

# The Acceptance and Use of Public Relations Practices among Kansas Litigators

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**ABSTRACT:** Because of a rash of recent high-profile trials, the practice of litigation public relations (LPR) has come under close scrutiny. LPR is the use of public relations techniques by attorneys to advance their clients' interests. Many in the legal community frown upon its use, saying it detracts from the true purposes of the judicial system. Some defense attorneys believe it is a logical response to the seemingly greater access prosecutors have to the news media. Although most state bars have rules that govern pretrial publicity, they are rarely enforced and have been challenged in the courts. Although some question whether LPR has any influence upon the courts, there is anecdotal evidence that, indeed, it does.

A survey of Kansas litigators suggests that LPR is more accepted in theory than in practice. LPR does not appear to be in widespread use. When it is used, it appears to be under close supervision of attorneys. Three groups appear most likely to use LPR: litigators working in organizations that employ larger numbers of attorneys, private litigators and younger litigators. Growth in the field appears likely. However, the environment for continued use of cameras in courtrooms appears to be chilly, if not hostile.

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## INTRODUCTION

*The New York Times* has proclaimed that “the era of the lawyer as press agent is in full swing.”<sup>1</sup> For many, this is not welcome news.

While serving as chairman of the Criminal Justice Standards Committee of the American Bar Association, William Jeffress Jr. said, “A lot of us think defense attorneys and prosecutors shouldn’t be playing to the press and becoming public relations agents for their clients.”<sup>2</sup> One New York judge complained, “Lawyers now feel it is the essence of their function to try the case in the public media.”<sup>3</sup>

U.S. District Court Judge John Lungstrum of Kansas City, Kansas, fears that the true purpose of the judicial system is being lost in all of this posturing. “The system isn’t about winning at all costs,” Judge Lungstrum said. “It’s about finding truth.”<sup>4</sup>

Not surprisingly, some attorneys vigorously defend the use of public relations in connection with their practices. The late William M. Kunstler, who served as defense counsel in some of the most controversial trials of the past generation, wrote in the Winter 1992 *Media Studies Journal* that the use of pretrial publicity is necessary to balance scales of justice that he believes are tipped unfairly toward the prosecution. “Whenever and wherever practicable, fire must be met with fire,” Kunstler wrote.<sup>5</sup> Former O.J. Simpson attorney Howard Weitzman said that in high-profile cases lawyers must “become involved in the public relations part of the case to at least even the playing field.”<sup>6</sup>

Amy Fisher attorney Eric Naiburg said publicity—even negative publicity—may be legally beneficial. When a newspaper published a client’s confession before the start of a high-profile murder case, Naiburg said he was able to weed out potential jurors negatively affected by the article. The situation also allowed him to seek out jurors who said they had an open mind—what he calls “a defense attorney’s dream.”<sup>7</sup>

## LITIGATION PUBLIC RELATIONS

At issue is litigation public relations (LPR), the use of mass communications techniques to influence events surrounding legal cases. Although its focus is often upon the relationship between reporters and attorneys, including preparation of news releases, coaching for interviews and media monitoring, LPR can also involve the use of other mass communications techniques. These include the use of focus groups, surveys and courtroom exhibit preparation.

A rash of high-profile cases—most notably the double-murder trial of O.J. Simpson—has brought LPR practices under greater scrutiny. It is a controversy rooted in the U.S. Constitution, which guarantees freedom of speech and of the press in the First Amendment and fair and open trials in the Sixth Amendment. As Richard Winfield, general counsel to the Associated Press has noted, “A case as notorious as the O.J. Simpson case points up the contradictions and ambiguities we tolerate in the name of making the First and Sixth Amendments work.”<sup>8</sup>

