

**COURTING PUBLIC OPINION:
Using Public Relations Effectively To Win Trials
And Preserve The Civil Justice System**

By Richard A. Jenson, M.S. and Sondra Williamson

Too often, public perceptions about the civil justice system are based on exaggerated reports of its failures—media stories mulched in hyperbole about mammoth monetary verdicts or outrageous lawsuits and the rare instances in which they produce winning verdicts. An uninformed scan of media stories about so-called “lawsuit abuse” would lead one to believe that McDonalds-type verdicts are being handed down daily in courtrooms nationwide.

It’s no accident that there is a common public misperception that the courts system is broken. Tort reform groups employ squads of workers whose sole purpose is to comb public records and the Internet, searching for “horror stories” to use in press releases, opinion-editorials and other forms of guest commentary—all for the purpose of building their case for systematically snuffing out the ability of ordinary citizens to pursue their rights in court.

Tort reform’s efforts are paying off. In 2003 alone, 21 states enacted limits on judgments, mostly in medical liability cases. Last spring, in my home state of Texas, the Legislature passed an omnibus tort reform bill so sweeping in scope that its advocates characterized it as “historic.” The U.S. Congress is considering federal legislation to curb class action lawsuits, immunize drug companies against patients they harm, cap monetary awards for medical malpractice victims and curtail contingency fee agreements that allow average Americans to retain the services of capable attorneys.

Legislatures in states across the U.S. are passing new laws to curb court judgments and limit legal fees. Some even are conducting workshops on the subject. Who is being invited to address those workshops? Big business and big insurance spokespersons preaching profit over patient care and customer safety. The legislators are listening, and they are going back to their districts and repeating the anti-lawsuit hype to their constituents and their local media. Sustained by the resulting discontent, they are passing laws that are encroaching on citizen’s constitutional rights to sue.

Across the United States, a critical war is being fought by plaintiffs’ attorneys—a fierce campaign to preserve the right of the average American who has been harmed by a faulty product, lax safety measures or a medical error to hold the business or individual who is responsible...*responsible*. It is a battle of sweeping scale and pivotal importance. We are engaged in a crusade to give voice to America’s powerless, and trial lawyers are at ground zero.

The question is, how do we focus the spotlight on the positive stories—the successes where plaintiffs and their counsel are instrumental in getting dangerous products taken off the market, where industries are forced to adopt enhanced safety measures, or where juries decide *not* to award money to

undeserving plaintiffs? How do trial lawyers draw attention to the work they do every day to make America a better, safer, more just place to live, work and raise families? How do we counter the negative effects of the tort reform movement's campaign and rekindle the public's high regard for the role of trial lawyers in preserving the most basic tenets of the American civil justice system?

Public Perception Trumps Reality

Like it or not, trial lawyers and plaintiffs have an image problem, one that is almost entirely attributable to tort reform's anti-plaintiff campaign. Polls show that three-fifths of Americans think trial lawyers are greedy, and three-fourths believe they charge too much. Roughly the same percentage believe that litigation is too costly, too lengthy¹ and constitutes "jackpot justice" in which undeserving plaintiffs often win mammoth verdicts for frivolous complaints. According to the American Bar Association, only one person in five agrees that lawyers are "honest and ethical."² The public has bought into tort reform's rhetoric and themes, including the movement's linchpin, the myth that runaway frivolous lawsuits and huge jury awards are costing consumers money in the form of higher prices for health care, insurance and consumables.

This hostile discourse shapes public attitudes about the character of lawyers, as individuals. Today, the label "trial lawyer" has taken on a pejorative tone, evoking contempt of the same vein as the term "liberal."

The views of people who are to the far left or the far right always seem to be the ones that make their way into newspapers, magazines, television news shows or talk radio. The truth is that the majority of American sentiment rests somewhere in the middle on virtually every issue. It isn't an accident, however, that extremist views are those that are represented most often in the media. Generally, the media doesn't intentionally seek out extremists for commentary; extremists actively make themselves available. And extremists are defining who trial lawyers are in the public's psyche.

