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### **Litigation PR – Strategic Impact**

Law enforcement Prosecutors and court officials, have always tried to represent their perspective not only in the courtroom but also to the general public. The media coverage of such public relations methods is not new - just think of the historically remarkable Dreyfuss affair. Nevertheless, in recent years a new highly specialized form of PR-service has developed in the German-speaking area – Litigation PR. In the Anglo-American sphere the use of Litigation PR has been an integral part of legal representation for many years now. This is also due to the way the Americans run jury trials..

### **What is Litigation PR?**

The most appropriate definition of Litigation PR would be the management of communication processes during legal disputes. This definition is deliberately wide, since the legal fields of application can not be reduced to the penal law. Actually it includes any legal dispute - from classic Civil Law, Patent Litigation and antitrust proceedings, to commercial criminal and compliance matters.

### **Objectives of Litigation PR**

As for the objectives of Litigation PR, there are two: On the one hand, the protection of the reputation of the company or the person concerned and on the other hand of course the influence of the dispute. This order is chosen quite intentionally because the reputation protection lies at the heart of what Litigation PR consultants do. The second aspect is often dropped from the agenda but in terms of a transparent explanation and discussion this aspect of our work should not be ignored.

### **Why is there Litigation PR?**

As mentioned above, albeit under a different name, something has always existed that resembles what we understand today to be Litigation PR. Yet the genre has developed into a distinct specialism of PR because: .

1. The crisis potential of legal disputes has strongly increased for the parties concerned. Whereas in the past there was a very special form of court reporting, today mainstream economic and policy teams in the media report on legal matters too. .
2. Media behave increasingly aggressive. Often the media are less interested in the information than the scandal. Economic pressure and editorial resources at media outlets play their part here.
3. New digital media have seriously shortened the reaction time required in communication crises. Gone are the days, where one could play for time to prepare appropriate responses. Now news multiplies over the whole world literally in minutes and a company's reaction needs to be there from the outset.
4. There is an ever more intense and professional discussion among lawyers and also in more and more areas of the judiciary with their target audiences.

### **Functions and activities in the context of litigation PR**

Legal matters are in many cases highly complex and confusing. Even well informed journalists can find it difficult to follow legal processes - both in terms of the specific facts, and in terms of legal basics. Hence there is a communications gap, a missing link between the courtroom and the public that is filled by Litigation PR consultants. Thus, one functions as a translator, which represents the

most central operational challenge for successful litigation PR. The Importance of being a 'translator' becomes particularly notable when it comes to a direct confrontation between lawyers and journalists. There are no other professional groups that function as differently as these two - both for good reasons. Here the lawyer, who is in love with details, legal requirements- and fact-centered arguments, tending linguistic accuracy. There, the journalist who has to dramatise and shorten the story, write in simple language, personalising and emotionalising.. The creation of journalistically realistic texts and statements, the entire storytelling, is thus a key task of Litigation PR.

Another function of Litigation PR, which should be mentioned due to its importance, is a possible contribution to extrajudicial agreements. Sometimes excellent results improve the prospects of negotiating a settlement for the parties.

Other reasons for the legitimacy and the ensuing problem areas and fields of application for Litigation PR are hereinafter discussed on the basis of three theses.

The first step is to deal with a fact that has only limited acceptance by judicial representatives: The Influence of published information over legal disputes may be greater than that of court rulings. This applies in terms of reputation, as well as on the company's performance or the economic situation of individuals. Numerous examples confirm these findings. Be it highly individual fates, such as that of the television presenter Kachelmann, who despite his acquittal was deprived of his middle-class existence, or be it negative shareprice trends after news of regulator searches of listed companies reach the public domain . The damage occurs by disclosure and positive judgments are usually insufficient to restore reputation.

Of course then there is a second-class acquittal. Legally speaking it is an acquittal, however if the judge says during the pronouncement of the judgment that there is a doubt about the innocence but not enough evidence for a criminal conviction, then the acquittal is somehow flawed. And so even if not legally guilty it happens that the public comes to a different opinion. Such a situation has contributed to the growing importance of reputation protection in the field of Litigation PR.

It should be noted that the prosecuting authorities are holding a monopoly position when it comes to preliminary proceedings which result in a dominant narrative appearing in public opinion. Breaking through this and thus creating equality of voice is an objective of Litigation PR. Justice officials usually point to the exact opposite situation: One cannot say anything at all, therefore there is an unequal treatment which disadvantages the judiciary. Against this it may be argued that the judiciary indeed increasingly communicates in an aggressive way and thus co-designs a media opinion. Some measures are designed such that they necessarily entail media reports and by all means can be termed Litigation PR – even though the judiciary avoids this term.

Good examples are the very professionally designed media information despatches, which are given to the media by the president of the regional court for criminal cases prior to the main hearings. Even if it is only intended to be a service for journalists, it compels media attention and guides reporting.

