

# The Media's Impact on High-Profile Litigation: 12 Insights from the Pros

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High-stakes litigation plays out in the media as much as it does in the courtroom. Celebrity and high-profile trials can create a media frenzy, or if used correctly can influence the litigation and public opinion positively.

I recently attended "In the Hot Seat: The Media's Impact on High Profile Litigation," a forum hosted by the Women Lawyers Association of Los Angeles, which included a panel of lawyers whose cases often land in the media spotlight. The panel included:

- Moderator Mack Jenkins, Chief of the Public Corruption and Civil Rights Section at the U.S. Attorney's Office; high-profile matters include Ron and Tom Calderon.
- Panelist Maggie Carter with O'Melveny & Myers; high-profile matters include the investigation of FBI special agent Denise Woo.
- Panelist Shawn Holley with Kinsella Weitzman et al; high-profile matters include Kanye West and O.J. Simpson.

The panelists offered their insights on how to manage cases that draw massive media attention. Here are 12 of my favorites.

1. **"No-Js" require a different strategy than "O.J.s"**. Johnnie Cochran used to say he worked for the O.J.s and the no-Js, but he took a different approach for each. The public doesn't care as much about cases involving "average people," so it's likely those matters can fly under the media radar. On the other hand, the media has an ongoing interest in the rich and famous. When there is a case involving a celebrity, their brand and reputation is also on the line, making it even more important for lawyers to fast track their case so they can reduce any negative press.
2. **Celebrity status does not equal lighter sentencing**. Despite public opinion that celebrities get off easier, Holley believes the opposite is true. Because celebrities attract so much media attention, not only is there more scrutiny on the case, but judges are also less likely to make lenient decisions when so many people are watching, as they don't want to be perceived as weak.
3. **Tension between accurate and fast**. When a story breaks or news is uncovered, lawyers and their clients feel the pressure to comment immediately. Oftentimes, this is before the lawyer can review the facts of the case, raising questions such as how much can you disclose, how long do you wait to comment, etc. Many people feel the

urge to rush and tell their whole story, but that can turn into a mess down the road, if you have to correct or recant the initial statement.

4. **Should you keep your clients away from the media?** The panelists agreed that most often, they keep their clients away from media attention as there are too many potential downsides to giving an interview. The exceptions are: 1) institutional clients because they have a responsibility to shareholders and the community at large; and 2) prior to sentencing, when a sympathetic interview may be beneficial. When it comes to celebrities, even though they're in the spotlight all the time, they aren't necessarily experts on the media, and they may go rogue when backed into a corner—think of Roger Stone posting a photo of his judge in crosshairs on social media, or R. Kelly yelling at Gayle King about his innocence on CBS *This Morning*.
5. **Should lawyers be a centerpiece in the press?** The consensus among panelists was that lawyers are predictable—defense lawyers will say their client is innocent and plaintiff lawyers will demand justice. These comments don't often sway public opinion so the panelists suggested to bring in a more objective source to speak, such as experts or law enforcement who are not involved with the case. Lawyers who do defense and plaintiff work need to be especially careful about what they say; their comments could come back to bite them when they're on the other side.
6. **But lawyers can provide important context.** All the panelists agreed that there is a place for lawyers to speak with the media. For example, a comment on the courthouse steps before or after trial can help the public understand the events of the day or can contextualize a comment the judge made that hit media headlines. Since the media can attend trials, it is important for lawyers to offer some comments; otherwise, the narrative of the case can get out of control.
7. **Use the media to humanize defendants.** When Carter defended Denise Woo, a former FBI agent accused of espionage, she told a broader narrative through legal filings and media interviews. Woo never gave an interview herself, but her friends and family did, and they all attested to her good character. This not only shifted public opinion, but it also helped with the outcome of the case itself.
8. **Positive outcomes don't equate to positive public perception.** Jenkins brought up an interesting example with rapper Tekashi 6ix9ine, who built a reputation on rapping about drugs, guns and gangs. He was charged with racketeering and had a difficult decision to make: accept a prison sentence and protect his street cred, or work with prosecutors and avoid incarceration. He took a plea deal, but his reputation has taken a hit, as fans have realized his persona was put on.
9. **A final verdict may not be so final.** Before the premiere of *Serial* and the subsequent true crime boom, once a case was over, it was over. Now, people are circling back to question prosecutors and verdicts, which is a good and bad thing. Of course, no one should be wrongfully convicted, but Holley—who is representing the estate of Michael Jackson in a lawsuit against HBO for the documentary *Leaving Neverland*—believes many documentaries are problematic because they only tell one side of the story and don't challenge the subject.
10. **You can't always stop information from leaking.** People approach celebrities and threaten to leak negative information to the press all the time. It's the nature of the beast, i.e., you can't always prevent a leak, even if you comply with the alleged victim's demands.

11. **Rein in clients with expert help.** When working with a high-profile client, seeking guidance from outside public relations consultants is crucial. PR pros can help create communication points and keep the narrative on theme. A good PR consultant can bring ideas to the table and manage a meltdown—or prevent one from happening altogether.
12. **Social media is good for more than selfies.** Social media can be an extremely useful investigative tool for trials, since photos and timestamps are so revealing. Lawyers can also use social media to get a read on public opinion. As Carter said, think of comments on social media or news posts as a mini focus group. No matter how biased the comments are, they allow you to see where the narrative is going and how divergently people interpret the same set of facts.