

## Protecting Your Client's Greatest Assets: Reputation and Trust

Twenty-four-hour news cycles triggered by social posts that go viral have escalated the need to respond quickly and decisively when a crisis hits—even when not all the facts are available. Failure to have a thoughtful, tested crisis communications plan ready to go when your phone rings places your client's brand and livelihood in jeopardy.

Of course, I'd argue that corporate counsel should work hand-in-glove with public relations crisis communications experts, but whether you get the job done with outside public relations counsel or just with your own team, the goal must be clear: Plan ahead of foreseeable scenarios to reduce exposure and help preserve your client's greatest assets—reputation and trust.



### United Airlines' Blunder Reveals Law-PR Disconnect

The court of public opinion is still weighing the impact of United Airlines' legal and public relations teams' botched response to the infamous dragging of a bloodied, helpless Dr. David Dao off one of its flights earlier this year. That occurred in full view of screaming,

horrified passengers, who immediately posted the event on social media. United will not be remembered for the Dr. Dao incident itself, but rather for how the company responded to the crisis.

A clear disconnect between legal and public relations was at the heart of United's major blunder that became a full-on media sensation for nearly 10 days. It is likely legal and public relations were operating in silos, independently working toward dif-

ferent goals—with public relations focused on United's reputation, and legal focused on not admitting fault. Failing to meet on common ground in advance of a foreseeable scenario—like a passenger altercation with airline security that turns ugly in front of a plane full of passengers—is why United's stock dropped \$900 million in just 24 hours. Now, the entire industry remains under a microscope as the U.S. House Transportation Committee continues hearings examining airline customer service.

What happened to Dr. Dao may not have been United's fault—directly. In fact, airline employees may have been following United's operational procedures—including contacting Chicago Department of Aviation officers to step in when things went

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sideways. However, the disjointed sequence of communications that followed is why the crisis escalated. It started within two hours of the incident with United's response to a tweet from a horrified passenger where United stated, "Any treatment of our passengers that is short of respectful and compassionate is unacceptable." That response, while not the direct apology many crisis managers would have recommended, was, at least, responsive to the situation and protective of United's reputation.

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Unfortunately, it was downhill from there.

The first formal statement from United came just after midnight: "Flight 3411 from Chicago to Louisville was overbooked. After our team looked for volunteers, one customer refused to leave the aircraft voluntarily and law enforcement was asked to come to the gate. We apologize for the overbook situation. Further details on the removed customer should be directed to authorities."

This statement completely missed the mark, again failing to apologize for the injuries sustained by Dr. Dao and instead apologizing only for the "overbook" situation. It's not clear who crafted this statement for United, but it fundamentally failed to acknowledge the assault on the public's sense of

humanity. In the meantime, the video of the incident was viewed 19 million times on Facebook before it was removed that night.

Then, the dagger for United happened when the airline issued its first carefully crafted statement Monday morning from CEO Oscar Munoz as follows: "This is an upsetting event to all of us here at United. I apologize for having to re-accommodate these customers. ..." Again, United completely avoided addressing the horrifying images of Dr. Dao being dragged helplessly off its plane and instead issued a sterile apology focused on the overbooking. When social media exploded yet again, United misfired with a message from Munoz to United employees blaming the incident on Dr. Dao. Suffice it to say, the note leaked immediately, causing a bloodbath for United across social, print, online, and broadcast media, including late-night talk shows. Parody slogans such as "not enough seating, prepare for a beating" were widely reported.

United failed miserably in the manage-

ment of this crisis because it did not apologize immediately for the way Dr. Dao was treated, and for the injuries he sustained, even if the carrier did not want to admit fault. The apology is what the public expected. Instead, United issued a series of inconsistent communications, handcuffed its CEO from addressing the human tragedy of the situation, and bridled him with the infamous, deflective “re-accommodate” comment. Then, United blamed Dr. Dao.

These actions illustrate a lack of strategy and a tug-of-war between legal and public relations that culminated in a disjointed, shoot-from-the-hip series of tactical responses that fundamentally violate the first rule of crisis management—stop the bleeding. In this case, literally and figuratively.

Dr. Dao’s personal injury attorney would turn the incident into a media spectacle, holding an impressive news conference that was covered like a U.S. senator calling for a full-blown investigation. The case settled within weeks—many expect for millions.

