Note from the Chair
By Judy Endejan

Not a week goes by when a colleague expresses both an interest in, and envy of, my media law practice because of its interesting issues and colorful (usually) cast of characters. If you are reading this newsletter, no doubt, you have one as well. This leads me to the topic of gratitude, which is fitting for this month of Thanksgiving.

I find that spending a minute or two each day being grateful for little (and certainly big) things in my life helps me stay on a more even keel. We are all looking for tips on how to find that ephemeral “balance” as we juggle briefs, soccer practice, dental appointments and cranky clients. I say: try a dose of gratitude! Not only am I grateful to be a media law attorney, I am also grateful to have been co-chair of Women in Communications Law (WICL) for the past two years. I thoroughly enjoyed working my first year with Kathy Kirby from Wiley Rein LLP and in my second year with Kate Bolger from Levine Sullivan Koch & Schulz LLP – both fantastic women and terrific leaders. I am also grateful for all the time and effort spent by Rosemary Harold of Wilkinson Barker Knauer, LLP and Rebecca Hughes Parker, the new Editor-in-Chief of the FCPA Report, for serving as the current WICL newsletter co-editors, and contributors to this edition.

I will be leaving my position as co-chair this November and turning it over to Robin Luce Herrmann from Butzel Long of Bloomfield Hills, Michigan, who will bring her considerable energy and talent to the position. Before I go, let me report on the past year, during which we had a lot of fun.

On February 10, 2012 WICL hosted a cocktail party and program at the ABA Forum on Communications Law Spring Meeting in Orlando, Florida: “Caught in a Media Maelstrom – Perspectives on Media Issues in the Casey Anthony Trial.” Rachel Fugate, a partner with Thomas & LoCicero of Tampa, Florida and Anthony Colarossi, Assistant Editor/Senior Reporter for the Orlando Sentinel, discussed the many access issues they dealt with in covering the headline-grabbing Casey Anthony case which was tried in Orlando last year. The WICL session was standing-room only, with many WICL members and (gasp!) men from the ABA Forum. This newsletter later presents an update from Rachel on the Orlando Sentinel’s latest foray into a media maelstrom involving the George Zimmerman trial. Zimmerman is accused of murdering 17-year old Trayvon Martin, an unarmed youth that has raised considerable controversy over the Florida “Stand Your Ground” law.

WICL held another well-attended breakfast at the annual NAB/ABA/FCBA “Representing Your Local Broadcaster” program in Las Vegas on April 15, 2012. This newsletter later presents an update from Rachel on the Orlando Sentinel’s latest foray into a media maelstrom involving the George Zimmerman trial. Zimmerman is accused of murdering 17-year old Trayvon Martin, an unarmed youth that has raised considerable controversy over the Florida “Stand Your Ground” law.

WICL held another well-attended breakfast at the annual NAB/ABA/FCBA “Representing Your Local Broadcaster” program in Las Vegas on April 15, 2012. WICL members and (again, gasp!) men from the ABA Forum heard Las Vegas columnist Norm Clark talk about “What Happens in Vegas, Stays in Vegas Covering Sin City.” Norm, who writes “a Vegas Confidential column” for the Las Vegas Review Journal, entertained the crowd with anecdotes about celebrity sightings and scoop he has covered over the course of his career.

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The third event WICL holds every year occurs in New York in conjunction with the November Media Law Resource Center Annual Dinner and the Practicing Law Institute’s Annual Communications Law CLE. While in the past WICL has organized an annual theatre night for interested members, this will not take place in 2013 due to a confluence of factors (i.e., the usual suspects could not attend). However, WICL will host its annual networking lunch on Friday, November 16, 2012 at Natsumi Restaurant in New York, beginning at 12:30pm. This is always a fun event that is well attended by WICL members from across the country—and is a terrific way to get to know other WICL members. Returning to my theme of gratitude, WICL thanks the sponsors of this year’s annual networking luncheon: Levine, Sullivan, Koch & Schulz LLP; Graham & Dunn PC; Davis Wright Tremaine; SNR Denton; Mandell Menkes; Thomas & LoCicero PL; Wilkinson Barker Knauer, LLP; and Butzel Long PC.

If you cannot make the November networking luncheon, I hope you will be able to attend the next WICL program, a cocktail hour at the ABA Forum on Communications Law Conference. That meeting currently is scheduled for February 7-9, 2013 at the St. Regis Monarch Beach in Dana Point, California.

I encourage you all to get involved with WICL, which provides a wonderful conduit for getting to know women across the country who practice media law. Like any organization, WICL is only as strong and interesting as its members make it. If you have any thoughts about activities for WICL or plans to organize WICL events in your locality, please let me or Kate know. WICL costs nothing to join, and we benefit from the shared knowledge of our members. I have gained so much from being involved in the organization and look forward to every event. WICL is one of those activities in my life for which I am grateful, and that gratitude extends to all of you. Happy Thanksgiving!

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Just over six months ago, Rachel Fugate, a partner with Thomas & LoCicero, in Tampa, Florida told a captivated audience at last February’s WICL event about her experiences representing the Orlando Sentinel on access issues surrounding the circus-like trial of Casey Anthony for the murder of her young daughter. Now, Rachel is embroiled in another sensational story on the Sentinel’s behalf, championing the newspaper on access issues arising from the George Zimmerman case.

WICL members likely recall that Zimmerman is accused of murdering Trayvon Martin, an unarmed 17-year old African American, in February 2012 in Sanford, Florida. The circumstances of Martin’s death, the initial decision not to charge Zimmerman and questions about Florida’s “Stand Your Ground” law have received national and international attention. Intense media reporting has surrounded the case.

