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TO: Executive Addressed

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RE: You're Courting Disaster . . . Without A Litigation Communications

What's the use of winning in a court of law if you lose your reputation, credibility, and customers in the court of public opinion? When you expect significant notoriety in connection with a trial or non-trial legal proceeding, you'll need a litigation communications strategy.

Step One: Familiarize yourself with the American Bar Association's Fair Trial and Free Press Standards, and local disciplinary rules. They will help you know how the judge will approach reporter access. During high profile cases the court is likely to have its own media relations and visibility management plan. Contacting the Court may reveal some insight you can use in your visibility strategy.

Step Two: Develop a message strategy for each phase of the trial. Keep in mind that each trial phase may require message revision depending on public reaction, facts as they develop, news coverage, opposition commentary, employee reaction, and other foreseeable, but not precisely predictable, factors.

Typical litigation message development segments we use for planning are:

- The pre-trial period
- Jury selection
- Opening arguments
- Special witnesses
- Initial rebuttal/arguments
- Evidentiary motions
- Other rebuttal
- Summations by both sides
- Jury deliberation
- The verdict
- Post-verdict assessment
- Appeals

There are several high profile variables your strategy may need to accommodate:

- The use of trial consultants (jury selection, celebrities, subject matter experts)
- Television in the courtroom
- Public demonstrations during the trial (organized opposition/support)
- Daily visibility of your client representatives and/or the company
- Someone else's notorious verdict in a similar case

Take advantage of the litigation process. Its predictable steps, phases, and events also control opposing actions and help predict when news events will occur (thereby helping you develop a counteractive or counterintuitive strategy). If you know the process you can out-strategize your opponent. It's this aggressive flexibility which can remove much of the corporation's defensiveness when attacked. Being unwilling, unable, or unprepared to respond is not a winning strategy.

"No comment" or "no comment because it's in litigation" don't serve the organization's reputation, credibility, or marketshare very well, rarely protect it against future litigation, or reduce settlement costs. In high profile cases, saying nothing may be the costliest single mistake.

If you're undergoing or are about to undergo notorious legal visibility, are experiencing intense, organized, and effective opposition outside the courtroom, or feel your side is just not getting a fair shake in the media during a trial, you may wish to have a conversation with us.

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