DEALING WITH THE NATIONAL MEDIA

(WE'RE NOT IN OUR FAIR CITY ANYMORE)



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As attorneys representing municipalities, we often deal with the local media. It is not uncommon for a mayor, city manager or city attorney to have to respond to local media requests concerning a news story, particularly about a lawsuit involving the city. But it is much rarer for a city to have to respond to, and deal with, the national media. When that happens, you may feel like a twister has plucked you out of your comfort zone and landed you in a whole new world that will have you saying, "We're not in our fair city anymore!" Here are some tips (learned the hard way) to help you follow the yellow brick road of dealing with the national media successfully:

1. I'LL GET YOU MY PRETTY CITY, AND YOUR LITTLE CITY MANAGER TOO!

Media Bias

We've all heard that the media is biased and maybe you've even encountered that a time (or three) in representing a city. But with the national media, this bias is much stronger than you anticipated. If a story is "juicy" enough for the national media to be interested in reporting about it, that is likely very bad news for your city. So if you get a call from "Dateline" one day, you cannot respond like you have with local news stories. By the time you get that call, the national media has already done preliminary research into the story (enough to decide they want to "investigate" further and have already committed to actually run the story) and they already have an "angle," their slant on how they want to present the story. Make no mistake; they are out to get your city.

> **Cowardly Lion**: *All right, I'll go in there for Dorothy. Wicked Witch or no Wicked Witch, guards or no guards, I'll tear them apart. I may not come out alive, but I'm going in there. There's only one thing I want you fellows to do.*
>
> **Tin Man, Scarecrow**: *What's that?*
>
> **Cowardly Lion**: *Talk me out of it!*

Before you think about running off like the Cowardly Lion with your tail tucked between your legs, realize that you have powerful ways to combat this predetermined media bias.

2. WE'RE OFF TO SEE THE WIZARD (AKA YOUR MEDIA CONSULTANT)

Hire a good media consultant ASAP

If you think you are capable of handling the national media on your own, think again! Hiring a media consultant should be the first step you take after you are contacted by the national media. These professionals know how to handle the ins-and-outs of media organizations. They can guide your city (from behind the curtain) as to what pitfalls to avoid and what strategies to utilize so your city will come off looking its best. They will be a liaison between the city and the national media and will work closely with the city's legal counsel to make sure that legal issues, including ethical concerns, are handled appropriately. (Tip: Consider having your city attorney or outside legal counsel hire the media consultant to preserve the work product and attorney client privileges for open records requests and discovery). Your city will be grateful if you retain a professional media consultant to combat a huge, and potentially very bad and repetitive, news story about your city.

> **Scarecrow**: *Oh joy! Rapture! I got a brain! How can I ever thank you enough?*
>
> **Wizard of Oz**: *You can't.*

3. A CAST OF CHARACTERS

Select a city representative to face the reporter

> **Scarecrow**: *I've got a way to get us in there, and you're gonna lead us.*

After hiring a media consultant, the next major decision you need to make in dealing with the national media is — who will be the face of the city in the interview? Your options include the mayor, councilmembers, city attorney, city manager, or city department head (e.g. police chief or fire chief). This decision should be a joint decision between legal counsel, the media consultant, and your city officials. If your mayor and council members are not involved in the decision-making process, they need to be informed once the decision is made and

instructed that only this city representative should be giving interviews to the media about this story. Make sure all employees know this decision. Consistency is the key. Once you have chosen a city representative, stick with that one person for all media interviews. There is nothing worse (both in the public eye and in a lawsuit) than having different people in the same organization giving different answers to the same question.

4. BEGONE, BEFORE SOMEBODY DROPS A HOUSE ON YOU TOO!

Respond quickly and preemptively when dealing with the national media

Taking swift, preemptive action will save you from future nightmares down the road. Engage in a dialogue with the national news organization to find out more specifics about what information they want and what the focus of their story will be. Also keep in mind that large national news organizations have legal counsel. It is beneficial to remind their legal counsel and executives of their duty to report accurately and to not defame any city officials or employees. This warning will at least ensure that they will thoroughly check their facts before running the story for fear of their own legal troubles ensuing. Be resourceful. Try to find any ways you can to kill the story before it hits the national airwaves. See, letters to NBC as examples of warnings to the national media.