As I write this article, Rachel is preparing for a hearing over the latest access issue—the Prosecutor’s request for a gag order. Rachel admits that “it’s been a little crazy around here lately.” Among other things, the Zimmerman case has been assigned to three different judges so far. The first judge recused himself, and the second was forced to bow out after the defense moved for his recusal (the latter had revoked Zimmerman’s bond after learning that the defendant had lied about his assets). A third judge, Deborah S. Nelson, was assigned to the case and has set a trial date of June 10, 2013.

Most of Florida’s high-profile murder trials have requests for a gag order, Rachel noted, but they are never granted. In this case, the prosecutor has asked Judge Nelson to bar attorneys from commenting publicly about the case. According to Rachel, however, the prosecutor has not presented anything like the detailed showing required to justify a prior restraint like a gag order. She also noted that the defense has not made the sort of inflammatory remarks that would justify such an order. Moreover, the prosecution has held press conferences and disclosed information about the case, making it hard for the defense to stay silent.

From Rachel’s point of view, neither side appears to be trying its case in the media, and she’s puzzled about the prosecution’s latest move. Because attorneys in most high-profile Florida murder cases generally agree to abide by state bar association rules about attorney speech, there is little need for a draconian measure like a gag order, she said. The motion for a gag order was denied on October 29, 2012.

Rachel clearly enjoys her practice, but she admitted that it is rare to have two high-profile cases from the same town occur so close in time. She predicts that “nothing will beat the Casey Anthony trial, which was a spectacle all the way around.” In that case, the media constructed a temporary private city at the courthouse to facilitate their coverage—and would report on such minutia as the kind of Skittles candy that Anthony ate.

Rachel’s practice involves many aspects of media law ranging from pre-publication review to access issues. She earned a bachelor’s degree in public relations from the University of Florida in 1995 and her law degree from Florida State in 1998. Rachel is an active participant in WICL and looks forward to meeting her colleagues from across the country. Many of them may be wondering “what’s in the water in Orlando?” •
Identifying and Mitigating Anti-Bribery Risk in Journalism and Newsgathering

By Rebecca Hughes Parker

“[I]t’s one of the Commandments of Good Journalism: Thou shalt not pay for information. Only the tabloids, of both the supermarket and TV variety, regard news as a tradable commodity,” according to an article in the American Journalism Review.

Unfortunately, those Commandments are not always followed. Generally, journalists pride themselves on not paying or giving favors for interviews or access to information. When it came to light recently that media doyenne Barbara Walters solicited school and job recommendations for an aide of Syrian President Assad after the aide helped arrange her exclusive interview with Assad, the blowback was quick. Faced with criticism that she had acted unethically, she issued an apology shortly thereafter. However, other actions journalists take may not just implicate journalistic ethics, but the FCPA and laws like it, with harsh consequences, such as penalties, disgorgement of profit (perhaps advertising revenue) and possible loss of FCC licenses.

The allegations against media behemoth News Corporation (News Corp.) are more significant than Walters’ faux pas. The conglomerate’s recent troubles include not just the highly publicized phone hacking scandal, but accusations that its journalists paid London police officers, military and defense personnel for information. Dozens of people – both government officials and journalists – have been arrested in a U.K. bribery investigation known as Operation Elveden, which has now broadened beyond News Corp. to include other British publishing companies. On August 15, 2012, News Corp. Chairman Rupert Murdoch announced an overhaul of the company’s anti-bribery compliance program and a new chief compliance officer. The ripples of the scandal may extend to other news organizations as regulators take notice of the potential for bribery in the media.

Bribery in journalism may work the other way too. It can be the journalists – foreign officials in many countries where the media is state-owned – taking the bribe from companies who want media coverage, creating liability for non-media companies.

Corruption in newsgathering may not be intuitive, and in today’s competitive media environment, it can be difficult to prevent. This article examines the corruption risks newsgathering can pose; situations where journalists and their employers can, and have, faced potential FCPA violations; compliance policies companies have implemented; and seven measures media companies can take to improve their compliance programs and mitigate corruption risk.

Newsgathering Corruption Risks
American regulators have yet to turn their lens on media companies in the way they have on other industries, such as energy and pharmaceutical companies, but that tide could be turning.

Matthew Reinhard, a member of Miller & Chevalier Chartered, said that media companies may be behind the curve in anti-bribery compliance. “It tends to be a couple of companies in an industry made an example of, and the other companies have to play catch-up. The gas and mining industries are all light years ahead of where they were a couple years ago because the whole industry has been under a microscope and they have some of the best compliance programs in the world right now. You don’t want to be the company that gets to be made an example of.”

The FCPA specifically prohibits knowingly offering, promising or authorizing to pay money or anything of value, such as reimbursement of expenses or personal favors, directly or indirectly to any non-U.S. government official, political party or official of a political party, or candidate for political office, with the intention of influencing such official to obtain or retain business or to otherwise secure any improper business advantage. Given the broad interpretation U.S. regulators and law enforcement have adopted of the “obtain or retain” business advantage prong of the FCPA, media companies should be wary that getting an interview or information could be considered obtaining business advantage or information could be considered obtaining business.

As Scott Peeler, Managing Director in Charge of Compliance at Stroz Friedberg LLC, said, “If a company obtained information it otherwise could not obtain from a government official and used that information to sell more newspapers and increase advertising revenue, that is a business advantage.”

