

REGULATORY OVERSIGHT
Season 01, Episode 3, Crisis Communications
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[STEPHEN PIEPGRASS]

Welcome to another edition of Regulatory Oversight. This is a podcast by Troutman Pepper Hamilton Sanders Regulatory Group where we focus on recent trends in government and regulatory enforcement and cover topics of interest to clients who may be facing regulatory scrutiny or litigation. I'm one of the hosts of the podcast and a partner at Troutman Pepper, Stephen Piepgrass. Today's topic is one that's near and dear to my heart because I began my career as a press secretary on Capitol Hill in Washington, DC. We'll be talking about the role of outside counsel in crisis communications and I am honored to have with me Carol Cookerly who is one of the best in the business. Carol founded Cookerly PR. She's a fellow Blue Devil, so I love her already. And, Carol why don't you tell folks a little bit about what Cookerly PR does and how you got into crisis communications.

[CAROL COOKERLY]

Well, thank you very much Steve and I'll be happy to. I will say that I already know that your accomplishments, your educational accomplishments far outweigh mine and you were probably a much better student at Duke than I was. But, I bet we both had a great time.

[STEPHEN PIEPGRASS]

Absolutely.

[CAROL COOKERLY]

So we'll have a good time. I'm honored to be here. I've had the opportunity to work with attorneys at your firm and across the legal spectrum on a variety of issues that have huge regulatory overlay. And, I will give a punchline and throughout this conversation then we can work back to it but in any event, any permitting event, anything where an environmental action goes awry, something happens, it always gets down to two critical audiences, the regulators and politicians. And so this is where the interplay of your skills and your profession and our skills and my profession can really make a difference for clients. And that's why I was honored to be asked by you to do this because we think similarly about an outcome for a client. What is the best, smartest way to get a great outcome for our client. It's usually the merger of our two skill sets.

[STEPHEN PIEPGRASS]

That's a great point Carol. And actually I often think about things in terms of audiences too. Coming from a shared background in PR. And I sometimes break it down even more to think about, in an investigation, regulators are often your chief audience, but then you've got the public, but then really the client is an audience too. And they have multiple sort of sub-

audiences within the client. So you've got your board, your senior executives, your team in the general counsel's office. Then you have the line folks at the client, who are the ones answering the phones who may be the ones who are most directly impacted in a regulatory investigation that ends up getting press coverage and publicity. When you're thinking about those audiences Carol, how do you help one of the companies you work with go through framing their messaging to those different audiences.

[CAROL COOKERLY]

I'd like to take you down a little bit of an unusual path when I think about audiences. And I look at all audiences as a pie. Think of a pie chart. And for me, it's one big pie chart with a dollar sign in it. Not a dollar for me or not a dollar for you, but a dollar sign represents the company and it's how do we protect, and when I say we, the lawyers, the PR professionals, how do we protect the wealth of a company. And if you protect the wealth of the company then you're protecting all those audiences, the board, the executives, the investors, the shareholders, the line people that you mentioned. All the employees. So all those audiences need their messages that pertain to the execution of their duties plus the transparency to know and see everything that everybody is getting. But there's different, certainly there's different levels of communications for the board of directors, as there might be for employees at a plant that are not near our headquarters, etc. But everybody needs some level, real level of transparency and forecasting of what's going to happen, etc. But that all rolls up into a bigger strategy of protecting the wealth of the company. And if you go at it from a perspective of is everything we're going to do geared towards protecting the wealth of the company or is this a waste of time, are we off on a tangent over here and it's really not going to be instrumental. That's how we come back to prioritizing audiences and making sure that we have every possible audience. Case-in-point could be simply warehouse workers who all of a sudden are much more critical in a dispute about the risk of a chemical. Let's say it's where certain items or devices might be stored temporarily and all of a sudden some group is interested in regulating that storage. And this relates to many different states and many different industries. So, those warehouse workers have all of sudden find themselves in the middle of perhaps a news story. Or some sort of a regulatory action. It's got to roll back up into the holistic pie. And so I've got messages for those folks, but then that's also, at the board level of interest, because it is already a regulatory action.

[STEPHEN PIEPGRASS]

And you've been doing this for a couple decades I guess now. And so you've probably had experiences working with legal counsel in these sorts of high profile investigations. I know I've worked with a couple of the folks at Cookerly on major multi-state investigations involving state attorneys general. When you think back over the years when you're working with attorneys, what would you say are the characteristics that make them the most helpful when it comes to putting together that communications strategy and thinking through protecting the company, protecting their dollar as you put it.

