

Media Management Strategies in Litigation

THURSDAY, APRIL 29, 2021

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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Jay Jones, President & CEO, **AlwaysON PR, Inc.**, New York

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Why Should Lawyers Understand the Media?

1. Because what you don't know could hurt you and your client, and when you least expect it.
2. Because you and your client could be missing out on lost opportunities.

You Will Learn

1. The +’s and –’s of engaging with the media;
2. How to engage with the media.

The “UCLA-selling-donated-body-parts-out-the-back-door”* and “nude-high-school-students-in-a-school-magazine”** cases



* Storytelling & the “20 second pitch”

** “Soundbites”, discussed below

The Risks and Benefits of Engaging With The Media

1. No Real Choice (when the media is interested)

a. Plaintiff: *Salka v. SDUHSD (Torrey Pines High School)*



This is news?



A soundbite, but not a good one



No privacy in PRA*

**Poway Unified School District v. Sup. Ct.* (1998) 62 Cal.App.4th 1496

(1. No Real Choice, cont.)

b. Defendant: *Jane Doe v. Dr. Benjamin Cajoon; Inland Eye Clinic*



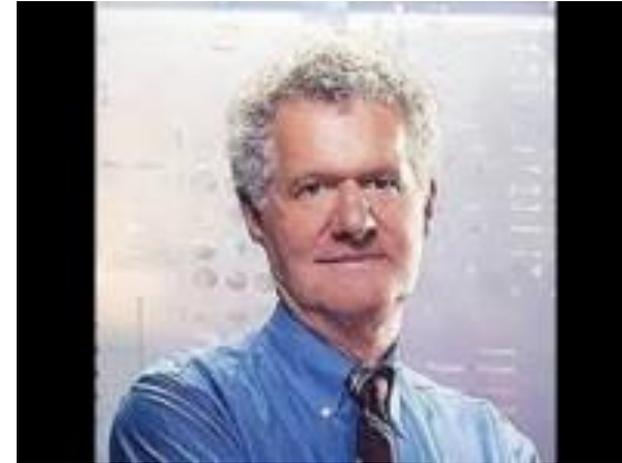
- 1) "No comment except he doesn't work here anymore" was awful PR. Disservice to client to say "we cannot comment due to the investigation," which is untrue. Sophisticated PR will often go on the attack, with their own allegations. At a minimum, the defense attorney should say something like, "these are just allegations", "anyone can file a lawsuit and allege anything they want," "we are looking forward to day in court", or "please withhold judgment", especially in criminal cases.
- 2) Note: "Exclusive"
- 3) Client's face and name hidden; typical practice of media anyway.
- 4) Sincere tears and fear are safe.
- 5) Note: Attorney Anna Yum hits the employer on legal issues; the doctor has already been pummeled.

(1. No Real Choice, cont.)

c. Paul W. Krueger

<http://www.paulwkrueger.com>

Paul W. Krueger is an Emmy-award-winning journalist, writer, editor, researcher, and consumer advocate. During his 45 years as a reporter, Paul worked for daily and weekly newspapers, local and national magazines, and a network-owned television station. He excels at investigative, consumer and medical reporting. Paul has extensive expertise in public records research at courthouses and government agencies. Paul's colleagues often seek his help in researching and writing their own stories, making use of his institutional knowledge and experience to get fast, accurate information.



Introduction



Always engage

2. Find Witnesses, and Clients

The San Diego Union-Tribune

Woman says San Diego deputy sheriff asked to use her restroom, then groped her



Sheriff Bill Gore posted this photo of Deputy Richard Fischer, appearing here with Magic of the K-9 unit, at KUSI TV in September 2016. "Thanks for tuning in this morning!" the sheriff said on Twitter. (Sheriff's social media)

By JEFF MCDONALD
NOV. 9, 2017 5 AM PT

A unidentified woman has filed a claim for more than \$6 million against San Diego County alleging she was sexually assaulted by a deputy sent to her home in the middle of the night to check on her welfare.

According to the complaint, the woman was "rubbed and fondled" by a deputy who returned to the home at 4 a.m. on Aug. 20, about an hour after leaving the woman's

Nov. 9, 2017, local newspaper breaks the story *

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April 24, 2021
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March 20, 2021
- 4 McKamey Manor 'victim' speaks out
Oct. 30, 2015
- 5 San Diego Democrats request independent audit of deaths in county jails



Nov. 11, Favored local station (ABC) gets exclusive for second victim

<https://www.kpbs.org/news/feb/another-accuser-c...>

Another Woman Comes Forward In Sexual Misconduct Case ...

