




Webinar
**The Ethics of
High Stakes Communications**

Gina Maisto Smith, Chair of Institutional Response, Cozen O'Connor
Darryl W. Lunon, II, Deputy General Counsel, Georgia Institute of Technology

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Presenters



Gina Maisto Smith
Chair, Institution Response
Group, Cozen O'Connor



Darryl W. Lunon, II
Deputy General Counsel & CECO,
Georgia Institute of Technology

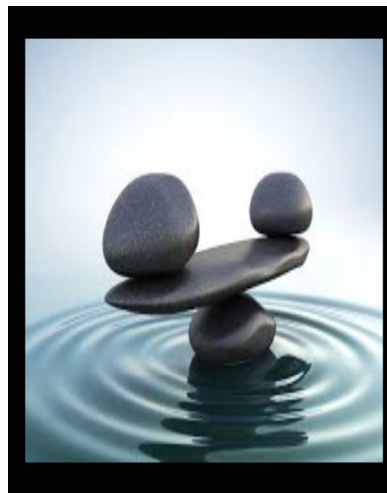
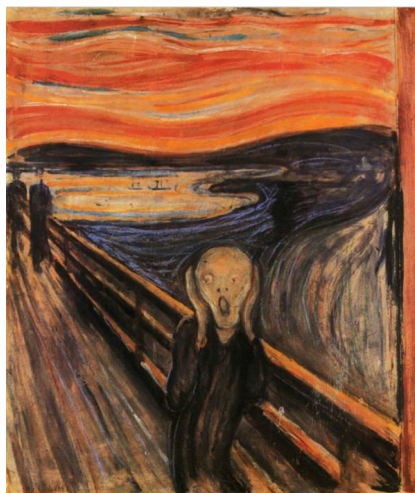


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Framing the Conversation

- ❑ Dssdfdedn# rghc#Jxhv#i\$ur ihvlrqdo#Frqgxfw
- ❑ Suhsdudwlrq#Suh#lqg#srw0qflghqw#
- ❑ Vfhdulrv#ghp rqvudwqj#kjh#qwhuvhfwrq#r i#ljk0sur ilh#
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Crisis Communications



Speak the truth, AND bite your tongue to find the words that may be heard...

she 100% teaches ccd



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What is the Most Important Thing You Can Do To Ethically Manage High Stakes Communications?

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**Prepare...
Starting Today**

One Size Does Not Fit All

Each institution is unique in:

- Institutional values
- Policies and procedures
- Resources
- Personnel
- Public vs. Private
- Culture
- Challenges

There is a True North

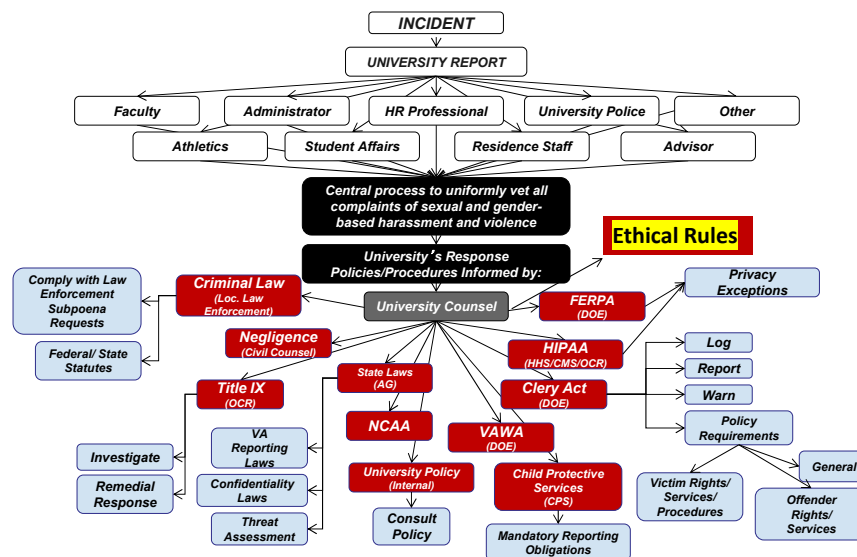
Successful Preparation Integrates:

The law (federal, state, local - including applicable ethical rules)

