outtakes which were taken at the scene.

Needless to say, this has quickly become a political football. At a press conference, Governor Perry Como says that Police Commissioner DiBee is incompetent and was negligent in having no training for his officers in demonstration and riot control. (In fact, the NYPD has a very rigorous training program which all the officers who were on duty at the demonstration had completed.)

Commissioner DiBee responds in interviews that Governor Como is a main part of the corrupt Albany environment. DiBee states that Como is a liar who has made state workers build an annex to his Chappaqua home without any payment by him or to the workers. Although the Trib reporter and editor working on the story don't really believe these charges and countercharges, they run a front page story highlighting the accusations.

In doing its research on Officer Krupke's background, the Trib learns that he is gay. A next-day article by the Trib reports this true fact. Krupke sues for invasion of privacy. (Assuming he is not gay, Krupke sues for libel.)

In the meantime, photographer Lenz has now gone through all the photos she took on that fateful day. To her surprise, in one of the frames she sees in the window of an apartment the outline of a half-undressed four-year-old girl. This image, framed by the beautiful architecture and molding of the classic Park Avenue building, is in poignant contrast to the rough-looking protestors visible on the street at the bottom of the shot. Though it is too late, and perhaps not newsworthy enough to run in the Trib, Ms. Lenz posts the photo on her personal website, where a slew of her

best pictures are displayed; they can be accessed and bought by the general public for \$100 per photo.

Finally, the prosecutors bring state and federal criminal charges against Officer Krupke for shooting Jim Smith. Because of the massive visibility of the case, at its outset, the federal judge files a gag order restricting the lawyers and the parties in the case from talking to the press. And during *voir dire*, and even on the last day of trial, the judge, sympathetic to juror privacy and worried about a swarm of reporters descending on jurors after a verdict, is reluctant to give the press their names and addresses. In addition, in the state case WSLZ and other local TV outlets petition the judge to allow audio-visual (and still) coverage of the preliminary hearings, as well as the trial.

Ultimately, Officer Krupke is acquitted, but because of the fallout of all the negative reporting about his sexual preference and his shooting of Brown, he moves to Paris. However, even years later he cannot rent an apartment there nor get a job (despite his fluent French).

He believes that despite his attempts to have everyone forget about this chapter of his past, potential landlords and employers readily find all this information when they Google him. He, therefore, requests that Google and the Trib take down the articles from their websites which include this harmful, but now irrelevant, material.

Panelist Biographies

Hon. Ronnie Abrams was nominated to the U.S. District Court for the Southern District of New York on July 28, 2011 and began service on March 22, 2012. Judge Abrams received a bachelor of arts degree from Cornell University in 1990 and a juris doctor from Yale Law School in 1993. Upon graduation, she served as a law clerk for Hon. Thomas P. Griesa of the Southern District of New York.

From 2008 until the time of her appointment, Judge Abrams served as special counsel for pro bono at Davis Polk & Wardwell LLP; she previously worked as an associate at Davis Polk from 1994 to 1998. Judge Abrams served in the U.S. Attorney's Office for the Southern District of New York from 1998 to 2008, as chief of the General Crimes Unit from 2005 to 2007 and deputy chief of the Criminal Division from 2007 to 2008. While at the U.S. Attorney's Office, Judge Abrams received several awards and commendations for her work, including the Department of Justice Director's Award for Superior Performance as a Federal Prosecutor.

Judge Abrams was an adjunct professor at Columbia Law School from 2008 to 2012. She presently serves on the Public Service Committee of the Federal Bar Council and has served on the Pro Bono and Legal Services and Government Ethics committees of the Association of the Bar of the City of New York. She also has served as counsel to the New York State Justice Task Force, one of the first permanent task forces to address wrongful convictions in the United States.

Lawrence Byrne is the Deputy Commissioner for legal matters at the New York Police Department and serves as its chief legal officer.

Prior to joining the NYPD, he was a partner in the White Collar Litigation and Investigations Practice Group of Pepper Hamilton LLP, resident in the New York office. He also was a managing director with Freeh Group International Solutions.

Mr. Byrne represented clients in complex white collar criminal, government regulatory and civil litigation matters. He has extensive experience representing clients involved in all types of government and internal investigations, as well as related trial and appellate matters. He has particular experience in antitrust, securities, class action defense, commercial, bankruptcy and First Amendment and media litigation.

Mr. Byrne served as a federal criminal prosecutor from 1988 to 1994.

During that time, he served with the U.S. Attorney's Office for the Southern District of New York and the Criminal Division of the U.S. Department of Justice in Washington, D.C.

Mr. Byrne received his undergraduate degree, *magna cum laude*, from Hofstra University in 1981 and earned his law degree from New York University School of Law in 1984. He then served a two-year judicial clerkship with the Hon. Shirley Wohl Kram of the U.S. District Court, Southern District of New York.