Feb 28, 2018 — A 15th woman has come forward to accuse a San Diego County ... Sheriff's Deputy Richard Fischer is escorted in handcuffs from his arraignment. ... But, Gilleon said, the Sheriff's Department should have found her in their ...

<https://www.sandiegouniontribune.com/courts/story>

Ex-deputy accused of misconduct with 16 women pleads ...

Sep 9, 2019 — Richard Fischer pleaded guilty Monday to four felonies, three ... A former sheriff's deputy accused of on-the-job sexual misconduct involving 16 women ... Daniel Gilleon, the attorney representing several accusers in a civil ...

<https://www.latimes.com/california/story/san-dieg...>

San Diego County costs for suits against ex-deputy are costly ...

Mar 28, 2021 — Former sheriff's deputy Richard Fischer was taken into custody in ... was accused of groping and sexually assaulting at least 16 women, ... But attorney Dan Gilleon, who filed many of the cases against Fischer and San Diego ...

<https://www.latimes.com/local/lanow/la-me-deput...>

5 women accuse San Diego County deputy of sexual ...

Nov 30, 2017 — Deputy Richard Fischer, right, was featured on Sheriff Bill Gore's ... Claims submitted by attorney Dan Gilleon on behalf of the women say the ...

<https://www.cbs8.com/article/news/additional-wo...>

Additional women come forward with sexual misconduct ...

Nov 28, 2017 — RELATED: Another woman accuses San Diego Sheriff's Deputy of sex assault. But Dan Gilleon - the attorney representing six of Fischer's ...



SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

24th Victim Files Lawsuit Against Former Sheriff's Deputy For Sexual Assault

Former Sheriff's Deputy Richard Fischer was sentenced to five years in prison for assaulting more than a dozen women.

By Dorian Hargrove and Mari Payton • Published December 27, 2019 • Updated on December 28, 2019 at 2:39 pm



A new lawsuit has been filed by a woman who was allegedly assaulted by former Sheriff's Deputy Richard Fischer. NBC 7's Danny Freeman has more.

Trending Stories

- INNTOWN SAN DIEGO
Main San Diego Off Overturned San Diego Building, Hits and Kills
Bystander: Police
- BASLAMP QUARTER
SOPD Identifies All 5 Victims of Gaslamp Quarter Mass Shooting
- U.S. HOUSE OF REPRESENTATIVES
California Losing Congressional Seat for First Time
- VISTA FIRE DEPARTMENT
Sister-in-law 'Vista Firefighter, Father of 2 Dies After Battle With Cancer

Weather Forecast

Dec. 27, 2019: 24th victim

* T.V. media will follow the paper; compare/contrast: Arevalos, Hays, Moncrief, Pascua

3. Marketing

- Jay and Dan's "end around" play
- Local v. national notoriety; "the Gloria Allred of San Diego"
- A lister with other attorneys; C lister with general public (good and bad)
- The most important factor is duration of exposure
- Advertising is best for direct leads; notoriety leads to attorney referrals
- It's rare to get a non-referred case/client directly from a news story

4. Reputation

- “There’s no such thing as bad publicity except your own obituary”; this is not true.
- Reputation backed by a bullet in the chamber, i.e. being willing and able to use media.
- Management, e.g., for plaintiff, trial wins are less likely so use settlements or judgments (CCP 1001; PRA)

Good PR



Woman Wins Lawsuit Against San Diego Police Officer



Taxpayers Funding Nude Dancers' \$1 5 Million...



\$17 million awarded to a victim of brain injury

Not so good

The San Diego Union-Tribune

Jury awards no damages in Filner civil case

1 Plan would transform Blvd into pedestrian

2 Apple to expand hub, boosting years

3 Downtown is still new office build

4 San Diego Court makes lawsuit & assault by Foster

By DANA LITTLEFIELD
MARCH 30, 2016 3:40 PM PT



Los Angeles Times

Jury says San Diego police did not retaliate against officer who complained about discrimination

Reporting from San Diego — San Diego police did not retaliate against a black sergeant who complained about racial discrimination and insensitivity within the department, including the use of a 1909 racist cartoon in a training session, a jury decided Thursday.

