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“How to Speak "Sound Bite" for the High Profile Cases”

I. To talk or not to talk, that is the question . . .

Lawsuits make great stories! Whether in newspapers, the nightly news, podcasts, or social media, lawsuits sell. Therefore, clients and lawyers must plan ahead and be ready for a response, or lack thereof, to the impending phone call, e-mail, text, etc. about any case, but certainly the high profile cases. In preparation for same, the lawyer and client must analyze the advantages and disadvantages to speaking with the media, and if they decide to talk, be prepared to do so.

Advantages to speaking with the media

So, you have a message from a reporter about your case. It seems she found out about it as she spends every morning looking over the list of local lawsuits that have been filed and afternoon scouring the clerk of courts’ websites for case that would potentially make a great story. Yours make the cut and she wants a comment. You will need to give her a ring back at 555-555-5555 by tomorrow or she will publish her article without your comment.

Do you advise your client that he should get out in front of this and give a comment, so you can tell your side of the story; otherwise, it could be much worse. Wait, should he do the talking or you? Definitely you.

Disadvantages to Speaking

Now that you have decided to tell your side of the story, what bad can come of it. You give the interview and tell the reporter your client’s side of the story and you believe it goes very well. However, the reporter/writer did not use your entire comment

and just part of it. Therefore, your well thought out plan has now gone bust as your partial quote has an entirely different meaning.

Advantages to Not Speaking

Alternatively, you have spoken with your client and believe that any comment or quote can only make things worse. The lawsuit is public record and the reporter/writer can tell only a one-sided story. Most readers/watchers will know that there is another side of the story and are sure they will hear about it soon. You have now kept them guessing. The reporter/writer has done her job and has everyone's interest up, now it is your job to change the narrative and you may give a quote when the timing is better for your client.

Fake news . . . What's to stop the "reporter/writer" from just making it up. She is trying to make a name for herself. She may think about the word defamation, but how often does that happen?

In "What happens when the media gets it really wrong"ⁱ, W. Joseph Campbell discusses just that. He discusses topics such as how many of the "main stream reporters" praised the reporters during Hurricane Katrina, but how many accounts had little factual basis. For example, Campbell states:

"The lavish praise was more than a little deceptive. News coverage describing chaos and lawlessness after the storm was often over-the-top and erroneous.

Media outlets reported snipers taking aim at medical personnel. They reported that shots were fired at helicopters, halting evacuations from the Convention Center in New Orleans where many people had taken refuge. They told of bodies stacked up at the Superdome. They reported that gangs were running rampant, raping and killing. They said children were victims of sexual assault, that one seven-year-old was raped and her throat was slit.

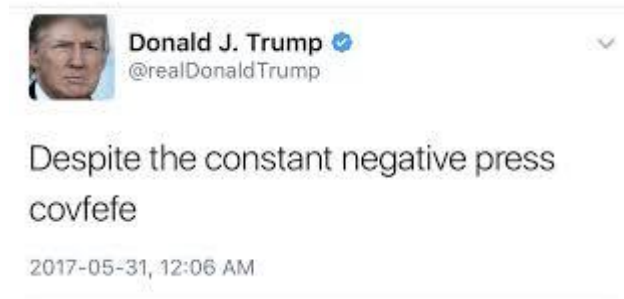
As it turned out, few if any of the gruesome accounts were supported by facts.

A bipartisan select committee of the House of Representatives noted in a detailed report about the hurricane's aftermath that "media reports from New Orleans featured rampant looting, gunfire, crime, and lawlessness, including murders and alleged sexual assaults at the Superdome and Convention Center. Few of these reports were substantiated, and those

that were -- such as the gunfire -- were later understood to be actually coming from individuals trapped and trying to attract the attention of rescuers in helicopters."

So, if a reporter can make up a story about Hurricane Katrina to sensationalize his or her story, what would stop them from doing the same on a high profile case. Are you better just staying quiet?

Worse yet, what if the "Twitter verse" gets a hold of your quote or worse yet, the President:



But, if you and your client do decide to speak, now what?

II. We decided to talk, now what?

Who does the talking and why?

When deciding who is the best person for the job, the following non-exclusive list must be considered:

1. Has your client spoken to the media before?
2. Has the lawyer spoken to the media before?
3. If the client speaks to the media, will the information be used against him at some point?
4. Can the client make the case worse by speaking to the media?
5. Can you make the case worse by speaking to the media?

Moreover, if the lawyer and client decide the lawyer will speak, are there any restrictions to what a lawyer can say? In the article, "The Lawyer and the Media: What Can a Lawyer Say to the Media?", Brian Foster Q.C. LL.B. and Jared Craig J.D.ⁱⁱ explore the relationship between the lawyer and the media in Canada including, limitations that

arise from: (I) rules of professional responsibility; (II) statutory restrictions on disclosure and publication bans; (III) contempt for violating the sub judice rule or “scandalizing” the court; (IV) personal liability for defamation; (V) contractual obligations; (VI) express and deemed undertakings; as well as (VII) tactical and practical considerations.

Lawyers may also consider having a firm policy for dealing with the media. In “Media Policies & Guidelines for Law Firms”ⁱⁱⁱ, David M. Freedman and Paula Levis Suita suggest that:

“Every firm needs a clearly written media policy, whether your media relations activities are active or reactive. A good policy prevents you from saying something foolish, actionable, or injurious to you, your firm, or your clients’ interests in media interviews. Your policy spells out who in your organization may respond to media inquiries, what kinds of information can or should be released to reporters, and what information must be kept confidential, among other things. It also informs interviewees when and how to mix promotional messages with educational content.”

Thus, there are many considerations prior to speaking with the media; however, before either you or your client does so, you need to prepare.

How do we prepare?

Now that you have determined who the correct person is for the job, and analyzed what can be said, you must prepare. In, “10 Terrific Tips for Talking to Reporters”^{iv}, David B. Grinberg gives some good ideas:

“1. Proceed with Caution

First and foremost, you should assume that every contact you have with a journalist is “on the record” for name attribution unless otherwise indicated.

2. Know the Rules of Engagement

If you prefer to speak “off the record” or “on background” you must tell the reporter at the start of the conversation. You never want to mistakenly divulge sensitive information with your name and title attached to it.

6. Be Responsive

Always respond to media requests as soon as possible, whether it's a voicemail, email, text or social media query—even if you have no substantive information for the reporter or cannot comment immediately.”

Other things to consider:

1. It goes without saying but look presentable.
2. Smile.
3. When the reporter asks a question, you better give an answer.
4. Be professional.
5. Do not get combative.
6. Look at the camera if there is one.
7. Do not be afraid to end the interview.

In sum, there are plenty of reasons to speak to the media in high profile cases, and plenty of reasons not to. Most importantly, it is a decision that must be made on a case by case basis with your client.

ⁱ <https://www.cnn.com/2017/11/28/opinions/what-happens-when-media-gets-it-really-wrong-campbell-free-press/index.html>

ⁱⁱ https://phil.ucalgary.ca/manageprofile/sites/phil.ucalgary.ca.manageprofile/files/unitis/publications/1-5564050/The_Lawyer_and_the_Media.pdf

ⁱⁱⁱ <http://www.freedman-chicago.com/mr-articles/policy.pdf>

^{iv} <https://medium.com/@DBGrinberg/ten-tips-for-talking-to-reporters-d3bf145daf19>