

- A PUBLICATION OF TUCKAHOE STRATEGIES-

AN INTRODUCTION TO

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# Litigation Communications

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Best Practices for Outside Counsel

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## CHAPTER ONE



# Introduction

## It's Time to Bring in a PR Expert



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# Introduction

## It's time to bring in a PR expert

Your client is facing high profile litigation. There exists the threat that the client's reputation or the corporate brand could suffer from bad publicity. It's time to bring in an outside public relations expert to create and execute a strategic communications plan.

This e-book lays out the best practices for hiring PR experts and getting the most out of them. It's a guide for outside counsels who suddenly find themselves in high-stakes litigation that includes unwanted interest from the media, negative buzz on social media, and a client's threatened reputation.

Specifically covered in this e-book are steps for:

- How to choose the right PR expert
- How to best contract with PR experts and the legal ground rules to follow to maintain privilege
- Identifying what to expect in a strategic communications plan
- Effectively working with the news media
- Keys to creating effective social media campaigns



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“A defense attorney may pursue lawful strategies to obtain dismissal of an indictment or reduction of charges, including an attempt to demonstrate in the court of public opinion that the client does not deserve to be tried.”

-- Supreme Court Justice Anthony Kennedy *re Gentile v. State Bar of Nevada*



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## CHAPTER TWO



# Choosing the Right PR Expert Experience Matters



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# Choosing the Right PR Expert

## Experience matters

There are lots of public relations firms and even more independent practitioners, but fewer with actual litigation communications experience.

Developing a litigation communications plan is quite different from promoting a consumer product or pitching “puff pieces.”

When faced with litigation, or pre-litigation, it is important to hire PR experts with specific experience working with legal strategy. You will need PR experts who understand the basic legal process, who know how to read filings, and who are loyal to the importance of working in lockstep with lawyers.

Seasoned PR experts with litigation communications experience also have critical relationships with key media that can influence how the story is told.

## Choosing the Right PR Expert continued

Finally, the courts have recognized the importance of distinguishing between PR experts with litigation communications experience versus those that only perform “ordinary” public relations. This could be a critical matter where privilege between the PR expert and the law firm is challenged.

In *Calvin Klein Trademark Trust v. Wachner*, privilege was not granted in part because the law firm’s client had a preexisting relationship with the PR firm where it also performed “ordinary” public relations services not related to litigation.

Chose wisely when it comes to engaging with a PR expert and you will be off to a good start.





## CHAPTER THREE



# Contracting with a PR Expert Preserve the Privilege



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# Contracting with PR Experts

## Preserve the Privilege

Attorney-client privilege between a law firm and PR experts can be essential in order to execute a successful communications strategy that supports the legal efforts.

In order to fully be of service to your efforts, PR experts must have access to documents, be involved in internal conversations, and easily communicate about the litigation with the attorneys on the case.



For these reasons it is important to have a contract directly between the law firm and the PR agency. This provides a level of protected confidentiality with the PR experts. The contract should clearly state that the purpose of the work engagement is to provide strategic communications advice for litigation or in anticipation of litigation.

The Scope of Work should use specific wording that connects the communications efforts to the legal strategy.

In *re Grand Jury Subpoenas Dated March 24, 2003*, a case heard before the U.S. District Court for the Southern District of New York, Judge Lewis Kaplan set out a number of examples of PR advice given to benefit the legal advice of a lawyer to his or her client. Those examples included:

- “[M]atters such as whether the state of public opinion in a community makes a change of venue desirable;
- “Whether jurors from particular backgrounds are likely to be disposed favorably to the client;
- “How a client should behave while testifying in order to impress jurors favorably; and,
- Other matters.”

*Grand Jury* and other cases have protected PR efforts extending beyond the court room, but typically only those that have a strong connection to fulfilling the legal strategy. PR efforts such as media outreach, publication of OpEds and even social media activity can be protected as long as they help serve the overarching legal strategy.

## Contracting with PR Experts continued

### *Ground Rules*

Soon after the PR expert is onboard there should be clear instructions for how the legal and communications teams should communicate. For example, any written communications should include an “Attorney-Client work product” stamp.

Likewise, conversations and emails should be between the attorney and the PR expert, not directly between the PR expert and the client. Experienced PR experts with litigation communications experience should already know all this, but it’s a good idea to set expectations.

In the process of creating documents there are invariably a number of revisions that produce multiple drafts. There should be a clear process at the beginning of the relationship for destroying drafts as a matter of normal process.





“ [T]he ability of lawyers to perform some of their most fundamental client functions...would be undermined seriously if lawyers were not able to engage in frank discussions of facts and strategies with the lawyers’ public relations consultants. ”

*Judge Lewis Kaplan of the U.S. District Court for the Southern District of New York re: grand jury*



## CHAPTER FOUR



# Getting the Most Out of Your PR Experts



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# Getting the Most Out of Your PR Experts

## Give Them a Seat at the Table

You've gone through the trouble of vetting and hiring a PR expert, now it's important that you give them a seat at the table.

