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PR executive sets off firestorm with proposal to discredit Madison County court system

Former Illinois first lady Jayne Thompson floated idea in proposal to Syngenta, which is involved in a lawsuit about the safety of its popular weedkiller atrazine

By [Ameet Sachdev](#), Tribune reporter

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It's a public relations nightmare when the publicist becomes part of the story. That's the situation Jayne Thompson finds herself in.

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The former Illinois first lady started her own Chicago-based public relations firm in 2002. Part of her practice involves managing communications for clients involved in legal disputes. Her clients have included Chicago's largest law firms, such as Winston & Strawn, where her husband, former Gov. James Thompson, was chief executive for 13 years and currently is senior chairman.

Another client is Syngenta Crop Protection Inc., the U.S. subsidiary of a Swiss company that manufactures the popular but controversial weedkiller atrazine. Thompson's firm was hired to help Syngenta handle public relations related to a 2004 lawsuit filed in Illinois by water systems looking to force the company to pay for removing atrazine from drinking water because of public health concerns.

Public relations strategies usually remain behind the curtain, but every once in a while the curtain is raised, exposing controversial tactics to shift public opinion. In the Syngenta case, a 13-page confidential memo Thompson wrote detailing a public relations strategy to augment the company's legal defense has come out in the course of pretrial evidence gathering known as discovery.

As part of her proposal, Thompson recommended planting stories critical of the Madison County courts, where the suit was filed. A rural community across the Mississippi River from St. Louis, Madison County became infamous about 10 years ago for its high volume of class-action lawsuits and high jury awards. One theme Thompson suggested for a story: "Now, Madison County is going after the family farmers," according to court documents.

Thompson said in an interview that the goal of the public relations campaign is to effectively communicate the history and safety of atrazine and its economic importance to the agricultural industry. The filing of a lawsuit with the potential to be a class action would bring increased attention to Syngenta and atrazine, and it's important to organize facts about such a scientific product, she said.

But Thompson said Syngenta never approved a negative media campaign against the Madison County judiciary. She said she doesn't know why Syngenta declined the option.

Nevertheless, her memo has backfired on her and her client.

Last month, Madison County Circuit Judge William Mudge ordered the memo be disclosed to plaintiffs, after finding that Thompson's proposal "has nothing to do with trial strategy ... but much to do with fostering a negative public perception of our judicial system."

The lead plaintiff's attorney has taken advantage of the court victory by engaging in his own public relations effort against Syngenta. Stephen Tillery, of St. Louis, promptly issued a news release after Mudge ordered the company to turn over Thompson's memo, criticizing Syngenta for resorting to a "campaign of intimidation." Tillery also provided a copy of Thompson's memo to the Tribune.

Thompson said Tillery has created a diversion. "I shouldn't be a part of the story," she said. "It's supposed to be a contest for the truth, and that's what we're trying to facilitate."

Public relations in the course of litigation has become more common in high-stakes lawsuits. But the Syngenta case shows legal publicity is more than a press conference on the courthouse steps.

"It's within every litigant's right to ensure that public perception reflects reality before you go into a court case," said James Haggerty, a New York-based consultant who's an expert on media strategies in high-profile lawsuits. "Both sides are trying to bend public perception to meet their own ends."

But for Syngenta, its public relations campaign has become a sideshow that could have consequences in the suit, according to legal experts.

"When you irk a judge in a somewhat personal way, that's never a good thing," said Leonard Gail, an experienced Chicago trial attorney who is not involved in the case. "There's a second issue that's more substantive. There is going to be a legal dispute as to whether this material, the PR-related efforts, in fact gets introduced into evidence at trial, including but not limited to punitive damages."

Syngenta, through its attorneys, declined to comment because the suit is pending.

Spread on cornfields, atrazine has long been approved for use by the U.S. Environmental Protection Agency. But it is one of the most commonly detected contaminants in drinking water, and recent studies have suggested that the weedkiller may be more dangerous to humans than once thought.

The 2004 suit against Syngenta, which makes most of the atrazine sold, wants to hold the company responsible for cleaning the state's drinking water. The plaintiff, the Holiday Shores Sanitary District in Madison County, seeks to certify the suit as a class action, which would drive up Syngenta's costs dramatically.

Syngenta has maintained the suit is baseless and that atrazine has undergone extensive testing to prove its safety. But in 2009 the EPA began a new review of atrazine to study its potential health risks.

In the summer of 2005, Syngenta called Thompson looking to engage a public relations firm experienced with litigation, she said. The court venue was somewhat new to the company, she said. Syngenta's U.S. operations are based in Greensboro, N.C.