Since few states have laws that limit what prosecutors and defense attorneys can say before trial, it is generally left to state bar associations to regulate pretrial comment.<sup>9</sup> Most of these regulations mirror Rule 3.6 of the ABA’s Model Rules of Professional Conduct. The rule states that “a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.”<sup>10</sup> However, these rules are rarely enforced. “It’s hard to prove that some out-of-court statement has an impact on a trial,” said New York University law professor Stephen Gillers. “So, essentially, there’s a rule but there really isn’t any rule.”<sup>11</sup>

In addition to the difficulty of proving the impact of pretrial publicity, Deborah Rhode, an ethics specialist at the Stanford Law School, said there are two other reasons that disciplinary rules are rarely enforced. She told the ABA Journal that First Amendment restrictions must be “narrowly tailored.” A more practical reason she cited is that because of the priorities of an underfunded judicial system, “there are more important matters to worry about.”<sup>12</sup>

The waters were muddied even further by the U.S. Supreme Court in June 1991, when it reversed sanctions against a Nevada attorney who had conducted a news conference to counter negative publicity about his client. In *Dominic P. Gentile v. State Bar of Nevada*, the court said the rule, as interpreted by the Nevada Star Bar, was too vague. In his opinion for the majority, Justice Anthony M. Kennedy wrote, “In some circumstances press comment is necessary to protect the rights of the client and prevent abuse of the courts.” In a concurring opinion, Justice Sandra Day O’Connor wrote, “Both Gentile and the disciplinary board have valid arguments on their side, but this serves to support the view the rule provides insufficient guidance.”<sup>13</sup>

In the wake of the Gentile case, the American Bar Association amended Model Rule 3.6 (Trial Publicity), the rule upon which the Nevada code was based, in August 1995. The amended rule permits attorneys to make “reasonable” statements that serve to mitigate “the substantial undue prejudicial effect of recent publicity not initiated by the lawyer of the lawyer’s client.” At the same time, the ABA House of Delegates also amended Model Rule 3.8 (Special Responsibilities of a Prosecutor), urging prosecutors to “refrain from making extrajudicial comments that have substantial likelihood of heightening public condemnation of the accused.”<sup>14</sup>

## THE EFFECT ON JURORS

At the heart of the issue is the degree, if any, to which these extrajudicial tactics influence jurors. Norbert L. Kerr, a professor of psychology at Michigan State University, said, "There is a reasonable body of research that suggests strongly that pretrial publicity can have a biasing effect on jurors." Kerr favors delaying trials until publicity fades.<sup>15</sup> Albert Alschuler, a professor of criminal law at the University of Chicago, sees things differently. "Jurors are the freshest, most independent people in the criminal justice system," he said.<sup>16</sup> In a report on jury reform in New York, one juror said, "Some of us even watched TV during the trial, but it didn't make any difference—we just considered the evidence."<sup>17</sup>

Alschuler suggested the greatest impact of publicity is on prosecutors and judges, who he said are more likely to take a tougher stand when under the public's gaze.<sup>18</sup> That may have been a dynamic at work in the case of a 12-year-old Florida boy, known to millions only as Gregory K., who sought to sever his relationship with his mother. The young man's legal team included a public relations practitioner who was instrumental in getting an interview with Gregory Kingsley broadcast by the ABC-TV news magazine *20/20*. The judge cited comments made in that interview, but not entered into evidence, in granting the boy's request.<sup>19</sup>

In an attempt to gauge the degree of potentially prejudicial pretrial information being disseminated, a content analysis of crime stories in 14 major newspapers was carried out over an eight-week period of 1993. The stories were measured for prejudicial content based upon categories outlined in the ABA's Model Rules. Researchers found that "27 percent of the suspects described in crime stories were associated with at least one of the ABA categories that define potentially prejudicial publicity."<sup>20</sup> Although this relatively high percentage did cause the researchers some concern, they noted that "the mere presence of prejudicial information reported about a criminal suspect does not inherently mean that he or she will be denied a fair trial."<sup>21</sup>

According to that same research, "police-authorities" were most often attributed as the source of potentially prejudicial statements. Prosecutors were the second most-cited source in most categories. Defense attorneys were usually found near the bottom of the list in most categories. Typical was the category "opinions of guilt," where 40.9 percent of potentially prejudicial statements were attributed to police, 5.1 percent to prosecutors and 2.9 percent to defense attorneys.<sup>22</sup>

Richard Stack of American University has said that the increasing role of publicists in litigation must be closely watched. The seeking of publicity is, perhaps, the most visible form of litigation public relations. Stack said attorneys, either themselves or through the use of public relations practitioners, jockey for publicity in an attempt to sway the pool of potential jurors and as part of the competition between the prosecution and defense counsel.

