

## **Celebrity Justice & High Profile Defense A Talk with Benjamin Brafman**

### **I. Cameras Inside and Outside the Courtroom**

- A. The presence of cameras can alter the dynamics of courtroom proceedings.
  - 1. Relevant law – cameras in the courtroom are decided state by state.
    - a. Examples:
      - i. New York
        - 1) See PART 29. Electronic Recording And Audio-visual Coverage In Court Facilities And Of Court Proceedings
        - 2) In New York cameras are permitted in the court at the discretion of the Chief Administrator of the courts, provided, however, that the permission of the Chief Judge of the Court of Appeals or the presiding justice of an Appellate Division shall be obtained with respect to the court over which each presides.
        - 3) The rules can be found at <http://www.courts.state.ny.us/rules/chiefjudge/29.shtml>
        - 4) In New York, the presiding court judge has discretion to determine whether media cameras will be allowed in the courtroom. 22 NYCRR § 131.3.
        - 5) In making this determination, the trial judge will consider a variety of factors including the type of case involved, whether the coverage could harm any participant, whether cameras would interfere with fair administration of justice, the objections of the parties, and the physical structure of the courtroom. 22 NYCRR § 131.4.
      - ii. Massachusetts:
        - 1) The Supreme Judicial Court's March 14, 2012 ruling giving broad access to filming and streaming court proceedings:
        - 2) Relevant text:
          - a) “Although the public has the right to be physically present in a court room, there is no constitutional right to bring cameras into or to make audio or video recordings of court room proceedings. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 610 (1978). However, if a court chooses in its discretion to allow recording, the person or entity making it has the same First Amendment freedom to disseminate the information it records as any other member of the print media or public, and the court is limited by the prior restraint doctrine in its ability to restrain the publication of the recording.”

- iii. California
  - 1) See Rule 1.150 the Camera Rules
    - a) Under Rule 1.150, the "Cameras Rule," judges use discretion when allowing cameras and other recording devices into their courtroom. Judges most often do grant access but there are procedures that media must be followed.
    - b) For more information visit:  
<http://www.courts.ca.gov/10018.htm>
  2. Arguments against:
    - a. Can taint the jury
    - b. Can extend the trial duration,
    - c. Can negatively influence proceedings
  3. Arguments in favor of cameras
    - a. Cameras may encourage openness and transparency in high-profile cases that could be considered a matter of public interest.
- B. Managing the media outside the courtroom
  1. A high-profile celebrity case will inevitably attract unbridled media and social media coverage.
    - a. Brafman represented Dominique Strauss-Kahn, former head of the International Monetary Fund, when he was charged in 2011 with sexually assaulting a hotel housekeeper in New York City.
    - b. Media coverage of those proceedings has been frequently described as a circus. Brafman and Strauss-Kahn were constantly mobbed by hordes of press.
    - c. Many French were shocked by the American media coverage, particularly his "perp walk," when he was shown handcuffed and being led away by the police.<sup>1</sup> French commentators asserted that showing images of the accused in handcuffs compromises his right to be considered innocent until proven guilty in the minds of jurors and the public.
  2. The lawyer representing a high-profile client will have to interact with the media, whether directly or indirectly, throughout the course of the representation.
    - a. With regard to trial publicity, New York Professional Conduct Rule 3.6(a) provides:
      - i. *A lawyer who is participating in or has participated in a criminal or civil matter shall not make an extrajudicial statement that the lawyer know or reasonably should know will be disseminated by means of public communication and will have a substantial*

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<sup>1</sup> Mayare, Scott, Maia De La Daume, and Robert Mackey. "French Shocked by I.M.F. Chief's 'Perp Walk.'" The New York Times News Blog, May 16, 2011: [http://thelede.blogs.nytimes.com/2011/05/16/french-shocked-by-i-m-f-chiefs-perp-walk/?\\_r=0](http://thelede.blogs.nytimes.com/2011/05/16/french-shocked-by-i-m-f-chiefs-perp-walk/?_r=0)

*likelihood of materially prejudicing an adjudicative proceeding in the matter.*

- ii. Rule 3.6(d) states: *Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial 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.*<sup>2</sup>
- b. Many lawyers, including Brafman, believe that the defense attorney should limit giving press conferences and inviting interviews.
  - i. It may detract from proper representation.
  - ii. It may also potentially violate professional ethics rules.
  - iii. While not engaging the press could result in a bad press day, that day will be inconsequential when the lawyer's focused efforts results in an acquittal.
- c. In addition, the lawyer should be wary of betraying client confidentiality or otherwise marring the attorney-client relationship when making public statements to the media regarding the case at hand.
  - i. Professional Conduct Rule 1.6 forbids a lawyer from knowingly revealing confidential information without the client's informed consent or if the disclosure is in the best interest of the client.<sup>3</sup>

