

Talking to a Journalist

A client of mine spoke to a journalist about a matter that is currently the subject of litigation. The journalist got back to him and asked to speak with me, as I could provide background. I am not crazy about the idea, but I am not sure. Also, I have not considered the marketing aspect - I am only looking at it from the involvement in the case. Should I think about the marketing side?

No.

Nothing good ever comes of talking to a journalist of anything other than an acquittal or the collection of a record setting judgment in your client's favor.

James P. Moriarty, Iowa

I did a paper a few years ago on this topic. Meg Tebo was one of the people I cited. In short, here are a few considerations:

Dealing with the media does not need to be an adversarial process (although it can be and sometimes seems like it is). Once you understand the ground rules (the unwritten rules of civil procedure as it were), the interview process can actually be enjoyable and, you get the benefit of getting your message across. Make no mistake, your message may not make it in print or on the air in the manner that you intended; however, knowing the rules will provide you with a whole lot better chance of getting your message out in the public.

Rule No. 1: Be Prepared to Be Ambushed.

Rule No. 2: Preparation is Paramount

Rule No. 3: You Are Always “On-the-Record” Even When You Are “Off-the-Record.”

Rule No. 4: Control the Interview.

The first rule in controlling the interview is avoid being interviewed in your office.

The second rule in controlling the interview is to maintain eye contact.

The third rule in controlling the interview is that you should answer the question you want to answer.

Rule number four. Like you tell your clients, always be polite during the interview.

The final rule in controlling the interview is to do it in your time frame (even though it is in the constraints of the reporter's deadline).

Rule No. 5: "No Comment" is Not an Option.

Rule No. 6: Never Deny Charges or Claims.

Always make an affirmative statement.

Rule No. 7: There Really are No Rules.

Well, not really. The overriding rule is this: Never lie to or mislead a reporter.

If you want a full version of the paper, e-mail me separately – more than happy to provide it.

Walter D. James III, Texas

What I learned from this list: "I will not comment on any pending client matters in a public forum." Remember, the other side will undoubtedly read what you have to say and it can all backfire on you ethically and in the course of providing zealous representation. You can probably expand your quote to include those thoughts as well.

Joseph G. Bonanno, Massachusetts

Never speak to a journalist.
Never.

Never ever.

Rex C. Anderson, Arizona

I've spoken to journalists on some of my cases and they pretty much always misquote you. If you do speak to one, then demand that it only be done in writing. They can email you questions, and you will answer over email. That is the only way to make positive that you aren't misquoted. A lot of journalists will push back and refuse to do it in writing solely because they love the option of changing your words around before the print it.

Never agree to a phone call interview.

Stephen Charles McArthur, California

I agree with Walter. The only real secret is to control the interview. The journalist is certain to ask you questions that are unethical or uncomfortable for you to answer. You need to provide an answer that makes for an interesting interview without giving the answer you don't want to provide. Pause and think about each question while you formulate an answer.

A skilled interviewer will try to get you into a rhythm answering innocuous questions and then slip in something not so innocent hoping you will just blurt out an answer. Don't fall for that. Learn and practice deflecting questions with a friend or colleague before you do the interview. Use phrases like "That's a great question, that is exactly what we hope to find out", "That's what this case is all about", "Interesting you would ask that, you know most people think". Give the interview you want to give no matter what questions they asked.

Duke Drouillard, Nebraska

Depending the type of matter/area of law, there are also tons of ethical issues surrounding how you can comment and what you can disclose. I don't practice criminal law, but I have heard of a lot of criminal attorneys getting in trouble for this sort of thing.

Nick Bowers, New York

As a former journalist who went to law school, I'm always fascinated by this discussion.

Marketing is great and has its place. During an active case, you owe your client consideration as to the outcome of the case. You can market many ways, you can give interviews and use all the information offered by our colleagues here. To risk the outcome of the case for marketing should not be your consideration.

I found while writing for the Huntsville (AL) Times for ten years that there was a wide range of ethical considerations among colleagues (reporters) and unfortunately I find that along lawyers.

But you can deliver a very effective message after your case concludes and not risk the outcome.

Reta McKannan, Alabama

The only other thing I would say is to make sure your client NEVER speaks to the media. We have a bit of an issue going on locally and the soon to be plaintiff decided to speak publicly about the topic. He killed his case. If you know the backstory, he is full of it. If you don't know the backstory, when and if he sues, you will see that he simply was making crap up to the media.

