



LEGAL AND LITIGATION PR:

POSITIONING COMMUNICATORS
AS PART OF THE CLIENT TEAM TO
GENERATE REVENUE

BY DAVE POSTON AND MEGAN PAQUIN

In today's complex business environment, collaboration between legal and communications counsel has never been more important. Now is the time to stop thinking of communications-related disciplines at law firms only as an expense. Legal marketers and all public relations professionals serving the industry must discover and propose strategies to add value, differentiate offerings and increase revenue by providing critical — and billable — communications services as part of client teams.

Modern marketing departments can be profit centers and essential elements in the portfolio of consulting services offered. There are many ways for attorneys and firms to raise revenue from public relations:

- Create a professional services curriculum that educates attorneys on communications;
- Give internal PR professionals billing rates;
- Grow and spin off that internal PR team as an ancillary business or affiliated agency;
- Develop a practice area and market crisis response as a new approach to litigation;
- Include PR in the services for emerging companies, private equity, real estate or other corporate practices;
- Offer PR as part of your legal consulting services division or ancillary business; and
- Partner with outside PR agencies.

Those Footsteps You Hear Are the Big Four and PR Agencies

PricewaterhouseCoopers sells crisis communication management as a primary service, offering algorithmic analysis, communications teams and cross-functional groups to address every type of crisis, including data breaches, product recalls, bankruptcy and customer complaints. In a recent Pricewaterhouse survey, nearly 60% of CEOs said they are extremely or somewhat concerned

about their companies' ability to respond to crisis. Yet Pricewaterhouse is not the only competitive threat.

In a recent survey of board members conducted by Deloitte, 29% of corporate leaders reported a desire for their companies to execute timelier and more robust communications plans as part of crisis planning and preparation. Insurance companies are also becoming part of the competitive environment. With crisis communications panels that closely resemble that of law firm panels, the same people that hire law firms hire public relations agencies for crisis communications and more. Furthermore, public relations agencies are increasingly called on by their clients to recommend and assist in the selection of legal counsel to collaborate on communications initiatives.

Lawyers can't just be lawyers in today's world. Law firms should not underestimate the need for and revenue potential of crisis and other communications-related services for their clients — nor the competition's willingness to provide these services. Those who lead in this arena receive the benefits of increased cash flow and profitability.

Attorneys Must Understand Media Relations to Provide Solid Legal Counsel

Communications is a necessary component of legal advice in today's frenetic, media-saturated world when information can spread across social media like a gasoline-fueled wildfire. Many major matters at law firms have communications components, and yet, attorneys and law firms simply have not identified the opportunity to extend the scope of their services to address all aspects of the matter facing their clients.

Litigation response and crisis communications are the most logical, and perhaps easiest, first steps. To wise and humble litigators, crisis communications executives are legal experts just like e-discovery, technical witnesses and courtroom graphics professionals. Crisis billing rates are comparable, and their fees can even exceed those charged by large firms. Furthermore, due to

the third stage of a standard "plan, respond and recover" approach, communications teams will often remain engaged with companies to recover from litigation long after the lawyers — and their invoices — stop.

A familiar refrain came up in a recent matter: "I didn't want to try to the case in the media. But now we don't have any choice. The other side is organized, aggressive and clearly working with a PR agency. And they are feeding stories about our executives' personal lives to the media, who are reporting them!"

To meet the challenge, some innovative firms are taking proactive steps — both in how they market, and with their staffing, partnerships and more. For example, one global firm not only created a crisis management practice, but also created a dedicated web page for those seeking crisis response. In addition to highlighting their legal professionals with deep experience in handling crises, they wisely leverage multi-channel marketing strategies to target different executives and legal counsel based on how they might search for or buy such services.

A small, Southeastern regional firm also has a crisis management practice group. They do not have the deep bench of a global firm, but their partnership with a crisis public relations agency is a prominent part of their web copy.

At the State Bar of Georgia's Law and Media annual conference, CNN anchors participated on panels with the Chief Justice of the Georgia Supreme Court, discussing the intersection of the media landscape and law practice. Law firms and attorneys involved in such trainings are often those that, in new business pitches, set aside the "legal issues memo" after just a few minutes in order to spend the better part of an hour discussing how crisis communications would drive the litigation strategy. This approach can be more appropriate and often wins business.

Turn to Litigators to Lead the Way

In our experience, when it comes to client matters, many of the most media-savvy lawyers are litigators. Class action attorneys are

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often involved in court-ordered communications programs. Plaintiff's attorneys know the value of spreading the word regarding dangers and advocating for changes that will encourage safer behavior. Pro bono clients often can only get another hearing, and another chance in life, if their lawyers seek out media assistance in creating a call to arms.

To identify these communications leaders, look at your litigation groups for the lawyers most likely to appreciate the value of a multidisciplinary crisis team that gives communication pros a seat at the table. Evaluate internal legal and communications resources to include lawyers from diverse disciplines, such as data privacy, intellectual property, product liability, labor and employment, white collar investigations, public policy and other groups.

While litigators appreciate reputation damage control, they may miss opportunities to be proactive. At the start of every single litigation matter, an attorney should ask, "If this case hits the press, how would that impact my client?" The simple reason is that the other side could go to the media at any time. You can't defend an angle you didn't consider, and no attorney likes to be caught off guard.

