# THE DEAN AS A CRISIS MANAGER

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CRISIS management is not part of a dean's usual job description. Yet major crises, unanticipated events with significant media coverage and with the potential to damage both the law school and the dean, occur more frequently than commonly assumed. My own cursory survey suggests that any dean in a typical five-year term has about a fifteen percent chance of encountering a major problem. When such events do occur, any stereotypic notions of a dean as an ivory tower administrator safely removed from the slings and arrows of the real world quickly evaporate.

Crisis management is a term more commonly found in the lexicon of corporate managers than academics. Many corporations have crisis management plans in place so that a general response to a sudden emergency is planned in advance. Airlines, utilities and drug companies are prime examples. Even with such contingency plans in place, few institutions can avoid the intense scrutiny of a World Com or Enron debacle. Universities fortunately don't face problems of such magnitude. However, the general assumption that major problems of crisis proportion are not forseeable enough in academic institutions to justify prior attention may be erroneous. Fortunately, some attention to the issue is now appearing at law school dean s meetings.

The purpose of this article is to discuss some of the issues which confront a dean in a major crisis and offer some observations on getting both the law school and the dean through with minimal damage.

## WHAT CONSTITUTES A MAJOR CRISIS

For purposes of this article, a major crisis is any significant unanticipated event with the potential to damage the institution and which draws continuing media scrutiny. Granted, the current fiscal constraints facing most public law schools or a precipitous drop in the *U.S. News* rankings to be sure would cause any dean major headaches. Deans have come to expect such things. My focus here will be on problems of an altogether different nature.

Some recent examples: a faculty member is arrested and convicted of a felony; a faculty member is suspended from practice for ethical violations while engaged in outside consulting activity; a law student goes on a shooting rampage; a faculty member is accused of tax fraud by the IRS, a sexual harassment controversy enmeshes the school; a convicted murderer, on parole, is admitted to the first year class; the school accepts a major gift from a controversial donor.

All these events and more have recently occurred and caused deans and their schools major problems. When they do happen, there may be little advance warning. Media will want immediate comment, usually from the dean and anyone

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else willing to speak. There will be no time to prepare a carefully worded response. The law school's position will not be clear. If the crisis is not quickly resolvable, troublesome questions about what was known in advance and why things are not being handled more expeditiously may also arise. It will fall to the dean to respond to the media while trying to address the crisis. Shades of the old Watergate coverup come to mind: what did the dean know and when did she know it?

There are, of course, horrendous problems like the September 11 terrorist attacks, with their effects on some New York area law schools, the murder of a dean by a dismissed student or devastating natural disasters, which are crises in every sense. They differ from those mentioned above in that the law school community is the victim and few are looking over the dean's shoulder asking hard questions about what she knew in advance and why the problem is taking so long to resolve.

## THINGS TO CONSIDER BEFORE THE WORST HAPPENS

Several points are worth bearing in mind, especially before being confronted with a major problem.

### 1 *Some Problems Can Be Detected in Advance*

Every law school has an information network full of rumors, facts and half-truths. Students and faculty in trouble may share a comment with friends or colleagues, which may be a sign of an impending crisis. Lawyers and judges outside the school may see unusual things. And family members may be concerned enough to call. Any dean is well advised to pay attention to signs of trouble or unusual behavior. Some problems do manifest themselves in advance. Awareness that bad things can happen even in a professional school environment may help identify clear signs of later trouble.

### 2. *Action Is Better than Inaction*

Timely intervention at an early stage may help resolve the problem. University counselors, therapists or a trusted friend or colleague often can help. Few people in a law school are truly bad actors with evil intent. More likely, they are in over their heads and may welcome help and an outside perspective to avoid putting their careers in jeopardy Action to facilitate an early solution may avoid a far more serious situation later.

### 3. *Media May Be Very Interested in a Law School Crisis*

While accountants and corporate CEO's seem to be at the top of the least favorite occupations list, lawyers are never far behind. Highly paid faculty and law students with the potential to earn high salaries make good copy if they go wrong and there is a public controversy.

4. *The Law School's Position and What Steps Are Being Taken Will Not Be Completely Clear to Outsiders*

Those outside the law school community will get most of their information from the media. Rarely will the law school's side of the story and the complexities of the problem get sufficient coverage. Outsiders will not understand what is happening to deal with the problem.

5. *Resolving the Crisis Will Take a Significant Amount of the Dean s Time*

Myriad internal issues can arise and the time demands of dealing with the substance of the crisis and responding to media and members of the law school community will be daunting.

6. *Crisis Management Cannot Be Delegated*

For the duration, the dean will be the principal person dealing with the crisis. Substantive decisions, communications with all interested constituencies and dealing with the media usually cannot be handled by anyone else.

