

6

Ethics

Chapter Objectives

- 6.1.** To discuss the one aspect that should differentiate public relations from the law and other business pursuits—ethics.
- 6.2.** To explore ethics—or the lack thereof—in today's business, government, media, and public relations cultures.
- 6.3.** To discuss the concept of corporate social responsibility.
- 6.4.** To underscore the bedrock importance of public relations professionals “doing the right thing.”



▲ FIGURE 6-1 Caught in the air.

Rapper and reality-star Bow Wow was caught with his Instagram down when a photo of a private plane he said he was flying on turned out not to be true.
Photo: Andrew Jones/Splash News/Alamy Stock Photo

The entire nation was devastated in May 2017 when it learned that beloved rapper reality-star Bow Wow had been caught in a lie about flying on a private jet (Figure 6-1).

It all started when Bow Wow shared a snapshot on Instagram of a luxurious private jet he said he was riding on to take him to New York City to promote his TV show, *Growing Up Hip Hop*. “Not so,” tweeted a sneaky fan who saw the Bow Wow post, and said the rapper was sitting a few rows away from him on a commercial flight to New York. It didn’t take long for internet sleuths to discover Bow Wow had used a stock photo from a Florida transportation service and was, in fact, lying.¹

Boo hoo, Bow Wow.

Well, maybe the entire nation wasn’t exactly “devastated,” but the Bow Wow embarrassment did raise an ethical question that has become a day-to-day issue in 21st century society.

Is getting an edge in business or politics or media or even personal relationships worth lying about?

This is the question that public relations practitioners face every day.

The answer to practitioners who care about their profession should be simple. The practice of public relations is all about earning *credibility*. Credibility, in turn, begins with telling the truth. Public relations, then, must be based on “*doing the right thing*”—in other words, acting ethically; in other other words, never lying.

The fact is that ethics should be the “great differentiator” that separates public relations professionals from other professions, like lawyers. The reality is that this is not always the case.

- In 2010, the U.S. Federal Trade Commission settled a complaint against public relations firm Reverb Communications for using employees to pose as customers to post glowing reviews of client video games on Apple’s iTunes store.²
- In 2011, former Bill Clinton White House apologist Lanny Davis grudgingly resigned from serving as public relations representative for murderous Ivory Coast leader Laurent Gbagbo. Davis, who wrote a book about the importance of “transparency” in public relations, was the subject of withering criticism for serving as a hired gun for a Gbagbo regime that reportedly committed legendary human rights abuses.³
- That same year, the executive of the Los Angeles office of the giant public relations firm Fleishman-Hillard was sent to prison and the company was ordered to pay millions of dollars for overcharging the city’s Department of Water and Power about \$50,000 a month for three years.⁴
- In 2012, Walmart cut its ties with Mercury Public Relations after a junior staff member at the L.A. public relations firm showed up at an anti-Walmart union news conference, posing as a reporter. The union discovered the ruse and alerted the media.⁵
- And then in 2018, of course, there was Donald Trump, a man, who, whether you love him or hate him, you must admit likes to, ahem, “*stretch the truth*,” every now and again . . . from claiming that Obamacare cost Tennessee half its insurers (every marketplace region in Tennessee had at least one insurer) . . . to stating his tough campaign talk forced China to stop manipulating its currency (the Chinese had stopped this practice years before) . . . to suggesting he didn’t really know disgraced aide Steve Bannon (he’d known him for seven years before firing him).⁶

The point is that the practice of public relations, which is already suspect in the eyes of many who don’t understand it and are skeptical, has suffered as much as any profession in maintaining ethical standards.

Ethical Issues Abound

In the 21st century, with scandals popping up periodically in every sector of society—from politics to religion, from business to sports—the subject of ethics is a pervasive one.

What precisely are *ethics*?

A sociologist posed that question to business people and got these answers:

- “Ethics has to do with what my feelings tell me is right or wrong.”
- “Ethics has to do with my religious beliefs.”
- “Being ethical is doing what the law requires.”
- “Ethics consists of the standards of behavior our society accepts.”
- “I don’t know what the word means.”

6.1

To discuss the one aspect that should differentiate public relations from the law and other business pursuits—ethics.

Classical ethics means different things to different people. Ethics theories range from utilitarianism (i.e., the greatest good for the greatest number) to deontology (i.e., do what is right, though the world should perish).

While the meaning of ethics may be hard to pin down, there's no secret to what constitutes unethical behavior. Unfortunately, it's all around us. Consider the following:

- In **government**, ethical lapses know no party affiliation. Washington seems perpetually rocked by ethical scandals.

In 2010, longtime New York Congressman Charley Rangel was convicted of a variety of ethical offenses, all stemming from his misuse of power.⁷ (The disgraced Rangel, whose career would have been doomed in any other profession, came back to win primary reelection in 2012. But hey, that's politics!) In 2011, Rangel's New York colleague Anthony Weiner resigned from the House and subsequently went to jail, after it was revealed he had sent provocative tweets to female followers.⁸

On the Republican side, Chicago Congressman Aaron Schock resigned his seat in the spring of 2015, when it was revealed he had spent \$40,000 to redecorate his office in the style of the popular public broadcasting show, *Downton Abbey*, and used campaign contributions for private jet flights, concert tickets, and all forms of entertainment.⁹ In the summer of 2015, former Republican Speaker of the House Dennis Hastert was accused of illegally structuring bank withdrawals to disguise payoffs to an underage person with whom he committed sexual acts; he, too, spent time in the slammer.¹⁰ And in 2018, the Trump administration was dogged by a special prosecutor investigation that found key Trump aides, including former National Security Advisor Michael Flynn and former Campaign Chairman Paul Manafort, guilty of lying and income tax evasion, among other crimes.¹¹

- In **business**, insider trading scandals, in which Wall Street fat cats bilked unsuspecting investors out of millions, have dominated the news in recent years. Financial titans Bernie Madoff, Allen Stanford, Raj Rajaratnam, and former McKinsey & Co. CEO Rajat Gupta all faced hard time after their unethical behavior was displayed before the world.
- In **sports**, several of history's most legendary baseball players, from slugging Mark McGwire to fire-ballng Roger Clemens to slammin' Sammy Sosa to all-everything Alex "A-Rod" Rodriguez, were all tarnished in the wake of the sport's 21st century steroids scandal. Formerly revered cyclist Lance Armstrong was disgraced when, after lying for years, he admitted to Oprah Winfrey that illegal doping gave him an unfair advantage.¹² In 2016, gold medal-winning swimmer Ryan Lochte was hustled out of Brazil, after lying about being robbed after his Rio Olympic performance (Figure 6-2).¹³
- In **entertainment**, one of America's most cherished television "role models," comedian Bill Cosby, was accused of sexual assault by more than 40 women, who had come forward by 2015. Cosby vehemently denied the allegations but was hauled into court in 2017 and in 2018, was found guilty of assault in the retrial, and has become a reviled figure.
- In **education**, the president of Penn State University was sentenced to prison in 2017 in the wake of the pedophilia scandal that also cost football coach Joe Paterno his job—and, some argued, his life. President Graham Spanier, whom all agreed did a superlative job in building Penn State's reputation, nonetheless was found wanting in covering up the awful Jerry Sandusky scandal.¹⁴ In 2018,



▲ FIGURE 6-2 Liar, liar, Speedo on fire.

Olympic gold medalist swimmer Ryan Lochte caused an international incident in 2016, when he falsely claimed he had been robbed during the Rio Olympics.

Photo: Andrew Chin/ZUMA Press/Newscom

Lou Anna Simon, the president of Michigan State University (MSU), resigned in the wake of the Larry Nassar sexual abuse scandal regarding female gymnasts; Nassar had been a sports physician at MSU.¹⁵ (See Case Study Chapter 17.)

- Similar charges of sexual abuse embroiled the venerable **Catholic Church** in ethical scandals from the beginning of the century under Pope John Paul II and later his successor, Pope Benedict XVI. It was left to Pope Francis to clear the air to rid the Church of the aftertaste of ethical scandal.
- In the realm of **nonprofit organizations**, supposed to aid those less fortunate, ethical improprieties also weren't uncommon. For example, in 2012, CNN revealed that a charity designed to serve veterans with disabilities had instead squandered millions of dollars on marketing costs that benefited Disabled Veterans National Foundation's organizers.¹⁶ And in 2018, the CEO of the Humane Society of America stepped down in the fallout from the sexual harassment scandals.¹⁷
- As noted, not even the practice of **public relations** could escape serious ethical lapses, as the Fleishman-Hillard, Walmart, Lanny Davis, and other ethical scandals revealed.

Again, public relations professionals are expected to *do the right thing*. The cardinal rule of public relations is to *never lie*.

Nonetheless, in one startling survey at the turn of the century of 1,700 public relations executives, it was revealed that 25% of those interviewed admitted they had “lied on the job,” 39% said they had exaggerated the truth, and another 44% said they had felt “uncertain” about the ethics of what they did.¹⁸

While the industry never repeated that survey (Wonder why?), the Public Relations Society of America (PRSA) did invest \$100,000 in revamping its code of ethics. The code (see Appendix A), underscored by six fundamental values that the PRSA believes vital to the integrity of the profession (Figure 6-3), demonstrates the significance of ethics to the practice of public relations.

Doing the Right Thing

What exactly are ethics? The answer isn’t an easy one.

The Josephson Institute, which studies ethics, defines ethics as *standards of conduct that indicate how one should behave based on moral duties and virtues*.¹⁹

In general, ethics are the values that guide a person, organization, or society—concepts such as right and wrong, fairness and unfairness, honesty and dishonesty. An individual’s conduct is measured not only against his or her conscience but also against some norm of acceptability that society or an organization has determined.

Roughly translated, an individual’s or organization’s ethics come down to the standards that are followed in relationships with others—the real integrity of the individual or organization. Obviously, a person’s ethical construct and approach depend on numerous factors—cultural, religious, and educational, among others. Complicating the issue is that what might seem right to one person might not matter to someone else. No issue is solely black or white but is rather a shade of gray—particularly in making public relations decisions.

That is not to say that classical ethical distinctions don’t exist. They do. Philosophers throughout the ages have debated the essence of ethics.

- Utilitarianism suggests considering the “greater good” rather than what may be best for the individual.
- To Aristotle, the *golden mean of moral virtue* could be found between two extreme points of view.
- Kant’s *categorical imperative* recommended acting “on that maxim which you will to become a universal law.”
- Mill’s *principle of utility* recommended “seeking the greatest happiness for the greatest number.”
- The traditional *Judeo-Christian ethic* prescribes “loving your neighbor as yourself.” Indeed, this golden rule makes good sense as well in the practice of public relations.

Because the practice of public relations is misunderstood by so many—even including some of those for whom public relations people work—public relations people, in particular, must be ethical. They can’t assume that ethics are strictly personal choices without relevance or related methodology for resolving moral quandaries. Public relations people must adhere to a high standard of professional ethics, with truth as the key determinant of their conduct.

Indeed, ethics must be the great differentiator between public relations practice and other functions. Public relations people must always tell the truth. That doesn’t mean they divulge “everything” about those for whom they work. But it does mean that they

PRSA Member Code of Ethics 2000

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.

The Public Relations Society of America, 33 Irving Place, New York, NY 10003-2376

◀ **FIGURE 6-3**
PRSA's six values.

The values of advocacy, honesty, expertise, independence, loyalty, and fairness form the basis of the PRSA ethical code.

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should never, ever lie. All one has in public relations is his or her reputation. When you lie, you lose it. So, a high sense of ethical conduct must distinguish those who practice public relations.

Professional ethics, often called *applied ethics*, suggests a commonly accepted sense of professional conduct that is translated into formal codes of ethics.

The essence of the codes of conduct of both the PRSA and the International Association of Business Communicators is that honesty and fairness lie at the heart of public relations practice. Indeed, if the ultimate goal of the public relations professional is to enhance public trust of an organization, then only the highest ethical conduct is acceptable.

Inherent in these standards of the profession is the understanding that ethics have changed and continue to change as society changes. Over time, views have changed on such issues as discrimination, the treatment of women and minorities, pollution of the environment, concern for human rights, acceptable standards of language and dress, and so on. Again, honesty and fairness are two critical components that will continue to determine the ethical behavior of public relations professionals.

Boiled down to its essence, the ethical heart of the practice of public relations lies, again, in posing only one simple question to management: *Are we doing the right thing?* In posing that critical question, the public relations officer becomes the “conscience” of the organization.

Often the public relations professional will be the only member of management with the nerve to pose such a question. Sometimes this means saying no to what the boss wants to do. Public relations professionals must be driven by one purpose—to preserve, defend, sustain, and enhance the health and vitality of the organization. Simply translated, the bottom-line for public relations professionals must always be to counsel and to do what is in the best long-term interests of the organization.

6.2

To explore ethics—or the lack thereof—in today's business, government, media, and public relations cultures.

Ethics in Business

To many people today, regrettably, the term *business ethics* is an oxymoron. Its mere mention stimulates images of disgraced CEOs being led away in handcuffs after bilking their shareholders and employees out of millions of dollars. In one period alone, the 2012 “summer of shame,” a dizzying array of corporate executives was charged with ethical violations.

- The summer began with Irving H. Picard, the trustee overseeing the liquidation of Bernard Madoff’s investment advisory firm, receiving permission to “claw back” profits from those Madoff rewarded in his Ponzi scheme that bilked investors out of some \$7.3 billion—the most costly swindle in investing history.
- The Madoff number was just slightly more than high-flying Texas financier R. Allan Stanford who was convicted of swindling clients out of \$7 billion over a two-decade-long scam involving 30,000 investors in 113 countries.
- In June, the conviction of Rajat Gupta was perhaps the most shocking scandal of all. Gupta, former McKinsey CEO and a member of the board of premier investment banker Goldman Sachs, was an eminently respected business leader. But he also turned out to be a common criminal, feeding insider information to convicted hedge fund felon Raj Rajaratnam.