[CAROL COOKERLY]

I appreciate it when legal counsel says what are all the tactics for the messages and Carol, do you have any strategies that can keep this from going to court. Because when you work with a team of attorneys and it's happened many times before that they're just geared to court, it's,

it is, nothing on my side but benign messages that are reactive to media inquiries that are sort of like no harm, no foul out there that don't do anything. For example, to blunt what a plaintiff's attorney might do, they don't anything to assuage any fears that regulators might do, it's just plain vanilla, plain vanilla, plain vanilla as this big machine gears up to go to court and meanwhile there's so many missed opportunities. And I know that many lawyers on the team both in-house and also they might be, for example, specialists brought in that are watching this and the see the missed opportunities, but perhaps sometimes lead lawyers may not be sensitive to the fact that there are other strategies. That if we combine our skills, we could keep things from going to court. We can blunt the efforts of plaintiff's attorneys. For example, we can smooth out relationships with regulators. Troutman has, for example, a wonderful public affairs division that we've utilized in a number of cities which has helped us get messages to regulators that, regulators become a very important audience for communications people. And it's not necessarily best to give those messages via the airwaves or through the media. You know, you want to do it one-on-one. So utilize all these people, but it is getting back to an open-mindedness. Now, I'm going to give you what needs to be, and how people in communications need to be open-minded. First of all, we need not play lawyer, right. Because, it is well-earned on your side because there are so many nuances and aspects of the law that people who try to play lawyer can only descend into trouble. It is open questions of luck. I am thinking that this set of messages, or I want to do a smack-down on the media and the client really wants to do a smack-down on the media, but I know that if I just make the same old statements that everybody makes. Look, I want to get a little edgy here and I want your support on that as the legal team. Better yet, in many cases Stephen, when the media has just flat out not gotten to the bottom of the truth or even tried or misrepresented something knowingly, they need a legal letter. They need a smack-down of epic proportions, because they need to have, they need to take stock, they need to think about what they're getting ready to write because what they have written is not acceptable. And that letter needs to be copied all through, for example, the newsroom when they've gone rogue or they've really been out of line. And it needs to give them pause to stop and think. We, on our side, on the comm side, need to bring you all in to use the muscle that you have that you can also use that's outside of the courtroom and that going to court process so that together we can leverage different audiences, media, other people, disgruntled former employees that are causing trouble when they clearly are at fault. Together we can accomplish a lot to get back to that pie sign where we're protecting the wealth of the company for all those audiences we seek to protect.

[STEPHEN PIEPGRASS]

Some really great points there Carol. One that you made resonated with me. Well a couple really resonated with me. One was involving the crisis communications firm as part of the team at the outset of any investigation. That's something that we recommend to every one of our clients that's facing a bet-the-business type investigation or litigation. We have our folks that work with the general counsel's office in coming up with a legal strategy but I'm part of that and also part of the communications team. And I think it is just so important to have all of those voices in the room in creating a strategy that can end up being much more effective than purely relying only on the one tool that every attorney thinks about, most attorneys think about litigation, right. There is so much more that you can bring to bear in a situation when you're dealing, especially with government regulators and communications is a central part of that. So I love that you picked up on that and highlighted that and I think that is just, that is so

important to include everyone in the room and particularly the public relations folks in building out that strategy.

[CAROL COOKERLY]

You're not just, pardon the interruption, but you're not selling just legal activity. You don't sell activity. You sell strategy with a learned point of view among colleagues with best possible outcomes. And we do the same thing. I am completely uninterested in selling comms. I am a strategist from night to morning, morning to night. And through the combination of our skill sets of being strategists, we have to be able to protect the wealth of the company in really smart ways, in faster ways than traditional roles. It's almost a disruptive way to look at it. I've gone in to significant situations where I've been told what my role is. I'm like, oh no, no, no. You're leaving millions of dollars on the table my friend because

[STEPHEN PIEPGRASS]

Right.

[CAROL COOKERLY]

If I don't have my voice and my creativity, and my colleagues to think about how to stop a speeding train, which is often the media, a media either misguided accidentally or purposefully then if we're not allowed to do anything, I don't want to be scripted. I don't want to just send out these reactive statements and get the check. That's of no interest. So it is about being strategists together. And I always learn something from attorneys. And I have to tell you Stephen, what I really enjoy most is the very special turn of a phrase that I often get in legal communications that I get for my purposes and I'm like okay, that works across the board for me and for you.

