An attorney’s duties do not begin inside the courtroom door. He or she cannot ignore the practical implications of a legal proceeding for the client. Just as an attorney may recommend a plea bargain or civil settlement to avoid the adverse consequences of a possible loss after trial, so too an attorney may take reasonable steps to defend a client’s reputation and reduce the adverse consequences of indictment, especially in the face of a prosecution deemed unjust or commenced with improper motives. A defense attorney may pursue lawful strategies to obtain dismissal of an indictment or reduction of charges, including an attempt to demonstrate in the court of public opinion that the client does not deserve to be tried.


This is the third edition of *In the Court of Public Opinion*, and notwithstanding the notion expressed by Justice Kennedy in *Gentile v. State Bar of Nevada*, above, the central theme of this book remains a bit radical: that a lawyer’s duties extend beyond the courtroom to the proverbial “court of public opinion,” and that public relations during lawsuits should be handled with the same seriousness and care as any other aspect of the case. Thus, whether you’re a lawyer at an outside law firm, corporate counsel, a business executive, a high-profile athlete or celebrity, or a senior communications professional, you need a system for managing communications during litigation, to ensure that you “win” this critical battle—and perhaps, in the process, the war.

Put this way, I’m sure it doesn’t seem like a radical idea at all—and, indeed, the first two editions of *In the Court of Public Opinion* were well-received in both legal and nonlegal communities. The book earned nearly unanimous accolades (*Financial Times*, for example, called the first edition “... the perfect handbook for this age of show trials.”); it was cited in textbooks and law review
articles, used in university and law school classrooms, spawned more than a few imitators, and otherwise helped ease the acceptance of communications consulting as a legitimate tool in the modern litigator’s arsenal. I humbly (or maybe not so humbly) submit that *In the Court of Public Opinion* has become the preeminent book in the field.

Yet even after a parade of high-profile cases and investigations played out on prime-time news shows and online media outlets; on Twitter, Facebook and other social media outlets; and in the pages of newspapers and magazines, you’d be surprised at the extent to which public communications considerations continue to be shunted aside during litigation, often even ignored altogether—usually to the detriment of the client’s reputation, and sometimes to the detriment of the case. “We won’t try this case in the media” is all too often the knee-jerk reaction of lawyers and clients alike. And thus, no planning, no preparation . . . no diligence applied to the management of this essential element of the case.

Consider this response from the owner of a prominent sports franchise when I mentioned the importance of planning for the communications elements of upcoming litigation:

*Why would I plan for something that may not happen?*

Or a typical e-mail, like this one, which I received from a prominent litigator on the West Coast:

*We have something I’m working on that may need your services. I’ll give you a call if it blows up.*

As you’ll see throughout this book, waiting until a case “blows up” is probably the worst time to begin communications planning during litigation, although in reality that is when the first call or e-mail usually comes. Yet smart lawyers, clients, and their advisors now realize that litigation communications (or litigation public relations, as it’s also known) is, at its core, a *litigation management* function—as important to the case as any other element of modern litigation practice: legal research, expert opinion, investigations, document management, jury consulting, you name it. In this era of instantaneous communications, if you are not planning for effective communications in legal matters before a case is filed (or worse, “blows up”), the damage can be quick and irreversible. Manage the crisis, or it will end up managing you.
Moreover, while not every case will wind up on the front page of the *New York Times*, lawyers and their clients should routinely ask the following questions about all their legal matters:

- Will this case be subject to public scrutiny?
- If so, what procedures can be put in place to manage the public aspects of the matter?

*In the Court of Public Opinion* is designed to show you how to put your legal issues to this test. If indeed your case might be subject to public scrutiny, this book will show you how to use public attention in the best possible manner—minimizing negatives and maximizing advantages—when litigating your side of the case.

Who should buy this book? Well, I’ve written it for the following audiences:

- **Attorneys** in private practice who realize that their clients are frequently finding themselves in the glare of the public spotlight and are turning to their lawyer (as always) for wise counsel.
- **Corporate counsel** in the legal department of a for-profit or nonprofit organization whose job includes offering advice on those areas where legal and public perception issues collide.
- **CEOs, CFOs, or other business executives**—or small business owners—who would like to know how to harness the power of public opinion when dealing with lawsuits, government investigations, and other legal proceedings that come their way.
- **High-profile individuals**, such as athletes, entertainers, or other celebrities, who are brands and businesses to themselves.
- **Plaintiffs** looking to even up the odds in a battle against a defendant with far greater resources.
- **Communications professionals** looking to refine their skills in an increasingly litigious business environment.
- **Students**—either in law school or in a communications program—wanting to learn the ropes in a practice that is a true synthesis of the legal and public relations professions.

