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Columbia Journalism Review

September/October 1994 | [Contents](#)

How O.J.'s chief strategist works the press

Secrets of a Celebrity Lawyer

by Robert L. Shapiro

As trial lawyers, our skills are honed in the courtroom. We practice our craft and improve to the point where our skills allow us to handle those important cases that the media deem newsworthy. When we are retained for those high-profile cases, we are instantly thrust into the role of a public relations person, a role for which the majority of us have no education, experience, or training. Our job switches from advocate to manager and commentator. To further compound the difficulties, when the media call, they come in droves. The lawyer's role as spokesperson may be equally important to the outcome of a case as the skills of an advocate in the courtroom.

The importance and power of the media cannot be overemphasized. The reporting of an arrest always exceeds the reporting of the acquittal. The first impression the public gets is usually the one that is most important. Unfortunately, in criminal cases, this generally is the biased report issued by the investigating law enforcement agency and, subsequently, the prosecuting agency.

Immediately upon the arrest of a well-known person, a public figure, entertainer, athlete, or businessperson, the story is framed in a way to give the prosecutor's version of the case the greatest weight. If the case is big enough, the head of the prosecuting agency will personally appear and announce a vigorous prosecution highlighting the strongest pieces of evidence showing guilt. This often takes place before a suspect has retained counsel, and any response to the media at that time is generally limited to statements from the suspect himself or from close family members.

The lawyer who is finally retained will be bombarded with inquiries from the press to comment on the allegations that have been levied by the police and prosecution. While the lawyer is busy becoming familiar with the facts of the case, beginning interviews with the client, starting the investigation, and arranging to have bail set or lowered so the client can be released, the attorney is now also obliged to be a spokesperson for the client.

Although California ethical rules do not place restrictions on an attorney's statements before trial, the majority of states do. Therefore, lawyers in states with restriction on free speech may be compelled to a simple "no comment" approach.

Otherwise, "no comment" is the least appropriate and least productive response. Coming at the end of a lengthy story, it adds absolutely nothing and leaves the public with a negative impression. At the same time, a cliché response that "these are trumped-up

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charges, politically motivated," accomplishes little good. An obvious exception would be if there are serious racial overtones or direct political implications.

The initial statement must be carefully crafted. It is never a good idea to lie to the press. To simply make up facts in the hope that they will later prove correct is too big a risk. Remember that everything you say will be recorded on videotape, audiotape, and in voluminous handwritten notes. Questions will appear and reappear throughout the case based on your initial response.

My personal preference is to prepare an open-ended response stating that we have recently been retained, that many of the facts will be in dispute, that we are conducting our own intensive investigation with the best experts in the field reconstructing the crime scene, and that we will not be able to make any specific comments until all the facts are in. This is also an appropriate time to let the public know that your client has support from his family and friends, that you are currently working with the family to arrange for bail or that you will be appearing in court to have bail set, and that you are optimistic about the ultimate outcome of the case.

If you release the story to the wire services, you can expect a barrage of calls from newspapers, radio, and television stations. In addition, free-lance writers will begin to prepare articles for magazines, and, finally, the tabloids will try to get the inside scoop on the case.

Initial relationships with legitimate members of the press are very important. The working press has a job to do. Many times a lawyer will feel it is an intrusion to be constantly beset by seemingly meaningless questions that take up a tremendous amount of time which could be better spent on trial preparation. Relationships can and should be cultivated with all legitimate members of the press. It is important for the lawyer to act as a conduit so that the real workings of the legal system can be known. My experience is that most reporters couldn't tell you the difference between a preliminary hearing and a pretrial conference. They know little or nothing of how bail is posted and what the legal requirements are. By answering these simple questions, a lawyer not only can develop a relationship with the press, but can also educate the public on the true workings of our justice system.

The initial headlines of the arrest often make the sacred presumption of innocence a myth. In reality, we have the presumption of guilt. This is why dealing with the media is so important. To make inroads into the mind-set that "if the press reported it, it must be true" is the lawyer's most challenging task.

