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# Crisis Response Strategies for In-House Counsel

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# CRISIS RESPONSE STRATEGIES FOR IN-HOUSE COUNSEL

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## I. Introduction

Whether a large industrial accident, a crippling cyberattack, or any other major corporate crisis, in-house counsel play a critical role in managing their organization's response. From ensuring appropriate evidence preservation, interviewing witnesses and managing the company's response to government investigations, to anticipating potential litigation, responding to media inquiries and assessing strategic risk, perhaps no other situation asks more from in-house legal departments. While every crisis is unique and it is impossible to anticipate every twist and turn, certain challenges are common across all crises. This paper reviews strategies and best practices to address these common elements, with the goal of putting in-house counsel in the best position to effectively manage the diverse array of responsibilities thrust upon corporate legal departments in the wake of a major incident.

## II. Overview of Key Concepts

### A. Evolution of a Crisis

Everyone has that colleague, friend or family member who reacts as if everything is a crisis. Fortunately, legal entities do not have emotions, and therefore, it is easier to determine what rises to the level of a corporate crisis based on certain objective criteria. Unfortunately, legal entities cannot act other than through human beings, who do have emotions, and as a crisis unfolds, a heightened emotional response is inevitable. As discussed in Part IV, planning and preparation play a key role, not only in identifying and quantifying threats, but in ensuring that emotions are productively channeled to effectively manage stress. But what does a crisis actually look like, and what are the common stages that connect seemingly unrelated events under the label "corporate crisis"?

The first stage in the evolution of a crisis is *surprise*. Surprise is a natural response to the occurrence of any low probability, high consequence event, but surprise that is rooted in a failure to anticipate the potential, recognize the risk, and manage that risk accordingly often leads to the second stage of a crisis – *insufficient communication*. A failure to communicate effectively, both internally and externally, in the immediate aftermath of a major incident is usually the result of insufficient data and uncertainly related to the legal consequences, which in turn leads to internal paralysis and anger. Such communication failures are often rooted in the diametrically opposed constructs of "legal" and "media." The legal construct is defined by deliberation, focused on detail and elaboration, and rooted in rules and procedures, a presumption of innocence, and a fear the anything you say can be used against you. The media construct, on the other hand, is defined by a rush to judgment, focused on simplicity and brevity, and rooted in fungible "rules," a presumption of guilt, and an understanding that not saying anything will be used against you.

As paralysis sets in and communications break down, we next reach the third stage in the evolution of a crisis – *escalating stakeholder demands*. The media, the government, the local community, your customers, and others, all want to know who, what, why, what's being done, and who is on point. The longer these questions linger, the more likely it becomes that the crisis will reach the fourth stage – *the*

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