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Be Media Savvy (p.9)

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# Smart Ways to Deal with the Press

by **Eden Gillott Bowe**

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The relationship between you and the media can be adversarial. But when developed well, it's also based on a sense of trust and *quid pro quo*. That doesn't mean you should blindly trust journalists. But it does mean that journalists *must believe* three things: you understand their needs, you want to help them, and you'll be honest (or at least fair). In addition, journalists *must believe* you offer something of value that will give them an edge over their peers.

Just as you develop a litigation strategy for the case, you should also devise a proactive media strategy. "No comment" is generally no good. Preparing in advance for dealing with the media saves headaches and cost, and provides your clients the best chance to protect their reputations – not to mention yours.

Whether they're print, TV or online, all journalists want the same thing: Recognition for being first with a breaking news story or writing the most insightful analysis. That is their metric. It is how they judge themselves, and it's how their peers and editors judge them. To the extent you can help them, they're grateful – and that makes them malleable. Once you grasp this concept, it's much easier to work with the media. But understanding motivation is only the first step.

## **The Intersection of Reputation and Truth**

To defend your client's reputation in the media, you must know where all the skeletons are buried. Only then can you build an effective defense. For this reason, experienced crisis public relations professionals are sometimes engaged as part of the legal team in high profile or high stakes cases. This brings them inside the tent of attorney-client privilege, so clients are reassured that they can share their darkest secrets – and they will stay secret.

## **Getting and Telling the Truth**

Clients aren't always forthcoming. Some hope if they don't admit the truth even to

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themselves, it won't be real. Others think if they don't tell their lawyer or Crisis PR counsel the truth, it's easier to sell a believable story to the media and the public. Life doesn't work that way.

If the story doesn't sound true, it probably isn't. Keep pressing from different angles to unearth nuggets of truth until you've guided the client to recognize the value of fessing up to you. The fastest way for a small issue to become a big problem is to step in front of the media or other stakeholders armed with half-truths and lies. You will lose credibility in an instant.

You'll never get away with flat denials if the facts against your client are obvious or will soon become public. False denials will not only destroy the reputations of you and your client but also whatever goodwill you've both earned.

Some explanations may take you close to the line, but not over it. They can soften the glare, shift the spotlight, or redefine the tone of the story. The problem may not go away, but it can become less painful at the moment and less damaging down the road.

Selective truth-telling is acceptable. But what you say must be plausible, and it must withstand scrutiny. Otherwise, you feed the frenzy, cause more speculation, and invite the media to keep investigating until they uncover what they believe you aren't telling them.

### Telling the Truth in a Way that Gets Reported

You may have a good angle to share that truthfully presents your side of the story, but it won't help your client if it never finds its way into the reporter's story. Be quick. Be

memorable. Be smart. Why? The public's attention span is short, and the media's is even shorter. Use this to your advantage by giving them only the most necessary information. End of story. Tailor your comments to the journalist's beat and expertise – reporters in the legal press may be better able to appreciate nuances that will be lost or mangled in the mainstream media. But whether or not you are speaking to a sophisticated reporter who has experience covering the area, don't add details that bury your theme in minutiae. Even worse are details that increase their appetite for more or raise questions you don't want to answer.

### Buying Yourself Time

Initial media statements can serve as pause buttons, and they are an integral part of your long-term strategy. They briefly satisfy the media and public while you gather facts, polish your message, and get the tone just right. Keep them short and simple. Too much information isn't your friend. It creates confusion and leaves room for error (either on your end or theirs). Also, the media may focus on what's least important to you and undermine your message.

Next, explain your priorities, what you're doing, and what you'll be doing in the near future. Make it obvious that you're engaged. Reassure them that taking care of this matter is your top priority. This is an excellent time to show compassion, especially if there's a loss of life (human or animal) or a threat to safety.

As more information becomes known and you make further statements, keep them simple and stick to the facts.

