



ON THE RECORD

BY BEN BRAFMAN, J.D., LL.M.



The Court of Public Opinion

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I often deal with the media. Not because I am famous but because of the famous people I represent. As a result, I have developed a keen eye for media bias and prejudice. As a criminal defense lawyer, even when representing a wonderful person, there is no constituency, there is no support group, and the media are rarely, if ever, sympathetic to me or my clients. I have watched the dishonesty, and I have learned to understand it.

Does the truth matter? Of course it does. But so does perception. And, unfortunately, if reality and perception are sitting on two ends of a scale, perception will dominate. Sometimes it is okay to know you are right, and you can ignore what others are saying, but there are other times when public perception can dictate the trajectory of your life.

I learned this when I represented a notorious landlord 35 years ago. The media had given him a nickname not fit for print in a respectable publication such as this one. He had been arrested numerous times for the terrible conditions in his apartment buildings. It was easy not to like him when you heard the accusations. Especially the way they were portrayed to



the public.

He asked me to represent him when he was accused yet again of failing to address very serious violations in one of his buildings. We showed receipts to the judge demonstrating that the issues were indeed fixed and evidence that the tenants had recreated the same type of damage in a deliberate attempt to have him arrested again. When the judge considered all the evidence, she dismissed the charges. That night, I watched the coverage of the trial in the news, and I heard the reporter say, "So-and-so was hauled into court, again, because of the horrific conditions in his buildings." Full stop. They showed footage of the conditions in the buildings, and with that, the segment ended.

Not a word about the charges being dismissed.

As humans, we tend to be extremely judgmental when perceiving negative or untoward behavior in others. Not because we hold a grudge or want to see someone fail. Like gawkers at the scene of an accident, there is a natural curiosity about misfortune or failure. Particularly when it involves a public figure or

someone we know.

Changing someone's initial perceptions is a herculean task. This is true of the general public but also of judges and juries. Especially when the case for guilt is direct and easy to understand, and the argument in defense is more complex. Don't be penny-wise and pound-foolish. It is far better for your bottom line to run your business or non-profit in a way that leaves no room for doubt or suspicion and doesn't require legal gymnastics.

When the reporter failed to mention that the charges against the landlord had been dismissed, I called the producer, whom I happened to know, and I said, "Excuse me, we won." His response? "We have 30 million tenants in our viewing

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audience and only two and a half thousand landlords.”

There have been hundreds of times when my client’s arrest was featured on the front page. When they were acquitted, it was not even in the newspaper. Scandal sells. If you add politics, it sells more. If you add race and stature and money and religion, it sells and it sells and it sells.

How can we prevent the fallout of bad press where they give *smichah* to anyone with a yarmulke and indict a whole nation with a front-page photo and a well-crafted headline? We make good fodder for the news. But for the person impacted by this, it can be emotionally and financially devastating, particularly if they lose their job or communal position.

The damage extends to their family as well, with difficulties in *shidduchim* and *shalom bayis*. And let us not forget about the effects on the children who are old enough to be aware of the gossip surrounding their parent, yet not mature enough to process it. The consequences

of false accusations or even just a negative perception can ripple for generations.

Pirkei Avos lays out an important quality: “*Hevei dan es kol haadam l’kaf zechus*—Judge every man to the side of merit.” But that is not easy. Especially when you form your opinion from the press and social media. They definitely do not follow *halachah*.

So how can we avoid the guillotine of the media and public perception? We cannot swim against the tide. Our actions must hold up in a court of law, for sure. But also in the court of public opinion. ●

● *Ben Braffman is a criminal defense attorney based in New York and is recognized as an expert in white-collar defense and litigation. A former assistant district attorney, he has been in private practice since 1980 and has represented a wide range of high-profile celebrities, business leaders, lawyers and medical professionals. This column is produced in partnership with Project 432 (p432.org), an educational initiative of the Aleph Institute.*



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