Court vs. Court: Corporate Counsel’s Strategy to Stop a Narrative Vacuum from Consuming a Brand

Career Development

Law Department Management

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The Court of Law and the Court of Public Opinion are often at odds during the first hours of a crisis.

Corporate silence has never been public silence. When legal risk dictates saying nothing, the vacuum still fills. That tension, left unmanaged, is where brands die, as employees, reporters, regulators, and every stakeholder with a theory fill the vacuum on their own terms.

By the time your organization is cleared to speak, the narrative has hardened.

One crisis. Two courts. Two questions.

The Court of Law wants to know what you knew and when you knew it. Your stakeholders are asking whether you understand what happened, care, and can be trusted going forward. These are two different sets of questions, and they do not pause for discovery. The assumption in most war rooms is that legal strategy and public communication cannot coexist, and that assumption is costing organizations.

The cost of silence

When Target's massive 2013 data breach became public, it was because an independent investigative journalist broke the story before Target was prepared to comment. As millions of customers' credit card and personal data were exposed, the retailer was left on the defensive with net Q4 profits dropping 46 percent. Consumers were angry at the perception that Target prioritized

profits over notifying them of the breach.

The filled vacuum, combined with Target's silence, fed anger and suffocated holiday revenue. Months later, the CEO and CIO resigned.

The fog of truth

In the first hours of a crisis, you are operating in a dense fog of incomplete information. If you declare an incident contained before forensic teams have finished their work, your initial statement looks like a lie or catastrophic incompetence and feeds the vacuum.

Standard cyber, liability, and directors and officers (D&O) policies include no admission and cooperation clauses that give underwriters legal grounds to deny coverage if an executive unilaterally assumes fault and materially prejudices the insurer's ability to defend the claim.

There is a significant difference between a raw truth and a strategic truth. In the fog of truth, never overpromise the facts. State them clearly without exacerbating the crisis, and be transparent about the solution to preserve stakeholder trust.

Raw truth: Our developer missed a patch and an extortion group accessed client data.

Strategic truth: We have identified a technical vulnerability within a contained area of our network that allowed unauthorized access. We are taking immediate steps to secure the network, engaging outside forensic specialists, and working directly with impacted stakeholders to address this issue.

The Court vs. Court framework

The Court vs. Court framework is based on my observations as a producer inside a cable news control room and my career leading organizations and federal agencies through a range of strategic communications needs. It is not a complete crisis strategy, but it provides a strong foundation for navigating both courts:

- **Stakeholder mapping.** Identify in advance the people whose trust most determines the outcome of your brand's crisis. Not all stakeholders carry equal weight. Some have the power to amplify a crisis beyond its natural scope. Others have the power to end it.
- **Scenario planning.** Build legal and communications strategy together before a crisis breaks. Establish what categories of communication are permissible for a given crisis type and agree on internal protocols before the phone rings.
- **Permissible narrative.** Identify the maximum amount of truthful, legally defensible information your organization can share at any given moment in a crisis. Determine this with legal and communications operating in parallel rather than in sequence. Most organizations do not build this until after a crisis breaks, which is when pressure clouds judgment.

When the two courts collide, the vacuum is dangerous. Like anything of consequence, you will not please everyone. But you must please the people who determine whether your brand's crisis has breath or withers on the vine.

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Mission & Story

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