Prior to joining Pepper, Mr. Byrne was a partner in the New York office of Linklaters, where he served as the head of the U.S. litigation practice, co-managing partner of the New York office and co-head of the global U.S. practice.

Mr. Byrne is admitted to practice in New York.

George Freeman is executive director of the Media Law Resource Center, which is a nonprofit trade association supporting the media industry in legal matters. Previously, he was of counsel to Jenner & Block.

For more than 30 years, Mr. Freeman was a First Amendment attorney in the Legal Department of The New York Times Company, leaving in 2012 as vice president and assistant general counsel (a title he had held since 1992). He was primarily responsible for the company's litigations and counseled the newsrooms of the Times newspaper and the newsrooms of the company's affiliated newspapers, television stations and magazines. He also was involved in antitrust and distribution problems, employment relations and business counseling. He was at the forefront of a number of high profile cases for The Times, including reporter Judy Miller's battle not to reveal her confidential sources in the Scooter Libby case and quarterback Ken Stabler's libel case against The Times. During his tenure, The New York Times newspaper did not lose one libel or privacy suit, or settle one for dollars.

He is a frequent lecturer and moderator of panels on First Amendment issues and has been chair of many American Bar Association and state media law committees. He also was co-founder, and for 20 years, co-chair of the Boca Conference, a winter meeting on First Amendment issues bringing together 250 media attorneys nationwide.

He is the William J. Brennan Visiting Professor at Columbia Journalism School and also teaches First Amendment law at New York University and CUNY's Graduate School of Journalism. He is a graduate of Amherst College and Harvard Law School. He is an avid tennis player.

Dori Hanswirth is a partner at Hogan Lovells. She has more than 25 years of experience handling legal matters affecting the media, with particular attention to journalists' rights, newsgathering law, defamation, copyright, trademark, right of publicity and invasion of privacy law.

Her understanding of the interplay between protected speech, journalism, and the public interest has positioned her as one of the foremost media attorneys in the nation.

Among Ms. Hanswirth's clients are news organizations, television networks, film studios, publishing companies, and television and video producers.

Corrine Irish is of counsel at Squire Patton Boggs (US) LLP. She is an experienced litigator in both trial and appellate practice, with significant experience advising and litigating First Amendment, media and intellectual property matters.

As a member of the Public Service Initiative at Squire, Ms. Irish also has experience litigating criminal justice issues, including high profile death penalty and innocence cases. Ms. Irish is lead counsel in a civil rights suit alleging First and Fourth Amendment violations brought by a number of journalists arrested during the Ferguson protests.

Ms. Irish has been recognized as a Rising Star in the 2011– 2015 editions of New York Super Lawyers – Metro Edition magazine featuring outstanding young lawyers, a distinction that recognizes New York lawyers under the age of 40 or those in practice for 10 years or less.

From 2005 to 2007, prior to joining Squire Patton Boggs, she served as a law clerk, first to Hon. William G. Young of the U.S. Court for the District of Massachusetts and then to Hon. Barrington D. Parker of the U.S. Court of Appeals for the Second Circuit.

Ms. Irish is a member of the New York State Bar Association's Committee on Media Law and the Copyright Society of the USA. She also is appointed to the Pro Bono Panel for the U.S. Court of Appeals for the Second Circuit.

Ms. Irish is a lecturer-in-law at Columbia Law School and was an adjunct professor at Brooklyn Law School in 2008 and 2009.

Marcia Kramer is chief political correspondent for WCBS-TV. She joined CBS 2 in 1990 as an investigative and political reporter. Prior to CBS 2, she was the City Hall bureau chief at the New York Daily News.

As bureau chief, Ms. Kramer covered Mayor Edward Koch's third and final term. Ms. Kramer not only covered his administration, she traveled with Mayor Koch around the world, including his visits to Northern Ireland when he assessed the religious wars between Catholics and

Protestants; Poland, where he visited the Auschwitz concentration camps; and Budapest, where he met with Jewish leaders.

Her reports on the local, national, and international level have garnered her multiple honors, including two George Foster Peabody awards, two Edward R. Murrow awards, nine Emmy awards, two New York Press Club Golden Typewriter awards and a first-place award from the Associated Press for her investigative reports. Her work has been recognized in editorials in The New York Times and the New York Post, as well as in a piece entitled, "Marcia Kramer: Journalism at its Best," which ran in the New York Observer in March 1998.

Ms. Kramer's exclusive report on the improper use of lights and sirens by city government officials led to Mayor Michael Bloomberg's crackdown, resulting in the removal of lights and sirens from hundreds of vehicles. Other credits include a report on people stealing school supplies and selling them on the black market, a story on schools that served old food past its freshness date, and a film exposing school board members vacationing in Las Vegas on taxpayer dollars. She also has been cited for her reports on the Swiss banks and Nazi gold that culminated in a decision by the Swiss to give back the money. Ms. Kramer also is known for her 1992 interview with President Clinton, in which he confessed he "never inhaled."