Dealing with the members of the press with whom you have a pre-existing relationship presents no particular problems. However, the majority of the time you'll be dealing with new and different people. Be responsive to their inquiries. The wire services depend on immediate updates. Therefore, all calls should be returned as quickly as possible. The wire-service reporters are generally interested in basic factual material and do not do in-depth interviews. They will want factual background material regarding dates of court appearances, assignment of judges, specific questions regarding the charges and the potential consequences. They also, however, provide immediate distribution of anything you have to say worldwide.

Wire-service reporters can also provide a valuable source of information to you. Many times they are aware of factual material yet to be released, but which is important to

lawyers.

Care should be taken to release the same statements to all wire-service reporters within the same time framework. Many reporters who work out of the courthouse share adjoining offices. It is a good idea to constantly keep in touch with wire-service reporters and let them know any updates that are important. By opening lines of communication, you will develop an invaluable sense of trust.

Newspaper reporters require a different approach. They have more time to investigate their stories, have later deadlines, and generally will stay with a case until its conclusion. These reporters, therefore, have tremendous power, and their stories can easily affect the outcome of the case. Newspaper reporters will try to present a balanced story. However, they are sometimes hampered in this endeavor by lack of communication with the defense lawyers.

The police department and prosecuting agency have longstanding relationships with most members of the press. High-profile cases provide an excellent opportunity for top-ranking police officials and prosecutors to use the press to their advantage. The defense lawyer who has never dealt with the press, or has no pre-existing relationship with a particular reporter, is at a severe disadvantage. In order to overcome this, the lawyer must cultivate a line of communication with the reporter so the client's point of view can be expressed in the most favorable way.

Just as you would do in trial, anticipate the questions a reporter will pose. Think out your answers carefully. My personal preference is to initially talk to a reporter off the record and get an idea what questions the reporter is interested in and where the story is going. After I get a general feel for the reporter's interests, I then respond to the questions that are appropriate. If there are questions that cannot be answered, or should not be answered, I simply tell the reporter that I cannot respond at this time. Remember, everything you tell a reporter, whether it's on or off the record, will be remembered even though it's not printed.

Use great care in choosing your words for the record and for attribution. Keep your statements simple and concise. Reporters generally will not use more than two or three sentences as a quote. If you do not feel comfortable, you may want to write out statements in advance and see how they appear to you. After a statement is given to a reporter on the record, do not hesitate to ask the reporter to read it back. This will insure that the reporter got the statement correctly and also give you a chance to change any words or thoughts.

As in any relationship between professionals, give-and-take can be mutually beneficial. This is not to say that reporters will take your point of view out of favoritism. I have never seen that occur. However, by the nature of the questions a reporter will ask, you can get an idea as to what people have been telling the reporter.

Perhaps the most difficult problem in dealing with the press is dealing with the tabloids. Sensational headlines which often have little or nothing to do with the story that follows can have a severe impact on a high-profile criminal defendant. My experience is that cooperating with tabloid reporters only gives them a legitimate source of information which can be misquoted or taken out of context and does little good for your client. The practices of ethical journalism are not followed.

My personal approach is not to cooperate with tabloid reporters. In response to questions raised in those publications, I generally point out that most stories are bought and paid for and, therefore, the sources have a financial stake in the story being printed. Thus, their credibility is undermined.

However, tabloids cannot be ignored and can potentially influence the outcome of a high-profile case. I have had occasions when individuals have attempted to extort me and threaten the sale of stories to the tabloids if financial demands were not met. My practice is to report such communications immediately to the police and district attorney.

I initially tried to cooperate with television tabloid shows. I had reporters and producers try to persuade me that they would present balanced versions for broadcast. However, my experience was that they are geared totally towards sensationalism. With television's editing ability, and the instant effect of reading out-of-context statements from police reports, I am now reluctant to cooperate with many of the TV tabloid shows.