The fact is, every company, every nonprofit or governmental organization, every high-profile individual—to save time, let’s just say every entity or person that interacts with the public—will
likely, at one point or another, be immersed in legal issues or crises. And increasingly, those situations involving legal matters will place the client under the glare of the public spotlight.

Thus, this is a book for both legal and nonlegal audiences. Properly handling the media aspects of litigation requires the involvement of inside and outside lawyers as well as the company’s top executives, senior internal communications professionals, and outside public relations firms. To ignore one of these audiences in the creation of this book would have been... well, it would have been negligent.

In aiming this book to both legal and nonlegal audiences, I have a built-in advantage in the fact that, as you’ll see, the practice of litigation public relations is still relatively new, even more than a decade and a half after the publication of the first edition of this book. Thus, many lawyers and nonlawyers alike are starting at the same base level of knowledge. This is also true of professionals in the public relations field, many of whom have only vague knowledge about the particular public relations challenges that face them when confronting high-profile legal action.

And although much of the book is focused on both traditional and “new” media (including blogs, social media, and the like), they are not the only audience relevant to our discussion. Especially when dealing with the complex issues and myriad ramifications of legal disputes, there will likely be a variety of audiences in addition to media that you’ll need to reach, including:

- Customers or clients;
- Shareholders and investors;
- Employees;
- Advocacy groups and nongovernmental organizations (NGOs);
- Government regulators; and
- Federal, state, and local elected officials.

I’ve occasionally included some basic information about the law or legal processes essential to a nonlawyer’s understanding of what’s going on. These areas are few and far between, but lawyers should feel free to skip these particularly elementary sections. Similarly, for the public relations professional, a section such as “Ten Tips for Interviews” is specifically related to the problems of litigation and other legal disputes. It should be of interest to even
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experienced communications practitioners looking to apply their considerable repertoire of skills to a legal context.

I hope you’ll find this book readable—even enjoyable—and useful whether you are a seasoned litigator, business executive, public relations professional, or neophyte with no particular communications or legal training. With lists of how-tos, Action Point summaries for each chapter, case studies, and checklists on various topics, this book should be a valuable resource for lawyers, business executives, and communicators as they confront these complex issues. I’ve also mixed in some interesting case studies, a few good stories, some personal opinions—even humor where appropriate.

It’s a challenging undertaking, but again, I am helped considerably by the novelty of the field, which means that, no matter what our prior training or experience, we’re all starting out at pretty much the same place. It is my hope that this book also brings us to the same place: a basic understanding of the intersection of media, public opinion, and the legal process, and how lawyers and clients can use this understanding to operate successfully in this new environment, where all the world is your courtroom, and public opinion, more often than not, your judge and jury.

But I’m Not a Company (or I Don’t Represent Them)!

The primary focus of *In the Court of Public Opinion* is business: specifically, companies whose lawsuits and other legal matters are subject to the increasingly probing eye of the media and other audiences. These might be publicly traded companies, privately owned conglomerates, sports teams and brands, small entrepreneurial enterprises, professional service practices, mom-and-pop shops, and so on. In addition, there are nonprofit organizations, including associations, labor unions, environmental groups, and other enterprises that don’t necessarily serve the bottom line but that have considerable constituencies nonetheless.

But there are also individual plaintiffs and their attorneys, as well as a certain class of high-profile individuals, such as celebrities, athletes, and “star” entrepreneurs, who find themselves immersed in legal issues that bring them into the public spotlight. This book is for them (and their attorneys) as well. Many have chosen to be high profile, while others have had it thrust
upon them. What is clear in my years of working with these types of matters is that an individual’s needs when dealing with the media in litigation are no less important than an organization’s. Individuals will find plenty of useful information in this book about handling the communications aspect of litigation.

**About “Winning”**

The original edition of this book carried the subtitle *Winning Your Case with Public Relations*. I was initially a bit uncomfortable with such a concept. The lawyer in me kept returning to the fact that there’s no way you can actually win a case in the courtroom solely using public relations techniques.

But it is important to remember that, in the context of litigation and other legal disputes, “winning” can mean many things:

- It can mean convincing a plaintiff (or prosecutor, or government regulator) not to file a lawsuit in the first place.
- It can mean convincing a defendant that you mean business and that, despite the defendant’s outsized resources, this case is just not going to go away.
- It can mean getting the other side to realize that they can’t hide the truth beneath a mountain of legal filings . . . and the resulting damage to their reputation makes settlement a priority.
- It can mean preventing copycat lawsuits from other parties looking to capitalize on a company’s travails.
- It can mean millions of dollars at the settlement table, depending on how weakened a party is by the damage to its business and reputation.
- It can mean tailoring a settlement in ways that limit the public relations or public opinion damage.

