

## CHAPTER 16

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### Public Relations/Strategic Communication Ethics and the Law

Effective public relations (strategic communication) is more than the art and science of building relationships that earn trust and motivate mutually supportive behaviors. It is more than outstanding communicators who think and plan strategically and systematically. It is more than publicity, press agency and counseling upper management. The effective practitioner must be more than an outstanding writer who is proficient in verbal skills.

Above and beyond all else, the effective strategic communication counselor must be a public relations *ethicist* – one who practices the profession in an *open, honest, thorough* and *valid* (relevant) manner. Those four principles are the foundation for every ethics' code including PRSA's (Public Relations Society of America).

In fact, some might argue that for those of us who practice these four principles, no other ethics are needed in our profession. However, PRSA adopted a revised Member Code of Ethics in October 2000. The unabridged version is available on its website ([www.prsa.org](http://www.prsa.org)).

#### **PRSA**

PRSA requires its members to take an oath to practice ethically. Its members are socially responsible practitioners, acting in the public interest, who ensure their products and services meet both a client's and society's needs. They are moral practitioners.

Rowan University Professor Anthony Fulginiti, APR, and member of PRSA's College of Fellows, has conducted extensive research into public relations ethics. He warns, "Practitioners must not turn their backs to

restrictions on their conduct. They do not hide in the dark corners of selfish ignorance. They face the light of moral practice – in facing the light of moral practice, they shine in its reflective brilliance.”

Professor Fulginiti and others believe effective practitioners must scrutinize their activities, making certain they are “truthful storytellers.” His advice – “We must know that as we bill clients for a dollar’s worth of work, at the same time we pay a dollar of respect to society.”

### PR Play 16-1

In summary, PRSA lists the following 10 principles of behavior for the practice of public relations:

1. Conduct in accord with the *public interest*.
2. Exemplify high standards of *honesty and integrity*.
3. *Deal fairly* with the public.
4. Adhere to highest standards of *accuracy and truth*.
5. Do not knowingly disseminate *false or misleading information*.
6. Do not engage in any practice that *corrupts the channels of communication* or processes of government.
7. *Identify publicly* the name of the client or employer on whose behalf any public communication is made.
8. Do not make use of any individual or organization professing to be independent or unbiased but actually serving another or *undisclosed interest*.
9. Do not *guarantee the achievement* of specified results beyond member’s control.
10. Do not represent *conflicting or competing interests*.

### Ethics vs. Laws

Ethics are the expression of your morals – your beliefs. One’s judgment is based on one’s morals. Laws, on the other hand, are what you must do – rules established by authority.

When making moral decisions, the strategic communicator should ask:

- Do I have my own moral codes?
- Will my morals do harm?
- Do I share my morals with others?
- Do my morals have universal ring?

## **PR Play 16-2**

### **PRSA Member Statement of Professional Values**

This statement presents the core values of PRSA members and, more broadly, of the public relations profession. These values provide the foundation for the Member Code of Ethics and set the industry standard for the professional practice of public relations. These values are the fundamental beliefs that guide our behaviors and decision-making process. We believe our professional values are vital to the integrity of the profession as a whole.

#### **ADVOCACY**

We serve the public interest by acting as responsible advocates for those we represent. We provide a voice in the marketplace of ideas, facts, and viewpoints to aid informed public debate.

#### **HONESTY**

We adhere to the highest standards of accuracy and truth in advancing the interests of those we represent and in communicating with the public.

#### **EXPERTISE**

We acquire and responsibly use specialized knowledge and experience. We advance the profession through continued professional development, research and education. We build mutual understanding, credibility, and relationships among a wide array of institutions and audiences.

#### **INDEPENDENCE**

We provide objective counsel to those we represent. We are accountable for our actions.

#### **LOYALTY**

We are faithful to those we represent, while honoring our obligation to serve the public interest.

#### **FAIRNESS**

We deal fairly with clients, employers, competitors, peers, vendors, the media and the general public. We respect all opinions and support the right of free expression.