For Clients, Start With the Crisis Plan

Just about every client company has a crisis plan in place, which is a natural place to start the discussion about integrating communications with the legal team. It is

important to recognize that a crisis plan is not a document that sits on the shelf waiting for the building to catch fire. The business, legal, regulatory and media landscapes change quickly. The entire team should be reassessing the crisis plan regularly, or it will be as useful as an outdated book of statutes. Identifying front-facing representatives should be part of the plan. In most cases, communicators will recommend that the top executive be the person the public hears from in a major crisis, and media training should be integrated — not an afterthought.

So, how are lawyers involved in crisis planning? It's about creating preventative strategies. It's what law firms can sell in between bet-the-company matters. Who better to inform such planning than an attorney charged with reducing risk?

Communications Strategy as an Essential Component of Legal Advice Isn't Just About Crisis or Litigation

Law firms increasingly need to act as business consultants to their clients, advising them not just on legal liability, but offering recommendations and helping inform decisions surrounding how innovative corporate transactions may affect the brand's reputation, investor confidence and internal audiences from executives to line employees. Furthermore, many in-house counsels are at the top of an organizational chart that places public relations and communications functions under them. If your firm is providing legal advice without ancillary communications

counsel, you are missing a revenue opportunity and, frankly, not serving the client as well as possible. Lawyers long ago integrated client legal teams, and they can follow the same model to embrace communications.

Some early adopters of this strategy have already demonstrated how this can work. Look no further than public affairs and lobbying affiliates as one model for firms to offer ancillary service to clients. As their main draw, these affiliates often boast professionals with credentials in public policy, usually a former member of Congress or former governors. Billing by internal staff for public affairs usually has parity with major legal practices. Contrast such success with firms that have not recognized the opportunity to provide related communications counsel, and the missed revenue is hugely apparent. Furthermore, overlooking communications counsel is missing out on the chance to fully serve clients.

One global law firm that was built on its public affairs practice recently went so far as to create an open, international public relations and governmental affairs network. It was a formal call for partners, but also a clear marketing effort to expand its network and attract referrals to the law firm. It wasn't a small player, with prominent and controversial political leaders from both sides of the aisle, before doing so.

Outside Partners Can Bridge the Gap in Expertise

Since communications work tends to be reactive and spawned by crisis, it may not be realistic to staff up internally. Relying on independent communications and public relations firms as outside partners can be a great beginning, interim, permanent or coinciding strategy. Outside communications partners will have broad experience, relationships with media and other influencers, and the ability to quickly marshal resources. While these pros generally have seen a lot, the most important factors in leveraging dedicated resources may be that they approach communications as a discipline, understand the communications ecosystem and encourage lawyers to expand their views.

Who Is in Charge?

Clearly, lawyers should always be first chair on these teams, in all cases and all the time. There is usually a legal component to communications — what can be said, disclosure requirements, confidentiality agreements and missteps that can violate contracts or complicate litigation. Attorneys must be confident that they are calling the shots. At the same time, they must appreciate that communications is a bonafide discipline that entails much more than writing press releases.

Attorney-Client Privilege Is a Double-Edged Sword

Philosophies related to open courts, the First Amendment and legal ethics all apply in offering these services. Another essential reason attorneys should serve as crisis communication leads is in exercising the attorney-client privilege and work product doctrines. Bringing a nonlawyer into a discussion can be regarded as a waiver of the attorney-client privilege in some circumstances, unless a lawyer is directing that interaction. Internal public relations counseling that has legal implications — guarding against tainting of a potential jury pool that may read prejudicial news, for example — likely will be protected. Reputation management that seeks to protect erosion of a brand to customers and investors may not be regarded as having a legal component and may be discoverable. The lawyer team leader will understand how to utilize nonlawyer communications experts without jeopardizing the privilege, especially as courts are split on whether the privilege or doctrine applies to communications counsel.

It's a Minefield Out There

Every week, we see new examples of big companies tarnishing their brands by making quick legal moves or being paralyzed by fears of legal exposure while ignoring the communications considerations. Boeing is suffering the fallout, with real financial implications, of ignoring the need to communicate and defend the company's commitment to safety, perhaps because of the legal concerns. One long-term strategy for Boeing might be

to seek expansion of Washington state's "I'm sorry" law (RCWs > Title 5 > Chapter 5.64 > Section 5.64.010), which allows apologies without creating more exposure or confirming fault in health care, to the broader business community.

Today's legal communications pros know that taking responsibility while limiting liability is the goal. We can all be a part of the law firms of the future by educating, encouraging and drawing up the business case and plans that drive revenue. But dabbling is not enough. Firms have been inching their way into communications services for years, with lawyers and clients unsure about their intentions. Make a formal commitment, train attorneys and staff in best practices for communications, identify internal and consulting expertise, and go all in selling communications counsel to clients. ■



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Megan Paquin has been trusted to lead communications strategies for some of the world's most respected brands that thrive in complex, high-stakes situations. For more than a decade, Megan has effectively collaborated with legal counsel on critical issues such as data breaches, consumer data privacy, natural disasters, various criminal activities and management issues.

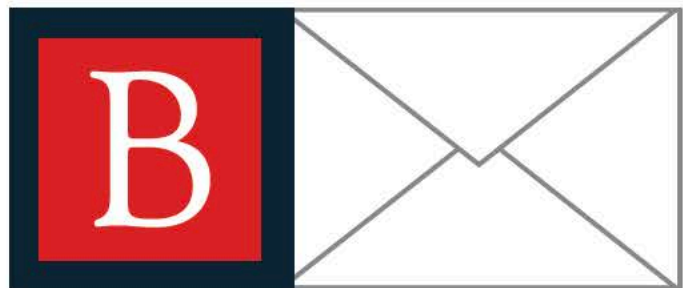


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