

Table of Contents

- [1. Prep](#)
 - [1.1. Invitation](#)
 - [1.2. Agenda](#)
 - [1.3. Prep Meeting, 1/20/2022](#)
 - [1.3.1. Invite email](#)
 - [1.3.2. Pre-meeting survey of materials](#)
 - [1.3.3. During meeting](#)
 - [1.4. Other Prep](#)
 - [1.4.1. Parallel process for Phil to issue a white paper](#)
 - [1.4.2. Also to Read](#)
 - [1.5. Themes I want to hit](#)
- [2. My thoughts](#)
 - [2.1. Email I sent post-prep with my themes and questions](#)
 - [2.1.1. In my seven minutes, I think I'll say:](#)
 - [2.1.2. Here are two questions for AG Rosenblum to consider asking me:](#)
 - [2.2. New thoughts on plane while reading](#)
 - [2.3. Seven Minutes Script](#)
- Scalia/Ginsburg Initiative panel on misinformation and disinformation

1. Prep

1.1. Invitation

Paul,

I hope all is well. I wanted to invite you to join us on February 4-6th in Avon, Colorado for a second conference related to the Ginsburg-Scalia Initiative. At present, I have you in mind to participate on a panel on The Challenges of Moderating Online Content and Misinformation, but that is subject to change. Information about the event is attached. Please don't hesitate to follow up with any questions.

I appreciate you and look forward to continued work together

Phil

1.2. Agenda

- Four panels
 - The state of our politics and the opportunity to heal and rebuild
 - The legal norm of respectful dialogue and how we hold onto it
 - Why law depends on dialogue and listening
 - The challenges of moderating online content and misinformation

1.3. Prep Meeting, 1/20/2022

1.3.1. Invite email

Panelists and Moderator,

On behalf of the Attorney General Alliance and Colorado Attorney General Phil Weiser, thank you for your participation during our upcoming AGA Chair's Initiative- Part II, scheduled for Friday, February 4 thru February 6, 2022. We are pleased to host you for your panel, The Challenges of Moderated Online Content and Misinformation running from 3:00pm – 4:00pm.

We'd like to schedule a 30-minute panel planning call to be held next week on Thursday, January 20 at 2:00pm MST. Kindly REPLY ALL to this email chain to confirm before COB on Friday, January 14, 2022. If this does not work with your schedule, please propose alternative times for Thursday. *Attorneys General may have a designee on the call.

Once we confirm the schedule, a calendar invitation will follow. Please find your panel details below and kindly come to the call prepared to discuss your panel topic.

The Challenges of Moderated Online Content and Misinformation

Saturday, February 5, 2022, 3:00pm – 4:00pm MST

Moderated by: Ellen Rosenblum, Attorney General, Oregon

Panelists:

Maura Healy, Attorney General, Massachusetts

Ellen Goodman, Associate Dean of Strategic Initiatives and Special Projects, Law Professor, Rutgers Law

Kate Klonick, Assistant Law Professor, St. Johns University

Paul Ohm, Law Professor, Georgetown Law

Joshua Tucker, Co Director, NYU Center for Social Media and Politics and SMaPP labb, NYU

Thank you and we look forward to this conversation.

Best,

Patricia Salazar

Legal Assistant | Attorney General Alliance

1.3.2. Pre-meeting survey of materials

- Lead seems to be Patricia Salazar in the AG Alliance
- In his office: Shalyn Kettering, Counsel to the AG