### PR Play 16-3

#### **Morals are to Ethics as Attitudes are to Opinions**

Morals and Attitudes = Inner feelings (your personal beliefs)

Ethics and Opinions = Expression of your feelings (personal beliefs)

- Do my morals maintain loyalty to important relationships?
- Can I justify your morals?
- Are my morals based on sound philosophical or religious principles?
- Do my morals support society's important systems?
- Can my morals survive challenges and questions from colleagues?
- Can I comfortably rearrange my moral's ranking?

#### **Areas of Understanding**

Strategic communicators should have a general understanding of laws related to their profession, as well as government regulations and copy-right and trademark laws.

A number of federal regulatory agencies directly or indirectly affect public relations:

- **Federal Trade Commission (FTC)** – The FTC enforces a variety of federal antitrust and consumer protection laws. It seeks to ensure that the nation's markets function competitively, free of undue restrictions. The commission works to eliminate unfair or deceptive advertising or public relations practices (through news releases). In general, the FTC's efforts are directed toward stopping actions that threaten consumers' opportunities to exercise informed choices.

Current FTC policy on deception contains three basic elements:

- Where there is representation, omission or practice, there must be a high probability that it will mislead the consumer.
- The perspective of the "reasonable consumer" is used to judge deception.
- The deception must lead to material injury. This policy makes deception difficult to prove.

If the FTC rules deception has occurred, it may issue one of three orders:

### PR Play 16-4

#### Warren Buffett Warns Executives To Be Alert On Ethics

Don't be a lemming.

That is Warren Buffett's warning to top executives at his company, Berkshire Hathaway Inc. According to a story by The Associated Press, Buffett cautioned managers that many corporate scandals arise because questionable activity is accepted as normal behavior.

He said the rationale that "everyone else is doing it" is not acceptable. Rather, it should raise a red flag.

"Somewhere along the line they picked up the notion . . . that a number of well-respected managers were engaging in such practices and therefore it must be OK to do so," Buffett wrote. "It's a seductive argument."

Buffett said, "If you lose money for the company, I will be understanding. If you lose one shred of the company's reputation, I will be ruthless."

*Courier-Post* – "Work and Save" – Oct. 12, 2006

**Consent Decree** – The first step in the regulation process after the FTC determines that an ad is deceptive or unfair. Also called a consent order. The second step is a Cease- and-Desist Order requiring an advertiser to stop running a deceptive, misleading or unfair advertisement, campaign or claim. Corrective Advertising is the third step.

**Cease-and-Desist Order** – An FTC order requiring an advertiser to stop running a deceptive, misleading or unfair advertisement, campaign or claim. A cease-and-desist order is the second of three remedies for deceptive or unfair advertising.

**Corrective Advertising** – Ordered by the Federal Trade Commission for the purpose of correcting consumers' mistaken impressions created by prior advertising. Corrective advertising is ordered when consumer research determines that an ad is false and/or misleading. Under this remedy, the FTC orders the offending party to produce messages for consumers that correct the false impressions the ad made. The FTC may require a party to run corrective advertising even if the campaign in

**PR Play 16-5**  
**Material Event**

***TSC v. Northway, Inc. (1976)***

- Established that a fact about a company is *material* if it would be significant to a reasonable investor in the total mix of information about the company.
- Public Relations/Strategic Communication implications – sometimes, it is difficult to determine what is or is not *material*. If there is a question, contact the corporate attorney. Illegal insider trading refers generally to buying or selling a security, in breach of a fiduciary (trust and confidence) duty or other relationship of trust and confidence, while in possession of *material*, nonpublic information about the security. Insider trading violations may also include “tipping” such information, securities trading by the person “tipped,” and securities trading by those who misappropriate such information.
- It may best be explained by Federal Appeals Court Judge Debra Ann Livingston: “Insider trading rules restrict speech with the intended use of regulation being fairness for all stock traders.”
- The unequal disclosure of information violates federal regulations.

question has been discontinued. Corrective advertising is traditionally the third step in a three-step regulation process.

