

September 2000

**TO: Executive Addressed**

**FR: James E. Lukaszewski, APR, Fellow PRSA Chairman**

**RE: How to Avoid/Manage Crummy Trial Visibility**

For the non-lawyer, here's a little understood fact: judges, the courts, juries, and the legal system are committed to protect the public and advocate for victims. If you're not a victim (and - from the public's perspective - companies and large organizations aren't), winning the public perception struggle that accompanies highly visible litigation can be extremely difficult.

Here are six important approaches communicators can use to manage litigation visibility:

1. Learn the process and the players.
  - Familiarize yourself with the American Bar Association's *Fair Trial and Free Press Standards and Model Rules*, plus state and local rules.
  - Anticipate high-profile variables (i.e., trial consultants, television, lawyers, public demonstrations, third-party experts, leaks, and aggressive prosecution or plaintiff cooperation with the media).
2. Encourage a quick settlement.
  - Settlement often eliminates or substantially reduces litigation visibility. There are very few non-victim winners in court. If you're wrong, or the perception is that you are, acknowledge it, settle, and move on. It's only money. No one who matters is really counting anyway.
  - The check you write today will be smallest check you will ever write.
3. Talk on your own timeline.
  - Identify the defining moments in the trial sequence and vigorously prepare. Plan your communication from the perspective of those most directly affected. Talk to them.
  - Develop a message strategy for each phase of the trial. Say less but make it more important.
4. Empathize.
  - Negative language, threats, and whining anger juries, empower critics, and induce the media to ask even tougher, more embarrassing questions. Be positive and compassionate. Care.
5. Fight nicely and fairly.
  - Keep the focus positive. Be relentlessly positive. If you feel like a warrior, act like you're preparing for war, and forecast war, there's going to be war. Wars are very messy, very expensive, create casualties who keep counterattacking. You'll take the heaviest casualties. If you hire only warriors as lawyers, you'll always be at war. Wars have a way of never ending. Fire the warriors; hire the peacemakers. Get on with your life.
  - Avoid war and you avoid crummy, unnecessary trial visibility. Your brand can survive.

6. Practice laggship. Engage selectively. Lag behind, slightly. Strategic silence can be an important controlling technique. Confrontation requires a combination of energy, action, and a workable, winning approach.

Copyright © 2000, James E. Lukaszewski. All rights reserved.

The Lukaszewski Group Inc. ■ Ten Bank Street, Suite 530, White Plains, NY 10606-1952  
Telephone 914.681.0000 ■ Facsimile: 914.681.0047 ■ [tlg@e911.com](mailto:tlg@e911.com) ■ [www.e911.com](http://www.e911.com)