

Legal Issues in Crisis Management

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Introduction

- A.** The events of September 11th have resulted in profound changes in our personal and professional lives. It may be some time before we fully appreciate the aspects of the new world we now live in. On our campuses, these changes have manifested themselves in many different ways.
 - B.** One of the major concerns on our campuses as a result of September 11th is the structure and adequacy of our campus emergency planning. Some of us were tested more than others. All of us should be concerned. Campus emergency planning needs to be measured against the September 11th reality.
 - C.** Crisis management requires review and assessment of existing plans and creation of new ones. What follows are a series of important questions to ask in developing these new plans.
- I. Do you have a campus emergency plan? What situations does it deal with?**
- A.** If you have a plan, does it address the variety of kinds of emergencies that may arise. There is no one-size fits all plan. Crises differ in kind, scope, and intensity.
 - 1. Act of terrorism
 - 2. Bioterrorism
 - 3. Public health emergency
 - 4. Suicide on campus
 - 5. Research misconduct
 - 6. Campus protests, strikes, other activism
 - 7. Intercollegiate athletics
 - B.** How to react depends on the nature of the event
 - C.** Who will be involved also depends on the nature of the event

D. For all these cases, planning should be done in advance -- who is going to develop or review your plan.

II. Who is responsible for managing the crisis?

A. Identify the team. Determine who you need in the room.

1. Teams members might include: President; Provost; General Counsel; Senior Leadership; Dean of Students; Facilities Manager; Campus Police; Human Resources Manager; Information Technology Officer; Public Relations and Communications Officer; Government and Community Relations Officer; Alumni Representative; Chaplain
2. Advise from the experts:

From Weston and Wildes, *The Lawyer's Role in Media Relations and Crisis Management*, page 4:

“All hands on deck” -- There should be a pre-identified cadre of people to gather in the event of [a] sudden crisis While each member of the group should be free to offer his or her comments and recommendations, there has to be an understanding and acceptance of each person's expertise. ... A *team* approach is needed. The decision-maker (president, provost) does not appreciate people imposing their views on others.

From Dorothy Siegel, *CAMPUSES RESPOND TO VIOLENT TRAGEDY*, Chapter Six (“Serial Murders Off-Campus”), pp. 104-105:

“On Sunday, August 26, 1990, two female University of Florida students were found murdered and mutilated in their off-campus apartment. Within two days of that initial discovery, two more students were found murdered.

The vice president for student affairs chaired ... [t]he crisis response team, nicknamed by some in the counseling center as “the death squad” ... [It] had the following members: provost, information officer, housing director, police chief, police representation from the county and city, director of the student union, associate VP for administration, campus ministry, student government president, dean of students....

The team coordinated and directed the university actions, policies, and official responses to the murders. They planned for increased security and deliberated about how and what to communicate to the students, how to control the spread of rumors, and how to help

individuals and the community cope with the impact of the tragedies. They recommended extending deadlines for payment of fees and for academic decisions that needed to be made, and also forgiving student absences for the first week of school.”

- B. Identify a leader.** Who the leader is may depend on the crisis. It might be the President in some cases, the General Counsel or the Provost or some other Senior Leadership in others.
- C. Assemble the team.** Too early is better than too late. As several commentators have observed, information is the most precious commodity in formulating a well-conceived plan to deal with a crisis. The emphasis at the outset should be on getting the facts, making sure the facts are right, and making sure that decisions are made based on fact, not rumor.
- D. Develop a contact list.** Put together a list – a single document – with the names and contact information about each of your team members. Include work, home, and cell phone numbers, e-mail, fax numbers, and alternate contacts. Distribute the list so everyone has it.