1.3.3. During meeting

- Attendees
 - Tania Maestas doing all the talking

- Deputy Director
 - Ellen Rosenbum, Oregon AG
 - Ellen Goodman
 - Evelyn Hitt
 - Josh Tucker
 - Shalyn Kettering
 - Kate can't be here
 - Me
- Traditional format
 - Moderator (Ellen) would give 5 minute welcome remarks
 - We owe a photo and short bio
 - Pat Salazar is the point person.
 - 6-8 minute presentations by each of us
 - Planned Q&A Segment
 - Each of us submit 2 questions in advance to ask ourselves
 - Idea: something you couldn't fit into the 6-8 minutes
 - Q&A is mostly just for the AGs, who are seated up front, not the hoi polloi
 - AG Rosenbum said that she'd ask everyone to chime in.
 - She will circulate a "run of show"
 - At end—soft ending
 - We get chance for closing comments or clarifications and thank you to all of the panelists.
 - 1 hour total
- Moderator—keep your openings closer to the 6 minute side
 - Like conversation
 - She dreamt up this format, including the two pre-cooked questions
- Order
 - healy, goodman, klonick, ohm, tucker
- Ritz does not have a mask mandate
 - But AG will ask, but not require, masks
 - We can remove our masks while speaking
- Deconflict
 - A lot of prior people who weren't on the panel
 - Josh—go last
 - He's not a lawprof
 - He'll leave policy to us
 - Professor of Politics
 - Three main points
 - 1. Importance of empirical research
 - On the platforms
 - To test interventions
 - 2. Policy recommendations: data access for outside researchers
 - Will lead to better policy
 - Will focus esp on the Data Access right
 - Ellen Goodman
 - Triangulate what Kate might talk about
 - Working with Germany on algorithm justice
 - Transparency
 - Digital Services Act

- Algorithmic Amplification
 - Tools to create more moral hazard and responsibility
 - Targeted through the lens of consumer protection
- My focus
 - The harms beyond misinformation
 - Design and redesign
 - Technology
 - For my Q&A: Privacy impacts of these policy fixes
 - For my Q&A: Consent decrees
- Moderator's big question: What can AGs do?
 - We're politicians
 - But we have a limited time to get things done
 - Dumb it down
 - Phil is our most scholarly AG
 - He's not typical
 - And even he doesn't have the time to do all of this
- By next Friday: for Patricia, provide some of this summary
- Noah Rosenblum, her son, just got an NYU lawprof job
- Logistics
 - COVID
 - Take a test before flying and given a rapid test to take back to the room.

1. DONE Send photo and short bio to Pat Salazar (move this to Sync/org file for agenda view) Also add our talking points and two questions for the Q&A

1.4. Other Prep

1.4.1. Parallel process for Phil to issue a white paper

1. Prep call in December
 - List of questions sent in advance:
 - Transparency for Researchers:
 - How to provide requested data to vetted researchers and research projects in a privacy-protected format?
 - Auditing of Algorithms:
 - What is the proper form of auditing and oversight of algorithms?
 - User Control:
 - How to provide users more options on what they see on their social media feeds? Potential options could include requiring platforms to pose questions to users such as “do you prefer to see only views consistent with your own?”
 - Platform Feature Changes:
 - Should there be limits on number of times a post can be shared?
 - Creating Friction:
 - Could changes be made to posting functionality to create friction ? Potential options could include using AI tools that detect certain keywords and propose questions like “Are you sure you’re not spreading false information about COVID-19?”
 - Offline Interactions:
 - How can we build more media literacy and local opportunities to facilitate dialogue both on and offline?

- A New Regulatory Agency:
 - How should such an agency be staffed and what authority should they have?
- 2. White paper draft
 - Shared draft with three of us this week
 - Other cc's were Josh Tucker at NYU and Jeff Blattner (now in Phil's shop).
 - Mentioned Josh's book as helpful resource
 - I'm skimming
 - Researchers need more data
 - Key takeaways from Persily/Tucker book:
 - Strong partisan beliefs more likely to share misinfo
 - Oldest users most likely to share
 - Trust in the person sharing is a critical factor
 - The reputation of the sharer matters more than the reputation of the news media outlet
 - Slight tip of the cap to design: SMS focus on the name of the user
 - "Tribalism"
 - Corrections sometimes help, sometimes hurt
 - If corrections challenge worldviews, act of correction may entrench beliefs
 - Solutions start on page 4
 - Preemptive measures designed to induce skepticism
 - E.g. media literacy programs
 - Flagging potentially inaccurate posts–Birdwatch
 - "Friction" on page 5
 - AI-mediated questions: Are you sure you're not spreading false info?
 - FB/Tiwtter: Prompt users to read a news story before sharing it.
 - More data to outside researchers
 - Mandating researcher access to certain platform data
 - FOIA-like legislation
 - Increase tort liability
 - Lots of other legis proposals
 - Tie it to content moderation policies
 - Algorithm focused exceptions
 - Info fiduciary reform (Data Care Act)
 - Strategic litigation
- 3. My main takeaway
 - Nothing criticizing the design of these platforms! Virality! Kids!
 - Maybe touch on related issues, particularly harassment and addiction?
 - Don't want to make this too diluted, but might be a nice way to build the political support.
 - Research isn't transparency.
 - Antitrust. Something about size increasing responsibility.