In 2014, Ms. Kramer broke a story exposing Mayor Bill de Blasio's caravan violating a number of traffic laws while he was a passenger in the vehicle. The incident occurred just a few days after the mayor announced his new traffic safety plan.

Hon. Eugene F. Pigott, Jr. is senior associate judge of the State Court of Appeals. He was born in Rochester in September 1946.

He graduated from LeMoyne College with a bachelor of arts degree in 1968. Judge Pigott served on active duty in the U.S. Army from 1968 to 1970. While in the service, he was stationed in the Republic of Vietnam, serving as a Vietnamese interpreter.

He graduated from State University of New York at Buffalo School of Law with a juris doctor in 1973 and was admitted to the Bar of the State of New York in 1974. Judge Pigott practiced law in Buffalo with Offermann, Fallon, Mahoney & Adner from 1974 to 1982.

In 1982, he was appointed Erie County Attorney and served in that position until 1986. In 1986, he became chief trial counsel for Offermann, Cassano, Pigott & Greco. On Feb. 4, 1997, he was appointed to the New York State Supreme Court by Governor George E. Pataki and thereafter was elected to a full 14-year term. In 1998 he was designated to the Appellate Division, Fourth Department and was appointed presiding

justice on Feb. 16, 2000. On Aug. 18, 2006, he was nominated by Governor Pataki to the Court of Appeals. His nomination was confirmed by the New York State Senate on Sept. 15, 2006. He and his wife, Peggy, live on Grand Island. They have two children.

Benjamin E. Rosenberg serves as general counsel of the Manhattan District Attorney's Office. In that position, Mr. Rosenberg has advised the DA on numerous matters of significance in the office, including those related to the press. Since 1994, he served as a partner at the law firm now known as Dechert LLP, representing both entities and individuals in prosecutions, enforcement actions and investigations throughout the country.

Mr. Rosenberg interrupted his private practice in 2007 – 2008, when he served as chief trial counsel to the New York State Attorney General, responsible for investigations and cases involving, among other things, student loans, not-for-profit entities and New York's *lis pendens* statute. In that capacity, he oversaw the re-investigation of the Martin Tankleff case.

Before joining Dechert, Mr. Rosenberg served as an assistant U.S. attorney for the Southern District of New York, where he was assigned to the Criminal Division. During four years as an assistant U.S. attorney, Mr. Rosenberg investigated and prosecuted cases of narcotics trafficking, violent gangs, and perjury, among others, while assigned to the Organized Crime Unit. He also previously served as an associate at Wachtell, Lipton, Rosen & Katz in New York for four years, where he worked on matters involving complex commercial litigation. Mr. Rosenberg began his legal career in 1981 as a law clerk for Judge Edward R. Becker of the U.S. Court of Appeals for the Third Circuit.

He is a 1985 graduate of Harvard Law School and a 1981 graduate of Harvard College.

Robert Stolarik is an award-winning photographer and regular contributor to The New York Times.

Born in New York City, Mr. Stolarik began his journalism career covering conflicts and general news in the United States, Europe, Latin America, and the Balkans. For the past decade, Mr. Stolarik has focused his reporting on social and criminal injustice issues, including groundbreaking coverage of stop-and-frisk policies, Hurricanes Katrina and Sandy, the Haitian earthquake, and most recently, the unrest in Ferguson and Baltimore.

His work with the Juvenile Justice Information Exchange led to the creation of his first documentary film, "The Battle of Marianna," set to be released in 2016. Mr. Stolarik's photojournalism has been featured in TIME Magazine, Le Monde 2, Stern, Newsweek, Le Figaro, US News & World Report, Paris Match, The Wall Street Journal and the Chronicle for Higher Education.

Ted Wells is co-chair of the litigation department at Paul, Weiss, Rifkind, Wharton & Garrison LLP. He specializes in complex civil litigation and white-collar criminal defense.

Mr. Wells is widely regarded as one of the country's top jury trial lawyers. In 2010, he was selected as one of "The Decade's Most Influential Lawyers" by The National Law Journal. In 2006, The National Law Journal named him "Lawyer of the Year."

Mr. Wells has extensive experience in representing major corporations and senior executives in regulatory matters and complex civil litigation including Citigroup, Merck, Johnson & Johnson, ExxonMobil and Prudential. Some of his other significant representations include the successful defense of U.S. Secretary of Agriculture Michael Espy; the successful defense of U.S. Secretary of Labor Raymond Donovan; the successful defense of U.S. Senator Robert Torricelli; the successful defense of investment banker Frank Quattrone; the defense of I. Lewis "Scooter" Libby, chief of staff to former Vice President Dick Cheney; the defense of former New York Governor Eliot Spitzer in 2008 and the defense of former New York Governor David Paterson in 2010. Mr. Wells is the chairman emeritus of the board of directors of the NAACP Legal Defense Fund.

He is a graduate of Harvard Law School and Harvard Business School and is a Fellow of the American College of Trial Lawyers.

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