

Paper trail

31A The government is cracking down on companies hiring illegal immigrants.

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Blow that whistle!

41A The stimulus package adds protections for those reporting corporate misdeeds.



Trying cases in the court of public opinion

Lawyers incorporate media communication into their strategy



By CLAUDE SOLNIK

A woman charged with drunk driving woke up to find her somewhat glum photograph in a compilation of mug shots on the Nassau County executive's Web site. Newsday also ran the photo online as the county waged what many saw as a welcome war against drunk driving.

County Executive Tom Suozzi saw it as a case of using photographs to deter would-be drunk drivers with the use of peer pressure. "By publicizing the names and photos of those who break the law by driving drunk, we're going to make sure that their friends, neighbors and families know about it," he said.

But Brian Griffin, the woman's attorney, saw something else: Running mug shots on the online "wall of shame," he believed, was using media to punish, not just to publicize, and was doing so prior to any conviction. "The law dictates your sentence," Griffin said. "In terms of a DWI, there is a fine, probation. Sometimes there's jail. Nowhere in sentenc-

ing provisions does it say you can be publicly shamed."

Griffin became proactive in his own public relations and legal war, filing suit against the county, arguing the posting assumed guilt and added punishment beyond sentencing. He won the case on the grounds that images were being posted before conviction.

The county, which hopes to appeal, now only posts images of people convicted of driving while under the influence. Newsday no longer runs photos of every DWI arrest or conviction. But the PR war continues in this case and in many other cases outside the courthouse.

And it's being fought more actively on both sides as publicity becomes a weapon in the justice system — and lawyers become advocates in the media as well as in court.

Compelled to speak out

While some attorneys like Griffin end up defending reputations in PR wars, those filing suits often benefit from negative coverage. Jeffrey Kimmel, partner at Woodbury-based Salenger, Sack, Schwartz & Kimmel, believes a case he's handling is stronger following front page Newsday coverage of a doctor's misdeeds.

"The problem's going to be the jury pool," Kimmel said. "Everyone's going to have heard of this."

Although defense attorneys may once have treasured

the two-word phrase, "no comment," they are less willing to be silent when clients are charged in the press. They argue that unfair, one-sided coverage can pollute the pool of potential jurors and dehumanize their clients.

"Of course the media affects things," said John F. Kaley, a partner at the Garden City office of Doar Rieck Kaley & Mack and chair of the Nassau County Bar Association Ethics Committee.

Griffin said the conventional wisdom is no longer that attorneys should keep quiet until arriving in court. Both sides are more likely to be more forthcoming.

"They understand that sometimes you have to respond. The day of 'no comment' has gone away," Griffin said. "Your client's friends, families, colleagues read the papers. And although you're not trying to manipulate a jury, potential jurors are reading it. You want it to be fair and complete."

Kaley said information often gets introduced in the media that's not allowed in court, complicating the judicial process. Previous arrests that make the news may be barred at trial.

"The rules and evidence at a trial are completely different than the rules in publishing a news story," Kimmel said. "The rules of evidence during a trial are very strict."

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Images as well as words affect outcomes

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A question of balance

Jaci Clement, executive director of the Fair Media Council in Bethpage, said reporters often inadvertently make the prosecution's case. It can be difficult to reach or get comments from a defense attorney. But she said reporters have the responsibility of reporting relevant facts.

"If you were reporting a story and the person accused was your mother, would you go through her history and report everything she did wrong?" she said. "Yet that's what's done. It actually begins to build a case."

Clement added that a faster pace means reporters need comments quicker, making things tougher for the defense. Financial stress makes it tougher for reporters to investigate rather than simply repeating charges.

"Look at the way newsrooms have been cut back," she said. "You don't have the time to focus on one story anymore."

While many attorneys are more willing to talk to the media, they're aware they must balance the risk of speaking, which could result in errors, with the damage inherent in keeping silent.

"When there's adverse publicity regarding your client, a lawyer has to make a judgment as to whether a response is permitted and will have a curative effect," Kaley said.

Lawyers also need to be selective: Saying too much – giving away your case or being wrong – can be disastrous. That can alienate prosecutors, judges and potential jurors.

"Any crisis management expert will tell

'Nowhere in sentencing provisions does it say you can be publicly shamed.'

you things are unfolding so quickly [at first]," Clement said. "Nobody wants to make a comment and find out there's conflicting information."

A picture's worth a thousand words

In addition to information, both sides often can use images to make their case. Police and district attorneys often alert media to a "perp walk," in which a handcuffed suspect is escorted by police. Even the

term – perp for perpetrator, rather than suspect – assumes guilt.

"Those have been looked at legally and been found to pass constitutional muster," Griffin said. "It's a necessary part of the arrest process."

New York City Mayor Rudolph Giuliani used perp walks for white collar criminals, showing they weren't treated differently than other suspects.

Mug shots themselves could prove prejudicial. "You look at the circumstances. It's against a stark white background. The defendant has just been arrested, so he's not in the greatest frame of mind," Kaley said. "He or she isn't looking his or her best. Your photo's not going to be flattering." So defense attorneys may do well to provide or facilitate other pictures showing a human being, rather than simply a perpetrator for future articles.

Facial expressions caught on video after an arrest can also leave lasting impressions. Footage showing Bernard Madoff smiling as he ploughs through a gaggle of photographers made him look amused by the scandal. "It could be a nervous laughter, which gets mistaken for callousness," Kaley said.

Nassau, meanwhile, continues to fight its own PR war, believing posting information and images of people convicted of drunk



Jaci Clement of the Fair Media Council said the media inadvertently begins building a case before trial, but is obligated to provide balanced reporting.

driving can save lives.

"We're sending a message in Nassau County – if you've been drinking, and you decide to get behind the wheel of a car, we're going to arrest you," Suozzi said. ■