

When organizational challenges become a ‘crisis in leadership’: How leaders can change the narrative

By Amy Conway-Hatcher, Esq., Baker Botts LLP

JUNE 26, 2017

United Airlines. Wells Fargo. Uber. Penn State. The list of companies and other organizations that have experienced firsthand what it’s like to be under siege, dogged by negative media, hit with legal actions and threatened by share price drops and lack of market confidence goes on. Volkswagen. Yahoo. Theranos. Arconic.

Organizational challenges, while unfortunate, are not new or surprising. Organizations are made of imperfect human beings who, at times, exercise bad judgment and make bad decisions, sometimes lots of them. Those decisions can lead to regulatory, legal, media, shareholder, consumer and public scrutiny.

What is of even greater concern today, however, is how quickly these challenges can be dwarfed by the swift and unrelenting backlash against poor leadership responses. The resulting “crisis in leadership” can become inextricably intertwined with the underlying problems and may be emblematic of bigger issues that can carry much greater implications for an organization and its leaders.

In the not too distant past, when problems surfaced, management and their advisors had the “luxury” of time, however small, to assess the situation, craft a response and manage the fallout. Today’s environment is much less forgiving and fraught with risk.

First, companies must now expect that their dirty laundry will be aired publicly. Given the rise of social media, public interest in transparency, and ease of information sharing on a massive scale in real time, one has to assume that bad conduct or negative information will make its way into the public domain.

Second, and perhaps more importantly, organizations must recognize that once this information becomes public, the public is willing to create its own narrative in the absence of information from the company, or when faced with perceived injustice or misinformation from organizational leadership. Public perception can become reality with viral consequences. Fair or unfair, the rules of the game have changed.

Crises don’t happen overnight; the underlying problems that trigger them are usually years in the making. On reflection, the warning signs in the most recent wave of corporate crises were present.

When the tinderboxes exploded publicly, and when each organization’s leadership was ill-equipped to handle the crisis and their missteps made matters worse, the spotlight turned on leadership (or lack thereof) became part of the narrative.

Business leaders and their advisers must do a better job. Here are five lessons from notable crises.

Accept that crises will happen and prepare for them

Some companies prepare for foreseeable challenges. Few prepare for unexpected or bad decision-making (especially if it involves leaders or management). Many organizations simply don’t consider the possibility that bad things can happen to them or, even more glaring, that their highly paid executives or valued colleagues will make bad decisions.

Accepting this fundamental premise is critical and can open leadership’s eyes and awareness to a range of risks that could threaten them later. This increased awareness of risks and consequences is invaluable and can result in proactive actions that can save an organization from significant challenges down the road. In some instances, leaders may make business decisions to reduce unacceptable risk or change behavior that could potentially alter the course of the future.

In all cases, however, this awareness will result in critical and strategic planning that will empower leadership to better manage the domino effect that occurs when a crisis goes public.

As emergency response teams know from their training, preparation is key to mobilizing a response effort quickly, deliberately and thoughtfully. With advanced planning and “what if” training scenarios comes heightened awareness, enhanced strategic thinking and better judgment calls — all of which allows organizations to mobilize faster and make fewer mistakes.

Imagine how any one of the companies above could have changed their narrative if their leadership had undergone an objective “reality check” and planning process years earlier? Would Yahoo, which suffered a slew of data breaches, have predicted that its systems were vulnerable to an outsider intent on stealing user personal information and better managed that risk?

Would Theranos’ leadership and board members have been willing to stake their individual reputations if they had known the scope of the company’s flawed laboratory testing practices and misinformation about whether it used its proprietary device for most of its testing?

If Arconic’s CEO had thought through the negative consequences, would he have thought twice before sending his disastrous letter to Elliott Management Corp.’s founder that threatened to expose potentially embarrassing personal information, a move that cost the CEO his job and created challenging issues for his company?



Would Uber's leadership have recognized the dangers posed by its culture and the business, reputational and legal fallout that would ensue once the company's aggressive business tactics and, in some cases, poor customer service or abusive driver conduct were exposed?

Outside the glare of each crisis, with heightened awareness of organizational risks and in a moment of critical reflection, how might these leaders have changed their thinking about what they were willing to risk, and how they would react when the spotlight turned to them?

