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# **MEDIA RULES OF ENGAGEMENT**

## **A. The Basics**

1. Media and Legal worlds are different.
  - Media world is interested in the story, not the process or rule of law.
  - Speak simply; avoid legal jargon.
2. Anticipate and deflect some reporters' skepticism and negative view of lawyers.
  - Be reliable and trustworthy.
3. Law and lawyers are not the story.
  - Offer a fact-based story with a hook and a broad, social perspective.
4. Treat members of the media as professionals.
  - Be courteous and respectful.
  - Respect reporters' high pressure and tight deadlines.
  - Understand they are exercising independent judgment.
    - They will decide who they talk to and who they don't.
    - They will call it as they see it.
  - Observe the boundaries of journalistic ethics.
5. Learn the operating procedures of the media outlets and reporters you deal with.
  - Deadlines
  - Process
  - Formats: print, web, radio, television
  - Personnel: reporters, bloggers, editors, producers
  - Types of news story: breaking news, profile, feature
  - Status of sources/participants:
    - exclusive access vs. available to all media
    - on/off the record
6. Respond quickly to any media contact.
  - Do not ignore the media.
  - If you can't comment, give an honest explanation.
  - Understand the media's short attention span and work within window of opportunity.
  - Develop office protocols for routing media calls.
7. Give reporters only accurate, factual, consistent information.
  - Provide direct access.
  - Be available to update information.
  - Above all, preserve your credibility.

## B. Developing a Media Strategy

- **What?**
  - Identify the story
    - Hard news – something happening or “breaking” right now
    - Soft news – feature or human interest story
  - Identify the news hook – why is the story newsworthy
  - Develop key message and sound bites
  - Avoid anything confidential or prejudicial to the client
  
- **Why?**
  - What is your purpose in engaging the media? Why do you want your story told?
  - Proactive image development for your case, client, issue
  - Desire to shape an ongoing story
  - Need to respond to media attention (wanted or unwanted)
  
- **When?**
  - Get the timing right
  - Depends on where you are in the legal process – risks differ at different stages of a litigation
  - What else is going on in client’s situation?
    - E.g., criminal defendant also facing civil suit
    - E.g., corporate defendant is about to have shareholder meeting
  
- **Who?**
  - Identify who is going to present the story – attorney (clinic director/student), client, combination?
  - Third-party expert?
  
- **How?** How to engage the media and control the message?
  - Public statement – written/verbal
  - Press release – print/video
  - Pitch story to news contact
  - Interview – on tape/off tape
  - News conference
  - Op-ed for newspaper (appropriate only when not participating in pending matter)
  
- **Where?**
  - Where to place the story? Which media outlets?
    - TV, radio, internet, social media, print
    - Specialized vs. general interest
  - Sometimes out of your control, e.g., when responding to a media inquiry
  - Can depend on intended audience: general public, particular demographic, litigation adversaries, interest groups, industry representatives, gov’t agencies

## C. Four Stages of a Media Interaction \*

### I. Pre-Interview:

#### Ask the Reporter

- Reporter's name
- Media outlet
- Reporter's contact info: phone number, email
- Story topic/angle
- Type of story: news, profile, feature, Q&A

#### For Written Media

- How will interview be positioned: news, metro, business, lifestyle, etc.
- Is anyone else being interviewed?
- How much time does reporter need for the interview?
- Does reporter need photographs or visuals?

#### For Television/Radio

- Will interview be live or taped?
- In studio or remote?
- What's the format?
  - Interviewer/guest; interviewer/multiple guests?
  - Do guests debate? Who speaks first?
  - Audience presence/participation?
- Any visual props okay?
- Will video/visuals be inserted? Can you review them first?

#### Try to Determine

- Does media have bias?
- How knowledgeable is the reporter?
- Has reporter done anything else on topic?
- Is the reporter friendly/antagonistic?

### II. Interview Preparation

#### Establish Ground Rules

- On/off record
- Not for attribution
- Length of interview?

