

Speaking Outside the Courtroom

Public Speaking for Lawyers

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Avoiding Ethical Pitfalls When Speaking to Non-Lawyers

You face two potential ethical pitfalls when speaking to non-lawyers. First, your behavior before, during, and after the speech may violate your state bar's rules of professional conduct prohibiting solicitation of clients. Also, your conduct may inadvertently create an attorney-client relationship with members of the audience.

Therefore, before arranging, preparing, and presenting an informative speech to non-lawyers consult your state bar's rules regarding these issues. Generally, however, consider the following guidelines to avoid these pitfalls.

In-Person Solicitation

Do not distribute handouts, promotional brochures, and business cards directly to audience members or leave them at audience members' seats. Instead, leave these materials at a convenient place at the room's exit so that audience members have the option of taking them as they leave.

During the question-and-answer session after your speech, be careful not to use your answers to invite a request for legal representation.

Creating an "Inadvertent" Attorney-Client Relationship

Question-and-answer sessions after your speech, and one-on-one conversations with members of the audience may lead to the inadvertent creation of an attorney-client relationship. If an audience member asks a legal question and you answer it, even informally, or say that you will research it an "get back to them," you could be found to have established an attorney-client relationship. At that point you will be held to all ethics rules pertaining to that relationship. If the

advice is incorrect and harms that person's legal interests, you could be liable to this person for legal malpractice.

To avoid this pitfall, make it clear before, during, and after the speech that you will not provide targeted legal advice to audience members as individuals. On materials advertising your speech and on visual aids provide a disclaimer that you will be providing generalized information about the topic and will not provide specific legal advice. State that the information you provide during the presentation and question-and-answer session is not intended to create an attorney-client relationship with any audience member.

During your speech and the question-and-answer session, assure audience members that you will make every effort to answer their questions but remind them that you will not provide individualized answers to their questions and that any information you provide is not intended to create an attorney-client relationship. If you are asked such a question, politely refuse to answer and move on. After the speech, if you are asked such a question, remind the person that you are not that person's lawyer and that you can't provide the legal advice that they seek.

Some Examples of Disclaimer Language

“This presentation is similar to any other seminar designed to provide general information on pertinent legal topics. The statements made and any materials distributed as part of this presentation are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of . . . or any of its attorneys other than the speakers. This presentation is not intended to create an attorney-client relationship between you and If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.”¹

¹ Responding to Patient Problems by Kim C. Stanger. Located at <https://www.hollandhart.com/pdf/RespondingToPatientProblems.pdf>

“No statements made in this seminar or in the PowerPoint or other materials should be construed as legal advice or as pertaining to specific factual situations. Further, participation in this seminar or any question and answer (during or after the seminar) does not establish an attorney-client relationship between . . . and any participant . . .”²

The information provided during this presentation and my answers to your questions are for educational purposes only and are not intended to create any attorney-client relationship between us. Presentations and answers to questions are not intended to constitute legal advice or a recommended course of action in specific situations. You should engage and consult qualified legal counsel before taking any action discussed during the presentation

² Maintaining A Happy, Harassment-Free Museum, SV019 ALI-ABA 95 , 97, Jonathan A. Segal, Legal Issues in Museum Administration – available on WESTLAW.

Using Copyrighted Material

If you plan to use photographs, audio, and video clips as visual aids be aware of the implications of using copyrighted work. If your use of the material is protected as a fair use,³ you needn't obtain permission⁴. Assuming that your use of the material is not protected as a fair use, you must obtain permission or a license to use the material.

The process requires that you identify the owner of the work and determine the type of rights needed. Then contact the owner, negotiate whether you will need to pay for the rights and the amount you'll be required to pay. Most importantly, obtain the permission in writing.

The following are articles and web sites that provide helpful advice regarding how to accomplish these tasks:

The Basics of Getting Permission, Copyright & Fair Use, Stanford Libraries. Available at <https://fairuse.stanford.edu/overview/introduction/getting-permission/>

Code of Best Practices in Fair Use for Online Video, Center for Social Media, School of Communication, American University. Available at <https://cmsimpact.org/code/code-best-practices-fair-use-online-video/>

Copyright Fair Use: How to Use Footage that Isn't Yours, by Craig Cunningham, The Videomode. Available at <http://www.thevideomode.com/author/ccunningham/>

How to License TV News Footage for a Documentary: How Much Does TV News Footage Cost to License? Available at <https://documentarycamers.com/how-to-license-television-news-footage/>

Get Permission to Use Video, The Copyright Hub. Available at <http://www.copyrighthub.org/copyright-resources/getting-permission/get-permission-to-use-video/>

Obtaining Copyright Permissions, University of Michigan Library. Available at <https://guides.lib.umich.edu/permissions/images>

³ The Fair Use Doctrine is a topic beyond the scope of this text.

