

### Five Ways to Manage PR In High-Profile Litigation

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Imagine the following: You've landed a high-profile case involving a public figure or well-known company accused of serious misconduct. As a litigator, zealously representing your client in the courtroom is your bread and butter. You're aware that your case will elicit media coverage, but that's someone else's headache, right?

Think again. Even if you win the battle in the courtroom, you can still lose the war in the public eye. And if that happens, you haven't completely solved your client's problem. In other words, if you win your case, but the media narrative has spun so far out of your control that your client's reputation is permanently tarnished, have you really won at all?

Take a simple example. You represent a major railroad company in litigation over a derailment that killed multiple people. Although the derailment was caused by an unforeseen act of a third party, the media is dragging the railroad company through the mud, and the public is furious. In the courtroom, your client is found not liable. But riders are so angry that they refuse to ride on your client's railroad line again, causing your client's sales to plummet. You won the case, but you lost the war.

So, yes, it is your problem to manage public relations in high-profile litigation. But how? While the answer



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is, of course, "it depends," there are certain practice points you should consider.

#### Leverage the Public Docket as a Storytelling Vehicle

In a high-profile case, the public docket is transformed from a record mainly for the litigants and the court into the story of your case that will be read by the public. Expect anything you file on the docket to be scrutinized by the media, shared and reshared on social media, and quoted in news articles. While your principal goal remains to prevail in the case, you must view your public filings as both persuasive works of advocacy for the court's benefit and as easily digestible stories for the public.

Your goal from a Public Relations (PR) perspective is to ensure anyone who reads your filings understands your client's version of the facts and events in a clear and coherent way.

For example, you may have a winning argument that the case against your client (criminal or civil) should be dismissed based on a jurisdictional defense or some other technicality. From a legal perspective, this might mean that the underlying facts don't matter. But if your client has been accused of terrible wrongdoing, their response must also take steps to explain why they did not do what they are accused of—in addition to the technical defense.

Failure to do so will leave the media with only one side of the story (your adversary's), which is not an ideal picture. Instead, you must seek dismissal on all viable grounds, technical or otherwise, while also using that motion practice to tie in your client's narrative.

The public docket is one of the best resources that the media has when investigating your case, so be mindful of what you say—and use your words wisely to defend your client both legally and in the court of public opinion.

### **View the Press as Your Ally**

Think of your relationship with the press as symbiotic. Reporters have a job to do—covering the facts of your case. Your job is to hold them accountable in doing so, ensuring that what they report is both factually accurate and not misleading.

The best way to ensure accurate coverage is through forming relationships with reporters and editors from the media organizations following the story. This is a process. The more you handle high-profile litigation, the more you will get to know the members of the press who cover your type of cases. Don't be afraid to speak with them about your case (principally off the record or on background) to explain the facts, who your client is, and where they fit within their broader industry. As your client's lawyer, you know every relevant detail about them and the issue they are facing, but the media likely does not. Be patient, helpful and accommodating.

### **Act Fast to Fix Misinformation**

The most important concern is that the media is reporting factually correct information. If inaccurate or misleading information is reported, it can spread like wildfire—at which point, no matter what happens in your case, it becomes hard to change the public narrative. To paraphrase from the iconic HBO show, *The Wire*, "It doesn't matter if he said it or not. People think he said it." That's the effect of misleading or inaccurate media coverage—and what we as lawyers are trying to avoid.

You must take steps to quickly correct inaccurate and misleading information. Let the reporter and news outlet know promptly, request a retraction and work with them to correct it. As you develop relationships with the media over time, such conversations should be productive and non-antagonistic. But if a news outlet refuses to correct materially false or misleading information, you may have to explain the potential consequences.

In extreme circumstances of misreporting, your client may consider filing suit to protect their interests. While we have filed defamation actions to protect our clients' interests in the past, this is a last resort when advocacy and reason do not work. Fostering your relationships with the press and keeping them in the loop goes a long way. Often, strong relationships with the media will help you learn about potentially inaccurate or misleading stories before they are written. If you cannot persuade the reporter of your position, involving their editor or their internal legal counsel is necessary. Many media organizations have their own internal guidelines on reporting, sources and ethics—hold them accountable to those guidelines.

### **Consider Your Outside PR Firm a Strategic Partner**

If you hire a PR firm to assist with media relations, work collaboratively with the firm in all aspects. A good PR firm will help you manage media coverage as an invaluable component of the litigation, not as a detached side project.

The firm you hire can help introduce you to the reporters covering your case. While you may

already have some long-standing relationships, a good PR firm has more—and is likely to regularly interact with these individuals. It can recommend media strategies to ensure your client’s story is accurately told. It can round up media coverage on your case so you can stay on the pulse of what is being conveyed to the public. A PR firm can also free up your time to focus on the legal strategy. Those who have litigated high-profile matters know of the media tsunami that can overtake your entire day until you have a process in place to control it.

A PR firm cannot, however, take the media piece off your plate entirely. In a high-profile situation, media and litigation cannot be completely uncoupled. Use your PR firm as a valuable resource to support your media efforts, not as a replacement for your involvement.

### **Treat On-the-Record Comments as Your Direct Connection to the Public**

Speak on the record to the press when it makes sense to do so. You are your client’s spokesperson, so these on-the-record quotes are your direct connection to the public. In general, brevity should prevail with these statements. Let your legal filings provide your client’s more detailed narrative.

Crucially, don’t say anything on the record that ends up being false. If you comment on the record haphazardly or without knowing all the facts, you risk that quote returning to bite you if new, conflicting information emerges. If you don’t know whether something is true, it is OK to say you are still investigating—or to not say anything at all. Being wrong is far worse than being quiet, as credibility can be near-impossible to get back.

As with all good litigation strategies, your press statements must reflect your ultimate goal in the case. Off-the-cuff remarks in response to press inquiries may feel good in the moment, but they will ultimately be your downfall.

Along with maintaining credibility, you must also consider the proper tone to strike. Generally, that means trustworthiness and confidence, without losing sight of relatability and empathy. For instance, if you were representing the railroad company mentioned above, in addition to explaining why your client is not at fault for the loss of life, you should also convey what is undoubtedly true—that your client is deeply distressed by what occurred and is invested in helping the community heal. Ultimately, your tone and messaging is situation-dependent and involves your professional judgment.

### **Conclusion: Be Prepared to Pivot**

With these five considerations in mind, remain flexible. In high-profile litigation, the state of play evolves rapidly, which means a communications strategy that made sense on a Monday may need to be adjusted on a Wednesday. Stay true to your narrative, but react appropriately when things change.

In sum, when your high-profile client is embroiled in a crisis in the courts, it is imperative that you are deliberate when it comes to PR. If you view the media as your enemy, you can win the battle (the litigation) and lose the war (your client’s reputation and livelihood).

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