



MANAGING THE COURT OF
PUBLIC OPINION DURING A

MEDIA CRISIS

30-SECOND SUMMARY There is a process to adequately responding to a media crisis. A platform for proactive responses to negative press includes: a positive, forward-looking statement about the company; tools for internal constituencies to deal with the fallout from the story; and a direct message to key company stakeholders, such as customers, vendors, regulators or government officials. In those communication networks that you control (rather than the media), you can provide the details necessary to address the situation, contain the damage and get on the road to recovery. For example, create a response website that employees can access, which details the facts of the situation.

By Bill Ojile and Gil Rudawsky

“We do not comment on pending litigation.”

This statement and underlying attitude has been the standard response from corporate counsel with a crisis, covering everything from an SEC disclosure to an Act of God. It’s a simple approach, saying: “There’s no story. Now, move on and don’t create a media frenzy.”

But with the changing media landscape, fast-paced social media networks and the rise of advocacy plaintiff firms, some legal counsel have dumped the standard “no comment” approach in favor of a more detailed response to help protect a company’s reputation. It is part of a proactive communication plan designed to offer balance to multiple audiences, while, at the same time, not adding any fuel to the fire.



To help manage this new world where one negative post by an unknown blogger can blow up into a national story, we attempt to outline a proactive, reputation management approach. This approach addresses not only the media, but also other company constituencies and stakeholders who are collaterally impacted by the negative media attention. Our comprehensive approach details not only how to react to various situations, but also how to create a platform for proactive responses.

At its core, the approach has three goals:

1. *Limit or contain the story.* If it is a traditional media story, make it a one-day story. The company should do nothing to extend or enlarge the story. Make your response to the request for comment a positive, forward-looking statement about the company.
2. *Provide tools to respond.* Your internal constituencies need the tools to deal with the fallout from the story. Employees, particularly front-line, customer-facing employees, will need to answer questions. Managers also need to address employee concerns that may arise from the issue.
3. *Take your message directly to your audiences.* Deal with key company stakeholders, such as customers, vendors, regulators or government officials, directly, rather than indirectly through the media. Work to tailor an individual message on the issue to stakeholder groups, addressing the issue from the perspective of what each stakeholder wants/needs to know.

Before a media crisis hits, you should take steps to lay the groundwork for an effective strategy that covers planning, monitoring and responding. Most in-house lawyers interact with their company's corporate communications team in some fash-

ion — possibly to review press releases or internal employee communications. Take it several steps further.

First, if you have not already had reason to do so, discuss with your internal corporate communication staff how they would deal with a potential media issue. If there would be a need to hire an external PR firm to assist in a crisis, taking the steps to identify and retain that firm before an issue hits is invaluable.

Second, create a process to monitor the internet on a daily basis for information about your company and market sector. Facebook, Instagram, Twitter, complaint boards and traditional media stories may provide you with early warning of a potential crisis. Tracking online conversations is time well spent by the in-house legal staff.

Third, if you have identified an external firm to augment your internal corporate communications team, hold a regular meeting among the law department staff, internal corporate communications team and external PR firm. Discuss pending matters or issues that could create a future media situation, but the main purpose would be for this team — the core group for any media crisis — to get to know each other better. It is also an opportunity for the law department to educate the communications team on issues that may impact the company.

Fourth, have your general counsel and corporate communications leader

discuss with senior management how the company proposes to respond to a media crisis. Before a crisis hits, educate your CEO, senior management or board of directors about a managed approach to avoid a common mistake — coming out swinging with a heavy-handed response. A common mistake leaders, managers and employees can make is to assume that your company will be perceived as giving up unless a tit-for-tat response plays out in the media. Nothing could be further from the truth.

To illustrate the benefits of rethinking the standard no-comment, closed-door policy, we track the lifecycle of a crisis in which a well-thought-out response strategy was used to maintain a company's reputation and offer a counterpoint. From a legal and PR strategy, we saw first-hand how this game plan effectively stole the thunder from those instigating the drama, and helped protect a company's reputation by ensuring key points from its side were shared.

The blindside

At 4 PM, your PR firm receives a call from a reporter who informs you that he has a copy of a putative class action lawsuit that will be filed the next day against your company. He says he is writing a story for the morning paper and wants the company's comment within the hour. The next day, the lawsuit is filed, and the article about the lawsuit lands on the front page of



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What I know:

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Crafting the perfect media statement

There is an art to crafting the perfect media statement.

It is worth the effort, since a poignant statement can diffuse a negative story, and even move a company's point of view forward.