They do this in a variety of ways—by registering with news services that match journalists with opinion sources; by generating press releases, opinion-editorials, letters to the editor, books and articles that keep their names constantly in the news and at the forefront of the media's attention; by giving speeches and making direct media contacts; and by using every other means at their disposal to position themselves as natural choices for the media to contact when the occasion arises.

In other words, they work at it. That's what trial lawyers need to do, too. They need to do those same kinds of things that focus attention on themselves and make it likely that the media will call on them when they need commentary on a story about medical malpractice, product liability, workplace safety, wrongful death or any other area of specialization. Trial lawyers must beat the extremists at their own game.

¹ *Washington Monthly*, October 2001, John Edwards, Esq., Joshua Green.

² *Ibid.*

Reshaping Public Opinion, One Case At A Time

We *can* turn the tide of public opinion, restore respect to our courts system and reclaim the high ground, but it will require trial lawyers nationwide to joint together in a systematic, sustained, broad effort.

It's important to note that we begin the battle for public opinion with a tremendous advantage. Studies have shown that "when told a large company is accused of wrongdoing in a lawsuit, more than one-third of the population believe that company is probably guilty. And 58% of the public believe that a large company is guilty when its spokesperson responds 'no comment' to charges of wrongdoing."³ Statistics such as these tell us that, exposed to the right stimuli, public sentiment rests on the side of the plaintiff.

The simple fact is that corporate defense interests have been doing a better job of framing the argument. The plaintiff's bar cannot afford to let those circumstances continue. With the expert counsel of a public relations team that specializes in PR strategies for law firms, trial lawyers can remind the public of the indispensable role of our civil justice system in obtaining justice "for the powerless from the privileged."⁴

I believe that the trial lawyer's best chance to prevail in this David-and-Goliath struggle is to win it on the critical front of media and public relations. Trial lawyers are overlooking the most potent weapon in their arsenal—the authentically passionate stories of their own hard-won cases that have salvaged the lives of grossly injured families and brought about far-reaching, positive social changes. We can prevail by using the enemy's own tactics against them—by publicizing our successes in order to counteract tort reform's horror stories with fully verifiable, positive stories of our own.

Every case carries tremendous potential for image enhancement and positive societal change. Sometimes, in fact, the smallest cases where almost no money is involved can showcase the importance of the civil justice system most effectively. An experienced legal PR consultant can point out opportunities and maximize the potential of each case.

Over the past 20 years, I have been privileged to help attorney-clients effectively and judiciously publicize courtroom successes that have brought about positive societal changes and fully justified the litigation that engendered the change. Consider the accomplishments of my public relations team in only a few of the cases we've handled:

³ DeMartino, T. (1997, February 17). How to do Litigation Public Relations. Inside PR. (Excerpted from Bryan H. Reber, The Lawyer-Public Relations Counselor Dynamic, submitted to the Institute for Public relations for the 1999 Walter K. Lindenmann Scholarship).

⁴ Richard North Patterson, from the jacket of Four Trials, by John Edwards.

- Ongoing individual and class action litigation concerning fuel-fed fires in Ford Crown Victoria police cruisers has pressured Ford Motor Company into making its cars safer for law officers and civilians alike, and continues to do so;
- The first case to be tried in the U.S. concerning rollovers involving defective Firestone tires raised public awareness, prompted massive recalls and undoubtedly prevented dozens of similar disasters;
- Ongoing class action litigation regarding defective Gen3 seat belts in DaimlerChrysler automobiles may force a blanket replacement of the belts at the behemoth automaker's expense, saving countless lives;
- *Caballero v. Esenjay*, a Texas workplace safety lawsuit, resulted in enhanced safety standards to protect industrial workers;
- *Linda R. Benavides, et al, vs. American Chrome & Chemicals, Inc* resulted in the endowment of a \$1 million, four-year professorial chair in engineering technology at Texas A&M University-Corpus Christi to emphasize the research and teaching of industrial safety; and
- *Flinn v. Eckerd Drugs* resulted in the nationwide pharmacy chain's adopting a zero-tolerance policy on medication errors.