Keep the PR team fully informed of new and relevant information. Ask for their input on how legal actions might be viewed through the media lens. The more complete and timely the updates to the communications team are, the sooner they can begin planning for how information is received in the court of public opinion.

If in some instances you are anticipating a particular filing will generate media buzz, then it's a good idea to have your PR experts provide input on the document prior to filing to maximize PR impact. Depending on the desired outcome, you'll want the PR expert to either punch up or tone down some language used.

## CHAPTER FIVE



# The Strategic Communications Plan



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# The Strategic Communications Plan

Following a detailed briefing from the legal team, the PR experts should produce a strategic communications plan for how it will support the legal strategy.

The plan should include three key elements – goals, strategy, and tactics.



The *goals* should list the two or three primary outcomes desired from the plan. The *strategy* provides the broad plan of action for achieving the goals. *Tactics* are the specific tools used to get the job done.

Attached to the strategic plan should be two additional sections. The first should lay out the *primary audiences* that are important to reach in the communications effort.

Coming to agreement internally on the primary audiences is important since a clear understanding of who you want to influence will be critical when deciding on what to say and where to say it.

The second attachment should be a document detailing the *key messages*.

The key messages should present the three of four best arguments to be used in all communications to positively influence the primary audiences. Each of the key messages should be concise and supported with two to three “proof points.”

Messages are often developed from an intense SWOT analysis. SWOTs are facilitated discussions with those involved that examine strengths, weaknesses, opportunities, and threats.

The messages should be used for virtually any public communications about the litigation, including press releases, statements, employee and stakeholder communications, testimony, and interviews.

## CHAPTER SIX



# Media Relations

Identifying Opportunities, Preparing and  
Conducting Successful Interviews



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# Media Relations

## Identifying Opportunities, Preparing and Conducting Successful Interviews

This chapter provides information about how media requests should be handled, and about preparing for and successfully conducting media interviews.

### *Media Request Protocol*

You should know the answers to several questions before speaking to any reporter, such as:

- Who is the reporter?
- What publication or outlet does he or she represent?
- Does the reporter have knowledge of the story?
- Has the reporter previously covered the story?
- What is the reporter's story angle?
- Who else has the reporter spoken to?
- What is the reporter's deadline?

Going into an interview with answers to these questions significantly improves your position and ultimately the outcome of the interview.

Here's how you do it. When a reporter contacts your office for an interview they should be forwarded to your PR expert for vetting.

The PR team should review the request and quickly provide background on the reporter, their style of reporting (some are more aggressive than others), the topic they wish to discuss, and their deadline.

The PR and legal teams should work together to determine who should conduct the interview. In some cases it could be the client, or it could be someone from the legal team or the PR expert.

### *Media Prep*

As stated above, before you agree to conduct a media interview you should know as much as possible about the reporter and their story angle.

The PR expert should provide to anyone conducting interviews a “Q&A” document that anticipates the good, the bad, and the ugly questions that could be asked. The document should also include answers to each question. Obviously, the answers should be approved by the legal team in advance.

Depending on the subject and outlet, it may be a good idea to work with the PR expert to conduct a mock interview with hard and soft sample questions to ensure your are ready to effectively utilize the key messages.

Before conducting any interview you should be sure to understand the rules of “On the record” and “Off the record.”



### *Media Interviews*

When it's time to speak to the media, stay focused on repeating the key messages in definitive terms.

Don't repeat the negative. For example, a statement such as "my client didn't commit the crime" is not helpful. It puts the image of your client committing the crime in the minds of the reader. Instead, find opportunities to get on offense. Say things like, "the allegations are completely false" and "the facts will come out in court and we will demonstrate that my client has been completely truthful and honest."



You should always avoid saying, "no comment" as this sounds like "I'm guilty" to most audiences.

If you get "hijacked" by a reporter and are not ready to speak, you can always buy time by telling the reporter that you want to speak with them about the story but you can't do it at that time. Then ask for the reporter's business card and let them know someone will be in touch.



“ Dealing with the media in a high profile case probably is not a matter for amateurs...Lawyers cannot be faulted for concluding that professional public relations advice was needed.”

--Judge Lewis Kaplan of the U.S. District Court for the Southern District of New York re: grand jury



## CHAPTER SEVEN



# CONCLUSION



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# CONCLUSION

When the stakes are high and your client's case is being tried in the media it's time to hire a PR expert.

The 24 hour media cycle and the power of social media today often means there is no choice but to engage in a strategic communications plan.

The value of developing a communications plan is to support the legal strategy by highlighting the key points of your case to influence audiences such as prosecutors, jury pools, and judges. It is not merely to respond to allegations but to provide your client the opportunity to pivot from defense to offense.

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# Learn more about Tuckahoe Strategies

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Tuckahoe Insights is our communications blog designed to provide news and information to the legal community about strategic communications

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