Gupta’s conviction culminated a wave of insider trading cases that had yielded 66 indictments and 60 convictions over two-and-a-half years. These followed business scandals earlier in the decade that exposed subprime lenders as crooks, banks and other

financial institutions as less-than-responsible stewards of public wealth, and CEOs as suspect in terms of ethics and credibility. With venerable companies such as Bear Stearns and Lehman Brothers going out of business and other less venerable ones like Washington Mutual and Countrywide Mortgage meeting the same fate, the early part of the 21st century was not a stellar period for business credibility.

No wonder confidence in business has deteriorated. One survey by the Ethics Resource Center found that although employees seemed more ethical in their own jobs, more employees had negative views of the ethics of their supervisors. Confidence in senior leadership fell to 62% in 2011, matching the historic low of 2000 and down six points from just two years earlier. One-third of U.S. employees said their own managers “didn’t exercise ethical behavior.”²⁰

Indeed, many believed “crooked CEO” was redundant. One book, written by former management consultants, described CEOs thusly:

Among the more than 14,000 publicly registered companies in the U.S. and the even larger number of privately held companies there is a class of people who will lie to the public, the regulators, their employees and anyone else in order to increase personal wealth and power.²¹

To stem the feeling that chief executives and their companies weren’t acting ethically, a number of firms increased their efforts to make their activities more transparent to the public. Companies from Coca-Cola to Amazon.com to General Electric announced plans to make accounting procedures more understandable. One CEO, Henry Paulson of investment banking giant Goldman Sachs, called on his fellow CEOs, in a memorable speech, to reform before regulation forced them to do so: “In my lifetime, American business has never been under such scrutiny. To be blunt, much of it is deserved.”²² Paulson’s call for business ethics helped secure his selection as Secretary of the Treasury under President George W. Bush; where later he presided over the meltdown and eventual recovery of the U.S. financial system.

A QUESTION OF ETHICS

Severing His Head . . . and Her Own Gig

In 2017 comedian Kathy Griffin thought it would be hilarious to pose holding a mask of Donald Trump’s bloody, severed head.

When the Trump head photo hit social media, the response was universal—and far from “hilarious.”

- Donald Trump, Jr. called it, “disgusting but not surprising.”
- Chelsea Clinton said it was “vile and wrong.”
- Actress Debra Messing tweeted, “It wasn’t right when people hung lynched Obama effigies, just as what Kathy Griffin did isn’t right now.”

Even Griffin’s 97-year-old mother said she thought her daughter had “gone too far.” Within days, Griffin was forced to apologize for her ethical lapse, only to find her comedic career in ruins.

Anderson Cooper, Griffin’s CNN TV co-host on the network’s popular *New Year’s Eve Live* program said he found his friend’s display, “disgusting.” And eventually, CNN announced that it was dropping Griffin from the high visibility broadcast (Figure 6-4). In addition, the Secret Service had Griffin investigated. What followed was a rush to the exits of promoters dropping Griffin’s stand-up concert dates.

Griffin, dumb struck by the ferocity of the blowback from her questionable photo apologized and, in a teary-eyed press conference, blamed Trump for her problems. Said a weepy Griffin, “A sitting President of the United States and his grown children and the first lady are personally trying to ruin my life forever. You guys know him, he’s not going to stop.”

The more Griffin whined, the less people believed her apology was genuine. Indeed, a few months after the severed



▲ FIGURE 6-4 Cryin' shame.

Comedian Kathy Griffin wasn't laughing when she held a 2017 news conference to apologize for holding a mask that looked like President Trump's severed head.

Photo: Los Angeles Daily News/ZUMA Press/Newscom

head photo, Griffin publicly "took back" her apology. "*I'm no longer sorry. The whole outrage was BS. The whole thing got so blown out of proportion,*" Griffin told an interviewer in Australia, the only country that seemed still willing to listen to a comedian whose attempt at a joke went far beyond acceptable boundaries of ethics.

For further information, see Chelsea Clinton (@ChelseaClinton). Twitter (May 30, 2017); Andrea Mandell, "Kathy Griffin Isn't Sorry About Her Trump Photo Anymore," *USA Today* (August 29, 2017); Debra Messing (@DebraMessing). Twitter (May 30, 2017); Jessica Sager, "Even Kathy Griffin's Mom Thought Trump Photo Was Stupid," *New York Post* (January 31, 2018); President Donald Trump Jr. (@DonaldJTrump). Twitter (May 30, 2017); "Kathy Griffin Apologizes After Decapitated Trump Photo Offends Everyone," *MarketWatch* (May 30, 2017); "Kathy Griffin Posts Apology for Graphic Trump Photo Shoot and CNN Responds," *Los Angeles Times* (May 30, 2017); Fraser P. Seitel, "Griffin Gives Worst Press Conference of All Time," www.odwyerpr.com (June 5, 2017); and Chris Weigant, "Friday Talking Points—We're All Covfefe Now," *HuffPost* (June 2, 2017).

Questions

1. How would you assess Kathy Griffin's handling of her ethical crisis?
2. Were you her public relations representative, what would you suggest she do now?

Corporate Codes of Conduct

With the Weinstein-inspired sexual harassment scandals of 2018 to remind them, most organizations are now devoting an increasing amount of time and attention to corporate ethics.

The vast majority of companies conducted periodic risk assessments, with more than half doing so annually. Three-quarters of all companies conducted training in such areas as sexual/workplace harassment, conflicts of interest, and protecting confidential information. Many firms devoted upward of \$500,000 a year, exclusive of personnel costs, for ethics and compliance programs.²³

Most organizations also adopted formal codes of conduct to guide their activities. A code of conduct is a formal statement of the values and business practices of a corporation. A code may be a short mission statement, or it may be a sophisticated document that requires compliance with articulated standards and that has a complicated

enforcement mechanism. Whatever its length and complexity, the corporate code of conduct dictates the behavioral expectations that an organization holds for its employees and agents.

Formal codes of conduct can help accomplish a number of public relations purposes.

- **To increase public confidence.** Scandals, credit crises, product recalls, and so on have all shaken investor confidence and have led to a decline of public trust and confidence in business. Many firms have responded with written codes of ethics.
- **To stem the tide of regulation.** As public confidence has declined, government regulation of business has increased. Some estimated the cost to society of compliance with regulations at \$100 billion per year. Corporate codes of conduct, it was hoped, would help serve as a self-regulation mechanism.
- **To improve internal operations.** As companies became larger and more decentralized, management needed consistent standards of conduct to ensure that employees were meeting the business objectives of the company in a legal and ethical manner.
- **To respond to transgressions.** Frequently, when a company itself is caught in the web of unethical behavior, it responds with its own code of ethics.

Ralph Waldo Emerson once wrote, “*An organization is the lengthened shadow of a man.*”²⁴ Today, many corporate executives realize that just as an individual has certain responsibilities as a citizen, so, too, does a corporate citizen have responsibilities to the society in which it is privileged to operate.

Corporate Social Responsibility

6.3

To discuss the concept of corporate social responsibility.

Closely related to the ethical conduct of an organization is its corporate social responsibility (CSR). Simply stated, CSR is about how companies manage the business processes to produce an overall positive impact on society. This implies that any social institution, from the smallest family unit to the largest corporation, is responsible for the behavior of its members and may be held accountable for their misdeeds.

In the 1960s, when this idea was just emerging, initial responses were of the knee-jerk variety. A firm that was threatened by increasing legal or activist pressures and harassment would ordinarily change its policies in a hurry. Today, however, organizations and their social responsibility programs are much more sophisticated. Social responsibility is treated just like any other management discipline: Analyze the issues, evaluate performance, set priorities, allocate resources to those priorities, and implement programs that deal with issues within the constraints of the organization’s resources. Many companies have created special committees to set the agenda and target the objectives.

Social responsibility touches practically every level of organizational activity, from marketing to hiring, from training to work standards. A partial list of social responsibility categories might include the following:

- **Product lines**—dangerous products, product performance and standards, packaging, and environmental impact
- **Marketing practices**—sales practices, consumer complaint policies, advertising content, and fair pricing

- **Corporate philanthropy**—contribution performance, encouragement of employee participation in social projects, and community development activities
- **Environmental activities**—pollution control and climate change projects, adherence to federal standards, and evaluation procedures for new packaging and products
- **External relations**—support of minority enterprises, investment practices, and government relations
- **Employment diversity in retaining and promoting minorities and women**—current hiring policies, advancement policies, specialized career counseling, and opportunities for special minorities such as the physically handicapped and, more recently, the LGBTQ community and others
- **Employee safety and health**—work environment policies, accident safeguards, and food and medical facilities

More often than not, organizations have incorporated social responsibility into the mainstream of their practices. Most firms recognize that social responsibility, far from being an add-on program, must be a corporate way of life. They recognize that in a skeptical world, business must be responsible to act ethically and improve the quality of life of their workforce, their families, and the broader society.

Ethics in Government

Politics has never enjoyed an unblemished reputation when it comes to ethics. In the age of Trump—with the U.S. political system increasingly polarized between hard right and hard left—politicians seemed to be losing more ground in terms of trustworthiness and ethical values.

Both the legislative and executive branches of the federal government took a beating in the public eye. By 2018, Americans' job approval rating for the President hovered south of 40%, while Americans rate the honesty and ethics of Congress as the lowest among 22 professions in a Gallup poll. Barely a quarter of Americans reported they were "satisfied with the way the nation was being governed."²⁵

The advent of 24-hour cable news and the 24/7 social media stream and internet blogosphere cast a perpetual 21st century spotlight on the activities of the President and his allies. No administration could escape the harsh glare of prying eyes noting ethical failures. President Bill Clinton suffered the ultimate ethical ignominy: being impeached by the House of Representatives for his inexplicable and shocking behavior with a young intern in the White House. Both President George W. Bush and Vice President Dick Cheney were criticized harshly for everything from the disposition of and reasons for war in Iraq to their past corporate energy affiliations. President Obama also was attacked by critics for everything from politicizing his declaration of a path to citizenship for children of illegal immigrants to his Justice Department's "Fast and Furious" decision to provide guns to Mexican arms traffickers. And then there was President Trump and his traveling ethical circus.

The "sleaze factor" in government continues to poison politics.

- In 2010, former Vice President Al Gore made headlines when an Oregon masseuse accused him of assault among other sordid details; meanwhile his wife of 40 years divorced him.
- In 2011, Democrat Congressman Anthony Weiner was drummed out of the House for sexting young women pictures of his . . . well, never mind.

- In 2012, former Democratic senator and presidential candidate John Edwards was exonerated of charges of using campaign funds to hide a mistress and love-child, although the damage to his career was done.
- In 2013, the mayor of Toronto, Canada, Rob Ford, was reported by *Gawker* as having been seen on a video smoking crack cocaine. For the next several months, Ford led the media on a cat-and-mouse excursion of continuing allegations and denials, through rehab and back again.
- In 2014, the administration of New Jersey Gov. Chris Christie was found to have purposely created traffic jams on the George Washington Bridge to get back at a political opponent. Despite his continued claims that he “knew nothing” of the lane closures, Christie’s bid for the Republican nomination for President went up in smoke, and he closed out his gubernatorial tenure with the lowest approval ratings in history.²⁶
- In 2018, Special Prosecutor Robert Mueller charged four Trump campaign associates with violations ranging from lying to prosecutors to tax evasion and bank fraud, in conjunction with an investigation of Russian influence on the 2016 presidential election. And Mueller was just getting started.²⁷

Get the picture? Whew!

After all the white-collar crime and political scandals that have marked the first two decades of the 21st century, the public is less willing to tolerate such ethical violations from their elected officials. It is likely that ethics in government will become an even more important issue as voters insist on representatives who are honest, trustworthy, and ethical.

FYI •

Test Your Workplace Ethics

So, you want to enter the workplace? The question of ethics looms larger today than at any previous time, especially with the advent of technology and the potential abuses it brings.

To test how you might measure up as an ethical worker, answer the following questions. And don’t cheat!

Questions

1. Is it wrong to use company email for personal reasons?
2. Is it wrong to use office equipment to help your family and friends with homework?
3. Is it wrong to play computer games on office equipment during the workday?
4. Is it wrong to use office equipment to shop online?
5. Is it unethical to visit pornographic websites using office equipment?
6. What’s the value at which a gift from a supplier or client becomes troubling?
7. Is a \$50 gift to a boss unacceptable?

8. Is it okay to take a pair of \$200 football tickets as a gift from a supplier?
9. Is it okay to take a \$120 pair of theater tickets?
10. Is it okay to take a \$100 holiday fruit basket?
11. Is it okay to take a \$25 gift certificate?
12. Is it okay to accept a \$75 prize won at a raffle at a supplier’s conference?

Answers

From a cross-section of workers at nationwide companies, the answers to these questions were compiled by the Ethics Officer Association, Belmont, Massachusetts, and the Ethical Leadership Group, Wilmette, Illinois.

1. 34% said personal email on company computers is wrong.
2. 37% said using office equipment for homework is wrong.
3. 49% said playing computer games at work is wrong.

4. 44% said internet shopping at work is wrong.
 5. 87% said it is unethical to visit pornographic sites at work.
 6. 33% said \$25 is the amount at which a gift from a supplier or client becomes troubling. Another 33% said \$50. Another 33% said \$100.
 7. 35% said a \$50 gift to the boss is unacceptable.
 8. 70% said it is unacceptable to take \$200 football tickets.
 9. 70% said it is unacceptable to take \$120 theater tickets.
 10. 35% said it is unacceptable to take a \$100 fruit basket.
 11. 45% said it is unacceptable to take a \$25 gift certificate.
 12. 40% said it is unacceptable to take the \$75 raffle prize.
-

Ethics in Journalism

The Society of Professional Journalists is quite explicit on the subject of ethics (Figure 6-5).

