

5 Tips for Crisis Management from a Trial Attorney's Perspective

3.26.20

Commentary provided by Miranda Lundein Soto and Frank A. Zacherl

As trial attorneys with more than 40 years of combined high-stakes litigation trial experience, we provide 5 simple tips on how to effectively manage crises through a trial lawyer's eyes.

1) Hit the **Pause** Button.

Because we live in an age of immediacy in response time, we miss opportunities to "take a pause" and allow ourselves a moment to assess the challenges before us. There are very few "real" emergencies in life or litigation that need an immediate response. It's okay to take a pause and collect your thoughts before making a hasty response that could be misinterpreted or send the wrong message. Taking a pause will also allow you to identify opportunities created by the crisis. As trial lawyers, we understand the value of taking a few moments to reposition ourselves, collect our thoughts, and look for a positive point to make, even when jurors, judges or the public are watching and patiently waiting. Acting impulsively or without ample forethought could exacerbate the crisis and could cause you to miss a way to make lemonade out of lemons.

2) **Triage** the challenges and **Assign Degrees of Urgency** to each issue.

Trial attorneys are akin to emergency room doctors in the legal world. With crisis management as in trial law, you need to "triage" and "assess the degree of urgency" of an issue or argument. Get out your white boards with your team and write out all of the possible issues you are facing during the crisis from every conceivable angle. Put issues into "buckets" ranging from high to low in urgency and tackle the highest priority issue first. After you and your team have identified all of the issues/challenges, now is the time to focus all of your energy on being solution-based, not problem-based.

3) Create a **Theme** and deliver a **Concise Message**.

In trials, we create a "theme" from the inception of the case. As evidence is collected over time, the theme may change. In trial, themes give the jurors the 30,000 ft. view of the case. Themes should be fluid and malleable to allow for unexpected changes over time—until it's fine-tuned. When dealing with crisis management, creating a theme is imperative for giving your customers, employees or the public a clear "big picture" of the company's overall goals.

Likewise, during closing argument, trial lawyers ask the jurors to render a verdict for their client. The most effective trial lawyers make their closing arguments clear and concise so that there is no mixed messaging. For example, "You should find for my client because of X, Y, and Z." The same concept

5 Tips for Crisis Management from a Trial Attorney's Perspective

applies to crisis management. In a crisis situation, people are starved for leadership and the same is true with jurors in trial scenarios. Jurors not only consider the evidence, they are taking into consideration how clear and confidently the evidence is presented to them. How you package the information and deliver it to your audience is crucial be it in trial or during a crisis.

4) Provide **Clear Instructions** to your team.

In jury trials, at the conclusion of every case, jury instructions are read to the jurors by the Judge and then sent back with the jurors to deliberate. Jury instructions provide the jurors with clear, concise instructions on how to deliberate (i.e. openly discuss the case) and ultimately render a verdict. Crisis management should be no different. Giving each team member clear instructions and delegating specific tasks is crucial for crisis management. Clear instructions to your team will reduce stress, confusion, and further chaos.

5) **Implement** your strategic plan.

Whether it's trying a case or managing a crisis, the secret to success is to 1) take a pause and collect your thoughts; 2) triage and assign the level of urgency to each issue; 3) create an overall, big picture theme of how you and your team plan to manage the crisis; 4) provide clear instructions and tasks to your team that will allow you to; 5) deliver an effective, concise message to your audience. Implementing a solid strategic plan effectively moves your team past the crisis, improves morale, and gives you the ability to measure your progress and success rate.

After a case is over, most trial attorneys carve out some time to identify the positives, negatives, and any opportunities for growth and perspective. Invaluable lessons can be learned from crises after careful, thoughtful reflection. These lessons learned can be used to implement better strategies moving forward, build a stronger team, and mitigate future damages.

About Miranda Lundein Soto

Miranda Lundein Soto is a partner in the Miami office of Shutts & Bowen LLP, where she is a member of the Business Litigation Practice Group. Miranda is Florida Bar Board Certified in Civil Trial Law and has tried more than 50 cases, bench and jury trials. Her practice includes from commercial and business disputes, professional and legal malpractice claims, product liability, complex fraud matters, public policy matters, cases of first impression, high-stakes personal injury cases, franchisee/franchisor litigation, trust and estate litigation and premises liability at the state and federal levels.

About Frank A. Zacherl

Frank A. Zacherl is a partner in the Miami office of Shutts & Bowen LLP, where he is Co-Chair of the firm's Class Action and Mass Litigation Practice Group, and a leading member of the Insurance Practice Group. A Martindale-Hubbell AV® rated attorney, Frank concentrates his practice in complex

5 Tips for Crisis Management from a Trial Attorney's Perspective

civil litigation and electronic commerce, with an emphasis on trial work, class action defense, and high-stakes commercial matters. His practice areas include insurance litigation, electronic commerce and cybersecurity consultation and litigation, and commercial litigation.

Professionals

Frank A. Zacherl

Practice Areas

Litigation

Offices

Miami