> **Dorothy**: *Please, sir. We've done what you told us. We brought you the broomstick of the Wicked Witch of the West. We melted her!*
>
> **Wizard of Oz**: *Oh, you liquidated her, eh? Very resourceful!*

5. THE EMERALD CITY

Choose the interview setting carefully

The setting where the interview will take place is important and should be carefully selected in advance. First, the interview setting will reflect the image of the city. It should be a professional environment that will be impressive to the public, *e.g.* council chambers, nice conference room at city hall, etc. Second, it should also be a place where your city representative will feel comfortable during what is likely to be an "uncomfortable" (and at times adversarial) interview. The investigative reporter can instill fear and uneasiness reminiscent of the Wicked Witch of the West. To deal with a malevolent reporter, don't let them sense your

or your client's anxiety. You can help accomplish this by controlling where the interview will take place and picking a setting that makes your client feel secure and calm.

> **Dorothy**: *Weren't you frightened?*
>
> **Wizard of Oz**: *Frightened? Child, you're talking to a man who's laughed in the face of death, sneered at doom, and chuckled at catastrophe ... I was petrified.*

6. LIONS, AND TIGERS, AND REPORTERS, OH MY!

Prepare for reporters' questions

It cannot be emphasized enough how important it is to adequately and thoroughly prepare for the reporter's questions. The national media interview will be much more like a cross examination than a typical local interview. This means your city representative will need to have live prep sessions with legal counsel and the media consultant on questions to expect and be given examples of answers that should be given. These questions and answers should be written and studied by the city representative. Prepare some talking points and a few, simple key messages that you want to get across to the nation-wide audience (and to refute the national media's position during the interview). Also go over some basic rules with your client:

Rule 1: Don't be like a Cowardly Lion and lie to the reporter. They have done their homework before the interview so they probably know the answer to the question before they ask. If you lie, they will catch you.

Rule 2: Don't be like a Scarecrow and say "no comment" or some variation thereof. This looks like there is something to hide and that you are afraid of the real answer. Answer each question, preferably with one of your talking points.

Rule 3: Don't be like a Tin Man and appear "stiff" during the interview. Relax, be personable, and appear friendly and the public will perceive the interview more favorably toward the city. Remember to retain your composure during the interview no matter what question the reporter throws at you.

> *That's the scary part. I didn't know if I should smile, crack up, scream, or run.*

7. THERE'S NO PLACE LIKE HOME

Get your side of the story heard locally before national media coverage airs

Being proactive is one of the best media relation strategies that a city can employ. It helps head off the bad publicity created by the national media before it permeates your local media coverage. Often times, local media will be fairer in their coverage than national media because they are more invested in the community. So before the national story airs, create a local media blitz by inviting all television, radio and newspapers to a live press release, to fairly present the city's side of the story. Give the reporters public documents (pleadings such a summary judgment or dismissal motions) with significant points highlighted, together with digital images (photographs, video or audio recordings, etc.) that the local reporters can use in their story to clearly convey the city's message. The citizens in your community will hear the city's side first, which will help insulate the city from the negative impact of the national media coverage and have your city saying, "There's no place like home!"

Miss Gulch: *If you don't hand over that dog, I'll bring a damage suit that'll take your whole farm! There's a law protecting folks against dogs that bite!*

Auntie Em: *How would it be if she keeps him tied up? He's really gentle... with gentle people, that is.*

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Dear Sirs:

This letter is written on behalf of my clients, the City of Murphy, Texas and its employees.

I am writing this letter in advance of any publication by NBC News to caution you that any suggestion by NBC that Stephen Williamson or any other employee of the City of Murphy is responsible for the death of Matthew Cantrell is patently untrue and will be regarded as

Exhibit 1

defamatory. For the record, Mr. Williamson and the other individual defendants in Cantrell v. City of Murphy, et al. are not public figures.