Journalists at all times will show respect for the dignity, privacy, rights, and well-being of people encountered in the course of gathering and presenting the news.

1. The news media should not communicate unofficial charges affecting reputation or moral character without giving the accused a chance to reply.
2. The news media must guard against invading a person's right to privacy.
3. The media should not pander to morbid curiosity about details of vice and crime.

And so on.

Unfortunately, what is in the code often doesn't reflect what appears in print or on the air. More often than not, journalistic judgments run smack into ethical principles—especially in a day when every citizen is a publisher on the internet.

- Plagiarism scandals at three of the nation's leading newspapers—*The New York Times*, *Washington Post*, and *Boston Globe*—resulted in the firings of high-profile journalists. The *Times* fell victim to the new century's most embarrassing instance of suspect journalistic ethics. In 2003, the "Great Gray Lady" was stunned when one of its promising young reporters, Jayson Blair, was discovered to have fabricated numerous dispatches for the paper over an extended period. The *Times* found out about Blair's fraud only when a reporter from another paper tipped it off. Blair was immediately fired, and the *Times* took a major reputation hit.
- In 2005, the *Times* was shocked again after one of its star reporters, Judith Miller, served 85 days in prison for refusing to reveal confidential administration sources related to stories involving the leak of the name of a CIA operative married to a Bush administration critic. On her release, the *Times* criticized her for being too cozy with the White House. Miller hastily resigned after 28 years at the *Times* and was hired by Fox News.
- In 2010, the *Times*, *Washington Post*, *Guardian* of London, and other major newspapers made the decision to publish a cache of a quarter million confidential diplomatic cables, purloined by WikiLeaks, an organization dedicated to revealing secret documents. Some questioned the ethics of putting diplomats and the nations they worked for at risk.²⁸
- In 2015, the anchor of the NBC Nightly News, Brian Williams, became immersed in an ethical scandal that ripped at his credibility and that of the network he represented. Williams admitted to making up facts about being attacked in a helicopter in Iraq during the war: specifically, Williams' helicopter wasn't

Society of Professional Journalists

CODE of ETHICS

PREAMBLE
 Members of the Society of Professional Journalists believe that public enlightenment is the cornerstone of justice and the foundation of democracy. Ethical journalism strives to ensure the free exchange of information that is accurate, fair and thorough. An ethical journalist acts with integrity. The Society declares these four principles as the foundation of ethical journalism and encourages their use in its practice by all people in all media.

SEEK TRUTH AND REPORT IT
 Ethical journalists should be accurate and fair. Journalists should be honest and courageous in gathering, reporting and interpreting information.

Journalists should:

- ▶ Take responsibility for the accuracy of their work. Verify information before releasing it. Use original sources whenever possible.
- ▶ Remember that neither speed nor format excuses inaccuracy.
- ▶ Provide context. Take special care not to misrepresent or oversimplify in reporting, previewing or summarizing a story.
- ▶ Gather, update and connect information throughout the life of a news story.
- ▶ Be cautious when making promises, but keep the promises they make.
- ▶ Identify sources clearly. The public is entitled to as much information as possible to judge the reliability and motivations of sources.
- ▶ Consider sources' motives before promising anonymity. Reserve anonymity for sources who may face danger, retribution or other harm, and have information that cannot be obtained elsewhere. Explain why anonymity was granted.
- ▶ Diligently seek subjects of news coverage to allow them to respond to criticism or allegations of wrongdoing.
- ▶ Avoid undercover or other surreptitious methods of gathering information unless traditional, open methods will not yield information vital to the public.
- ▶ Be vigilant and courageous about holding those with power accountable. Give voice to the voiceless.
- ▶ Support the open and civil exchange of views, even views they find repugnant.
- ▶ Recognize a special obligation to serve as watchdog over public affairs and government. Seek to ensure that the public's business is conducted in the open, and that public records are open to all.
- ▶ Avoid access to source material when it is relevant and appropriate.
- ▶ Boldly tell the story of the diversity and magnitude of the human experience. Seek sources whose voices we seldom hear.
- ▶ Avoid stereotyping. Journalists should examine the ways their values and experiences may shape their reporting.
- ▶ Label advocacy and commentary.
- ▶ Never deliberately distort facts or context, including visual information. Clearly label illustrations and re-enactments.
- ▶ Never plagiarize. Always attribute.

MINIMIZE HARM
 Ethical journalism treats sources, subjects, colleagues and members of the public as human beings deserving of respect.

Journalists should:

- ▶ Balance the public's need for information against potential harm or disruption. Pursuit of the news is not a license for arrogance or undue intrusiveness.

The SPJ Code of Ethics is a statement of abiding principles supported by additional explanations and position papers at spj.org that address changing journalistic practices. It is not a set of rules, rather a guide that encourages all who engage in journalism to take responsibility for the information they provide, regardless of medium. The code should be read as a whole; individual principles should not be taken out of context. It is not, nor can it be under the First Amendment, legally enforceable.

◀ FIGURE 6-5
Journalists' code.

The Society of Professional Journalists has elaborated in some detail on the ethical guidelines that should govern all journalists.

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www.spj.org

involved in any attack. NBC suspended the veteran anchor after other exaggerated stories came to light, and its nightly news broadcast lost 700,000 viewers in the wake of the scandal. Eventually, Williams returned to the network, demoted to hosting the 11:00 p.m. broadcast on affiliate channel, MSNBC.²⁹

- In 2017, ethical dilemmas, mainly regarding sexual harassment, sunk the careers of well-known journalists from the nation's most prominent outlets—from Matt Lauer at NBC to Bill O'Reilly at Fox, from Mark Halperin at Bloomberg to Glenn Thrush at *The New York Times*, from Michael Oreskes at NPR to Charlie Rose at PBS.³⁰

Not surprisingly, a joint study by Gallup and the Knight Foundation found that most Americans don't trust the news media. Also not surprisingly, especially in the midst of presidential pronouncements of "fake news," Republicans far outranked Democrats in their antipathy to the media. Almost 70% of Republicans said they had an unfavorable opinion of the media, compared with 54% of Democrats.³¹ Clearly, in terms of ethics, journalists have a long way to go to build back credibility.

6.4

To underscore the bedrock importance of public relations professionals "doing the right thing."

Ethics in Public Relations

Ethics is—or at least, should be—the great differentiator between public relations and other professions. In light of numerous misconceptions about the practice of public relations, it is imperative that practitioners emulate the highest standards of personal and professional ethics (Figure 6-6). Within an organization, public relations practitioners must be the standard bearers of corporate ethical initiatives. By the same token, public relations consultants must always counsel their clients in an ethical direction—toward accuracy and candor and away from lying and hiding the truth.

The public relations department should be the seat of corporate ethics. At least four ethical theories are relevant to the practice of public relations.

- The *attorney/adversary model*, developed by Jay Barney and Ralph Black, compares the legal profession to that of public relations in that (1) both are advocates in an adversarial climate and (2) both assume counterbalancing messages will be provided by adversaries. In this model, Barney and Black suggest practitioners have no obligation to consider the public interest or any other outside view beyond that of their client.
- The *two-way communication model*, developed by Jim Grunig, is based on collaboration, working jointly with different people, and allowing for both listening and give-and-take. In this model, Grunig suggests that the practitioner balances his or her role as a client advocate with one as social conscience for the larger public.
- The *enlightened self-interest model*, developed by Sherry Baker, is based on the principle that businesses do well by doing good. In this model, Baker suggests that companies gain a competitive edge and are more respected in the marketplace if they behave ethically.
- The *responsible advocacy model*, developed by Kathy Fitzpatrick and Candace Gauthier, is based on the ideal of professional responsibility. It postulates that practitioners' first loyalty is to their clients, but they also have a responsibility to voice the opinions of organizational stakeholders. In this model, Fitzpatrick and Gauthier suggest that the practitioner's greatest need for ethical guidance is in the reconciliation of being both a professional advocate and a social conscience.

The PRSA has been a leader in the effort to foster a strong sense of professionalism among its membership, particularly in its new code of ethics. Its six core values underpin the desired behavior of any public relations professional.

- **Advocacy.** The PRSA Code (see Appendix A) endorses the Fitzpatrick and Gauthier model in stating: "We serve the public interest by acting as responsible advocates for those we represent."³² For example, public relations professionals must never reveal confidential or private client information, even if a journalist demands it. The only way such information might be revealed is after a thorough discussion with the client.



CODE OF ETHICS AND PRINCIPLES

PR Council
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New York, NY 10017
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prcouncil.net

Members of the PR Council commit to standards of practice that assure clients, the public and media, employees, and business partners the highest level of professionalism and ethical conduct in every relationship with a Council member. This commitment is a requirement for application and continued membership in the Council.

Our overriding principle is that openness and transparency not only are in the public interest, they are also necessary tools for meeting our clients' objectives. Members of the PR Council embrace our responsibilities to promote open and transparent dialogue. We carry out our business in accordance with the following code of ethics and principles that guide our relationships with clients and the public.

1. We adhere to the highest standards of ethics in the public relations profession.

The employees of public relations firms are members of a profession which has well-established guidelines for ethical behavior through professional organizations such as PRSA and the PR Council as well as within their individual firms. We expect each of our employees to commit themselves to those guidelines, and advise our clients' communications professionals to do so as well.

Members and their employees will be honest and accurate when recording time charges and seeking reimbursement of expenses, and member firms will not solicit or accept kickbacks or under-the-table payments in connection with business development efforts.

2. We protect the integrity of client information. Member firms will serve their clients by applying their fullest capability to achieve each client's business objectives. Members reserve the option to represent more than one client in an industry sector but any apparent conflicts must be vetted with relevant clients. Council firms and their employees will respect client confidences and the privacy of client employees.

Commercial relationships with business partners and vendors will be handled in a businesslike manner. Credit will be given for ideas and services provided by others, consistent with the terms under which those relationships are negotiated.

3. We honor our role in society. In their service to clients, public relations firms play a vital role in encouraging public discourse. The professionalism and objectivity of our firms helps clients engage in that discourse, and clients turn to us for our counsel and assistance to vigorously pursue their organizational goals in educating or persuading audiences that matter most to them. Public relations firms help clients as diverse as government agencies, public and private companies, and not-for-profit groups. In a democratic and free-market society, our clients' goals often put us in the sphere of such complex issues as thorny policy debates, intense market competition or critical education needs in areas of public health, safety and well-being.

◀ **FIGURE 6-6**
Doing the right thing.

The Council of Public Relations Firms' board of directors revised its Code of Ethics in 2009 to exhort members to commit to the highest level of ethics.

Permission to reprint by the PR Council.

- **Honesty.** For example, a client asking a public relations representative to “embellish” the performance the company expects to achieve should be told diplomatically, but firmly, no. Public relations people don’t lie.
- **Expertise.** For example, a client in need of guidance as to whether to accept a sensitive interview invitation for a cable TV talk show must be carefully guided through the pros and cons by a skilled public relations practitioner.
- **Independence.** For example, when everyone in the room—lawyer, human resources, treasurer, and president—agree with the CEO’s rock-headed scheme to disguise bad news, it is the public relations professional’s duty to strike an independent tone.
- **Loyalty.** For example, if a competing client offers a practitioner more money to abandon his or her original employer, the public relations professional should understand that his or her loyalties must remain constant.
- **Fairness.** For example, when a rude and obnoxious journalist demands information, a practitioner’s responsibility is to treat even the most obnoxious reporter with fairness.

What these tenets indicate is that proper public relations practice is just the opposite of what many accuse public relations people of being—deceivers, obfuscators, con artists, spinners, or even liars. Rather, public relations people and practice ought to be “transparent.”³³

Sadly, the practice hasn’t always lived up to these ethical principles. As a consequence, public relations, even more sadly, regularly ranks toward the bottom on credibility surveys. One 2014 Texas Tech study found that while 91% of those surveyed considered public relations professionals to be “smart and informed,” only 11% considered them to possess positive ethical traits.³⁴ Changing this view to one of a more ethical and honest practice is a great challenge for public relations leaders in the 21st century.

▼ LAST WORD

The scandals in government and business and journalism in the first two decades of the 21st century have placed a premium in every sector of society on acting ethically. More than half of the 3,000 workers who took part in a National Business Ethics Survey said they witnessed at least one type of ethical misconduct on their job.³⁵ That’s disgraceful. As the CEO of Eaton Corporation, the manufacturing giant, put it, “There is no truer window into a corporation’s soul than its approach to ethics.”³⁶

The same can be said for the practice of public relations.

The success of public relations in the 21st century will depend largely on how the field responds

to the issue of ethical conduct. Public relations professionals must have credibility in order to practice. They must be respected by the various publics with which they interact. This is as true overseas as it is in the United States. To be credible and to achieve respect, public relations professionals must be ethical. It is that simple.

Stated another way, for public relations practice in general and individual public relations professionals in particular, credibility in the next few years will depend on how scrupulously they observe and apply the principles and practice of ethics in everything they do.

DISCUSSION STARTERS

- 6.1.** How would you define ethics?
- 6.2.** How would you describe the state of ethics in business, government, and journalism?
- 6.3.** How important is the ethical component of the practice of public relations?
- 6.4.** Why have corporations adopted corporate codes of conduct?
- 6.5.** What is corporate social responsibility?
- 6.6.** How significant do you believe the perception of government ethics is to public trust?
- 6.7.** What are the pros and cons of the attorney/adversary public relations model compared to the enlightened self-interest model?
- 6.8.** Is the public more tolerant or less tolerant of ethical violators today? Why?
- 6.9.** What is the significance of the six ethical values that underscore the PRSA Code of Ethics?
- 6.10.** What are the ethical responsibilities of a public relations professional?