It should be noted that some of the producers are so hungry for celebrity coverage that they will give you complete creative control over your client's presentation on a segment. Although such offers have been made, I have felt that it is best for my clients and their families to generally stay away from the media and have declined what appears to be a generous offer. My thinking is, again, that editing and follow-up stories can only be detrimental.

Another aspect of dealing with the press begins after the case is under way and they are reporting the day-to-day coverage of a case in progress. Here, I make a distinction between members of the press. I always try to notify legitimate working press „ ahead of court appearances „ as to what is to be anticipated and what procedures will be used. Further, if the case is going to be advanced or continued, I notify the media so that they can adjust their schedules and avoid coming to court when nothing will take place. Such consideration helps to develop a relationship of trust which will be greatly appreciated.

After a day in court, a lawyer in a high-profile case will be inundated by the media. The first people I talk to are legitimate members of the print media. I gather the newspaper, wire-service, and legitimate magazine representatives together. These are the people who are going to have to write the most in-depth stories and are facing tremendous pressure from deadlines, especially for evening edition newspapers.

The end of a court day is a time when most of us are exhausted and must go on to prepare for the following day. Take time and be patient with the reporters. Many of the questions they ask may seem simple and sometimes irrelevant. But bear with them. They have a job to do, and your cooperation with them is always appreciated.

Do not assume that courtroom reporters understand court procedures. Take your time to explain motions that are filed, the theories behind them, and the reason for the motion. If a story appeared that you liked, compliment the reporter on his or her objectivity. Maintain a list of all reporters covering your case. Get not only their office phone numbers, but their home numbers as well. I have yet to meet a reporter who did not want to be called when something was happening on a story.

Reporters are always looking for a scoop. However, to maintain good relationships with all members of the press, it is important that all material be released simultaneously. For example, if a probation-sentence recommendation is going to be filed at the end of a case,

have simultaneous deliveries to all of the media. But make sure that the court and prosecuting attorney have the recommendation before it is released to the media.

Dealing with television presents additional problems. Not only is the content critical, but how it's said, where it's said, and your appearance are equally important. The television media, either consciously or unconsciously, create an atmosphere of chaos. Immediately upon arriving at the courthouse, you are surrounded by television crews. Reporters press their microphones at your jugular. You would think the most important event in the world was the arrival of your client and you at the courthouse. We have all seen people coming to court and trying to rush through the press with their heads down or covering them with newspapers or coats. Nothing looks worse. There is no way to avoid having your client's picture on television. Therefore, do everything you can to have yourself and your client appear in the most favorable light.

I always instruct my clients upon arrival at the courthouse to get out in a normal manner, to walk next to me in a slow and deliberate way, to have a look of confidence and acknowledge with a nod those who are familiar and supportive. Although the reporters will be shouting questions from all directions, answer no questions at this time. I simply tell the press a statement will be given at the end of the court day.

If your client is in custody, take special care to make sure that he or she appears neat, well-groomed, and in civilian clothes, even for perfunctory appearances. Television producers are notorious for editing in pictures of your client in the most unflattering light. Their preference is for pictures taken immediately upon arrest or transportation to court after your client has been up all night, unkempt and in jail clothes. They will continue to edit in this picture months after the fact. When this has happened, I have called station news directors and producers, and told them my concerns. If they told me they had no current pictures, I immediately sent them one. Almost all were sensitive to my request and stopped running the negative photographs.

In the California state court system, all judges now allow microphones and cameras in the courtroom. You must therefore be constantly aware that every movement you make and every word you say will be recorded.

At the end of a court session, the television crews will form a semicircle, effectively blocking any exit from the courtroom. The attorney will be backed up against the courtroom doors with television lights glaring in his eyes and microphones thrust in his face.

To avoid this, I tell the reporters in advance that I will be making a statement at the end of the day, and I direct them to an area outside the courthouse. I prefer a lawn with trees or some other attractive background. As I stated before, I talk to the print media first. This allows me time to compose my thoughts and outline in my mind the statement I will give.

The most important lead story on an hour newscast allots only 15 or 20 seconds for a statement from an interview. These sound bites must be concise and easily understood. In order to insure what you say is aired on the news, limit your statements. The less choice you give the news director or reporter, the greater chance you have of airing the precise words you want aired.

