Litigation Communication

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Crisis and Reputation Management
in the Legal Process

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This book is dedicated with great respect and love to my dear wife, daughters and my mother.

This book is offered in the hopes that in some small way it may lead to the assistance of socio-legal studies and the evolution of public relations.

Preface

As Robert Harris, author and former BBC television reporter claims on the reputational risk of a legal case¹ “Even Lord Aldington, the ostensible winner, was in some senses a loser: he failed [...] to receive the money [...], and still the litigation and the questions drag on, ruining the peaceful retirement he had hoped for” (Mitchell, 1997, p. ii). Our account is offered in the hopes that in some small way it may contribute to the academic literature of law, socio-legal studies and public relations into crisis and reputation management in the legal process.

As a communication and socio-legal scholar, the author intends to explore the evolution of a particular communication practice, crisis and reputation management in the legal process. Extensive research in litigation communication is a complex, rigorous and exacting engagement. It requires the investigation of different multidisciplinary sources such as law, history, communication and management. As such, the book has been an objective and subjective intellectual journey through time and jurisdictions, respectively.

¹ *Aldington v. Watts and Tolstoy* (1990) resulted a record £1.5 million award (plus £500,000 costs) to Lord Aldington in a libel case against Nikolai Tolstoy and Nigel Watts. They had accused Lord Aldington of war crimes, a forced repatriation of Cossacks from Austria back to the Soviet Union, at the end of the Second World War. The award was overturned by the *European Court of Human Rights* in July 1995. Find more details on the affair and the libel case in Mitchell (1997).

Introduction

This book intends to be a pioneer account that addresses the evolution of Litigation Communication, this new and, arguably, under-researched branch of communication, by which the author means *a specialized communication knowledge for managing a legal dispute, solving a crisis, with enforcing settlement when avoiding trial procedure or defending client's reputation before, during and after the trial.*

In general, Litigation Communication,² as a distinct type of legal communications, is about fighting a case both through the law courts and in public, in the arena or 'court of public opinion'.³ Litigation public relations practitioners offer effective communication techniques, a specific form of crisis and reputation management, to ensure that the client's image is completely aligned with the legal representative's efforts and the litigation strategy, while ensuring that the legal team's and the client's messages are understood outside the courtroom in different legal jurisdictions during the legal process.

As the critical historian, Robert W. McChesney, says, we study history "because we are living on the edge of history, and if you want to know where you are going, you have to know where you are coming from" (Godfrey 2005, p. 6). Accordingly, this book sets out to explore the emergence and evolution of litigation communication by exploring various pressures⁴ placed on judicial and PR institutions and practitioners. These legal and communication contextual considerations are to emphasize the importance of the different occupational contexts concerning the evolution of this new communication branch (Bedarida 1991; Briggs 1985; Curran and Seaton 2010; Pugh 2002; Williams 1997). We claim that all these circumstances created a high demand for the expert knowledge of Litigation Communication.

² Hereafter it will be called as Litigation Communication, Litigation Public Relations or simply Litigation PR.

³ For the expression borrowed by this sentence, please refer to Haggerty (2003).

⁴ Social, political, economic and legal pressures, such as the significant changes of civil and criminal procedural rules in a certain jurisdiction.

As a kind of applied legal history, the book provides an exploration of legal and communication historical events, while addressing the contemporary implications of these events and regulations on modern enactments. The book returns to the history of regulations with a specific purpose: to better understand the strict rules, such as the rules on contempt in a certain jurisdiction, that have been cited to support or restrict communication in the legal process, several times in history.

The account illustrates the evolution through the example of the English common law jurisdiction⁵ due to the fact that the history of Litigation Communication in England has an entirely independent evolution than that of the new branch in the USA where this specialist practice originally evolved in the 1980s.⁶ Accordingly, this account provides an overview to a series of external forces⁷ as well as the main internal drivers⁸ and gives greater explanation as to why the English common law legal system⁹ and London are extensively investigated.¹⁰ The book focuses on illustrative examples of cases, cited from the legal history of England, managed by legal and communication practitioners and occurred frequently only after 1992.¹¹

This account provides the reader with proper contexts on different legal and communication considerations, as well as the cooperation of legal and public relations people during a conflict or an organization's crisis (such as a litigation process)¹² (Broom et al. 1991; Fitzpatrick 1996; Fitzpatrick and Rubin 1995;

⁵ According to our standpoint, the differences among the various legal jurisdictions (for example, in the USA, the European Continent and in the UK) are remarkable issues and under no consideration questioning the existence of the new and distinct PR specialist practice in England.

⁶ Therefore, a narrative of the positions of other jurisdictions, such as the one in the USA in relation to communication in the legal process, is offered by this account.

⁷ For example, economic and legal reforms, procedural rules.

⁸ For example, the history of PR, journalism, mass communications, legal and litigation communications.

⁹ This book illustrates the evolution of litigation communication through the example of England. The proper name of the jurisdiction of England is *common law legal jurisdiction of England and Wales*, and will be introduced in detail in Part II.

¹⁰ Our account focuses spatially on London due to the fact that it is the administrative, political, financial and juridical, as well as litigation communication capital of England. London is famous for its adaptive business and legal culture, contending litigant parties and high-profile clients who created a high demand for this particular PR knowledge.

¹¹ For the first time in England, professional litigation support by case promotion was provided by a PR practitioner in the famous *Blue Arrow fraud case*. Multiple and independent sources, such as PR and Litigation PR experts, court journalists, as well as different lawyers mentioned below in this paragraph, confirm that the professional practice of the new PR branch first time occurred in England in 1992 when Titmuss Sainer and Webb, as legal representative of County NatWest, did take a PR consultant in a legal case. For more details and the professional litigation communication support provided by PR practitioners in *Regina v NatWest Investment Bank and Others (1989-92)*, please refer to Part II.

¹² The book investigates the development of legal and PR institutions and the specific interactions as these emerged in the past. Firstly, the conceptual analysis of litigation communication is examined. This level provides us with detailed understanding of the main theoretical

Lauzen 1991, 1992, 1995; Lee et al. 1999; Reber et al. 2001, 2003; Toth et al. 1998). Accordingly, the next chapters present legal and communication institutional frameworks and concepts that facilitate a comprehensive understanding of the theory, practice and evolution of litigation communication.

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considerations. The second level intends to be a kind of legal history proper. In our case, this level is dealing only with a narrow field, the evolution of the legal market and legal communication services, such as Litigation Communication. The mainstream approach intends to be on the analysis and interpretation of different contexts. This provides us with detailed historical narrative on the recognisable legal and communication institutions (Schudson 1991). Accordingly, it intends to examine the effects of the changing rules on the market that fundamentally informed the development of litigation communication in England.

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