PICK OF THE LITERATURE •

Public Relations Ethics

Marlene S. Neill and Amy Oliver Barnes, New York, NY: Business Expert Press, 2017

Excellent overview of the various aspects of ethics in the practice of public relations, according to 150 professional public relations practitioners interviewed by the authors.

The senior professionals, representing corporate, non-profit and agency public relations as well as public relations professors, talk about not only the importance of ethical practice but also how to raise ethical issues with their superiors.

Public Relations Ethics, Marlene S. Neill and Amy Oliver Barnes (New York, NY: Business Expert Press, 2017).

Among topics discussed are how to navigate office politics to earn a position of trust, the ethical responsibilities of a chief communications officer, and the strategies that public relations professionals might pursue in delivering ethical counsel.

This provides a comprehensive summary of the thinking of top public relations professionals on as important a topic as exists in the field, ethics.

CASE STUDY • Axing a Beloved Prairie Home Companion

The sexual harassment/#MeToo tidal wave of 2017, begun by Harvey Weinstein's reprehensible actions, swept away scores of household celebrities in the arts, media, government, and business.

One of those caught up in the Weinstein aftermath was National Public Radio's Garrison Keillor. The accusations against Keillor, his response to them, and the eventual end result were far different and more subtle than those involved in the Weinstein case. Here's a recap.

NPR's Brightest Star

For four decades, Garrison Keillor held forth as NPR's brightest star. As the avuncular host of NPR's most popular program, *A Prairie Home Companion*, Keillor presided over a weekly old-fashioned, homespun variety program of song, satire, sound effects, and nostalgic good humor. It was heard by 4 million listeners a week on 700 public radio stations.

Keillor was a storyteller, humorist, author, voice actor, and astute grammarian, all rolled into one creative, non-threatening

radio host. The show took place in Keillor's imaginary little hometown of Lake Wobegon, where everybody knew everybody else. *A Prairie Home Companion* was "sponsored" by good old Powder Milk Biscuits and Ketchup. Its stars included private eye Guy Noir, a detective, voiced by Keillor, who got into embarrassing—and often very funny—situations. The humor was good-natured and harmless, and its host was more a trusted friend than a radio personality. It was not an overstatement to conclude that the program put Minnesota Public Radio (MPR), from which it originated, at the top of NPR's offerings from 1974 to 2016.

As proof of the high esteem in which Keillor was held, he and his show were parodied on *The Simpsons* and *Saturday Night Live*, and he was the subject of pop songs and book parodies. In 2006, Robert Altman directed a feature film, *A Prairie Home Companion*, starring Keillor as himself and an all-star cast including Meryl Streep, Lily Tomlin, Woody Harrelson, Tommy Lee Jones, Kevin Kline, and Lindsay Lohan (Figure 6-7).

One magazine profile called Keillor "a genius," reminiscent of Mark Twain. But, despite such accolades, Keillor, true to his



▲ FIGURE 6-7 Homespun and heartfelt.

Director Robert Altman's 2006 movie, *A Prairie Home Companion*, featuring Meryl Streep and Lily Tomlin, paid homage to the warm and trusted creation conceived by Garrison Keillor (behind the podium).

Photo: AF archive/Alamy Stock Photo

humble Minnesota heritage, was always low-key and understated, never giving himself any billing or credit on his weekly show. In fact, the only time Keillor's name was ever mentioned on *A Prairie Home Companion* was when a guest referred to him.

No wonder that when Keillor announced plans to retire in 2016, his final show drew 18,000 fans to the Hollywood Bowl in California, and President Obama called him after the broadcast. In retirement, MPR kept Keillor on in an occasional on-air consulting capacity.

An Icon Fired and then Investigated

In late November 2017, in the midst of the #MeToo movement, word spread that Garrison Keillor had been charged with sexual harassment.

The first to report the allegation was Garrison Keillor himself, in an email to the Associated Press, which reported that he had been fired by MPR over "a story that I think is more interesting and more complicated than the version MPR heard."

Hours later, Minnesota Public Radio issued an announcement that it had, indeed, fired its iconic star due to allegations by someone with whom Keillor had worked of inappropriate sexual behavior. MPR added that it also had hired an outside law firm "to investigate the allegations." To many, investigating the alleged infraction after firing the alleged infractor seemed backwards.

After MPR's announcement, Keillor again emailed a reporter to explain in more detail, writing

"I put my hand on a woman's bare back. I meant to pat her back after she told me about her unhappiness and her shirt was open and my hand went up it about six inches. She recoiled. I apologized. I sent her an email of apology later and she replied that she had forgiven me

and not to think about it. We were friends. We continued to be friendly right up until her lawyer called."

Unaccustomed to the spotlight—and particularly shaky in the face of nationwide, social media rebellion by legions of Keillor fans—MPR was slow to respond. Finally, the president of the network elaborated on the allegations against its former star, saying that it had received "multiple allegations related to Garrison's behavior." In response, Keillor insisted that the story he shared publicly was the only incident he could remember.

Stoic in Defeat

In the ensuing weeks and months, while *Prairie Home Companion* loyalists continued to lament the fall of their hero, Garrison Keillor's billings as a speaker around the country and additional media opportunities generally dried up. In an environment dominated by discussions of sexual harassment, hiring a highly visible person facing such allegations wasn't likely.

MPR, facing continued criticism, said, in a statement, "We understand that some listeners are upset and know that the limited information we've made available at this time may not seem to justify such a consequential decision. We want to assure that this decision honors the highest standards they've come to expect from us."

For his part, Garrison Keillor said he was disappointed at the company's response to the allegations. But it was unlikely he would embrace an aggressive public relations campaign to clear his name. Rather, he was characteristically stoic and resigned. Summarized Keillor, "My situation is that I've worked extremely hard on a show that I love for almost 50 years, and somebody else can torch it in one morning, and so it's all gone" (Figure 6-8).



▲ FIGURE 6-8 Alone on the prairie.

After decades of revered status as an ethical and honorable radio personality, Garrison Keillor stood alone after being let go by Minnesota Public Radio in 2017.
Photo: Joel Sartore/National Geographic Creative/Alamy Stock Photo

Questions

- 6.11. What do you think of MPR's response to the complaint that its former lead star was guilty of sexual harassment?
- 6.12. Had Garrison Keillor hired you to defend him, what would you recommend he do?

- 6.13. Assume for a moment that Keillor's explanation of what he did was accurate. Given the strength of the #MeToo movement, do you think, realistically, that Keillor could have changed public opinion about the allegations against him?

For further information, see Camilla Domonoske, "Garrison Keillor Accused of 'Inappropriate Behavior' Minnesota Public Radio Says," *The Two-Way* (November 29, 2017); "Garrison Keillor's Ouster Stemmed from 'Multiple Allegations Over Years,'" *Associated Press* (December 6, 2017); Dialynn Dwyer, "Garrison Keillor Tells Diners in Berkshires That Firing Is 'Kind of Bewildering to Me,'" *Boston News* (November 30, 2017); James Hibberd, "Garrison Keillor Calls Firing 'Poetic Irony' in New Statement," *Yahoo Entertainment* (November 30, 2017); Abby Ohlheiser, "Here's Why the Garrison Keillor Allegations Stand Out," *Washington Post* (December 1, 2017); Fraser P. Seitel, "Saving Garrison Keillor," www.odwyerpr.com (December 11, 2017); St. Paul "Keillor's Conduct: What We Know and Don't Know," *MPR News* (November 30, 2017).

FROM THE TOP •

An Interview with Howard J. Rubenstein

Photo: Oxfam International/Howard J. Rubenstein



Howard J. Rubenstein, president of Rubenstein Associates since founding the firm in 1954, is one of the world's most well-known and respected public relations counselors, advising some of the world's most influential corporations, organizations, and opinion leaders. In addition to managing the day-to-day activities of his firm, Rubenstein is involved in numerous civic and philanthropic organizations. A Phi Beta Kappa

graduate of the University of Pennsylvania, he finished first in his class in the night school division of St. John's University School of Law, which subsequently awarded him an honorary Doctor of Law degree. As an attorney, he served as assistant counsel to the House of Representatives Judiciary Committee.

How would you define the practice of public relations?

Public relations is the art of conveying an idea or message to a wide variety of publics utilizing multiple forms of communications. It can be broadly applied and used to advance the interests of businesses, governments, and society in general. It can achieve objectives as narrow as promoting a product or as broad as creating a movement. The communications themselves can be targeted to the general public or to very select groups of individuals, conveyed via media or person to

person. The tools employed encompass a wide array, from press releases, news conferences, special events, speaking engagements, webinars, blogs, and grassroots organizations down to a single conversation with one influential person.

How important is communications for organizations in today's society?

Communications in its many forms creates and projects messages with the power to affect great change and achieve tremendous success, while a breakdown in communications can lead to dismal failure. Clearly, communications is critical for organizations as they seek public acceptance, support, and understanding of their activities. Communication today is a major focus for Presidents, prime ministers, and legislators, as well as religious leaders, as they try to shape the directions of entire societies and world events.

What are the key attributes that distinguish the best public relations professionals?

Ethics, intelligence, and willingness to put in the time and hard work are core characteristics. Good PR professionals should have the ability to write well and speak effectively. The final attribute is creativity and imagination, combined with an understanding of reality and practicality. Professionals in the field should be able to stretch the envelope as far as technique and methodology go, without forgetting what they are trying to achieve.

What is the key to interesting a journalist in a client's story?

There are many keys to piquing media interest. First, however, you must know the media outlet and understand what a news story is and what a reporter wants to see as the components of a story. You must target and reach out selectively, rather than just send out releases. Then, once you know where to go, find the human-interest angle, keep the pitch succinct, and offer what the reporter needs to cover the story. Forget the term *spinmeister*. Offer a story that is accurate, do it in an honorable and forthright way, and help the reporter do his or her job well. Above all, don't waste reporter's time with something that isn't right for the publication or the beat the reporter covers. And don't be nasty if your idea is rejected. You'll likely want to approach that reporter again some day. Instead take that rejection as a sign that you need to refine the pitch or find a better fit for it.

Interview with Howard J. Rubenstein, used with permission.

What inspired you, personally, to go into public relations?

I was inspired to enter public relations by my father, who was a crime reporter with the *New York Herald Tribune*. From his perspective as a journalist, he believed that PR had the untapped potential to be a great career. Not only did he get me my first account, he explained to me the importance of ethics, honesty, and integrity in dealing with the press, conducting business, and communicating with the public. He taught me the importance of good writing, finding the news value in a story, and working hard to achieve coverage in the media. He was very supportive when I began my company with that single account at my new office, which was also known as *my mother's kitchen table!* He encouraged me and always believed that public relations had a bright future. I remember him saying that public relations as a field was malleable, like clay, and could be formed to fit any idea that I had. As a result, I started out believing that if I was honest, thoughtful, and hard working, I could be successful, earn a living, and establish a good reputation in what was then a barely recognized field. That's what happened, so I guess my father was right.

What are the greatest challenges facing the practice of public relations?

In every aspect of society, leaders seek public relations counsel. Because media scrutiny is so intense today, it takes a professional to understand and advise society's leaders as to how best to respond and engage. As a result, PR people today are professionals with as much credibility and weight as lawyers, accountants, bankers, architects, or engineers. We alone offer the ability to design communications programs, judge their potential, and execute them to achieve results. That guarantees for PR professionals tremendous opportunity and a seat at the table at the highest levels.

Yet for all that progress in the evolution of the profession, there are still too many people, especially in the general public, who hold public relations in low esteem. PR professionals are still viewed in many quarters as snake-oil salesmen, ready to stoop to conquer or employ deceptive tactics. The great challenge today is changing that perception and winning for the profession the respect that it deserves. The way to meet that challenge as an industry is through superb professional performance and continued adherence to the highest ethical and business standards.

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Chapter Objectives

- 7.1.** To discuss the relationship between public relations professionals and lawyers and the importance to public relations practitioners of understanding the law.
- 7.2.** To explore, in particular, the First Amendment, from which free speech emerges.
- 7.3.** To discuss the various areas of the law relevant to public relations professionals, including defamation, disclosure, insider trading, copyright, and internet law.
- 7.4.** To underscore the new importance in the 21st century of litigation public relations.



▲ **FIGURE 7-1** *Crying Wolf?*

AT&T held a press conference in 2017 to warn of dire business consequences if the Justice Department continued to block its planned merger with Time Warner, the owner of anchor Wolf Blitzer's CNN.

Photo: MediaPunch/Shutterstock

As the practice of public relations has increased in power in recent years, its tug of war with the practice of law has increased. Internal tussles between public relations advice on the one hand and legal advice on the other have become a fact of life within many organizations.

But rarely has there been a more open battle between public relations and the law than the one engaged in by telecommunications giant AT&T in 2017, when it went toe-to-toe in the court of public opinion with the U.S. Department of Justice, the nation's primary arbiter of the law.

At issue was the Justice Department's attempt to block a proposed \$85.4 billion merger between AT&T and media colossus Time Warner, owner of, among other properties, HBO, Turner Networks, and the CNN news network. In November 2017, the Justice Department announced it would move to block the merger on anti-trust grounds, on

the grounds the proposed entity would be disposed either to withhold Time Warner content or overcharge for it.

But some suspected the reason for the Justice Department's action was more complicated than that. Specifically, they wondered if President Donald Trump was encouraging his Justice Department to block the sale because CNN was one of his least favorite "fake news" networks.

