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Lawyers and Media: Three Big Mistakes

Here are three fundamental communication missteps that legal teams make when dealing with the media during litigation.

By Isaac Benjamin

"That was a perfect answer. Can you say the exact same thing to the reporter?"

Like clockwork, the lawyer pauses a beat, then dutifully explains why they can't actually phrase it so simply in an interview.

It is a roadblock in nearly every media training session. Both attorneys and the clients they represent are full of insight when they're preparing for an interview, only to abandon their candor when they go on the record. Particularly in legal matters, attorneys speaking to the press believe they are acting in the best interest of their client by mitigating the risk of negative coverage when they pivot to garden-variety banalities in lieu of direct, interesting commentary. The truth however, is that this impulse to "do no harm" frequently undercuts the value of media relations, quite often making things worse.

Adhering too closely to the Hippocratic Oath may seem risk-free, but if it makes your client look weak, vacillating, mealy-mouthed or unsure, it will do more harm than good.

With that in mind, here are three fundamental communication missteps that legal teams make when dealing with the media during litigation.

(1) You don't get extra credit in the courtroom for getting beat up in the press.

Many attorneys believe that maintaining a muted presence in the media—if not entirely mute—will curry some sort of intangible favor with the court. This reflects a fundamental misinterpretation regarding what behavior in the media generally ticks judges off. While lawyers are concerned about appearing to bully or taunt in the press, this form of groupthink ignores the reality that you're being tried in the court of public opinion whether you play ball or not. It's fair to say that most sophisticated judges understand that, assuming ethical rules are adhered to throughout.

There are plenty of alternatives to "no comment" that can amplify key messaging to your target audience. Punchy punditry may occasionally get top billing, but it's typically the straight shooters committed to working with the media who effectively impact which narrative comes through in a story. If you're sacrificing the opportunity to engage with the media, you're creating a vacuum in which other interpretations can form—at times stoked by the other side.

(2) Defensive driving doesn't work: Say what you mean.

Last year, a client asked me to draft a press release that would make it crystal clear to reporters just how offensive the other side's behavior had been, following the filing of motion with the court making the same argument. A few hours after sending a first draft for review, the client responded with their own marked-up version; calling one highlighted paragraph "far too aggressive," they deleted the paragraph and replaced it with a series of banal, vague clichés. The kicker? The section they deleted was lifted, verbatim, from their own filing, available for all to see in the court docket.

Attorneys instinctually establish red lines of caution when dealing with media to protect themselves from admitting liability or risking misinterpretation. This can actually do more harm than good if it means sticking to generalities that don't adequately convey your position. A defensive response guided by self-restraint—rather than tactical messaging—ignores the core tenets of effective communication. What perspective can you add to the facts of the case that won't otherwise be covered? Don't let cautiousness become a defense mechanism that dilutes your message to the point that it clouds your strategy.

There's a comfort level that many attorneys find in the docket. Hidden in a procedural paper trail can be accusations that are true, but that they feel uncomfortable conveying to a reporter in the same way they've presented it to the court. But facts are facts, and if a reader can't understand the logical point you're trying to make because you've buried it in generalities and pablum, they won't remember any of the key takeaways from your narrative.

(3) Once is never enough.

Nobody is following your case as closely as you are. Indeed, even reporters covering the dispute on a day-to-day basis aren't—and they're certainly not cataloguing each prior comment to pull out for use in their next article. Thus, each dispatch to the media needs to support your narrative on its own. By necessity, that means repeating key messages over and over again. It may seem unnaturally duplicative, but it's the only way to make the audience see the bigger picture.

In political campaigns, field organizers understand that it takes a minimum of 5 or 6 interactions to sway likely supporters into voters. The same principle applies to communicating to media during a legal dispute. A successful communication strategy might not show tangible dividends right away to reflect progress. It takes time, as well as realistic expectations of what is possible; but activating effective messaging campaigns is a necessary component of navigating the scrutiny of litigation in the public eye successfully.

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