In addition we have also seen indictments showing up in the media, even before being delivered to the defendant.. It should not be speculated here, where such information was collected from and why they were "leaked" but it happens

Another thesis is: The law provides too little protection. Media law is largely useless to fulfill a protecting function. As mentioned before, the damage already occurs through the publication. Successful challenges to reporting via media law disputes are usually retractions, replies and corrections, which come weeks later =. The fact that with such proceedings the basis for discussion

with the affected medium can be damaged, aggravates the circumstances. For these reasons, from the perspective of PR media legal actions are not recommended.

It is especially difficult where media deliberately displays a negative practice. The threat of punishments are obviously so insignificant, that they have no preventive effect. Tabloids regularly publish court-ordered releases, where just underneath, in form of polemical commentaries, fuel is added to the fire, accompanied by the obligatory judicial scolding. Boulevard media naturally play here a particularly inglorious role, but not only them. Also quality media sometimes don't shy away from violating journalistic minimum standards for a 'good' story. Misleading titles, distorting get-ups and deliberate misreporting also exist in the quality media.

The third thesis is for every educated Austrian rather obvious: judiciary, politics and the media are interconnected. Despite their independence these estates by no means exist or function free from mutual influences and dependencies. There is a wide network of joint interaction, which influences the work and the results of all three areas.

In that way newspaper articles can lead directly to public prosecutor's investigations, even if the report turns out to be wrong. Parliamentary committees of inquiry meet parallel to investigations, whereby files reach daily the public. Live-tickers put a magnifying glass on the actions of the courts and attack the most important or most unimportant questions. All this and many other examples have nothing to do with professional Litigation PR, but form an unpleasant framework within which one has to act.

#### **Digression: Do media influence the outcome of criminal proceedings?**

An intriguing question is, whether and to what extent criminal proceedings are influenced by media reports. The renowned German scientist Hans Mathias Kepplinger interviewed prosecutors and judges about this for a comprehensive empirical study in 2009. He found:

- Almost unanimously the respondents state an impact on all involved laymen, witnesses, victims, defendants and experts, and more fundamentally on the atmosphere in the courtroom and the process of the entire procedure.
- A modified, enhanced media usage in relation to their own cases is confirmed by the majority.
- Almost half of the respondents say that they contemplate the acceptance of the judgement or the indictment by the public during processes under public view.
- The question of guilt is considered hardly impacted.
- However, around 40% believe that the penalty is affected by media reports.

All the previously mentioned factors probably make clear wherein the legitimacy and importance of a consistent, comprehensive and sustainable communication strategy during legal disputes lies. To develop these, to accompany them strategically and implement operationally is the objective of Litigation PR. In an ever more rapidly rotating media society a purely legal representation of interests of a client is insufficient. The support of the 'court of public opinion' and the local victory must be gained. To ignore this would mean to blank out social realities.

#### **The communication of the judiciary - The outside view**

The general theme of the judges Week 2015 is "The media landscape 2015 - Challenges for Justice". A short analytical view of the communication of justice should therefore be allowed.

It is of positive note, that there is an honest discussion among the judiciary on new trends of communication and a real attempt to recognise the reality of how media operates in society today. An ever increasing professionalisation is clearly visible. The existence and the good performance of

spokesman are clearly visible. Professionally structured press releases of courts and prosecutors as well. In addition it has also become clear that the judiciary doesn't see media issues in a reserved manner like it did a few years ago. As best-practice example one can mention the comprehensive communication of the constitutional court, which provides proactive, rapid and comprehensive information on a variety of channels - including Twitter - and in that way satisfies the need for information of an interested professional audience.

Nevertheless, the missing communication strategies, structures and activities in large areas of the judiciary remain a negative aspect. Of course limited financial and personnel resources constitute an extremely limiting factor. Furthermore – especially at an event of the justice department one should be allowed to point this out – despite a positive development, one can see that numerous prosecutors and judges are deeply sceptical because of how they see their professional role and react to media challenges. The immediate consequences are communication mistakes to the detriment of the judiciary.

Moreover, there are no answers to new communication challenges. One example is the so far unclarified way of how the judiciary deals with the phenomenon of live coverage from within the courtroom. Nor has there been found a way to establish direct communication immediately after sensational processes. As a result of this, it is left to the journalists and the public to make up their own opinion, without any possibility for the judiciary to explain oneself or discuss key decisions and processes.

## **Summary and Outlook**

- Legal disputes, especially litigation, take place in a much larger public sphere than a few years ago.
- This can not be prevented, as those involved will always try and find ways to defend their interests and protect their reputation.
- Therefore, the special form of communication services, Litigation PR, has emerged. In this field a professionalisation is taking place at all levels, which entails improvement in quality and seriousness in a medium and long term.
- For the future, the necessity to act quickly will increase even more; as well as the social attention for legal operations.
- Just as we saw with 'Investor Relations', 'legal communication' will be increasingly considered an additional strategic tool of integrated corporate communications.
- Thus, the expectations on the judiciary in terms of communications issues will continue to rise. This will require a further professionalisation of the judiciary in matters of press questions.