The traditional idea of bribing a foreign official to retain business may not be one associated with newsgathering. But ample corruption opportunities abound for journalists, and if any of the payments made by the journalists or third parties they hire are improperly recorded, there is the potential for a books and records violation as well.

The Use of Third Party Consultants
Veteran journalist Dan Rather, host of Dan Rather Reports on AXS TV, told The FCPA Report that in his 60 years of experience, he has seen other producers and correspondents use consultants when producing stories overseas to help navigate the culture and language, and such consultants may use their influence to help pave the way for a big interview.
Miller’s Matthew Reinhard said the potential for an FCPA violation looms large when using a third party consultant. “Payments funneled through consultants and other third parties offer you no protection whatsoever.” If the third party paid a foreign official to obtain an interview for the media company, there could be a violation. Reinhard added that the “News Corporation investigation probably has caused editors to make sure that their reporters aren’t paying bribes to police officers, but there also are problems with third-party consultants in Cuba or Sudan paying a government official to get access to people. My sense is that most reporters know that paying a bribe to a cop is wrong, intrinsically wrong, but they may think that hiring a consultant to help me get around a third world country who charges me $5,000 at the end, that is not a problem. There is not a gut check moment when we think this does not seem right. So, this is an important issue to be flagging in the media industry.”

Peeler agreed that using third parties as consultants can be very dangerous, especially if the fee paid is higher than a customary fee for the services provided. “If a translator usually gets $x dollars in a certain country for his services, and he is asking for $2x, especially in a country with a higher corruption risk, it looks like he is being paid to make something happen” such as a hard to get interview. To determine the corruption risk for different countries, a good resource is Transparency International’s compilation.

Donations and Favors Before or After Landing the “Big Get”
A few weeks after Barbara Walters landed an exclusive interview with Syrian president Bashar al-Assad in December 2011, she helped his press aide, Sheheraza Jaafari, in her quest for a job at CNN and a spot at Columbia University. Jaafari said that she was fired after the interview and came to Walters for help; Walters, refusing to help Jaafari get a job at ABC, wrote to friends at CNN and at Columbia School of International Affairs on Jaafari’s behalf. Columbia accepted Jaafari.

In this scenario, the “favor” was given after the interview, so a quid pro quo would be harder to establish. But favors can just as easily be given before interviews, and the FCPA prohibits the giving of “anything of value,” which includes intangible items. Peeler noted that favors and intangible items can clearly be bribes. “If what is being given benefits the person getting it, and there is a link between what is being given and a business advantage, that could be a bribe.”

Things that have “physic value” to people can violate the FCPA, at least according to the SEC, Reinhard pointed out. “The recommendation for a job or acceptance into school would have not meant much to someone else,” he said. “But it did have value for that aide.”

In the Schering Plough case, for example, Schering-Plough’s Polish subsidiary donated money to a charitable foundation headed by a Polish government official. Reinhard noted that the donation to the charity, which restored castles, was not fungible – the donation may have provided a physic benefit to that official, but not to someone else who did not have the same fondness for castles. For more on the Schering Plough settlement and charitable gifts, see “Ten Strategies For Avoiding FCPA Violations When Making Charitable Donations,” The FCPA Report, Vol. 1, No. 3 (Jul. 11, 2012).

Another possibility is an actual in-kind donation. Dan Rather noted that someone in a foreign ministry could mention to a journalist that the government’s television equipment was old, and conveniently, that journalist’s employer has some equipment that it no longer needs. “The company may send the country used equipment that the company is going to stop using but it is better than what the Land of Oz has by far,” Rather said. “So the company has not paid for the interview, but there has been an exchange. Maybe the company would even write it off as a tax deduction.”

There may be other kinds of exchanges at work as well. In 1990, during the first Gulf War, CNN had the exclusive ability to broadcast live from Iraq. At the time, the only way to do this was through a four-wire phone line, which entailed lobbying the Iraqi government to allow the communications set-up. According to the Los Angeles Times, NBC, CBS and ABC lobbied the Iraqi Foreign and Information Ministries for the access and were successful, but were then denied access by the Ministry of the Interior. CNN claimed that its perseverance with the Ministry of the Interior paid off, but there were rumors of a quid pro quo – an ABC news source told the LA Times that the Ministry of the Interior said ABC could have the four-wire like CNN if it agreed to open a bureau in Baghdad.

Paying Government Officials for Access to Information
Direct payments are more of an obvious violation. News Corp., along with British publishers Trinity Mirror and Richard Desmond’s Express Newspapers, have been accused of paying police officers and other law enforcement and defense officials in the U.K. government to obtain information for news stories. Evidence related to the bribes is being heard as part of the Leveson Inquiry. For example, in testimony at the Leveson Inquiry, British authorities describe one case in which a prison officer at a high security prison received payments from all three publishing companies totaling over $55,000. The officer’s former partner helped deposit the funds, dispatched in numerous payments over a year’s time, into their bank accounts. Investigators working for Operation Elveden, with the help of the publishers’ internal investigations, have been able to trace some of the payments they have uncovered to stories published.

Scotland Yard officers made the latest arrests on August 7, 2012. A journalist and a police officer were arrested on suspicion of conspiracy to corrupt and conspiracy to cause misconduct in public office. Scotland Yard made it clear that the arrests relate to “suspected payments to a police officer.”
Some bribes paid to gain access may be smaller than those uncovered by Operation Elveden. Rather said that to access to large amounts of cash is very rare even for big-named journalists – “face cards, like aces, kings, queens, jacks” as he calls them. “Even aces like Barbara Walters cannot get access to the kind of money it would take to pay off major government officials,” he said.