A comprehensive understanding of the facts and the dynamics at issue

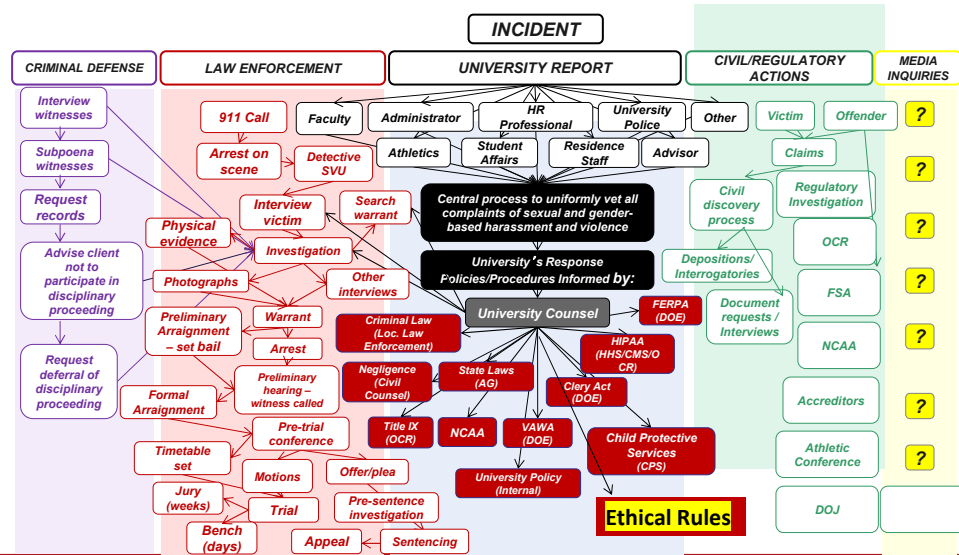
Your institutional culture, history, current climate, resources, policies, procedures, personnel, practices

The Challenge of the Context



Note: Lists of report recipients and relevant laws is not exhaustive.

The Challenge of the Context



I. Ethical Rules and Imperatives

Rule 1.1 – Competence

Rule 1.2 – Scope of Representation

Rule 1.3 – Diligence

Rule 1.4 – Communication

Rule 1.13 – Organization as Client

I. Ethical Rules and Imperatives

Rule 2.1 – Counsel Advisor

Rule 3.4 – Fairness to Opposing Party and Counsel

Rule 3.6 – Trial Publicity

Rule 4.1 – Truthfulness in Statements to Others

Rule 4.3 – Dealing with Unrepresented Person

Rule 8.4 – Misconduct

II. Importance of Preparation

**Preparation in
advance of high
stakes “episode”**

- ✓ Establish emergency/incident response team
- ✓ Practice, Practice, Practice!
- ✓ Define role of Counsel on the incident team and to the executive leadership team

Assessment and Planning

Conduct a privileged vulnerabilities assessment

Identify and prioritize areas of risk

- Faculty/Staff/Student conduct
- Institutional finances – cyber security
- Political speech/activities
- Greek life - Athletics
- Sexual/Racial harassment and violence
- Labor disputes
- Health and Safety considerations
- Evaluate all legal requirements
 - See *NACUA Higher Education Compliance Alliance Matrix*

Crisis Communications Planning

Unique Context of Higher Education

- Privacy and Reporting Laws
- Significant Compliance Requirements
- Variety of Audiences
- Silo Structure
- Board Engagement
- Expanded Press Corp (campus, industry)
- Access to Alternative Information Platforms
- Speed and Velocity of the Information

Crisis Communications Preparation

Crisis Preparedness

- ✓ Response Team in place
- ✓ Assignment of Roles
- ✓ Communication Expertise
- ✓ Subject Matter Expertise
- ✓ Prior relationships with press (external/internal)
- ✓ Response Protocols
- ✓ Document hygiene
 - *This will prove critical to respond to questions effectively, efficiently and confidently – and will avoid the **tyranny of temporal compression****

*Common phenomena in the institutional setting describing external audience judgement of institutional decisions based on the incorrect inference that ALL administrators knew ALL information at one point in time. GMS

Identification and Coordination of Response Team

Identifying your core response team

- The Response Team is responsible for all aspects of the institutional response.
- The quality and success of your institutional response is directly correlated to the functionality of the Response Team
- Crisis exacerbates pre-existing issues within leadership teams. Ensure you assemble a team that trusts each other.
- Composition: ***Need to know*** circle

Identification and Coordination of Response Team

Composition: *Need to know* circle; may include:

- President or identified other members of senior leadership
- Student Affairs, Human Resources
- Provost
- Legal
- Communications – internal/External Crisis Communications consultant?
- Public Safety/Security
- Risk Management
- Title IX, Clery, Youth Protection
- Subject Matter Expert? (Internal/External)
- Board involvement?

