

LITIGATION COMMUNICATION STRATEGY PART I: OVERCOMING THE FASCINATION AND THE FRUSTRATION OF WORKING WITH ATTORNEYS

Attorneys and their clients have discovered public relations in a much bigger way in recent years. Some of the reasons for this newfound interest are:

- ✘ Increasing lawyer-driven exposure of what used to be considered minor or highly technical legal events by the media.
- ✘ The role of the lawyer in the legal and non-legal environments is being refined and refocused on legal matters and away from non-legal activities. One consequence is that public relations practitioners are becoming more involved to do the public relations.
- ✘ Thanks to Ken Starr and his troop of intrepid prosecutors, and the massive tobacco legislation by the states, attorney/client privilege has been re-refined in ways that have gone far beyond their impact on William Jefferson Clinton. Lawyers need to be much more careful about when they are and when they are not acting as attorneys.

The issue in question is attorney/client privilege, the bastion of client privacy. Lawyers – through their expanded activities in client affairs – have helped erode privilege.

Courts and aggressive plaintiffs (those who sue or prosecute) are getting courts to carefully scrutinize what can be privileged.

The purpose of privilege is to protect the attorney/client relationship. Increased court scrutiny means that lawyers will ever more carefully guard their client relationships.

The ability to protect information and legal advice from discovery is narrowly construed by the Court because the interests of justice are governed by the principle of fullest possible disclosure.

Jerold S. Solovy and Robert L. Byman, writing in the July 24, 2000 *National Law Journal* used this definition: To establish privilege, the withholder must show a communication between a legal professional and a client involving legal advice made in confidence. This standard applies to documents. Note the phrase, “involving legal advice.”



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James E. Lukaszewski (loo-ka-SHEV-skee) advises, coaches, and counsels the men and women who run very large corporations and organizations. He is an expert in managing and counteracting tough, touchy, sensitive corporate communications issues. The fastest growing portion of his practice involves civil and criminal litigation. He is one of the few who can and truly does coach CEOs.

He is a prolific author (several books, hundreds of articles), lecturer (corporate, college and university), coach, and counselor. He is quoted in publications such as *The New York Times*, *The Wall Street Journal*, *The Miami Herald*, the *Harvard Business Review*, and industry trade journals. He is a columnist, advisor, or editor for almost every major public relations periodical. His 1992 book, *Influencing Public Attitudes: Strategies that Reduce the Media's Power*, remains a classic work in the field of direct communication. He is an internationally recognized speaker on crisis management, ethics, media relations, public affairs, and reputation preservation and restoration. Visiting his Web site, www.e911.com, is like attending the University of Crisis Management.

An accredited member of the International Association of Business Communicators (ABC) and the Public Relations Society of America (APR), Mr. Lukaszewski is a member of the PRSA's College of Fellows (Fellow PRSA) and Board of Ethics & Professional Standards. He served as a crisis communications advisor to the International Disaster Advisory Committee, Agency for International Development, Office of U.S. Foreign Disaster Assistance from 1989 to 1992, and is a civilian advisor to several other federal agencies. He lectures annually at the U.S. Marine Corp's East Coast Commander's Media Training Symposium and was the second recipient of its Drew Middleton Award. He is the recipient of both Ball State University's 2004 National Public Relations Achievement Award and the 2004 Patrick Jackson Award for Distinguished Service to PRSA, and is among the winners of the 2005 *PR News* Lifetime Achievement Award. His name appeared in *Corporate Legal Times* as one of "28 Experts to Call When All Hell Breaks Loose," and in *PR Week* as one of 22 "crunch-time counselors who should be on the speed dial in a crisis."