

The Limits of PR

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Pop Singer Janet Jackson bared a breast on national TV during the Super Bowl. Was that a great stunt, as some public relations practitioners said, or an affront to the public, or both? The flap raises a question that practitioners rarely discuss. Are there limits to what public relations practitioners should say or do on behalf of clients? And if there are limits, what are they? Legal/business limits? Moral/ethical limits? Both or neither?

Some practitioners choose not to do certain kinds of work. Others take the same work willingly. Some practitioners distinguish between what one should do for clients and what one should avoid. Others believe a client deserves representation no matter what it might be. Advocacy in the US under the First Amendment tolerates a broad range of discussion, allegation and contention. Legal restrictions on free speech favor fewer limits than more. Anyone, for example, can practice public relations. Essentially, PR practitioners are free to say or do just about anything to gain awareness on behalf of a client and deepen relationships with a target audience. The question is, "Should they?" Even though something is permissible, it isn't always advisable.

To understand limits, one must define boundaries. Advocacy communications encompass a vast territory from commercial speech through nonprofit and governmental representation, individual presentation and support for ideas. The same communications counseling and media techniques cross all areas and take different names including investor relations, corporate communications, employee relations, customer publicity, public affairs, grassroots communications, promotions, events, etc. At the base of these names are two goals:

1. Persuasion: Build through creation and delivery of messages an awareness of people, products and services and their acceptability. This is done traditionally through press releases, events, stunts, media relations, promotions, and other techniques that result in stories and actions, such as voter support for a candidate.
2. Relationships: Guard and deepen relationships between organizations/individuals and key audiences who have power to help the entities and/or individuals succeed or fail.

Economic boundaries

Companies complete economic transactions to build the wealth of owners. This requires communication of a product or service for sale, communication of a price, communication from a buyer that a price is acceptable and the economic transaction -- an exchange of goods and services for something of value.

Business is amoral: In a purely capitalistic and unregulated environment, there are no ethical limits on what a company can do to complete economic transactions, including selling illicit drugs such as heroin and cocaine; engaging in sex slavery; abusing workers; profiteering.

Society regulates business for society's protection. Even free marketers talk about the amount of regulation governments impose and not about elimination of all regulation. Government judges some business, such as the drug trade, to be injurious to society at large and outlaws it. Government judges other business as dangerous or potentially harmful by the nature of what the business does and hence, government regulates it, such as chemicals, pharmaceuticals, food, autos, financial services. Government judges still other business as essential to common weal and hence, regulates it, such as electrical and gas utilities. Finally, government judges some business to be of minimal impact on society's welfare and leaves it alone but for taxes and regulations such as where one can do the business and how one treats employees. Barriers to commercial speech are few but they exist, such as prohibitions of false advertising and informing employees of their rights.

Non-economic Boundaries

There are none beyond the survival of the individual, institution and/or idea itself. A member of a terrorist group advocating the overthrow of the United States has the ability to publicize that idea as much as the President of the United States has the communications capability to fight against it. Individuals can support and oppose a broad range of ideas and organizations from environmental protection and family life, to suicide and exploitation of natural resources. All can and do use PR communications ideas and techniques to support their positions. Moral/ethical limits reside with message creators and senders: Communications techniques are amoral. That does not mean, however, that message receivers (target audiences) also are amoral. Target audiences can and do reject messages regularly.

Legal Boundaries

The US and most democratic countries strongly protect free speech, but there are restraints. This paper focuses only on US limits.

- **Threats and present danger.** Free speech limits started with a case of publicity that pushed the edge -- *Schenck v. U.S.* (1919). Socialists printed and distributed a flyer calling for draftees not to serve or go overseas during World War I. Chief Justice Oliver Wendell Holmes, Jr. in supporting the conviction of the socialists for printing the flyer, wrote the following: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case is whether the words used are used in such circumstances and are of such a nature as to

create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.” This was the beginning of the “clear and present danger” doctrine. It evolved into a concept of “True Threat”: A “True Threat” is speech that is likely to lead to harmful action against another. Thus an anti-abortion group that conducted a publicity campaign by circulating Wanted posters with photos of doctors who perform abortions was determined a “true threat” because doctors have been harmed by anti-abortionists. While it is not clear what constitutes a “true threat,” courts have mandated that there must be a willful intent to carry out the alleged threat. This protects individuals who mistakenly make a threat in a moment of desperation and frustration, or even a cruel joke. Student creators of a web site called dateRape.org that advocated date rape say they set the site up as a hoax to test the limits of free speech on the Internet. The students took the site down before it went to court under the “true threats” doctrine. States have successfully outlawed cyberstalking as a “true threat” as well. This is pursuing another person via e-mail or chat rooms and threatening that person. A classic case was a man who posted a woman’s name and address in chat rooms and claimed the woman had an unfulfilled sexual fantasy of being raped. The individual was convicted under the California cyberstalking law.