⁴ It's best to obtain permission even if you determine that your use of material is a fair use.

The Ultimate Guide to Image Usage Rights, by Sarah Donawerth. Available at <https://getcarro.com/blog/theultimate-guide-to-image-usagerights/>

You should also consult Creative Commons at creativecommons.org for materials to use in your speech.

To obtain licensing for use of video clips of network and cable news programs:

ABC

Lynnore Thames

Associate Director, Rights & Clearance and Permissions

(Permissions request line), clips from previously broadcast ABC News programs and excerpts/reprints from ABCNews.com articles

Ph: (212) 456-5421

Toll Free – 1-800-789-1250

abc.permissions@abc.com

CBS

cbslaclips@tvc.cbs.com

CNN

licensing@cnn.com

Fox News

ArchiveSales@foxnews.com.

NBC and MSNBC

Contact Getty Images at service.na@gettyimages.com

PBS NewsHour

Annette Miller

Vice President, NewsHour Productions

NewsHour Productions – Main Office

2700 Quincy St., Suite 250

Arlington, Virginia 22206

703.998.2170

Ethical Public Speaking

“I still believe that most lawyers are wise enough to know that their most precious asset is their professional reputation.”⁵

National Communication Association Credo for Ethical Communication⁶

Questions of right and wrong arise whenever people communicate. Ethical communication is fundamental to responsible thinking, decision making, and the development of relationships and communities within and across contexts, cultures, channels, and media. Moreover, ethical communication enhances human worth and dignity by fostering truthfulness, fairness, responsibility, personal integrity, and respect for self and others. We believe that unethical communication threatens the quality of all communication and consequently the well-being of individuals and the society in which we live. Therefore we, the members of the National Communication Association, endorse and are committed to practicing the following principles of ethical communication:

We advocate truthfulness, accuracy, honesty, and reason as essential to the integrity of communication.

We endorse freedom of expression, diversity of perspective, and tolerance of dissent to achieve the informed and responsible decision making fundamental to a civil society.

We strive to understand and respect other communicators before evaluating and responding to their messages.

⁵ *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 413 (1990) (Justice STEVENS, concurring in part and dissenting in part).

⁶ Public Statement Credo for Ethical Communication 2017.pdf available at <https://www.natcom.org/sites/default/files/>

We promote access to communication resources and opportunities as necessary to fulfill human potential and contribute to the well-being of individuals, families, communities, and society.

We promote communication climates of caring and mutual understanding that respect the unique needs and characteristics of individual communicators.

We condemn communication that degrades individuals and humanity through distortion, intimidation, coercion, and violence, and through the expression of intolerance and hatred.

We are committed to the courageous expression of personal convictions in pursuit of fairness and justice.

We advocate sharing information, opinions, and feelings when facing significant choices while also respecting privacy and confidentiality.

We accept responsibility for the short- and long-term consequences for our own communication and expect the same of others.

When you speak publicly, your audience perceives you first as a lawyer. Your reputation as a lawyer, your most valuable professional asset, will be affected by your conduct when speaking. When you practice law, you are bound by your state bar's rules of ethics. When you speak publicly you are bound by the "unwritten" rules of ethical public speaking. It's incumbent on you to understand and apply the principles of ethical public speaking.

A review of these principles reveals that if you follow your professional rules of ethics, you will be able to follow the principles of ethical public speaking. In many ways they conform to the same goals and purposes.

To speak ethically, you must:

Be truthful.

Avoid plagiarism, cite sources properly, and respect content copyright.

Acknowledge any conflicts of interest you may have.

Be fair in your presentation.

Respect your listeners' values.

Avoid Offensive Speech.

These principles are not much different from the rules of professional conduct that you must follow--For example, ABA Model Rules of Professional Conduct Rule 4.1: Truthfulness in Statements to Others; Rule 3.3: Candor Toward the Tribunal; Rules 1.7 and 1.8: Conflict of Interest; Rule 3.4: Fairness to Opposing Party and Counsel; Rule 3.5: Impartiality and Decorum of the Tribunal.