- **Securities and Exchange Commission (SEC)** – Monitors financial affairs. SEC guidelines call for full and timely disclosure of information that materially affects a company’s stock – known as *a material event*. SEC regulations are clear – any information that could affect a stock’s price must be disclosed through “broad dissemination” accessible to all publics, otherwise it might constitute (illegal) insider trading. News releases are one of the basic methods of satisfying required “broad dissemination” of material information. To assure “broad dissemination,” the SEC recommends “standard disclosure” – releasing information through the listing exchange, all major wire services, such social media as Facebook and Twitter, and industry analysts.
- **Federal Communications Commission (FCC)** – Regulates the broadcast industry.
- **Food and Drug Administration (FDA)** – Covers product labeling, prescription drugs, cosmetics and over the counter medicines.

## Legal Environment

Laurel O'Brien, former president of the Philadelphia chapter of PRSA, has compiled a "Legal Environment Summary." O'Brien's summary, presented during a series of workshops for her local chapter, includes areas that public relations practitioners must be familiar with to avoid ethical and legal problems:

### Legal Environment – Privacy

Privacy is the right to be left alone – the right of an individual to be free from unwarranted publicity commonly known as "invasion of privacy," which falls under tort litigation. Torts are a wrongful act, damage or injury done willfully or negligently, but not involving breach of contract, for which a civil suit may be brought.

There are four torts of privacy:

1. Appropriation – A person can be liable for invasion of privacy if he or she appropriates for his or her own use, without permission, the name or likeness of another. **Strategic Communication Implications:**
  - Image advertising: the use of a photograph of an employee, customer, celebrity or other person in a corporate ad; the use of a tagline or catch phrase associated with a particular individual, implying that person's endorsement.
  - Employee publications: the use of an employee's photo or personal information in an internal company newsletter.
  - Promotional publications: the use of an employee's photo or personal information in an external newsletter or release.
2. Intrusion – A person is liable for invasion of privacy if he or she intrudes upon another's solitude, including through use of cameras or microphones. **Strategic Communication Implications:**
  - Participant monitoring of conversations: Federal law allows recording of phone calls and other electronic communications with the consent of at least one party to the call. A majority of the states and territories have adopted laws based on the federal standard. But 12 states require the consent of all parties to the call: California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington.
  - Using cameras or recording equipment (electronic intrusion) in places presumed to be private: an individual's home or office; doctors', accountants' or lawyers' offices.

3. Private Facts – The publication of private information that would be highly offensive to a reasonable person and is not of legitimate concern to the public. ***Strategic Communication Implications:***
- Revealing private information (such as state of health, finances, family concerns, sexual orientation) about an individual.
  - Information in the public domain does not violate private facts tort; neither does information that has been previously published nor information gleaned from an individual's actions (which make said actions obvious).
4. False Light – Dissemination of highly offensive false publicity with knowledge of or reckless disregard for the falsity; making someone look worse than they are. (Casting someone in false light could be positive, also – e.g., saying someone has a Ph.D. when, in fact, they do not.) Either could be embarrassing to the alleged victim. ***Strategic Communication Implications:***
- Omitting full information or context: Individual may be portrayed in a false light if a news story is heavily edited or context is lost or if a photograph taken on one occasion is used to illustrate something completely different.
  - Embellishment: Addition of characters or dialogue to an otherwise factual account.

### **Standard Defenses**

- Newsworthiness: If event is particularly newsworthy; using employee's photo with news of a company breakthrough.
- Consent: Public relations practitioners should understand uses of release forms, including appropriate parties, scope duration, consideration, etc.

### **PR Play 16-6**

#### **Plaintiff's Burden of Proof**

According to PRSA's O'Brien, the plaintiff must show all six of these elements are present to prove defamation:

- |                  |                 |
|------------------|-----------------|
| • Defamation     | • Fault         |
| • Identification | • Falsity       |
| • Publication    | • Personal Harm |



- Fault: *Time, Inc. (Life Magazine) v. Hill* (1967) held that even private individuals must prove “*New York Times* actual malice” – actual malice on the part of the media outlet if the story involves public interest.