The media statement is a good tool to use when a client is not prepared to offer a full-blown interview, or when the business or organization does not stand to gain anything from participating in an interview because of the story's subject matter or media angle.

Plus, providing the media with a statement will ensure a consistent message from your organization. Many journalists will simply ask for a statement given their time pressures and lack of airtime or reporting space.

Generally, the best statements are ones that are short, to the point and rise above the fray. This is particularly important when you are being asked to respond to a negative incident, or ones dealing with legal issues. It is not a tit-for-tat response. Rather, the statement should highlight positives you would like stakeholders to be aware of.

Then, there is the challenge of providing the media a statement before the reporter or

producer finishes the story. With numerous hands in the pot, not to mention a slow legal review process, getting timely sign-off on a statement before deadline can be an exercise in futility.

It is often hard for the public relations team to advise their clients to respond with a written media statement because they are used to over-communicating with the media. But, a well-crafted media statement can walk the line between saying too much and saying nothing at all.

Think of a statement as sound bite, but one that the media can't cut off or use out of context. Here are some tips that may help:

1. *Keep it short and to the point.* What is short? No more than three concise sentences. The longer the statement, the less of a chance the media will use it. Additionally, a long statement gives media the opportunity to edit, and most likely butcher the main intent.
2. *Send the statement before the reporter's deadline.* This gives you a better chance it will be used in its entirety and increases the chance it will be used in a more

prominent location within the story. Statements that come after the stories have been written usually get tacked on the end, if at all.

3. *Make sure the statement says something of substance.* A nothing statement will be perceived as such by the media and their audience.
4. *Keep it positive.* The media likes nothing more than creating drama. Keep the statement positive and forward looking, and you may avoid the critical he-said/she-said perception of a story.
5. *Keep names and logos out of it.* For negative stories, put the statement in an email, instead of attached letterhead, and do not mention your company's name. This way the media can't reproduce it on the screen or online with your logo.
6. *Get legal sign-off.* The last thing you want a statement to do is create more controversy, making a bad situation even worse. PR and the legal team should work together to ensure that the statement will not cause controversy.

the morning paper. It is subsequently picked up by national wire services and distributed across the country.

Once the company is asked for comment, you will generally have only an hour or so to put together a statement. (See sidebar on best practices for creating the best statement.) Remember, it is unlikely a reporter will print or read a long statement, so a two-to-three line statement is the most effective.

Once you have prepared your statement — with all the necessary approvals — and given it to the reporter, use the time before the story runs to inform your company leaders. You need to establish and keep open lines

of communications with key leaders, and give them the tools to respond to issues and questions that arise from their employees, customers and key stakeholders. We suggest the following:

- Have the law firm representing you in the litigation retain your external PR firm directly. This will likely maintain attorney-client privilege on conversations and exchanges of documents among in-house counsel, outside counsel and the PR team related to the subject of the litigation and any media-related issues.
- Immediately schedule a conference call of the company's leadership team to inform them of the impending

media issue surrounding the lawsuit.

The corporate communications team should prepare a FAQ document that managers can use to apprise their employees. Have individual managers meet with their teams first thing the next morning to tell them about the news and answer their questions.

- Consider whether the subject of the litigation and the extent of the media coverage warrant direct communication with key stakeholders, such as customers, regulators or shareholders.
- For several days after the story runs, have a "huddle" at the end



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Through the eyes of legal counsel and a PR firm

QUALITIES AN IN-HOUSE LAWYER VALUES IN AN EXTERNAL PR FIRM:

- *Experience:* Having a member of the PR team whose worked as a reporter was invaluable in translating the process. What was the reporter looking for? What would he accept from us?
- *Resilient:* Working with a reporter on background takes persistence and the willingness to go back repeatedly if necessary on issues. They can't give up and provide the reporter with an excuse to report an inaccurate or unbalanced fact.
- *Responsive:* A media crisis is a 24/7 grind. Media appreciate getting immediate responses to questions and issues. (It is also a two-way street.)
- *Tough:* Someone you would want with you in a bar fight.
- *Teachable:* Work with someone who will get beyond sound bites and wants to understand the details and background. This will involve a desire to dig in and learn about the company and how it does business.