### Managing Your Client's Employees

The media will grab anyone they can for a statement. Make sure all your client's employees know who's authorized to speak. No one else should. This is a major pitfall. The danger is that people love to talk. When a microphone is put in front of them, a star is born. They become overwhelmed and tend to ramble. To make matters worse, they're



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often the least informed and make erroneous and damaging statements.

### Using Social Media to Your Benefit

Your client's most loyal fans (and critics) will automatically look to social media for the latest information. It's crucial that you don't ignore this. Post official statements directly onto all of your client's social media platforms. This is your opportunity to tell your client's story on your terms. Reach out to your client's stakeholders in whatever form they use. If you don't keep them informed, they will speculate. Know where their eyes are. There's no point in getting your message out if no one is around to read it.

The Internet is a treasure trove of information. Use this to your advantage. Monitor the public's opinion of your client. Correct inaccuracies. Learn what the other side is up to.

### Working Directly With the Media

**First things, first.** Breathe. Stay calm. Your speed, accuracy, and credibility are essential to effectively represent your client in the media. The media will learn about an incident, like a major adverse verdict, within minutes, assuming it's big enough news. Sometimes they're in such a rush to publish that they report the future. Remember Michael Jackson's death? TMZ reported he was dead while emergency room doctors were still working and nearly half an hour before they declared him dead.

**Media: Friend or foe?** Neither. The media isn't out to get you. They're out to get the story. Understanding the mind-set of a reporter means you know what they need and when they need it. Sadly, this often means they prefer a juicy, negative story. Your client just happens to be in the wrong place at the wrong time.

**Killing a story.** If the media has sunk their teeth into a story, you might be out of luck. But you do have options. Is no one else chasing the story? If so, it's not competitive. Let the reporter know this, and assure them that if any other media *does* come snooping, they'll get the first call-back. This



will deflate the sense of urgency because the reporter doesn't feel compelled to file a story immediately to protect their "scoop." This buys time to develop a more thorough strategy to defuse the issue.

**Shifting the spotlight.** If killing a story isn't an option, shift the spotlight. Refocus the reporter's attention by providing them a new angle and fresher material. For a reporter, that's preferable to regurgitating the same day-old story.

**Best thing you can say (in almost every circumstance):** "Let me check on that, and I'll get right back to you." This buys you time. Not a lot, but even a little goes a long way. Gather all the facts. Know what you want to achieve before you start talking. Don't stray off message. Changing your story mid-stream corrodes your credibility and reputation.

**Worst thing you can say (in almost every circumstance):** "No comment." Unless you're restricted by legal constraints, saying this means you've missed an opportunity. Use the time to say something that can shift the spotlight, make the story more favorable, or at least soften the damage to your client. If a client is nonetheless too worried about mistakes to allow you to speak extemporaneously, at least seek permission to send publicly filed documents (briefs,

motions) that reflect the client's position, so that you don't sound cagey and obstructive.

**Never lie.** If you do, you'll get caught. The cover-up (or lie) is worse than the original sin.

**Key Points: Pick two or three (and stick to them!)** Know what questions you want to answer, which may be very different than what the media asks. You see this all the time in political debates. If you rattle off too many points or topics, chances are the reporter will focus on exactly what you *don't* want. Don't leave things to chance.

**Sound bites.** Anticipate what will capture the media's attention and tailor your words ahead of time. Comments that are overly detailed and riddled with jargon cause the media to lose interest. Ask yourself: Will this fit into a few seconds of air time or a paragraph in a newspaper?

**You needn't fill the silence.** Don't fall for this old journalistic trap! People naturally feel awkward when there's silence. Resist the urge to ramble. If you say nothing, reporters will realize they've been outfoxed and will move on.

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## Quick Tips for Working with the Media

### DO

- Select one to two people who are trained to talk to the media.
- Let the public know what you're doing to resolve the situation. Show empathy and compassion.
- Select two to three talking points. Don't stray from them.
- Monitor all media coverage. This includes social media.
- Correct errors immediately. Otherwise they're presumed true by whoever sees them in the future.

