

Martindale-Hubbell's Counsel To Counsel Series Comes To Philadelphia for Best Practices Discussion About Managing Corporate Crises

By Timothy B. Corcoran

The extent to which a company has a crisis management plan in place before the inevitable crisis actually hits will determine how well that company responds and minimizes its risk and exposure, according to participants at a unique discussion forum that took place recently in Philadelphia.

The event was last month's stop in Martindale-Hubbell's 2002 **Counsel To Counsel** series, a global initiative in which senior corporate counsel are invited to discuss best practices in delivering corporate legal services.

Twenty-one high-level corporate counsel from national and international companies participated in the forum, along with four senior partners at major law firms.

Michael Costello, assistant general counsel for Asia Pacific Monsanto Company and James Sheehan, deputy general counsel of Tellabs, co-chaired the Martindale-Hubbell forum and were joined by in-house counsel from Cigna, DuPont, Electronics Boutique, Hay Consulting Group, Independence Blue Cross and several other companies. The event was co-hosted by the law firms of Dechert and Patton Boggs LLP.

Key findings at the **Counsel To Counsel** forum included the following:

1. Establish a state of readiness by preparing a comprehensive crisis management plan to guide executive decisions. Based on the experience of several participants, the key to effective crisis management is advanced preparation. There is simply no substitute for careful planning before a crisis hits. One general counsel from an international company suggested that any crisis management plan should address three levels of response – corporate, regional and local – and that procedures be put in place that allow the organization to work through crises within a checklist format.

2. Train for a crisis as if one is inevitable – because it is. Several participants agreed that a common mistake made by companies is that they develop a crisis management plan and promptly put it on the shelf. One general counsel shared that his company performs formal “mock” emergency management exercises every two years, such as hostage-taking crises and plant explosions. These are very intense programs that take a full-time crisis management staff as much as six months to plan, and occasionally involve the participation of community agencies (e.g., police, fire, paramedics, etc.)

as well as members of the local news media.

3. Have a matrix in place to monitor crises and track progress of crisis management programs. A master calendar is a valuable management tool for in-house counsel because it provides a “snapshot” assessment of where the company's vulnerabilities are at any moment in time. This matrix should include physical crises (e.g., storms, explosions, fires, etc.) as well as non-physical crises (e.g., financial, ethical, moral, corporate, etc.).

4. Maintain open lines of internal communication. Several in-house counsel stressed the importance of good communication among the senior executive team throughout a crisis management situation. For example,



Participants (l-r) David Glogoff, Vertis Inc., and Lanny Davis, Patton Boggs, at a Counsel To Counsel forum in Philadelphia.

it's essential that there be an effective way of reaching other members of the disaster response team at any moment in time. In fact, one participant stressed the importance of having a redundant communications system in place (e.g., telephone, email, etc.) in case the regular modes of communication are interrupted by a physical disaster. The key point is that all senior management decision-makers must be accessible so that employees, customers and other appropriate audiences can be kept accurately informed.

5. Evaluate the company's various compliance programs and make sure that all employees are undergoing adequate compliance training requirements. The general counsel of one

global corporation explained how his company's compliance requirements are so complex that they are often neglected by senior managers. They have now put in place a streamlined process for compliance training, mandated by the chief executive officer, that enables management to track and verify that appropriate employees have been trained.

6. Navigate the frequent tension between public relations counsel and legal counsel. There was a lengthy and lively discussion about the role of inside counsel and outside public relations experts during a corporate crisis. It was agreed that the company's external perception management is a serious challenge, but the participants agreed that the PR agenda and legal agenda are often at odds when it comes to crisis management.

For example, the public relations people will typically advise the chief executive officer to disclose as much information as possible and to be visible with the news media. The lawyers, however, by their very nature tend to advise against making any comments that might incriminate the management team or the company in general. One law firm partner, who provided counsel to the Clinton Administration, suggested that the ideal situation is to have legal counsel on the crisis management team who understands the importance of public relations and accepts that good PR advice can be just as valuable as good legal advice.

7. Beware of the possible loss of privilege when consulting with non-lawyers. One very key

point that emerged from the discussion about the role of public relations experts was a potentially serious consideration about communicating sensitive information to these and other non-lawyer advisors. A recent New York District Court decision held that attorney-client privilege does not apply when the purpose of such conversations is to assist public relations experts with generating “PR spin” to enhance the company's external image. Although this may be an isolated ruling, several participants agreed that case law on this topic is evolving and at least one law firm partner urged that in-house counsel be sensitive to this possible loss of privilege since it could potentially require public relations documents to be produced in litigation.

8. Work hard to maintain the trust and confidence of employees. Several of the session participants concurred that in many crisis situations, there is no more valuable asset than employee confidence. First of all, angry or disillusioned employees may quit en masse. Second, those employees who are especially upset by the company's actions may make damaging statements to the news media. Third, even loyal employees whose confidence is shaken during a crisis are likely to experience a significant decrease in productivity. In-house and outside counsel agreed that the most important strategy for maintaining employees' trust in a crisis is to be honest, forthright and fair in communicating with them as much information as possible.

Martindale-Hubbell's **Counsel To Counsel** consists of individual forums where general counsel share ideas on best practices in corporate legal services among peers in an off-the-record exchange. Participation in each forum is by invitation only in order to ensure the highest possible quality of discussion.

Martindale-Hubbell's objective in underwriting the initiative is to facilitate a valued dialog between leading buyers and providers of legal services. **Counsel To Counsel** is organized in collaboration with ELD Project Marketing International, Inc.

For more information about the Philadelphia forum, or to apply to participate in any of the forums in the Martindale-Hubbell **Counsel To Counsel** series for 2002, please go to <http://c2c.martindale.com>.

About the Author

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