The more likely scenario, which he said he has not done, but has seen about three times in his career, is the exchange of small amounts of money. “Let’s stay the newperson was waiting for three days to see the Information Minister and finally he hands the security guard his passport, with a crisp $20 or $50 bill depending on the development of the country, and he says, look I know you have your instructions but I have credentials and I really do need to get inside to see someone. The guy will look at you, look at the passport, pocket the money, and give a nod of the head. Now you are inside and you get to the receptionist. She tells you to have a seat and you sit there from eight in the morning until noon and nothing happens. So you do the same thing you did with the security guard, and give, maybe $20. Now you finally get to see the information minister.” At that point, he said, there may be other negotiation required to get to the person above the information minister who you want to interview.

Gifts, Travel and Entertainment

Like donations, gifts, travel and entertainment can seem less like bribes than envelopes of cash. They certainly can, however, be “things of value” under the FCPA, and while some expenses are acceptable, such as taking a source out to dinner, it can be hard to determine how much is too much.

“There is no bright line rule regarding gift travel entertainment. It is what’s reasonable and it is a very fuzzy term,” Reinhard said. “It is a little bit like the definition of pornography – you know it when you see it. I think you do need some flexibility because things cost more in Tokyo than in Topeka and you have to have that wiggle room in there. I have seen entertainment policies for taking people out to dinner with limits everywhere from $25 to $250. The real touchstone is reasonableness and I think that most professional journalists know when they are being asked to do something beyond what is a reasonable amount. Dinner may be one thing but racking up a thousand dollar bottle service tab is something different.”

Peeler agreed that journalists aren’t “forbidden from paying reasonable expenses. You need to appreciate the risk and be thoughtful, so a dinner at the Four Seasons may not work, but a legitimate interview conducted over a reasonably priced dinner may be okay.” For more on gifts, travel and entertainment, see “Ten Strategies for Paying for Government Clients to Attend the Olympics or Other Sporting Events without Violating the Foreign Corrupt Practices Act,” The FCPA Report, Vol. 1., No. 1 (Jun. 6, 2012).

Paying Journalists For Stories

Non-media companies can also face FCPA exposure when dealing with the media. Peeler has advised companies who have encountered the problem of journalists in countries such as China requiring the payment of a fee before they will write or air stories about a company’s products or services. In China, the media is mostly state-owned and thus, according to the DOJ and SEC’s interpretation of the law, the journalists would most likely be considered foreign officials.

Among other cases, the New York Times reported that the Chinese version of Esquire magazine was paid $10,000 a page to run a five-page feature about a European audio company, Bang & Olufsen. Nothing in the Esquire story indicated that the Chinese magazine had been paid to run it. Bang & Olufsen supplies equipment for the carmaker Audi, and the magazine’s executives say Audi was involved in the payment, but Audi denied that it paid the magazine.

“In China,” Peeler said, “it is extremely common for a company who wanted to get coverage for a new product to be required to pay a fee to the journalist for that story.” He added that it occurs in other countries aside from China as well where the media is state-owned. In those countries, he said, “if you are paying for media coverage that will give you a business advantage, that is a problem under the FCPA,” he said. And there is the corresponding books and records violation for any payment that is recorded incorrectly.

Unlike the FCPA, the U.K. Bribery Act also implicates the person taking the bribe, and thus the journalist in this scenario may also face liability under that act.
Compliance Implications for Media Companies

The Consequences
Though companies regularly settle FCPA charges with the DOJ or SEC, the consequences can still be weighty – they can include a criminal fine, and the disgorgement of profits, and for individuals, jail time. Reinhard said: “Imagine that an evening news magazine makes a payment to get access to a figure in Cuba and that show airs and the SEC comes back and says ‘what was the advertising revenue for that episode?’”

The possibility for even harsher corporate sanctions exists, such as the revocation of Federal Communications Commission licenses. When the revelations about News Corp.’s alleged bribery of public officials surfaced last summer, former New York Governor Eliot Spitzer wrote: “If DOJ does investigate and if a court were to find News Corp. liable, the penalties should extend beyond the traditional monetary fine. News Corp. should also have its FCC licenses revoked. Licensure and relicensure by the FCC require that the licensee abide by the law and serve the public interest. News Corp. appears to have blatantly violated this basic standard. Its licenses should be pulled.”

News Corp.’s Investigation and Remedial Actions
In an April 2012 statement to the Leveson inquiry, Rupert Murdoch confirmed that the DOJ had been investigating News Corp., along with British authorities, since July 2011, and that the company, through its Management and Standards Committee (headed by former New York City Schools Chancellor Joel Klein until June 2012) had been cooperating with both the American and British governments.

News Corp. has reportedly hired a battery of outside counsel in both the U.S. and the U.K., reportedly including Linklaters LLP, Williams & Connolly LLP, and for some period, Paul, Weiss, Rifkind Wharton & Garrison LLP (Mark Mendolsohn, the high profile former deputy chief of the Fraud Section in the Criminal Division of the DOJ, was reportedly retained and then let go).

The investigation has come with a large price tag. On August 8, 2012, the company reported a $224 million charge in the full fiscal year for the costs of all of the investigations, including both the bribery charges and the phone hacking scandal. News Corp. had previously announced its intention to split its entertainment and broadcast assets from its newspaper and book publishing businesses.