1.4.2. Also to Read

1. Another memo framing questions sent out by Shalyn?
2. Jeff and Ashkan's paper?

1.5. Themes I want to hit

- Research access to data and the story from The Markup

- Design, design, design
 - Study cited in Phil's white paper about how the username vouches more credibility more than the media outlet's name—design!

2. My thoughts

2.1. Email I sent post-prep with my themes and questions

You can pull as much from my online bio as you see fit: <https://www.paulohm.com/bio/>

2.1.1. In my seven minutes, I think I'll say:

- A lot of my current work focuses on how regulation interacts with the design of technological products and services, including social media sites and other important platforms.
 - I think our tendency is to focus primarily on how to protect people given the way these platforms are designed today.
 - I encourage us to think a bit more about how our regulatory and enforcement influence can help the platforms decide to redesign their services to make the safer, fairer, better, etc.
 - One example: the platforms are designed to spark virality, and virality is what makes misinfo spread so fast. How can we encourage platforms to tamp down on virality?
 - One common thread is to think about how to encourage platforms to harness friction.
 - For example, WhatsApp changed a policy last year so that messages can be mass-forwarded only five times before they are intentionally slowed down, in a bid to tamp down on "rumors, viral messages, and fake news". <https://faq.whatsapp.com/general/chats/about-forwarding-limits/?lang=en>
 - Do policies like this work?
 - What role can State AGs play in bringing about policy shifts like these?

2.1.2. Here are two questions for AG Rosenblum to consider asking me:

- Josh has highlighted the importance of transparency-enhancing measures like sharing social media data with academic researchers. Are there privacy concerns with solutions like these, and how should we balance the privacy of users with the need for greater transparency?
- A lot of State AG cases against large tech platforms end up in consent decrees. Are there novel approaches to consent decree negotiations we ought to be considering to help address problems with misinformation and disinformation? [Explanation: I didn't mention this at our prep meeting, but I have received a grant to convene some working groups to develop new proposals for the consent decree process. We haven't really started the work yet, but I'd be happy to tell the State AGs about it.]

2.2. New thoughts on plane while reading

- Everything in KK's paper shows far too much naivete about who is calling the shots.
 - Every reference to social norms—particularly "evolving" ones—miss the manipulative power of the platforms to choose the norms that feed their economic goals best.
 - It's not a democracy, as you might believe. It's economic totalitarianism run by bureaucrats who don't understand this.
- Help avoid confusion by examples
 - Modern day equivalents to time/place/manner restrictions

