

Preparing for a Media Onslaught

WHEN IT COMES TO HIGH-PROFILE LITIGATION, lawyers seem to prepare for every contingency—motions, jury selection, delays, evidentiary hearings, surprise testimony—except one: dealing with media coverage. Notable exceptions notwithstanding, most lawyers find themselves unprepared for the press onslaught that can greet a major trial. Mix in 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 television and electronic news demands a new class of lawyers—professionals who are as skilled at communications outside the courthouse as they are inside it. Law schools also have a duty to include some form of instruction about media and its influence on litigation, 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 truly be a boon to lawyers, because it may strengthen their ability to answer unexpected questions and further key arguments, while educating the public about the legal system.

There may well be a natural inclination among attorneys to avoid the press. Avoiding the press, while understandable and hypothetically sound, can actually undermine a client's argument and an attorney's reputation. For silence before the press—an entirely acceptable strategy, though not without its hazards, in the predigital age—is an invitation to falsehood, innuendo, and negativity among today's arbiters of influence and consumers of news. An attorney's ability to navigate this landscape, including the intelligence to successfully develop key long-term relationships with reporters, can become a major step toward shaping the public's attitude toward a given lawyer and his or her clients.

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 may just as easily create their own narrative about the attorney's "intransigence" or "hostility."

It bears noting that there is a profound difference between a lawyer's decision to speak with the media, which offers some degree of personal and professional detachment, and a client's own insistence on talking directly to the press. The former has its benefits, such as addressing misperceptions among the public or correcting points of law, while the latter is virtually guaranteed to sabotage a trial. A client should no sooner deliver a complex summation before a judge or jury than he or she should stand before a phalanx of reporters, many of whom are far less forgiving than the sternest courtroom judge. On the other hand, the media will actively seek attorneys who have the ability to make complex legal issues intelligible to a mass audience. And therein lies the essence of advocacy: communication.

Examples of this symbiotic relationship, the begrudging yet mutually beneficial partnership that can exist between lawyers and media, abound. Starting with the Nuremberg tribunals—the first internationally broadcast criminal proceedings in which the world literally had a stake in the outcome—and continuing with any number of considerably less important cases that regularly bookend the evening news shows, a pattern clearly develops: Reporters are in a position to influence popular opinion about the accused or the legitimacy of a legal argument.

The still unequalled apogee of this phenomenon, the O. J. Simpson

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criminal trial, will long serve as a primer on press relations. The Simpson case, as we already know, is not only a metaphor for divergent views about race, class, justice, and the manifold ways journalists interpret these issues, but also presents the two classic paradigms on how lawyers can handle the press and the way reporters react. Simpson's defense attorneys reminded us that past connections matter. Many of his lawyers had well-established contacts with media, having, over many years, argued high-profile cases and authored riveting legal-themed books. Their ability to communicate with reporters while advancing discreet points of law favorable to their client lay at the core of their success.

Going before the press may be an attorney's best chance to move popular opinion. Members of the public frequently have very partisan attitudes about certain lawyers when viewed through the prism of the modern talk show circuit. In that medium, a combative forum where critics pounce and questioners rarely have the patience for deliberative answers, a lawyer's job becomes more challenging and as a result more 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 development, starting with the legal education he or she receives. Today's law students generally enjoy 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—the media are more aggressive than ever before—and a virtue. It hones the art of eloquence and thought. ■

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