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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

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## 5 Myths In Legal Crisis Communications

By Robert Gemmill (May 7, 2019, 2:55 PM EDT)

As a nonpracticing lawyer in crisis and litigation communications, my work is almost always done with, or through, a client's outside counsel. But having worked at a boutique law firm, a crisis communications agency, and now in BigLaw, and even as different as each of these business models may be, I have seen a number of patterns emerge across all three areas. These appear to simply be common misconceptions among a substantial number of experienced lawyers.



Robert Gemmill

### **1. You will constantly butt heads with the communications team on strategy and direction.**

A good communications team will seamlessly complement and support the legal team and its overarching strategy. While outside counsel typically is most concerned about liability issues that could arise from a communications plan, crisis professionals start by asking three fundamental questions when an issue arises:

- Should the client say anything at all?
- If so, what should, and should not, be said?
- Should the response, if any, be proactive or reactive?

After these three questions are answered, decisions about messaging priorities and the means by which those messages reach the public and key audiences should be easier. The important thing is that the team is in agreement on the most fundamental questions in the midst of a fluid, fast-moving situation.

To be clear, if counsel recommends not commenting for liability reasons (especially in criminal cases or investigations), then that should be the end of the discussion. But even if the decision is made not to publicly comment, having a communications team on board will prepare the client for what to expect, how to restart communications when the timing is right and how to handle other key constituencies such as employees, investors and customers.

Having a communications team that is knowledgeable about counsel's concerns while able to offer their own unique expertise is essential for the client to be adequately represented when dealing with negative media attention.

### **2. It will only add to your plate instead of easing your workload.**

We have all worked with vendors who require some hand holding and there is no time for that when it comes to crisis communications. If you don't have the utmost trust in the communications team, then you can't recommend that the client hire them, period. A seasoned crisis team won't waste your time or require your constant monitoring. On the contrary, they should make your life easier by supporting your recommendations to the client, handling the heavy lifting that messaging and planning requires, and serving as an effective resource on media trends and strategy.

Obviously, counsel ultimately has the final say on a variety of decisions such as specific wording in a statement, but when time is tight and the client is under pressure, there is no substitute for having a crisis team on board who can understand your legal recommendations, turn around work product immediately — and tell you why their communications recommendation supports your legal strategy.

### **3. It's not necessary unless a true disaster occurs.**

Unfortunately, the vast majority of clients only turn to crisis communications professionals after it becomes apparent that there is indeed a crisis. By not preparing ahead of time, the monetary costs are obvious in additional attorney and consultant fees. But the true (perhaps even more expensive) cost can be the weeks, months or years it takes to repair and restore the client's reputation and regain the trust of shareholders.

Preparing even a basic crisis preparedness plan ahead of time is typically a painless exercise that ensures clients can quickly and efficiently handle any number of risk events, from data breaches to executive misconduct, to government investigations and litigation, to actual physical disasters. Of course, these plans should not only describe what a company should say in a particular situation, but also provide an internal procedure for who does what, when and how.

### **4. Your communications team should have the same level of expertise in the industry that you have.**

As one could tell from the examples cited above, crisis communicators cultivate their expertise more in terms of solving certain types of incidences rather than in terms of industry. The items to prepare for were not listed as aviation, education, environmental and health care. Rather, issues were identified — issues for which companies in most every industry must be prepared.

Obviously, this comes with two caveats: First, every company and every industry is different, and crisis professionals should treat their strategy as such and tailor their counsel to serve the specific markets of their clients. Second, there is no denying that in some circumstances, especially in finance (such as with mergers and acquisitions), a deep expertise by communications counsel is helpful and sometimes even necessary. The ideal is to have a combined communications and legal team that pairs communications expertise with the deep substantive knowledge of the legal team's industry specialization.

BigLaw partners are the best attorneys in the world, at the top of their industry and profession. And while some communications experts come from careers in government or law, the vast majority do not. While BigLaw attorneys almost always focus their work on a specific niche or industry, crisis communicators can work on a U.S. Securities and Exchange Commission lawsuit against an accounting firm in the morning, a criminal allegation against an airline executive in the afternoon and come in the next day to help a cruise line handle an assault allegation on one of its ships.

These are all different issues in different industries and all would almost certainly entail very different advice. But when communicators work with counsel for a cruise line, they simply will not have the same knowledge or expertise in cruises or maritime law that

outside counsel does. But they do know how to position the client to protect their reputation. That's what makes their relationship and the ability to work hand in glove with outside counsel, so critical. Agreeing on overarching strategy for the client is far more important than industry expertise.

#### **5. Your recommendation to the client to bring on communications assistance will backfire if things go south.**

Many attorneys hesitate before recommending crisis assistance to their client. For one, their relationship with their client is special and must be protected from other voices who have not yet had the time to fully earn their trust. Another consideration is that recommending communications counsel can be risky in high-stakes circumstances because if things get bad (or worse) in the media, the recommendation could potentially make counsel look foolish. Lawyers also often think (and in some cases, correctly so) that they can simply handle the matter themselves.

All three concerns are valid. But the alternative is that that special relationship with the client is jeopardized because a lawyer doesn't recommend consulting an expert. And, if things do get worse in the media, not only will that advice put the target squarely on the lawyer's back instead, but now the client is dealing with a media storm and still doesn't have a professional communicator assisting.

Communications pros have been there. We know what is likely to happen if the client takes a certain route — or not. We can advise why public reaction would be different if a client decides to simply issue a short reactive statement as opposed to a proactive press release. We understand why leaving one word out of public messaging can mean the difference between outrage and indifference. The right crisis communicators' experience sets them apart from marketers, the in-house communications team and even the most esteemed BigLaw lawyers, because this is all they do, every day.

Some lawyers will never be convinced that a communications team is additive to the legal team and the client's corresponding strategy. They have gone their entire distinguished careers without it and are understandably not about to start now. Perhaps they have even had a bad experience with a communications firm or equate crisis communications with needless press releases and unwanted press. On the other hand, some lawyers are wholly convinced that every matter should have a communications strategy or assistance if there is at least some chance of media coverage.

But for those many lawyers somewhere in between, who might like the idea but have been skeptical for a whole host of reasons, including those above, I hope this short article has helped clear up some of the most common fallacies.

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*Robert Gemmill is director of strategic communications (crisis and litigation) at Hogan Lovells.*

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