Citing the drug trial of Washington, D.C., Mayor Marion Barry, Stack noted, "Sometimes a victory in the court of public opinion is even more significant than it is in a trial court." Stack claimed that Barry's attorney "never missed an oppor-

tunity to pitch his case to the media” and was able to “put the federal government on trial for being overzealous in pursuit of his client.”<sup>23</sup> Barry, acquitted of 12 of the 13 drug-related charges facing him, was elected to the city council and later reelected mayor after his release from prison.

Perhaps never has the aggressive use of extrajudicial statements been more in evidence than in the O.J. Simpson double-murder trial, where the defense vigorously courted public opinion prior to voir dire:

By late August, the stream of press releases and leaks had crested toward a flood. Reporters received faxed copies of a letter (Defense Attorney Robert) Shapiro wrote challenging the integrity of blood samples used for DNA testing before it was delivered to (Judge Lance) Ito or prosecutor Marcia Clark. At about the same time, the defense suggested to several media outlets that initial DNA tests were favorable to Simpson, only to see results tightening the odds his blood had been found at the scene. In a singular act of chutzpah, Shapiro announced that prejudicial publicity was likely to prevent his client from getting an unbiased jury.<sup>24</sup>

Of course, the defense was not alone in its attempts to sway the jury pool. While the defense was positioning O.J. Simpson as a victim of police racial bias, the prosecution was positioning Nicole Brown Simpson as a victim of domestic violence.

### **THE DEBATE OVER CAMERAS IN THE COURTROOM**

Central to the LPR debate is the role of cameras in the courtroom. Their reintroduction to American courtrooms over the past decade has permitted prosecutors and defense attorneys to make appeals to a much broader audience. According to one newspaper advertisement, Court TV brings its viewers “the truth, the whole truth and some damn good lying.” Its founder, Yale Law School graduate Stephen Brill, says “I have an inner confidence that I can make some legal stuff interesting to people.”<sup>25</sup>

Taking an opposite view is Robert Lichter, director of the Center for Media and Public Affairs, who believes live coverage of widely-publicized trials “turns us into a nation of voyeurs.”<sup>26</sup> Lichter is not alone. *The National Law Journal* reports that jurors, particularly women jurors, do not want cameras in the court. Fifty-six percent of jurors polled said they thought cameras have no place in the court. Only a third of those polled said they thought they belong. Although male jurors were split on the issue, two out of three women jurors polled said they did not want cameras in the court.<sup>27</sup>

Stephen Hess, an analyst with the Brookings Institute, believes that there is a “certain inconsistency” in arguing that television cannot influence the outcome of a trial. “To me, having a fair trial, the Fifth Amendment, is more important than the First Amendment,” he said.<sup>28</sup>

The 1991 Florida rape trial of William Kennedy Smith seemed to fan the flames of controversy. Although Smith was acquitted, Lichter said, "The one thing we will never know is the conscious or unconscious degree to which witnesses, the judge, the prosecutor, the defense were influenced by the cameras, were acting roles for a national audience." Attorney Abbe Lowell, who doubles as a commentator for the Cable News Network, said, "A lawyer cannot afford to play to the public at large and not the jury at hand."<sup>29</sup>

