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Ten Questions to a Media Lawyer

By Michael Berry

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Michael Berry is a partner at Ballard Spahr in Philadelphia.

1. When did you know you wanted to be a lawyer? And what was your first job in the business?

My first job in the law was as an intern at Sirote & Permutt in Birmingham, Alabama following my first year of college. At that point, I was interested in the law, but more interested in public policy and journalism. The next two summers, I was an intern at CNN – first in Atlanta, working with the network’s guest booking group and with its reporters on the floor of the 1992 Republican National Convention, and then at *Larry King Live* in Washington, DC.

After college, I decided to pursue my interest in policy and went to work on Capitol Hill for the late Senator Paul Coverdell. From there, I went to graduate school to pursue degrees in public policy (at Duke University) and the law (at the University of North Carolina), uncertain of which path I would go down. While in school, I decided to pursue a clerkship, and then a job with a large law firm as the next steps in my career. Through a series of very fortuitous events, I wound up being able to practice media law full time and pursue a legal career that has combined all of my early interests – journalism, policy, and the law.



2. What is the best advice you received as a young lawyer?

I have been blessed to have great mentors throughout my legal career. Each has taught me important lessons about being a lawyer. A few that come to mind:

My first job out of law school was clerking for Judge David B. Sentelle on the U.S. Court of Appeals for the D.C. Circuit. From him, I learned many things about being an effective litigator. He showed me the importance of focusing on the key issues and writing about them clearly and concisely, and without footnotes. Every time I argue in court, I remember Judge Sentelle’s thoughts on effective oral advocacy: Be prepared. Answer the judge’s question. Be aware when the judge’s question is throwing you a lifeline. You don’t need to use all of your time.

My next job was at Dechert, where I worked closely with a partner named Steve Brown. Steve taught me many lessons about preparing witnesses. One of the most important: Witness prep starts the first time you meet someone.

My mentors and partners at Levine Sullivan Koch & Schulz taught me more than I could possibly recount here. Gayle Sproul showed me time and again that, as media lawyers, sometimes our job in court is to stand on the tracks in front of a moving train to try to make it stop for our client. Lee Levine highlighted the importance of getting input from everyone on a team, considering issues from different angles, and exploring creative approaches to solving clients’ problems. And, among so many other things about trial strategy, Michael Sullivan taught me the importance of pace, grace, and presence in questioning witnesses at trial.

Of course, some of the best lessons that help me as a lawyer are things that I was taught long before law school. I sometimes say that I learned everything that I needed to know about being a good lawyer from being a bag boy for many years at the Piggly Wiggly grocery store: Be on time, look and act professional, be organized, multi-task well, hustle, provide good customer service, and always treat everyone politely and respectfully.

And the one abiding lesson that has guided me throughout my career is the old adage, “There is no limit to what a man can do or where he can go if he doesn’t mind who gets the credit.”

3. You were on the defense team in the infamous Hulk Hogan trial. What was that like? And what did you learn about juror attitudes toward the press?

Litigating and trying the case was very difficult. On a personal level, it was difficult to litigate a case intensely for several years that dealt with troubling subject matter. That difficulty was compounded by the fact that we were subject to a very broad confidentiality order that prevented us from discussing many aspects of the case with anyone (and even certain parts of discovery with our own clients). Also, I spent the better part of two years working around the clock and traveling around the country for the case. At the time of the trial, my children were 8 and 12 years old, and it was emotionally difficult shielding them from the press coverage of the case and not to being able to explain to them what I was working on and why I was away for so long.

On a professional level, the case presented immense challenges. The facts were, of course, challenging. The plaintiff’s trial lawyers were very skilled. We were litigating against a charismatic national icon – one of my childhood heroes – in his hometown. Still, the most challenging aspects of trying the case were the constraints imposed on our defense by a series of pretrial discovery and evidentiary rulings. Although I cannot say that any of the discovery or evidence at issue in those rulings would have changed the outcome, they hamstrung our defense and limited our potential presentation to the jury to one argument – that the post with the video excerpts was protected by the First Amendment as newsworthy. When the issue was litigated in connection with the initial injunction that the trial court had imposed, that argument carried the day before appellate judges. But, to put it mildly, arguing that the First Amendment protects the right to post excerpts from a surreptitiously recorded sex tape is not exactly the most compelling pitch to make to a group of regular people.

Despite these challenges, the experience was invaluable. We had a terrific legal team who worked extremely well together. The trial was televised and obviously generated intense media coverage. At the time, I did not see the coverage or follow it at all. But having that experience has helped me appreciate how judges and lawyers view media requests for access and has helped me make better, more persuasive arguments when I seek greater access to court proceedings for our clients.