#### Key Messages

- What is your desired headline?
- Identify 3 messages and for each:
  - Supporting facts, stories, anecdotes
  - Sound bites – quotable quotes in support
- Compassion for victims (if appropriate)

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\* Adapted from and thanks to Hennes Paynter Communications, "Managing the Media: Crisis Communications & Media Relations" (2011)

Anticipate Questions

- Easy questions
- Questions you dread
- Questions you can't/won't answer
- Develop responses
- Update hot issues
- *Rehearse!*

Provide Background Info/Additional Sources

- Bios, fact sheets, articles
- Third-party experts
- Clarify any misinformation
- Consider making client available

**III. At the Interview**

<u>DO:</u>	<u>DON'T</u>
<ul style="list-style-type: none"> <li>• Tell the truth; tell it all; tell it first</li> <li>• Be prepared</li> <li>• Speak in sound bites</li> <li>• Repeat key messages</li> <li>• Be concise and clear</li> <li>• Stay on message</li> <li>• Stay positive in thought and word</li> <li>• Tell stories</li> <li>• Keep the interview orderly</li> </ul>	<ul style="list-style-type: none"> <li>• Say “no comment”</li> <li>• Just answer questions – make your points</li> <li>• Be boring</li> <li>• Use jargon</li> <li>• Speculate</li> <li>• Repeat negative phrases</li> <li>• Place blame</li> <li>• Let your guard down</li> <li>• Lose your temper</li> </ul>

Bridging Phrases

“The real issue is . . .” • “The most important point to remember is . . .”

“Let me add . . .” • “That deals with one aspect of a larger issue . . .”

“It’s important to emphasize . . .” • “Let me put this into perspective . . .”

“Another question I’m often asked . . .” • “Yes, and in addition to that . . .”

“It’s too early to talk to you about that, but I do know is . . .”

“I’m glad you asked me that . . . people have that misconception, but the truth is . . .”

“Here’s what we did and what we’re going to do about it . . .”

“I can’t speculate on what might happen. What I can tell you is . . .”

**IV. Post-Interview**

- Debrief with client, including assessing client performance if personally participated
- Obtain sharable links to stories, audio, video, or PDF of article that is behind a paywall
- Share on social media as appropriate and constructive

## Professional Ethics and Bar Rules for Lawyer-Media Interactions

### ABA Model Rule 3.6

Almost all states follow ABA Model Rules of Professional Conduct 3.6 (full text below) which:

- Prohibits lawyers involved in a case from making extrajudicial statements reasonably anticipated to be publicly disseminated and that “will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.”
- Permits lawyers to describe claims and defenses, publicly available information, the fact of an investigation and the need for evidence, and the litigation timeline, among other things.
- Permits lawyers to respond to publicity initiated by others to protect a client from “substantial undue prejudice.”

### Local and Court-Specific Rules

- Some courts/judges impose specific restrictions on pretrial and trial statements by participating lawyers.
- Special rules may apply in criminal proceedings to protect the defendant’s due process and other constitutional rights.
- Special rules of confidentiality may govern certain types of proceedings, including juvenile, domestic relations, and mental disability proceedings.

### Examples of prohibited statements

- Comments on the credibility of a witness.
- References to inadmissible evidence.
- Contents of attorney-client confidential communications (unless client authorizes the disclosure).

### Examples of permissible statements

- You may speak on a wide range of ethically approved topics on pending cases.
- You don’t have to stand by silently while someone else smears your client.
- Ethical rules typically restrict only lawyers who have “participated” in a litigated matter. Lawyers are generally free to comments as “experts” on cases brought by other lawyers. This can also be an effective way of advocating for or against a particular result.

#### ABA Model Rules of Professional Conduct – Rule 3.6

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subparagraphs (1) through (6):
  - (i) the identity, residence, occupation and family status of the accused;
  - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
  - (iii) the fact, time and place of arrest; and
  - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

## STUDENT EXERCISE: OP-ED CRITIQUE

Read the “student-authored draft” below of an opinion piece to be published in a newspaper.

Evaluate its effectiveness considering:

- What is the hook?
  - Does the piece grab the reader’s attention in the first sentence?
  - Does the piece focus tightly on one issue or idea, and place that idea up front?
- What is the story?
  - Does the piece adequately humanize the issue?
  - Does the piece “show,” rather than “tell,” using colorful details and examples?
- What is the voice?
  - Is the piece personal, conversational?
  - Does the piece have a clear editorial viewpoint – reasonable but unequivocal?
- Why should the reader care?
  - Does the piece explain to readers how the issue impacts their life and why now is the time to act?
- What is the solution or call to action?
  - Does the piece offer specific recommendations to resolve/advance the situation?
- Writing style:
  - No jargon/legalese
  - Concise (typical op-ed at most 750 words)
  - Short sentences and paragraphs
  - Clear, especially when presenting statistics and other dry facts
  - Strong and winning final paragraph

Then read the published op-ed on the same subject and identify where and why it is more (or less) effective.

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### Student-Authored Draft Op-Ed on Sexually Violent Predator Acts

In recent months, Sexually Violent Predator Acts have received substantial coverage in the media. The Acts, which exist federally and in 20 States, provide for the indefinite detention of qualifying sexual predators even after they have completed their prison sentences. Nationally, nearly 6000 individuals, the vast majority of which are men, are confined to such programs. Here in New Jersey, over 500 men refer to the Special Treatment Unit, “STU,” as there indefinite homes until the State determines they no longer pose a threat to society.