On August 15, 2012, in a memo to staff, Murdoch announced an overhaul of News Corp.’s compliance program. He announced a new Chief Compliance Officer, former Williams & Connolly LLP partner Gerson Zweifach, and a new deputy compliance officer, Lisa Fleischman. He also described the organization of five separate compliance groups. “Each group will be headed by a group chief compliance officer who will report directly to Gerson and will focus full-time on compliance issues,” he stated. Murdoch also announced the initiation of reviews of anti-corruption controls in selected locations around the globe. “We recognise that strengthening our compliance programmes will take time and resources, but the costs of non-compliance – in terms of reputational harm, investigations, lawsuits, and distraction from our mission to deliver on our promise to consumers – are far more serious,” he said.

Newsroom Policies
“Checkbook journalism” in the domestic sphere, such as paid interviews of figures in the Casey Anthony trial or the Anthony Weiner sexting scandal, is becoming more common. Media companies need to be vigilant that payments are not made to foreign officials and that journalists are not accepting payments from foreign officials. Some media companies, like ABC, have banned all payments in connection with obtaining exclusive interviews.

Explicit written policies are important, Stroz Friedberg’s Peeler said, pointing to the New York Times. Regarding journalists paying their own way, the New York Times’ policy says in part:

When we as journalists entertain news sources (including government officials) or travel to cover them, our company pays the expenses. In some business situations and in some cultures, it may be unavoidable to accept a meal or a drink paid for by a news source (for example, at an official’s residence or in a company’s private dining room). Whenever practical, however, we should avoid those circumstances and suggest dining where we can pay our share (or, better, meeting in a setting that does not include a meal). Routine refreshments at an event like a news conference are acceptable, but a staff member should not attend recurring breakfast or lunch meetings unless our company pays for the journalist’s meals. Whether the setting is an exclusive club or a service lodge’s weekly luncheon, we should pay our way.

Staff members may not accept free or discounted transportation and lodging except where special circumstances give little or no choice. Such special cases include certain military or scientific expeditions and other trips for which alternative arrangements would be impractical – for example, an interview aboard a corporate jet where there is no benefit other than the interview. Journalists should consult responsible newsroom managers in advance when special circumstances arise.

The Times’ policy also prohibits journalists, except for the one covering the event, from accepting free tickets, and prohibits the receipt of payment from competitors for news tips.

Basic training on these policies for journalists is essential, sourced tell The FCPA Report. “I would make sure that my foreign correspondents are trained in these laws and understand that the company is serious about enforcing its policies and that the company will not pay officials for access,” Reinhard said.
Seven Steps Companies Can Take to Mitigate Newsgathering Corruption Risks

Aside from a strong written policy and training about the FCPA and the company’s policy, there are some additional measures companies can take to avoid FCPA violations by their employees.

1. Specific Contracts with Third Parties: If journalists want to hire consultants or other third parties, such as a translator or cameraman, in a foreign country, a specific contract can provide protection. “You want to have some sort of contract with a consultant that has an express undertaking that they will not make payments to foreign officials,” said Reinhard. Peeler noted: “If I were representing a member of the media and they wanted to hire a local to perform a certain function, I would make sure the parties execute a contract with an anti-corruption language in it. It should be clear in the contract that payments to foreign officials are prohibited. The contract would make it clear that the member of the media took seriously the risk that money could be used improperly.”

2. Provide FCPA Training Regarding Reasonable Entertainment: Peeler said that the FCPA “doesn’t mean that you cannot legitimately take someone out for dinner; that is not what the law says. You just need to be thoughtful. You do not want to ever have the appearance of impropriety. Be thoughtful and appreciative of the risks.” Reinhard concurred: “I would hate for a company to say that you can’t take your sources to dinner. The question is: are you going to very fancy restaurant like Le Bernadin or are you going to someplace reasonable?” He emphasized that employees should be reminded that excessive entertainment and travel can be a real problem. “Travel and entertainment are real hot areas of enforcement. Most people realize a briefcase of cash is going to be a problem now but trips to Disneyland, expensive bottles of wine, Mont Blanc pens or fur coats are also problems.”

3. Gifts Should Not Be Linked to a Business Advantage: Reinhard said “We tell clients sometimes that if you need to give a gift, for example, a crystal bowl, perhaps to honor a person of very high standing, you can get it, but please plaster your logo all over it so that if it ends up on eBay, nobody’s going to want it. Who wants a Global Corp. crystal bowl? So maybe there is some intrinsic value to it, but it is clear where it came from and what it is.”

4. Train the Auditors to Request Details of Expenses: To avoid a books and records violation, training the auditors to properly review journalists’ expense reports is paramount. Reinhard said that this is an “area where not only the journalists themselves need to be vigilant about what they’re doing but the media companies’ internal audit and control functions have to be trained and understand this when they are reviewing the expense reports. They need to know who was there and what was the purpose of the meal or meeting.”

5. Identify as Much About Meetings as Possible: Sometimes a journalist may want or need to protect his or her sources, and that can create challenges. “I recognize that sometimes we are talking about confidential sources,” said Reinhard. A journalist may not want to tell the accountant “who was at that meeting because it’s my source and I promised I wouldn’t burn them,” he added. “There is no easy answer for that one, but that is an issue that companies and the reporters need to navigate and at least be able to indicate whether the source is the government official, because that matters.”

6. Watch for Expense Report Red Flags Before Big Interviews: Reinhard also noted that if the media company is “trying to score the interview with President X and the week before that interview, some reporter is submitting thousands of dollars in expense reports and buying bottles of wine and nights out and it turns out they’ve been heavily entertaining a person who controls access to the newsmaker beyond a reasonable amount, that would be a red flag.”

