The Art of (Litigation PR) War

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Surviving in today’s litigious business environment, particularly given our instantaneous and 24/7 media, requires careful planning. The key to survival may be found in the 2,500-year-old Chinese masterpiece, The Art of War. The author, General Sun Tzu, was an extraordinary philosopher and military strategist during the reign of the King of Wu in China. His compelling and detailed advice (contained in 13 chapters) on tactics, maneuvering, and the politics of war is as valuable to 21st century business owners and litigants in today’s traditional and social media environment as they were to Sun Tzu’s troops more than two millennia ago.

LAY OUT AN EFFECTIVE PUBLIC RELATIONS PLAN (BEFORE IT IS NEEDED)

“The general who wins a battle makes many calculations in his temple before the battle is fought. . . many calculations lead to victory, and few calculations to defeat . . It is by attention to this point that I can foresee who is likely to win or lose.”

–Chapter VI (“Weak Points and Strong”), 19.

Careful planning is the key to survival. This includes an honest assessment of your opponent’s strengths and weaknesses—as well as your own. Consider the following time-tested advice in developing an effective public relations plan:

- Prepare: Lay out your PR communication plans in anticipation of events.
  “With more careful calculations, one can win; with less, one cannot.”
  –Chapter I (“Laying Plans”), 26.

- Assemble your “crisis team” with clearly defined responsibilities.
  “A confused army leads to another’s victory.”
  –Chapter III (“Attack By Stratagem”), 16.

- Calculate your adversaries’ weaknesses and maneuvers—and public perception of yours.
  “To secure ourselves against defeat lies in our hands, but the opportunity of defeating the enemy is provided by the enemy himself.”
  –Chapter IV (“Tactical Dispositions”), 2.

- Strive to “do the right thing” in response to a problem or event; it is good business and engenders good public relations.
  “Do the right thing and don’t try to compete for outside alliances.”
  –Chapter XI (“The Nine Situations”), 55.

- Find trouble before it finds you.
  “Know the enemy, know yourself.”
  –Chapter X (“Terrain”), 31.
Develop a good relationship with the media, and use news/web crawlers to monitor events relevant to your business. Make sure personnel “on the ground” funnel relevant intelligence to your PR point person.

“Those who do not use local guides are unable to obtain the advantages of the ground.”
–Chapter XI (“The Nine Situations”), 52.

Always plan for the worst.

“As water has no constant form, there are in warfare no constant conditions.”
–Chapter VI (“Weak Points and Strong”), 32.

IMPLEMENT YOUR PR PLAN EFFECTIVELY
Successful public relations plans require effective execution. This necessitates a unified front, simplified theme, and an effective spokesperson.

Important messages should come from the top.

“Command your people in a way that gives them a higher shared purpose.”
–Chapter X (“Terrain”), 26.

Identify an official company spokesperson—and choose wisely. (Desired attributes: calm, good judgment, focused, authoritative; a Walter Cronkite look-alike would not be bad.)

If Sun Tzu had known the late TV anchorman Walter Cronkite, he might have said, “He who speaks for you must have the respect of those whose opinion can help ensure victory.”
–Chapter III (“Attack By Stratagem”), 17.

Keep your team lean and mean—speed and flexibility are key. There is no such thing as a normal news cycle today; it is 24/7 with instantaneous global access.

“Mastering speed is the essence of war.”

Sensitive public perception issues dictate an “internal” spokesperson to convey genuine concern.

“Winning a battle is always a matter of people.”
–Chapter I (“Laying Plans”), 5,6.

Create the honest perception of proactively identifying and remedying the problem.

“Plan an advantage by listening. This makes you powerful. Get assistance from the outside. Know the situation. Then planning can find opportunities and give you control.”
–Chapter XI (“The Nine Situations”), 22.

COMMUNICATE EFFECTIVELY—INTERNALLY AND EXTERNALLY

“All the field of battle, the spoken word does not carry far enough: hence the institution of gongs and drums. Nor can ordinary objects be seen clearly enough: hence the institution of banners and flags . . . means whereby the ears and eyes of the host may be focused on one particular point.