So AT&T, a company not known for its outspokenness, decided to go public. AT&T CEO Randall Stephenson, in fact, conducted a bare-knuckles press conference—from a room just outside CNN's newsroom!—where he warned of the "*chilling effect*" the government's decision might have. CEO Stephenson also vowed, in no uncertain terms, that AT&T would never sacrifice CNN's independent news judgment (Figure 7-1). For a company that ordinarily shied away from such public contact, the Stephenson public relations offensive was quite remarkable.¹

CEO Stephenson's counter-intuitive public relations approach eventually paid off, as a federal judge ruled against the Trump Administration in the summer of 2018 and approved the merger of Time Warner and AT&T; a verdict the Trump Justice Department quickly appealed.

There has always been a natural tension between public relations practitioners and lawyers. Ideally, public relations counselors and lawyers should work together to achieve a client's desired outcomes. And this is often the case. But there is also a fundamental difference in legal versus public relations advice.

- Lawyers correctly advise clients on what they *must* do, within the letter of legal requirements, to defend themselves in a court of law.
- Public relations advisors counsel clients not on what they *must* do but what they *should* do to defend themselves in a different court—the court of public opinion.

There is a vast difference between the two.

In recent years, however, lawyers have moved increasingly to pursue the publicity turf traditionally held by public relations professionals. Some lawyers have become ubiquitous—on radio and television and in the middle of press conferences—using public relations techniques to further their clients' and their own ends.

In many ways, it makes sense that lawyers and public relations people should work in concert. Public relations and the law both begin with the First Amendment to the Constitution that guarantees freedom of speech in our society.

But in the 21st century ensuring freedom of speech is not as easy as it sounds. One question that was underscored in 2013 by WikiLeaks' public distribution of classified documents stolen by former U.S. security consultant Edward Snowden is, *Where does one's freedom start and another's end?* Another question is, *How much freedom of speech is appropriate—or advisable—in any given situation?* And yet another question is, *How does the freedom of the internet impact on communications rights and responsibilities?*

Such are the dilemmas in the relationship between public relations principles and legal advice.

An Uneasy Alliance

7.1

While public relations professionals and lawyers have worked more closely in recent years, the legal and public relations professions have historically shared an uneasy alliance. Public relations practitioners must always understand the legal implications of any issue with which they become involved, and a firm's legal position must always be the first consideration.

From a legal point of view, normally the less an organization says prior to its day in court, the better. That way, the opposition can't gain any new ammunition that will become part of the public record. A lawyer, the saying goes, tells you to say two things: "*Say nothing, and say it slowly!*"

From a public relations standpoint, though, it may make sense to go public early on, especially if the organization's integrity or credibility is being called into public

To discuss the relationship between public relations professionals and lawyers and the importance to public relations practitioners of understanding the law.

question. In the summer of 2003, for example, when NBA star Kobe Bryant was accused of raping a woman at a Colorado hotel, on the advice of his lawyers and public relations counsel Bryant immediately held a press conference, with his wife at his side, to acknowledge he had erred but denied the charges. A year later, the sexual assault charge was dismissed, and Kobe Bryant, his credibility restored, returned to the NBA to lead his Los Angeles Lakers to the NBA championship in 2009 and continued playing through the 2015 season. By contrast, domestic icon Martha Stewart listened to her lawyers' exhortation to remain silent when charged with lying to federal prosecutors in 2004, and she wound up in the slammer. (See the Case Study at the end of this chapter.)

The point is that legal advice and public relations advice may indeed be different. In an organization, a smart manager will carefully weigh both legal and public relations counsel before making a decision.

It also should be noted that law and ethics are interrelated. The Public Relations Society of America's Code of Professional Standards (see Appendix A) notes that many activities that are unethical are also illegal. However, there are instances in which something is perfectly legal but unethical, and other instances in which things might be illegal but otherwise ethical. Thus, when a public relations professional reflects on what course to take in a particular situation, he or she must analyze not only the legal ramifications but also the ethical considerations.²

This chapter examines the relationship between the law and public relations and the more prominent role the law plays in public relations practice and vice versa. The discussion introduces the legal concerns of public relations professionals today: First Amendment considerations, insider trading, disclosure law, ethics law, privacy law, copyright law, and the laws concerning censorship of the internet—issues that have become primary concerns for public relations practitioners in the 21st century.

A QUESTION OF ETHICS •

Law vs. Public Relations, NFL Style

The National Football League (NFL) may be the richest and most successful sports league in the United States, but lately it has not been an easy road for the NFL. (See Case Study Chapter 11.)

The NFL was shaken in 2014 when one of its star running backs, Ray Rice, was caught on videotape assaulting his then girlfriend. After a long delay and much criticism, the NFL suspended Rice, and he never played in the league again. After taking the heat in the Rice case, the NFL got the message.

Two years later, when its newest star runner, Dallas Cowboys' Ezekiel Elliott, was charged with domestic violence against a former girlfriend—although never formally charged with a crime—the league investigated the charges for a year and then suspended him for six games (Figure 7-2). When Elliott appealed the suspension, the NFL appointed an arbitrator who upheld the suspension.

That's when it started to get interesting.

Immediately, the NFL Players Association (NFLPA) went to court to file a lawsuit against the league on the grounds that

Elliott was never convicted of the crime of domestic violence, suggesting that his former girlfriend's testimony was found suspect. The U.S. District Court of Eastern Texas granted an injunction, and Elliott was temporarily allowed to play—which he did for the Cowboys with great success.

The NFL then appealed the decision in Circuit Court, which overturned the lower court's decision, and Elliott was put back on suspension, until the NFLPA refiled its claim in the New York Southern District Court, which allowed Elliott to play again, "temporarily," until its judge returned from vacation and could issue a ruling. When the judge returned, she ruled against Elliott, and the suspension was on again.

That's when the public relations gates opened. NFL Spokesman Joe Lockhart, a former Bill Clinton press secretary and no stranger to sexual misconduct allegations, called a press conference to condemn the NFLPA's "*blame and shame*" accusations against Elliott's accuser. Lockhart also criticized the NFLPA attorney for criticizing NFL Commissioner Roger Goodell's handling of the evidence. In retaliation, the NFLPA issued an open letter to the media, blasting the

NFL's "desperate attempt to rescue whatever credibility they have left with you and the fans."

The public relations battle likely would have continued except that a third court, hearing another NFLPA appeal, ruled that Elliott had to serve the suspension, which he did grudgingly, while the Cowboys, its star running back now sidelined, failed to qualify for the playoffs.

Questions

1. Do you agree that the NFL should have suspended Elliott even though he wasn't formally charged with a crime?
2. How would you have handled the contretemps with the Players Association had you been the NFL public relations director?



▲ FIGURE 7-2 Bringing him down.

Dallas Cowboy running back Ezekiel Elliott had no trouble evading obstacles or tacklers, but wasn't able to escape a suspension for domestic violence allegations in 2017.

Photo: Albert Pena/Cal Sport Media/Alamy Stock Photo

For further information, see Mike Florio, "NFL, NFLPA Continue Their PR Battle in Ezekiel Elliott Case," www.nbcSports.com (September 16, 2017); Jeanna Thomas, "The Ezekiel Elliott Suspension Explained in a Two-Minute Read," www.sbnation.com (December 24, 2017); and "NFLPA Open Letter to the Media," The National Football League Players Association (NFLPA) (September 15, 2017).

The First Amendment

Any discussion of law and public relations should start with the First Amendment, which states, in part: "Congress shall make no law . . . abridging the freedom of speech . . . or of the press."³ The First Amendment is the cornerstone of free speech in our society. This is what distinguishes democratic nations from many others.

Recent years have seen a blizzard of problems and challenges regarding the First Amendment.

- In 2010, WikiLeaks, an international online organization that then billed itself as a "publisher of private, secret and classified media from anonymous news sources, leaks and whistleblowers,"⁴ shocked the diplomatic world by collaborating with international newspapers to publish secret U.S. State Department diplomatic cables. WikiLeaks' founder, an Australian computer programmer/hacker named Julian Assange, defiantly defended the "public's right to know."⁵

7.2

To explore, in particular, the First Amendment, from which free speech emerges.

- In 2015, after publishing scatological cartoons of the Prophet Muhammad, the satirical French weekly newspaper *Charlie Hebdo* was attacked by Islamist terrorists, who killed 11 staff members and later a French police officer. As offensive as the cartoons were, most democratic nations considered them examples of “freedom of expression”—although as a French publication, *Charlie Hebdo*, of course, wasn’t covered by the First Amendment. World leaders flocked to Paris to join a crowd of 2 million, who marched in solidarity with *Charlie Hebdo*’s right to publish such material.
- That same year, veteran *New York Times* national security reporter James Risen was subpoenaed by the U.S. Central Intelligence Agency (CIA) to reveal the sources he used to report on a failed secret CIA sabotage operation on Iran’s nuclear program. Demanding such disclosures by a reporter may be technically legal, but it flies in the face of journalistic First Amendment concerns. Risen refused to reveal his sources and vowed he’d go to jail first. In the end, U.S. Attorney General Eric Holder backed down and decided not to prosecute the journalist.⁶ Nonetheless, a CIA officer believed to be Risen’s source was found guilty of leaking classified government information and sentenced to 42 months in prison.⁷
- In 2018, the Trump Administration regularly called out journalists for running stories the President frequently labeled “*fake news*,” that stemmed from a torrent of leaks about internal squabbling and poor morale emanating from what was often described as a “*chaotic White House*.⁸ Reporters defended their stories as examples of exercising their First Amendment privilege.

As these cases suggest, interpreting the First Amendment, especially in the internet age, is no simple matter. One person’s definition of obscenity or divulging state secrets or blaspheming may be someone else’s definition of art or freedom of expression. Because the First Amendment lies at the heart of the communications business, defending it is a front-line responsibility of the public relations profession.

7.3

To discuss the various areas of the law relevant to public relations professionals, including defamation, disclosure, insider trading, copyright, and internet law.

Defamation Law

The laws that govern a person’s privacy have significant implications for journalists and other communicators, such as public relations professionals, particularly laws that touch on libel and slander—commonly known as defamation laws—by the media.

Defamation is the umbrella term used to describe libel—a printed falsehood—and slander—an oral falsehood. For defamation to be proved, a plaintiff must convince the court that certain requirements have been met, including the following:

1. The falsehood was communicated through print, broadcast, or other electronic means.
2. The person who is the subject of the falsehood was identified or easily identifiable.
3. The identified person has suffered injury—in the form of monetary losses, reputational loss, or mental suffering.⁹

Generally, the privacy of an ordinary citizen is protected under the law. A citizen in the limelight, however, has a more difficult problem, especially in proving defamation of character through libel or slander.

To prove such a charge, a public figure must show that the media acted with actual malice in their reporting. *Actual malice* in a public figure slander case means that

statements have been published with the knowledge that they were false or with reckless disregard for whether the statements were false. In a landmark case in 1964, *The New York Times v. Sullivan*, the Supreme Court nullified a libel award of \$500,000 to an Alabama police official, holding that no damages could be awarded “in actions brought by public officials against critics of their official conduct”¹⁰ unless there was proof of actual malice. And proving actual malice is a difficult task.

Several historic libel cases have helped pave the case law precedent.

- In a celebrated case in 1986, Israeli General Ariel Sharon brought a \$50 million libel suit against *Time* magazine. The jury criticized *Time* for negligent journalism in reporting Sharon’s role in a massacre in a Palestinian refugee camp. However, the jury couldn’t conclude *Time* acted with “malice” and didn’t render a libel verdict. Sharon got nothing.
- In 1992, *The Wall Street Journal* and its award-winning reporter Bryan Burroughs were served with a \$50 million libel suit by Harry L. Freeman, a former public relations executive of American Express. The suit stemmed from the way Freeman was characterized in Burroughs’ book, *Vendetta: American Express and the Smearing of Edmund Safra*.¹¹ American Express and Freeman both eventually acknowledged that their effort to discredit Safra was wrong.
- In 1996, Atlanta security guard Richard A. Jewell sued both *NBC News* and the *Atlanta Journal-Constitution* for reporting that he was the lead suspect in the Atlanta Olympic bombing, which led to two deaths. The reports caused a media feeding frenzy, which disrupted Jewell’s life and tarnished his name. A decade later, Jewell was cleared of any involvement in the bombing and reached a settlement with his media accusers, averting a libel lawsuit.

The 21st century proliferation of blogs, tweets, Facebook posts, and cable and radio talk shows, where hosts and guests say what they want regardless of factual accuracy or impact on a person’s life, has resulted in the definition of “defamation” becoming more complex and more global.

- In 2008, when a businessman sued for defamation against actor Sacha Baron Cohen for chasing him down Fifth Avenue in a movie in which Cohen’s alter ego, “Borat,” pretended to be a documentary producer, a judge tossed out the case on the grounds that the movie, “while vulgar,” was an attempt at ironic commentary (Figure 7-3).¹²
- In 2016, *Rolling Stone* magazine was mortally embarrassed when a jury found the magazine and a writer liable on multiple charges in a defamation suit based on a gang rape story that *Rolling Stone* was forced to retract. The jury ruled that the magazine and its writer defamed with malice a University of Virginia official in a story about an alleged sexual assault on campus that was created out of thin air.¹³
- In 2017, former Alaskan Governor Sarah Palin unsuccessfully sued *The New York Times* for defamation, when a court ruled the newspaper had not acted “with malice” when an editorial linked her to a 2011 mass shooting in Arizona.¹⁴
- Actress Rebel Wilson had more luck when an Australian jury awarded her \$3.6 million in damages from a magazine that maliciously defamed her by suggesting she was a “serial liar and opportunist who assumed a false name, age and biography in order to advance her career.”¹⁵

Public relations practitioners must be aware of situations involving libel and slander. Many public relations professionals create, write, and edit internal print and online newsletters. In this context, they must be careful not to defame fellow employees or



▲ FIGURE 7-3 **Nice.**

Actor Sacha Baron Cohen, aka “Borat,” came out the winner after he was sued for defamation by a not-so-pleased businessman who appeared in the film.