Every case a trial lawyer tries is characterized by the riveting drama of a novel, made all the more powerful because it is grounded in truth. That is what trial attorneys do: Sift through the endless details of their cases, setting aside the chaff of deception and shining light on the truth. They use skill, determination and genuine compassion to seek justice for people who have been wronged. They prepare their cases with unfailing attention to detail. They highlight the strength of their clients' character. They speak for justice in a world where far too little of it is apportioned to the ordinary citizen with limited resources. *They give voice to the powerless.*

Framing The Message

Within the parameters set by the court, plaintiff's counsel must frame its own story for presentation in the court of public opinion. They begin with a tremendous advantage: If they tell their story properly, people will identify with their client. People will be able to imagine what happened to the plaintiff happening to them. They will like the plaintiff. They won't like the corporate defendant.

Perhaps the poll number that most realistically reflects Americans' attitudes toward lawyers—and reveals the opportunity for paradigm shift that lies at the plaintiff's bar's feet—is this: While three-quarters of Americans say they dislike lawyers in general, those same people report that they're largely satisfied with their *own* lawyer.⁵ All politics is local; the trial lawyer's task is to take his case directly

⁵ *Washington Monthly*, October 2001, John Edwards, Esq., Joshua Green.

to the people, establish consortium with them and force tort reformers to face the harsh reality that “people hate insurance companies more than they hate lawyers.”⁶

A public relations plan should be an integral part of the trial lawyer’s strategy from the outset of the case. This is important for a number of reasons. Perhaps the most immediate is the decisive impact that media coverage can have on the outcome of the trial. If the defense senses that public sympathies are tilting toward the plaintiff, they may worry that the jury will react similarly and become more willing to settle.

Framing the message properly is of singular importance. First and foremost, it can’t be about the money. The stories the trial lawyer generates in the news media must be about the societal good that comes from the lawsuit. My own PR team has established relationships with the principles of major consumer organizations such as Public Citizen and Consumers Union to broaden our media campaigns and intensify efforts to promote change. We form alliances with groups with common interests and goals and, in many cases, form new advocacy organizations for our specific purposes. The tremendous recognition and resources that these groups bring to the table has added immeasurably to the credibility and forcefulness of our campaigns. In a number of instances, we used the publicity associated with a lawsuit to work with legislators to pass new laws increasing consumer protections—in turn, generating more publicity for the case and its social value.

In short, the goal isn’t just PR for PR’s sake. It’s about helping the public identify with the hardships and suffering of the plaintiff, and expanding the positive impact of the lawsuit through actions that help protect others from the same kind of tragedy. In a larger context, it’s about creating a public perception of the trial lawyer as a champion of the “little guy.” By establishing this kind of common ground, we can begin to change the anti-plaintiff, anti-trial lawyer culture that holds America in its grip.

Managing Communications Inside and Outside the Courtroom

The relationship between public relations practitioners and lawyers is changing. In 1956, Blaustein and Gross said that public relations practitioners saw lawyers as a deterrent to their work. They found that PR people agreed with statements like: “Lawyers don’t understand the importance of public attitudes” and “Lawyers are too rigid.”⁷ In 1969, Morton Simon dubbed legal and public relations professionals “the oil and water team.”⁸ Lawyers have argued that PR people don’t understand the vagaries of the law, and responses in surveys of public relations practitioners, at times, have validated those concerns.⁹ Lawyers have given evidence that they don’t understand the basics of public relations practice, as well.¹⁰

⁶ Ibid.

⁷ Blaustein & Gross (1956). Working in lawyers. *Public Relations Quarterly*, July 1956, 7.

⁸ Simon, Morton J. (1969). *Public Relations Law*. New York: Appleton-Century-Crofts.

⁹ Fitzpatrick, Kathy R. (1996). Public Relations and the Law: A Survey of Practitioners. *Public Relations Review*, 22, (1), 1-8.

¹⁰ Stein, M.L. (1993, August 28). Lawyer says it’s OK to lie to the media. *Editor and Publisher*, 9-10.

The relationship between attorneys and public relations professionals has changed dramatically since Blaustein and Gross' observations of 45 years ago. Today, the most successful litigation firms in America maintain close collaborative relationships with public relations professionals that are based on mutual understanding, respect and trust. Although the driving force behind a successful litigation public relations strategy must be attorneys and their legal acumen, most lawyers have found that they benefit tremendously from the counsel of public relations professionals who understand the media's rules of engagement, mechanisms and timelines, and who enjoy a high degree of credibility with key journalists.