## II. Challenges in Representing High Profile Defendants

- A. Establishing and maintaining an effective attorney-client relationship
  - 1. Handling celebrity personalities
    - a. The lawyer should also be aware that some celebrities are not accustomed to many restrictions in their day-to-day life and that legal proceedings may be a drastic change in lifestyle for the client.
    - b. The lawyer must also counsel the client taking into account that some celebrities also have limited knowledge of legal proceedings. When celebrities lack real world experiences, they might not necessarily understand the gravity of criminal proceedings. Thus, it is the lawyer's job to make the client aware of the reality of their situation.
  - 2. New York Professional Conduct Rule 1.4 requires that the lawyer reasonably consult with the client about how to accomplish the client's objectives and to keep the client reasonably informed about the status of the matter. Most importantly, Rule 1.4(b) requires that the lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions

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<sup>2</sup> New York State Rules of Professional Conduct, Rule 3.6:  
<http://www.nycourts.gov/rules/jointappellate/ny-rules-prof-conduct-1200.pdf>

<sup>3</sup> New York State Rules of Professional Conduct, Rule 1.6:  
<http://www.nycourts.gov/rules/jointappellate/ny-rules-prof-conduct-1200.pdf>

- regarding the representation.<sup>4</sup>
3. The lawyer must deal with not only the celebrity but also the celebrity's staff.
    - a. When the celebrity's staff is extremely intertwined in the client's matters, the lawyer must be more cognizant of maintaining attorney-client confidentiality.
    - b. Many celebrities and high profile clients have layers of staff that handle their scheduling, finances, fee requests, and other transactions.
    - c. Regardless, the lawyer must have direct access to the client and confidential information rather than through the celebrity's handlers.
- B. Any media exposure of the celebrity's legal issues can affect his career.
1. Minor legal proceedings may not necessarily damage an ordinary individual's career or private life.
  2. For a celebrity, however, criminal charges can cause permanent damage. It can result in loss of jobs, loss of assets, and/or the end of a career altogether.
  3. Brafman represented Plaxico Burress, former Giants receiver, when he was charged with criminal possession of a weapon and reckless endangerment in 2009.
    - a. Burress pleaded guilty to attempted criminal possession of a weapon and was sentenced to two years in prison.<sup>5</sup>
    - b. After Burress was indicted, the Giants suspended and later released him as it became apparent that the trial would take some time. The N.F.L. also suspended him for the length of his prison term.<sup>6</sup>
- C. Endorsement contracts and moral clauses
1. Many endorsement contracts contain morals clauses that provide for termination of the contract if the celebrity fails to meet certain behavioral standards.
  2. Even if the celebrity is exonerated, the celebrity may still lose the endorsement deal as a result of the bad publicity and suffer detrimental effects to his career.
  3. Some organizations may employ morals clauses in their contracts.<sup>7</sup>
- D. Depending on the high-profile status of the celebrity client, the attorney may be thrust into the limelight as well and encounter similar attention and invasion of privacy as the celebrity.

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<sup>4</sup> New York State Rules of Professional Conduct, Rule 1.4:

<http://www.nycourts.gov/rules/jointappellate/ny-rules-prof-conduct-1200.pdf>

<sup>5</sup> Eligon, John. "Burress Pleads Guilty in Weapons Case." The New York Times, August 20, 2009:

<http://cityroom.blogs.nytimes.com/2009/08/20/burress-expected-to-plead-guilty-in-weapons-case/>

<sup>6</sup> Eligon, John. "Burress Will Receive 2-Year Prison Sentence." The New York Times, August 20, 2009:

<http://www.nytimes.com/2009/08/21/nyregion/21burress.html>

<sup>7</sup> For treatment of morals clauses view the following: Pinguelo, Fernando M.; Cedrone, Timothy D. (2009). "Morals? Who Cares About Morals? An Examination Of Morals Clauses In Talent Contracts And What Talent Needs To Know" (PDF). Seton Hall Journal of Sports and Entertainment Law (Seton Hall School of Law).

<http://www.loeb.com/~media/files/publications/2008/09/what%20every%20player%20should%20know%20about%20morals%20clauses/files/click%20here%20to%20download%20the%20full%20article/fileattachment/brian%20socolow%20moves%20magazine.pdf>

### III. When Trials become Entertainment

- A. Criminal defendants becoming “celebrities”
  1. When the public becomes fixated on a particular crime and trial process, it can thrust a criminal defendant into “celebrity” status.
  2. In 2008, the public became infatuated with the missing case of Caylee Anthony, a two-year old girl, and the subsequent murder trial of Casey Anthony, her mother.
    - a. Anthony was indicted for first-degree murder among other crimes.<sup>8</sup>
    - b. The 33-day heavily publicized trial ended in an acquittal.
    - c. Subsequently, Anthony appeared on magazine covers, has been the subject of a cable TV movie, and continues to be the subject of interviews about her life after the trial.

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<sup>8</sup> A copy of the indictment issued by the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, can be viewed here: [http://www.foxnews.com/projects/pdf/Anthony\\_Indictment.PDF](http://www.foxnews.com/projects/pdf/Anthony_Indictment.PDF)