Photo: STOETZEL/BABIRAD/SIPA/Newscom

others in what they write. The same caution should be the rule for public relations professionals who make statements to the media on behalf of their organizations. Care must be the watchword in such public speech.

Insider Trading Law

Every public relations professional should know the laws that govern his or her organization and industry.

With 150 million Americans participating in the securities markets, either directly or through private pension plans, nowhere in public relations practice is an understanding of the law more important than in the area of securities law.

Every public company has an obligation to deal frankly, comprehensively, and immediately with any information that is considered *material*. A material announcement is one that might cause an investor to buy, hold, or sell a stock. The Securities and Exchange Commission (SEC)—through a series of court cases, consent decrees, complaints, and comments over the years—has painted a general portrait of disclosure requirements for practitioners, with which all practitioners in public companies should be familiar. The SEC’s mandate stems from the Securities Act of 1933 and the Securities

Exchange Act of 1934, which attempted to protect the public from abuses in the issuance and sale of securities.

The SEC's overriding concern is that all investors have an opportunity to learn about material information as promptly as possible. Basically, a company is expected to release news that may affect its stock market price as quickly as possible. Through its general antifraud statute, Rule 10b-5 of the Securities and Exchange Act, the SEC strictly prohibits the dissemination of false or misleading information to investors. It also prohibits insider trading of securities on the basis of material information not disclosed to the public.

In the first years of the 21st century, one celebrated insider trading case involved ImClone Systems' CEO Sam Waksal, who, along with family members, unloaded ImClone stock after he learned that the Food and Drug Administration was about to reject a key ImClone drug. The stock was subsequently crushed, as was CEO Waksal, his family, his stockbroker, and his good friend media star Martha Stewart who were all embroiled in an insider trading scandal. Domestic superstar Stewart, as we will chronicle in the Case Study at the end of this chapter, eventually went to jail for events surrounding the insider trading case.¹⁶

In 2011, billionaire hedge fund manager Raj Rajaratnam was sentenced to 11 years in jail and fined more than \$150 million for using insider tips to buy stocks. One of those from whom he allegedly received tips was Rajat Gupta, a former McKinsey and Company CEO, Goldman Sachs director, and White House state dinner guest, who was convicted of insider trading charges in 2012. In 2013, the giant hedge fund SAC Capital and its high profile founder Steven A. Cohen paid \$1.2 billion to settle a federal insider trading suit and agreed to stop handling other people's money.¹⁷

Nor did journalists escape the accusation of insider trading convictions. In the late 1990s, a columnist at *The Wall Street Journal* was convicted of illegally using his newspaper column to give favorable opinions about companies in which a couple of his stockbroker friends had already invested heavily. He went to jail. Again in 2017, the *Journal* fired its chief foreign affairs correspondent for his involvement with an international businessman who was one of his key sources.¹⁸

As to public relations counselors, they, too, must be careful to act only on public information when trading securities. Public relations people are privy to all manner of confidential information. When they violate that confidentiality, they risk not only losing clients but also violating the law. In 2008, for example, the public relations firm Brunswick suspended its Dow Chemical account executive when her husband traded on confidential news that Dow was considering an acquisition. Dow Chemical promptly dropped its relationship with Brunswick.¹⁹ In 2014, an investor relations executive was sentenced to two years in jail for taking positions in stocks mentioned in press release drafts being prepared for his firm's clients and then exiting the positions right after the release was made public.²⁰

Disclosure Law

Besides cracking down on insider trading, the SEC has challenged corporations and public relations firms on the accuracy of information they disseminate for clients. Today, in an environment of mergers, takeovers, consolidations, and the incessant rumors that circulate around them, knowledge of disclosure law, a sensitivity to disclosure requirements, and a bias toward disclosing rather than withholding material information are important attributes of public relations officials.

Now, with Twitter an instant-disclosure medium, securities trading extending beyond the traditional 9:30 a.m.–4:00 p.m. stock market trading day, and online trading

a reality for millions of investors, the responsibilities on public relations people for full and fair and immediate disclosure have intensified. The SEC, in turn, has increased its focus on private meetings between companies and analysts, which are closed to the media and therefore to individual investors who rely on the media for financial information.

To combat such selective disclosure, the SEC in 2000 adopted Regulation FD, or “fair disclosure.” Basically, Regulation FD requires companies to widely disseminate any material announcement. In recent years, that disclosure has included disseminating corporate announcements via social media, especially Twitter and Facebook.

In the past, companies would share such material news with securities analysts or large investors, who then might act on it before the public found out. Under Regulation FD, even if a material announcement slips out to an analyst, the company is obligated to issue a news release within 24 hours “to provide broad, non-exclusionary disclosure information to the public.”²¹

In 2002, Regulation FD was bolstered by the passage of the Sarbanes–Oxley Act, sponsored by U.S. Senator Paul Sarbanes and U.S. Representative Michael Oxley. Sarbanes–Oxley came about as a result of the large corporate financial scandals involving Enron, WorldCom, Global Crossing, and Arthur Andersen. Among other requirements, Sarbanes–Oxley mandated all publicly traded companies to increase financial disclosure and submit an annual report of the effectiveness of their internal accounting controls to the SEC, with criminal and civil penalties for noncompliance.²²

After the global financial crisis of 2007–2008, when many of the formerly most solid financial institutions shut down and the world was thrown into financial meltdown, legislators returned to the cause of protecting investors. What emerged in 2010 was the Dodd–Frank Wall Street Reform and Consumer Protection Act, designed to increase transparency of financial reporting and also to create a new consumer protection agency, the Consumer Financial Protection Bureau.

In 2013, the SEC declared that companies could use social media outlets, such as Facebook and Twitter, to announce key information in compliance with Regulation FD. The SEC took the action after Netflix CEO Reed Hastings announced on his personal Facebook page that for the first time, Netflix viewers had consumed one billion hours in a month. At first, the SEC vowed to punish Netflix for disclosing “material information” on social media. But then it changed its mind and the rule.²³

In the early years of the Trump Administration’s initiative to deregulate, two early targets were Dodd–Frank and the Consumer Financial Protection Bureau, whose hard-charging chairman ultimately resigned.

FYI

Public Relations Lawyers

The sad, sorry saga of Harvey Weinstein, recounted in the Case Study in Chapter 1, gave rise to the #MeToo movement, helped increase representation of women and minorities in Hollywood, and instilled a renewed sense of power for those who previously had felt relatively powerless.

It also gave new prominence to a 21st century phenomenon, “public relations lawyers”: attorneys who rose to fame and made their living primarily using public relations tactics as media personalities.

Without question, the grande dames of this genre were a mother-daughter combination who rarely missed an opportunity to plead their cases—literally—on cable television talk shows. Mama Gloria Allred and daughter Lisa Bloom were cable TV staples, as they defended women charging sexual harassment allegedly committed by film stars, TV icons, fabled athletes, and even a President of the United States (Figure 7-4).



▲ **FIGURE 7-4 Dynamic duo.**

Gloria Allred (right) and her daughter, Lisa Bloom, were high-wattage, Hollywood sexual harassment lawyers, who were more widely known for their public relations activities than their courtroom actions.

Photo: Fapian/Zodiac/Splash News/Alamy Stock Photo

Allred, born Gloria Bloom, was raped at gunpoint on a vacation to Acapulco in her 20s and was forced to have an abortion. After marrying William Allred, she graduated law school and dedicated her practice to fighting sexual harassment and discrimination and for women's rights. She soon discovered that the quickest way to gain recognition was to go on television, which she did at the drop of a hat and with a vengeance.

Allred (who almost always wore, yes, "all red") was a one-woman wrecking crew, taking on high-profile cases against the likes of California governor and actor Arnold Schwarzenegger, rocker Tommy Lee, Congressman Anthony Weiner, comedian Bill Cosby, and even President Donald Trump. All were accused of various degrees of sexual misconduct. To announce her intentions, Allred would follow a modus operandi of first convening a press conference, then going on television to elaborate, and then, if necessary, taking the case to court.

Bloom followed in her mother's footsteps by becoming a civil rights attorney and landing a gig as a commentator on Court TV. Proving that the legal apple doesn't fall far from the tree, Bloom, too, began representing alleged sexual harassment victims of high-profile men, including former Fox TV star Bill O'Reilly, former Congressman John Conyers, and also, like her mother, Cosby and Trump.

Mother and daughter were not without critics, who questioned their publicity-seeking legal style. In 2016, Bloom made the mistake of going to work for accused sex offender Harvey Weinstein, who had, as it turned out, agreed to finance a film project based on a book she had written. The backlash was immediate and unforgiving. One of Bloom's clients, comedian Kathy Griffin, fired her and denounced her for charging exorbitant fees and "fame-whoring."

Such is the danger of being a high-visibility public relations lawyer.

Ethics Law

The laws on ethical misconduct in society have gotten quite a workout over the last few decades and often involved public relations activities and professionals.

- In one celebrated case, translated into the 1999 movie *The Insider*, the late public relations counselor John Scanlon faced a grand jury subpoena stemming from his efforts to discredit Jeffrey Wigand, an internal critic of Scanlon's cigarette client Brown & Williamson.²⁴
- In the political public relations arena, the activities of lobbyists, in particular, have been closely watched by Congress since the imposition of the Federal Regulation of Lobbying Act of 1946. The late White House Deputy Chief of Staff Michael K. Deaver, a well-known public relations professional, was found guilty of perjury over his lobbying activities, fined \$100,000, and sentenced to community service. In 2005, political public relations professional Michael Scanlon, an associate of crooked lobbyist Jack Abramoff, also was sentenced to hard time as a result of conspiracy to bribe public officials.²⁵
- In 2018, the Trump Administration, run by the first businessman to become President, seemed to bounce from one high-profile ethical infringement to another, from Trump advisor Kelly Anne Conway suggesting Fox News viewers buy daughter Ivanka Trump's fashion products to Ivanka's husband Jared Kushner's involvement

in business deals while at the White House to charges against the President himself, accused of rewarding the Trump Organization through his office.²⁶

In recent years, campaign finance reform to limit—if not eradicate—the acceptance by legislators of favors and money from wealthy interest groups intensified until 2010. In that year, the Supreme Court’s decision in the *Citizens United v. FEC* case held that the First Amendment prohibited the government from restricting independent political expenditures by corporations and unions.

Consequently, the emergence of so-called Super PACs, political action committees, that could accept unlimited contributions from individuals, unions, and corporations for the purpose of making independent expenditures, proliferated. Accordingly, politics in America is currently dominated by money. So much so that in 2016, candidates running for federal office spent a record \$6.4 billion on their campaigns, while lobbyists spent \$3.15 billion to influence the government in Washington. Both sums were twice that of 2000 levels and underscored a continuing problem of citizens’ lack of trust in a system where money often means access and power.²⁷

Copyright Law

One body of law that is particularly relevant to public relations professionals is copyright law and the protections it offers writers. Copyright law provides basic, automatic protection for writers, whether a manuscript is registered with the Copyright Office or even published. Under the Copyright Act of 1976, an “original work of authorship” has copyright protection from the moment the work is in “fixed” form. The word *fixed* means that the work is sufficiently permanent to permit it to be perceived, reproduced, or otherwise communicated.

What kinds of works are subject to copyright? According to the law, the following:

- Literary works, including articles
- Songs, including words and music
- Plays and choreographed dance performances
- Art
- Motion pictures and audiovisual works
- Sound recordings
- Architectural works²⁸

Copyright law gives the owner of the copyright the exclusive right to reproduce and authorize others to reproduce the work, prepare derivative works based on the copyrighted material, and perform and/or display the work publicly. That’s why the late Michael Jackson had to pay \$47.5 million for the rights to the Beatles’ compositions to the duly sworn representatives and heirs of John, Paul, George, and Ringo.

Copyright law is different from trademark law, which refers to a word, symbol, or slogan, used alone or in combination, that identifies a product or its sponsor—for example, the Nike swoosh.

What courts have stated again and again is that for the purposes of criticism, news reporting, teaching, scholarship, or research, use of copyrighted material is not an infringement but rather constitutes *fair use*. Although precise definitions of fair use—like everything else in the law—are subject to interpretation, such factors as “the effect on the future market” of the copyrighted work in question or the “volume of quotation used” or even whether the “heart” of the material was ripped off are often considered.



▲ FIGURE 7-5 Not so “Amazing” Photograph.

Singer Ed Sheeran settled a \$20 million copyright infringement case in 2017, when two song writers sued him for stealing the chorus from their song “Amazing” for his song “Photograph.”

Photo: Everett Collection Inc/Alamy Stock Photo

That’s why the Associated Press (AP), one of the nation’s largest news organizations, announced in 2008 that it had had it with bloggers copying its works and would impose strict guidelines on the blogosphere as to how much quoting and copying of AP stories would be tolerated. The AP dictum was aimed squarely at the vague doctrine of *fair use*.²⁹

Perhaps the most famous recent example of copyright infringement was the verdict in 2015 that Robin Thicke and Pharrell Williams copied a classic Marvin Gaye song while writing “Blurred Lines.” The jury awarded Gaye’s children \$7.3 million for the copyright theft.³⁰ The Blurred Lines verdict may have influenced singer Ed Sheeran in 2017 to settle a similar \$20 million copyright infringement case for his song, “Photograph.” Two song writers accused Sheeran of stealing the chorus word-for-word from their song, “Amazing” (Figure 7-5).³¹

Over time, the Supreme Court has strengthened the copyright status of freelance artists and writers—many of whom either are or are hired by public relations practitioners—ruling that such professionals retain the right to copyright what they create “as long as they were not in a conventional employment relationship with the organization that commissioned their work.” As a result of this ruling, public relations professionals must carefully document the authorization that has been secured for using freelance material. In other words, when engaging a freelance professional, public relations people must know the law.

