

Seminar for Legal Marketing Association – Vancouver Chapter

November 1, 2007, Four Seasons Hotel

Help Your Clients Win in the Court of Public Opinion

How a powerful public relations strategy can help your client navigate the stormy waters between the correct legal strategy and perceptions in the court of public opinion.

That's what was sent out to promote this session. What I want to talk about:

- Acknowledge I am NOT talking about a business development strategy per se; such as a client event, sponsorship or website
- Rather I am talking about a different application of our strategic thinking and communications skills
- Talking about organizations that are clients of your firms'
- Will discuss the differences between communications practitioners and lawyers (Mars and Venus)
- How to meld those differences to become a viable team providing integrated service and enhanced value to clients
- Will offer a list of crisis preparedness techniques you can help clients put in place
- Will demonstrate how virtually every client has significant communications needs during a time of crisis even if the media is not camped in the lobby.

Large private or public organizations **usually have both in-house legal counsel and communications managers**. But are they trained in dealing with sensitive or crisis management situations? Are they both at the management table? **Example:** mining client with in-house legal counsel (skilled at M&A) and no communications assistance...they breathed a sigh of relief when the family of the dead boy drowned at a decommissioned quarry didn't sue and this year when the man came out alive from under 13 tons of rock. More **good luck than good management!**

At many private and public organizations there are no communications people trained or experienced in crisis or issues management. Likewise, the in-house legal counsel may strictly deal with contracts or other routine matters. However, **law firms are high on the CEO's list of 'who to call' when facing a critical problem**. The law firm that can provide **integrated service** will be providing the best value to the client.

So...who's ready for 'the big one'? Like emergency preparedness, it's about the same: **Best estimate of crisis preparedness: one-third of all public or private organizations.**

Law firms today all purport to "understand business" and to take a **modern multi-disciplinary approach to law**. This means firms need to have access to experts in a variety of specialties including crisis communications management.

This approach demonstrates your understanding of your client's business objectives and your determination to help the client maintain a good reputation. Examples of files I have teamed with lawyers on from the 37 listed on my website (out of 54 over a 25-year career):

- Real estate agent doing a lively trade in ecstasy labs.
- Paternity suit against a local celebrity.
- Theft of trust funds by a senior professional.
- Symphony musicians' labor dispute.
- Dispute over a high-profile logo.
- Forced resignation of a long-time CEO at a well-known NGO.
- Dismissal of a teacher on charges of sexual harassment.
- Hospital's revelations of an infant's death in emergency.
- Public 'outing' of a respected member of a professional organization.

Backgrounds differ – but how can we work as a team to the benefit of the client?

Communications/marketing professionals and lawyers need to understand **the differences between the legal and communications professions** – in thought processes, academic and experiential backgrounds and approaches to problem solving. This will ease the working relationship some lawyers and mar/com practitioners have found frustrating. (*Reference workshop and offer article*)

Most communications managers come from a liberal arts background, often with little formal education in business and it's the rare marketing or communications professional who has any training in law. On the job, we are trained to think broadly, to swiftly assimilate large amounts of information and to reframe information quickly for the consumption of different audiences. All lawyers, on the other hand, have university degrees, have graduated from law school and been licensed to practice law. Many have long experience in the business community and just as many are very articulate with their own target audiences.

We do have a **few things in common**: we both focus on communications skills and the presentation of facts and arguments to advance a client's interests. But we operate in very different arenas – i.e. the courts v. the court of public opinion.

Our **approach and thought process is quite foreign** in terms of both content and process from lawyers. Most **lawyers – and most CEO's, too – are process, linear thinkers**. They are trained to follow a logical process of facts and considerations through to a conclusion (think Lego). We are **intuitive thinkers**; we are attuned to lots of variables, different considerations and use empathy and imagination (as well as research) to get inside the head of the stakeholders (think pinball machine). It's no wonder that most lawyers and some CEO's are mystified and sometimes even a little suspicious of us. To them, we appear to come to conclusions much more quickly than they do, seem to be thinking of everyone else except the organization and often want to jump into writing or producing something before everyone else has finished thinking and strategizing.

As process thinkers, often **lawyers strike us as obstructionist and intransigent**. They don't understand the overall perception of target audiences. Instead, they want to rebut the charges or quibble with facts, failing to see that most audiences won't "get" the whole story and will still base their conclusions on just an overall impression. They sometimes further frustrate us by wanting ALL of the information before responding and, as we know, usually all of the information is not available as the crisis unfolds, but it is critical that we start communicating as soon as possible.