III. Who is the Spokesperson?

- A.** The spokesperson is not necessarily the same person as the team leader.
- B.** Who the spokesperson is may depend on the nature of the crisis. It might be the President, or it may be important to have someone other than the President out front. It might be the communications person at your institution.
- C.** There may be the need for a spokesperson for the University Community and one for the Outside World.
- D.** A word from the experts:

From Shelley Sanders Kehl, *Campus Counsel on Crisis Management*, Chapter 32 in Council for Advancement and Support of Education, *WHEN CRISIS STRIKES ON CAMPUS*, page 208:

“As soon as practicable, the team’s designated PR person should be available to coordinate all media relations. This will help the institution limit the spread of rumors and will also encourage the media to look to the public relations office for continuing information.

The media spokesperson should take the initiative by providing press releases and public statements that distinguish fact from speculation. Of course, the spokesperson should also understand

the issues of confidentiality and privacy ... [with respect to] released information. Legal counsel should consult on press releases.”

E. Just as important as who should speak is who should *not* speak.

1. With exceptions warranted by the circumstances, lawyers should not speak for the institution.
 - a. They’re untrained at it and usually bad at it.¹
 - b. There are some, albeit relatively narrow, ethical impediments. *See, e.g.*, Disciplinary Rule 7-106(a) in the ABA Model Code of Professional Responsibility: “A lawyer participating in or associated with the investigation ... of a criminal matter that may be tried by a jury shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that he knows, or should know, constitutes a clear and present danger of interfering with the fairness of the trial by a jury.”
2. Under what circumstances should the President be the institutional spokesperson? There are good reasons for keeping the President above the fray:
 - a. Let somebody else be the lightning rod for controversy and unpopular decision-making.
 - b. The President should always have the leeway to change institutional policy by disavowing the work of the crisis management team.
 - c. When the President finally weighs in, the effect can be significant and dramatic if that trump card is held in reserve and played at the right moment.

But there are times when only the President can speak effectively to calm fears or express sympathy or regret. When the crisis is severe and public

¹ For a useful list of hints for dealing with the media, *see* Annette Hannon Lee, *Media Training Checklist: The Top 25 Tips for Faculty and Administrators Who Deal with Journalists*, Chapter 20 in CASE, WHEN CRISIS STRIKES ON CAMPUS.

confidence in the institution is at stake, there is no substitute for an active, visible, fully engaged President.

IV. What is your Communications Strategy?

A. Critical to any crisis management plan is a communications strategy. There are four main factors to consider: **Who** is your target audience; **What** are your communications tools; **How** will you develop your message; and **Who** will be responsible for developing and communicating the message?

B. Target Audience

- Students on campus
- Students living off campus
- Faculty and Staff
- Parents
- Alumni
- Community

C. Tools of Communication

- Voice Mail
- Broadcast Messages
- Telephone Trees
- Radio and television
- Campus Newspaper
- Cell Phones
- Web Site
- Emergency phone lines
- What if you don't have electricity? What alternative tools are available?

D. Message Development

- What is the message that you want to communicate?
- Make it consistent
- Make it clear

E. Communication of the message

- Who is responsible for drafting the message?
- Who is responsible for dissemination?

F. Advice from the experts

- Communicating with your own constituencies

1. From Sally Ann Flecker, *Getting Out the Inside Story: When Crisis Strikes, Internal Audiences Need Accurate Information -- Here's How to Predict, Prevent, and Prepare for Troubled Times*, Chapter 15 in CASE, WHEN CRISIS STRIKES ON CAMPUS, page 130:

Identify your internal audiences. Consider current students, faculty, staff, parents, alumni, friends, and neighbors of the institution, and prospective students. ... Think in clear terms about the audience and don't generalize. ... Segment as much as possible. Think about specific organizations within any campus community. ... Identify opinion leaders -- people who are outspoken but highly regarded by their colleagues, although not necessarily by the administration. ... Make a good-faith effort to inform your internal audience first.