Internet Law

The internet has changed the rules for the laws affecting free speech. The premise in American law is that “not all speech is created equal.”³² Rather, there is a hierarchy of speech, under Supreme Court precedents dating back many decades, that calibrates the degree of First Amendment protection with, among other tests, the particular medium of

expression. For example, speech that would be perfectly acceptable if uttered in a public park could constitutionally be banned when broadcast from a sound truck.

Dealing with the internet has introduced new ramifications to this legal principal. Indeed, cyberlaw has brought into question many of the most revered communications law principles.

Censorship In 1996, Congress passed the Communications Decency Act (CDA) as an amendment to a far-reaching telecommunications bill. The CDA introduced criminal penalties, including fines of as much as \$250,000 and prison terms up to two years, for making “indecent” speech available to “a person under 18 years of age.”

Then, in the summer of 1997, the Supreme Court, in a sweeping endorsement of free speech, declared the CDA unconstitutional. The decision, unanimous in most respects, marked the highest court’s first effort to extend the principles of the First Amendment into cyberspace and to confront the nature and the law of this new, powerful medium. In summarizing the Court’s finding, Justice John Paul Stevens said the Court considered the “goal of protecting children from indecent material as legitimate and important” but concluded that “the wholly unprecedented breadth of the law threatened to suppress far too much speech among adults and even between parents and children.”³³

In 1998, Congress passed the Children’s Online Privacy Protection Act (COPPA) that details what a website operator must include in a privacy policy, when and how to seek verifiable consent from a parent or guardian, and what responsibilities an operator has to protect children’s privacy and safety online including restrictions on the marketing to those under 13. While children under 13 can legally give out personal information with their parents’ permission, many websites altogether disallow underage children from using their services due to the amount of COPPA paperwork involved. The Federal Trade Commission enforces COPPA.

In the 21st century, the difficulty in interpreting such rules has become apparent. In 2015, a California court sentenced a so-called revenge-porn website owner guilty for posting intimate, compromising, and explicit images of people and then charging the victims to take down the images. This move by a state to challenge First Amendment free speech on the internet underscored the gray area that internet censorship has become.³⁴

Internet censorship overseas is another ongoing battleground, with countries like China, Iran, Saudi Arabia, and Turkey, among many others, notorious for their internet filters. The Obama Administration joined other democratic governments in leading a global effort to deploy “shadow” internet and mobile phone systems to undermine repressive government attempts to censor dissidents.³⁵

The pro-business Trump Administration, through its Federal Communications Commission, moved to dismantle so-called net neutrality rules that prohibited broadband providers from blocking websites or charging for higher-quality service or certain content. Critics charged that dismantling net neutrality would be disastrous for equal internet access.³⁶

Intellectual Property Few cyberlaw cases have drawn more headlines than the 2001 case against Napster, the popular application that allowed users to exchange music files. Because Napster ran the file-swapping through a central server, it was an easy target for legislation.

In the end—for Napster—the protest, led by those heavy-metal defenders of the First Amendment, Metallica, and backed by the large music companies, convinced the court that the company was infringing on copyright protections of intellectual property. Two years later, the recording industry waged all-out war on those who downloaded intellectual property without paying.

On a broader level, intellectual piracy of everything from video games to music to software has become rampant, with estimates that 90% of virtually every form of intellectual property in China is pirated (including this book!).³⁷ In 2012, a pitched battle was waged in Congress on the piracy of intellectual property. On one side stood the Hollywood producers of records, books, and movies who fretted that the fruits of their labors were being stolen. On the other side stood firms such as Google, Twitter, Facebook, and Reddit that saw the Stop Online Piracy Act (SOPA) momentum as a threat to creativity. In the end, the might of the upstart internet crowd proved too strong, and SOPA was defeated.³⁸

The SOPA conflict was a harbinger of battles to come, with media companies on one side and internet providers on the other. While a number of nations, including the United States, Japan, Canada, South Korea, and Australia, signed the Anti-Counterfeiting Trade Agreement, in July 2012, European legislators rejected the international treaty to crack down on digital piracy. Although the United States vowed to put the treaty into effect, even without European Union involvement, the debate into international piracy of intellectual property was destined to continue.³⁹

The Trump Administration in 2018 publicly called out China for intellectual property theft. The President, who prided himself on his relationship with China's leader Xi Jinping, nonetheless threatened to fine China for forcing U.S. companies to transfer their intellectual property to China as a cost of doing business there.⁴⁰ Sure enough, in the summer of 2018, President Trump announced \$50 billion in tariffs on Chinese goods, in an attempt to protect the intellectual property of U.S. companies.⁴¹

E-Fraud Fraud is fraud, no matter where it is domiciled. And on the World Wide Web, where anyone who wants to can choose anonymity, strip in a logo, and pretend to be someone he or she is not, fraud runs rampant. (Just check your inbox for "inheritance gift" emails from Nigeria!)

The problem is that e-crooks are not only difficult to stop but also difficult to define, at least in legal terms. Often it depends on companies policing the internet themselves, through clear policies that access and email remain the property of the company and rules governing the use of non-work emails and websites on company time. In recent years, case law has been littered with corporate attempts to prosecute employees suspected of e-fraud. For example:

- Varian Medical Systems of Palo Alto won a \$775,000 verdict against two former employees who posted 14,000 messages on 100 message boards accusing the firm of being homophobic and of discriminating against pregnant women.
- A California court ruled against a fired Intel employee who sent emails criticizing the company to about 35,000 staffers.
- St. Paul-based insurer Travelers accused one former vice president of trying to sabotage the company with anonymous blog postings, charging, among other things, that one executive was little more than a "glorified secretary" and another "would stab his own mother in the back to make money." Travelers took the case all the way to federal court.⁴²

And then there's "click fraud," which threatens to disrupt the largest search engines. Search engines rank listings by the number of clicks they receive: the more clicks, the higher the ranking. Click fraud occurs when a concerted effort is initiated to register multiple clicks to drive specific listings higher in a search-ranking algorithm. Such fraudulent activity affects marketers, who advertise on a site and pay rates based on usage.⁴³

Social Media The advent of social networking has introduced yet another legal dimension to the internet. As noted, the SEC has moved in recent years to introduce new disclosure rules that clarify how companies can use Facebook, Twitter, and other social networks to disseminate information, provided they meet certain requirements. One area where social media law is particularly thorny is in terms of employee relations.

In 2010, the National Labor Relations Board accused a company of illegally firing an employee after she criticized her supervisor on her Facebook page. The Board argued that “whether it takes place on Facebook or at the water cooler, it was employees talking jointly about working conditions, in this case about their supervisor, and they have a right to do that.”⁴⁴

Or do they?

With organizations now sensitive to the potential use of social media to discuss employment matters, lawyers recommend that employers “review their Internet and social media policies to determine whether they are susceptible to an allegation that the policy would reasonably tend to chill employees in the exercise of their rights to discuss wages, working conditions, and unionization.”⁴⁵

Increasingly, universities and potential employers are seeking access to social media to monitor activities. The University of North Carolina at Chapel Hill, for example, adopted a student athlete policy that appointed a coach to be responsible “for having access to and regularly monitoring the content of team members’ social networking sites and postings.”⁴⁶

Social media became part of the Trump Administration’s initiative to control immigration when in 2017, the U.S. Department of Homeland Security announced that it would begin collecting social media information and search results for naturalized citizens and immigrants with a green card.⁴⁷ Meanwhile, Facebook attempted to avoid further regulations by self-policing its political advertising, after the social media giant became embroiled in a scandal involving Russian-inspired fake ads during the 2016 presidential campaign.

These are but a few of the burgeoning legal issues that surround social media and the World Wide Web.

7.4

Litigation Public Relations

To underscore the new importance in the 21st century of litigation public relations.

In court cases, plaintiffs and defendants are often scrupulously warned by judges not to influence the ultimate verdict outside the courtroom, especially by seeking positive publicity.

Fat chance.

In the 21st century, with social media, cable news, talk radio, and traditional media incessantly jabbering about possible trials, upcoming trials, and current trials, there is little guarantee that any jury—or a judge, for that matter—can be objective about any high-profile legal case.

That’s why litigation public relations has become so important.

Litigation public relations can best be defined as managing the media process during the course of any legal dispute so as to affect the outcome or its impact on the client’s overall reputation.

Although court proceedings have certain rules and protocols, dealing in the public arena with a matter of litigation has no such strictures. The Sixth Amendment to the Constitution guarantees accused persons “a speedy and public trial, by an impartial jury,”⁴⁸ but television commentary by knowledgeable—and in many cases, unknowledgeable—“experts” can help influence a potential jury for or against a defendant. Among the most lethal was *Headline News* commentator and former attorney Nancy Grace, who was often wrong but never in doubt. Among other pearls of wisdom,

Grace accused members of the Duke lacrosse team of “gang raping” a stripper, and alleged that singer Whitney Houston’s death in 2012 might have been the result of foul play. Courts found her wrong on both counts, and her ratings kept right on rising until she mercifully retired from the airwaves in 2016.

The fact is that communication has become central to the management of modern litigation. Smart lawyers understand that with social media, the internet, and cable TV, in particular, being so pervasive, they have little choice but to engage in litigation public relations to provide their clients with every advantage.

For example, in 2011, when International Monetary Fund President Dominique Strauss-Kahn was charged with rape by a New York City chambermaid, his surrogates engaged in a blistering publicity attack of the woman’s history and character. The case was dropped.

According to one counselor who works exclusively with litigation, there are seven keys to litigation visibility.

1. **Learn the process.** All involved should be aware of the roadmap for the case and the milestones ahead that may lend themselves to publicity.
2. **Develop a message strategy.** Think about what should be said at each stage of a trial to keep the press and public focused on the key messages of the client.
3. **Settle fast.** Settlement is probably the most potent litigation visibility management tool. The faster the settlement, the less litigation visibility there is likely to be. This is often a positive development.
4. **Anticipate high-profile variables.** Often in public cases everybody gets into the act—judges, commentators, jury selection experts, psychologists, and so on. Always anticipate all that could be said, conjectured, and argued about the case. Always try to be prepared for every inevitability.
5. **Keep the focus positive.** Ultimately, it’s a positive, productive attitude that leads to effective negotiations with the other side. So the less combative you can be—especially near settlement—the better.
6. **Try settling again.** Again, this ought to be the primary litigation visibility strategy—to end the agony and get it out of the papers.
7. **Fight nicely.** Wars are messy, expensive, and prone to producing casualties. It is much better to be positive. This will give both sides a greater chance of eventually settling.⁴⁹

▼ LAST WORD

As our society becomes more contentious, fractious, adversarial, and litigious, public relations must become more concerned with the law. On the one hand, because management must rely so heavily on legal advice and legal judgments, it is imperative that public relations people understand the laws that govern their organizations and industries. Public relations people must understand that their views may

differ from those of an attorney. As a defense lawyer once described his role, “You should do what a client wants, period. That’s what you’re paid for.” By contrast, public relations people are paid to advise their clients what is “the right thing to do.” And they should never shrink from that obligation.

On the other hand, public relations advisors must depend on “buy-in” from others in management.

Lawyers are among the most influential of these associates. Therefore, knowing the law and forming an alliance with legal counselors must be a frontline objective for public relations professionals.

Beyond the working relationship between public relations people and lawyers, the practice of public relations has, itself, wrestled with legal questions in recent years. The government has gone after firms that “deceptively advertised” online, through such tactics as posting fictitious online reviews of products or restaurants or similarly endorsing clients’ wares through blogs and Twitter.⁵⁰ Increasingly, public relations practice is based on legal contracts: between agencies and clients, employers and employees, purchasers and

vendors. All contracts—both written and oral—must be binding and enforceable.

In recent years, controversy in the field has erupted over noncompete clauses, in which former employees are prohibited, within certain time parameters, from working for a competitor or pitching a former account. Time and again the courts have ruled in favor of public relations agencies and against former clients in noncompete cases.

Add to this the blurring of the lines between public relations advice on the one hand and legal advice on the other, and it becomes clear that the connection between public relations and the law will intensify dramatically in the 21st century.

DISCUSSION STARTERS

- 7.1.** What is the difference between a public relations professional’s responsibility and a lawyer’s responsibility?
- 7.2.** What have been recent challenges to the First Amendment?
- 7.3.** How can someone prove that he or she has been libeled or slandered?
- 7.4.** What is meant by the term *insider trading*?
- 7.5.** What is the SEC’s overriding concern when considering disclosure?
- 7.6.** How have Regulation FD and Sarbanes–Oxley changed the disclosure environment?
- 7.7.** Whom does copyright law protect?
- 7.8.** What are some of the dominant issues in laws affecting the internet?
- 7.9.** What are several general principles with respect to litigation public relations?
- 7.10.** What general advice should a public relations professional consider in working with lawyers?

PICK OF THE LITERATURE •

Advertising and Public Relations Law, 2nd Edition

Roy L. Moore, Carmen Maye, and Erik L. Collins. New York: Routledge, 2011

This book offers an exhaustive examination of the First Amendment as it relates to the advertising and public relations businesses.

It traces the history of the First Amendment and tracks the interpretation of the amendment through the decades. The real merit of this volume is in its discussion of New Media

implications on free speech law in terms of both individuals and corporations. Libel, defamation, privacy, and related public relations-oriented statutes are discussed in depth.

Copyright, patents and trademarks, Federal Trade Commission regulations, and others are explained. An excellent legal primer for public relations professionals.

Roy L. Moore, Carmen Maye, and Erik L. Collins, *Advertising and Public Relations Law*, 2nd Edition (New York: Routledge, 2011).

CASE STUDY**The Rise and Fall and Rise Again of Queen Martha**

One of the most famous and significant cases in 21st century public relations history is the legal battle that threatened the reputation and empire of domestic queen Martha Stewart. The case pitted the law vs. public relations; the law “won,” and Martha Stewart lost—big time.