- **Harmful material - Obscenity and Indecency.** The primary reason for law forbidding such speech is the protection of citizens, especially children. In *Miller v. California* (1973), the Supreme Court set out a three-prong test for obscenity. It asked whether "the average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest"; whether the work "depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law"; and whether "the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." Allied to this are Federal Communications Commission Indecency regulations. The original authority for the regulations stem from the Radio Act of 1927. These mandate what can be shown on network television and heard on radio. In *FCC vs. Pacifica* (1978), the Supreme Court established the right of the FCC to determine when broadcasts over the airwaves contain indecent material. The case surrounded comedian George Carlin’s monologue on Seven Filthy words that one cannot say on the public airwaves that was subsequently broadcast over the air. The 1995 Action for Children’s Television vs. FCC case restricted indecent material over the airwaves to 10 pm to 6 am. Cable was unaffected. In the 1996 Telecommunications Bill, the Communications Decency Act focused on the Internet was struck down in the Supreme Court in 1997 as an abridgement of adults’ right of free speech. The Child Online Protection Act of 1998 has been rejected twice because justices see the Internet as a true Free Speech venue and because it is difficult to regulate the Internet to protect children without

simultaneously trampling on adults' free speech rights. The Internet conundrum is that there is no local standard because the Internet is global. Secondly, there is no practical way to restrict children from entering Web sites. The courts see the Internet in the same light as a newspaper – a medium of free expression to be limited only in the most dire cases.

- **Defamation -- Libel and slander.** Libel is publishing an untruth about another in a way that is meant to be believed by others, injuring the targeted person and creating a permanent impression through publishing the material. Slander is doing the same in the spoken word. A PR practitioner who libels or slanders another on behalf a client with reckless disregard for the truth is open to charges. Charges must prove “actual malice” when defaming public figures (*New York Times v. Sullivan*, 1964). Public figures are anyone who is prominent and not just government officials or politicians. Proving “actual malice” is difficult to do. An ex-employee started a bitter publicity campaign against the high-tech manufacturer Intel and e-mailed 35,000 Intel employees to complain of Intel's practices. Intel sued the employee, but lost in the California Supreme Court because the court found Intel objected to the content of the ex-employee's complaints more than to the employee's abuse of Intel's e-mail system.
- **False Advertising.** If as part of a communications campaign, one uses advertising, there is a possibility a company can be sued for making false allegations. This is what happened to Nike Inc when it advertised how it was treating workers in the Far East who make its shoes. Nike claimed it was treating its workers well. An activist sued the company claiming false advertising because the company knew workers were being treated badly. Nike contended it was protected under the First Amendment rights for commercial speech. The California Supreme Court disagreed and allowed the suit to go forward. The US Supreme Court accepted the case for review but Nike and the activist settled before the case was heard. This leaves a question about commercial First Amendment rights that practitioners have to be cautious about.
- **Prejudicial comments.** Pretrial publicity is a serious threat to the conduct of fair judicial proceedings. A judge can impose a gag order on all parties related to the trial and bar cameras from the court but not on the news media or any party unrelated to a trial. An organization could, for example maintain a drum roll of publicity related to a trial about which it has deep concern but no direct relationship.
- **Copyright.** PR practitioners do not have the right to expropriate content from a creator's copyrighted work without the creator's permission.

The Limits of PR

PR's legal limits are the boundaries of free speech under the First Amendment. With such broad license to speak, publish and act, should PR consider itself essentially unlimited? No, because PR is circumscribed as well by forces outside of legal boundaries. These are the message sender, the perceived reputation of the sender among target audiences and audiences' tolerance for speech. Most PR practitioners intuitively recognize and respect these limits. They are "community standards." PR works within communities of interest that have spoken and unspoken rules for what is acceptable and what isn't. These vary by community, and there is no guide for what works in all cases. Janet Jackson's assisted exposure of her breast at the Super Bowl is tame by the standards of cable television where audiences are self-selected.

A few examples might help to demonstrate community-standard limits on PR advocacy.

- Would you advise a female CEO to show up at an annual meeting in a string bikini to emphasize a point the CEO is trying to make? Chances are you wouldn't, but the founder of Wal-Mart, Sam Walton, showed up on Wall Street one day and did a hula in a grass skirt.
- Would you advise a young starlet trying to gain awareness by wearing a low-cut and highly revealing dress to a press conference? Chances are you might. Expectations focused on a young starlet are different than on a female manager. It is assumed in the entertainment business that one can present oneself more daringly.
- Would you advise a priest or rabbi to use words such as "shit" and "crap" in an interview? Chances are you wouldn't because the perception of a religious person is that of one who represents God and a higher standard.
- Would you advise a punk rocker to use the same words? Chances are you would because the image of a punk rocker is that of a rebel.
- Would you have advised Janet Jackson to bare her boob during the Super Bowl halftime show to gain attention for her forthcoming record and clothing line? Some PR practitioners might have done that without regard to FCC indecency standards. But would they -- and Janet Jackson -- have been prepared for the negative fallout that resulted? Jackson was lambasted for the stunt, barred from the Grammy awards and lost a movie role. But, apparently, it helped her launch her daring clothing line and promote her latest album. From a business point of view, it might have helped more than hurt her with teen and young adult audiences she targets.

