"Press….Press…Pull"[1]
When "No Comment" No Longer Serves the Client's Interest[2]

By

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[1] From Three Stooges "Three Little Beers"

[2] This article adapts and expands a previous version submitted to the ABA in March 2019 and PLI in May 2019

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After more than 40 years of law practice from courtrooms to board rooms, it has become difficult for me to consider a single, private lawsuit a "crisis" for a corporation. Of course, a multi-state class action aimed at a company's sole product or a challenge to a patent could well be a "bet the company" matter, I have come to think of true corporate crisis as multi-faceted attacks on the brand itself. We have seen them play out in the media and such events usually consist of a confluence of government and private actions with a mix of derivative actions and possible legislative hearings. In today's environment, the brand and corporate reputation are pummeled in the round the clock news cycle leaving in doubt the company's continued participation in the market segment and perhaps its very existence as shareholder value flees the risk. What can be done effectively and ethically to respond?

Historically, a general counsel would assemble a legal team to develop facts and legal defense of the pending or potential actions. Such activity might include coordination with government affairs to deal with legislative inquiries, investor relations to shape messaging and public relations to ensure consistent responses to media inquiry. Historically, such coordination was not always effective. Whether by design or necessity, however, the constituent parts just mentioned have increasingly seen the benefits of a coordinated and professional crisis communications plan.

This evolution is remarkable considering that until the O.J. Simpson trial, cable news hardly covered legal developments in real time. Today, it is difficult to find a cable news channel without wall to wall legal opinions by bystanders. It is also unquestionably true, that

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