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Lawyers and the press: deadly enemies or friends?

Trust and integrity can be the building blocks to good media relations.

By Mark A. Miner

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NO TWO GROUPS are more fascinated with and suspicious of each other than lawyers and the news media. Wary of each other's influence and power, and with all their great ambitions and vast differences, the two sides increasingly run headlong into each other in the normal course of their work. Savvy lawyers and journalists know how to be effective at managing their relationships.

At times, this co-dependency can produce highly positive results for both sides. However, when the expectations of one or both parties are not grounded in reality, the results can be disastrous.

While many lawyers cringe at a call from a reporter, understandably concerned about saying the wrong thing, it is nonetheless a call that, in today's media-saturated society, is becoming ever more important to answer, and to answer well.

Lawyers are understandably reluctant to talk with reporters because they have virtually no control on how their comments will be used. The risks can be immense for disclosing confidential data, being misquoted or for a remark being taken out of context. Also, lawyers who are generalists, and have clients in a variety of fields, sometimes fear they will alienate their diverse client base if an article labels them as specialists in just one field.

That said, there are four primary benefits that news media coverage can provide lawyers:

■ *Feature coverage.* Such coverage can be beneficial whether a lawyer is changing firms, completing a successful case or transaction or launching a new practice.

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■ *Expert quotation (as an independent third party).* This approach works well for thicker-skinned lawyers who think fast on their feet and know how to describe complex issues in pithy sound bites.

■ *Bylined article.* This approach provides more-cautious lawyers with the ability to communicate their messages while keeping control over the content.

■ *Being a client advocate, at appropriate times, during an ongoing case or transaction.* Troubles arise when reporters call for comments at inopportune moments. The best solution is to plan ahead with the client on how such calls are to be handled—such as whether the call will be referred directly to the client, whether the lawyer should negotiate with the reporter and ask for the story to be delayed and whether a litigator should simply state that “this case is absolutely without merit and is being aggressively defended.” The answer will depend on the comfort level of the client and the judge overseeing the matter.

There are a number of issues inherent to journalism that can greatly irritate lawyers. First among them is media laziness or sloppiness. Lawyers generally dislike taking time to answer simplistic or naïve questions from inexperienced reporters who don't understand the complex processes of a matter. They also can feel their time put to waste when having to educate new reporters periodically in a field where turnover can be high. Also, some reporters give the impression that they are unapproachable or arrogant.

Ah, but they need lawyers

From the media's perspective, lawyers can provide many benefits: insight, understanding and context. Many reporters keep lists of lawyers they turn to for expertise in understanding how the legal, business and financial processes work generally and specifically, and in identifying industry

trends. Sometimes journalists turn to lawyers for a broader macro-view of the legal field itself, or a particular type of business or issue.

Reporters also see lawyers as sources for untold stories. They are looking, for example, for unsung clients with success stories, especially entrepreneurs and technology companies. Last, but by no means least, reporters call sources, including lawyers, looking for insider information. This can be dull or the stuff of legend, such as Watergate's Deep Throat. Unidentified sources can provide gossip and breaking news.

The legal field has its own set of characteristics that often frustrate reporters. Chief among them is the tendency of lawyers to work in secret. Reporters, however, want to know about events before they occur, not after.

The ethical rules that lawyers must follow also put a crimp in their relations with the media. All states have rules of professional conduct prohibiting a lawyer from acknowledging that he or she represents a given client, let alone disclosing the nature of the representation without the client's consent after consultation. See ABA Model Rule 1.6(a).

Time constraints are also a factor. Explaining nuances of a complex transaction or lawsuit to a nonlawyer requires much patience, which can be a precious commodity for lawyers. Even more difficult for reporters is the fact that it's against lawyers' training to disclose any more information than is necessary.

However, some lawyers are so close to their subject that they often don't realize that the depth of their routine knowledge is of great interest to reporters and can be shared with them at minimal risk. In other words, explaining the basics of a complex litigation—based on public court records—or the general structure of a transaction, may go a long way toward satisfying

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the needs of a reporter, without divulging client confidences.

Lawyers rarely advocate only one point of view, while the media desire sources who take a stand, especially when the story is controversial. Lawyers also fear public embarrassment, especially in front of their peers. Even when portrayed positively, some fear they will be accused of grandstanding.

