

Advice to Clients: How to Work with Legal Advisors

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Dear Client:

Attorneys, often by the score, will be involved in this crisis situation. What I'll describe and suggest in this note is sensible, constructive, actually quite helpful, and will lead to far more prompt and appropriate resolution of the controversies, confrontations, contention and the victimization crisis situations will likely generate.

Guiding Principles:

- 1) The lawyers, inside or outside are your legal staff, rather than the other way around. Their thinking will require a readjustment which only a client can stimulate and require.
- 2) Be positive and require that those who advise you also act positively and constructively all the time. Negative language and behavior creates victims and re-victimizes victims. Victims control the outcome.
- 3) Sticks and stones are easy, because people heal. It's words that damage; it's words that humiliate; it's words that are remembered forever. Bad words, negative words, accusatory words, victimize or re-victimize and are one huge cause for litigation and crisis.
- 4) Be constructive. Be helpful. Offer solution options. Work to make all decisions useful rather than obstructive.
- 5) Be outcome-focused. Where do you want the victims and your reputation to be when this is all over? Start there.

- 6) Be prompt. Ask it now, answer it now, do it now, change it now, decide it now. Speed beats smart every time.
- 7) Be responsive. Get ready to answer every question as you can as soon as you can.
- 8) Even if your operational response is perfect in most respects, which does happen occasionally, if you mess up the communications and irritate and intimidate victims, your perfect response will be characterized and remembered as stumbles, fumbles, bumbles and bungles.
- 9) The longer you wait to initiate settlement and go there, the more your bad news will fester, corrode, and escalate, and it will be your own fault.

Step I:

Help Attorneys Avoid Legal Testosterosis from the Start (Mostly Verbal Vegetables You Will Be Forced to Eat Later, During Settlement Talks)

Legal work in crisis is different. It's the creation and presence of your victims that makes legal work different in crisis. Wage peace first. That's because job one in litigation, when you are the defendant, is to settle the case. Stop hiring outside attorneys who are as angry as the boss. Hire separate counsel to start work on settlement immediately. Control and detoxify all legal language and behavior.

Specific behaviors and language to detect and prevent:

- If it creates victims or re-victimizes existing victims, stop.
- If it seriously threatens reputation, stop.
- If it creates concern rather than conciliation, stop.
- If the approach is disagreeable, contentious, confrontational or combative, stop.
- If it is testosterosis, stop.
- If it agitates, stop.
- If it humiliates, stop.
- If it's just huffing and puffing for opposing council and the media, stop.
- If it irritates, stop.
- If it demeans, denigrates, insults or discredits, stop.

- Avoid thinking or speaking in military or competitive athletic metaphors and vocabulary. If you are seen and heard as though preparing to wage war, there will be war. Stop. Wage peace at every opportunity.

The only audiences for negative behaviors and language are other attorneys, reporters, bloggers, bloviators, bellyachers, and back bench bickerers who need these behaviors to keep their stories going. Act to heal the victims created and prevent more from being created. Victims always win. The more victims there are, the faster they win. Victims control the outcome.

Remember, the odds of your case going to trial, civil or criminal, are about 100 to 1 against. Prepare for settlement or other settlement options such as mediation, arbitration, letting cases fall by their own weight, from the start.

Step II:

Avoid Failure Profile Ingredients

1. Silence: the most toxic strategy
2. Stalling: the most corrosive reputation poisoning strategy
3. Denial: never passes the straight face test (as somebody always knows the truth). “We are not crooks.”
4. Victim Confusion: perpetrators are never considered victims
5. Testosterosis: the great victim/critic/combatant creator. Stop producing critics and enemies. They will always outlive you and get better at hurting you over time.
6. Arrogance: the opposite of compassion, generally spikes anger, emotion, and the size and scope of the damages.
7. Search for the Guilty: blame shifting is obvious and unbelievable and management’s last gasp
8. Fear of the Media: once it dawns on you that neither control, nor intimidation work on the media. Your bad news will simply continue to ripen badly.
9. Whining: all too prevalent and the weakest management behavior, “Well, we’re victims, too.” “We’re a good company, really.” “It wasn’t our fault.”

Step III:

Let Communicators in from the Start, Especially if it's a Highly Emotional and Likely Very Visible Case

Communicators are the ones that are going to save your bacon. Have the attorneys find a way to include them rather than shun them. The vast majority of cases are going to be settled, mediated, arbitrated or dropped. Remember, from the client's perspective, crisis provides often the greatest opportunity to tell the story of the client's circumstance, as well as their messages and ideas. Every tough question they get asked is an opportunity to say more. Communicators can help from the start. This is counterintuitive to attorneys who feel defendants need to be quiet. Why? What for? The case will be settled anyway. The longer it takes to get to settlement the more negative stuff gets into the conversation because that's the tone generally set by both sides. Be relentlessly positive and you deny your opposition their usual platform of hostility and negativity.

Keep lawyers away from the media. In civil cases let communicators or leaders do the talking. In criminal cases, however, experienced criminal lawyers are generally the spokespeople.

Step IV:

Find Ways to Communicate Now

Speed of action and communication beats smart but time consuming cogitation every time. Always let settlement talks drive litigation preparation. The two are actually quite unrelated, as it turns out.

You're going to be pushed by social media. The most significant change in the crisis communication environment is the speed of social media. The benefit of social media is the ability to say a few important things very briefly, very quickly.

Social media, also, has eliminated any reason why an organization, alleged perpetrator, or potential victim-creator remains silent. No matter how smart, potent, or creative standard legal approaches are, the fact is silence destroys reputations and trust goes right down the drain with

the reputation. The reason that so many senior, and top executives are fired during or immediately after a crisis situation is because they cannot explain why (because there is no explanation) they remain silent for even a brief period of time while victims are being created, counted or recovered. There simply is no reasonable or logical explanation for remaining silent. Silence breeds only one question: What are you hiding?

Those who fail to speak, including the innocent, will always be suspect and un-trustable.

Step V:

Stay Engaged with the Attorneys Throughout the Process

Believe it or not, even if all of these ideas are taken to heart by your attorneys, and by-in-large obeyed or carried out, you still must remain watchful. Attorneys are trained to punch whenever they get the chance, to jab whenever the opportunity presents itself, and this means at the very end, as well. Read every legal document and purge those documents of negativity, accusations, intimidation, and whiney excuses.

Really examine carefully every legal correspondence, especially those at the end of the process. You can wage peace the entire time; you can be nice; you can be friendly; you can be helpful to the victims. But then at the very end, the lawyer drafts a turgid, humiliating closure letter that reopens all the old wounds. The attorneys always want to have the last word by reminding everyone that, "Our willingness to settle this matter is neither an admission nor a denial of responsibility." Yeah, sure.