Jonathan Stein, California

You cited ME for some of those bits of advice Walt? Perhaps in the inverse (such as if I might have posted something here about things to remember when talking to a journalist).

Anyway, I might like to see that paper of yours. You can use this email.

Meg Tebo, Illinois

Exactly.

Bingo.
Right on.
Ignore at your own risk.

Mike Phillips, North Carolina

An attorney for whom I worked in NYC a millennium ago spoke to journalists frequently but always carried and very openly brought out his own tape recorder at the start of the interview whether or not the reporter had one. He always told the reporter that if he was misquoted, he would know it and would sue the paper and the reporter personally. He told me privately that it was "of course, doubtful" that he would sue anyone just for being misquoted but that it always had an effect on what the journalist wrote.

Lyza L. Sandgren (not a lawyer), Georgia

If you must speak to a media person, not that I can think of a scenario in which in would be mandatory, do everything within your power to make your own personal record of the interview. Digital recorders, of course, come to mind. However, be prepared to be frustrated when you try to get the media outlet to correct its inevitable errors in the story.

Mike Phillips

I'm kind of conflicted about this. On the one hand, before I went to law school I went to J-School at Temple and my public relations prof repeatedly made the point that if you refuse to comment, you will not get to tell your side of the story and you will look, at best, weasly for "no comment". I get the desire to tell your side of the story.

On the other hand, not only are lawyers under ethical restraints when talking to the press (most state bars have a rule to the effect that the lawyer will not make any out of court statements that may 'prejudice' the case in the eyes of the public; i.e. Florida Bar rule:

RULE 4-3.6 TRIAL PUBLICITY

(a) Prejudicial Extrajudicial Statements Prohibited. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.

(b) Statements of Third Parties. A lawyer shall not counsel or assist another person to make such a statement. Counsel shall exercise reasonable care to prevent investigators, employees, or other persons assisting in or associated with a case from making extrajudicial statements that are prohibited under this rule.

Although, in my opinion, prosecutors frequently walk very close to the line on this, if they don't cross it;

But also, it is not unknown for journalists and reporters to take a statement out of context and if you made a nuanced point, the nuance is lost. You give 15 minute interview and your response is quoted in one or two sentences.

Personally, I would not comment, publicly, on an ongoing case that I was involved in, at least not beyond very general platitudes like "my client will present his side of the story in the courtroom" or something like that. There's just no 'upside' to talking to reporter.

Apologies to journalists on this list but that's my take on it.

Ronald Jones, Florida

In that regard, it is the clients call. My fee agreement contains the following paragraph:

Press Inquiries

From time to time, we may receive media inquiries concerning this case. Applicable ethical requirements may preclude or limit our response to those inquiries. Subject to ethical limitations, we will abide by your instructions concerning whether and in what manner we respond to media inquiries. In the absence of specific instructions, we will respond to such inquiries in accordance with our best judgment, revealing non-confidential information when it is ethical to do so and appears to advance the Client's interests.

Walter D. James III

Lots of missing details here. Some cases are going to be in the news, no matter what. In those instances, some attorneys hire a media specialist to assist in managing the response. In cases that will be in the news regardless, managing the message is important.

Other cases are just an opportunity for the lawyer to be tone deaf. One of our local attorneys is so tone deaf he went on camera multiple times trying to justify overbearing actions he initiated on behalf of a property owner association. I know him, and he has an antagonistic approach to all conversations. Pretty much he has repetitively made an ass of himself. Even if he had a point, it was lost. He should never, ever, be on camera due to his demeanor.

In other instances (two I can think of with local counsel), the media inquiries were dealt with professionally. One attorney was so likable it was impossible for the jury or anyone else not to like him and he was the defendant in a criminal case regarding money laundering (long time criminal attorney). In another high profile matter recently, there is a movie out now that the PI lawyer has beaten a high profile federal rap. Throughout that case there was a media consultant.

Personally, I have given interviews and declined interviews. My best success with an interview resulted in absolutely no news story. It was the most favorable result possible and I am glad it worked out that way.

Darrell G. Stewart. Texas

How do you know it had an effect on what the journalist wrote? That's rather presumptive. I can understand the interviewee's desire to have his own record in case of a mistake, but to assume a reporter will act ethically only if on tape is asinine. I can

tell you right now that having an interview subject record our conversation would have ZERO effect on any story I'd write. And yes, I've had subjects with their own recorders. All that tells me is that usually this personal is going to be a lousy interview because they won't ever answer a direct question, but will, instead, as someone here advised "answer the question they want to answer, not the one that was asked." But here's the thing: the journalist is not there to be your personal PR rep. So just because you don't like the tone of a story does not mean there's anything "wrong" with it. But Ron is also correct that whether you participate or not, the story will be written. We'd like to get your two cents, but you're not going to stop a story from being done by refusing to answer our questions. We'll just do the best we can with info from other sources, AND we'll tell our audience that you refused.