7. Track the Third Party’s Expenses: A third party hired by the media company must also provide detailed expense reports including an itemized list of expenses, said Reinhard. Peeler added that “it is about the risk that a high number either is and/ or looks like a bribe.”

Rather lamented the current hyper-competitive atmosphere among many news outlets to get stories. “The fierceness now is unprecedented. The combination of that has led to a diminution of standards,” he said. In that atmosphere, and with the recent troubles of News Corp., anti-corruption compliance is something media companies, and other companies that deal with journalists and newsgathering, cannot ignore.
Profile:
Julie Brill
By Jocelyn Hanamirian

If any woman lawyer represents what it means to engage with media law in the digital age, it is Julie Brill of the Federal Trade Commission. From majoring in economics at Princeton under Nobel Prize winner Joseph Stiglitz, to serving in state government for over 20 years as a fierce consumer advocate, Brill’s path has been far from the traditional. Yet since becoming an FTC Commissioner in 2010, Brill has had the ear of every stakeholder and attorney who has found themselves at the curious intersection of communications and privacy law—which is just about everyone in today’s socially networked economy. From digital advertisers to broadband service providers and even high school students, Brill has got the nation talking about privacy.

“I am very intrigued by complicated, esoteric issues, that your average consumer may not have the time to figure out, or which may not be obvious to consumers,” Brill explains. “Which is why I think I am interested in privacy so much. I really love digging into complicated, interesting issues like that. And I am also very motivated to help consumers and help people.”

Brill has not lost any of her enthusiasm for numbers since her economics major days, and even considered pursuing a Ph.D. in the subject, before she decided to accept a Root-Tilden public service scholarship to attend New York University School of Law. Her mathematics edge has served her well in a field that is driven both by complexity and rapid change. Fortunately for her audience, she is as facile and passionate speaking about big data as about basketball and soccer, which she frequently references in analogies during her speeches. Brill proudly played on the first women’s soccer team at Princeton, in the wake of the passage of Title IX.

Brill ignored warnings from her friends and advisors that she would never return to her studies and took a year off from law school in between her second and third years to work with Guatemalan refugees in Mexico. Her desire to clerk for a federal judge following graduation, and the location of her now husband, led her to a clerkship in Vermont. After her clerkship, Brill spent two years at Paul Weiss Rifkind Wharton and Garrison LLP in New York. The private practice experience, she says, was valuable preparation for government service, because “it gives young attorneys the confidence to believe that you do understand how to practice law, and confidence when you are negotiating against big firms.”

It was in Vermont, as an Assistant Attorney General for Consumer Protection and Antitrust, that Brill found her passion for consumer issues, eventually leading her to chair the State Attorneys General Privacy Working Group. While in the Vermont Attorney General’s office, she tackled an antitrust investigation into several grocery store mergers in partnership with the FTC. She also stepped up when Vermont became a focal point of fair credit reporting abuses, as consumers were denied credit due to intentional misrepresentations by credit reporting agencies. In part due to her work, Congress took action against the issue nationwide, in the form of the 1996 Fair Credit Reporting Act. Brill proudly recalls her innovative work in tobacco litigation on behalf of consumers, which led to the multi-state group she represented receiving an extra $150 million in its settlement. Her innovative approach was to frame as a policy issue the extent to which the state could recover on behalf of Medicaid recipients who have been harmed by tobacco, taking the matter to the Vermont legislature. When the state legislature passed an act defining the role of the state in such suits, it cleared the way for the litigation’s success, even as other states had received mixed success in the courts on the very same issue.

To this day, Brill cites her time in state government as crucial in the development of her career, and in striking the right balance between work and family as a woman lawyer.

“One of the pieces of advice I often give to law students is to give government work a good hard look. That’s government work not only at the federal level, but also at the state level. There is work that might be very interesting, but which also might present great opportunities for work-life balance.”

After a nearly 20-year career in the Vermont Attorney General’s office, Brill was called upon to run the Consumer Protection division of the North Carolina Department of Justice. Following a year in that post, she received a call from the White House, asking if she would be interested in being a Commissioner. The call, she says, was a dream come true. Yet Brill humbly cites her family as her proudest accomplishment to date. She has two teenagers, ages 17 and 19. Her home base is with them and her husband in scenic Vermont, even though her frenetic workweek takes her to Washington, D.C. She cites staying in Vermont as one of the ways in which she has been able to achieve balance.

The FTC enforces over 50 different statutes, from Truth in Lending to antitrust laws to privacy measures such as Do Not Call, and more recently Do Not Track. In a given week, Brill can be found poring over legal filings on behalf of the
commission, meeting with investigation targets and other groups, and addressing industry organizations through public outreach. She says that perhaps her favorite recent speech came as she was inducted into the Hall of Fame of her alma mater, Maplewood Columbia High School in New Jersey. In this and other settings, she has relished opportunities to connect with the everyday consumers she serves.

“I’d say one of the biggest challenges of a role like being a Commissioner, is to not be trapped too much in an ivory tower, and to spend a lot of time talking to all of the stakeholders involved in a particular issue,” Brill said. “Also that you get outside of Washington and speak to folks around the country, because you get a variety of different perspectives. It’s very important to keep those lines of communication open.”

Commissioner Brill’s term expires in 2016. Until then, with privacy as hot an issue as ever, she looks forward to all she has yet to accomplish.