2. An important and often overlooked corollary comes from the same author: "Where we often make our biggest mistakes in internal communications is [when] we fail to communicate with our critics. ... You can't deal well with opposing opinions if you've made no effort to learn what they are."
3. Pay attention to Board members and influential alumni. They resent reading about a problem in the newspapers before they hear about it from the institution.
4. The student press is a critical constituency meriting special attention. It is worth the effort to cultivate the trust of student reporters -- for example, by returning telephone calls, treating questions with respect, being responsive, and avoiding the temptation to lecture.

- The critical importance of rumor containment.

From *Racial Incidents on Campus: A CASE Issues Paper for Communications professionals*, July, 1990, reprinted in CASE, WHEN CRISIS STRIKES ON CAMPUS, page 161: "Don't respond to emotional concerns with intellectual answers. ... If emotions are running high on campus, don't rely on printed communications. Make sure that senior administrators are visible on campus. Set up forums where senior administrators can listen and ask for suggestions. Tell these administrators that they don't have to have all the answers or provide all the solutions."

- Communicating with the Outside World

1. From Weston and Wildes, *The Lawyer's Role in Media Relations and Crisis Management*, pages 7 – 8:

- ❖ **Take the time to properly prepare.** There is no substitute for preparation; too much is at stake to do otherwise. If you are in a position to interact with the media on a regular basis, media training is an absolute must. Then, work with your public relations counsel in advance of each interview to anticipate the questions you might be asked – the tougher the preparation, the better – and consider your response.
- ❖ **Make an effort to understand the media.** The media is anything but monolithic. Newspapers “work” differently from magazines; and radio and television present other challenges. The more you know about a reporter and the news organization he or she represents, the better. Know the differences between “live” and “on tape.”
- ❖ **If you are going to respond, do so quickly.** While there will be times that no response is the best response, understand that reporters are paid to get the story, with or without you, and other sources might not represent your organization as well as you can. If you choose to respond, do so as quickly as possible. Media deadlines are severe, particularly for the print media; broadcast is more immediate. What you have to say might well influence a story, but the story will be “old news” faster than you think.
- ❖ **Know your facts.** Accuracy, brevity, and clarity are the words to live by in any interaction with the media. Know your facts, be as brief as possible in your response to questions, and speak in understandable language. Resist the temptation to “offer” unsolicited information.
- ❖ **Approach an interview with an agenda of your own.** Always approach an interview, print or broadcast, with an agenda of your own – two or three points that represent you and your organization well – and make those points in clear, concise language.
- ❖ **If at all possible, be preemptive – seize the high ground.** If it's bad news – and it's reasonable to assume it will “get out” eventually – get it out and get it over; do in on your terms.

- ❖ **Treat all media fairly.** If you consent to an interview with one news organization, you should extend that courtesy to others. Avoid “exclusive” interviews.
- ❖ **Never relax.** The interview doesn’t end when the reporter’s notebook is put away or when the camera isn’t rolling. Do understand that anything you say is “fair game” and there really is no such thing as “off the record.” If you don’t want it used, don’t say it.

V. Do you have a Crisis Management Center?

- A. Where will the crisis management team meet? Is it equipped with telephones, television hook ups; radios; computers; food?
- B. What if communications at that location have been cut off? Or what if you can’t assemble there because there is a protest going on? Do you have a back up plan?

VI. Do you have an Evacuation Plan?

- A. What if you have to get your students out of residences or academic buildings quickly? Where will you put them?
- B. How will you communicate the decision to your students?
- C. What is your responsibility for students living off campus?
- D. Have you coordinated the plan with your campus security officials?

VII. Have you provided for counseling and support services?

- A. Students may need a place to go to find support, counseling, information, phones, friends, food, comfort. Have you identified the place and is it ready to be used for this purpose?
- B. Who will staff the center?
- C. Does it have the equipment you need – phones, television, computers, food?

VIII. Is your campus secure?

- A. Have you evaluated your campus security?
 - Guards
 - Locks
 - ID’s

- If you need to, can you limit access to the campus? Are you in communication with local police authorities?

B. If there is a need to close the campus and cancel classes, have you determined how that decision will be made and communicated?