Thompson's firm is familiar with Madison County, having worked with Philip Morris USA after it was hit with a \$10 billion verdict in a class-action suit there brought by smokers alleging deception in the sale of "light" cigarettes. (The Illinois Supreme Court later reversed the judgment.)

In October, Thompson provided a 13-page proposal to Syngenta outlining how the firm could support the company. By that time, Madison County had gained a reputation within business circles and certain segments of the legal community for being uncommonly friendly to injured parties seeking damages from big business. The U.S. Chamber of Commerce and other business and pro-reform legal groups dubbed Madison County a "judicial hellhole."

Thompson played up the commonly held fears of being a corporate defendant in Madison County. She led off her pitch with the headline: "Syngenta's Turn in the Madison County Barrel."

She also warned Syngenta about Tillery, a gregarious class-action lawyer who some say is as adept at influencing the court of public opinion as any publicity agent.

"You can expect that he has been preparing his publicity assault for months," she wrote. "It will be a questionable and unremitting smear of atrazine and the people who make and use it, as well as Syngenta itself and its foreign owners."

Tillery, after seeing a copy of Thompson's memo, said he was outraged but not surprised at the personal attack.

"That seems to be the rule of the day in complex litigation," he said. "Attack the plaintiffs, attack the plaintiffs' lawyer, instead of dealing with the merits of the case."

Business proposals often contain the type of aggressive language Thompson uses because someone is trying to win an account. But publicists have to tread cautiously when doing work connected to a lawsuit because their written communications may be subject to disclosure in court, Haggerty said.

In addition to assisting Syngenta with courtroom-related activities, Thompson proposed a campaign to build public support for the company among Illinois farmers and other constituencies.

She wrote: "While Syngenta is not particularly well known outside its business-to-business marketplace in Illinois, the product's link to our farming families and businesses

make it potentially a much more sympathetic defendant than the great majority of out-of-state, not to say foreign, firms hauled into Madison County's courts."

Thompson said in an interview that at the time the suit was filed, atrazine started becoming the subject of more media reports.

"They were concerned that the coincidence of these two circumstances greatly increased media attention to the product," she said.

Among her ideas, Thompson proposed establishing a "Healthy Corn Coalition" among farmers and others atrazine supporters, and asking economists to estimate the financial costs of an atrazine ban. She also suggested recruiting supporters among policy and legal advocacy groups, such as the Illinois Civil Justice League, the Chicago-based Heartland Institute and the Madison County Record, a legal journal owned by the Institute of Legal Reform, an affiliate of the U.S. Chamber of Commerce.

Thompson's recommendation to push a negative media campaign against the Madison County courts was contained in the third part of her proposal. She wrote that the placements would help balance negative articles about the company and atrazine. The effort did not have to involve Syngenta directly, she stressed. "*We are not suggesting that the company author any or all of these themes,*" she wrote, using italics in the memo.

In explaining the strategy, Thompson said that stories critical of Madison County had a "great deal of currency at the time the proposal was written." She requested a monthly fee of \$30,000, according to her proposal.

The memo came to light after Tillery subpoenaed documents from Don Coursey, a University of Chicago professor Syngenta had hired as a litigation consultant. Communications between consulting experts and attorneys are considered private and don't have to be disclosed to the opposing party.

The company said at first that it had hired Coursey as a consultant in 2006 and would not produce any records after that date, Tillery said. He disputed the timing.

Further discovery discerned that Coursey wasn't retained as a litigation consultant until Jan. 9, 2009, according to court documents. The company hired him in early 2006, based on a recommendation from Thompson's firm, to study atrazine's financial benefits, but many of the documents related to that work are not protected by the consulting-expert privilege, the judge determined. Mudge also found that Thompson's memo was not protected under the same privilege.

"They were hiding about 900 documents from disclosure," Tillery said.

Coursey, an economist at the Harris School of Public Policy, has previously worked with Thompson's partner Chris Robling on small consulting projects, according to his deposition.

Coursey's study, released in February 2007, estimated Illinois corn growers could suffer annual losses of \$161 million to \$577 million if atrazine were banned. Tillery questions much of the paper Coursey wrote, alleging that Thompson's firm had a big hand in drafting the study. Thompson denies the charge, saying her firm's role was limited.

"We reviewed the paper and made some editorial changes, just in terms of smoothing what was an academic paper into something that was usable in a little more general way," Thompson said. "But that's all. The content was all his."

Coursey said in an email that he stands by the paper and declined further comment.

"Coursey was part of the media campaign they bought from Jayne Thompson," Tillery said. "We knew Thompson was involved in Syngenta public relations, but we didn't know the depth or scope of it until now."

Even though the suit is 7 years old, it is far from being resolved. It's unclear whether the battle over public relations will influence what happens in the courtroom.

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