If you feel it is appropriate to answer questions, remember that only the answers are aired ,, never the questions. Pick and choose the questions you want to answer. You do not

have to be concerned with whether the answer precisely addresses the question, since only the answer will be aired.

By taking time to compose your thoughts before you come outside, you will have a chance to relax. I always have my client, if not in custody, or family members close to me, but do not allow them to answer any questions. Do not lower your head and look at the microphone. This will cause your eyes to close and give you a dazed appearance. The best way to see how people come off well on television is to watch professionals. A good rule is to try to look over the cameras. This will cause you to keep your chin up. John Wayne, when asked about his success, was fond of telling young actors, "Speak low and speak slow." Trial lawyers, who are used to quick cadence and firing fast questions on cross-examination, must rethink their delivery for television. Look neat and well-groomed. Rather than be intimidated by cameras, think of them as a friendly audience to whom you are trying to tell a very short and important story.

In dealing with all members of the press, avoid clichs. Referring to a case as a tragedy or to a client as being framed does not convey a thoughtful message. To describe an unfortunate death situation, I use the term "a horrible human event." Come up with phrases that you believe in and are comfortable saying. Repeat them continuously, and they will be repeated by the media. After awhile, the repetition almost becomes a fact. That is your ultimate goal.

In one murder case, I was faced with a situation where I wanted to leave our options open for trial, but also to attempt to resolve the case on a favorable basis. Rather than try to explain the difference between first-degree murder and second-degree murder and voluntary manslaughter and involuntary manslaughter, I used the phrase "accidental manslaughter." This was a perfect phrase for television, although it has no legal significance. The idea that I wanted to convey came across loud and clear. It was a death that was unintentional, that may have legal consequences, but was nothing more than an accident.

Be concerned with time constraints on all legitimate members of the press. The television media begin their news coverage at 5 p.m. If you are leaving the courtroom at 4:30 p.m. and conducting a news conference at 4:45 p.m., that gives very little time for preparation. Thus, reporters will conduct a live-from-the-courthouse segment and then edit in the comments you have just made. These brief press conferences are of tremendous importance. Try to watch the first news of the day if at all possible, or have someone record it for you. The news is repeated throughout the evening. I have often called reporters to point out mistakes in their initial newscast, and an hour later saw a different and more accurate version. Your input will be respected.

Reporters in high-profile cases will continuously ask you to come on live news segments or for private interviews. My policy is the same as with the written media: I want everybody to have equal access and not create any animosity through favoritism. Therefore, I kindly thank reporters for such inquiries and tell them that I must decline for the above stated reasons.

There is no question that media coverage can and does affect the ultimate outcome of widely publicized cases. Just as it is important to cultivate relationships with judges and prosecutors, it is equally important to establish and maintain such relationships with the press. When bail was set for Christian Brando, more than fifty journalists were camped outside the county jail awaiting pictures and comments upon his release. I knew the legal

requirements in posting a property bond would delay Christian's release for several weeks. I therefore contacted all members of the press covering the story and informed them there was no need to camp out, and I would notify them when his release would take place.

At first, most reporters remained on the scene. As the days went by, their ranks dwindled. Finally the local television crews and a few tabloids were the only ones left maintaining all-night vigils. I personally contacted the local crews and again told them that I would tell them exactly when Christian's bail was posted and coordinate a release through the sheriff's department. The sheriff's department was extremely happy to cooperate because the reporters were causing a security problem at the jail. Even though Christian's bail was posted late in the day on a Tuesday, and he could have been released any time that night, I fulfilled my promise and coordinated with the sheriff's department a release at 11 a.m. This allowed the press enough time to gather and allowed the sheriff's department to set up proper security for the safety of the reporters and for us.

Creating and cultivating such relationships pays great dividends. Remember: the press, including reporters, photographers, cameramen, and backup crews, all have a job to do. Making their job easier can only serve you and your client's best interests.

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