The host thus forming a single united body, is it impossible either for the brave to advance alone, or for the cowardly to retreat alone. This is the art of handling large masses of men.”

All successful public relations plans rely upon effective communication. Public relations provides the “gongs and drums” and the “banners and flags” to give your communications reach and clarity. As Sun Tzu recognized, “you fight a large army the same as you fight a small one. You only need the right position and communication.”
This is even more important in today’s social media/business news fusion of split-second and unfiltered mass communications.

Conveying your message in an effective and straightforward manner, while molding public perception, is paramount. Generally, taking control of the situation, getting in front of the story, and properly handling traditional and social media are essential in every public relations campaign.

You must:

- Form a “single united body” with a simple theme.
  “In the tumult and uproar, the battle seems chaotic, but there must be no disorder in one’s own troops.”

- Communicate in a timely manner—shape the story before it shapes you.
  In “confined terrain . . . you will die if you delay.”
  –Chapter IX (“The Army on the March”), 15.

- Get out front, get ahead. Always return reporters’ calls before their deadline. Do your homework, know where the reporter will likely go, know the facts, and write down your talking points in advance.
  “Bring the enemy to the battlefield and be not brought there by him . . . keep the danger in front of you and safety behind.”

- Develop succinct talking points, and drop the legalese.
  “Another general is weak and easygoing. He fails to make his orders clear.”
  –Chapter X (“Terrain”), 18.

- Have your talking points critiqued by another—how they sound is not always how they read. (i.e., Were you really misquoted?)
  “You must master gongs, drums, banners, and flags.”
  –Chapter VII (“Maneuvering”), 24.

- Never lie—lest the lie become the story.
  “No man, however wise, will be able to avert the consequences that ensue.”
  –Chapter II (“Waging War”), 4.

- “No comment” = “We are guilty”—especially in post-Enron America.
  “You can speak but will not be heard. You must use gongs and drums.”
  –Chapter VII (“Maneuvering”), 23.

- Use your company website to inform the media with a timely and consistent message.
  “Place people as a single unit where they can all see and hear. You must unite them as one.”
  –Chapter VI (“Weak Points and Strong”), 14.

- Always assume you are “on the record.”
  “On dangerous ground, you must not camp.”
  –Chapter VIII (“Variation in Tactics”), 2.

- Never stonewall—it alienates the public (including investors and stockholders) and your customers (those who control the viability of your products and services).
  “In crossing salt-marshes, your sole concern should be to get over them quickly, without any delay.”
  –Chapter IX (“The Army on the March”), 7.
GOOD LEADERS REMAIN TRUE STUDENTS OF STRATEGY

Even in an age where “Rambo litigation” is severely frowned on by courts and the public alike, *The Art of War* takes on renewed significance. Despite its title, Sun Tzu’s work makes clear that “the true object of war is peace,” and that “to fight and conquer in all your battles is not supreme excellence; supreme excellence consists in breaking the enemy’s resistance *without fighting*.” Sun Tzu’s observations about protracted battles holds true for the prolonged corporate crisis or protracted litigation of today:

“In all history, there is no instance of a country having benefited from prolonged warfare. Only one who knows the disastrous effects of a long war can realize the supreme importance of rapidly bringing it to a close.”

Sun Tzu also recognized that to be of invaluable service, you must know when to move forward—and when to retreat: “[t]he general who . . . retreats without fearing disgrace, whose only thought is to protect his country and do good service for his sovereign, [is] the jewel of the kingdom.” Good lawyers know when to mediate, when to settle, and when to try the case. Good PR professionals know when and how to concede negative facts, when to initiate an aggressive PR campaign, and when to lie low.

Good leaders understand the importance of public relations in protecting their client base, stock value, product viability, corporate reputation, brand awareness, and corporate viability. Their level of success in achieving these goals may depend on the extent to which they recognize and adhere to these age-old strategies. As Sun Tzu stressed over two millennia ago: “War [in our context, public relations battles during litigation] is a matter of vital importance to the state [company]; a matter of life or death [corporate survival], the road to either survival or to ruin. Hence, it is imperative that it be studied thoroughly.”