## SOME CRISIS MANAGEMENT GUIDELINES

Every situation is different. No one approach applies to every crisis. Even so, there is enough commonality that some general guidelines may be of use. The most complex problems arise from serious faculty misconduct. Beyond the media attention, difficult employment and tenure issues often limit the dean s options in responding to the crisis. Final resolution may take many months, inviting scrutiny of any action by the dean.

In general, four issues demand attention in any crisis:

- the dean's role
- substantive considerations
- communication with law school constituencies
- media coverage

As a practical matter the four are not easily separated. One often affects others. Confidentiality issues surrounding employment matters may limit the dean s ability to deal with media or communicate with law school constituencies. Unfavorable media coverage may prompt more demands from the law school community for action. The dean's role throughout the crisis may change from problem solver to prosecutor to chief administrative officer.

### *The Role of The Dean*

Before a crisis becomes a crisis, the dean may be acting as a problem solver, mediator, or facilitator. Informal communication is possible and confidences can be kept in the interests of defusing a potentially highly public controversy If such

efforts fail, the dean's role must inevitably change to the law school's chief administrative officer. The school's best interests must be served. The interests of the school usually will diverge sharply from those of a faculty member or student charged with serious misconduct. Disciplinary action or termination or expulsion in the case of students may be called for Formal institutional procedures will come into play and must be followed. The dean will recognize these multiple roles soon enough. For all practical purposes, as soon as a crisis becomes public, the degree of the dean's freedom will be limited by his role of chief administrative officer.

A very important distinction should be raised here. The dean is the school's chief administrative officer, not its lawyer Deans of course are attorneys and we tend to act as such. The dean as administrator is an agent of the university, a role very different from being the school's lawyer. The distinction should not be overlooked or diminished.

The dean will need and should obtain counsel as soon as possible. In most cases, this will be the university general counsel. The old admonition that a lawyer representing himself has a fool for a client is never truer than in a crisis situation. Too much will happen too fast for the dean to both manage the crisis and understand the complexities of the legal issues involved. Competent counsel can take some of the burden of the situation off the dean, avoid mistakes of substance and process and reinforce the reality that the dean must act as an administrative agent of the university.

*Substantive Considerations*

This will often be the crux of any crisis involving faculty or staff. Most cases of serious personal misconduct by faculty, staff or students will invoke university or law school disciplinary, termination or suspension procedures. In general, such procedures tend to be complex, with authority to act divided among the dean, the central administration and even faculty committees outside the law school. They are also cumbersome and glacial in their ability to facilitate a quick decision on a personnel matter

Early on, the dean will need a complete understanding of all policies covering the situation, who has responsibility for initiating action, who decides and the substantive standards governing such matters as suspension and termination. Counsel will be essential here. Mistakes made can hinder moving forward and subject the university and the dean to later civil liability. Counsel also will be aware of internal university precedents from other units and advise on such mundane but important matters as who actually prosecutes a tenure revocation and what seems to be the burden of proof. Tenure revocation is so rare in higher education that answers to such questions may not be immediately apparent from reading university faculty handbooks and procedure manuals.

One of the first substantive problems the dean will face, and one of the most difficult, will be whether the dean has authority to alter a faculty member's job duties after an indictment, arrest or suspension from practice. When any of these events occur, there likely will be immediate pressure from students and others to either terminate the offender or at minimum remove him from all teaching responsibilities. Of course everyone is innocent until proven guilty of a criminal

charge. The harsh reality, though, is that students are likely to be outraged that they are paying tuition dollars to be taught by someone charged with a crime or disciplined by a state bar. Removal from the classroom, while not a final solution, is one of the first necessary steps the dean most likely will have to take. If possible, this should be done even before criminal accusations or bar disciplinary action becomes public. The dean may receive informal notice of what is coming through back channel communications from prosecutors or bar staff. If that happens, it is better to reassign the faculty member ahead of the adverse media coverage that will follow the public announcement.

In an ideal world, the offending colleague would voluntarily take leave without pay until his personal difficulties are resolved. More likely, protestations of innocence and unfair treatment may greet the dean's decision to remove a colleague from the classroom. By this point the faculty member usually will be represented by counsel and protracted discussions and negotiations may begin in earnest as to the future of the faculty member.

Assuming the dean has authority to remove a faculty member from the classroom, must he continue to be paid? My own informal survey and discussions with fellow deans who have faced similar issues suggest that many universities have no specific written policy covering this situation. If the university takes the position that a faculty member under a cloud must continue to be paid, in effect the dean will have to reassign instead of simply remove. In such a case, there are no good alternatives. To justify continuation of salary, there must be some assignment of non-teaching duties that at least plausibly pass for work. There are few administrative duties around a law school that a faculty member can be thrust into on short notice. A logical alternative is research. Other colleagues are likely to resent the fact that a colleague in trouble has the apparent luxury of a paid research leave while they must continue teaching and perhaps even fill in for that person's courses on short notice.

