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Crisis management attorneys can protect reputations *and* legal interests



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(Left to right): DAVID DURSO AND ANDREW GARBARINO: 'Involving an attorney early on in the crisis allows us to analyze the legal implications of public statements, and whether any such statement is necessary or advisable.'

BY ED MOLTZEN
LIBN CONTRIBUTING WRITER

It's no secret that the Long Island and New York media markets can be brutal on those caught up in a crisis—whether of their own making or not—and those tough times may call for a tough response.

But not in the way you might think. While a thoughtful public relations strategy is usually necessary in the face of scare headlines, protests or worse—such as a criminal investigation—crisis management attorneys can provide necessary skills to protect a reputation and avoid legal jeopardy.

"Many of the cases that I get involved with could potentially lead to litigation," said Mitchell Schuster, head of crisis management at the firm Meister Seelig & Fein, which has an office in Jericho. "So I have to play chess and not necessarily checkers. I sometimes, with my statements, think of a more long-term vision and where this case may go through the judicial system."

That at times means not falling into a trap of responding to every reporter's question or new story.

"They say something, we say something, they say something, we say something, which I'm not a fan of," Schuster said. "I'm a big proponent of, 'You don't give a fire oxygen.'"

The capability of a strong litigator to also provide public relations skills can provide a dual benefit: a successful legal outcome and protection of reputation for a person or a business. Whether a client in crisis

is a business, an individual or a family, public response to a crisis can make all the difference in attaining a better outcome.

Terrance Flynn, who leads the Government Compliance and Investigations Practice Group at Harris Beach Murtha, which has an office in Uniondale, said there are clear situations for hiring an attorney with a known reputation both inside the courtroom and outside during a time of crisis.

Flynn, who has served as a U.S. attorney for the Western District of New York, said the standing an experienced litigator has with news outlets and others can more than come in handy.

"As a former United States attorney...I'm often asked to be the spokesperson and avoid the company having a CEO or a general counsel speaking," Flynn said. "Media can say, 'I know him—I've dealt with him for many years,'" Flynn said.

Lawyers say time of crisis in a media environment can create two dynamics: Speaking too aggressively in public comments can hurt in a courtroom or before a jury, while not speaking out forcefully enough publicly in a defense can help in court but sink a reputation.

Many believe that's what happened to the former Big Five accounting firm Arthur Andersen, which got swept up in the Enron scandal, charged federally and convicted. Even though the company won when the Supreme Court threw out the conviction—by then its reputation had been eviscerated, and the firm went belly up.

Or consider the case of Raymond Donovan, the then-Reagan Administration

labor secretary who was indicted and tried for corruption in New York City in the 1980s, but eventually acquitted of any crimes. Donovan famously asked: "Which room do I go to to get my reputation back?"

"You can win in court, and just never get your reputation back," Flynn quipped.

So measuring response when both reputation and legal ramifications loom large becomes key.

"It is critical that an attorney be the first professional engaged and coordinate the onboarding of other professionals, including PR experts, to ensure that any communication will further a client's legal interests and, more importantly, not interfere with a client's goals or otherwise do harm in a given scenario," said David Durso, partner in the Uniondale-based firm Ruskin Moscou Faltischek, and Andrew Garbarino, (not the congressman) of counsel to the firm, said via a joint response.

"As attorneys, we are able to coordinate with PR professionals and our client to develop a clear and effective communications strategy," Durso and Garbarino said.

"It is important to take into account both legal and business considerations when developing a communications plan," they added. "Involving an attorney early on in the crisis allows us to analyze the legal implications of public statements, and whether any such statement is necessary or advisable."

Either civil or criminal crises call for an understanding of potential pitfalls down the road—particularly if a public comment

makes it in front of a jury.

"Traditional PR is appropriate when business is operating as usual," Durso and Garbarino said. "A crisis, by its nature, removes the normalcy of everyday business and requires a different perspective."

"Business and individuals should consider involving their legal team or a crisis management attorney when a situation has occurred that could have legal implications for the business or individual," they added.

Long Island has long had its share of controversies and scandals that have dominated national and international headlines. When Long Island native Joseph Hazlewood ran the Exxon Valdez aground in Alaska in 1989, for example, he became of the subject of unrelenting media coverage around the world. But that was long before the Internet and social media emerged as dominant forces.

All of the attorneys interviewed for this story say that lawyers can work with a platform's management in egregious cases and have social media posts removed. But it can be difficult.

"With social media, there's no barrier," Schuster said. "Anyone can be on social media, anyone can create a page, anyone can seek to take down a celebrity or an artist because of whatever gripe or grievance they might have, justified or unjustified."

In many cases, a viral social media event may evaporate on its own. In other cases it may be more serious. If it reaches crisis proportions, an experienced crisis litigator may be the best resort.