The hours and days leading up to that settlement were almost certainly anxious ones in the offices and hallways of United’s corporate counsel. Any attorney who has been in that kind of a high-impact, escalating, public-facing crisis knows just how high the stakes can be. Rapid-fire legal decisions must be made that serve and protect the client.

When you find yourself in a public-eye crisis, do you consider messages to the public a matter of primary concern, or is communication with the public shunted aside as being of secondary importance? The long-term health of your client’s reputation and its bottom line will be affected by your approach.

For United, a lawsuit had not yet been filed when the settlement occurred. It should have settled the next day. While the Dr. Dao event itself was shocking, his

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broken nose, broken teeth and concussion were not injuries likely to lead to an exorbitant settlement all by themselves. It was how United mishandled its response to the event that resulted in what was likely a large payout—and a damaged reputation.

### **CEOs Feel Vulnerable Without a Crisis Communications Plan**

Like United, in-house counsel, defense teams and their public relations counterparts are likely to face numerous crises over the course of the client relationship. They may include whistleblowers, workplace vi-



olence or serious injury at a business location, strike, sudden death of a key executive, data breach, natural disaster, corporate fraud, regulatory investigation, product recall, discrimination, supply-chain interruption, and inappropriate employee behavior. Stakeholders are watching, and CEOs are increasingly recognizing the need to have a crisis communications plan in place. In fact, according to a 2016 survey of 164 global CEOs conducted by PwC,<sup>1</sup> 65 percent said their companies experienced a crisis in the past three years, while 30 percent expect their business will experience at least one crisis in the next three years. In addition, 57 percent of CEOs said they feel vulnerable. (See sidebar at right.)

To avoid a botched response, effective crisis communications requires an open dialogue between legal and public relations professionals in the crisis-planning stages as they work together with marketing and operations teams to think through specific scenarios. This is a facilitated, structured discovery conversation outlined in Phase I below. A byproduct of this planning is mutual trust leading to a levelheaded, realistic view of the situation. The result? Decisive communications recommendations for the CEO.

Beyond building the legal, communications and operations team that will (1) evaluate, (2) make recommendations and (3) communicate during a crisis, there are distinct benefits from having a crisis communications strategy in place for the client, which that include:

- Time savings. Companies that have a plan to address and respond to a crisis within the first “golden hour” following the event are likely to substantially reduce the visibility of the event to key stakeholders and its overall impact on the bottom line
- A joint understanding of the issues involved, allowing the legal team to maximize protections under the law while allowing the company to provide a humanized response to the crisis consistent with corporate values and culture
- A team that is ready to spring into action on a moment’s notice, executing against a pre-determined strategy, as



**YES**

## Your Clients *Are* Thinking About This

According to PwC CEO pulse 2016, CEOs are increasingly realizing the importance of crisis planning and feel most vulnerable during a crisis when it comes to:

- Gathering the right information quickly
- Out-of-date business continuity plans
- Communicating adequately with external stakeholders
- Communicating adequately with internal stakeholders
- Unclear definition of the crisis

Consequently, 30 percent of CEOs have proactively started crisis planning while another 25 percent plan to do so over the next 12 months.

opposed to having to hire consultants and get them up to speed

### Addressing the Lawyerly Instinct To Stay Silent

Still, the tension between the lawyerly instinct to stay silent as a crisis unfolds in anticipation of potential litigation, and the need to speak with transparency internally and externally to stakeholders as a crisis is erupting, is a constant tug-of-war and should be addressed head-on for each client relationship. That conversation happens in a crisis planning discovery session with the C-suite, legal, marketing and public relations crisis planners. It centers on corporate values, company culture, and the relationship the brand has with its customers or constituents.

Crisis communications experts will have their own distinct approaches to help you plan for your client’s inevitable crises. Here, I provide an approach that is supported by best practices. I would reiterate, however you decide to protect your client’s reputation and trust, steps like the ones I describe below must be addressed.

