

The High-Profile Case: Where the Courts & The Media Meet



**A Guide to prepare courts, media, prosecutors,
defense attorneys, and the community
for high-profile cases**

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High-profile cases can create or heighten tensions within and between communities, the police, government officials, and the courts. While much of the drama plays out in the media, the courts have great powers and responsibilities to ensure that the process and outcome not only meet the demands of justice, but also gain the understanding and acceptance of all concerned.

The media seek to investigate and report on these cases. How they report or editorialize on the cases can raise or lower tension levels. Often, there are community expectations on case outcomes, and such cases can place courts under great scrutiny.

But often neither the media nor the public truly knows much about how courts work; perhaps even worse, their perceptions derive from inaccurate portrayals of our justice system in movies, television shows and secondhand stories. Courts, media, government officials, prosecutors, attorneys, police, and community leaders together can, however, do much to explain court procedures, practices, constraints, and outcomes.

This guide, drawing upon the experience of many high-profile cases, seeks to prepare courts, media, prosecutors, defense attorneys, and the community for these high-profile cases.

Goal

The American Bar Association (ABA) recognizes that high-profile cases are challenging for the judicial system, the media and the public: Judges do not always appreciate how the media operates and may not always be clear on what information the media wants or can use, and the media often do not understand how the judicial system operates or the constraints on judges and court personnel, including the ethical restrictions on commenting on civil and criminal cases before them.

We offer two sets of materials aimed at overcoming those challenges:

(1) A presentation for members of the judicial branch, including court personnel (such as clerks, interpreters and bailiffs), to make to members of the public, the legal community, and the media regarding the unique challenges that judges face in dealing with high-profile cases; and

(2) A checklist of issues for judges to consider when assigned a high-profile case.

These are works-in-progress, and are meant to evolve as judges and members of the media learn from future interactions with one another and the public.

Presentation

Whom to Invite:

The court hosting the presentation should be sure to invite:

- (1) Judges of the Court, and their law clerks;
- (2) Staff members of the Court who are impacted in a high-profile case, including the Court's chief information officer, bailiffs, court clerks and others;
- (3) Lawyers representing the parties and witnesses;
- (4) The leadership of local bar associations;
- (5) Community stakeholders likely to be concerned in the case (e.g., the local chapters of the American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored Persons (NAACP), the Urban League, organizations representing the Hispanic, Asian, LGBT and other communities, state and local government officials and police unions);
- (6) Other community stakeholders (such as the Chamber of Commerce, Kiwanis Club, the Rotary Club);
- (7) The law enforcement community; and
- (8) Members of the media, including:
 - (a) Print media;
 - (b) Visual media; and
 - (c) Online media, focusing on the blogging communities that are most likely to cover high-profile cases.

Where to Hold the Presentation:

Possible places to hold the presentation include:

- (1) The local courthouse;
- (2) A public school; or
- (3) Facilities run by community stakeholders (such as a Kiwanis or Rotary Clubs).

How to Promote:

Enlist the support of the local media community, local bar organizations, community stakeholders, churches, schools and others to advertise the event more widely.

Network with community stakeholders (see above) to encourage them to assist in educating and informing the public.

The Nature of the Presentation:

In addressing issues related to high-profile cases, it is vital to have a conversation with those in attendance. Therefore, the presentations should be designed to support as much civil discussion of the important issues at stake as possible. The presentations should seek to be “two way streets,” with the presenter or panel members willing to listen (rather than hear), to learn (rather than purely lecture), and to appreciate the benefits from interacting in a pleasant and non-stressful manner. The presentations should also provide an opportunity for those in attendance to interact “socially” before and after the presentation and during breaks.

Although there are many other approaches one might take, two presentation formats are most accessible:

- (1) A panel presentation; or
- (2) A single-speaker presentation.

The panel format is more likely to result in an engaged, interactive conversation—as long as the panel’s moderator encourages the panelists to interact with one another and the audience. Avoid any format that calls for speakers to give “canned” 20 minute speeches on a topic. Even a single-speaker presentation can facilitate a good conversation if there is opportunity for lots of questions and feedback.

