

Attending ‘media management’ courses will teach you how to manage the media the same way I can teach you how to shovel smoke. Although you can’t truly manage the media—they are fiercely independent—with the right skills you can at least help manage the message.

Litigation Media Management

BY RONALD F. POL

Such courses remain invaluable for lawyers involved in high profile cases. The reality is that the media trial is often as important to the client as the courtroom trial. Just ask Arthur Anderson. Did they ultimately win the litigation? Frankly, it doesn’t matter; they were gone before they even got into the last courtroom. If a media onslaught can help put a Big 5 accounting firm out of business, it can happen to anyone.

Complementing courses run by seasoned journalists, books also help, such as the “Media Training Guidebook.”¹ The litigation section offers the following pointers:

- 1. Saying nothing don’t mean nothing’s said.** “No comment” might be appropriate, yet simply trotting it out as a reflex, with its companion “we won’t try this case in the court of public opinion,” can be dangerous. We might think that saying nothing means, well, saying nothing, yet the message it conveys might instead be taken as a sign that the client’s not faring well and the lawyer hopes the less said the better. If this piques a journalist’s interest, a little digging might ensure more coverage, not less; with none of it presenting your client’s side of the story.
- 2. Playing offense for the defense.** If the media’s going to report, they’ll do it whether or not the defence

participates. So if you choose not to engage, your client might be seen as evasive or having something to hide.

- 3. Limited engagement underrated.** It’s not “all or nothing.” If bar rules or court orders prevent you from saying some things, politely explaining why you can’t be more forthcoming on a particular point can be better than a point-blank refusal, especially if it’s not simply “no-comment” dressed up. If a reporter knows you might be able to provide more information later, your client might not be attacked at the outset.
- 4. See the need.** You know what the judge needs. Deliver it to the best of your ability. The media also has legitimate needs—for timely, factual, and accurate information. If your strategy allows you to help meet those needs, it can improve your ability to tell the client’s story.
- 5. Internal is external.** Communicate your message internally. Employees can be powerful spokespersons, but only if they know the facts. Make sure the message is accurate, authentic, and consistent—good reporters recognize “spin” from 1,000 paces and employees are often their first port of call when they decide to “open up the real story.”
- 6. Perception is reality.** Outlining the Ford/Firestone product liability cases, Miranda Sevcik recounted in 1998 a woman who lost her 14 year old daughter in a Ford Explorer rollover and refused to settle, and with her lawyer took the case to the media. The ensuing widespread coverage focused mostly on tire blowouts causing SUV rollovers. In essence, Ford’s story got to the

media first and Firestone seemed at fault. If they’d appreciated the public perception earlier, Firestone might have maintained a closer connection between perception and reality.

- 7. Yes Martha, judges are human too.** Care must be taken not to try and influence judges with inadmissible or inappropriate “evidence” to the media which can’t be presented in court, yet it would be folly to think that judges don’t read newspapers or watch television. When appropriate, lawyers can sometimes summarize elements of their client’s case to expose human elements often missing in the formality of a courtroom.
- 8. Answer the call.** If you don’t return a reporter’s call on a story in which you don’t want to be included, you won’t get calls for the stories on which you want coverage. Lawyers are great at “no holds barred” sparring with colleagues in court, yet with friendly discourse on other issues at lunchtime; reinforcing collegiality for which the profession prides itself—so why not treat journalists with the same respect? They’re doing their job. Even if you can only say that you can’t help with this particular story, every call is an opportunity to build stronger relationships.

As Jeffrey Sandman concludes, it is naive to think that participants in high-profile legal cases can ignore the media. If the media’s covering a case, the choice can be stark; tell the story yourself, or let your opponent tell it for you. 

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NOTE

1. Published by PR News (www.prnews-online.com). With particular thanks to Jeffrey Sandman (Hyde Park Communications), Miranda Sevcik (Media Masters), and Richard Levick (Levick Strategic Communications) from whose contributions this article has directly drawn.



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