QUALITIES A PR FIRM VALUES IN CORPORATE LEGAL COUNSEL:

- *No schadenfreude:* Leave the legal language for pleadings, not the media or communications to non-lawyers. In a crisis, a good lawyer will know less is more for messaging.
- *Value PR:* Understanding the proactive and reactive role of public relations, particularly during a crisis, is valuable, and counsel knows it can preserve or help rebuild a company's reputation. The court of public opinion is just as valuable as the actual courtroom.
- *Cool-headed:* A crisis can have many different lifecycles, and keeping calm with a focus on the end goal is appreciated.
- *Open-minded:* A PR response can be much different than a legal response in a crisis, while both have similar goals.
- *Backbone:* During a crisis, an executive may want to either go out swinging or say absolutely nothing. A good legal counsel will offer a better perspective, and a more moderate and effective approach. Remember: You want to win the war, not the battle.

of each day among the company's leadership team. You can provide the leaders with information on the current status of the media coverage and whether additional media is expected. The company leaders, especially those outside the headquarters location, can provide valuable insights on employee and key stakeholder reactions, which can be used to develop other strategies designed to mitigate the crisis situation.

- After the dust settles, conduct message training for employees most impacted by the litigation and any fallout. Arm them with information to understand the

situation and to discuss concerns they might hear from other employees, customers or other company stakeholders.

Nightline or Dateline or Frontline on line one

Over the past two months since the filing of a class-action lawsuit, plaintiff's counsel has leveraged social media and traditional media to create unwanted and unbalanced attention about your company. Now, your company's PR firm gets a call from the producer of a national network news program indicating they are working on "an investigative story" and want someone on camera to address the allegations in the lawsuit.

Because of the generally longer lead-times for a network news or news magazine segment, more possibilities exist to potentially reduce — or in rare instances, to kill — the negative aspects of the story. Particularly effective is working with the reporter or producer on background or in off-the-record conversations. On background, you can review statements and documents with the reporter, and while working in this fashion can educate the reporter and rebut information provided by the other side, the reporter cannot attribute your statements directly to the company. Typically, the reporter or producer will ask questions of the company, most of which, in this example, have been seeded by the plaintiff's law firm. They may have reviewed documents provided by the firm or met with the plaintiff and other handpicked witnesses. All of which will contribute to a one-sided segment unless you can inject some balance into the reporting. We suggest the following:

- Take all opportunities to share information with the media on background or off-the-record. Fully and aggressively respond to questions from the reporter, even if it is not attributable to you. Where you see gaps in knowledge or an incomplete understanding of the full scope of the issue, educate the reporter. Provide references to non-confidential/non-privileged documents (e.g., information on the company's website) to debunk the reporter's erroneous understandings. Beware: Anything you share with a reporter, off-the-record or not, may be used in their reporting. Hopefully, you can establish some trust with the reporter.
- If you have cooperated with the reporter on background, but still believe the segment will be unfair or biased, contact the executive producer or network law department and detail your concerns in writing.



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- Just because you provide information on background does not mean that you need to provide a company spokesperson to respond to questions on camera. Many factors and considerations need to be weighed before the company agrees to provide a spokesperson on camera: aggressiveness of the news outlet/reporter, tenor of the questions and whom they have interviewed from “the other side.”
- Do not stop after the segment runs. Make a record of the segment’s deficiencies and communicate those concerns to the news agency, including the reporter. If it has an ombudsman, use that process to lodge grievances.

From bad to worse

One year later, at 3 PM, you are notified that a government investigative report, outlining negative information about a

handful of companies, including yours, will be released the next day.

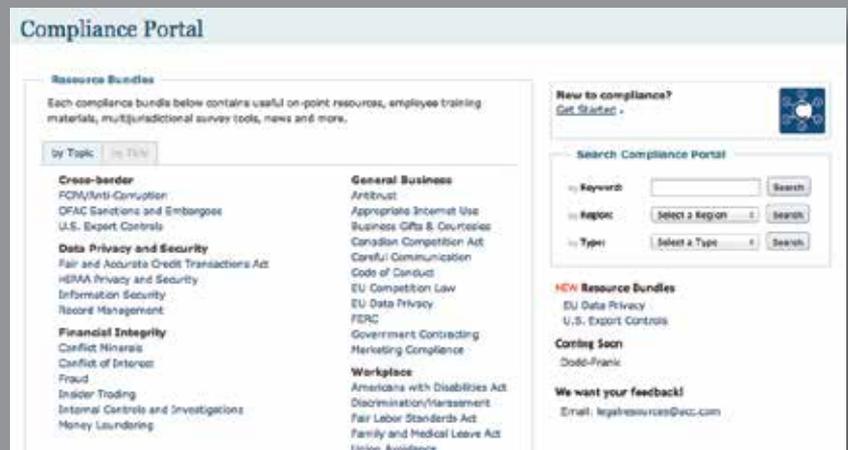
The media dynamics of this situation will be somewhat different. The report of a government investigation will likely garner national attention and is typically stacked against the companies. But because of the number of companies involved, only the largest and most prominent will get mentioned in national news stories. A significant media player in this situation may be industry-specific periodicals or blogs that dig deeper into the issues. Regulators, investment analysts and congressional staffers closely follow these types of media.