Find balance in relationships

All things considered, many lawyers and law firms successfully work with the media to help build their brands and communicate their key messages. Here are some suggested approaches. First of all, always secure client approval before seeking media coverage or answering a reporter's inquiry. Explain the realities, or pros and cons, of speaking to the press or remaining silent. If working for a firm with in-house capabilities, use the firm's marketing director to help develop relationships. If not, consider outside assistance. A competent media relations expert can provide many benefits, including an intimate knowledge of the unwritten rules of how the press operates, established relationships with key reporters, experience in certain types of difficult situations and the time to think through and analyze problems.

Understand the subject matter clearly before answering questions. Reporters hate babble and resent being pitched story ideas from someone who has no understanding of the big picture. When employing public relations professionals, lawyers need to know the fine line between relying on the expert and needing to get involved personally. While lawyers can save time by referring press calls to PR experts, no self-respecting reporter will rely on the PR person's words alone, because the quote cannot be attributed to the true source of the information. While PR experts are most appropriately used as liaisons, lawyers often must take the time to be interviewed on client matters. On the other hand, PR experts can be used effectively as spokespersons for their firms when commenting on business or financial issues rather than legal matters. Any overture to a reporter should be consistent with the client's business and marketing strategy. Focus on results that move the client's or the law firm's enterprise forward. Except when building a reputation from scratch, it rarely makes sense to generate publicity for publicity's sake.

Helping reporters is paramount. Journalists often complain that lawyers aren't

available when needed. Reporters place a very high value on promptly returned phone calls. They often are on deadline and need information right away. If you can't talk, refer them to a colleague who can.

It helps to know the reporter's world. Read the target publications and know the

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nature of their content. Nothing irritates an editor more than a misguided call from a lawyer or PR person with a completely unsuitable idea for a story or bylined article. Effective pitches are an art unto themselves. Understand that your stock-in-trade is not only information but also trustworthiness. Build credibility by asking journalists to report on something they and their editors care about. Be aware that due to editorial policy, some reporters won't mention the firm's name in a story. Be professional; don't insist on things a reporter has no editorial control over.

Be honest. Always tell the truth and don't tread down the slippery slope of exaggeration. More often than not, the truth will come out eventually. Once burned with a lie, reporters do not easily forgive or forget, and will consider the source worthless in the future.

One of the worst faux pas lawyers can make is to ask to review the reporter's story prior to publication. It just is not done and is bad form to request. However, reporters often are willing to allow a lawyer to review his or her own quotes, especially in sensitive or controversial stories where accuracy is in the reporter's own interest.

Reporters love opinions but greatly dislike it when sources try to present opinions as facts. Don't hesitate to provide spin if you label it as such. A reporter will appreciate the distinction.

Think about stories from the newspaper's point of view. Reporters generally ignore routine news of office openings, lateral partner hires and the like unless placed in the broader context of a trend. If a law firm blankets regional or national papers with unsuitable press releases, the firm might find itself ignored when finally producing hard

news. When sending press releases, use simple, jargon-free English. Stay on message and state the main point up-front.

Off the record? Use of the tactic of "off the record" can be dangerous, because many reporters will find some way to utilize the information. Lawyers can misunderstand the meaning of "on background," "off the record" or "on the record." And lawyers don't always know how to negotiate an off-the-record attribution. There are different ways to use this approach, and it is best to ask a reporter what he or she means by these various terms.

Crisis time

In a crisis, the story usually will be written with or without the lawyer's participation. If a lawyer chooses not to take part, he or she allows the other side to dominate the stage. Many lawyers respond in a crisis by holding the reporter at arm's length, choosing not to return the call or to issue a "no comment." This might work to win the battle, but it doesn't help to win the war in developing long-term relationships with journalists.

When reporters call with difficult questions, the key is preparation. Develop a response approach that won't alienate a reporter. Establish a team, including clients and colleagues, to whom any lawyer within the firm can turn to for confidential advice, both ahead of time and while the story is breaking. Think ahead about how to answer potential questions, especially if it is clear that a problem is looming.

Even under the tightest of deadlines, a source has the right to ask a reporter for time to consult the client and gather facts before responding to questions. If you do so, honor your word and return the call. Five minutes of preparation are better than none at all.

Organizations and individuals in the midst of crisis generate the best results when articulating a straightforward message, from a single point of contact making all press statements. This helps prevent rumors and the spread of inaccurate or conflicting information.

If possible, turn the problem into an opportunity to tell the client's side of the story. Don't speculate; stick to the facts. Keep in mind that a source is under no obligation to reply to the reporter's exact questions. One can ignore the question altogether and then to restate the main points the client wants to get across. Communicate the solution from the client's point of view, including plans for handling or correcting the situation. **NLJ**