“Part of what I really enjoy, is that I need to appropriately balance a lot of different interests when it comes to an issue like privacy,” Brill explains. “On the one hand, innovation is incredibly important to consumers, the ability to use mobile apps to get information very quickly on their smart phones, to be delighted in the use of apps. At the same time, one needs to balance that with how consumers’ data and information is collected and used. It’s trying to strike that appropriate balance that is incredibly fascinating.”

**Women on the Move**

*Catherine Robb* has joined Haynes & Boone LLP in their Austin office. She was previously at Sedgwick LLP. Robb’s practice is focused on commercial and business litigation, First Amendment litigation, pre-publication review and editing, copyright and trademark litigation, general commercial litigation, open government issues and privacy concerns.

*Laura Prather* has also joined Haynes & Boone LLP in their Austin office. She was previously at Sedgwick LLP. As the lead author and negotiator of the reporter’s privilege and anti-strategic lawsuit against public participation (SLAPP) statute, Laura is an authority in media law serving an extensive array of content providers. Her practice includes general commercial, intellectual property and open government litigation as well as pre-publication review work for media clients.

*Susan Seager* was promoted to Vice President at Fox Group in Los Angeles in August. She’s part of a team of lawyers handling litigation involving a variety of Fox companies, including Fox Television Stations, Inc., Twentieth Century Fox Film Corp., Fox Television Studios, Inc., and Twentieth Television. She has been at Fox Group since 2007. She previously practiced as an associate at Davis Wright Tremaine LLP in Los Angeles.

*Rebecca Hughes Parker* is now Editor-in-Chief of The FCPA Report. She previously was a senior associate at SNR Denton LLP in New York. The FCPA Report is a legal publication that provides analysis and insight on legal developments with respect to the Foreign Corrupt Practices Act and related anti-bribery and anti-corruption issues, and practical compliance guidance for companies and the attorneys who advise them. Rebecca also writes about working motherhood, and her essays have been published in the New York Times Motherlode blog, the Huffington Post, and the Albany Times-Union.

*Lucy Dalglish* became dean of the University of Maryland’s Philip Merrill College of Journalism on August 1, 2012. She moved to her new post after a 12-year stint as executive director of the Reporters Committee for Freedom of the Press, a voluntary, unincorporated association of reporters and news editors dedicated to protecting the First Amendment interests of the news media.


*Barbara Wall*, Vice President and Senior Associate General Counsel of Gannett Co., Inc., was honored with the Reporters Committee for Freedom of the Press’ First Amendment Award at the Reporters Committee’s annual gala at the Four Seasons in Washington, DC on September 27. For the last 27 years, Barbara has represented Gannett’s interests on a variety of issues, including free speech and free press concerns.
Deborah Taylor Tate, a former commissioner at the Federal Communications Commission, spoke in October 2012 at an international conference in Korea about the need for greater participation of women in media, information and communication technology (ICT) and communications across the region. Debi and actress Geena Davis, who co-chair the Healthy Media Commission (advocating for positive portrayals of women and girls in scripted media) addressed the “Women With the Wave” forum, sponsored by the Asia Broadcasting Union. Later in October, Debi spoke at the International Telecommunications Union’s Telecom World 2012 conference in Dubai on several topics, including the ITU’s child online protection initiative.

S. Jenell Trigg, a member of Lerman Senter PLLC, was honored this September with the Donald H. McGannon Award from the United Church of Christ, Office of Communication, Inc. at its 30th Annual Everett C. Parker Ethics in Telecommunications Lecture and Breakfast in Washington, DC for her work in promoting ownership of telecommunications media for women and persons of color. This award is a nationally renowned civil rights award named after the former Chairman of the Westinghouse Broadcasting Company who promoted social responsibility and diversity in the broadcasting industry. The Rev. Dr. Everett Parker, who will be 100 years old in January, is a founder of the UCC’s Office of Communication and was a close advisor to the Rev. Dr. Martin Luther King, Jr.

Rachel Matteo-Boehm, a partner with Bryan Cave LLP in San Francisco, and her colleague Leila Knox, an associate in Bryan Cave’s San Francisco office, report that the merger between their former firm, Denver-based Holme Roberts & Owen, and St. Louis-based Bryan Cave earlier this year has been a positive development for them and their colleagues in the firm’s media and First Amendment law practice. The merger has significantly expanded the breadth of the media group’s expertise since several attorneys from the Bryan Cave side also practice in this area, most notably in Chicago, Los Angeles, New York and Atlanta. Bryan Cave has more than 1,000 attorneys in 32 offices worldwide.

Life Outside the Law

On August 28th, 2012, Laura Prather gave birth to adorable twins named Blake Russell Hartman and Julia Grace Hartman. The twins arrived earlier than expected, but just like their mother, they are fighters and are both doing well and getting stronger every day. Laura and her husband, Fred, are thrilled.

From Molly Riley: “I have a Life outside the law, in a place where the legal system doesn’t even work. After working as a lawyer in China for nigh twenty years, I took some time off, thinking there might be more to life than legal practice. I found a lot, founded my own song and dance troupe, which I had the joy of listening to every night, and wrote up my experiences in The Entertainer is the Charm, which is finally available in paperback, details at: http://sbpra.com/EvaPhiletaWright/”

News from Levine Sullivan

A lot has happened in the past year for the Women of Levine Sullivan Koch & Schulz (LSKS), a firm with offices in Washington DC, New York, Philadelphia and Denver:

Alia Smith became a partner in the firm’s Washington, DC office, effective January 2, 2012.

Kate Bolger joined LSKS in July 2012 as a partner in the firm’s New York office. Prior to joining the firm, Kate was a partner at Hogan Lovells, where she co-chaired the media litigation and counseling practice group.

