

Friday, January 18, 2008

### **The camera never blinks.**

As much as I worship at the altar of the First Amendment, that does not automatically justify worshipping journalists. (Image from the public domain). Last year, I spoke on a criminal continuing legal education panel where a lawyer who had a high-profile case said "No publicity is bad publicity." Think again. Journalists are humans, and should not be treated as confidants; fortunately, with some reporters, one's guard does not need to be skyhigh, but caution needs to be used with unknown reporters, even when they come from exalted news organizations. 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 a convoluted question." Substantial self control often is needed to decline the publicity (not all publicity is good publicity, including for one's client) of being on television or radio, or in print. In dealing with the press, less is more; it is wiser to selectively choose which interviews to accept, even if no interview requests will ever follow the declined interview invitation. How does one keep "no comment" off the record? Once a journalist described me on television as having "failed to return phone calls" on the story, even though the two phone calls were virtually back-to-back just a few hours before the story aired on television. I have had a print journalist agree to keep a conversation off the record, but then write that he asked me a particular question that I declined to answer. One morning, very irritated at a judge's procedural ruling and leaving court to meet my secretary on a time-sensitive matter during a court recess, I overlooked how much the camera never blinks, as I firmly but diplomatically (I hope the segment aired) asked the reporter waiting at the courthouse steps to step back, because he was getting right into my face when I was on my way to a meeting, with my client alongside me. The better approach would have been for me to have prepared my client for this possibility, to have greeted the reporter, and to have more smoothly told him I would love to talk, that I had an appointment to get to, and that I would let him know if I would have any comment later on if he would provide me his phone number. Also, for the rest of the day, I took a side exit from the courthouse. What to do when reaching a journalist's voice mail or email with the intention of making no comment, but to at least give the courtesy of showing the reporter is not being blown off? One reporter told me by email that "off the record" is a request that a reporter need not honor unless the reporter affirmatively says the request is being honored. Consequently, when I call back a reporter and reach his or her voice mail or email, if I want my reply off the record, I might say: "Please keep this reply off the record. If you do not, I do not know how I will be able to leave responsive voice mails and emails to journalists in the future. When I say off the record, that includes not even disclosing that I responded and would not comment." A reporter from a prominent legal publication once emailed back that he would honor my off-the-record request, which included the latter emailed verbiage. However, over one month later, the reporter told me that his colleagues and publication's ethics committee said he could and must say I declined to comment. The reporter explained that balanced reporting requires letting readers know which parties involved in the story were contacted, and whether they did or did not reply (but what if the phone call is made to the party just an hour before the story runs? -- I never see articles give that context) or whether they would not comment. I reminded the reporter that he long ago agreed to honor my off-the-record request. The reporter still insisted he would say I declined to comment. Then I took a page from policereportpassivevoicespeak, and suggested he instead say something to the effect that: "Efforts to obtain comment from Jon Katz were unsuccessful." The reporter agreed. Such passive-voice verbiage may not get high marks from an English teacher, but suits me just fine. Jon Katz.

Posted by Jon Katz in Jon's news & views at 00:00