As trial lawyers build their cases, their trial strategy and their public relations strategy should take shape on parallel ground. One is integral to the other, and the two should never diverge. And while many attorneys may believe that the courtroom is the only appropriate setting for litigation, in today's world, any trial in which the defendant is a publicly held corporation will be the object of media scrutiny. Without a doubt, the corporate defendant will use the media to jockey for advantage.

This redefined collaborative relationship between lawyers and PR strategists makes public relations a major playing piece in the litigation puzzle from the outset of the case. It makes it easy for lawyers and their public relations practitioners to work in tandem from the earliest stages of pretrial and ensures that the PR team always is in step with the litigation team, rolling out the publicity plan parallel to trial development. Finally, it enables the trial lawyer to take advantage of PR opportunities as they arise and address unexpected crises without having to bring a new consultant on board and up to speed.

Some lawyers still cling to the traditional view that, because anything that is written or spoken in public can be used against their client in court, the less communication outside the courtroom, the better. But "no comment" isn't a media strategy. It may seem safe, but it doesn't resonate with reporters or with the ultimate audience—the public. It virtually screams all manner of negative messages: *no plausible response, something to hide, secrecy, condescension, guilt*. Remember, each question is an opportunity to further your case.

That's where the public relations component of the litigation process comes in. An accomplished public relations team with a litigation focus, such as mine, can help the trial lawyer frame his message effectively and consistently, both inside and outside the courtroom. Our expansive experience in litigation PR enables us to anticipate or respond effectively to the opposing side's public relations tactics.

The breadth of knowledge and skill of my own PR team encompasses every phase of trial research and communications, from preparing focus groups and polling, to voir dire questioning, to jury selection, witness preparation, and opening and closing statements. When appropriate—particularly when we can tie the story to a local cause—we recommend and coordinate press conferences, coaching speakers and preparing press releases, background materials, participant statements and high-quality visuals. We manage post-verdict/post-settlement communications to obtain maximum publicity for the societal benefits flowing from the trial and enhance the trial attorney's public image. And we manage publicity in ongoing actions, such as the lawsuits involving Firestone tires, generating positive opinion-editorials and other media communiqués as new developments occur.

Knowing which strategy or venue is appropriate in a given situation is critical. Timing and tone are of the essence. Relationships with key members of the media and a working knowledge of the media mean the difference between success and failure. These are just a few of the characteristics of an experienced legal PR team. We can help or attorney-clients create intimacy with jurors; communicate legal points lucidly and in a non-confrontational, non-politically ideological fashion; and establish *common ground* with the jury, with the media and with the public.

The Last Warriors Standing

It is true that America's civil justice system suffers isolated instances of abuse. Ultimately, though, I would argue that litigation is good for America. If properly portrayed in the media, the vast majority of plaintiff's lawsuits would demonstrate to the public that the popular perception has it backwards—trial lawyers aren't cleaning out Mom-and-Pop businesses or driving up prices. They are targeting big corporations that make dangerous products, big industry that turns a blind eye to worker safety and negligent hospitals that injure small children. And they are winning *unanimous* jury awards that state laws require for these heinous corporate abuses.

In America today, trial lawyers are the Last Warriors Standing in defense of the "little guy" against corporate America. They are the only remaining barrier to keep the wealthy, influential and powerful from steamrolling over the average citizen. It is a noble calling.

Trial lawyers are uniquely situated to refute tort reform's attacks on plaintiffs and the civil justice system because they are the embodiment of how the civil justice system was structured to serve as a regulator of misbehaving corporations, insurance companies, hospitals and doctors. In the course of preparing every case, members of the plaintiff's bar concurrently create an outline for an effective parallel PR campaign. They must take the masterful arguments that they use in the courtroom to show the public how decent regular people are, how vulnerable they are and how the system often turns a blind eye to their struggles and injustices. By collaborating with legal public relations professionals, trial lawyers can shape the futures of their clients, their profession and this Nation.

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