Cases statewide
3,702,692 confirmed
60,908 deaths

5. Enhance Your Trial, Speaking, and Storytelling Skills



- Confidence and comfort levels skyrocket over time (big improvement since Sean Hannity)
- Learn to speak succinctly, clearly, slowly (or fast if appropriate)
- Become comfortable enough to use humor
- But also be able to push the envelope and get dirty
- All the above happens in the courtroom too, which then helps media appearances

6. Although Rare, You/Your Client Can Get Sued for Defamation

- a. Sued twice since 2005
 - b. Defamation *per se*, e.g., crime, occupation, disease, impotence, chastity (CC 45,46)
 - c. Anti-SLAPP hammer (*Lipstick Bounty Hunters v. Gilleon*)
 - d. Opinion defense, but don't test the "rhetorical hyperbole" rule
 - e. Truth as a defense (but not an element)
 - f. Absence of malice defense
 - g. Fair and true report to the media about a complaint that has been filed. Exceptions:
Violation of Rule 5-120, a court order or confidentiality imposed by law*. (*Commodity Trucking v. Gilleon*, [Unpublished appellate decision denying anti-SLAPP motion](#)).
- New law. Question if confidentiality applies to written agreements vs. statute, e.g., juvenile records, doctors, lawyers, employers, etc.

7. Ethics Complaints

- a. ABA Rule 3.6, prohibits statements that have a “substantial likelihood of materially prejudicing an adjudicative proceeding,” but can make statements to mitigate “the substantial undue prejudicial effect of recent publicity”

- b. Gag Orders In Disguise (*Abdullah v. SDG&E*)



Full News Story



Clip



Noose on client’s SDG&E truck

ACLU Press Release

In a brief filed yesterday, the ACLU of San Diego & Imperial Counties defended the First Amendment against an unjustified attempt to impose a gag order on the parties to a controversial discrimination case against San Diego Gas & Electric Company.

In February 2011, Bilal Abdullah filed suit against SDG&E in San Diego Superior Court, claiming that the company unlawfully terminated him when he complained about racial discrimination. SDG&E denies the claims. Before trial was scheduled to begin on October 19, 2012, SDG&E asked the court to restrict the First Amendment rights of the parties and lawyers to talk about the case. SDG&E complained that pretrial publicity was unfavorable to its case, although SDG&E took full advantage of the opportunity to state its position in the press. SDG&E also offered no evidence on how many people in the San Diego jury pool actually saw the limited media coverage of the case, especially in the current news cycle dominated by election stories and other matters.

The court denied the initial request for a gag order but agreed to continue the trial until early January. Still not satisfied, SDG&E renewed its request for a gag order. The ACLU then joined the case to oppose this unjustified attempt to infringe First Amendment rights.

“First Amendment rights don’t stop at the courthouse door,” said David Loy, legal director for the ACLU of San Diego & Imperial Counties. “The public has a strong interest in hearing about this kind of case, and courts may not restrain the speech of lawyers and parties to litigation on mere speculation that it might influence potential jurors. Courts can ensure fair trials without violating the First Amendment.”

Dan Gilleon, the lawyer who filed the lawsuit against SDG&E, believes SDG&E’s request for a gag order is consistent with the company’s retaliatory conduct in the underlying case. “It’s ironic the way SDG&E is targeting me for speaking to the media just like it targeted my client for speaking out against racism at SDG&E,” Gilleon said. “When will SDG&E learn that free speech is part of the Bill of Rights?”

The motion for a gag order will be heard in San Diego Superior Court before Judge Jeffrey Barton, Department 69, at 9:00 a.m. on November 9, 2012. The Mitchell | Gilleon and Simpson-Moore law firms represent Mr. Abdullah in his discrimination case against SDG&E.