The state government justifies detention-after-prison by claiming the men are “mentally ill” and subjects them to various sorts of treatment.

However, many of these men are diagnosed with tenuous “illnesses” such as Anti-Social Personality Disorder, a condition that psychiatrists and psychologists almost unanimously agree diminish as one ages. Many of the men detained in New Jersey’s STU are not young, and are well into their 40s, 50s, and 60s. Many have been residents of the STU for over a decade, even after completing their court ordered jail sentences. They continue to pay the price for mistakes they made in their youth and have little hope of ever reintegrating with society. For some, their predicate offenses occurred before the age of 18. Yet, despite the uniform acceptance that their mental disorders and dangerous tendencies fade with age, these men remain behind the barbed

wire in the former segregated unit at the campus of the East Jersey State Prison. It is undeniable that New Jersey and other states have a legitimate interest in protecting their citizens, and sexual offenders rarely elicit a soft spot even in the hearts of the most staunch civil rights advocates. Nevertheless, the price for such protection must not be the individual freedom of men who have already paid their debt to society.

For the most part, the public accepts the detainment of these individuals due to a misguided fear of recidivism. It has been beaten into the heads of modern American society that once a rapist, always a rapist. However, the actual statistics fly in the face of conventional logic. Studies consistently show that sexual offenders are among the least likely to reoffend, with a likelihood spanning 3-9%. When compared to other criminals, such as burglars and larcenists, whose recidivism rates are about 25-35%, sexual offenders are far less likely to fall back into bad habits. Yet, few would agree that the indefinite detention of burglars and larcenists is necessary, despite their alarmingly high recidivism rates. The same should then be true regarding sexual offenders. We must not let our fear of these individuals guide our moral codes and justify what may very well be *de facto* life sentences for these men.

Apart from recidivism, the logic behind “halfway houses” also poses a justification for the

indefinite detention for sexual offenders. Like halfway houses, the STU and other similar centers are viewed as a way for the men face the reality of their crimes outside of prison and work towards better futures. However, the halfway house mentality is equally as flawed as the recidivism rationale, as highlighted by a recent New York Times study. In particular, halfway houses in New Jersey are exceptionally poor in quality, have become dens of violence and drug use, and are ineffective in deterring the criminal actions of its residents. If halfway houses do not work, why would the STU? Instead of helping its residents, the STU and similar programs throughout the nation serve as harbors to deny the rights and freedom of men who have already paid their debt to society. Such institutions have no place in this nation, where individual liberty is heralded as one of our proudest attributes.

Fear must not drive us to turn a blind eye to injustice. It was that precise rationale that lead to some of the darkest moments in American history, including McCarythism and Japanese internment camps. Today it is the rights of lowly sexual offenders, but tomorrow some other sham justification may be presented to deny the rights of another group. On Law Day, while we celebrate the vast liberties we enjoy as Americans, let us not forget the downtrodden, less politically popular groups. If we do not speak out on their behalf, who will speak out on ours if we lose society’s favor?



## Published Op-Ed on Sexually Violent Predator Acts

*Sex Offenders: The Last Pariahs* by Roger N. Lancaster  
*New York Times*, August 20, 2011

STARTING in the 1970s, lawmakers across the United States enacted punitive “lock ’em up” policies. The prison population more than quadrupled, and the United States became first in the world in both the total number of prisoners (about 2.3 million) and the rate of imprisonment (1 of every 100 adults is behind bars).

Now, budget pressures, court orders and a recognition of the social costs of incarceration have prompted America to reconsider some of these draconian laws. Incarceration rates may be topping out.

But most criminal justice advocates have been reluctant to talk about sex offender laws, much less reform them. The reluctance has deep roots. Sex crimes are seen as uniquely horrific. During the Colonial, antebellum and Jim Crow eras, white Americans were preoccupied with tales of sexual dangers to white women and children. McCarthy-era paranoia, stories of Satanic ritual abuse and other sex panics stirred pervasive anxieties about lurking strangers. Sexual predators play a lead role in the production of a modern culture of fear.

In fact, the crimes that most spur public outrage — the abduction, rape and murder of children — are exceedingly rare. Statistically, a child’s risk of being killed by a sexual predator who is a stranger is comparable to the chance of being struck by lightning. The reported incidence of most forms of child abduction, including the most serious, has declined since the 1980s.