### DON'T

- Allow untrained or uninformed individuals to talk to the media.
- Go into too much detail.
- Say, "No comment."
- Speculate. Make sure you stick to the facts.
- Use industry jargon. It's off-putting and makes you less likely to be quoted.

#### *Presume you're always "on the record."*

Only if you've built a long relationship with a reporter should you even begin to consider speaking on background or "off the record." The lower you go down the journalistic food chain, the less likely reporters are to understand, let alone abide by, the rules of "on background," "off the record," and "not for attribution."

**Get back to the reporter promptly.** When you tell a reporter "I'll get back to you," make sure you do. Usually, reporters will say their deadline's earlier than it actually is. Regardless, respect their clock and deliver on your promise.

**Monitor the media for factual errors – and correct them.** If you don't, errors will take on a life of their own and eventually become accepted as facts.

### Repairing a Reputation After a Crisis

Whenever accusations are made in the media, you always face an uphill fight. The world is more cynical than ever. It's easier to believe the bad than it is to hope for the good. It's also satisfying (in a voyeuristic sort of way) to watch the powerful fall.

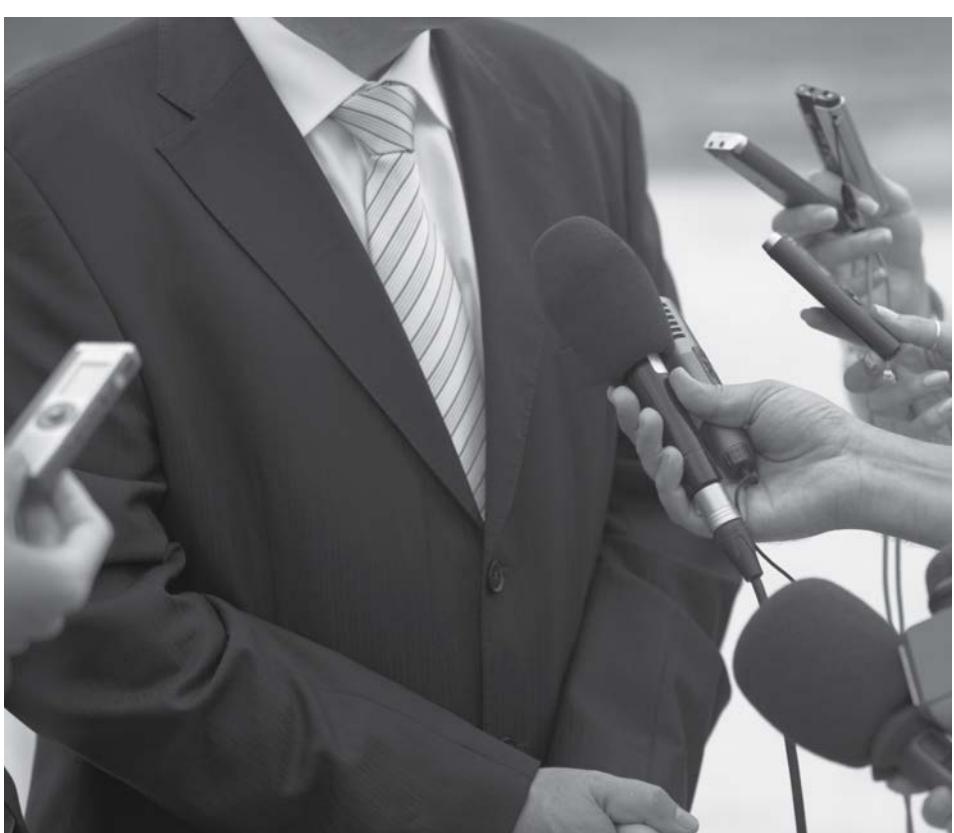
The media is at least partly responsible because bad news is big news, while good news is buried.

Protecting your client's reputation has two parts: First, fix the immediate problem. Second, provide a narrative for long-term redemption. If you don't do what's necessary to repair your client's reputation for the future, the immediate fix might not hold – and the tarnish will return.