Take the blinders off on 'culture'

All organizations tout a commitment to integrity, and ethical and respectful behavior. In the absence of a crisis, however, leaders rarely test this premise and rarely engage in candid discussions about cultural strengths and weaknesses — or whether their organization's written message is getting through to their employees and business partners.

Crisis management planning forces such reflection and provides a chance for a critical reality check. Crisis management planning gives leadership a chance to challenge its perceptions about itself and its organization and think about what others would say instead. What would people say about your organization in the glare of the spotlight?

In Uber's case, the public response was not good and added fuel to the fire. The company publicly espoused a commitment to respect in its code of conduct, but workers described in news reports a "Hobbesian environment at the company, in which workers are sometimes pitted against one another and where a blind eye is turned to infractions from top performers".¹

What has been described as Uber's competitive "win at all costs" culture that drove its initial success now has become its Achilles' heel. People who felt victimized by it are speaking out.

Another more established and venerable organization — Penn State University — faced similar problems when its failure to do the right thing in the wake of a child sex scandal was attributed to a long-standing culture of protecting its most profitable franchise, its beloved football program.

In the fallout, Penn State leaders whose previously stellar careers were beyond repute were suddenly thrown into the spotlight, and the scandal led to costly investigations, criminal charges, terminations, prison sentences and a tarnished legacy.

In March, in a sad end to a sad story, former Penn State President Graham Spanier was convicted of a misdemeanor charge, and two other former administrators pleaded guilty; in June, all three were sentenced to jail time.

"Culture" is never an easy issue to tackle. No one wants to fail at ethics and integrity. That said, if one fails to critically assess whether the words on the page match reality, one could miss an important opportunity to be able to tell the story that leaders will so dearly want to tell when a crisis hits.

In today's world it is clear that if the things leaders say in a crisis moment do not match reality, the public will likely write a different narrative that will peg leadership as part of the underlying problem, taking the crisis to a new level. Remember, it's not just what you say, it's what you do.

Leaders can let their credibility become the headline

When a problem is detected, leaders must deal with it and demand accountability within their organization. Leaders cannot afford credibility problems in a crisis. It is important to get the facts, speak the truth and take responsibility for mistakes — all of them.

If leaders don't have the facts, they should demand them before taking an ill-informed position that has to be walked back later.

Leaders must ask critical questions before speaking to ensure that what they say is true. They also must demand accountability of their organizations. They must make sure that they understand the scope of the problem and whether it is part of a pattern that could result in reassessment of the organization's response strategy.

As United Airlines' leadership knows all too well, the initial reaction to a crisis can have significant fallout if it is not well received by the media and the public.

United's reaction to a recent passenger incident for better or worse, led to public outcry, stock price drops and loss of customer confidence. The public couldn't help but pile on with more stories of instances where paying customers were forcibly "bumped" from flights.

The initial story was problematic, but the stories that ensued gave United a lingering headache, including legal, business and reputational challenges — all at a time when leadership had just charted a path to emerge from the company's last crisis.

United is not alone. This same pattern is true in other scandals. By the time a scandal goes public, it is not uncommon to find that the warning signs were there long before the scandal hit the news. Yet, for reasons that typically dribble out over time, the warning signs were missed, ignored, downplayed internally or underestimated.

Predictably, attention then turns to leadership's failures, cultural weaknesses and, in the worst instances, whether leadership sanctioned unethical or illegal conduct. If the leaders of these organizations knew then what they know now about how quickly crises can devolve and how their role would be defined, would they have made the same choices?

Expect surprises and prepare to be nimble

Leaders and their teams need to be better prepared. What does that mean? No one can anticipate everything that could go wrong. We must accept that no crisis will be the same and a checklist or playbook will only get you so far.

Therefore, in addition to preparing for foreseeable problems and having standardized crisis management protocols, leadership teams need to learn to expect and handle

the unexpected. Unanticipated events, particularly for a company in crisis, can be extraordinarily challenging and overwhelming.