Speaking Remotely/Online

Unfortunately, the “new normal” necessitates that we often meet with and speak to others remotely. Although you should follow the public speaking principles covered in this book even when speaking online, there are some additional pointers that you should follow.

Equipment

- Use reliable video conferencing software. There are quite a few of these programs available but be sure to use one that is convenient for your audience.⁷ Whichever you use, it’s crucial to fully familiarize yourself with the program, its components, and operation.
- Use a webcam/video conferencing camera. Disable the camera imbedded in the computer.
- Use a wireless lavalier microphone.
- Invest in and use a video conferencing lighting kit. These products can be purchased online for as little as \$10.00 and as much as \$300.00.

Venue

- Create a “studio” with a polished appearance.
- Light the image as professionally as possible.
- Use a pleasing, professional, background that doesn’t distract from you and your message.⁸
- Customize the background using the composition techniques described in Chapter 13. Favor neutral colors such as soft white, light gray, and navy blue.

Most video conferencing platforms provide virtual background choices. These can be adequate but avoid the “tropical beaches” and “outer space” variety. If you use one of these backgrounds

⁷ There are at least 105 according to Online Meeting Software, <https://www.softwareadvice.com/sem/voip/online-meeting-comparison/p/all/>.

⁸ Bookshelves displaying your reading material may impress, but they also distract.

or use a green screen, practice with them to avoid the ghostly “disappearing act” that often results if you move.

-“Soundproof” the room to eliminate outside noise, echoes, and other distracting sound.

-Lock the door! Prevent interruptions from coworkers or family and roommates (if you’re presenting from home).

Practice

-Practice your speech following the guidelines in Chapter 6 using the video conferencing platform and equipment.

-Enlist the help of volunteers to act as your online audience during practice sessions. This will give you an accurate “feel” of speaking to a remote audience. Many speakers who acquire energy from a room full of people and use the “chemistry” that this creates find speaking to a remote audience to be lifeless. Practice to avoid this pitfall.

-Record the practice sessions to see how you will sound and appear.

Before the Presentation

-Check the internet connection.

-Test audio and video.

-Ensure that your laptop is plugged in.

-Hide the “ribbon” of the program that you are presenting from.

-Mute audio and pop-up notifications.

-Mute audience members.

-Adjust your camera level. The best camera framing will display your face, neck, and shoulders.

During the Speech

-Stand while you speak. This ensures a high energy level. Either use a standing desk or position your laptop so that you will be standing at eye level with the computer.

If you must sit, pay attention to your posture – follow the tips in Chapters 8 and 17. Do not use a standard office chair that rocks and rolls on wheels.

-Maintain eye contact. Always look directly at the camera lens and not at your image on the computer monitor.

Place the monitor far enough away so that if you must look at audience members appearing on the monitor, your eye contact will still appear to be with the camera.

-Use limited gestures. Unless you will be appearing “in full view,” most arm and hand movements won’t be visible to your audience.

-Pay attention to your vocal quality. Speak at the volume you’d use if talking with someone in conversation rather than to a room full of people.

Using Notes:

-If the camera framing is close, looking down at note cards or paper may be distracting. Post your notes next to or right below the camera. This will ensure that your eye contact remains with the audience.

-Consider using a teleprompter. Inexpensive teleprompter equipment and teleprompter software are available online. There are several videos online that explain how to build a homemade teleprompter

Using Visual Aids:

-It is difficult for audience members to stay attentive during remote presentations. Therefore, it's important to use visual aids to keep the audience interested. Overall, follow the techniques described in Chapter 13.

-If you use photographs or slideware, be sure that the video conferencing platform permits you to share your screen. Follow the techniques described in Chapter 13 for how to design and display the slides. If you plan to use objects, you'll need to adjust the camera framing to be allow for this.

Question and Answer Session

-For the most part, handle the Q&A session after the speech according to the guidelines in Chapter 16.

-Turn off the chat function on the video conferencing software to prevent interruptions during the speech.

-Remind audience members who wish to ask questions to unmute themselves while speaking.

Video Examples of Speeches

Audience and Venue Awareness

☞ Reagan Challenger Speech

This speech, written by Peggy Noonan, exemplifies brilliant crafting and delivery. Reagan's mission was to address three audiences—the general public and families of the deceased astronauts, NASA employees, and young children (especially Christa McAuliffe's students). This also provides an example of the skillful use of a closing quotation.