## **Defamation**

Defamation is:

- Any expression that tends to damage a person’s standing in the community through an attack on an individual’s character or professional abilities.
  - Libel – written, printed or pictorial defamation.
  - Slander – spoken or broadcast defamation.
- Every living individual has the right to sue to protect his or her own reputation.
  - Cannot sue for damage to another person.
  - Government units and corporations cannot sue for defamation.
  - Some people are considered “libel-proof” because their reputations are either so bad or so good that nothing anyone says can harm them (e.g., The President of the United States).
  - Plaintiff’s Burden of Proof

## **Defamation**

- Statements that tend to expose an individual to hatred, ridicule or contempt, including accusations of criminality, immorality or incompetence.
- Directly in story content, headlines, advertisements, photographs and cartoons.
- Or, when any of these is used out of context.

## **Identification**

- Plaintiff must prove the defamation is about them personally.
- Must prove that a reader or viewer would link the statement to them by:
  - Name
  - Picture
  - Description
  - Nickname
  - Signature
  - Caricature
  - Circumstances

### **Publication**

- Defamation requires at least three people:
  1. the defamer
  2. the defamed
  3. and at least one other person who overhears or reads the defamation.
- Even one copy of a news release, memo, letter or other written document can be libelous.

### **Fault**

- Private individuals need only prove negligence.
- Public figures must prove reckless disregard for the truth.
- Malice must be intended and proven.
  - Also known as “*New York Times* actual malice” after the landmark 1964 case *New York Times v. Sullivan*.
- Who is a public figure?
  - Individuals whose influence is pervasive.
  - Private individuals who thrust themselves into a public debate.

### **Falsity**

- Defamatory statement is probably false.

### **Personal Harm**

- Proof of damage to an individual’s reputation, mental anguish or actual monetary loss.

### **Defenses**

O’Brien and others, expert in defamation, stress, “*Truth* is always a complete defense.” Some other defenses are critical to the defense:

- Opinion – A pure statement of opinion or reasonable opinion based on facts.
- Absolute privilege – Government officials acting in their capacity, political candidates or consent of the person defamed.
- Qualified privilege – Reporters have qualified privilege to report on defamatory statements made during official meetings; some states also recognize “neutral reporting” standards.

### PR Play 16-7

#### Copyrightable Works

- Writings
- Compilations
- Collections
- Photographs
- Works of music
- Works of art
- Graphic art
- Dramatic performances
- Lists
- Derivative works
- Sculpture

### Legal Environment – Intellectual Property

#### Copyright

- Copyright protects creative individuals, allowing them to control the uses of their materials – known as “express work.”
- To qualify for copyright, a work must be created independently with a modicum of intellectual effort and in some fixed form.
- Ideas, processes, methods of operation cannot be copyrighted.
- For individuals, copyright lasts for the life of the author plus 50 years.
- For companies, copyright lasts for 75 years from publication or 100 years from creation, whichever comes first.
- Copyright for commissioned works belongs to the author *until or unless he or she signs a work-for-hire agreement*. Absent such an agreement, the work may be used one time only.

#### To Protect Copyright

- Notice: Authors should place a copyright notice on their works with three elements – the word or symbol “copyright,” the year of first publication and the name of the copyright owner.
- Registration: Although unregistered works are still protected, registration with the Registrar of Copyrights in Washington (Library of Congress) ensures that an author may sue for infringement.
- Deposit: Two copies of the copyrighted work should be deposited with the Library of Congress within three months of publication.

#### Work for Hire

- Work prepared by an employee within the scope of his or her employment.
- Work specially ordered or commissioned from a freelancer.

- Once the freelancer signs a *work-for-hire agreement*, copyright belongs to the employer.

### **Rights of Copyright**

- Copyright Act of 1976 grants the author:
  - The power to copy or reproduce a work.
  - The power to authorize adaptations.
  - The right to distribute copies of a work.
  - The right to perform or display a work publicly.

### **Fair Use**

- The privilege for individuals other than the owner to use copyrighted material in a reasonable manner without the owner's consent.
- Factors determining fair use:
  - Purpose and character of the use.
  - Nature of the copyrighted work.
  - Substantiality of the portion used.
  - Effect of the use upon the market for, or value of, the original.

