
Media and the Law

By Debra S. Frank, Esq.

In the world of high profile litigation, lawyers often prepare for any contingency - motions, jury selection, delays, evidentiary hearings, surprise testimony - except one: media coverage. Notable exceptions notwithstanding, most lawyers find themselves unprepared for the press onslaught that can greet a major trial. Include the celebrity factor and a trial can quickly transcend all reasonable proportions; the attendant commentary, which itself is a career opportunity for enterprising attorneys, is enough to vanquish the toughest of litigators. Indeed, the nature of TV and electronic news demands a new class of lawyers, professionals who are as communicative outside the courthouse as they are inside it. Law schools also have a duty to include some form of instruction about media and its longtime influence on these matters, since the next generation of attorneys - call them the YouTube Generation - already gets its information, distilled and thoroughly analyzed, from countless news sites. This newly defined landscape can be a real boon to lawyers, strengthening their ability to answer unexpected questions and further key arguments, while educating the public about the legal system.

There may be a natural inclination among attorneys to avoid the press. This approach, while understandable and hypothetically sound, can actually undermine a client's argument and an attorney's reputation. Silence before the press - an entirely acceptable strategy, though not without its hazards, in the pre-digital age - is an invitation for falsehood, innuendo and negativity among today's arbiters of influence, or consumers of news. An attorney's ability to navigate this landscape, including the intelligence to successfully develop key relationships with reporters, can go a long way toward shaping the public's attitude toward a given lawyer. Take, for instance, the way the press can (and often does) conflate a suspect's alleged crimes with a defense attorney's attempt to answer these allegations. If a lawyer remains silent - if he or she simply ignores the press - the media can just as

easily create their own narrative about this attorney's "intransigence" or "hostility."

Examples of this union, or the begrudgingly yet mutually beneficial partnership that can exist between lawyers and media, abound. Starting with the Nuremburg tribunals - the first internationally broadcast criminal proceedings where the world literally had a stake in the outcome - to any number of considerably less important cases that bookend the evening news, a pattern clearly develops: reporters can influence popular opinion about the accused or the legitimacy of a legal argument. O.J. Simpson certainly

proves this rule - his criminal trial will long be a primer about press relations - which demands further attention. (The Simpson case is, as we already know, a metaphor for divergent views about race, class, justice and the manifold ways journalists interpret these issues. But the way the respective legal teams handled themselves, and the reactions they received from reporters, is also particularly interesting.)

Simpson's defense attorneys remind us that past achievements matter. That is, many of these lawyers - F. Lee Bailey and Alan Dershowitz, specifically - have well-established connections with media, having

previously argued high profile cases and authored books about equally riveting subjects. This ability - the inclination to speak to reporters, while advancing discreet points of law - is at the core of a lawyer's success. (Notice that Mr. Simpson's reputation - and the divided opinions about his guilt or innocence - has little to do with the effectiveness of his lawyers, when presenting themselves to the press. Translation: it pays to court the media.)

The Simpson case is merely one of several examples of the intersection between law and celebrity in Los Angeles. More recent trials - including the child custody hearings involving Britney Spears and her former husband, or the murder trial of actor Robert



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Blake, which attracted its own share of B-celebrity groupies, or the media speculation about the rape accusations involving Los Angeles Lakers star Kobe Bryant (the alleged incident having occurred in Colorado) – all prove the same point: that Hollywood is both an entertainment capital and a legal world unlike any other, where lawyers need to know the intricacies of this relationship, both for themselves and their clients. Indeed, lawyers need to have the ability to handle crises (of the celebrity kind) when clients – take the case of a temporarily jailed hotel heiress as an example of this phenomenon – come before an aggressive press corps and a public hungry for gossip.

Going before the press is perhaps an attorney's best chance to move popular opinion, while also - and here I must state the obvious - building a reservoir of potential work among people who may need legal representation. Individuals have very partisan attitudes about certain lawyers, at least when viewed through the prism of the modern talk show circuit. In that arena, and it really is a combative forum where critics pounce and questioners rarely have the patience for deliberative answers, a lawyer's job becomes more challenging and essential: he or she must counter attempts by opponents to demonize a client, thus upholding the very principles of justice, and make people think. If a lawyer can accomplish these things, then he or she will quickly develop a name among the broader public.

Developing these skills should be part of a lawyer's career, starting with the legal education he or she receives. Today's law students have incredible facility with interactive media and online communication; they deserve the opportunity to fully prepare themselves for life as both advocates and professionals who can handle the press. Acquiring that training is both a necessity – media are more aggressive than years before – and a benefit: it hones the art of eloquence and thought.

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