Also debated are the kinds of proceedings journalists choose to cover. Some attorneys and judges complain that the only time reporters want cameras and microphones in the court as so-called "sensational" trials. "The trials where requests were made for media coverage seem to be such that the desired effect was to titillate rather than educate and inform the public," wrote Judge Otis H. Godfrey, Jr. of Minnesota's second judicial district. "Such sensational trials are the very ones where difficulties arise in management by the trial judge, and in maintenance of proper decorum to ensure a fair trial."<sup>30</sup>

Writing in the same article, Minneapolis radio reporter Curtis Beckmann stated, "Those cases regarded by the legal community as 'sensational' are regarded by journalists as 'the most newsworthy.'" Beckmann wrote, "A fuller understanding by judges and lawyers of news judgments seems necessary."<sup>31</sup>

Another issue is whether camera coverage in the court will improve public understanding of any attitudes toward the judicial process. A 1989 experiment in Madison County, Kentucky, provides more of an indicator than a definitive answer. Thirty persons viewed an edited videotape of a civil trial that researcher Paul Raymond of Hartwick College in Oneonta, New York, described as having "only slight entertainment value." Although 57 percent of the viewers said they learned something about the judicial process from their experience, Raymond reports that the participants' confidence in the courts was largely unaffected by the coverage.<sup>32</sup>

## METHODOLOGY

A survey funded by a University of Kansas General Research Grant was administered with the cooperation of the Kansas Bar Association. Its goal was twofold: to determine the degree to which LPR is practiced by and is accepted among litigators. It is descriptive research that is designed to enlighten as to the current environment and to lay the groundwork for seminal research.

For the purposes of this research, litigators are defined as trial attorneys. Persons with law degrees but do not practice in the courtroom do not fit this definition. The sampling frame was the approximately 1,600 KBA members who are litigators. These trial attorneys constitute less than one quarter of the KBA's total membership. Litigating attorneys are listed in the following KBA membership classifications: criminal law prosecution, criminal law defense, commercial and business litigation, and general civil litigation. A systematic random sample of

these categories was drawn, and 388 self-administered surveys were mailed September 8, 1995. By the end of the month, 179 surveys, or 46.1 percent, were returned. Two of the surveys were returned blank.

Although designed to measure the use and acceptance of LPR, neither the survey instrument or the cover letter accompanying it included the phrase "public relations." Because "public relations" is a term often misunderstood and sometimes used as a pejorative, it was felt that its use might bias the survey. Instead, respondents were informed that the purpose of the survey was to measure "the use of mass communication techniques in the practice of law." Prior to sampling, the survey instrument was pre-tested among members of a Kansas City, Missouri, law firm. Several other individuals, including some litigators, were provided the opportunity to comment upon the format and content of the survey instrument.

Respondents were asked whether they had, within the past two years, undertaken any of 11 actions typically undertaken by LPR practitioners: mock trial/juries, focus groups, survey research, background research (information gathering), communications skills counseling, media relations counseling, service as a spokesperson, service as a writer (i.e. preparing news releases), the use of video news releases (VNRs), the preparation of courtroom exhibits and displays, and monitoring of the media. The selection of these categories was based upon the results of the literature review, interview research and the pre-testing of the survey instrument. A brief description of each LPR action was provided.

When respondents indicated that they had undertaken any of these actions within the past two years on behalf of a client, they were asked two contingency questions: (1) whether this was accomplished using in-house resources, going to an outside consultant, or both; and (2) how often each technique was employed. All respondents were then asked the degree to which they felt the taking of each action on behalf of their clients was an appropriate activity.

In addition to the questions relating directly to the practice of LPR, respondents were asked about several free press/fair trial related issues. Specifically, respondents were asked about their attitudes about talking with reporters, media coverage of trials, extended television coverage of trials, and the O.J. Simpson trial. To aid in the analysis, respondents were also asked about their legal experience, the type of law each practices, and the number of attorneys each respondent's firm, company or organization employs. The survey instrument was tested among litigators prior to its administration.