<https://www.youtube.com/watch?v=Qa7icmqgsow>

Noonan's book, *Simply Speaking: How to Communicate Your Ideas With Style, Substance, and Clarity*, provides interesting background about drafting the speech.

☞ Obama's Address to the 2004 Democratic National Convention

Then Senator Obama recognized that he had two audiences—the conventioners and television viewers. Notice how often he looks directly into the camera to connect with the television audience.

<https://www.youtube.com/watch?v=eWynt87PaJ0>

☞ Sara Palin Accepts Nomination at 2008 Republican National Convention

McCain's campaign aids Nicole Wallace and Steve Schmidt have said that this was one of the best convention speeches they'd ever seen.

<https://www.youtube.com/watch?v=Om2gNE48gDI>

☞ Jenifer Granholm's Speech at the 2012 Democratic National Convention

An example of a delivery well-suited for revving up the crowd in the arena but too "hot" for a television audience.

http://www.huffingtonpost.com/2012/09/06/jennifer-granholm-speech-democratic-convention_n_1863181.html

☞ Dean Scream

This clip shows the moment Dean derailed his quest for the Democratic presidential nomination.

Dean had two audiences watching this speech—his supporters in the room and the television audience. His goal was to keep his supporters enthusiastic and optimistic. He neglected, however, to consider how his delivery would appear to the audience watching at home. Although

people in the room, including the press, did not consider his actions to be bizarre, the television audience perceived his behavior as “unhinged,” “crazy,” and not representative of someone with the temperament to sit in the Oval Office.

<https://www.youtube.com/watch?v=D5FzCeV0ZFc>

Special Occasion Speeches

☞ Tom Hanks Eulogy for Clarke Duncan

This provides an example of appropriately using humor in a eulogy.

<https://www.youtube.com/watch?v=DsQhB4tJRxw&feature=youtu.be>

☞ Clinton 911 Speech Memorial Speech

<http://newsbusters.org/blogs/noel-sheppard/2011/09/10/bill-clintons-flight-93-memorial-dedication-speech>

☞ Reagan D-day Commemorative Speech

<http://www.youtube.com/watch?v=eElqdcHbc8I>

Dealing with the Unexpected

☞ The Wrong Speech

Here President Clinton presented an address to Congress (his first) regarding health care. When he arrived at the podium, he noticed that the teleprompter has been loaded with the wrong speech. You’ll see him turn and tell Vice President Gore who sends someone to address the problem. Clinton “ad libbed” and referred to written text for approximately ten minutes before the correct speech was loaded.

<https://www.youtube.com/watch?v=3K1d3E-BoUw>

What Type of Visual Aid Should Be Used?

Questions to ask when determine the type of visual aids to use in your speech.

Objects and Props

- Are there objects available that will represent otherwise abstract ideas covered in the speech?
- Are the objects interesting?
- Are the objects large enough to be seen by the audience?
- Will the speaker be able to manipulate the objects easily?

Handouts

- Will a handout assist the audience to understand the speech's complex topic?

For example:

Legal concepts presented to a lay audience or

Legal concepts, doctrine, procedure, etc. presented to lawyers at a CLE

- Will the handout provide the audience with detail that the speaker will not have time to cover in the speech?

Photographs

- Are the photographs interesting and relevant to the topic?
- Will the photographs be easy for the audience to see?
- Will the speaker be able to manipulate the photographs easily?
- If copyrighted, does the speaker have permission to use the photographs?

Flip Charts and White Boards

- Will the speaker be soliciting ideas, suggestions, or other information from the audience during the speech?
- Will the speaker be able to write the information easily and legibly on the flip chart and white board?

Video and Audio

- Is the video or audio clip interesting and relevant to the topic?
- Will the video or audio clip grab the audience's attention?
- Is the video or audio clip short – no more than one minute?
- Will the speaker be able to cue and play the clip easily?
- If copyrighted, does the speaker have permission to use the clip?

Document Camera and Overhead Transparencies

- Will the speaker be displaying and annotating documents during the speech?

Slideware Presentation Programs

Keeping in mind that slideware presentation programs should not be considered the default visual aid method:

- Will slides quickly convey information that otherwise can't be conveyed effectively by other types of visual aids – usually handouts?
- Will slides be useful to display objects, photographs, charts, etc. that otherwise would not be easily seen by the audience and would not be easy for the speaker to manipulate?
- Will the speaker avoid turning the speech into a slide show?