### **Infringement of Copyright**

- Owner/author must prove access and substantial similarity.
- Public relations implications:
  - Practitioners need to know who holds the rights to a work commissioned from a freelancer and keep adequate records.
  - Practitioners cannot reproduce and circulate news articles or journal papers (news clips) without obtaining permission.

### **Trade and Service Marks**

- *Trademark* – A word, name or symbol, or device, or any combination, adopted and used by a manufacturer or merchant to identify its goods (products it manufactures) and distinguish them from those manufactured by others (e.g., Coca-Cola® carries the ®, but could carry the TM).
- *Service mark* – Like a trademark, however a service mark is used by companies or merchants who provide services rather than manufacture goods (e.g., Burwyn Associates Strategic Counselors/ Ethicists<sup>SM</sup>).
- Both *trademarks* and *service marks* are protected under common law. Registration provides notice of a firm or organization's claim to ownership.
- *Trademarks* and *service marks* can be lost or abandoned if the owner does not rigorously guard its rights to sole ownership and pay strict attention to the Trademark and Patent Office Rules and Regulations.

## PR Play 16-8

### Key Decisions Affecting Public Relations

#### ***New York Times v. Sullivan (1964)***

In 1960, the *New York Times* publishes “Heed Their Rising Voices” (picture, text), a fund-raising advertisement for the civil rights movement. The ad contained several minor errors of fact. Sullivan, one of three city Commissioners in Montgomery, Alabama, becomes aware of the ad. He sues the *New York Times* for libel, claiming that the ad refers to him in that he oversees the Montgomery Police Department, which was mentioned in it. The jury grants him damages of half a million dollars; the *New York Times* appeals to the Supreme Court.

Supreme Court Associate Justice William J. Brennan, writing for a unanimous Court, argued that the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open” made the ad in question an instance of very valuable speech.

Was this value outweighed by the harm that falsities could cause, or the harm done to Sullivan’s reputation? No, for the government should not be involved in judging truth; and government officials should be tough enough to take criticism.

Allowing libel lawsuits in cases like this one, further, would tend to “chill” future criticism of government officials, even legitimate criticism, for a “pall of fear and timidity” would fall over speakers, leading to “self-censorship.”

Therefore, wrote Justice Brennan, a “public official” may not recover “damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with ‘actual malice’ – that is, with knowledge that it was false or with reckless disregard” of the truth.

This is, after all, the rule governing defamation lawsuits brought by *citizens* against *officials*; it’s only fair to apply it when *officials* sue citizens.

**Strategic Communication Implications:** Justice Hugo Black argued, in a concurring opinion, the First Amendment absolutely protects criticism of the government, even speech published with actual malice.

The judgment was reversed.

cont.

### PR Play 16-8 continued

#### **SEC v. Pig 'n Whistle Corp. (1972)**

The Securities and Exchange Commission, which monitors and regulates financial affairs, ruled that a public relations firm may be held liable for securities fraud if the firm passes along misleading financial information about a client without conducting a reasonable investigation.

**Strategic Communication Implications:** Strategic counselors cannot simply do as the client orders. The value of strategic communication rests with the practitioner's ability to maintain objectivity and communicate only the truth. (*Conduit Theory* – In public relations and advertising, the agency or consultant may be held liable for fraud if it passes along misleading information provided by the client. The understanding is that the agency or counselor should have done ample research. For more, see *The ABCs of Strategic Communication* – AuthorHouse.)

### **Rely on Your Lawyer**

Many times, the strategic counselor must persuade the firm or organization's attorneys that open, honest, thorough and valid communication is the only correct route to take. When it comes to ethics, the counselor must rely on his or her own beliefs. If in doubt about laws and regulations, consult the organization's attorneys. While we may not always agree, the lawyers are paid to interpret rules and regulations. They will help the strategic counselor keep current on those regulations and should be relied upon for their judgment.

The strategic counselor and organization's believability (truth) and credibility (trust) are much like a pitcher who is throwing a no-hitter. Once the first hit is given up, the no-hitter is gone forever.