## **USE AND APPROVAL OF LPR ACTIONS**

Of the 11 LPR actions listed in the survey, only four had been taken on behalf of clients within the past two years by a majority of the respondents. (Table 1) The most frequently taken action was courtroom exhibit/display preparation (86.4 percent). Second was background research (79.9 percent), followed by media monitoring (58.4 percent) and communications skills counseling (52.0 percent). Less than half of the respondents said they had taken

any of the following LPR actions on behalf of clients within the past two years: spokesperson (15.7 percent), writer (15.7 percent), media relations counseling (15.1 percent), mock trials/juries (11.7 percent), focus groups (9.6 percent), survey research (5.1 percent), and VNRs (2.2 percent).

When asked whether it is appropriate for attorneys to take those same actions on behalf of their clients, a majority of the respondents answered in the affirmative for nine of the 11 listed LPR actions. (For the purposes of this analysis, the response was considered to be in the affirmative if the respondent either "agreed" or "strongly agreed" with the appropriateness of the LPR action on a client's behalf.) Courtroom exhibit/display preparation (99.4 percent) and background research (97.2 percent) had the highest approval percentages. Third was communications skills counseling (88.9 percent), followed by media monitoring (86.2 percent), mock trial/juries (77.6 percent), focus groups (69.6 percent), survey research (68.2 percent), media relations counseling (57.5 percent), and writer (50.9 percent). The only two LPR actions that failed to receive approval from a majority of the respondents were spokesperson (47.9 percent) and VNRs (37.9 percent).

### IN-HOUSE VERSUS OUTSIDE CONSULTANTS

The LPR actions taken on behalf of clients within the past two years appear to have been accomplished through the exclusive use of resources within the firm, corporation or organization. Of the 11 listed LPR actions, five had been taken entirely in-house by more than half of the respondents: VNRs (100 percent), communications skills counseling (88.2 percent),

TABLE 1

#### Use, Acceptance and Sources of LPR Actions (by percentage)

	<i>Used LPR within Past Two Years</i>	<i>Approval of Use of LPR Actions</i>	<i>LPR Actions Performed In-House</i>	<i>LPR Actions Performed by Consultants</i>	<i>LPR Actions by Consultants and In-House</i>
Mock Trials/Juries	11.7	77.6	42.9	42.9	14.3
Focus Groups	9.6	69.9	29.4	41.2	29.4
Survey Research	5.1	68.2	14.3	57.1	14.3
Background Research	79.9	97.2	48.3	3.5	48.3
Communications Skills	52.0	88.9	82.8	10.6	6.5
Media Relations	15.1	57.5	43.5	21.7	34.8
Spokesperson	15.7	47.9	57.7	11.5	30.8
Writer	15.7	50.9	55.6	22.2	22.2
Video News Releases	2.2	37.9	100.0	0	0
Exhibits/Displays	86.4	99.4	24.8	3.3	71.9
Media Monitoring	58.4	86.2	81.4	0	18.6



media monitoring (81.4 percent), spokesperson (57.7 percent), and writer (55.6 percent). Only survey research (57.1 percent) was accomplished by a majority of the respondents through the exclusive use of outside consultants.

The actions for which outside consultants were most frequently employed, either exclusively or in concert with internal resources, were determined through a process of data reduction. This required a combining of the "outside" and "both" responses (or, to put it another way, elimination of all responses that indicated the actions were accomplished entirely by using internal resources). This approach reveals that among those LPR actions undertaken with the involvement of outside consultants, courtroom exhibit/display preparation ranked first (75.2 percent). Second was survey research (71.4 percent), followed by focus groups (70.6 percent), mock trials/juries (57.2 percent), media relations counseling (56.5 percent), and background research (51.8 percent).

### **FREQUENCY OF USE**

Respondents who indicated that they had used a particular LPR action on behalf of a client within the past two years were also asked to estimate the percentage of cases in which the action had been used. For the purposes of this study, frequent use is defined as any action used in more than 30 percent of the cases. The surveyed litigators indicated that they made frequent use of seven of the 11 listed LPR actions. Topping the list of LPR actions frequently used was courtroom exhibit/display preparation, used by 74.6 percent of the litigators in more than 30 percent of their cases. This was followed by background research (60.2 percent), communications skills counseling (59.2 percent), media monitoring (24.5), spokesperson (7.6 percent), writer (7.4 percent), and mock trials/juries (4.8 percent).

