



Think like a journalist: Who, What, When, Where, Why and How

Although managing the media today is way more than talking to newspaper and TV reporters, the tenets of journalism are still the underpinnings of an effective media strategy

BY TRACI STUART

A long-time television producer routinely quips that working with media is a 21st Century blood sport. A case may have all the right stuff: gross injustice; sympathetic parties; a disdainful adversary; and a mountain of supporting facts. But, if your story doesn't get heard or, worse yet, if you're ill prepared to tell it, the media has the potential to damage your case – and your reputation. Never has this situation been more acute than in our long-tailed, Web-enabled world.

Understanding the current media landscape and factoring this into case planning and litigation strategy can help plaintiffs' attorneys shine – or at least keep them well polished.

Borrowing the elements of a good article from the journalism realm, attorneys will do well to take a good look at who, what, when, where, why and how when preparing to share (or attempting to bury) their stories.

Who?

When evaluating coverage potential or planning a media relations strategy, lawyers generally account for the interested reporter from the local daily newspaper and their favorite evening news personality, but it's also critical that "new" or online media sources be on the top of your mind.

The definition of "media" has broadened exponentially in recent

years. Broadcast coverage includes television and radio, as well as podcasts or even videos posted on YouTube. A story on a well-read community bulletin board or a mention on a popular and well targeted hobbyist's blog may be more valuable (or damaging) to your case than traditional news sources.

Beyond the "official" reporter-generated stories, the Web sites of broadcast news stations, daily newspapers, news aggregators, blogs and other social media outlets often include "comments" sections. Here, members of the community can provide their feedback on the story – amplifying it, adding to it, creating controversy, showing support or raising questions. In this manner, everyone with Internet access becomes a part of your media pool (just as they might be a member of your jury pool). Attorneys should stay atop this "buzz."

Finally, consider whether media relations efforts should be aimed at appropriate ethnic media. Hispanic, African American, Asian, Middle Eastern and other groups have prominent U.S.-based media that deliver information vital to these communities. If ethnic media is of interest, outreach and response may need to be in more than one language.

Why?

For plaintiff's counsel, the reasons for providing media comment vary widely. If attorneys find themselves with a newsworthy case, it is wise to consider

the goal or strategy behind either responding to media inquiries or seeking media attention. High-level goals typically include:

- **Build the class** – In the context of a class action matter, media attention can help alert the public to a pending lawsuit and encourage opt-in. If this is the goal, be sure to clearly describe all necessary class-member identifiers in language appropriate for a middle school student. Contact information for opting into the class should also be easily provided – whether in writing or verbally.
- **Encourage witnesses** – Media coverage on your case may alert witnesses to the fallout from a situation to which they were a party or remind them of an incident they had forgotten. Again, a means for responding to the coverage should be offered.
- **Influence public opinion** – While this goal is the most nebulous, it's also the most common. The trick here is defining the influence you'd like to have. Do you want the community to be sympathetic to your client and consider how a similar situation might impact them? Do you want to stress the potentially wide-reaching impact of the issue in dispute? Do you want to drive policy, reform or other change?

Understanding your motivation for media comment will help drive your message points. This will also help you formulate responses on the fly. While you'll want to respond to questions



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directly, you're also free to bridge the response to messages that support your goal.

Reporter: "Didn't Joey and his parents join the baseball team at their own risk and sign waivers of liability?"

Plaintiff's Counsel: "Yes, *but what's critical* is that the parents – all parents who let their children participate in afterschool sports – assume adult supervision. These young boys were left totally unsupervised."

One note of caution: the "why" behind media relations should never be focused solely on the attorney (e.g., this will help generate business). If there is not a significant benefit to the client or case, media may not be desirable – or worse, it may work against you. An off-the-cuff comment (particularly one driven by ego or business development interests) could be quoted back to you and painted in an unfavorable light in front of the judge and jury. Remember, information spreads virally and lives virtually forever on the Internet.

When?

There are several points in the lifecycle of a case that attorneys can anticipate media interest.

- *Before you're engaged* – Be very aware that in many situations, the camera crews arrive before the lawyers. When a large-scale incident or natural disaster gives rise to your case, there is every chance that your potential clients – those who ultimately become clients – have already appeared on TV, in the paper or online. The material in circulation can be visual or photographic and/or include comments in response to the incident.

This pre-engagement exposure may have a direct impact on your trial strategy – as well as your media strategy. Before you engage a client, particularly if the issue is high-profile or otherwise newsworthy – be sure you thoroughly research the individual and/or family's on-

line profile. And remember a news search is only half the picture. Has your potential client poured her heart out in a blog post? Has he uploaded pictures that may impact your case on his unsecured Facebook page? Not only does defense counsel have this information, but reporters do too. And once the information has been posted, there's no erasing it.

- *Upon filing* – The filing of a newsworthy lawsuit may give rise to media opportunities. News outlets often have reporters housed at the courts to watch for notable filings; however, with resources shrinking and information proliferating, it may be necessary to alert media to your case. This can be accomplished in several ways.

- The press conference on the courthouse steps – This approach is rarely warranted except in the highest profile matters or those involving high-profile supporters. Preparation for a press conference should involve both plaintiff's counsel and his or her clients and include some on-camera practice.