Believability and credibility are much the same. Once they are gone, they are nearly impossible to regain. Know the ramifications of breaking your own ethics code and that of such organizations as PRSA. This might just be the time to conduct an audit of your personal *public relations and strategic communication ethics*.

**PR Play 16-9**  
**First Amendment**

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

According to the Cornell University Law School Legal Information Institute, “*The First Amendment of the United States Constitution* protects the right to freedom of religion and freedom of expression from government interference. Freedom of expression consists of the rights to freedom of speech, press, assembly and to petition the government for a redress of grievances, and the implied rights of association and belief. The Supreme Court interprets the extent of the protection afforded to these rights. The First Amendment has been interpreted by the Court as applying to the entire federal government even though it is only expressly applicable to Congress. Furthermore, the Court has interpreted the due process clause of the 14th Amendment as protecting the rights in the First Amendment from interference by state governments.

“The most basic component of freedom of expression is the right of freedom of speech. The right to freedom of speech allows individuals to express themselves without interference or constraint by the government. The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech. A less stringent test is applied for content-neutral legislation. The Supreme Court has also recognized that the government may prohibit some speech that may cause a breach of the peace or cause violence. The right to free speech includes other mediums of expression that communicate a message.

“Despite popular misunderstanding, the right to freedom of the press guaranteed by the first amendment is not very different from the right to freedom of speech. It allows an individual to express themselves through publication and dissemination. It is part of the constitutional protection of freedom of expression. It does not afford members of the media any special rights or privileges not afforded to citizens in general.”

## EXERCISES

### PR Challenge 16-1

Let's find out just how ethical you are (Part One):

True-False

1. It is not ethical to offer \$100 to a reporter to assure coverage of an event. T F
2. It is not ethical to let a reporter buy you lunch in exchange for proprietary information. T F
3. It is not ethical to send a platter of sandwiches to a newsroom on Thanksgiving or Christmas Day. T F
4. It is not ethical to accept an award-winning chocolate chip banana cake from an enterprising reporter who visits your house for an interview. T F
5. Truth is always the ultimate defense in court cases against journalists. T F
6. An ethics policy cannot be used against you in court unless you sign it. T F
7. As an independent contractor or agency, it is ethical and justifiable to represent two or more competing clients – with full disclosure. T F
8. Newspaper editorials and columns are held to the same standards of accuracy as news stories. T F
9. If you give a journalist information in confidence and that confidence is broken, you may sue him/her for breaking that promise of confidentiality. T F
10. It is ethical for an organization's spokesperson to be an unnamed source in a non-controversial story. T F



11. Photographers and reporters always have the responsibility to fully depict a scene, rather than letting their personal judgment interfere. T F
12. Public relations/media specialists can alter pictures for use with feature stories, but not pictures accompanying news or sports releases. T F
13. It is not ethical to request that corrections/clarifications be published. T F
14. An ethics code is all encompassing. T F
15. Professor Steve Spear of MIT is correct when he says, the public remembers mistakes far longer than good deeds and, in fact, talk far more about mistakes than “good deeds.” T F

## **PR Challenge 16-2**

Let's find out just how ethical you are (Part Two):

### **Questions**

A) Each week, you, as media relations representative for a social-service agency, hand deliver a calendar of your agency's activities to a local newspaper. In appreciation for the editor's good work, you give two free tickets to the agency's benefit concert and dinner. Is this an ethical practice? (Please explain your answer.)

B) You represent a county commissioner who is facing serious allegations. Your client has ignored messages left for him on his home and cell phones. The reporter has warned that if a return call is not received by 10 p.m., the newspaper is running the story. Is this ethical on the newspaper's part and what advice would you give to your client?

C) You represent an amusement park which has just experienced a fatal fire inside its “haunted house.” The fire marshal has invited a television news photographer to follow her inside the house as she looks for evidence. Do you, as the amusement park's strategic communication director, allow it and if so, do you accompany them? (Please explain your answer.)

**PR Challenge 16-3**

What have you done in the past month to improve your credibility and knowledge as a strategic counselor – current or future?