Discussions with NBC producer Robert Powell have indicated that NBC's interest in this story is based on misinformation that has been contradicted by sworn testimony and documents in this case. NBC mistakenly believes this case illustrates problems with 911 operators, when in fact it portrays a hysterical parent who cannot rationally interact with the 911 operators, police or paramedics. NBC has apparently selected this case for national attention and made the decision to travel more than 1,500 miles to Texas to interview the plaintiffs before it has spoken to anyone at the City of Murphy.

The evidence contradicts the key issues upon which your story is based. Last week, we filed a motion for summary judgment seeking to dismiss the plaintiffs' case. I have included the motion for summary judgment to allow you to review the issues and the evidence in greater detail. This case clearly does not illustrate the premise of your story, but allows plaintiffs seeking monetary damages to defame public servants for doing their jobs professionally.

Matthew Cantrell's death was not caused by the City

The evidence and sworn testimony demonstrate that Mrs. Cantrell had come home from work, and played a Disney movie for her two young children in her bedroom. She fell asleep without checking to ensure that her back door was locked. She awoke when her oldest son said that the movie was over. Mrs. Cantrell found that her 21 month old son Matthew had gone out the back door and was hanging in a soccer net in the backyard, strangled. He had been hanging in the soccer net for at least 10 to 30 minutes. He showed no signs of life and was not breathing. In her sworn deposition, Mrs. Cantrell testified that the accident was primarily her fault. Mr. Cantrell agreed with this sworn statement in his deposition.

The 911 System did not fail Matthew Cantrell

The evidence and sworn testimony of Mrs. Cantrell, the 911 call, and the report by responding police officers and the responding paramedics demonstrate that Mrs. Cantrell was beside herself and hysterical during the 911 call. While that is understandable, and we greatly sympathize with the family's loss, it is untrue that the 911 system failed Matthew Cantrell. The main interference with the system's performance was Mrs. Cantrell's frantic hysteria. The city dispatcher was on the phone for a total of 2 minutes 15 seconds before transferring the call to the East Texas Medical Center. During the first 67 seconds of the call, the dispatcher dispatched two police officers, an ambulance, and a fire truck to the scene. During the call (135 seconds), the dispatcher asked Mrs. Cantrell to calm down 8 times. She was unable to calm down. The dispatcher during the call also sought the address of the call, sought the caller's identification, sought the age of the child, sought to know how the incident occurred, relayed that police were in route, and twice relayed that medics were in route. The city dispatcher was certified by the

Texas Commission on Law Enforcement Officer Standards and Education. A copy of his certification is enclosed.

Matthew Cantrell did receive CPR

Mrs. Cantrell has testified under oath that she did attempt to give Matthew CPR and that she has extensive training in how to perform CPR. (Apparently, NBC incorrectly believes she had only "some" training). Mrs. Cantrell was previously trained as an Emergency Medical Technician, received CPR training and received a Basic EMT certificate. Her training included toddler CPR training. She had received additional CPR training in September 2007, approximately one month before this incident.

Dispatchers did not refuse to answer Mrs. Cantrell's questions

In fact, the Murphy dispatcher answers Mrs. Cantrell each time she asks for help, telling her she needs to calm down. In an attempt to calm Mrs. Cantrell the dispatcher quickly assures her that he has "medics en route" and repeats that assurance during the 911 call. Despite his continued professional efforts to reassure and calm the caller, Mrs. Cantrell remains in a frantic and hysterical state, which according to police and paramedic's reports continues after they arrive on the scene. The arriving paramedics described Mrs. Cantrell as "screaming uncontrollably."

There is no proof that Matthew Cantrell would be alive today had it not been for the claimed delay in providing CPR

Mrs. Cantrell states in the 911 call that his eyes are dilated, his eyes are glazed, his lips are blue, he is pale, and he is not breathing. Police officers who arrived at the scene found no signs of life, he had no pulse, was not breathing, and his eyes were partially rolled back in the eye sockets. Paramedics who responded shortly after the officers arrived made the same findings, and were never able to obtain respirations or a pulse despite their heroic efforts in the ambulance. Matthew did survive a few days on artificial life support at the hospital in a vegetative state. Mrs. Cantrell's statements and sworn testimony indicate Matthew may have been entangled in the net and deprived of oxygen for as long as 10 to 15 minutes and a neighbor's testimony indicates it may have been longer than that. The paramedics' report shows that during their treatment, Matthew Cantrell never had a pulse, never had a blood pressure, and never had any spontaneous respirations despite the paramedics' treatment of intubating him, giving CPR and chest compressions, and giving IV medications.