When things get to this point, the ultimate fate of the faculty member will probably be on the table. It usually will fall to the dean, in conjunction with the central administration, to decide whether to terminate the employment relationship. Will the separation be negotiated or must there be a termination proceeding? This is a hard decision for the dean. The university administration will normally look to the dean as the school's chief administrator for guidance. The faculty generally may be divided as to what is an appropriate resolution. Some may want nothing to happen until pending charges are resolved. Others want the school's very public turmoil to subside and would welcome a departure under any circumstances.

Revocation of tenure for a colleague charged but not convicted of a crime or disciplined by a bar is no sure thing under most university tenure revocation standards. Revocation of tenure for cause is standard virtually everywhere, and a criminal conviction usually constitutes cause. An indictment or an arrest alone is another matter. Most tenure standards are silent here, and this usually will be the situation confronting the dean. A faculty member has been charged with a crime and is awaiting trial. He or she has been removed from the classroom. What next? Should the dean wait until the criminal charges are resolved or proceed with tenure revocation knowing that the standards are ambiguous? There is no standard answer. Waiting at least will bring clarity to the tenure issue. The tradeoff may be

unremitting pressure from inside and outside the school for action and continuing media coverage and inquiries. At state schools, legislative pressure is not uncommon. The time lag between a criminal charge being filed and its resolution may be months or even years if an appeal is involved. All these considerations make for a difficult decision. A plea to a lesser offense, perhaps a misdemeanor, could only compound matters.

Ethical violations which result in suspension or disbarment raise even more difficulty with tenure standards. The degree of culpability may not be as great as with a criminal charge, the offending behavior usually comes from some outside activity only indirectly connected with academic responsibilities and university tenure standards are usually silent on the effect of loss of professional license. Many law schools hire non-lawyers in tenure track positions. Probably no law school in the country conditions employment on bar membership. A law professor, unless a clinician with clients, can adequately and competently carry out all the duties associated with law teaching whether a bar member in good standing or not. Linking loss of license or a suspension to usual university tenure revocation standards is not an easy case to make. Yet many in the law school community, especially students, may equate ethical misconduct with sufficient grounds for termination of employment. Explaining these subtleties to outsiders and the media is not an easy task.

Dealing with these substantive issues involving the continued employment or termination of a tenured colleague is fraught with difficulty Because of the uncertainties on both sides, a negotiated settlement with voluntary resignation coupled with some financial incentives often is the solution of choice. There is no guarantee that tenure revocation, especially before an actual conviction or where only an ethical violation has occurred, will be successful. The cost of failing to remove a colleague in a revocation proceeding will be substantial in terms of the intangible effects on the institution. The consequences of losing a job through tenure revocation will usually be the end of an academic career, perhaps an unacceptably high cost to the faculty member The very indeterminancy of the situation may be enough for the dean to find a middle ground and reach a voluntary separation agreement.

A workable approach here is always to leave the door open to negotiation while making it clear that the dean is preparing to go through with tenure revocation proceedings. Any compromise will usually involve some incentives—continued employment for another year, buying additional years for retirement or similar benefits, use of an office for a period of time, and an agreed position the law school will take if the faculty member seeks employment elsewhere—and those incentives often will become public or at least known around the law school. Some will not understand their necessity, some will be outraged and some will be relieved that the matter has been concluded. These negotiations usually will be handled by attorneys on both sides, but the dean's role will be an important one. The university will not sign off on a settlement that the dean believes is ill advised.

The substantive issues confronting the dean in a major crisis are complex and multifaceted. An early appreciation of the terrain ahead makes a negotiated resolution attractive in crises involving personal misconduct, even though such an approach has some obvious downside risks. The school may appear to be buying

a solution from a wrongdoer at too high a cost. The alternatives to negotiating a deal could be considerably more costly and carry far higher risk to the best interests of the school. Perhaps the bottom line is this: in certain situations the continued presence on the faculty of a wrongdoer is simply unacceptable.

*Communication With Law School Constituencies*

Any law school community has multiple constituencies—faculty, students, alums, boards, the central administration and other groups. When a major crisis occurs, most in the community will be interested and view themselves as stakeholders. They do not want the school harmed, they want the problem solved quickly and they want it resolved with as little adverse publicity as possible.

In this situation, certain things will become obvious. Despite all best efforts, it will be difficult to convince the law school community why the crisis is taking so long to resolve. Outside the faculty, there may be little sympathy or understanding of just how long it takes to remove a faculty member. Faculty colleagues may not agree on the need for any action against a wrongdoer beyond whatever criminal penalties or bar disciplinary sanctions are imposed. In this environment, constant communication by the dean is imperative.