Example: closing down the abattoir for a large meat processing company involved going head-to-head with the company's outside counsel. Crafting the strategy around laying off all the employees, offering severance, letters of reference, 'warming up' the language of the letters received and preparing for the local media's reaction. Encouraging the company to provide the personal touch – the president went there and addressed the entire staff, shook everyone's hand, handed out the letters and cheques personally and then walked down the street to the local media and gave interviews. The company's law firm did not only not encourage this, they actively advised against it. Shortsighted.

Example: Non-English speaking pregnant woman is sent home from an ER ...returns two days later, cannot find a heartbeat...baby delivered dead. Next scene: boardroom with hospital CEO, regional health authority CEO, in-house counsel, outside legal counsel, insurance company's legal counsel, in-house communications manager, outside crisis communications advisor, hospital management team members, physicians. Autopsy inconclusive. Family distraught. Media all over this. Highly emotional. Lawyers argue against taking any responsibility. Communications advisors want the hospital to acknowledge the pain of the family and to take responsibility for its own staff's actions and to support staff. Result: stalemate and too little, too late on all fronts.

Seven Needless Sins of Crisis Mismanagement:

The **seven deadly sins of mismanaging crises** apply to most organizations, too; it's still the same old excuses for not being prepared, not accepting the challenge and missing the opportunity inherent in most crises. Helping a client get prepared is another service that a law firm can offer – value added – see Deloitte's is offering crisis management (www.deloittes.com).

1. **We don't have time to develop a crisis plan.** This may also include the 'it won't happen to us' mentality. Ignorance or arrogance may fuel this mistake...take your pick...because the damage may well be crippling.
2. **We aren't sure who will do what in an emergency.** It isn't just designating roles and responsibilities...it is also the contingency plans for when someone is away, dead or otherwise unavailable...backups, systems of reporting, information sharing and methods all need to be determined and understood organization-wide.

3. **We have a plan, but we don't know if it will work.** Practice, debate and blue-sky at least annually. Given a choice between being embarrassed at something not working in a drill or in front of the TV cameras, I know what I would choose!
4. **We may be sued, so let's not say anything publicly.** Often litigation follows adversity (more so in America), but lawyers will often caution against communicating or taking actions (like apologies) that may ascribe fault. They are usually wrong on this. However, messages can be couched in terms like "We can confirm at this time..."
5. **Putting the media ahead of its own employees/members.** Nothing is worse than disenfranchising employees during a time of crisis. Gossip and misinformation rush in to fill a communications vacuum.
6. **We'll handle the news media when the time comes.** You CAN be prepared for a variety of eventualities and even prepare Key Messages and Q/A's about different outcomes that will prove to be very useful to your spokesperson. Media training annually is essential.
7. **Ignoring the 'window of opportunity'.** Experts warn this can be as narrow as 12-48 hours. Today it is far less – may be an hour or even just minutes. If you lose the opportunity to tell your side, to offer credible message of support or sorrow or apology or correct misinformation, the window slams shut and your reputation is damaged...maybe forever. The **rise of the Internet and the alarming speed** with which cyber-activists attack can leave organizations shocked and incapable of responding in real time. When you are able to advise clients on communications preparations they can arrange in advance of crises or challenging circumstances, you **give your clients a fighting chance to salvage, maintain or even emerge victorious from a difficult situation.** Example: how many of your clients have a 'dark website' ready? Example: schools, colleges and universities in the post-Dawson College period – all are re-assessing their security and procedures and the mesh or disconnect between communications and operations.

12-step program for crisis management – can send it if you're interested.

Even without the media camped in your lobby, communications is critical

End with **Symphony** example: situation in which the media wasn't even able to publish any information, but it threw the organization into a terrible crisis of leadership and turmoil. Affected its ability to sell tickets, to raise funds, to lead the orchestra effectively and harmed personal relationships among staff and the board. And yes, the lawyers were there garnisheeing the conductor's wages.

So... Even when a case is not in the public eye, **most organizational clients still have significant communications needs.** Offering your clients communications expertise in

crafting and disseminating important and timely messages to key audiences like employees, shareholders, competitors, suppliers and colleagues is often just as important as messages via the media...and usually much more controllable. That is, the **business objectives via communications to these groups are achievable.**

You can help the client create and distribute proactive information swiftly and smoothly, whether for the organization's website, newsletter, emails to employees, corporate blogs, press releases, fact sheets and speeches.