Panel Presentation

The keys to a successful panel presentation are the appropriate speakers and the relevant discussion topics.

Speakers. The aim is to find speakers who are knowledgeable, well-spoken, and well-respected in the community. The speakers should come from (1) the judicial branch, (2) the media, and, if appropriate, (3) the two or three community stakeholders with the most involvement in high-profile cases. “Well-respected” should not be defined as aligning with a specific political, economic or age perspective. Rather, in determining who is “well-respected” on the subject matter, consider whether the potential speaker has the substantive credentials, through education, experience, publication or journalistic integrity.

Moderator. The moderator should be someone who has credibility in the community, and who understands that the goal is to foster a conversation among the speakers and the audience. Avoid selecting a moderator who will be there to advance their own agenda rather than to facilitate community understanding of the important issues you will be presenting.

Topics for conversation. The moderator should, as explained below, have a pre-presentation call with the speakers to decide which questions to ask. The following questions may serve as a starting point:

- To the judicial branch members:
 - At what point in the life of a case do you get the sense that it may become high profile?
 - What should the media and the public know about the constraints of the judicial system?
 - What are the reasons judges are constrained in commenting publicly?
 - What *are* the limits judges have to abide by when considering what information they may share with pending cases with the media?
 - Why are some judges able to serve as public commentators and regularly seen on mainstream networks commenting on ongoing cases?
 - Are there any dangers in the day-to-day commentary on testimony in ongoing high-profile cases, particularly by lawyers and other judges?
 - What is the legal status of juror information and why would the court try to keep data on juror questionnaires from being made available to the media?
 - Does the status of the dialogue change depend on the stage the case is in and if so, why?
- To the media:
 - What information do you most need?

- What should the court know about the constraints of reporting on high-profile cases (deadlines, media requirements for reliability of information, fact sheets, understanding of the court process, etc.)?

- To the community stakeholders:

- Is it important that the community understand the limitations and reasons for the limitations on the media and the judiciary in high-profile cases? (Is reliable information important in ensuring fair trials, and do fair trials matter?)

- What is the impact on today's community stakeholders of media reporting, and its reliability?

- Does media reporting help or hurt in advancing confidence that our judicial system delivers fair and impartial justice, and does that matter to a community facing a high-profile case? If so, why? If not, why not?

- How can relations between the media and the judicial branch be improved?

- How can your organizations help the public understand the court proceedings?

Preparation. The best path to a productive panel presentation is for the moderator and speaker to have at least one conference call in advance to discuss the topics, who will cover them, and how the moderator should facilitate and control the discussion.

Single-speaker presentation.

A sample PowerPoint presentation is attached to this memorandum and may be tailored for the particular audience members who attend the presentation.

Checklist of Considerations When Assigned a High-Profile Case

A bench officer assigned a matter that is likely to be high profile should consider taking the following steps:

√ Immediately involve the Court's chief information officer in the case. Predict likely media questions and how the court can respond to them;

√ Alert Court security and help them plan for possible security needs, if any, that will attend the various proceedings (e.g., pre-trial hearings, preliminary hearings (if criminal), trial, and post-trial motions);

√ Consult the Court's policies for public attendance, "cameras in the courtroom," and discuss the likely scenarios with the pertinent supervisory structure within the Court;

√ Consider whether overflow seating may be required to accommodate spectators;

√ Develop a plan for how the public and media will be:

√ Allowed access to in-court proceedings (or, if access is limited, in what manner it will be limited and on what basis it will be limited);

√ Allowed access to the court's written rulings;

√ Consider issues relating to access to the jury questionnaires of potential jurors and review most recent case law on this issue;

√ Share these plans with the Court's chief information officer or public relations staff, as described above.

√ Should there be an unfair and direct attack on the judge presiding over the matter, see the advice contained in ABA's *Rapid Response to Unfair and Unjust Criticism of Judges*, which is available at

www.americanbar.org/content/dam/aba/administrative/judicial_independence/rapid_response_pamphlet.pdf (last viewed June 29, 2018).