With respect to jurors’ attitudes toward the press, I am reluctant to draw any lessons from the verdict because the facts and circumstances of the trial were unique. Anyone who is interested in what people think of the press should read the transcript from the third day of *voir dire*, when the lawyers for both parties had an opportunity to question the venire. As that extended question-and-answer session showed quite clearly, people are very skeptical of the media. As lawyers representing the press, we should understand the depth and causes of that skepticism when we counsel our clients prepublication and prepare our cases for trial.



| Mike with his family last summer

4. You also tried a media defamation case in the Virgin Islands. What was that like and how did you like your couch prepared?

Our defense of the Virgin Islands Daily News was one of the defining events in my career. The plaintiff was a sitting judge who was represented by very talented lawyers, including one who had recently secured a large defamation verdict for another sitting judge. The case was extraordinarily important to the newspaper, which at the time was facing a series of defamation claims. All of the judges on the bench recused themselves from our case because their colleague was the plaintiff. Ultimately, a senior judge lifted his recusal and quickly ordered us to trial. The trial dealt with nearly 20 articles and an op-ed. I learned an incredible amount working with Michael Sullivan and Celeste Philips, and our Virgin Islands co-counsel Kevin Rames. Together, we lived in a hotel in the Virgin Islands for five weeks. The jury rendered a split verdict and awarded the plaintiff less than \$250,000. The presiding judge vacated the plaintiff's portion of the verdict and entered judgment in the newspaper's favor on all claims, writing a very thoughtful decision on a number of issues. That judgment was affirmed by the Virgin Islands Supreme Court in its first – and still most consequential – decision in a defamation case. The United States Court of Appeals for the Third Circuit also affirmed the judgment in a significant decision detailing how appellate courts conduct independent appellate review after a jury trial in an actual malice case and what state of mind plaintiffs are required to show when their defamation claims arise from alleged implications.

While trying the case, we had many memorable experiences – from flying our lone set of trial exhibits on a sea plane to St. Croix, to arguing motions *in limine* in a steaming hot courthouse after the air conditioning broke down, to spending some time with the jurors following the trial. The trial itself featured a former Virgin Islands Governor, the former President Judge of its trial courts, a celebrity talk show host, citizen activists, and, of course, the hard-working journalists from the newspaper.

Despite the glamour some people think comes with trying a case in the tropics, the experience was hardly glamorous. Just imagine getting up each morning, rushing to prepare for court with limited supplies, and putting on a wool suit while everyone else around you is on island time, throwing on a bathing suit, and drinking cold beverages while enjoying the bright sun, warm sand, and crystal clear water.

As far as the food goes, I don't eat shellfish, so never had any conch. But because we were in the Virgin Islands for so long and on so many different occasions, I often joke that, during the life of that case, I had more romantic dinners with Michael than I had with my wife.

5. Were there any other memorable cases that shaped you as a media lawyer?

I have been lucky to have had many memorable cases and represented clients that span the political spectrum and that have ranged from large media companies with well-known journalists to ordinary citizens. The first cases where clients retained me and placed their trust in me as a young lawyer to defend them were very meaningful. I am extremely grateful to those clients (like Jon Schanzer, Middle East Forum, and Times/Review).

Working with Gayle Sproul, Katharine Larsen, and our paralegal Scott Bailey to defend *The Pocono Record* and Matt Birkbeck was also incredibly memorable. We defended them in a defamation lawsuit arising from a series of articles they published in 2001 that won the IRE award for investigative reporting. The articles reported on the reasons behind the foreclosure crisis that existed at that time in Northeastern Pennsylvania. The plaintiffs – a real estate developer and his companies – claimed that the articles falsely accused them of selling homes at inflated prices using inflated appraisals, often leading buyers into foreclosure. After a lengthy trial in which the plaintiffs were seeking over \$20 million in damages, the jury unanimously decided that the articles were true. The trial was a vindication of our client's tremendous journalism and the positive impact that it had on the community.

6. What do you like to do when you're not working – any unusual hobbies?

I love spending time with my wife Randi, our two children (Faye, 21, and Jackson, 17), and our dog Mabel, and with our family and friends. To clear my mind, I run regularly. To relax, I like to read fiction or sit by our fire pit with a cold beer listening to music and talking with friends. And I am most happy when I am doing something active outside with family or friends, including hiking and kayaking.