These are obvious examples, but they demonstrate the difference between what is permissible and what is advisable in PR. Message and medium never stand outside of the environment in which they exist. While this is understood, it is not always practiced.

There is a place for the shocking and/or differentiating messages and presentations that raise one above threshold awareness, but one should calibrate the outcome of communicating. Pressing the limit has resulted in great personal and commercial advantage. Artists do this regularly with works considered offensive or shocking. Designers do it with dresses barely hanging to the wearer. Musicians appeal to a rebellious teenage audience use violent language, sexual expression and innuendo. But, there are other times when the same expression dooms one's message. The only rule that counts is to know your audience. One must have a sense of when an audience is going to reject a message and when a medium distracts from it. Janet Jackson's failure was one of miscalculating to whom she was playing. Her act would not have raised an eyebrow elsewhere. But her error, to some degree, compromised her reputation – whether for the long or short-term is unclear at the time of writing.

Reputation exists within the perception of individuals comprising an audience. It does not stand alone or apart as regard for another person, organization or idea. To persuade audiences and build relationships with them, one starts with their perceptions and supports, corrects or amends the way members regard an idea, person or firm. Reputation is both short-term and long-term. That is one might send a message today that upsets an audience today but does not upset an audience's regard for an individual or organization for the long term. One might disagree vehemently with the Pope's positions on a moral issue but still consider the Pope a holy, if misguided, man. If one seeks to communicate for the moment without regard to the long term, then any legal method of raising awareness is open to consideration -- for example, paying a buck-naked stalker with an ad painted on his bare back to run onto a soccer field during a competition, as one company did.

If one is concerned about long-term reputation then short-term methods of awareness may be evaluated against long-term perception of the person, company, product or service. However, one can choose to use short-term stunts and publicity to maintain awareness for the long term. Richard Branson, founder of Virgin Records and Virgin Airlines, is a master of this technique, with, for example, his attempts to balloon around the world, and it has helped his company immensely. In fact, it has given Branson an enviable reputation as a shrewd entrepreneur who will try anything. Such publicity can test the limits of acceptability depending on the company, product and service.

One can use also short-term publicity for short-term purposes with little reference to the long-term. Promoters and publicists use numerous stunts to boost turnout at baseball games from bat day, hat day, mascots, between-

innings contests and more. The object of these efforts is to make the immediate experience pleasurable and involving. The team itself can be – and often is – unsuccessful. Such publicity can test the limits of propriety because it is evanescent. Today’s promotion has little reference to what is going to happen the following day when another promotion will be launched. The cumulative perception is that interesting things happen at a ballpark.

One can subordinate short-term publicity to a long-term goal that differentiates an organization. Publicity is tied to a core message and enhances that core message directly. For example, *Playboy Magazine* has carefully maintained an image of itself for decades as a magazine offering naked women in centerfolds, sex advice and men’s interest articles in a single package. The monthly centerfold is part of long-term positioning that goes back to the beginning of the magazine. So, too The *Sports Illustrated* Annual Swimsuit issue features scantily clad women, but not nearly naked men, to bolster the image of the publication as a men’s magazine. Macy’s, the department store, has hosted a Thanksgiving Parade since 1924 that has become a defining symbol for the company and its community consciousness.

Expansive Limits

Whether one chooses short-term disruptive expression in PR or longer-term brand building is a matter of judging message, medium, target audience and outcomes from expression. For some PR practitioners “anything goes.” For others, there are acceptability limits they will not cross. Each tends to find a clientele and audience. PR cannot, nor should it attempt, to set standards of acceptability that are narrower than legal limits. Those of us who are offended by what other practitioners do should learn to hold our noses and shut our eyes. To those who contend that this harms the image of the profession, the answer is that PR is not a profession. It is the practice of communications skill sets that anyone can do -- some strategically and others pragmatically. It has no defined rules, tests or barriers to entry.

Because of the First Amendment, it is impossible for PR to police itself effectively. One can be within the limits of expression while at the same time being well outside the bounds of advisability and acceptability. What if Janet Jackson had stripped naked and not just exposed a breast? It would have been tacky and unacceptable on prime time television and transgressed FCC indecency standards but maybe not on the MTV music channel. In the end, practitioners must depend on judgment as to what is acceptable and what transgresses. Each will come to a different limit, but both can be successful in practicing their craft.

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