In **Phase I** we conduct the discovery session, which includes crisis communications practitioners, the client’s C-suite, general counsel, defense counsel, marketing, public relations, human resources, risk management and operational department representatives. In this session, the following topics, among others, are discussed so that the team has the information necessary to write the plan:

- Corporate culture and leadership philosophy for communicating during a crisis



- Proactive versus reactive communications/controlling the narrative
- Defining crises that would trigger the plan
- Assembling the crisis communications team/defining roles/approval structure
- Assessing in-house gaps regarding crisis capabilities and vulnerabilities
- Communication policies and infrastructure
- Nightmare scenarios for which the client should plan
- Defining success

**Phase II** is where the actual planning occurs. Crisis communications practitioners collaborate with the client's marketing team and then vet a draft with the client's general counsel and defense counsel. At the heart of this planning is an analysis tool that compartmentalizes each nightmare scenario based on the information we learned through discovery and filters it through best practices of crisis communications. The goal is to present viable communications response options with solid recommendations, justifications, consequences and unintended consequences.

This planning is a comprehensive exercise and otherwise includes these elements, among others:

- Defining corporate values and goals in a crisis
- Creating a crisis preparedness checklist
- Social media monitoring and activation of external communications channels
- Defining key stakeholder groups
- Defining the chain of command, roles and responsibilities
- Locating the war room and identifying logistics
- Actions, including a grand gesture, the client will take during the first golden hour
- Answering the questions the media will ask, such as:
  - What happened?
  - How is the company responding and attending to victims?
  - Are the allegations true? If not, why?
  - How will this event impact operations/customers now?
  - What is the company doing to make sure this never happens again?

- Leveraging third-party advocates
- Form development such as incident report, holding statements, media advisories, fact sheets, draft social posts
- Hour-by-hour checklist

**Phase III** is the presentation of the plan to the larger team identified in Phase I. Central to this phase is a walk-through of one model scenario by the crisis communications planners so that the client participants and counsel can visualize how the plan would actually work. This is the opportunity for client subject-matter experts to offer adjustments so that the final plan may be produced.

In **Phase IV**, a comprehensive, real-time training exercise is conducted that includes tabletop drills on multiple scenarios, and a media-training workshop for counsel and designated spokespeople.

This session usually takes about half a day in depending on how many scenarios are exercised. Members of the crisis team, including general counsel, are assembled in the client's war room. The scenario is presented in the form of an incident report that goes to the client's public relations manager. Over the course of the next hour or so, the crisis unfolds, led by the crisis planner who assumes the role of simulation leader, and triggers are prompted by antagonists. A simulation guide helps participants if they get stuck applying the facts to the plan.

A simulation analyst records how the team responds in line with the plan and compares actual to anticipated performance during a post-mortem review at the end of the exercise. The outcome is a well-considered recommendation for the CEO that will guide the client's communications through the crisis.

A media training for key spokespeople follows, usually in form of an interactive presentation outlining do's and don'ts, with illustrative clips that bring each point to life. Spokespeople are then provided with a fact pattern and key messages. The simulation leader acts as a reporter putting the spokespeople through a spectrum of

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questions ranging from friendly to tough. During this time, members of the crisis team are observing. Following the interview, the video is played back so that everyone can provide constructive feedback. The crisis communications planners then provide expert advice, and the process is repeated until the spokespeople are confident in how they would respond in a similar real-life situation.

## Conclusion

Investing in reputation management through crisis planning and testing that pairs counsel with public relations crisis management experts pays dividends. Companies that have thought through similar scenarios act more quickly and respond more decisively, reducing exposure when the real thing occurs. The result is consumers and investors are more likely to give your client the benefit of the doubt; its stock is likely to recover faster; and your client will be seen as more influential by policymakers who are crafting new regulations affecting its industry.

Such an approach can have an impact on the practice of law too. Every client is different, and so is every crisis. Thoughtful consideration, planning and practice will help attorneys deliver better real-world advice that addresses the client's holistic needs. And, it will get attorneys closer to where we all want to be on our best days—not just legal problem solvers, but far-thinking counselors to our clients. And at the end of the day—or the earnings quarter, the year or the decade—that's the kind of strategic thinking clients appreciate, remember and reward.

## endnotes

1. [www.pwc.com/gx/en/ceo-agenda/pulse/crisis.html](http://www.pwc.com/gx/en/ceo-agenda/pulse/crisis.html)