

Courting Public Opinion

By Daniel Cherrin, North Coast Strategies, 11/24/2009

Companies today are facing increased challenges from regulatory and legislative authorities. Likewise, legal issues continue to permeate the headlines, placing brands and reputations at risk. In the past few month's alone companies such as BJ's Wholesale Club Inc., settled a class action lawsuit with their midlevel manager and class actions were certified against Sprint, Tyson and TJMaxx. Locally, well known Schubot Jewelers recently filed for bankruptcy, while GM is preparing to pay off part of its' government loan to the United States and Canadian governments. Social and other web-based media is providing citizen journalists, disgruntled employees or the average consumer to bypass the traditional media and take their messages directly to those who are interested in that issue or that company. As a result, one's corporate, product or individual reputation is on the line and attorneys are being called to defend their client's reputation in the public's eye.

In today's economy clients are seeking full service law firms to resolve issues where business, politics and public perceptions collide, but many lawyers are uncomfortable offering their clients counsel in approaching the media. However, when the damage is done publicly the legal outcome may become irrelevant.

In protecting a client's reputation, "an attorney's duties do not begin inside the courtroom door -- he or she cannot ignore the practical implications of a legal proceeding for the client." *Gentile v State Bar of Nevada (Kennedy opinion)* 510 US 1030, 1043 (1991). An attorney should take reasonable steps to defend a client's reputation, in court and out. This is particularly important in an environment where news is reported 24/7

and at times delivered instantaneously to our cell phones, by our cell phones. Likewise, with sales of newspapers and magazines at all-time lows, the media is hungry for a story even if no story really exists. Therefore, lawyers must be more diligent in protecting their clients' interests in the court of law as well as in the court of public opinion.

TODAY'S LEGAL STRATEGIES DEMAND PUBLIC RELATIONS

Today's business environment demands a strategy to resolve issues legally while protecting one's reputation publicly. As a result, lawyers need to be familiar with how perception is created within the public eye and how to use the media effectively to manage that perception. For example, litigation, even the potential for litigation will have an impact on a company's image, reputation, investor relations and future business opportunity. Therefore, to protect clients legally and to preserve their reputation publicly, lawyers are encouraged to engage public relations counsel early in developing a complementary strategy and seek media training to become familiar with how to initially help their clients. It is possible to talk to the media without revealing your legal strategy, jeopardizing privileged information or otherwise affecting the legal outcome of case or regulatory matter. With the right public relations counsel a public campaign can be implemented while the lawyers focus on the legal strategy.

Effective and strategic communications with the media, consumers, investors, employees and other audiences can be essential to any legal outcome, in addition to preserving the reputation of your clients or even avoiding litigation in the first place. Through an on-going litigation strategy key stakeholders will have all the information they need to make informed decisions. A well-formed litigation communications plan blends legal expertise, media savvy and political prowess by helping to frame messages

during the litigation. It also helps to monitor what others are saying about the case, the company and the individuals involved, and works to control the message, address concerns and build relationships to help the organization emerge from the litigation with its reputation intact. An effective litigation communications strategy, also works to enhance the legal strategy by providing clarity on complex legal issues, often giving reporters perspective on the cases they are covering. The goal of litigation communications is to guarantee that the client's public image is completely aligned with the legal team's efforts and strategy, while ensuring the organization's message is understood outside the courtroom.

PROTECTING A CLIENT' REPUTATION

Should lawyers represent their client's outside the courtroom, they have to become more comfortable in talking freely about their client's case without jeopardizing any legal outcome. Lawyers in general, are trained to answer only the questions asked and to give no more information than is necessary to resolve the issue. In the face of the media and those that rely on it, however, information and communication are the two factors that build trust and go a long way toward preserving one's reputation.

PR counselors can employ specific tactics to build, preserve and protect the reputation of a company, union local or any individual within the organization, while reinforcing their client's legal strategy. For example, in the public eye, we are presumed guilty if we respond to a reporter's question with "*no comment.*" To avoid the presumption of guilt, it is important to answer the question asked and continue to stay on message.

CONCLUSION

In today's economy, lawyers need to provide their clients with more than just legal services. By learning a little bit of how the media operates along with the increased nuances social media brings, lawyers can position their clients to avoid litigation, minimize risk and protect their reputation, by blending law, policy, politics and strategic communications to provide clients an integrated approach to resolving or avoiding legal problems.

Increasingly, legal battles are being fought in the court of public opinion long before lawyers see the inside of a courtroom. Without a careful and coherent litigation communication strategy, even legal victory can be prohibitively costly in terms of how it impacts the reputation of the company, product and individual. Therefore, it makes sense for lawyers to learn a little bit about the media and their interest in covering their client's cases and their clients in protecting their reputation in the public's eye.

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Take aways:

- Legal issues continue to permeate the headlines, placing brands and reputations at risk.
- Today's business environment demands a strategy to resolve issues legally while protecting one's reputation publicly.
- Communications with media, consumers, investors, employees and other audiences can be essential to the legal outcome as well as to preserving corporate reputation.
- Through a strategic and targeted communications plan, organizations can protect its image, avoid any investor drop-off and continue to keep its customers.