- Content neutral
 - Simple geofencing
 - Tamp down on virality
 - No CP
 - Hard to ban lies—easier to limit the spread of them!
- Really want to lean into time/place/manner
 - Also really want to highlight how we need some institution to step up and lead!
- Slay some sacred cows
 - More speech is better
 - Intermediation is bad
 - A single globally connected internet is unassailable.
- To ease into it
 - Almost everybody who talks about this holds the design of the systems mostly constant.
 - The one thing we can't do is change the essential nature of the social networking services themselves.
 - Is this because
 - We think they are ideal forms?
 - We don't think we are entitled to have a say in this part?
 - We think it is illegitimate to say something about these private acts?
 - None of those hold!
 - They are far from ideal.
 - We need to constantly think of ourselves as entitled to have a say.
 - Auto safety
 - Broadcaster decency
 - Net Neutrality
 - These private acts have profound public effects!
- Basic steps
 - Nobody is talking about redesign these services in fundamental ways.
 - These services are pretty terrible, not only because of misinfo/disinfo but more.
 - Notwithstanding what many believe, this isn't because they are catering to our user preferences and our evolving norms!
 - Lots of recent research highlights the way they call the shots.
 - Manipulation.
 - Serving advertisers not users.
 - "Engagement" as a dirty word.
 - As private institutions with incredible public power, we need to use our most powerful public institutions to bring about redesign.
 - The Constitution won't prevent this. There are lots of precedents in regulatory history.

2.3. Seven Minutes Script

- A lot of my current work focuses on how regulation interacts with the **design** of technological products and services, including social media sites and other important platforms.
 - I think our tendency is to focus primarily on how to protect people given the way these platforms are designed today.
 - The one thing we seemingly all agree we can't do is change the essential nature of the social networking services themselves, at least not through direct government action.
 - We can chip away at the sources of misinformation and disinformation, but we don't really have any say in the fundamental shape and experience provided by these services.

- This ties one hand behind our back.
 - These services are pretty terrible, not only because of misinfo/disinfo but more.
 - Notwithstanding what many believe, this isn't because they are catering to our user preferences and our evolving norms!
 - Every reference to social norms—particularly "evolving" ones—miss the manipulative power of the platforms to choose the norms that feed their economic goals best.
 - It's not a democracy, as you might have been led to believe. It's economic totalitarianism run by bureaucrats who don't understand this.
 - Lots of recent research highlights the way they call the shots.
 - Manipulation.
 - Serving advertisers not users.
 - "Engagement" as a dirty word.
 - Bottom-line: some of the root causes of what ails us is the global free-for-all of our current speech architecture.
 - Without taking on some of structure at root, I worry that we're just applying small tweaks to a problem that needs major reforms.
- I encourage us to think a bit more about how our regulatory and enforcement influence can help the platforms decide to **redesign their services** to make the safer, fairer, better, etc.
 - In the face of fundamental problems with private institutions with incredible public power, we need to use our most powerful public institutions to bring about redesign.
- Does the Constitution Permit this? Does it square with our political and social history?
 - The Constitution won't prevent this. There are lots of precedents in regulatory history.
 - We need to constantly think of ourselves as entitled to have a say.
 - Auto safety
 - Broadcaster decency
 - Net Neutrality
 - These private acts have profound public effects!
 - What about the first amendment?
 - Really want to lean into time/place/manner
 - We might need the 1A to change.
- So what kind of reforms do I have in mind?
 - This week's context gives us plenty grist for the mill
 - The news two days ago that Apple's simple tweak to its architecture has been blamed for fundamentally affecting FB's business model.
 - Twitter's new "downvote" button has started to go global.
 - Modern day equivalents to time/place/manner restrictions
 - Content neutral
 - More examples
 - Simple geofencing
 - Tamp down on virality
 - The platforms are designed to spark virality, and virality is what makes misinfo spread so fast.
 - How can we encourage platforms to tamp down on virality?
 - No CP
 - Make it harder to ban lies—easier to limit the spread of them!
- One common thread is to think about how to encourage platforms to harness **friction**.
 - For example, WhatsApp changed a policy last year so that messages can be mass-forwarded only five times before they are intentionally slowed down, in a bid to tamp down on "rumors, viral messages, and fake news". <https://faq.whatsapp.com/general/chats/about-forwarding-limits>

[/?lang=en](#)

- Do policies like this work?
- What role can State AGs play in bringing about policy shifts like these?
- Phil's memo's two examples:
 - AI Tools that ask, are you sure you're not spreading misinfo?
 - FB/Twitter: Read this story before posting it.

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[Validate](#)