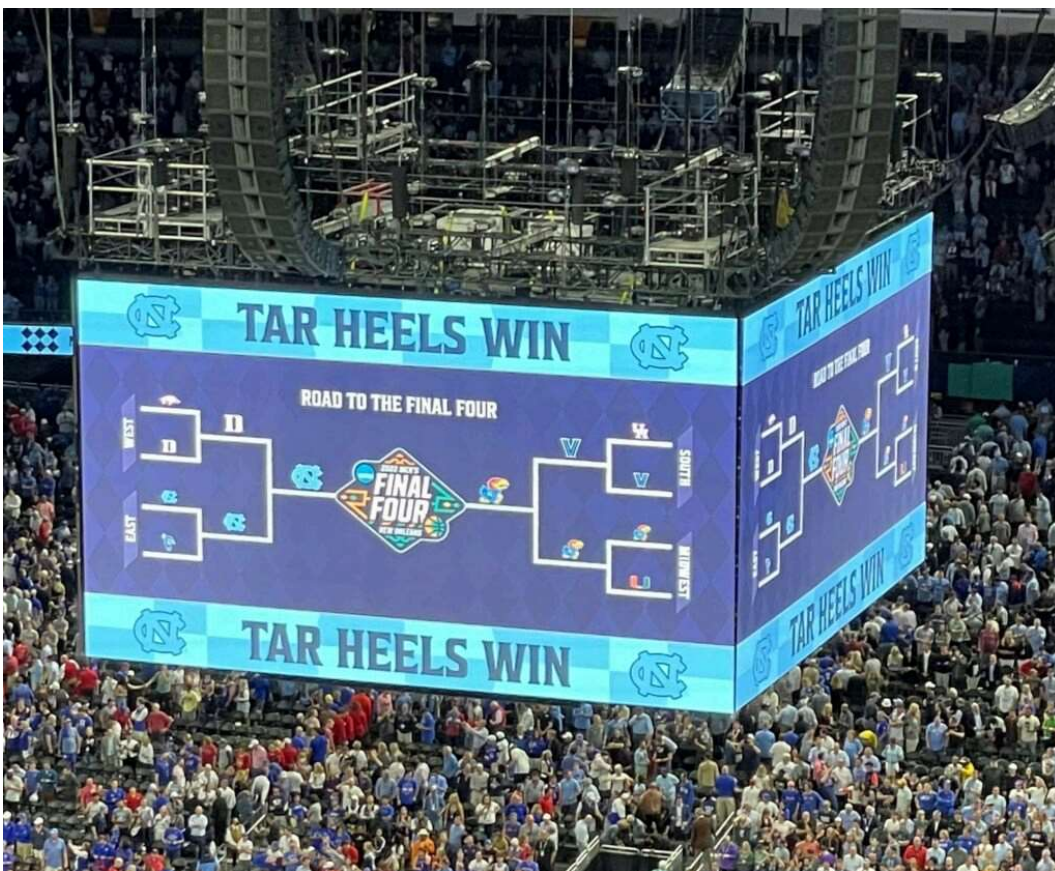
Kayaking on the Schuylkill River in Philadelphia

7. UNC v. Duke in March Madness. Who are you rooting for?

UNC. This question is no hypothetical. From the day my wife and I moved to North Carolina in 1996, we have been UNC fans. In 2022, we and our son were lucky enough to see UNC play Duke at the Final Four in New Orleans. We got to cheer on UNC as they beat Duke in Coach K's last game. Definitely one of the greatest games that I have ever attended.

8. What's on your travel bucket list?

I was able to check off my number one bucket list item when my extended family traveled together to Israel in December 2022. I have traveled all over the United States and want to explore the handful of states that I have not visited – tops on that list are Alaska and Idaho. I've always dreamed of hiking the Appalachian Trail.



UNC Beats Duke in the Final Four

9. I've got 24 hours in Philly – what should I see, do, eat?

Visit Independence Hall. See where we got our start and remind yourself of first principles. Definitely go to a Phillies or Eagles game. There is nothing like the passion of Philadelphia sports fans. Take a tour through Reading Terminal Market, stopping for Beiler’s doughnuts, Dinic’s roast beef, and the cannolis and cakes at Termini Bros. Then, run up and into the Art Museum. The run up the steps is iconic Rocky. The view from the top is classic Philly. The art inside is inspiring worldwide. If you still have time, go for a run or walk on the Schuylkill River trail by the beautiful Boathouse Row.

Philadelphia is all about food. My family says that whenever they come to town they expect to add “The Philly Five.” My favorite places are Michael Solomonov’s Israeli restaurants – Zahav, Dizengoff, Laser Wolf, Goldie, and K’Far. And, of course, have a cheesesteak and a soft pretzel and water ice and ...

10. The Ballard crew is going out for karaoke – what are you singing?

I’m not. I love good music and seeing live music, but I have a terrible singing voice – one that literally made my daughter cry when she was very young. As some friends in the media bar know, I have a great time going to piano bars and karaoke spots at our conferences, but I will not go on stage. Trust me, it’s for the best. For everyone.

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