If frequent use is defined as use in more than half of the cases, the order does not change for the top four LPR actions. Courtroom exhibit/display preparation was used in more than half of the cases by 61.0 percent the respondents, followed by background research (41.3 percent), communications skills counseling (35.5 percent), media monitoring (9.8 percent), mock trials/juries (4.8 percent), spokesperson (3.8 percent), and writer (3.7 percent).

### **ENVIRONMENTAL FACTORS**

In an attempt to determine whether the use of LPR is influenced by environmental factors, an index was developed. For each of the listed LPR actions used, one LPR index point was added to each litigator's score. (For example, if a respondent had used each of the listed LPR actions within the past two years, his or her LPR index score would be 11.) A bi-variate analysis examined differences according to experience, organization size and type of law practiced. (Table 2)

Experience, as measured by the numbers of years as a member of the bar, may have some influence on the use LPR. There is little difference in the mean LPR index among those with less than five years experience (3.82), with six to 10 years experience (3.56) and with 11 to 20 years experience (3.87). However, the mean drops to 2.27 for respondents with 21 or more years of experience. That could be a reflection of more mature litigators who are set in their ways and less susceptible to change. However, it could also be an artifact of a smaller analysis pool—only half the size of the other categories.

The number of attorneys employed by a firm, corporation or organization also appears to have an influence. The LPR mean for litigators who work by themselves was 2.66. It rose to 3.39 for those in organizations with two to five attorneys. For litigators employed in organizations with more than 20 attorneys, the mean was 4.22. This appears to be logical, because it seems reasonable to assume that the larger organizations have more resources to engage in LPR.

It is more difficult to measure influence by the kind of law practiced by each litigator. Because of the manner in which the Kansas Bar Association handles its rolls, it is possible for a respondent to give be listed in more than one of the four membership categories used to single out litigators for this survey. Despite this overlap, the analysis suggests that private litigators are more aggressive in the use of LPR than government prosecutors. The LPR mean for the criminal prosecu-

TABLE 2

LPR Index Crosstabulation			
	<i>Reported Instances of LPR Actions</i>	<i>n</i>	<i>LPR Index Mean</i>
Years Experience in the Bar			
≤5	210	55	3.82
6-10	178	50	3.56
11-20	178	46	3.87
≥21	59	26	2.27
Type of Law Practiced			
Criminal Prosecution	52	19	2.74
Criminal Defense	193	58	3.33
Commercial and Business Litigation	391	104	3.76
	487	137	3.55
Number of Attorneys Employed within Firm/ Organization			
1	101	38	2.66
2-5	183	54	3.39
6-20	160	36	4.44
21-50	58	14	4.14
≥51	141	35	4.03

tors was 2.74, compared with 3.33 for criminal defense litigators, 3.76 for commercial & business litigators, and 3.55 for general civil litigators.

One possible explanation has to do with money. Government budgets are increasingly becoming tighter while a client, theoretically, at least, has bottomless pockets. However, the lower mean LPR index among prosecutors may also be evidence of what many defense attorneys have claimed is the government's built-in publicity advantage. It is logical to assume that if law enforcement agencies are trumpeting their cases before the public, the defense would have to be more aggressive in LPR than the prosecution to narrow the public relations gap. In either event, this is an area worthy of further research.

### **LITIGATOR ATTITUDES TOWARD THE MEDIA**

Respondents were asked the degree to which they agreed or disagreed with the statement, "There are circumstances in which it is appropriate for an attorney to speak to the media on behalf of a client." An overwhelming majority of the respondents, 91.4 percent, indicated that they either "agreed" or "strongly agreed" with the statement. There were no major differences among experience, type of practice, or organization size.

