

## **Fair trial, free press: Hypothetically understanding rights**

**By Christina Couto**

Drones, police body cameras, invasion of privacy and social media issues top the headlines daily. Not only do these issues make the news, the way they are handled by the media, police and even attorneys can become news.

The State Bar's Committee on Media Law invited a panel of attorneys, judges and members of the media, along with the commissioner of legal matters for the New York City Police Department (NYPD), to discuss what they would do in a hypothetical case involving a variety of hot-button media law and privacy issues.

The event, "Fair Trial/Free Press: From Both Sides of the Bench" discussing the hypothetical case, "Police, Politics, Privacy, Drones, Demonstrations and Defamation—Can't We All Just Get Along?," was held at the Daniel Patrick Moynihan U.S. Courthouse in Manhattan January 26. Moderators were George Freeman of New York City (Media Law Resource Center) and Corrine A. Irish of New York City (Squire Patton Boggs LLP).

State Bar President-elect Claire P. Gutekunst welcomed the audience, citing the importance of such discussions for members of the legal community and the working press.

### **The "case"**

The hypothetical case begins with a demonstration against income inequality in New York City, where police have confined the media to a "press pen" separated from the demonstration and the public.

"I wouldn't put up with it," said Marcia Kramer, chief political correspondent for WCBS-TV. "You're saying the public doesn't have a right to see this and it is a violation of my First Amendment right."

The NYPD does not use press pens during protests, said Lawrence Byrne, deputy commissioner for legal matters at the NYPD. "We have a team of lawyers to make sure officers are not placing limitations on the media or the public," he said. "We want the public to see exactly what the protesters are doing."

### **Drones**

*Hypothetically:* To get photos of the demonstration, a TV station launches a drone in Central Park to fly over the site. But before the drone can get to the scene, it is downed by authorities, using a net. The TV station ultimately obtains video obtained from a hobbyist drone operator.

“It is illegal in New York City for anyone to operate a drone,” noted Byrne, adding that although drones can be purchased there, flying them in the city violates both FAA and city law and “are a terrible threat to public safety.”

Yet Amazon, Google and other companies are looking for ways to utilize drones for deliveries. “Drones are here and we’re going to have to get used to them,” said panelist Dori Ann Hanswirth, a partner at Hogan Lovells.

### **Police body cameras, video**

*Hypothetically:* During the demonstration, shots are heard, prompting newspaper photographer Ima Lenz to leave the press pen and approach the scene. As she is snapping photos, a young black man is apparently shot by police.

Lenz focuses on the young man and the police officers involved, but is told to stop taking photos and to leave. She refuses, continues to take photos and is arrested.

The demonstration gets ugly. Fifty protesters and 20 police officers are injured and 30 demonstrators are arrested. As part of the investigation by the district attorney’s office, subpoenas are served on Lenz, the TV station and drone hobbyist.

In addition, Lenz’s newspaper files a Freedom of Information Law request for the police departments’ body camera footage.

Hanswirth said that in order for TV news footage to be turned over to investigators, a need must be shown that the video and photos in question are vital to the case. Outtakes or extraneous video—or images of innocent individuals—could raise privacy issues, she explained.

Kramer said she would only provide video that was televised. “Our policy and NYPD is basically the same. I also know that our policy is not to turn over the outtakes.”

“Body cameras are one tool in the tool box of policing and make it more transparent, but it’s not a panacea, and raises lots of issues,” Byrne said. “Just because someone is stopped doesn’t mean they have done anything wrong,”

### **Invasion of privacy**

*Hypothetically:* Criminal charges are brought against the officer for shooting the young man and a gag order is ordered, restricting the lawyers and other parties in the case from talking to the press.

In its investigation of the case, Lenz’s newspaper uncovers information that indicates the police officer is gay and reports it, which prompts the officer to sue for invasion of privacy (or, assuming he is not gay, libel).

The panelists agreed that a gag order probably would be unnecessary—both sides should agree not talk to the press, they said.

### **Social media**

*Hypothetically:* Finally, because of the fallout from the negative reporting regarding the officer's sexual orientation, the officer moves to Paris. He is unable to rent an apartment or find a job because of the negative information about him available on the Internet. The officer requests that the “harmful, but irrelevant information” about him be removed from the Internet.

Unfortunately for the officer, panelists agreed that the Internet, including social media—as well as drones, police body cameras and invasion of privacy issues—is here to stay, and likely will continue to create legal issues and debate for years to come.

### **The panel**

Other panelists included Judge Ronnie Abrams of the U.S. District Court for the Southern District of New York; Senior Associate Judge Eugene F. Pigott, Jr. of the state Court of Appeals; Benjamin E. Rosenberg, general counsel for the Manhattan District Attorney's office; Robert Stolarik, a freelance photographer for the New York Times; and Ted Wells, a partner at Paul Weiss Rifkind Wharton & Garrison.

The Committee on Media Law considers all questions of public importance pertaining to First Amendment rights, access, freedom of information, government open meetings laws, media ownership, libel and privacy, privilege, confidentiality, advertising, fair trial/free press, and others.

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