Handling the media is more art than science. You need to be inside their brain – to know intimately what they need, when they need it, and what is enough to keep them satisfied.



Eden Gillott Bowe, President of Gillott Communications, is a Crisis PR expert who resolves issues both inside and outside the media's glare — from celebrity scandals to corporate fraud to civil litigation. She's the co-author of *A Lawyer's Guide to Crisis PR* (2014) and *A Board Member's Guide to Crisis PR* (2016).





# Effective Advocacy Outside the Courtroom

## How Far *Can* You Go? How Far *Should* You Go?

by Roger Goff

**A**s attorneys, we are first and foremost communicators. That is our primary skill, our primary job function, and for many of us, a genuine passion. We love to write, talk, argue and convince. It's what we do.

However, while our job is to communicate, we are actually more restricted in that regard than most other citizens. The U.S. Supreme Court has noted that attorneys do not enjoy the same First Amendment freedoms as people engaged in most other professions. *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1073, 111 S.Ct. 2720. Our ability to communicate is certainly restricted by rules of attorney-client privilege. And judges routinely impose restrictions on what lawyers may say or do both inside and outside the courtroom. So while our role in society is to communicate on behalf of our clients and their causes, we understand that significant restrictions exist in that regard.

On the other side of the coin is our passion and obligation to protect our clients and to assert their positions as aggressively as we can in order to get the best possible result in a transaction or controversy. When our clients are publicly attacked or placed in a negative light, we must work with crisis control experts and other professionals to assure that the public discourse is as fair as possible. It is often the attorney who is called upon to be the public spokesperson for a client who has drawn negative attention. Our communication in that role is not only often critical to the outcome of the matter at hand, but also essential for the long-term success and well-being of the client. As we know, attorneys tend to be summoned at the most perilous times in their clients' lives, and it is those moments and events that can determine the ultimate results of a lifetime of effort.

So when we are called upon to be a public advocate and spokesperson, how can we be most effective without crossing any ethical or legal boundaries? In California, Rule 5-120 of the Rules of Professional Conduct gives substantial guidance in that regard. On the one hand, section (A) of that rule prohibits us from making statements outside the courtroom with the intent of creating a prejudicial result in the proceeding at hand. However, section (B) grants us the ability to assure that the public is receiving accurate information regarding the proceedings.

In other words, it's not appropriate to "try your case in the press" if you cross the line with misleading statements, or statements that are true but may in some way sway the potential jury pool or a sitting jury. But we *are* permitted to share information that is already a part of the public record, and we can provide names, dates and places, as well as informing the public of ongoing investigations and certain concerns where we fear harm to individuals or the public interest.

Further, section (C) of Rule 5-120 allows us to "make a statement that a reasonable member would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the member or the member's client." Therefore, when our clients are attacked in the press or other public forums, we have the right to set the record straight.

As natural communicators and aggressive defenders of our clients' rights, most of us are probably prone to pushing the envelope. Our instinct is to strive for the cutting edge of what we can proclaim in the press without going past our ethical limitations. However, we should also remember that sometimes silence is not only golden, but can speak volumes. The public

interest is often stirred more by what is omitted than what is stated. When the public knows that there is information that is being withheld, imaginations often fill in the blanks in a manner that the truth cannot match.

Social psychologist Jack Brehm spent much of his career demonstrating the effect of reactance, which makes us more focused on and desirous of the things that are withheld from us. Therefore, the *implication* of the existence of a key piece of information can often bring more attention than lengthy proclamations of facts and assertions that are likely to be viewed as self-serving, incomplete or outright distortions of the truth.

Our skills and years of training in communication are therefore not wasted in an environment where we are restricted. In fact, those restrictions and protections are essential to promoting fair outcomes in our legal system, and our ability to work effectively within those boundaries is what makes us most valuable, both to our clients and to the system of justice to which we have devoted our professional lives. □



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### Roger Goff

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