Identification and Coordination of Response Team

Designation of roles:

- ☐ Information gathering
- ☐ Decision-making
- ☐ Drafting
- ☐ **Spokesperson:** Liaising with external press corps
- ☐ **Spokesperson:** Liaising with internal stakeholders
- ☐ Liaising with Board
- ☐ Setting agenda topics
- ☐ Documenting progress and decisions
- ☐ Facilitating discussion

II. Importance of Preparation (Cont'd)

**Preparation value
during high stakes
“episode”**

- Implement the emergency/incident response plan
- Remain involved/informed throughout the communication process
- Inform governing board when appropriate

Response Team Initial Considerations

Response team training and preliminary reminders:

- Ethical Rules
- Attorney-Client Privilege, Work Product Protections
- Subject Matter Expertise
- Privacy Considerations
 - Family Educational Rights and Privacy Act (FERPA) considerations
 - HIPAA
- Open Records Laws
 - Open Records Act considerations
 - Freedom of Information (FOIA) considerations

Response Team Initial Considerations

Initial Question for Response Team

- *What are your top three core values in the context of this crisis or incident?*
- Then assess all ensuing decisions by this values framework. An ethical response team has the courage to fall back on their values!

Response Team Initial Considerations

- Allow room for dissent; all ideas are welcome
 - Even bad ideas can spawn good ones
- Let ideas “play” – come back to them as more information is gathered and more facts are known

Messaging

- Critical to gather known and *reasonably* available relevant facts before releasing any communication
 - Documents
 - Interviews with personnel
- Important to identify *all* constituencies for accurate, yet tailored messaging and communications
 - Students
 - Parents
 - Faculty and Staff
 - Alumni
 - Board
 - Public

During A Crisis

- Media and many others most concerned with:
 - What happened?
 - Why did it happen?
 - Was it avoidable?
 - How seriously is the institution taking this?
 - Does the institution care about the people affected?
 - What is the institution doing to investigate what happened?
 - What is the institution doing to prevent a recurrence?

Don't Forget About Language

- Language is more important than ever.
- Higher education has to be willing to look at the crisis communications and response experience of other industries.
- Counsel can ask: how have similar incidents played out in other industries?

Don't Forget About Perception

- Counsel can also combat the instinct to keep everything in-house. Knowing when to hire competent outside counsel that is *free from conflict or appearance of conflict* can diffuse the situation.
- Can't just issue the same statements as other institutions. There can only be so many similar statements from a college president before "We take this seriously" is understood as "We know we have to issue this statement and we don't really take it that seriously."

II. Importance of Preparation (Cont'd)

Preparation value
after high stakes
“episode”

- Assessment and Reflection
- Continue to protect confidential information

Crisis Communications Manual


- Include standby statements and all past statements in a larger crisis communications manual
- Manual should include:
 - Step-by-step instructions for team members and to alert broader community
 - Clear delineation of responsibilities
 - Full internal and external contact list
 - Update regularly (at least annually)
- Test readiness of crisis communications team
 - Media train key spokespeople (primary and back-up)
 - Conduct tabletop or full drill
 - Evaluate team's handling
 - Modify crisis communications manual, as needed



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Implementation Rubric

Law	Regulations	Guidance
Policy	Higher Education Experience	Values



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III. Scenarios Highlighting the Application of Ethical Rules

Scenario No. 1

POTUS has signed an Executive Order requiring all federal contractors to have its employees vaccinated, except those with medical or religious accommodations. Additionally, all visitors must wear masks within buildings where federal contracts are conducted. Your university meets the 'federal contractor' definition because you receive federal funds.

- What are the ethical and communications considerations?

III. Scenarios Highlighting the Application of Ethical Rules

Scenario No. 2

You have received an anonymous complaint of sexual harassment from three students (one former and two current students) against a long tenured professor. The students note in their complaint they plan to release this information on social media and national media outlets if the professor is not fired immediately.

- What are the ethical and communications considerations?

III. Scenarios Highlighting the Application of Ethical Rules

Scenario No. 3

You receive a call from an Assistant United States Attorney that a Chinese American faculty member will be arrested next week by the FBI for her failure to disclose receipt of funding for collaborations with a foreign university. The AUSA plans to release a statement and is willing to discuss. Before you are able to connect with the AUSA, the faculty member appears on various cable news networks citing First Amendment and academic freedom concerns.

- What are the ethical and communications considerations?

III. Scenarios Highlighting Ethical Rule Application

Scenario No. 4

You receive a call from the Chief Information Technology Officer noting a data breach of a third-party vendor who manages some of the university's Personally Identifiable Information. University Communications indicated the breach had been reported via social media and national news.

- What are the ethical and communications considerations?

On the Horizon

Increased compliance environment and expanded enforcement efforts (regulatory #metoo)

Increased civil litigation from both complainants and respondents – mega cases

New federal and state legislation

Increased mass and social media attention

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V. Conclusion

- Ethical rules are counsels' true north
- Best crisis response is based on proper preparation, anticipation, and planning
- Success in high stakes communications is directly tied to excellence of effort that integrates the legal framework, comprehensive facts, and a commitment to institutional values – that effort can start today.

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Questions?



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