



Author: In-house corporate lawyers and senior management perceive value in the PR profession.

Managing the Litigation PR Process in the Court of Public Opinion

BY DAVID SILVER, APR

Editor's note: Part of the analysis in the following article is based on the author's conversations with lawyers at the firms where he lectures on "Managing the Litigation PR Process: When Public Opinion Matters." He is accredited by the State Bar of California to teach the course. In addition, the USC Annenberg Strategic PR Center's fourth annual Public Relations Generally Accepted Practices (GAP) Study, released in May, also found that public relations is being valued more now by senior management in Corporate America.

Andrew Grove, former CEO and chairman of Intel Corporation, wrote a book a number of years ago titled "Only the Paranoid Survive." In it, he described the concept of strategic inflection points, when corporations get to a time when fundamentals in their businesses or industries are about to change. It can mean an opportunity to

rise to new heights or may signal the beginning of the end.

Corporate America is currently at such a strategic inflection point where a growing part of its core resource — revenues and profits — is being diverted to fight lawsuits in both the court of law and the court of public opinion. In fact, litigation costs for corporations are steadily rising; almost 90 percent of American corporations are engaged in litigation, with the average corporation balancing a docket of 37 lawsuits. For corporations with \$1 billion-plus in revenues, the average number of litigation cases they're fighting soars to 147. Those are the latest findings from the 2005 Litigation Trends Survey from the international law firm of Fulbright & Jaworski. American corporations fighting the costly lawsuits surveyed in this study reported annual gross revenues of \$484 million.

This strategic inflection point for corporate America bodes well for PR professionals. In-house corporate lawyers and senior management perceive value in the profession because of the rise in litigation and the aggressive nature of the media — the Internet and blogs — covering these trials on a 24-hour basis.

PR pros valued

With class actions, corporate and securities fraud, and accounting shenanigans on the rise, and aggressive government investigations spreading across all industries, CEOs, CFOs and boards of directors at public companies are now finding that PR professionals are valuable assets in formulating strategies and tactics to fight the company's battle in the court of public opinion.

Reputations of public companies

and their products or services, their employees, their board of directors, senior management and their brands are at stake. When this is the case, profits can suffer and credibility can be lost.

This is a watershed moment for PR executives, both at external agencies and in-house communications departments across Corporate America. From my perspective, PR executives are now being valued on the same level as in-house general legal counsels.

We are currently in the golden age of public relations in the business world, where sophisticated senior-level PR executives with valued skills are sought after for advice and counsel, especially on issues of litigation and crisis management. When it comes to costly litigation, the first thing a public company should know is that PR professionals who are involved in litigation or investigations for a public company have attorney-client privilege.

It has been three years since a federal judge in a Manhattan court ruled that the attorney-client privilege applies to PR professionals when they are involved in litigation and when a company is being investigated. Before, in-house corporate legal counsels were at times at war with the PR executives on communicating to the outside; now, due to the Sarbanes-Oxley Act passed by Congress in 2002 that requires transparency and accountability by senior management of public companies, this relationship has changed.

The triumvirate

There are three arenas where executives now converge in Corporate America because of the rise in litigation by plaintiffs: in-house general counsel, outside law firms and outside PR counsel. The in-house general counsel has become the de facto leader in hiring outside law and PR firms.

A PR firm can bring much-needed advice on how to structure a litigation PR strategy for a beleaguered public company.

According to the Fulbright & Jaworski study, U.S. corporate counsels accept that litigation will be a constant and have no plans to reduce the number of outside lawyers that handle their cases. I would extend that argument. Working in the court of public opinion for a public corporation, the fight in public must be managed with strategies by competent senior PR executives who have knowledge of this country's legal and financial structures.

The litigation process is highly complex and structured. The PR executive must remember to set a communications strategy with the general legal counsel that is transparent, without giving away private client information.

This shift — where PR counsel is leading the communications strategy in litigation for a public company and working in tandem with in-house corporate legal counsel and corporate communications — is revolutionary.

Maintaining transparency

Managing the litigation PR process is key to helping a public corporation fight the public battle it cannot conduct on its own. "No comment" by senior management doesn't work, and never has. A senior PR counsel can provide important strategic and tactical advice.

When managing the litigation PR process for a public company, it's important to focus on developing key messages for target audiences and communicating them through the media and corporate Web site on a periodic basis. This varies with each dispute, depending on the nature of the litigation and the target audiences you are trying to reach.

Maintain a transparency with all target audiences and work closely with in-house corporate attorneys and corporate communications executives. PR executives' role is to help senior management understand that when they are talking to the media and to the company's target audiences during litigation, it should be meaningful and true.

Help educate the media on the facts and be as transparent as possible without divulging anything that should be confidential. Understand that there is a pre- and post-litigation PR strategy that is crucial in keeping the media informed and helping your public client frame the debate in the court of public opinion. Let the other side be on the defensive.

According to the Fulbright Jaworski study, some companies spend 5 percent or more of gross revenues on legal issues, which, for a \$1 billion business, translates into \$50 million. A portion of that is now being spent on defending a public company during disputes in the court of public opinion, especially for public companies where lawsuits and litigation have to be disclosed to shareholders.

There has never been a better time for PR professionals to be as valued in Corporate America than now, especially when it comes to defending the reputations of companies in litigation. This strategic inflection point is providing opportunities for the PR profession to enhance its reputation. ■



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