News is news. It's all in a day's work for the journo.

Meg Tebo

Just the messenger of what I witnessed an attorney do.

Lyza L. Sandgren

I understand that. But if HE was presuming that his recording made any difference in what was written, he's showing that he had no respect for any journalist. Setting oneself up to be adversarial in every interaction will get him pegged as an asshole, and make good journos dig harder. As Mark Twain may or may not have once said, "don't pick fights with someone who buys ink by the barrel."

Meg Tebo

Reporters don't decide which stories are aired, editors decide that.

Reporters with a chip on their shoulder don't last long, the competition starts getting exclusive stories.

Duke Drouillard

Someone earlier mentioned the “rule” that one should not say, “No comment.”

I will pass along what I was told by a friend (who started out as a lawyer, and moved on to become VP of Public Relations for a large company). His advice was that, instead of saying simply, “no comment,” one should make a coherent statement as to why no comment was being made.

So, for example, say, “I am not permitted by ethical rules to respond to your question.” Or even, “My client does not wish to try this case in the press; we will respond appropriately in court.”

Those are (conceptually) the same as saying “no comment,” but allow the reporter something more to say than simply, “we asked _____ for comment and he/she refused to respond.”

Brian H. Cole, California

I'm not talking about a personal vendetta, Duke. I'm talking about getting a reputation among journalists for being untruthful and condescending. That morphs into reporters not trusting your word, and so they dig and dig on every word you utter. And in my experience, people with no respect for journos tend to vastly underestimate their intellect, tenacity and thirst for truth. Thus, those subjects tell reporters half-truths and outright lies, believing those reporters are easily misled and will never find the truth.

That, as many an arrogant politician has discovered, is a big mistake. Big mistake.

Meg Tebo

For me it all depends upon the journalist. If the journalist is known to cover the court and legal matters, they have a better understanding of the rules attorneys are under. If you are honest and direct and within the ethical rules you're probably going to be okay.

But I do agree with the previous comments about making sure you publicly and openly have your own recording of the interview. Ask the journalist what they're angle on the story it's and they always have an angle. But assume nothing and of course always protect your client.

Most journalists particularly those on the local level are pretty good at their job and are pretty straight-forward. Their editors know that they will have to face public scrutiny if the lawyer is untruthful or takes matters out of context on a regular basis. The reporters know that if they lie to sources and to interviewees they will rather quickly be unable to do their job.

Be polite, be humble, and be direct. Just like a deposition the answers of "yes", "no" and "I don't know/no comment" are perfectly acceptable answers.

Matthew S. Johnston, Maryland

Meg Tebo, what do you and others think about passing out exhibits (possibly selectively) to the gallery (which may include journalists) during the trial? If you do that, do you pass them out in a stack before testimony or as they are introduced or admitted?

I ask this mainly about situations where counsel knows journalists are in the gallery. I realize the judge may constrain counsel. I also realize there may be some exhibits that you may elect not to handout, such as gory photos or exhibits clients may not like being 'out there.'

Also, Meg Tebo, what do journalists like in this regard?

Rob V. Robertson, Texas

As always, Darrell makes a lot of sense. Of course this is situation-dependent, and when a case is in court, or about to be, a lawyer needs to be very cautious. I'm not by any means saying that lawyers must always talk to reporters when asked. I'm simply saying that if the story is big, you won't make it disappear by refusing to participate. And if you talk to a reporter, tell the truth (including saying that you cannot discuss some things if that's the case) and be respectful as one professional with a job to do to another. Just being unnecessarily obnoxious to opposing counsel is bad form, so too is condescension or lying to a reporter. Neither is good for your long term career prospects.

Meg Tebo

I think Meg Tebo's advice is on point. My general position is that I will not comment on the merits of the case, however if the reporter has any procedural questions or doesn't understand something, I will try to assist with that.

Steve Terrell, Indiana

I think journalists love as much info as possible. I would say though that it might be better to let people know where they can pick up a copy of the exhibit elsewhere in the courthouse, and, of course, only AFTER it's been admitted to evidence. If you can offer electronic copies of longer docs, even better.

Meg Tebo