- Press release – This is an opportunity to share news of your filing with a mass audience and, in the context of a written release, provide key message points. Previously, to see print (and, thereby, get the information out to the community at large), press releases had to appeal to a media gatekeeper, who would then develop and "run" the story based on the release. Today, lawyers can distribute their press releases online via wire services (e.g., BusinessWire, PRNewswire, PRWeb) and the information is Web searchable and available to interested parties in its original format.

- Direct contact – Attorneys can "pitch" or alert reporters to their filings. However, if you are pointing out filings that are not terribly newsworthy, you will quickly develop a reputation, and your tips will be ignored.

Best to only contact reporters – and specifically those reporters who cover the courts or community – on the most noteworthy cases.

To select a filing date that maximizes media potential, aim for mid-week. Also consider other news items that may compete with your story. Filing a case involving a sports injury on the day of the parade for the local World Series Champs ensures your news will take a backseat.

- *At key points in the trial* – Jury selection, opening statements, presentation of key witnesses, closing arguments and the reading of the verdict all provide opportunities for media coverage in a closely watched trial. In other instances, any of these points may provoke media interest, and attorneys should be prepared to face cameras or reporters – or even to have their arguments blogged and tweeted.

How to interact with media

Regardless of the media outlet or form, attorneys should keep some basic ground rules for engagement in mind.

- *Preparation* – If you have time before an interview, try to anticipate tough questions that might be posed. Have a colleague or other ally perform a mock interview with you. Employ the same strategy you would use if you were preparing a witness. Be on time, look polished and be prepared with your business card.
- *Confidence* – Know your message points and what you want to communicate. Take your time. Listen carefully to the interviewer's question and respond to the point as directly as possible.
- *Transparency* – Today, more than ever, there is a huge aversion to "spin," and the average consumer, business person or high school student has an amazing ability to spot it. As a result, it is critical that your comments and presentation ring true. Avoid hyperbole – "this is the most devastating tragedy ever wit-



nessed” or “this event has ruined my client’s life.” Instead focus on connecting your clients, your case and your story to the world that readers and viewers live in. Respond to questions directly and honestly, whenever possible starting with a clear “yes,” “no” or “I agree.” Cite reputable third-parties’ examples and facts to support your statements.

• *Edit yourself* – If you go on, and on, and on, you’re forcing the writer, reporter, editor, producer or another third-party to edit you. If you speak in shorter sentences – sound bites – you’re doing the editing for them. In addition, few know and understand the legal process, so if you are forced to use courtroom parlance, be sure to define it, or you may see a neutral ruling or ruling in your favor interpreted as a win for the other side. Also, while breaking down complex legal issues, be careful to avoid speaking down to the reporter. Doing so can give the impression that you are arrogant and can negatively impact the tone of the piece.

• *Timing* – In the 24-hour news cycle – which describes the current reality – there is no “hot off the presses.” If your story, case or client is in print, it’s probably not that fresh and is already readily available online. As such, news reporters are on near-constant deadlines. So return that call promptly. If you are unable to do so, let the reporter know – via e-mail or a quick call from your assistant. Also provide an estimate as to

when you might be able to respond. Reporters often pull together a brief article or package with the basics and update it later with quotes, photos or other available materials.

• *“No comment”* – Using this response – or worse, using this as a brush off – is rarely the most effective approach for avoiding an interview. “No comment” is usually construed as an admission of guilt, or in the case of broadcast media, visually casts an attorney as the “bad guy.” If your strategy is to avoid comment, know why. If possible, explain this to the inquiring reporter. For example, “This case has already received much exposure with numerous parties telling their sides to anyone who will listen. My client and I look forward to our day in court, when we will exercise our constitutional right to tell the whole truth to those who matter most – our jury.” It’s not likely that such a quote or statement will make the cut, but it’s definitely better than the visual of a rapidly passing attorney shouting “no comment.”

• *On camera* – When faced with a news camera, focus on the reporter doing the questioning and always assume the camera is rolling. With activity surrounding you, it is imperative that you concentrate on what you are saying and your actions. Even the slightest eye movement looks like a distraction on camera.

Body language is a key factor on video. A good rule of thumb is to sit or stand straight with your legs planted on the floor, but don’t appear to be “frozen.” Use small gestures for empha-

sis, keeping hands within shoulder width and height. Speaking to a camera often feels uncomfortable for people not used to it and even to those adept at giving lectures. If you have time, get some training to prepare yourself for this experience.

Those who know journalism or are familiar with the “5Ws and 1H” of reporting may have noted that the question of “Where?” has not been addressed. It’s the easiest. Attorneys may be confronted with reporter requests or faced with cameras anywhere.

Today’s journalism students learn videography techniques, as well as the fundamentals of writing and reporting. Newspapers and broadcast stations encourage average citizens to send in footage – even if it was captured on a cellular phone – for post on their Web sites as part of a “news package.” With free blogging tools and social networking sites, “citizen journalists” are a reality. As such, an awareness of the media isn’t optional for successful plaintiffs’ counsel, it’s a requirement.



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