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The Importance Of Media Relations Strategy In Critical Legal Disputes

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When Toyota recently announced a series of recalls over problems with its accelerator, the company was hit with more than civil lawsuits – it faced a barrage of media coverage, regulatory examination, public scrutiny, financial analysis, consumer inquiries and governmental hearings.

Though the scope of the case was unusual, the scenario was common: companies with legal problems in the United States must now contend with multiple audiences, not just in the courtroom but in the wider court of public opinion. Regardless of the outcome of litigation, which can take years to conclude, mere allegations of product defects, criminal activity, pollution or political impropriety are enough to damage a company's reputation before the par-

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ties ever appear before a judge, Congress or regulator.

In the past, companies involved in a legal dispute would usually answer a reporter's inquiry with a terse, "No comment – we don't try our cases in the press." Today, companies recognize that to protect their reputations, they should always be prepared to speak to multiple audiences. A company may choose not to communicate in connection with a specific development. But as long as it is prepared to comment, the company will be able to make an informed decision on how communications will be handled.

There are four goals in any legal communications strategy:

1. To identify, at an early stage, proceedings that may threaten a company's reputation;
2. To marshal facts and other information to respond to – and challenge – opposing litigants and their allies;
3. To provide a range of strategic and tactical options (pre-litigation to appeal, when necessary);
4. To ensure that communications messages complement legal strategy and company objectives.

To achieve these goals, companies should understand the current legal environment, the influence of the media, tactics used to manipulate the media and the communication strategies that are available to use during litigation or other crises. A com-

pany will achieve the best results by succeeding in getting its employees, departments and outside legal and public relations advisors to work together as a team to protect both the company's legal position and its reputation.

Companies In Litigation Face A Skeptical Public And Savvy Plaintiffs' Bar

The public is skeptical of companies accused of violating the law. Polling research undertaken by APCO Worldwide, an international public affairs and strategic communications firm, consistently shows that institutions faced with allegations of wrongdoing are immediately presumed liable. Corporate scandals and economic instability, among other factors, have caused people to be wary about the motives and actions of formerly well-respected citizens: large companies, religious institutions, international organizations and governmental officials. Therefore, companies must persuade individuals to keep an open mind.

Persuading people to withhold judgment until all the facts are out can be an uphill battle. Many plaintiffs' attorneys effectively utilize the press and other forms of public communication to favorably position a lawsuit. One thing they tend to do very well is frame the debate in understandable terms. For example, in product liability cases, the plaintiff's attorney will often talk about the product's danger to the public or the egregiousness of the companies' actions. However, all too often the defendant company focuses on the technicalities of the law, which are not as interesting to reporters, editors or most readers. Companies should be prepared to defend themselves in each area by being proactive when appropriate.

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Five Principles Of Effective Litigation Communication

In the face of a skeptical public, aggressive media, and sophisticated plaintiffs' lawyers, how can a defendant company protect its legal position while keeping its reputation intact? The answer lies in developing and executing an effective litigation communications strategy.

Many of the rules of general public relations do not apply in the case of a legal dispute. In traditional public relations, practitioners are driven to take action. They want to get a story out, draw attention to a product, person or entity. Success is measured by thousands or millions of impressions, sales and other visible results. In contrast, when designing and implementing a communications strategy regarding a legal dispute, the first rule, as in the Hippocratic Oath, is "Do no harm." Companies must resist the urge to respond to every negative news item or development in the case. Rather, a company is better served by a measured, well-coordinated response. Nowadays the news is reported in almost real time. To have a chance at influencing what is reported, companies must have a communications plan in place at the outset.

There are five critical steps for preparing a successful communications strategy regarding a legal dispute:

1. Choose the Right Team

Choosing the core team that will determine the strategy and carry out tactics is a critical first step. The team should include staff with expertise in making critical judgments and the ability to work well with others in a high-pressure environment. Successful teams usually include inside and outside counsel, inside and outside communications professionals and investor relations representatives, among others, as dictated by the issues.