While you may not see your company’s name in the news, being implicated in this type of report may cause significant concerns with regulators and your congressional delegation. Investors, lenders and your auditor may also have questions you will need to answer. Also, your board or CEO may direct you to

commence an independent investigation on the situation described in the report. Depending on how that investigation report turns out, you may have to wrestle with senior management and PR experts about using the investigation results to vindicate the company. Remember that disclosing any more than the fact that the independent investigation was conducted could impair your ability to maintain attorney-client privilege on the investigation and final report. We suggest the following:

- After conclusion of the hearing, contact any regulators by phone. They will want to know that the situation has your attention, and your call will demonstrate that urgency in the face of this situation is crucial.
- Create a response website that details the facts of the situation. This is a place where you can create content for use by managers to address employee questions, or for

Drum Roll, Please...



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employees to address questions from customers or other company stakeholders. The site can also be used to educate the media, ensuring a consistent message is getting out.

- By the end of the next day, you should prepare a letter to a broad group of stakeholders. Let them know the steps you are taking to investigate and examine the issues addressed in the report. Also, let them know when they can expect to hear back from you.
- Within the next week, send a follow up letter to stakeholders explaining how you intend to address the issues raised in the report. Provide specific actions that you intend to take and a timeframe.
- Do not hide. The initial reaction to a situation like this is to lay low until the furor dies down. This is a mistake. Get out and meet with your key stakeholders in person. Provide them your main messages and assure them the situation has your full attention. These interactions will pay dividends.

A crisis can test a company's resiliency, and the legal and PR team are at the center of the storm. They will be intensely judged on how they handle the controversy and recovery.

To adequately respond to a media crisis, you need to understand the process. From a media perspective, the initial hit of bad news is likely the only time media will call you for comment, and possibly the only time a company will be able to defend itself to a wide audience. Like it or not, the news value when a crisis hits is always bigger than when it goes away. Moreover, the company usually starts from a point of disadvantage: Many of these stories will start with a "little guy vs. company" slant, which is far more interesting to the reader or viewer than the company's technical response or explanation.

We have outlined an approach to address a media issue, contain it and keep it from becoming a full-blown crisis. Take the request for comment as an opportunity to make a positive statement about your company and its integrity. Beyond the statement, go directly to your key stakeholders — employees, customers, regulators, political leaders, etc. — and provide your explanation and plan to deal with the issue in greater detail directly to those constituents. In those communications that you control (rather than the media), you can provide the details necessary to address the situation, contain the damage and get on the road to recovery. **ACC**

What a crisis response plan should include

Plan, monitor and respond.

Above all, never compromise integrity. These are the basics of a crisis communication plan.

Having faced a constant barrage of crises from both the legal and PR perspectives, we can say first-hand that having a crisis plan in place prior to one hitting can make it more manageable, and can help diffuse the impact and get you on the road to recovery much quicker.

Here is an outline of a crisis protocol that should be the basis for any crisis plans:

PLAN

- Identify and prepare for potential issues.
- Communicate with the customer service and legal teams.
- Get the facts, and prepare statements and messaging.

MONITOR

- This covers traditional and social media.
- Monitor of social media and online outlets on a daily basis, as well as newspapers, magazines and broadcast media.
- Respond and correct the record.

RESPOND

- Get in front of the story.
- "No comment" is a last-ditch response.
- Accurately convey your side of the story.

ACC EXTRAS ON... Crisis management

Leading Practices Profile

Crisis Management and the Role of In-house Lawyers: Company Leading Practices (June 2011). www.acc.com/lpp/crisis-mgmt_jun11

QuickCounsel

Planning Ahead—The Board's Role in Crisis Management (Feb. 2013). www.acc.com/quickcoun/crisis-board_feb13

Top Ten

The Top Ten Ways to Mitigate Risk Once a Crisis Occurs (Jan. 2013). www.acc.com/topten/crisis_jan13

Form & Policy

Planning Sheet [The First 72 Hours] (Oct. 2012). www.acc.com/form/first72_oct12

Presentation

How to Survive a C-Suite Scandal (Oct. 2012). www.acc.com/scandal_oct12

Quick Reference

Crisis Management Simulation—Hypothetical (Oct. 2012). www.acc.com/quickref/crisis_oct12

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