The faculty is one of the most important constituencies in any law school. Kept adequately informed, they are unlikely to hinder the dean's efforts to resolve the crisis. Expecting public support for the dean or formal resolutions of condemnation of a colleague may be expecting too much. In general, faculty tend toward neutrality While they may strongly resent bad conduct and the position in which it puts the school, they also realize that the offender may remain a colleague in the future. Junior faculty are especially wary of such situations and usually want to remain invisible. As long as the dean regularly keeps the faculty up to date and ahead of what they may hear on the street or through the media, this critical constituency will cause minimal difficulty Most schools have elected or appointed dean's advisory committees and the dean can make good use of this resource both to communicate information and seek advice from respected colleagues.

A similar but more general communication effort will be necessary with students. They may feel most aggrieved by highly public faculty or student misconduct. They after all are paying tuition and most are constantly looking for jobs. Anything which harms the reputation of the school concerns them. A strong sense of betrayal, powerlessness and even outrage among some is not uncommon. The strength of student feelings should not be underestimated. The dean needs to find time in the press of other matters to meet with student leaders, have open forums and send e-mails to all students in an effort to keep them informed to the extent possible.

This effort may pay off in other ways. The several hundred members of the student body have an enormous network of lawyers, judges, legislators, business leaders and even potential future law students that they talk to daily Information students receive will go far beyond the law school. A dean, realizing the broad reach of this information network, can use it to get the law school's message to a large group of people.

The same holds true for boards of visitors and other alumni groups and leaders. It is well worth the time to hold special meetings to keep them informed or at least communicate by letter. Such groups have very large networks and can be useful to help the dean keep influential leaders advised of progress.

It is crucial to realize that events inside the law school are noticed by a very large group of people outside who are vitally important to the future well being of the institution. The dean, by keeping the entire law school community informed, can keep the good will and understanding of most. Regular communication with important stakeholders is a vital part of crisis management.

*Media Coverage*

An equally important element of crisis management is dealing with the media. You can expect coverage of the immediate problem and later revisiting to investigate what has been done and why The most complete coverage occurs at the beginning when the crisis is most newsworthy and greater numbers of people are willing to comment. New stories then surface when*ever* there is something new to report. That may be a new development or even a new comment by a faculty member or someone in the legal community outside the school. This new coverage keeps the law school and its problems in the public eye even longer.

Problems of the complexity discussed here cannot be caught in a thirty-second TV segment or even a single news article. It will be hard to get the school's position fully explained to the public through the media.

Several strategies may be of use here. The dean should advise the faculty that she should be the only person speaking officially for the school to the media. That request usually will be respected and will take some of the burden off the faculty Law school faculty usually have relationships with members of the press. The faculty need to understand that what they may view as a throwaway comment or observation may become the basis of yet another story about the school's problem.

As difficult as it may be to deal with the media, quick responses and complete answers usually pay the most dividends. Seasoned journalists can sense intentional delay If bad news is inevitable, the dean probably will be better off to release it early with the best face on it instead of having to explain why it wasn't disclosed sooner. Otherwise the school and the dean seem to be hiding critical details. As an example, the fact that a suspended faculty member must continue to be paid even though no longer teaching may be an embarrassing admission and sure to be met with negative reaction. Better to get it out in the context of university policy than later defend the policy and possible implications of a coverup of such an important detail.

The dean may have only a few opportunities to get the school's position out to the media and explain the complexities of the situation. Some thought in advance to the critical talking points to emphasize will help. Then use every opportunity to get them across. Incomplete answers, failure to disclose important facts and inordinate delays or no comment usually will cause more problems than they solve. They also contribute to the perception the school is withholding information that the public is entitled to know To be avoided at all cost are two main story lines about

the law school—the first about the crisis itself and the second about what is taking so long and being covered up in its resolution.

Dealing effectively with the media is a crucial part of crisis management. It cannot and should not be avoided or delegated. Media coverage is an important opportunity to communicate the school's version of what happened and what is being done to resolve it.

## CONCLUDING THOUGHTS

Major crises occur relatively infrequently in academic institutions, probably not often enough to warrant the adoption of the type of formal crisis management plan common in many corporations. That is the good news. The bad news is such problems do occur more often than conventional wisdom might suggest. Deans at least should be aware that they can crop up at any time. Not handled properly, they have the potential to harm the school and the dean s career. Any major crisis will demand the dean's attention to substantive issues, media coverage, which can be critical, and a law school community seeking both information and action. Possibilities for misinformation abound. Sensitivity to the possibility that a major problem may be developing and willingness to engage it may avoid a public controversy. Situations involving faculty misconduct may be the most difficult to deal with. Once a crisis breaks, the dean must devote whatever time necessary to deal with the problem itself, the media and the law school community Openness to negotiation and a good communication strategy are useful in resolving the crisis and getting the school back to its normal academic mission.