Media, Entertainment, and First Amendment Newsletter, October 2017

By Laura Lee Prather | October 6, 2017

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The Libel Suit Strikes Back

Much has changed since 1972 when reporters Woodward and Bernstein exposed President Nixon of wrongdoing. Through their extraordinary reporting, the public learned of “dirty tricks,” criminal actions and a cover-up led by this country’s leaders inside the White House. All resources available to these reporters including unnamed sources of information provided details that fueled these stories. Strong journalism provided a new hope for those seeking the truth and the faith placed by the public in the Fourth Estate remained strong.

Fast forward 45 years later and now the media has become a political punching bag and scapegoat used to further an agenda. “Fake news” has further confused the issue eroding the trust between the media and the public. A certain segment of the population now believes the news media poses a greater threat to the United States than white supremacists. Perhaps not coincidentally, a rise in defamation suits against the media has occurred as the libel suit strikes back as seen in this survey of recently filed cases.

Read more.

Model Brief on Access to the Executive Branch

This Model Brief sets forth arguments and legal arguments meant to form the basis for a motion seeking media access to the executive branch. The Model Brief includes multiple potential constitutional arguments that could be made to obtain access to various activities of the executive branch. The authors do not anticipate that the media will use each of the sections set forth below in a single setting. Rather, attorneys using the brief must use their discretion to determine which potential constitutional argument should apply in the circumstances facing the media representative. In making the determination as to what parts of this Model Brief apply, the attorney will need to consider not only the specific right under attack but also the actor, as the authors drafted the Model Brief to be used to contest actions taken by both state actors, *see 42 U.S.C. § 1983*, and federal actors, *see Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The potential constitutional arguments and a brief description of each of the arguments set forth in the Model Brief include the following:

- First Amendment Retaliation
- First Amendment Right of Access
- Due Process pursuant to the Fifth or Fourteenth Amendment
- Equal Protection pursuant to the Fourteenth Amendment

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Laura Prather in ABA Journal: How to Defend Against "Libel Bullies"

At the ABA Annual Meeting in New York City on Aug. 22, Haynes Boone Partner Laura Lee Prather was a panelist on a panel entitled “Trump v. the Press and the First Amendment: Fake News, Government Leak Investigations, Alleged Biased Media Coverage, Trump’s SLAPP Libel Suits and His Pledge to ‘Open Up the Libel Laws’— Will the First Amendment Survive?”

Prather said that in her home state of Texas, there have been many successful uses of the state’s anti-SLAPP laws.

Prather said anti-SLAPP legislation has been an important defense against “libel bullies” and identifies Trump as a libel bully himself. Trump has brought seven libel suits against people and was unsuccessful in all but one, in which he achieved a default judgment in arbitration when the defendant failed to appear.

Read more.

For more information please contact the lawyers listed below.

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