C. Have you identified critical personnel to stay on campus?

D. For research institutions, have you evaluated bioterrorism risks and other risks from toxic agents?

IX. How will you disseminate your plan?

A. A crisis management plan is of no use if your institution is unaware of its existence. It is important that your community knows of the plan and understands it.

B. The plan should be in writing and should be widely disseminated? Is it on your web site? In university handbooks?

X. Have your tried out your plan?

A. If you have a plan, have you done a recap after September 11th to see what worked and what did not?

B. Consider doing a table top exercise to see how the plan works. If there are glitches, it is better to know now.

Resources

A. Through your campus counsel, you can access the on-line Legal Reference Service of the National Association of College and University Attorneys (NACUA). There your lawyer can find and download:

1. Model crisis management policies from other institutions;
2. Useful outlines and monographs on how to prepare a crisis management plan, *e.g.*:

- Jeffrey Chasen, *Crisis Management*, Outline No. XV-97-03-2 (March, 1997).
- Gregory Hassler, *Be Prepared: A Crisis is Coming to Your Campus – In the Eye of the Storm: A Univesity Confronts Hurricane Floyd*, Outline No. XV-00-06-4 (June, 2000).

C. Other useful compendia of information on emergency preparedness are available on the Web:

- *Crisis, Disaster, and Risk Management* (2000), on the George Washington University Web site at www.gwu.edu/gelman/guides/sciences/crisis.html.
- Johns Hopkins University, *Report of the Committee on Crisis Management* (1999), www.jhu.edu/news_info/reports/crisis/sources.html.
- National Academy of Sciences, National Research Council, *Summary of a Workshop on Information Technology Research for Crisis Management* (1999), available on-line at http://stills.nap.edu/html/itr_crisis_mgmt.

D. Other Resources

1. “Articles and Books on Crisis Management and Crisis Communications,” <http://www.crisisexperts.com/bibliography.htm>. A compendium of articles and monographs on crisis management in many different corporate and nonprofit settings. The Website is maintained by the Institute of Crisis Management, a consulting firm based in Louisville, Kentucky.
2. Counsel for Advancement and Support of Education, *WHEN CRISIS STRIKES ON CAMPUS* (Wendy Ann Larson ed., 1994). See particularly:
 - Chapter 17: Jan Michelson, *At Odds Over Openness: Corporate and Campus PR Pros Tell How They Fight Closed Minds and Mouths During a Crisis*.
 - Chapter 18: Victoria Stuart, *Learning the Legalities: Prepare Yourself and Your Lawyers to Handle Campus Crises*.
 - Chapter 32: Shelley Sanders Kehl, *Campus Counsel on Crisis Management*.

This lengthy book is a collaborative effort by sixteen higher education organizations under the direction of CASE. The book utilizes as its central case study the murder of four students at the University of Florida in 1990. The book also contains other useful case histories, issues papers on various topics, crisis management forms from selected colleges, and an excellent bibliography.

3. Siegel, Dorothy, *CAMPUSES RESPOND TO VIOLENT TRAGEDY* (1994). Published by the American Council on Education, the book reflects the work and experience of the Campus Violence Prevention Center at Towson State University, which Ms. Siegel founded and headed as Executive Director. It too focuses on the murders in Gainesville, Florida, in 1990.
4. Weston, Michael C., Wildes, Kenneth J., *The Lawyer's Role in Media Relations and Crisis Management*, June 30, 1992 (available from CASE).

A useful account by two senior officials at Northwestern University – the General Counsel and the head of public relations – of their working relationship and their formula for collaborating on crisis management.

5. Two outlines prepared for a continuing legal education seminar conducted by the National Association of College and University Attorneys, October 21, 1993:
 - Barbara C. Wingo, *Managing Your Crisis: Two Case Studies – Some Legal Considerations in Student Emergencies*.
 - Paul T. Dee, *After the Storm*.

Both of these outlines offer interesting observations on crisis management from the perspective of campus attorneys.