

## ANYTHING YOU SAY CAN AND MAY WELL BE USED AGAINST YOU

By

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What we, as lawyers, can and cannot say to the media, and when we can say it, keep cropping up for debate in the profession. Unfortunately, the usual terms of the discussion address only the simpler portion of a successful approach to working with the media. If we untangle our objectives – for example, leveling the playing field for a client – from our analysis of the rules, the “What?” and “When?” of speaking to the media are fairly straightforward.

The more complex questions fall under the heading of “How?” Even with a clear understanding of the rules and their application, without an effective procedure for speaking to the media, it is possible to convey the opposite of your intended message and to get into a pile of trouble. This is why most modern celebrities keep spokespersons – people who make a specialty of “How?” – on retainer.

I lay no claim to the exalted status of “spin doctor,” but I have had about my fair share of encounters with the media, and I have been the beneficiary of wise counsel from a variety of experienced sources. What I have learned is that there is an informal code of etiquette for dealing with the media, and that one dispenses with its wisdom at one’s own peril:

- **Vanity invites lampoon.** Seeking out the media without a professional spokesperson as buffer is dangerous. If you initiate contact with the media, and cannot decline a noun, conjugate a verb or match number between noun and verb, your comments will likely go to print verbatim. If you photograph better from the left, you will see yourself in right aspect.
- **The adage, “Any press is good press” is patently false.** A request for an interview is not a subpoena. If the potential rewards of an interview do not outweigh the risk, you can refuse to participate. For example, defending someone accused of murder, all possible gains cancel out if your interviewer has a history of asking defense attorneys, on camera, whether they believe their clients are guilty.
- **“Handling” a reporter is the short road to a hot place.** As lawyers, we are not ordinarily newsworthy, and so have little chance to gain experience in this communication format. A hundred media interviews in a lifetime is far more than average for a practicing lawyer. On the other hand, even a relatively inexperienced reporter will have endured a hundred attempts at “handling” in the first month on the job.
- **Keep your expectations reasonable.** Who is your audience and how will they react to you and your client? How does your position translate into the language of the collective consciousness? The general image of lawyers, born of thousands of television and movie dramas, each with “good” and “evil” clearly labeled, is too powerfully embedded in the

public psyche to overcome in any number of individual interviews.

- **Prepare.** We painstakingly prepare for depositions, trials, arguments on motions. When you know you will talk to the media, prepare. When scheduling an interviewer's request, ask about the subject matter and try to get a feel for the interviewer's perspective. If possible, do a practice interview with someone who is as unafraid of you as a reporter will surely be.
- **Think before speaking.** Collect your thoughts and present them in logical order, unrushed. This is a routine transaction for your interviewer, but an extraordinary event for you. It is difficult to imagine a more disadvantageous situation than speaking while agitated to someone who is calmly listening and formulating the next question.
- **Never say, "No Comment!"** While it sounds professional to the speaker, it tells a reporter that there is interesting information available somewhere else and invites a hunt for the "truth." If you cannot answer a question, say why you cannot. Most of the time, your honest reason for not discussing a matter will reveal just how boring and extraneous the requested information is.
- **Stick to what you know.** Do not be afraid to say, "I don't know." No one knows everything, and it is unlikely that you are a reporter's only source of information. The one doing the talking may see a statement as a "logical extension" or "filling in the blanks." Listeners and readers generally regard such statements, when made in an affirmative manner, as lying.
- **Honor your commitments.** If you are not ready to proceed when initially contacted, offer to call back, and then do so, even if only to refuse the interview. If you do not have, but can find, requested information, and there is no reason not to reveal it, offer to call, but then do call. Most people – and reporters are people – view a statement of intention as a promise and the failure to honor a stated intention as dishonest.
- **Answer clearly, concisely and without evasion.** Never fill the void of silence. The reporter may be too busy taking notes to ask the next question, but leaving an opening is still the easiest and most effective device to make someone talk.
- **Never restate and reformulate an answer already given.** This gives the interviewer multiple versions from which to select, and you cannot fairly expect a reporter to select the answer that most accurately conveys your meaning.
- **Use simple words and sentences.** Avoid legalese or other "...ese." The more complex the language, the more subject a statement is to interpretation. Complex comments are almost always digested and paraphrased.
- **Never go off the record.** This is not a courtroom. There is no such thing as "off the record" in an interview. Your interviewer may – kindly – not identify you as the source of a comment, but this is more than you should expect. If you do not want to see it in

print, do not say it.

- **Never repeat a negative question.** “My client has a history of filing fraudulent claims? Where do you get that from?” contains an autonomous statement against your client’s interest. Just as in a deposition, the words can be tracked right back to your mouth. The interviewer’s notes, like a deposition transcript, may not include the questioning inflection.
- **Never trash anyone.** Trash someone weaker, and you will come off as a monster. Trash someone stronger, and you, or worse yet, your present and future clients, will pay for it in installments. Besides, would you want your parents, spouse, children or clients to read your negative comments? They will.
- **Never ask to see a story before it is printed.** Aside from marking yourself as an amateur, you can trigger a negative response from your interviewer. You will raise the specter of censorship, and so invite your interviewer to view you with fear and suspicion. You might well cast into doubt everything you have said.
- **Never argue with a reporter, and never call to complain about the final story.** If you come off looking like a buffoon, take the ribbing you will get from your friends, and learn quietly from your mistake. You can only lose – and lose ugly – in an argument with someone whose words are delivered regularly to a loyal and trusting audience.

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