Can public relations be instrumental in bringing about the resolutions described here? You bet. In fact, on many occasions, I believe that effective communications techniques can be the deciding factor. And it is my fervent belief that while you can have a victory in the court of public opinion without a victory in the courtroom, your legal victory doesn’t amount to much if, in the process, you sacrifice reputation, corporate character, and all of the other elements that make up an organization’s goodwill in the marketplace.
All About Me . . .

“Who the hell is Jim Haggerty?”

This was said by one of my first employers, U.S. Senator Daniel Patrick Moynihan of New York, when informed I was handling something and would have an envelope of materials for him in the next few hours. Not the most comfortable way to begin a career, but such is life, I suppose.

I’d like to say that’s the last time I ever heard that question in my years in this business—or the related query, “Who the hell does Jim Haggerty think he is?”—but I’d be less than truthful. More than 30 years later, I’ve often been accused of being both a self-aggrandizing megalomaniac and someone who keeps a low profile. Sometimes in the same sentence.

No matter. To quote the great philosopher Popeye, I am what I am.

That said, I’ve always felt that many otherwise good public relations books have suffered by spending too much time recounting the author’s biographical details and résumé, personal history, and reputation in the field. You’ll learn a lot about me through this book, no doubt, but in the interest of satisfying your initial curiosity (and my ego), let me summarize: I’m a New Yorker who started out wanting to be a journalist, wound up working in politics and government, and then became a lawyer. As a lawyer, I increasingly began to use my combination of legal and communications skills to help other lawyers with the particular needs of their profession. Over the years, I have worked with hundreds of attorneys and have been involved in some of the largest cases of their kind in history, including (at the time):

- One of the largest international criminal fraud cases in history,
- The largest single-family Holocaust restitution claim in history,
- The largest class action lawsuit ever filed against the U.S. government,
- One of the largest pharmaceutical class actions in history,
- The largest intellectual property verdict and appeal in history,
- Germany’s largest postwar bankruptcy,
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- The most expensive divorce and child custody case in history, and
- The largest employment discrimination class action case in U.S. history.

I’ve included some of these cases in this book. Where the litigation and the parties are extremely well-known and no confidential information is at stake, I have used real names—otherwise, names and certain fact patterns have been changed to protect client confidentiality. As in prior editions, I’ve included the full text of media stories where appropriate, so that you can get a real feel for the coverage that resulted from our efforts. While some of the cases were big, others were smaller matters that were resolved with a little strategy and proper execution. And while I’m not by any means the most famous public relations practitioner in the country, I am among a handful of lawyer/PR pros who have established a niche practice and national reputation in this area. Among other honors, in 2018 and 2019 I was named by the international legal directory Chambers & Partners as one of the leading public relations professionals in the United States, and in 2017, PR News included me on a list of the “50 Gamechangers of PR” as a “pioneer” in the field of litigation communications. It is this experience that serves as the foundation for the insights and practical tools presented in this book.

What’s New?

In the 16 years since the first edition of In the Court of Public Opinion was written, a remarkable amount has changed, both in the way modern lawsuits are covered by both traditional and social media platforms and in perceptions of the role of communication consultants in modern litigation practice.

So, with that in mind, I’ve made some significant changes to this new edition. Most significantly, I’ve completely rewritten a chapter on social media, blogs, and websites since the second edition of this book was published in 2009 (way too many mentions of MySpace!) and updated a chapter on the extension of privilege to public relations activities during litigation to reflect the most recent changes in the law.

And, as with the second edition of this book, I have tightened up my arguments throughout (based on another decade of work in this evolving field) and added new examples to illustrate key
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points, taken from both my engagements and other cases that have been fought under the glare of the media spotlight. What is interesting to me as I reread the older editions of this book is the fact that, while the particular platforms and news delivery outlets have changed over the years (Facebook and Law360 are as important to the modern conversation today as TIME magazine and the National Law Journal were in 2003), the basic principles of planning, messaging, and delivering the right messages during litigation remain. So even examples from the 1980s and 1990s have remarkable relevance to the audiences today. Someone once said “you cannot understand without understanding history”—sometimes a hard concept to grasp, particularly in a time when younger audiences believe the world was formed in 2007 with the introduction of the iPhone. But true.

And speaking of history . . .

A Tool for the Resolution of Legal Disputes

“Discourage litigation,” Abraham Lincoln once said. “Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser—in fees, expenses, and waste of time.”

This, more than anything, is the guiding principle of the work I do and what I hope to impart as the central benefit of effectively using communications during litigation: it helps clients and their lawyers resolve their legal disputes in a more favorable manner. Depending on your particular legal strategy, this can mean many things, but for plaintiffs and defendants alike it ultimately means just one thing: getting the legal dispute over with (and with it, as Lincoln said, all of its fees, expenses, and waste of time) and getting back to more important things—matters that are at the core of our business, professional, and personal lives.