It is vital that this team function with clear authority and that its work be streamlined. The ability to make quick and informed decisions as a team is crucial when dealing with a crisis. The coordination of legal and public relations is critically important, especially when the team is faced with unexpected developments in a case. A delay in making a decision can lead to a loss of control over events, a narrowing of options and, most likely, a larger crisis than you would have faced otherwise. Therefore, the company should designate one or a very few senior managers to coordinate communication to the media, government, customers, shareholders, suppliers and dealers. The team leaders should have immediate access to top management to report anything that may undermine the

company's reputation and to discuss the response.

2. Gather the Facts and Applicable Law

First, have the communications team research and read everything that is public on the matter (if there are public materials). Such materials include media clips, technical papers, industry and business background information, websites and public filings.

Facts are the central component of a credible communications policy. They can be used to head off false charges from opponents – before those claims get traction with reporters and the public. Understanding the facts – however painful – will give you a head start on controlling the direction of the story. This will also help to ensure that accurate information is conveyed to the media so the company maintains its credibility.

Second, the legal members of the team need to research and understand the law, then convey to the rest of the team the nature of the legal issues. Oftentimes, the legal issues will not be well defined and decisions will have to be made with imperfect information. However, managing the legal aspects of a crisis can be a substantial part of managing the crisis itself, and creative thinking must be employed to determine the extent of the risk faced by the company. Therefore, one initial step should be to evaluate each potential legal action that has been or could be taken by the company, its adversaries, or others.

3. Draft a Master Message Document

As early as possible, the team should draft an overall message document that presents a brief and compelling story ("Master Message Document"). Messages in this context are different from the documents or pleadings designed to communicate the company's legal position on an issue. Rather, the Master Message Document should contain public affairs messages that address the potential legal issues, while also addressing the factual issues, the broader business issues and other aspects of the company's messaging that need to be communicated to the public.

The core of the message will likely be a two- or three-sentence "soundbite" that captures the listener's attention and succinctly communicates the key message. Facts, empathy and a compelling narrative are the key components of a powerful message. Always provide the public with more than one scientific fact, the letter of the law or minimum adherence to regulations.

Once vetted and released, the messages must be continually updated. Because the Master Message Document forms the basis

for all communications, it is important that it reflects developments in the dispute. Consistency in communication is a necessary component of dealing with a crisis. All communications – press releases, speeches, notices to employees, even court filings – should use the language from the Master Message Document.

4. Create the Infrastructure

In a crisis, it is critical to divide responsibilities into discrete tasks. Sometimes team members will want to "solve" the entire problem, without considering all the existing issues or seeing what other issues should be part of an overall strategy. Utilizing a horizontal communication structure that spans across the company's relevant departments or subdivisions can help ensure that all issues are addressed.

Identifying and communicating to the team the timelines, objectives, and responsibilities is the first step towards creating a successful infrastructure. The team should frequently discuss both the company's messages and the direction of media coverage and communications by adversaries. During this process, the team should explore ideas and options for not only supporting the company's legal position but for protecting and enhancing the company's reputation. This system of assessment and reevaluation is vital for success.

Rather than just reacting to developments in the dispute the team should prepare for different scenarios, establish a rapid response program, and designate spokespeople for different aspects of the litigation. Each spokesperson must take the time to master the substance and the tactics and, above all, believe in the messages. Training should be mandatory to make sure spokespeople are comfortable with the message track and to ensure that they can handle anticipated questions.

5. Continuously Analyze, Organize and Implement

No matter how detailed your crisis planning process, you will be confronted by unforeseen events. News stories will not always be what you expect, plaintiffs' tactics may change, your own employees may question your strategy. You should prepare yourself for uncertainty. Squarely face the crisis as it presently exists, not as it was at the inception of the dispute or you imagined it would be. While real and honest tension can exist among employees and other stakeholders with differing responsibilities (for example, the legal, public affairs and marketing teams), it is vital that new information be appropriately shared, analyzed and acted on as a team.