Experts recommend that all 911 operators be trained to provide CPR instructions over the telephone.

NBC has yet to provide us with information as to the identification of any "experts" or specifically what they recommend. The Cantrells have retained an expert, but the Cantrells have

blocked the city's efforts to question the expert under oath. The caller's hysteria is a significant issue here and there is no evidence that CPR would have saved Matthew's life after he had been deprived of oxygen for such a long period of time.

Police considered the Cantrell's home a crime scene

NBC has aired dozens of stories on parents who have killed their children and lied to the police about the circumstances of their child's death. A recent example locally is the Darlie Routier case. While it is now clear that Mrs. Cantrell did not murder her child, that was not evident when police initially arrived at the Cantrell home. Police departments have been criticized time and again for contaminating a crime scene when it turns out the parents' claims are untrue.

Police who arrived on the scene observed a child who appeared to be dead from a very recent strangulation and assault. He had strangulation marks on his neck and what appeared to be a recent injury to his forehead. The child's mother was hysterical and making incriminating statements, including "find me guilty" that indicated she may be both responsible for his death and suicidal. Police allowed the ambulance-based paramedics into the house without delay and moved Mrs. Cantrell to another room until they could begin determining what happened. This was proper police procedure.

Accusing someone of being complacent in the death of a child is one of the most serious allegations one could make against an individual. The accusation must be held to the highest possible standards of fact checking and accuracy. Your request for the dispatcher's work records suggests to us that you have already made a determination that he did something wrong and should be accused of playing a role in the death of a child. We caution you again, in the strongest possible terms, not to make that false and libelous accusation.

The motion for summary judgment filed with the federal court provides specific information that you can utilize to determine whether you wish to go forward with this story.

The citizens of Murphy and first responders across the country are hopeful that you will make the right, ethical decision concerning this issue.

Very truly yours,

Andy Messer

Wm. Andrew Messer

Exhibit 1

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December 2, 2009

Steven Chung
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Dear Mr. Chung:

Thank you for your response to my letter of November 30, 2009. I am pleased that NBC has not drawn firm conclusions about this matter and that NBC has not already made a determination that the City of Murphy 911 dispatcher did something wrong. We expect NBC to provide nothing but a fair, true and impartial account of the judicial proceedings or other aspect regarding this matter.

I do, nevertheless, disagree with you that Stephen Williamson (or any other employee of the City) is either a public figure, a public official or at the very least a limited purpose public figure. He and the other individual city defendants are merely public employees. The fact that these defendants have been named in this lawsuit and have received, not sought, some publicity does not elevate their status to that of being public figures or public officials. You have cited two cases in your letter, neither of which is applicable. In those cases, both plaintiffs were admittedly public officials. The plaintiff in the *New York Times* case was an elected commissioner; and, the plaintiff in the *Times-Mirror* case was stipulated to be a public official. And, he apparently had become a "controversial figure" in the public eye. The *New York Times* case also dealt with a paid advertisement, as opposed to an investigative news report, which contained false statements for which the *New York Times* had no knowledge due to their admitted failure to investigate. In the present matter, NBC has been made well aware of the many facts which controvert the falsehoods alleged by the plaintiffs, for which NBC cannot later claim not to have believed, or to have been unaware.

Consequently, we again strongly caution NBC that any suggestion made by NBC that Mr. Williams or any other employee of the City of Murphy is responsible for the death of Matthew Cantrell will be considered defamatory.

On behalf of the City of Murphy and first responders across the nation, we look forward to your fair, true and impartial reporting of this matter.

Very truly yours,

Andy Messer

Wm. Andrew Messer