

Ten Random Observations on Crisis Management

By Mark W. Merritt

In considering how to write about crisis management, I was reminded of a sign above the bar at one of my favorite restaurants in Holden Beach, North Carolina. The sign simply says: “Good judgment comes from experience. Experience comes from bad judgment.” With that thought in mind, I will share some practical observations on crisis management based on my experience. When I was in private practice, my experience included dealing with professional athletes who were accused of behaving badly, large financial institutions that failed, and false accusations against clients in national media regarding their business operations. For the last fifteen months as General Counsel for a large public university, I have represented an institution that faces unrelenting media scrutiny. I also served as State Bar President during a challenging time politically in the State of North Carolina. My hope is that some of my bad experiences will translate into your good judgment.

With that in mind, here are some critical observations.

1. Pay attention to your key stakeholders first. All organizations have key stakeholders that are of critical importance to your long-term well-being. If you are facing a crisis or the public disclosure of a big problem, the first reaction is to think about how to address the media. It is more important in my experience to make sure that your key stakeholders learn of a major problem or how you intend to address a crisis from you directly as a leader of your bar organization. For example, you do not want the Chief Justice of your Supreme Court to be reading about a problem within your bar organization in the newspaper or learning about it from someone else. This requires giving some thought to who your key stakeholders are and making sure you have their up-to-date contact information so that you can get to them quickly. You want to have the ability to get to them first with accurate information before a reporter calls them. The best way to do this is in a phone call.

You can survive bad media. It is tougher to survive letting your key stakeholders get blindsided by bad news. If you have a number of key stakeholders to contact, divide them up among your leadership group with a calling tree that is thought out in advance and can be called on with short notice.

2. Refine your message to a few key talking points. Whether with key stakeholders or with the media, an organization needs to speak consistently and simply on the key talking points that it needs to address in response to the crisis. Your leadership group needs to draft these quickly, and come to consensus on them and stick to them. These do not have to be complicated messages. They often involve the acknowledgement that there is a crisis to be addressed, that your organization is taking the matter seriously and addressing it, and that when more information is available that you will share it.

A good process to engage in is to ask yourself or your leadership group to identify the one question that is most likely to be asked and then to be prepared to answer it. You need to think practically in conducting this exercise. For example, a media relations group I worked with several years ago advised Virginia Tech when that school suffered a tragic mass shooting. The media group identified that a critical question that needed to be answered to students, faculty and employees was “will there be class tomorrow?” If a crisis shuts down your workplace, a key message may be as simple as “our office will be closed tomorrow.”

Lawyers have a tendency to want to say too much and provide too much context. The key is to be concise and credible. You will likely have time to provide the context and explanation once the crisis has passed to the people that you really care about.

3. If at all possible, speak with one voice and designate your spokesperson. You do not want inconsistent messages being delivered by different members of your organization about a crisis situation. The best practice is to designate one person to speak on behalf of the organization and to direct all media inquiries to that one person. Most media people will be respectful of that choice. If this is not possible, such as when members of your organization could be interviewed publicly, then it is important to make sure that whoever may be speaking has available the few key talking points that your leadership team has agreed are appropriate.

4. Prepare a holding statement. If you have some advance warning of a crisis, such as an impending hurricane, prepare one or more holding statements that are available to release to the press or to serve as your message to key stakeholders in advance. You may not be able to have your statement finalized until you know what actually occurs, but to have some drafts to work from in the press of time when a crisis hits can be a real advantage.

5. Avoid the urge to get ahead of the facts. When serious allegations of misconduct occur that may warrant some kind of remedial action, the media can place tremendous pressure on organizations to condemn or take immediate remedial action. A good recent example can be seen in allegations regarding sexual misconduct. It can be a mistake to make conclusions prematurely because allegations always do not bear out, and organizations can expose themselves to legal liability for acting precipitously before all of the facts are known. The Duke Lacrosse scandal was a classic example of the allegations ending up bearing little relationship to the facts, and the result was multiple claims and lawsuits against Duke University. My experience is that you would benefit from considering the following as a way to respond:

- These are serious allegations and we take them seriously.
- We will completely and promptly investigate the matter.
- We will follow the facts and hold people accountable if misconduct is found.
- We intend to be transparent about what we find, but we will conduct our investigation in a manner that is respectful of the rights of all parties involved.
- We will not speculate about outcomes until we finish an appropriate investigation and know the facts.

Depending on the circumstances, it may also be appropriate to express sympathy for the victims of alleged misconduct and to take steps to remediate harmful consequences to them. This requires the exercise of judgment based on the facts and circumstances.

6. The news cycle moves quickly, and you must too. The media have changed dramatically, and there is tremendous emphasis in online news reporting on who can get the news out first. Reporters are sometimes compensated on how many clicks their online news stories receive. This provides incentive to have the sensational news headline before the facts are known or before you have a chance to respond. This shortened news cycle is the reality. If you have a story break during the day, it is important to have press statements to the media available by 3:00 in the afternoon to have your story picked up on the evening news. If a false narrative about the situation you face gets out in the media, it is very difficult to ever correct that false narrative. Simply stated, it is difficult for the explanation to ever catch up with the accusation.

7. Try to cultivate some friends in the media. Reporters as a group are inherently skeptical people who will question anything you say in a crisis. That being said, reporters are more likely to give credence to and report the stories of organizations with whom they have a relationship and some positive history. These relationships need to be cultivated and in place in advance of a crisis. Relationships can be cultivated by having leaders in your bar organization serve as resources to reporters on legal issues that are of interest to the press. Providing the local press ongoing information on what your organization is doing cultivates relationships. This investment will pay off when you need someone to tell your side of the story in the media.

8. Have a crisis management resource. There are firms in every major city that specialize in crisis management and public relations. There is merit in having an ongoing relationship with a firm of this nature that you can call on for advice on how to handle the media or craft messages to key stakeholders when a crisis hits. Lawyers use people with expertise all of the time, and there is nothing wrong with having this kind of relationship in place to call on when a crisis hits.

9. Obtain media relations training. Lawyers generally consider themselves to be adept at talking to people in any context, including the media. In fact, dealing with the media is a complicated subject, and training allows you to know how best to prepare for an interview or interaction with the media. It is important to know if interviews are on or off the record, whether your comments are for attribution, what questions may be asked in advance, how long the interview is scheduled to last and who else may be being interviewed. Media training allows you to know better what questions to ask to prepare for an interview and how to set the ground rules for the interview.

10. Have a plan for when the crisis is over. In the press of a crisis, it is challenging to say everything that you may want to say due to the press of time or the absence of all the facts. Most bar organizations are membership organizations, and our members want and deserve the more complete story when the crisis has passed or when all of the facts are known. This implicates both transparency and accountability. Your members need to know how you dealt

with a crisis, what you learned from it, what you can do better the next time, and in the case of misconduct, whether you did the appropriate investigation and held any wrongdoers accountable. Your key stakeholders will have similar expectations. Organizations can build credibility with their members and stakeholders when they handle a crisis well or at least acknowledge how they learned from their mistakes.