

Sunday, March 11, 2007

Journalists are humans. Resist the temptation to treat them as confidants.

As much as I worship at the altar of the First Amendment, that does not automatically justify worshipping journalists. (Image from the public domain). Many times, potential clients seek to pay me through "tons of inevitable publicity" of their case, rather than through money payment. I guess they have not heard me speak about my general inclination to speak little to the press about my own clients' cases and to be more readily available to talk about non-clients' cases. The opportunity for a lawyer to fulfill any dream of being on television (whether for the excitement of appearing on this still-fascinating yet overly-censored medium, or for publicity reasons) should not be at clients' expense, particularly when the appearance turns out to be an awkward dress rehearsal at best. Fortunately, I learned before ever stepping foot into law school how awkward one can look and feel on television. For me it started at thirteen years old, when a cable television interviewer asked for an interview of a youthful customer at the legendary Louis Tannen's magic shop in New York. My excitement quickly turned into sweaty palms, as I became preoccupied with the interviewer's request to look into the camera and not at him while answering his questions and eventually making a coin disappear. My opportunity to expand my magic show clientele went south. Five years later, I watched myself on New Haven's local ABC affiliate, playing lead trumpet with a folk rock group after we had privately produced and issued an LP record (before the days of CDs). Somehow, the camera tended to close-up on me just after I was finishing a riff, only to see me emptying out the accumulated saliva from my spit valve to the floor. Perhaps such visuals were more in sync with auditioning for *Vomit and the Zits*. Visually, I was a not ready for prime time player. Thankfully, a few factors ultimately came together to make me more comfortable and presentable in the mass media, including constant public speaking through court trials, handling rapid-fire questioning from appellate judges, joining my law partner Jay for two years behind the mike on our former weekly radio show "Legalmente Hablando" ("Legally Speaking"), learning from Jay's natural ease speaking on camera and on microphone, and, ultimately, many interviews for several years.

Journalists are humans. It is best to resist any temptation to treat them as confidants. Being human, they are fallible; they are deadline-driven, and many churn out overly-short news stories rather than pursuing in-depth investigation and lengthier coverage, which often is inconsistent with obtaining and presenting objectivity and accuracy; and they compete against the 24/7 never-ending churning of news stories online and off. As much as I worship at the altar of the First Amendment, that does not automatically justify worshipping journalists (aside from Daniel Schorr -- heavy admiration is more like it -- but he has not tried interviewing me; he is in a class by himself). Over time, I have experienced the real value of never hesitating to say with a smile to journalists: "Off the record", "I will not be commenting on that right now, because...", "You should seek a different interviewee, because my opinion does not match the viewpoint you seek," and "You appear to be trying to get an inaccurate soundbite from me through seeking a yes or no answer to your convoluted question." Journalists often work at a fast clip, and often seek interviews close to deadline. Recently, a longtime reporter with a Washington, DC, network affiliate kept calling my office while I was offsite, hoping to hear back before her deadline, and telling my secretary she would keep close to her cellphone for my return call about an interesting client for whom we had recently fought another aggressive public round. Not expecting my client to be well-served by talking on the record before feeling out the reporter, I told her at the outset that the conversation was off the record. She wanted to keep talking, and seemed interested in my helping to simplify the convoluted procedural picture of my client's litigation battles. However, soon she started grilling me -- non-objectively -- like a prosecutor might grill a criminal defendant who has waived his or her Fifth Amendment rights. I told this journalist that I found it of no use to be grilled in this fashion in an off the record conversation, and that I was becoming uncertain whether she would honor keeping the conversation off the record. She tried to bait me to speak on the record by telling me she was waiting for a response from my opposition. She wanted a comment from me before her deadline. She asked: "What should I do? Say you declined to comment?" I responded: "You cannot even say that I declined to comment, because I said at the very beginning that everything I say in this conversation is off the record." With that, this two-decade veteran of local network television news thanked me for confirming lawyers' reputations and abruptly hung up. Granted, this was after I had earlier told her that my years-long experiences with journalists taught me that many could be trusted, but many not. Finally, when one speaks to a journalist without saying "off the record", the speakers' words are fair game to be quoted and misquoted. (One reason for misquotes is the deadline-driven, news-churning culture of most journalists, but I suspect that too many journalists are more committed to printing a quote than to taking the time and effort to assure it is not a misquote.) Recently, for instance, I returned the phone call of an ABC reporter, and figured he was just getting some background from me, and possibly considering interviewing me on camera about Barak Obama's lawyer's sending "a cease-and-desist letter to [Lindsay] Ashford, asserting that the use of the photos [of presidential candidates' minor children and grandchildren] is not simply defamatory, but is a criminal act," and that the Illinois senator reserved the right to 'pursue civil remedies and criminal referral.'" However, at the end of the discussion, I learned that the call was for an online article, so I realized I might be quoted. That was fine by me, because I never said "off the record." In this instance, the journalist was professional, and quoted me correctly (but

only a snippet of our talk): "If Obama knows that his lawyer is doing this, then that's one reason not to vote for him," Katz said. "These are clear free speech issues." Then, again, I said the same thing about the rest of the candidates. As an aside, the journalist also interviewed First Amendment lawyer Larry Walters, with whom I had the pleasure of working as local counsel in fighting the termination of a prison guard who had posed nude on an Internet site celebrating the tattoo and body piercing culture.Â Â My work is never dull. Jon Katz.

Posted by Jon Katz in Jon Katz in the News at 00:00

I believe you might be able to help a very good man, Mike Rodelli, to go public with his very compelling case for the questioning of a new suspect in the Zodiac Killer case. He has been working hard on his case for over 8 years, and has followed the letter of the law the whole way, as his "suspect" is a very powerful and wealthy businessman (possibly an attorney) who has threatened to sue him if he ever reveals his name publicly. Mike has not, but has not received any help from the SFPD because of the position of this man. Please visit his site www.mikerodelli.com for the details on the legal conundrum he's in, and see if there is anything you can do to help him go forward with his case, as this may mean a very sick serial killer could finally be caught after over 35 years of injustice. Thanks.

Anonymous on Mar 11 2007, 01:03

Regarding the above Mike Rodelli-related comment, I am not the person to assist Mr. Rodelli's efforts to convince prosecutors to pursue a prosecution. I have never prosecuted and never will. Jon

Anonymous on Mar 11 2007, 07:53