The respondents were asked the degree to which they agreed or disagreed with the statement, "Overall, the news media have been fair in reporting on cases in which I have been personally involved." Those who either agreed or strongly agreed with that statement outnumbered those that either disagreed or strong disagreed by 46.6 percent to 20.2 percent. Prosecutors answered in the affirmative 57.9 percent of the time, compared with 46.3 percent for non-prosecutors. (Again, please note that these categories are not mutually exclusive.) Litigators affiliated with organizations employing five or fewer attorneys answered in the affirmative 50.5 percent of the time, compared with 42.4 percent for those employed by organizations with more attorneys. Respondents who had been members of the bar 10 or fewer years answered in the affirmative 45.7 percent of the time, compared with 51.3 percent for their more experienced counterparts.

### **CAMERAS IN THE COURTROOM**

The next two questions carried implications for the future of cameras in the courtroom. The respondents were asked the degree to which they agreed or disagreed with the statement, "The public has a better understanding of the inner-workings of the American judicial system because of extended television coverage of trials by Court TV and other cable TV channels." Only 35.6 percent of the respondents indicated that they either agreed or strongly agreed with the statement. A majority, 59.3 percent, said they either disagreed or

strongly disagreed with the statement. This pattern continued when analyzed for experience, type of practice or organization size.

Respondents were also asked the degree to which they either agreed or disagreed with the following statement: "The public has a better understanding of the inner-workings of the American judicial system because of media coverage of the O.J. Simpson trial." Nearly eight out of 10 respondents, 79.1 percent, said they either disagreed or strongly disagreed with the statement. Only 19.7 percent either agreed or strongly agreed. There was virtually no difference based upon organization size.

Agreement with the statement was higher among litigators with 10 or fewer years of experience, 22.3 percent compared with 13.8 percent among more experienced litigators. Given the Simpson verdict, it also surprising that prosecutors were in greater agreement with the statement (36.8 percent) than non-prosecutors (20.2 percent). However, it should be noted that the survey was conducted in the late stages of the Simpson trial, before the verdict was rendered.

## SUMMARY

Litigation public relations appears to more acceptable to litigators in theory than in practice. Of the four LPR actions most frequently used by respondents, only one, media monitoring, appears to be beyond the normal scope of the practice of law. It is reasonable to expect attorneys to use courtroom exhibits/displays and background research in the preparation of their cases. It is also reasonable to expect attorneys to counsel their clients on how best to handle questions, whether they come from reporters or other attorneys. When attorneys use LPR, they appear to want it done under their close supervision—either in house or through close coordination with an outside consultant.

It is not surprising that LPR techniques are more frequently used in organizations that employ a greater number of attorneys. These organizations are more likely than their smaller counterparts to have greater financial and personnel resources at their disposal. Nor is it surprising that private litigators appear to be more disposed than their public colleagues to using LPR for the same reasons.

However, it also appears reasonable to expect the use of LPR to continue to grow. Nine out of 10 surveyed litigators indicated that there are circumstances in which it is appropriate for attorneys to speak with reporters. As the index analysis shows, younger attorneys appear to be more receptive to LPR. Because it appears that prosecutors, as a group, are more satisfied with media coverage, more defense attorneys may be tempted to use LPR to balance the scales. These factors, plus the ABA's loosening of its restrictions against pretrial publicity, point toward continued growth.

In the area of free press/fair trial issues, the survey suggests dissatisfaction with cameras in the courtroom. Although the questions did not specifically address their propriety, the strength of the negative response should be a cause for concern among those who champion extended broadcast coverage of trials. In the

wake of the Simpson trial, Chief Judge Gilbert S. Merritt of the Sixth U.S. Circuit Court of Appeals in Cincinnati said he is "a little more skeptical" about cameras in the courtroom. Merritt had been previously described as an advocate.<sup>33</sup> This negativity may be an artifact of the Simpson trial. However, it is a trend that bears watching.

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