

Media and Publicity Public Advocacy v. Officer of the Court

Eight Rules for Dealing with the Media

Speaker Information

Christopher L. Tritico
Essmyer & Tritico, L.L.P.
4300 Scotland
Houston, TX 77007
713.869.1155
Fax 713.869.8957
E-Mail: CTritico@EssmyerTritico.com

Biographical Information

Chris, a native of Houston, Texas, received his Bachelors Degree at Sam Houston State University and his Doctor of Jurisprudence at South Texas College of Law. Mr. Tritico is licensed to practice law in the State of Texas, United States Court of Appeals for the Fifth and Tenth Circuits, and the United States District Court for the Southern and Eastern Districts of Texas. He is a member of the State Bar of Texas, The National Association of Criminal Defense Lawyers, The Texas Criminal Defense Lawyers Association, The Harris County Criminal Defense Lawyers Association, and The Houston Bar Association.

Mr. Tritico began his career as an associate of famed attorney Richard "Racehorse" Haynes. After leaving Mr. Haynes' office in 1994, Mr. Tritico started his present firm Essmyer & Tritico, L.L.P. A regular speaker to the Houston Federation of Teachers and other groups, Mr. Tritico has presented workshops in areas such as administrative rights and techniques for avoiding false allegations of child abuse. In 1988, Mr. Tritico authored an article entitled "Investigative Techniques Every Lawyer Should Know." He also authored "Teacher Contracts and the Hearing Process: The Road to Victory" The Houston Lawyer, March/April 1997, Vol. 34, No.5.

Mr. Tritico has appeared on Nightline, Meet the Press, CBS Evening News, World News Tonight, Good Morning America, CNN, Fox News and many news organizations around the world. He is the legal analyst for News Radio 740 KTRH in Houston, TX and Co-host of "Hearsay With Chris Tritico and Brian Clary" on Talk Radio 950 KPRC in Houston, TX.

18th Annual Juvenile Law Conference

PROFESSOR ROBERT O. DAWSON
JUVENILE LAW INSTITUTE

February 1- 3, 2005 • Renaissance Hotel • Austin, Texas

EIGHT RULES FOR TALKING TO THE PRESS

Christopher L. Tritico

Too many times lawyers tell me they will not talk to the press because they always get misquoted. Let me dispel a few myths. Not all reporters have an agenda. Not all reporters are trying to spin stories. The press can help you if you deal with them.

These eight rules will help you in dealing with those cases that the media is interested in.

- 1) Keep it simple stupid;
- 2) If you do not want it reported, do not say it to a reporter;
- 3) Say it in 20 seconds or say nothing at all;
- 4) Learn and live by the rules that reporters have;
- 5) Do not get angry when they get it wrong;
- 6) Smile;
- 7) When a reporter asks you a question give an answer;
- 8) Do not let your love of the camera override your judgment.

Most reporters are not lawyers. They do not understand the legal matters that go on inside the courtroom. While they want to get the story correct, they also have to make it interesting. The media has evolved into a television show, ratings matter more than anything else. News is no longer a show detailing matters of public interest or concern. Always bear that in mind. A reporter has about 2 minutes on the air for the biggest of stories. The reporter is trying to encapsulate a day's events into that time frame and at the same time make it sensational. This can be used to your advantage.

1) Keep it simple:

When you answer a reporter's question keep your answer simple and easy to understand. Everyone knows that lawyers can say phrases in Latin. Speaking in Latin does not make you a newsworthy person. The reporter wants to put a story on the air that a person living in a trailer can understand. Talking like a law professor may impress your mother, however, it most likely will not make the air.

Example:	Question:	"Why was bail set at one million dollars and what are you going to do about it"
	Bad answer:	"I do not know why it was set so high. The constitution prohibits setting bail at an amount where it operates as an instrument of oppression. I intend to immediately file a Writ of Habeas Corpus to attack this unconscionable bail. I expect that the court of appeals will grant the writ and set bail at an amount that is within the framework of the constitution"
	Good answer:	"Setting high bail always makes for a good news story. I am certain that the court of appeals will reduce the bail in short order."