The most intense dread, fueled by shows like “America’s Most Wanted” and “To Catch a Predator,” is directed at the lurking stranger, the anonymous repeat offender. But most perpetrators of sexual abuse are family members, close relatives, or friends or acquaintances of the victim’s family. In 70 to 80 percent of child deaths

resulting from abuse or neglect, a parent is held responsible.

No one can doubt that child sexual abuse is traumatic and devastating. The question is not whether the state has an interest in preventing such harm, but whether current laws are effective in doing so.

A 1994 federal law named for Jacob Wetterling, an 11-year-old Minnesota boy who was abducted, requires convicted sex offenders to register with authorities. Under an amendment to that act, all states adopted statutes collectively known as Megan’s Law — named for a 7-year-old girl who was raped and murdered in New Jersey in 1994 — that require local law enforcement authorities to notify neighbors about a sex offender’s presence in their community. And although registration and notification requirements vary, all states now post searchable online lists of at least some categories of registered sex offenders.

Advocates for laws to register, publicize and monitor sex offenders after their release from custody typically assert that those convicted of sex crimes pose a high risk of sex crime recidivism. But studies by the Justice Department and other organizations show that recidivism rates are significantly lower for convicted sex offenders than for burglars, robbers, thieves, drug offenders and other convicts.

Only a tiny proportion of sex crimes are committed by repeat offenders, which suggests that current laws are misdirected and ineffective. Indeed, a federally financed study of New Jersey’s registration and notification procedures found that sex offense rates were already falling before the implementation of Megan’s Law. The study also found no discernible impact on recidivism and concluded that the growing costs of the program might not be justifiable.

Contrary to the common belief that burgeoning registries provide lists of child molesters, the victim need not have been a child and the perpetrator need not have been an adult. Child abusers may be minors themselves. Statutory rapists — a loose category that includes some offenses involving neither coercion nor violence — are covered in some states. Some states require exhibitionists and “peeping Toms” to register; Louisiana compelled some prostitutes to do so. Two-thirds of the North Carolina registrants sampled in a 2007 study by Human Rights Watch had been convicted of the nonviolent crime of “indecent liberties with a minor,” which does not necessarily involve physical contact.

Culpability and harm vary greatly in these offenses. Some would not be classified as criminal under European laws, which set lower ages of consent than do American laws. And because sex crimes are broadly defined and closely monitored, the number of people listed in public sex offender registries is growing rapidly: 740,000 at latest count, more than the population of Boston or Seattle. The registration and notification rules — the result of efforts by victims’ rights advocates, crusading journalists and tough-on-crime politicians — violate basic legal principles and amount to an excessive and enduring form of punishment.

Newer laws go even further. At last count, 44 states have passed or are considering laws that would require some sex offenders to be monitored for life with electronic bracelets and global positioning devices. A 2006 federal law, the Adam Walsh Act, named for a Florida boy who was abducted and killed, allows prosecutors to apply tougher registration rules retroactively. New civil commitment procedures allow for the indefinite detention of sex offenders after the completion of their sentences. Such procedures suggest a catch-22: the accused is deemed mentally fit for trial and sentencing, but mentally unfit for release.

Laws in more than 20 states and hundreds of municipalities restrict where a sex offender can

live, work or walk. California’s Proposition 83 prohibits all registered sex offenders (felony and misdemeanor alike) from living within 2,000 feet of a school or park, effectively evicting them from the state’s cities and scattering them to isolated rural areas.

Digital scarlet letters, electronic tethering and practices of banishment have relegated a growing number of people to the logic of “social death,” a term introduced by the sociologist Orlando Patterson, in the context of slavery, to describe permanent dishonor and exclusion from the wider moral community. The creation of a pariah class of unemployable, uprooted criminal outcasts has drawn attention from human rights activists; even *The Economist* has decried our sex offender laws as harsh and ineffective.

This should worry us, in part because the techniques used for marking, shaming and controlling sex offenders have come to serve as models for laws and practices in other domains. Several states currently publish online listings of methamphetamine offenders, and other states are considering public registries for assorted crimes. Mimicking Megan’s Law, Florida maintains a Web site that gives the personal details (including photo, name, age, address, offenses and periods of incarceration) of all prisoners released from custody. Some other states post similar public listings of paroled or recently released ex-convicts. It goes without saying that such procedures cut against rehabilitation and reintegration.

Our sex offender laws are expansive, costly and ineffective — guided by panic, not reason. It is time to change the conversation: to promote child welfare based on sound data rather than statistically anomalous horror stories, and in some cases to revisit outdated laws that do little to protect children. Little will have been gained if we trade a bloated prison system for sprawling forms of electronic surveillance that offload the costs of imprisonment onto offenders, their families and their communities.

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