In the winter of 2001, few Americans could dispute that Martha Stewart was “Queen of the Kitchen.” Few Americans enjoyed more robust acclaim in terms of public opinion.

The tough-willed, hot-tempered, blunt-speaking perfectionist had morphed from a modest upbringing to become the undisputed, multimillionaire-closing-in-on-billionaire, domestic doyenne—the homemaker’s homemaker, arbiter of all things tasteful in the home, *numero uno* in all matters of domesticity.

Her parents, Martha and Edward Kostyra, were Polish Americans, her mother a school teacher and her father a pharmaceutical salesman, who raised their five children in Nutley, New Jersey. Her mother taught young Martha cooking and baking and sewing, and her father taught her how to garden. That was just the start the serious-minded model student needed. After a brief fling in the stock brokerage business, Stewart began to build an empire that would become the stuff of legends.

- She coauthored a book called *Entertaining*, which became an instant bestseller.
- She followed that with lucrative publishing ventures, producing videotapes, dinner-music CDs, television specials, and dozens of books on matters of domesticity—from hors d’oeuvres to pies, from weddings to Christmas, from gardening to restoring old houses.
- She appeared regularly on NBC’s *Today Show*, becoming a household name.
- She became a board member of the New York Stock Exchange.
- She delivered lectures for \$10,000 a pop and charged eager attendees \$900 a head to attend seminars at her farm.
- She signed an advertising/consulting contract with department chain Kmart for \$5 million.
- She presided over a long-running syndicated television show, *Martha Stewart Living*.
- She parlayed the program into the creation of multimillion-dollar company Martha Stewart Living Omnimedia (MSO), with branches in publishing, merchandising, and internet/direct commerce, selling products in eight discrete categories.

Without exaggeration, Stewart was Queen of the Kitchen, until one day when it all came tumbling down.

Selling in the Nick of Time

In December 2001, Stewart sold nearly 4,000 shares of biotech company ImClone Systems stock under mysterious circumstances. The company was run by Stewart’s pal Samuel Waksal,

who had presided over a rapid stock price ascension, due principally to the company’s promising cancer-fighting drug, Erbitux, which had been submitted for approval to the Food and Drug Administration (FDA).

With everything looking good for the company, it was surprising on December 27 that Stewart decided suddenly to unload all her shares at a \$60 price. The next day, the case got even more curious: On December 28, the FDA rejected ImClone’s application for Erbitux. The stock cratered. But Stewart, having presciently decided to sell the day before, avoided a \$51,000 loss.

Serendipity perhaps?

The government didn’t think so.

Charges of Insider Trading

Stewart may have been smart, but according to the U.S. Attorney for the Southern District of New York, she was not smart enough to know about the FDA’s timing in rejecting Erbitux. Rather, argued the government, Stewart had learned about the FDA’s intention from her stockbroker. The stockbroker had received an urgent call from Waksal, then relayed the information to Stewart, who immediately decided to sell.

If true, Stewart had acted on classic insider information, a federal crime, which gives privileged investors an unfair advantage over all other shareholders. Indeed, prosecutors argued that this was precisely what had happened and that Stewart and her stockbroker were both guilty of illegally acting on insider information. Accordingly, in June 2003, the U.S. Attorney formally indicted both of them.

Stewart’s attorneys argued that this was not the case at all. Stewart, they said, had always had a “plan” to sell her stock when it reached the \$60 level.

After Waksal was sentenced to seven years in prison and family members he had tipped off were fined, attention turned to Stewart. The question was: Would she come forward and acknowledge “mistakes,” or would she hold firm and deny any impropriety?

Silence of the Doyenne of Domesticity

The answer, painfully revealed over the next excruciating two years, was that Stewart became the “silent diva.” She said little to elaborate on the case, preferring instead to allow her attorneys to speak for her. In one celebrated appearance on the *CBS Morning Show*, Stewart defiantly cut cabbage while an exasperated host tried to get her to react to the charges against her.

Soon thereafter, Stewart’s guest appearances on television became fewer and fewer. She stopped lecturing. Her ubiquitous Kmart ads ceased to appear. She resigned as chair and CEO of MSO. Indeed, the woman who had seemed to be everywhere was now virtually out of sight.

In her place, a battery of lawyers negotiated with the Feds and argued with the judge to have her charges reduced. U.S. District Judge Miriam Cedarbaum, taking a page from the domestic doyenne herself, adamantly refused to throw out the charges.

Those who expected the typically feisty Stewart to come out fighting were sadly disappointed. In June 2003, Stewart unveiled a personal website on which she proclaimed her innocence and insisted she would fight to clear her name. But beyond those website notations, she remained tight-lipped. Meanwhile, in the vacuum of Stewart's silence, the internet, cable television, and the public press were flooded with "experts" surmising on just what poor Martha Stewart had done to herself.

An Excruciating Trial

Stewart's trial began January 27, 2004, two full years after the alleged insider trading violation.

The trial was excruciating for Martha. For two months, she was forced to endure a phalanx of cameras greeting her in the morning for her arrival at the lower Manhattan courthouse and waiting for her each evening when the day's session was over (Figure 7-6). She said nothing, again relying on attorneys to explain to the media exactly what went on that day in court. As her lawyers spoke each night, a stone-faced Stewart would stare straight ahead. Meanwhile, the share price of her company's stock plummeted and her reputation wasn't far behind.

On March 5, 2004, with the world waiting breathlessly for the verdict, Stewart was found guilty on all four counts of obstructing justice and lying to federal investigators. Her broker was also found guilty, and both faced prison time.



▲ FIGURE 7-6 The diva falls.

Grim-faced Martha Stewart is flanked by lawyers after she was sentenced to five months in prison in July 2004.

Photo: ZUMA Press, Inc./Alamy Stock Photo

About an hour after the verdict was read, Stewart—radiant as ever with a fur around her neck, a black overcoat, and a tasteful, brown leather bag at her side—strode poker-faced down the stairs of the courthouse, accompanied by her lawyers. She did not respond to questions shouted at her by reporters. Instead, the following statement was posted on her website:

Dear Friends,

I am obviously distressed by the jury's verdict but I take comfort in knowing that I have done nothing wrong and that I have the enduring support of my family and friends.

Her lawyers vowed to appeal.

Four months later, after losing her job, her company, close to \$500,000 in stock market wealth, and her reputation, Martha Stewart lost her freedom. She was sentenced to five months in prison and two years' probation.

Still, Stewart was defiant, telling a television interviewer that "many, many good people have gone to prison" and comparing herself to Nelson Mandela, South Africa's persecuted anti-apartheid hero. And outside the courthouse, after her sentencing, an unrepentant Stewart vowed, "I'll be back."

Winter at Camp Cupcake

Stewart's attorneys, taking the lead from their defiant client, appealed her conviction and vowed to spare her hard time. But suddenly, in mid-September 2004, Stewart had a change of heart.

Shocking her supporters, the domestic doyenne announced that she would not wait for the verdict on her appeal and rather wished to begin serving her five-month prison sentence early "to put this nightmare behind me, both personally and professionally."

And so, on October 8, 2004, Stewart, 63, and a multimillionaire, slipped into the women's federal prison in Alderson, West Virginia, to join petty thieves and embezzlers and drug offenders, all performing day labor at rates between 12 cents and 40 cents an hour.

And wonder of wonder, Stewart was an ideal prisoner. Reports from "Camp Cupcake," as it was labeled, were glowing in their praise of Stewart.

- She praised her guards, the warden, and fellow prisoners.
- She wrote passionately about the unfairness of federal sentencing guidelines, which shackled many of those whom she met behind the walls.
- She even participated in prison events—failing to win the "prison bakeoff."

On Thursday, March 3, 2005, when Stewart was sprung from the slammer to return to her 153-acre Westchester estate, she was met with cameras, microphones, and a hero's welcome.

Comeback Kid

It was a new Martha Stewart who emerged from prison. She was more relaxed, more open, and more available to questioners. She also was very much back in business.

- She signed deals to begin two new television shows—one a daytime lifestyles show, the other a spinoff of Donald Trump's *The Apprentice*.

- She signed a \$30 million deal for a Sirius satellite radio program.
- She signed a lucrative book deal to produce a Martha memoir, discussing her time in prison.

By the winter of 2005, Stewart was back with a vengeance. She still hadn't acknowledged—even after her conviction and subsequent jail time—that she had done anything "wrong." But there would be ample opportunity for an admission, as Martha momentum—"Martha Mo"—began to build and the "queen" set out to retake her throne.

On January 6, 2006, the United States Court of Appeals for the Second Circuit rejected the arguments of Stewart's lawyers and upheld her conviction.

With time, Martha Stewart was back on television and prominent once again. But the layoff in prison had clearly taken its toll. While Martha was gone, a number of other homemaking heroines—led by the younger Rachel Ray—and celebrity chefs had moved eagerly to supplant her.

By 2015, Martha Stewart had regained her footing as a media force to be reckoned with. She introduced new television shows, wrote new books, and lent her name to retail chains looking to hitch their wagon to a star. By the winter of 2017, in her seventh decade, Martha Stewart had slowed down a bit, content to author a lifestyle blog on all things Martha.

For further information, see Michael Barbaro, "Court Rejects Appeal by Martha Stewart," *The New York Times* (January 7, 2006): C3; Krysten Crawford, "Martha: I Cheated No One," *CNN Money* (July 20, 2004); Krysten Crawford, "Martha, Out and About" (March 4, 2005); Gene Healy, "Lessons of Martha Stewart Case," *Cato Institute* (July 16, 2004); "Martha Stewart Wants to Enter Prison Early," *CBC News* (September 16, 2004); Leon Lazaroff, "Martha Stewart Guilty," *Chicago Tribune* (March 6, 2004); Brooke A. Masters, "Stewart Begins Prison Term," *Washington Post* (October 9, 2004): EO1; Fraser P. Seitel, "Martha's Final PR Hurdle," www.odwyerpr.com (March 6, 2005); Fraser P. Seitel, "Martha Finally Gets PR Religion" (August 26, 2005); "Stewart Convicted on All Charges," *CNN Money* (March 5, 2004); Kaitlynn Tiffany, "Over 10 Years, Martha Stewart Has Quietly Become the Perfect Blogger," *The Verge* (May 3, 2017); "Timeline of Martha Stewart Scandal," *Associated Press*, Copyright 2005.

And while it was clear that the domestic diva would never again want for money, fame, or power, nonetheless it was also safe to assume that in terms of public opinion and reputation, Martha Stewart would never fully get back to where she had been prior to taking her fatal fall.

Questions

- 7.11. How would you assess Martha Stewart's initial choices between a "legal" or a "public relations" response to the charges against her?
- 7.12. What key public relations principle did Martha Stewart violate?
- 7.13. Had you been advising her, what public relations strategy and tactics would you have recommended? How "vocal" should she have been?
- 7.14. How important, from a public relations perspective, was her decision to go to jail early?
- 7.15. What public relations strategy should Stewart adopt now?
- 7.16. Should she acknowledge that she made mistakes?

FROM THE TOP •

An Interview with Robert Shapiro



Robert Shapiro (right) and a former client, O. J. Simpson.
Photo: Ken Lubas/KRT/Newscom

Celebrity attorney Robert Shapiro, co-founder of Legal Zoom, has represented many of Hollywood's most famous and notorious defendants, from his tenure as a member of football great and accused murderer O. J. Simpson's "dream team" to his defense of legendary record producer and convicted murderer Phil Spector. After his successful defense of O. J. Simpson in 1995, Robert Shapiro offered the following insights into how a modern-day lawyer views public relations.

How do you view a lawyer's public relations responsibilities?

When we are retained for those high-profile cases, we are instantly thrust into the role of a public relations person—a role for which the majority of us have no education, experience, or training. The lawyer's role as spokesperson may be [as] equally important to the outcome of a case as the skills of an advocate in the courtroom.

How important is the media to a trial?

The importance and power of the media cannot be overemphasized. The first impression the public gets is usually the one that is most important. The wire services depend on immediate updates. Therefore, all calls should be returned as quickly as possible.

“No comment” is the least appropriate and least productive response. Coming at the end of a lengthy story, it adds absolutely nothing and leaves the public with a negative impression.

How important are relationships with the media in a trial setting?

Initial relationships with legitimate members of the press are very important. Many times a lawyer will feel it is an intrusion to be constantly beset by seemingly meaningless questions that take up a tremendous amount of time. But the initial headlines of the arrest often make the sacred presumption of innocence a myth. In reality, we have the presumption of guilt. This is why dealing with the media is so important.

How carefully should lawyers construct answers to reporters' questions?

Just as you would do in trial, anticipate the questions a reporter will pose. Think out your answers carefully. Use

Excerpted from Robert Shapiro, “Secrets of a Celebrity Lawyer,” *Columbia Journalism Review* (September/October 1994): 25–29. Copyright © 1994 Columbia Journalism Review. Reprinted by permission.

great care in choosing your words. Keep your statements simple and concise. Pick and choose the questions you want to answer. You do not have to be concerned with whether the answer precisely addresses the question, since only the answer will be aired.

What about dealing with the tabloids?

My experience is that cooperating with tabloid reporters only gives them a legitimate source of information which can be misquoted or taken out of context and does little good for your client. My personal approach is not to cooperate with tabloid reporters.

What about dealing with television?

The television media, either consciously or unconsciously, create an atmosphere of chaos. Immediately upon arriving at the courthouse, you are surrounded by television crews. We have all seen people coming to court and trying to rush through the press with their heads down or covering them with newspapers or coats. Nothing looks worse. I always instruct my clients upon arrival at the courthouse to get out in a normal manner, to walk next to me in a slow and deliberate way, to have a look of confidence and acknowledge with a nod those who are familiar and supportive.

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