The first answer shows that you have read the constitution and know how to say Writ of Habeas Corpus. No one watching the news knows what that is. The second answer also tells the listener that you know what you are doing but says it in a fashion that they can understand. Simple answers make the news. The first response will be most likely misquoted by the reporter without using your sound bite. A problem that many lawyers have is they feel the need to explain everything in legal terms. That results in misquotes and edited sound bites that never helps your cause.

2) If you do not want it reported, do not say it to a reporter:

Rule two should be self explanatory. If you do not want information reported, keep it to your self. All reporters, I mean every one of them, is looking for the story or the spin that no one else got. In a high profile case they will call you at all hours and camp out at your doorstep. I have never met an unfriendly reporter. If you become friendly with the press corps, and there is nothing wrong with that. Never forget that they are always working. Do not let your guard down and say something that you do not want aired.

However, becoming friendly with them will give you advantages that others do not get. Your friends will come to you with new information first. You can find out matters that your opponent is doing before they wanted you to. The press can be a very helpful tool to you. They will only be a tool if you use them properly.

3) Say it in 20 seconds or say nothing at all:

When you are doing an interview or a press conference that is taped. YOUR SOUND BITE WILL NOT BE MORE THAT TWENTY SECONDS. Never, never forget this. I have had more lawyers tell me that they will not talk to the media because they always make them look stupid. The reason they look stupid is because they were edited. Answer every question in 20 seconds or less and you will not get edited. The press corps, generally, is not intentionally trying to make you look stupid. They do not know what the hell you are talking about. When a lawyer drones on the reporter has to go back to the studio and edit your remarks to fit with in the time frame they have for the story. If you do not want to be edited, say it in 20 seconds or less. Droning on trying to make yourself sound good is a big mistake. Say it and shut up. If the reporter has a follow up they will ask it. If they do, answer it in twenty seconds or less.

Print media is confined by how much space the editor will give them for their story. Give them the twenty second answer as well. Print reporters will edit you as well. If you keep your answers to the short twenty seconds sound bites, you will have far less trouble with the editing.

There are times that a reporter will want an explanation about the legal matters going in the courtroom. If these questions come up during a press conference keep your answer short and simple. After the press conference is over, if they want further explanation give it to them with the cameras off. They will use your information to put the story together and use your words to explain on the air what happened in the court room. You still get your good sound bite and they got a useful story. Everyone wins.

4) Learn and live by the rules that reporters have:

When the cameras come on and the pens come up everything you say is on the record. If you give an on the record interview do not get upset when it is reported. You cannot and will not have a group "off the record" discussion. You will not have the luxury of having off the record discussions at the door of the courthouse with the entire press corps there.

If you choose to talk to a reporter about matters that you do not want attributed to you or matters that will be coming up that you want them to be aware of but not reported until it occurs, give it to them "off the record" or on "deep background". If you choose to do this, make sure that you and the reporter have an understanding of what you are doing and how the information is to be used.

I have given many "off the record" or "deep background" interviews. I have never been shafted by a reporter in doing so. The reporter wants and needs the information. If the reporter gets the information from you and airs that it came from you, he knows you will never help him again. However, always tell them up front that your comments are off the record. If it is a reporter that you do not already know and trust make sure that you both agree on what the meaning of that phrase is. There are times when an off the record discussion can benefit your client. For example, a reporter calls you and is working on a story, however, he has bad information or only half the information. You want the reporter to get the story right for the benefit your client. However, you do not want to be quoted as the source of the information. Give him the information he needs in an "off the record" or "deep background" conversation. This way you can tell him where to go look to get the correct information. The reporter gets the story and your client looks better for it. I have never met a reporter that did not appreciate that kind of help. In the end they will help you with better stories for helping them.

Matters may be coming up that you think would benefit your client. If you want the media to cover it let them know about it. By saying this I am not suggesting that you have a hotline to the press and bug the crap out of them. However, when something important is coming up and you feel that they might want to cover it, give it to them as background. They will appreciate it.

In big cases you will run into reporters away from the courthouse. Every time you get around a reporter he will ask you questions. They cannot help it. If you do not want to be quoted, tell them it is off the record. If they will not agree, do not talk about your case. If you do not want to talk about the case, tell them and they should respect that.