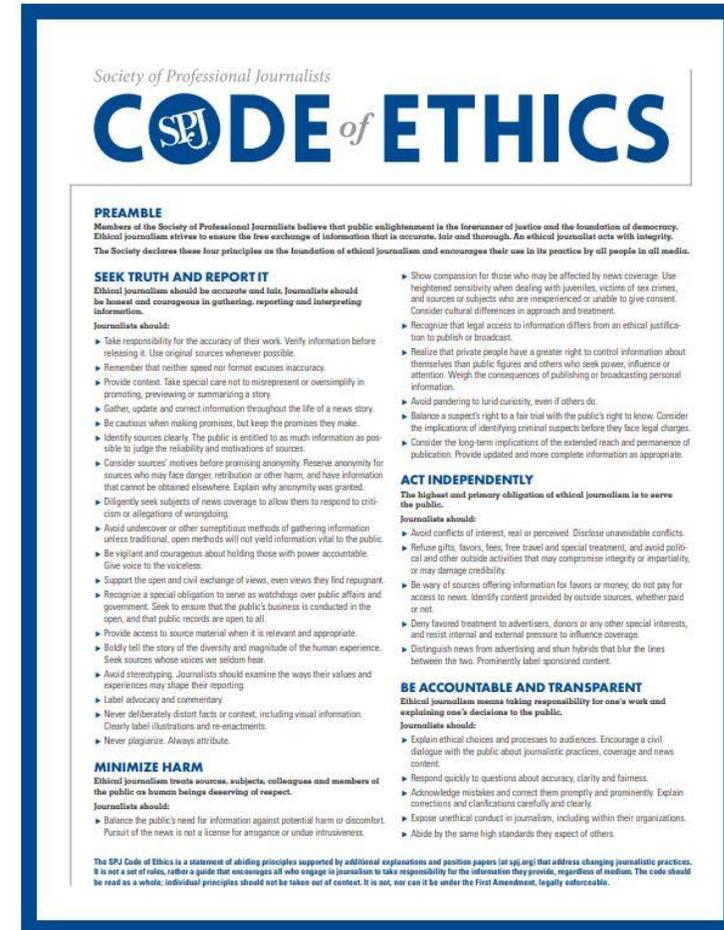
How to Handle the Media

1. Know Your Audience

a. Ethics of Journalism

SPJ's preamble: "Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. Ethical journalism strives to ensure the free exchange of information that is accurate, fair and thorough. An ethical journalist acts with integrity. The Society declares these four principles as the foundation of ethical journalism and encourages their use in its practice by all people in all media."

- 1) Seek Truth and Report It
- 2) Minimize Harm
- 3) Act Independently
- 4) Be Accountable and Transparent



- b. “Off the Record.” A reporter cannot publish anything you say if it’s “off the record.” Otherwise, they can report anything you say. Put it in writing if you don’t trust the reporter.
- c. Deadlines. Is this a “day turn” story? If so, make sure the interview happens early. Are you being asked for a statement just before the deadline? If so, make a demand in writing that you are given a chance to make an informed comment even if the story must wait a day. Cite the SPJ ethics rule and the Restatement that a story cannot be one-sided.
- d. Photojournalists. Understand the demands being placed on reporters these days, including having to shoot their own video. Help them.
- e. Sweeps and “Strippers Rate”. Know when sweeps are occurring and maybe hold off until that time for a great story that they might promote.
- f. Exclusives. A huge motivation for reporting a story. Make sure you let a reporter know if the story has already been broken or you’ll make enemies. Normally, t.v. won’t follow t.v., but will follow the print.
- g. Visuals. Make sure you have these ready before you pitch the story, and be ready to provide them again. Photos and videos often make or break a chance to get a story on t.v.

- h. Soundbites are essential. Have one or two main points you want to get across and practice 10 different ways to make those points. This is the difference between good interviews and the ones you hope nobody sees.
- i. Hit the ground running. No wind ups. Work from the stretch, or even pull a pick off move.
- j. Don't feel obligated to answer an anchor's question during a live interview. They rarely know much about the story, and will be reading the producer's talking points just before you go live. Anchor are turning over stories, so assume they want you to take over for them so they can zone out. You can say something like, "that's important but what is more important is . . ." and then launch into your own talking points. Remember, it's your client's case, not yours, and this interview is meant to benefit your client's case.



- h. During live interviews, especially with other panelists, don't hesitate to correct the anchors or argue with co-panelists. Talk over them, but don't let them talk over you. Again, you're there to advocate for your client and enhance their case. Be respectful but firm. Anchors have thick skin. They'd rather have make good t.v. than be treated nicely.



- h. This doesn't mean you should be bashful about plugging yourself at the end. A better way is to have someone like Jay Jones handle that for you before the interview takes place.



2. Client Management

- a. +'s: witnesses, exposing the defendant (punching back, warning others), encourage settlement
- b. -'s: exposure (embarrassment, shame, hateful comments, work problems), discourage settlement
- c. Prepare client for the "tough question"
- d. Tears and fear are fine, but not smiles
- e. Be next to the client to instruct her not to answer, to correct a statement, to insist on a retake
- f. My advice regarding showing their face and name: unless 100% sure, don't do it, even if the media will not do the story otherwise
- g. Never insist, especially if their face and name will become public. Advise clients it's their decision.



Prepping for Media Appearances

AlwaysON PR, Inc.



Rules of Engagement

- Turbo speed for TV vs. radio
- Be conversational
- Know your audience
- Authenticity is key

Make Your Presence Known

- Give yourself credit
 - Use your own anecdotes | Incorporate your unique trial experiences
- Smile and project confidence
- Sit up straight
 - Slouching looks worse on TV | Always lean into the conversation, never sit back
- Know where the camera is, make eye contact

Stay Ready

- Address the anchor and panel guests by name to immediately connect
- Prepare well in advance; haste makes for easy mistakes
- Know the content
- Be dressed for on-air appearances