

COPRAC Ethics Symposium

Beyond the Headlines: Ethical Trial Publicity

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What Makes a Case High Profile?



When The Media Calls TV v. Radio



Off the Record?

**NEVER SAY ANYTHING
YOU
DO NOT WANT TO READ
ON PAGE ONE OF THE
NEWSPAPER**



“There are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves.”

ABA Model Rule 3.6 Comment [1]



Checklist for a quote:



- Lawful**
- Ethical**
- Non defamatory**
- Non invasive of privacy rights**
- Interesting**
- True**
- Insightful**
- Delivered with poise**

What can you say *Out of Court?*



CRPC 5-120 - Trial Publicity

- (A) A member who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication . . .

CRPC 5-120 - Trial Publicity

- (A) . . . if the member knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

CRPC 5-120 - Trial Publicity

- (B)(1) A member may state:
The claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

CRPC 5-120 - Trial Publicity

- (B)(3) that an investigation of the matter is in progress
- (4) the scheduling or result of any step in litigation

CRPC 5-120 - Trial Publicity

- (B)(7) In a criminal case, a member may also state:
 - The identity, residence, occupation and family status of the accused;
 - If the accused has not been apprehended, the information necessary to aid in apprehension of that person;
 - Circ.s of arrest, ID of officers, length of inv.

Trial Publicity

“a member may state ...
the information contained
in a public record”

CRPC 5-120(b)(2)

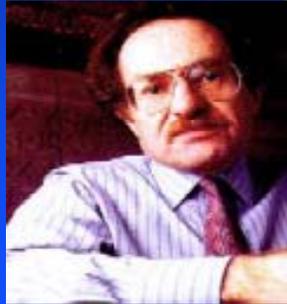


CRPC 5-120(C) Reply Statements

- “a statement . . . required to protect a client from the substantial undue prejudicial effect of recent publicity”
- “as is necessary to mitigate” the adverse publicity.
- * No “litigating in the press” (*Rothman v. Jackson*)

Who Else is Talking About Your Case?

- Not you on morning TV, but the “Experts”
- Credibility issues



Gag Order: a court order directing lawyers and witnesses to not discuss the case with reporters.



Commentators and Attorneys Representing Witnesses

