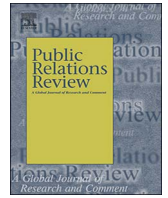


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Conflict and cooperation between advocates: Lawyers, PR practitioners, and the client's best interest

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ABSTRACT

In this article we investigate the under researched interface between two sets of professional advocates. We focus on public relations practitioner collaboration and competition with lawyers and the issues these professionals confront in the process of reaching consensus about the client's best interest. Our research covers PR professionals and lawyers in two countries – New Zealand and Israel – and uses interviews with 29 informants to identify the conditions for collaboration. We also record how both groups have significant concerns about the impact of the new communication environment on the future of their professions. Our findings highlight major issues that help explain the inter-professional relationships. They also suggest future directions for the practice of law and PR and for further scholarly investigation of the topic.

1. Introduction

Legal and Litigation Communication is an increasingly important research field that investigates the intersections between the public, news media, and the legal system. Organization managements as well as individual clients need counsel on issues that have legal and reputational implications and so depend on different expert opinions. The need for lawyers and PR professionals to collaborate in the service of a client becomes paramount when the client is facing a crisis situation that attracts media attention. Studies published in the PR literature have examined this intersection from different perspectives. This article seeks to build on previous studies and add value by collecting first hand evidence on how jurisdictional differences enabled or restricted how the professions served their clients' best interest. Its second objective looks to identify specific issues involved in the relationships between the professionals in the fast-expanding environment of online and social media.

This research reports findings from in-depth interviews with 29 lawyers and public relations practitioners (PRPs) in New Zealand and Israel. The research is not making a cross-national comparison between the professionals in the two counties but aims to identify core issues that increase or decrease cooperation, or competition, between the professionals.

From the outset, it is important to acknowledge that not all PRPs work with lawyers and not all lawyers work with PRPs. In fact, many lawyers might have a specialist career in an area of expertise that never includes interaction with PR and vice versa. However, there is always a potential for the two sets of advocates to work together unexpectedly when an organization hires professionals from both areas to deal with the same problem. In such circumstances, mutual understanding of the issues and approaches each profession bring to the table is necessary for lawyers and for PRPs.

Collaborative relationships between lawyers and PR practitioners are essential, especially in the context of publicly traded

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companies. The area of investor relations is highly regulated and the corporate communication officer is responsible for working within strict legal requirements. In most international stock exchange jurisdictions, the regulating authority demands

full and fair disclosure by listed companies as a way of preventing insider trading. This means that any information given by companies to the likes of people in the investment community that might have an influence on stock price should be disclosed simultaneously to the market (Westbrook, 2014, p. 133).

The most common situations where the two professions find themselves working together can vary as follows:

- In-house: Both professionals are employed by the same organization. The legal department and the PR department consult management together on specific projects, or on an ongoing basis;
- In-house PRP is working with an external lawyer hired by the organization to help with an ad-hoc issue, or to serve the company on an on-going basis;
- An in-house lawyer is working with an external PRP whom management hired to deal with an ad-hoc issue, or to serve the company on an ongoing basis;
- A law firm is hiring, or recommending the client to hire, a PR firm for help with communication with media, community, unions, investors and other stakeholders for a specific client's legal case that involves communication challenges; and
- A law firm is hiring an external PR firm or an in-house communication specialist to promote the firm's reputation, to market the firm's services, and to develop relationships with the firm's stakeholders. The law firm's internal communication department might, or might not, provide PR services to the firm's clients.

It is important at this stage to acknowledge that the research does not cover many other topics relevant to legal communication (e.g., the impact of strategic communication and media on court decisions, professional ethics, and the relations between PRPs and media in the context of legal cases). While we touch upon such topics when discussing the inter-professional relationships, they are not the subject of this research. Instead, we focus on the inter-professional relationships, the way they evaluate each other's contributions and responsibilities, and their respective approaches to the client's best interest.

2. Literature review

In overviewing publications relevant to the topic of PR in the context of law, we observed that the topic was not high on the PR scholarship agenda: There is no entry on Litigation or Legal PR in the latest *Encyclopedia of Public Relations* (Heath, 2013). The only item in this *Encyclopedia* relating to law discusses defamation, primarily libel and slander (Leeper, 2013). Similarly, the benchmark second edition of the *Sage Handbook of Public Relations* (Heath, 2010) omits any mention of the topic although the 2001 edition of the handbook included a chapter on public relations law (Parkinson, Ekachai, & Traynowicz Hetherington, 2001). Although it involves issues of power, critical PR scholarship similarly neglects the legal aspect of PR (L'Etang, McKie, Snow, & Xifra, 2016).

Previous studies on the legal context of PR have examined the intersection between the professions from different perspectives. Litigation Communication and Litigation PR, for example, have been the topic of scholarly publications in communications, PR, law journals and books (Beke, 2014; Roachwalb & Stack, 1992; Watson, 2002). Haggerty (2003) usefully defined Litigation PR as “managing the communications process during the course of any legal dispute or adjudicatory proceeding so as to affect the outcome or its impact on the client's overall reputation” (p. 2). Some of the issues addressed in this article are mentioned in Haggerty's (2003) book *In the Court of Public Opinion: Winning Your Case with Public Relations*. However, this book is based solely on the author's experience and does not include the empirical evidence of the kind provided by this research.

The legal topics mentioned in public relations literature as relevant to the industry relate mainly to the U.S. legal system, the First Amendment and the freedoms of speech, expression, and press. These cover corporate speech and all forms of communication on behalf of clients and employers that might become a potential lawsuit. Few studies focused on PR legal considerations such as liability, defamation, slander, Intellectual property, copyrights, trademarks, employees' rights, insider trading, disclosure law, censorship, and the protections PR might enjoy in regimes that value free speech (Colins & Cornet, 1990; Fitzpatrick, 1996; Gower, 2008, 2012; Leeper, 2013; Myers, 2015; Toledano, 2014). Public relations texts discuss the legal aspects of the practice assuming that “both familiarity with applicable law and access to good legal counsel are important components of any successful public relations practice” (Parkinson et al., 2001, p. 257).

A unique article on litigation PR was published by U.S. communication scholar, Watson (2002), who went as far as considering lawyers who failed to hire PR services when that was appropriate, to be negligent. Based on U.S. contract and malpractice law, Watson (2002) argues that “there appears to be grounds for courts and bar associations to require attorneys to serve their clients' interests in the court of public opinion as well as the court of law” (p. 101). This idea might be embedded in the highly litigated U.S. society where an “entire industry of legal public relations consultants has emerged to assist lawyers in dealing with the press on behalf of clients” (p. 87). Watson's (2002) bold idea has not been taken up by any other published scholarship.

Previous literature on the lawyer-public relations counsellor dynamic has concentrated more on the professional clashes during crisis and on media relations (Coombs, 2012; Darr & Zer-Gutman 2007; Fitzpatrick, 2000; Gibson & Mariposa, 1999; Haggerty, 2003; Lee, Jares, & Heath, 1999; Reber, Cropp, & Cameron 2001). Bain (2012) discussed the role of PR within law firms whereas Reber, Gower, and Robinson (2006) identified two major goals for litigation PR: to influence the outcome of a court case and to protect the client's reputation (p. 25). Their study found out that “litigation public relations transfer well to the internet” (p. 41).

Sissons (2015) conducted videotaped ethnographic research study of the interaction between an external PRP and the client's in-

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