Leaders and their advisers need to be prepared to be nimble and strategic. They need to have situational awareness. They must be able to think laterally. They must be able to exercise strong judgment and challenge themselves so that they can quickly assess the potential direct and collateral impact of any particular response. They must then constantly reassess response plans and be prepared to pivot as events require.

Preparing to be nimble is a challenge. We are creatures of habit and take comfort in certainty. A crisis scenario, however, is by nature messy, unpredictable and filled with uncertainty — that’s in part what makes it a crisis.

This is why emergency responders, pilots, and disaster specialists practice response scenarios. By practicing what they expect and reacting to what they don’t expect, they are better equipped to more effectively navigate the unexpected, inevitable twists and turns in a real-time event. They become more resourceful and see pitfalls more readily.

This type of preparation is what helped Capt. Chesley “Sully” Sullenberger successfully land a plane on the Hudson River in 2009. He was able to use his training, preparation, experience and skill, combined with instinct and judgment, to develop a split second plan to maximize the chance of successfully landing the plane and the survival of all passengers after his plane catastrophically lost both engines.

Preparation won’t allow one to avoid all crises, but it can help maximize the potential for survival and minimize more serious or catastrophic missteps. In many instances, missteps in crisis response are avoidable and occur due to lack of foresight, preparation, perspective, judgment, and critical thinking in a critical moment.

If leadership better prepares itself for crisis scenarios and the mindset needed in those critical moments, an organization’s crisis response will be greatly improved. If mistakes happen or new information becomes available, leadership will be better able to pivot and make appropriate adjustments to its response plans.

On the other hand, if leadership is wholly unprepared and when faced with a surprise event, becomes paralyzed, slow to respond, or fails to assess the dangers of a particular response, it can create more serious issues, increasing the likelihood that leadership will become part of the narrative.

Prepare to be resilient

Being resilient is a life skill we start learning in elementary school, and it is critical to emerging from any crisis. “Preparing for resilience,” however, is an often overlooked yet extremely important aspect of crisis management planning. Why? It forces leaders to acknowledge pre-crisis that no organization is perfect (even one they are deeply

passionate about), and that they will make mistakes. It also gives leaders confidence that their organization can learn from mistakes and emerge from any crisis stronger than before.

This mindset is crucial because it instills perspective, humility and realism. It may encourage leaders to recognize and shore up areas of weakness earlier to avoid crisis situations.

More importantly, however, when things go wrong (which they will), leaders will be better prepared to rise to the occasion, acknowledge and fix problems, proactively learn from mistakes, and embrace multifaceted and dynamic crisis strategies to better manage any fallout.

Leaders will become less reactionary and better equipped to manage a crisis life cycle to its end, with an eye towards the future. The resilience leadership mindset acknowledges that mistakes will happen and, although there may be some pain along the way, lessons will be learned, changes will be made, and “this too shall pass.”

An organizational crisis need not devolve into a “crisis in leadership.” Leaders and their teams, however, must realize that we are in a new era with many uncharted and unanticipated dangers that will change how organizations tackle crisis situations in the future — all of which will affect inextricably intertwined legal, business and reputational consequences, positively or negatively.

Greater attention, awareness, preparation, flexibility, training and strategic thinking are crucial, and it is important to be nimble and forward-thinking as situations evolve. As a good friend and general counsel so aptly stated, “Hope is not a strategy.”

NOTES

¹ Mike Isaac, *Inside Uber’s Aggressive, Unrestrained Workplace Culture*, N.Y. TIMES, Feb. 22, 2017, <http://nyti.ms/2sTKjOo>.

This analysis appeared in the June 26, 2017 edition of Westlaw Journal Corporate Officers & Directors Liability.

ABOUT THE AUTHOR



Amy Conway-Hatcher is a partner with **Baker Botts LLP** in Washington, and her practice focuses on corporate internal investigations, corporate compliance and defending corporate and individual clients in criminal and civil enforcement matters. She can be reached at 202-639-1306 or amy.conway-hatcher@bakerbotts.com.

Thomson Reuters develops and delivers intelligent information and solutions for professionals, connecting and empowering global markets. We enable professionals to make the decisions that matter most, all powered by the world’s most trusted news organization.

©2017 Thomson Reuters. This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit www.West.Thomson.com.