

# Whether as a Sword or Shield, a Proactive Press Strategy Is Essential for Every Litigation Plan

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Writing for the [New York Law Journal](#), Faith Gay and Megan Larkin explore three steps litigators should follow to develop a vigilant press plan, and explain why the days of “no comment” are over.

Understanding the power of the press is a critical part of a well-rounded litigation strategy. Litigators tend to focus solely on telling a story in the courtroom despite the fact that publicity can be just as important as the client actually winning in court.

The single most important part of a press strategy is a story that has emotional impact—i.e., a story that “sings.” Develop it as early as possible in the life of the case, stay on message, and communicate the message broadly. Whomever controls the narrative wins—again, whether winning in court or not.

## **Immediately assess how litigation might affect public perception of a client.**

Litigators regularly assess litigation risk, such as the likelihood that particular legal arguments or theories will prevail. Prior to developing a press strategy, a litigator must also assess the risk that a particular litigation may have on the public’s perception of an individual client, particularly if they are well known to the public, or their business. This will help inform what story to tell and how to tell it.

Winning in court but losing in the eye of the public can be devastating. Not only can it have tangible affects like spooking shareholders or driving consumers away from buying products or services, but it may destroy future business opportunities.

For example, unrebutted and widely reported allegations that a business misused confidential information obtained during a due diligence process could stop potential partners from transacting with the business until the suit is complete, and in some cases even afterward. Similarly, allegations that a business engages in discriminatory hiring and firing practices could deter eligible candidates from applying for job positions.

Negative effects may occur regardless of the truth of the allegations and can persist even if the allegations are ultimately disproved. Once tainted, a reputation can be difficult to restore. This makes it all the more important to develop an affirmative press strategy with careful messaging.

Accordingly, frank assessment of the impact that a particular litigation might have on the perception of a high-profile client or a business and its top-level executives is necessary at the very outset to inform the narrative and create a press plan that minimizes reputational risk.

### **Quickly develop a compelling narrative that attracts the relevant audience.**

The most important step of any press plan is to develop a compelling, coherent story and point of view that can be conveyed very simply and grabs the public's attention. The story must be developed early and revisited often to gain and keep control of the narrative. No matter what the story is, it must be aligned with the positions taken in litigation.

Craft a concise press statement that acts as an “elevator” pitch to pique interest when speaking to reporters and more detailed talking points that tell the story of the dispute and why your client is being wronged. Do not simply rely on filed papers—the key is to develop a message that leads reporters to the heart of the matter and convinces them that it is important enough to cover.

Avoid the common pitfall of misaligning press messaging with positions taken in litigation. Inconsistencies will most certainly be picked up by an adversary and used in court. Also beware of legal claims that may be brought for defamation or tortious interference. Where possible, keep public statements grounded in facts from in-court filings or proceedings for added protection, but understand that even that does not provide full immunity from suit if you stretch the facts—and doing so will eventually undercut your credibility.

Designate a spokesperson or spokespeople (but no more than two) to whom reporters can be directed for questions about the dispute, and determine whether they will speak on-the-record or on background only. Choose one main spokesperson and one back-up who are both fully briefed on the messaging and can communicate key points externally. Depending on the dispute, a spokesperson may be counsel, a representative from the client, or both. The goal is to ensure that a consistent, unified message is delivered. When a potential news story is investigated, reporters may call several people within an organization to ask for comments, so individuals who should (and shouldn't) speak must be made well aware of their role in the press strategy.

### **Engage in proactive press outreach to affirmatively tell the story.**

No matter how compelling, a story is only effective if told. Depending on the facts of the case and a client's goals, a press strategy may be used as a sword or shield—the key to either approach is proactive outreach to spread the client's narrative. Choosing not to engage with media or reactively responding to media requests might feel tempting in certain scenarios, but in today's age of 24/7, global news cycles and readily-obtainable court filings, no one can afford not to affirmatively tell their story.

*Press as a sword.* A proactive press strategy can be used as a sword to affirmatively shape the narrative and gain leverage in the litigation. Such an approach might entail affirmatively contacting media outlets and reporters even before filing a lawsuit to describe the dispute and explain why your client is right and the adversary is wrong. The primary benefit of this approach is taking control of the narrative early on and making the first impression—but make sure the complaint that conforms to your press talking points is filed promptly after speaking to the press if you have indicated that charges are being filed. Heavy media coverage of a dispute may also create pressure for the adversary. For example, in a case alleging misappropriation of trade secrets, initiating a media campaign in which several outlets write about the adversary’s misuse could lead an adversary to quickly resolve the dispute to avoid having its dirty laundry aired.

*Press as a shield.* A second approach is to proactively use the press to reshape an already-released narrative and combat negative coverage. In decades past, a watch and wait approach sometimes made sense for high-profile individuals or businesses seeking to avoid calling more attention to a particular dispute. Today, with the speed at which news travels and ease of its spread, it is unlikely that an interesting story will be left untold. Simply lying in wait until questioned about a story already being told is not enough—get involved in the conversation from the start. Affirmatively reaching out to the press provides a platform from which to maintain some control over the narrative and protect against potentially damaging messaging from an adversary. In the case of a defendant, a well-told counter-story may even equalize the leverage that a plaintiff seeks to create through its own press outreach.

*“No comment” is no longer an option.* Although avoiding the media has historically been a viable option, this is no longer the case. Deliberately avoiding an opportunity to enter the conversation is a mistake—the public will assume the worst from a client’s silence and the odds are that an adversary is diligently working its press angle. Be mindful that a strong legal case does not automatically translate into a positive perception of a client outside of the courtroom, particularly where complicated or sensationalized allegations are involved. To the extent a client has unique business or legal sensitivities that require silence, find a message to communicate that throws doubt and puts the burden on your adversary while avoiding a simple “no comment.” Messaging need not be comprehensive or even new—stating simple facts previously disclosed in legal filings can be sufficient. The mere willingness to provide comments can boost the public’s perception of and avoid negative assumptions about a client.

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