Toward the end of the Timothy McVeigh trial the reporter from Newsweek had a party one Saturday night. He invited me and some of the other lawyers on the case. There was probably thirty reporters there. I went to the party with another lawyer from our team. When we got there the host of the party told everyone there that we were the off the record only. We stayed for about an hour and a half. We had a great time and not one reporter aired a story that we were there or anything about what we talked about while we were there. Now to be honest, we were both very guarded in what we said at the party. However, in a case like that, the fact that we went to the party would have been a story in and of itself.

5) Do not get angry when they get it wrong:

No matter how hard you try sorties will be aired and printed where the reporter gets it all wrong. This is not cause for anger. It is not necessarily cause for even a phone call. Once it is done, it is done. If the story is so far off the mark tell the reporter in an off the record discussion what the problem is. They might fix it later. Some reporters have agendas. You might not know who your friends are when this happens. I very rarely call and have a discussion with a reporter after a story has aired- even if I do not like the story. Gripping at them or their editor may only cause them to hurt you later. If they get the story wrong, just live with it.

6) Smile:

When you are giving an interview, smile. Everything is not so serious that you cannot smile. A smile goes a long way on camera. You want to express confidence in your client and your case. Give the interview serious answers, but do it in a friendly conversational tone. Matters will come up that require a more serious tone, when that happens be serious. However, you will do yourself and your client good if you smile and stay conversational.

7) When a reporter asks you a question give an answer:

If there is one answer that is universally wrong, it is "No Comment". When you say no comment, you look scared and your client looks guilty. Answer, even if the comment does not answer the question, just answer.

Now I am not suggesting that you have to give away the farm here. There may be matters that you just cannot comment on. If you have a gag order, for instance. When that occurs, you will have to tell them that you cannot comment. Instead of just saying no comment, it is better to say something like "You know that the court has ordered that I not make comments about that" or "Are you trying to get me held in contempt" with that answer you can smile and make light of the fact that you cannot talk about it and the public thinks that you want to answer but cannot.

8) Do not let your love of the camera override your judgment:

There are very few things that we encounter in life more fun than walking up to 100 cameras and reporters. The hair on the back of your neck stands straight up. It is an experience that many people live for. However, never forget that the attention that is being put on you is a result of your clients dilemma. Your client comes first, not your mug on TV. Do not work your case up for the media impact. Do not play to the media. You media exposure is a fringe benefit of landing the high profile case. If you play to the media your client will suffer.

It is a poor practice to seek out the media. It is a better practice to let them come to you when they have a story. When you are working on the high profile case it is all too easy to spend too much time talking to the reporters and not enough time preparing for trial. If you fall into that trap, you will in all likelihood be the subject of a writ later on for doing it.

All comments to the media should be done with Rule 3.07 of the *Rules of professional Conduct* in mind. You cannot make statements that are designed to materially prejudice the proceeding. (R. Prof Conduct 3.07(a)). Lawyers run into problems with this section when they comment on the character of a party or witness, discuss the plea negotiations or the contents of a confession in a criminal case,¹ the performance or the refusal to perform any test, an opinion as to the guilt or innocence of a defendant in a criminal case, or discussing evidence that is inadmissible at trial. (R. Prof Conduct 3.07(b)(1-5)). However, the rules give lawyers guidance as to what matters may be discussed with out violating the rules:

- 1) The general nature of the claim or defense;
- 2) Information contained in a public record;
- 3) That an investigation is ongoing and the general scope of the investigation, offense, claim or defense.
- 4) The identity of the persons involved, if not protected by law;
- 5) Scheduling matters;
- 6) A request for assistance in obtaining evidence;
- 7) A warning of danger if one exists;
- 8) In a criminal case:
 - a) The identity and residence of the accused;
 - b) His residence and occupation;
 - c) Information necessary to aid in the apprehension;
 - d) Facts about the arrest;
 - e) The identity of the investigating and arresting officers and the length of the investigation.

(R. Prof Conduct 3.07(c)). No lawyer will run afoul of this rule if you keep from attacking the opponent of the victim in any case. Read this rule when you get hired on the high profile case.

There it is eight rules for dealing with the media. The effective way to deal with the media is to understand their purpose for being there and your purpose for giving the interviews. Keep your perspective. Keep your clients best interest in mind. You will do fine.

¹ One has to wonder how there are any prosecutors left licensed.