Rachel Strom, also formerly of Hogan Lovells, joined LSKS’s New York office as an associate in July 2012.

Elizabeth (“Lizzie”) Seidlin-Bernstein joined LSKS in September 2012 as an associate in the firm’s New York office. Prior to joining LSKS, Lizzie served as a law clerk to the Honorable Berle M. Schiller of the United States District Court for the Eastern District of Pennsylvania. Lizzie is a graduate of New York University School of Law.

Mara Gassmann joined LSKS in October 2012 as an associate in the firm’s Washington, DC office. Prior to joining LSKS, Mara served as a law clerk to the Honorable Leonie M. Brinkema of the United States District Court for the Eastern District of Virginia. Before her legal career, Mara worked as a spokesperson for CNN. Mara is a magna cum laude graduate of Georgetown University Law Center.

Nabiha Syed will join LSKS as an associate in the firm’s New York office this December when she completes her term as a First Amendment Fellow at The New York Times. Nabiha is a graduate of Yale Law School where she co-founded and directed the Media Freedom and Information Access Clinic.
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Betsy Koch of the firm’s Washington, DC office, Kate Bolger of the firm’s New York office, and Gayle Sproull of the firm’s Philadelphia office have been selected for inclusion in The Best Lawyers in America® 2013 (Copyright 2012 by Woodward/White, Inc., Aiken, SC). The Best Lawyers in America bills itself as “the definitive guide to legal excellence” and selects attorneys based on an exhaustive peer-review survey of leading lawyers.

The Legal Intelligencer and Pennsylvania Law Weekly have recognized Katharine Larsen, an associate in the firm’s Philadelphia office, as a “Lawyer on the Fast Track.” The annual award honors the top Pennsylvania attorneys under the age of 40.

Kate Bolger was recently appointed as co-chair of the ABA First Amendment and Media Litigation Committee. Having long served as the committee’s membership chair, Kate replaces Ashley Kissinger and now co-chairs the committee with Jon Donnellan, Deputy General Counsel of The Hearst Corporation.

Katharine Larsen, an associate in the firm’s Philadelphia office, announced the arrival of Anja Mathilde Larsen Sule (pronounced “Ahnyah Matilda”) on October 11, 2012. Katharine and Anja are both doing great!

We Know It When We See It – and Then We Tax It
By Rosemary Harold

Oh, all right – a recent tax decision out of the highest state court in New York isn’t about smut, strictly speaking, but it’s close enough to have prompted journalistic giggling across online news sites recently. In case you missed it, the New York State Court of Appeals on Oct. 23 determined that pole dancing does not qualify as choreography. It does, however, have a claim to kinship with athletic games and other sporting events.

The case of In re 677 New Loudon Corporation v. State of New York Tax Appeals Tribunal pitted the owner of Nite Moves, an Albany area enterprise characterized as an “adult juice bar” (for regulatory purposes) or “gentleman’s club” (for Internet marketing purposes), against state taxing authorities. Night Moves claimed that its terpsichorean offerings entitled it to a statutory tax exemption afforded to “dramatic or musical arts performances,” including “choreographic” ones. By a narrow 4-3 vote, the New York high court brushed aside a First Amendment argument to rule for the regulators.

The majority opinion noted that the NY statute distinguished between “a wide variety of entertainment and amusement venues” – including sporting events, carnivals, amusement parks, variety shows, magic performances, ice shows and aquatic events – subject to state sales and use taxes from a more “discrete form of entertainment” exempt from those tax levies. Explaining that lawmakers had carved out a narrow exemption “with the evident purpose of promoting cultural and artistic performances in local communities,” the court pointed to precedent for resolving ambiguous tax disputes in the state’s favor:

“Clearly it is not irrational for the Tax Tribunal to decline to extend a tax exemption to every act that declares itself a ‘dance performance.’ If ice shows presenting pairs ice dancing performances, with intricately choreographed dance moves precisely arranged to musical compositions, were not viewed by the Legislature as ‘dance’ entitled a tax exemption, surely it was not irrational for the Tax Tribunal to conclude that a club presenting performances by women gyrating on a pole to music, however artistic or athletic their practiced moves are, was also not a qualifying performance entitled to exempt status.”

Dissenters criticized the majority for effectively favoring “highbrow” dancing over lowbrow prancing: “The people who paid these admission charges paid to see women dancing. It does not matter if the dance was artistic or crude, boring or erotic. Under New York’s Tax Law, a dance is a dance.”

Writing for the dissent, Judge Robert S. Smith also decried the majority’s brush-off of Night Move’s constitutional claims: “Like the majority and the Tribunal, I find this particular form of dance unedifying – indeed, I am stuffy enough to find it distasteful. Perhaps for similar reasons, I do not read Hustler magazine; I would rather read the New Yorker. I would be appalled, however, if the State were to exact from Hustler a tax that the New Yorker did not have to pay, on the ground that what appears in Hustler is insufficiently ‘cultural and artistic.’ That sort of discrimination on the basis of content would surely be unconstitutional (see Arkansas Writers’ Project, Inc. v Ragland, 481 US 221, 229-230 (1987)). It is not clear to me why the discrimination that the majority approves in this case stands on any firmer constitutional footing.”

Ms. Harold is a partner at Wilkinson Barker Knauer, LLP, specializing in media and First Amendment regulatory issues. She recently served as media legal advisor to FCC Commissioner Robert McDowell, and prior to that was Deputy Chief of the FCC’s Media Bureau.