[STEPHEN PIEPGRASS]

Yep, I love it, I love it. One other piece that I picked up as you were talking earlier was the fact that attorneys can be very helpful when it comes to dealing with difficult PR situations for companies. Many of our clients operate in areas where the law is grey or where technologies are developing and the law hasn't quite caught up to it. And that can lead to misunderstandings in the public about the way that the business operates. So one thing we have done for clients, and this sounds a lot like what you were talking about, is help them in a campaign of correcting misinformation in the marketplace. So actually, writing letters to the local press that are getting the story wrong about what the client is actually doing and getting them to issue retractions and corrections to their stories. And that can be, actually, very effective, especially when you're dealing with companies that are getting bad press or scrutiny from folks like the Better Business Bureau and others that ends up raising their profile in a negative way with regulators like state attorneys' general.

[CAROL COOKERLY]

Point well taken. And dead on. I just migrated, I like letters to the editor in, behind that tactic what you're saying about netting it out for a client to basically say this on-going bad news is not going to get better with age.

[STEPHEN PIEPGRASS]

Yes.

[CAROL COOKERLY]

Or be proactive, which is the message you're giving. I migrated though, many years ago, I had a, and I was young, I fell into a very big issue and it took on the Clinton-Gore administration for some regulatory strings they were pulling with EPA out of Chicago, Region 5 I think it was at the time. And it was a big fight and a big deal. It involved a lot of senators, and a lot of other people and I might have been either naïve or brave, or both, but as a former reporter who did investigative work, I was like, eh, letters to the editors of *The Wall Street Journal*, others, even though *The Wall Street Journal* was on my side and they had done eleven editorials to help my side, I very much just didn't think that in the various newspapers in the Midwest letters to the editor were going to help. I just ran a full-page ad, open letter to President Clinton detailing the problem. I got a writer who was much better than I am. As I say, I'm the world's best writer when I'm incredibly angry but I needed to be even better. But this ran in *The New York Times*, *The Washington Post* and *The Wall Street Journal*. So I did the trifecta there. And it blew up and it made all the difference. Because I mention this little story it was the beginning of a history we've had in over thirty years of self-publishing to take the power away from the media to filter so that we go directly to regulators and politicians because we want them to hear the truth. If the media come along and are accurate after that, great, if not we'll just keep self-publishing. Since this was the first time that kind of thing was done, since that time a lot of people have been self-publishing but I'm also shocked at how many times they don't. I'm shocked at how many times they don't take their own interview that somebody might be doing and put it up on their own asset, which is the website or tweet it out. It's remarkable that they don't. That level of protectionism. But back to your point, correcting the record. We have a motto in my shop, and it is you correct every piece of misinformation. Nothing slides. And whether it's a letter to the editor or you self-publish or you put a document in the hands of your public affairs people and they go to the state house or they're in DC and they do visit somebody hand-to-hand and clarify misinformation. You don't let anything slide. Absolutely nothing. You can get a better result with a reporter if you call then every single time and nitpick. And if you're a professional, I mean you have a right to do that. If it's legit. We don't wear anybody out for no purpose and we're not onerous unless we're pushed and we know something is amiss. It's a political motivation, if it's a self-interest, etc. But we stay on top of it. We're relentless. Because that's fair. It is fair. And that's what lawyers do. That's where we meet on this, that's why we get such a nice synergy.

[STEPHEN PIEPGRASS]

I agree. And I like the direction that you've taken our conversation too, when talking about the creativity and offensive as opposed to defensive use of communications strategy. And I think that's something that, especially in-house counsel, and many lawyers, we are notorious for being conservative. And always giving very conservative advice. But when it comes to PR, crisis communications, sometimes the best defense is a strong offense. Since we're sharing some war stories, maybe the most fun case from a PR perspective I've worked on was the closure, attempted closure of Sweet Briar College here in Virginia where we're located. A women's college where the board decided, unexpectedly, to vote to close. Then we were hired by a group of alumni to keep the college open. And from day one, we brought crisis

communications to the table and said, look, there's several prongs to the spool that makes up our strategy. One is the legal, litigation strategy. One is the outreach to public officials like the state attorney general and others. The third is publicity. And if we don't get all three of those right, we aren't going to win this.

[CAROL COOKERLY]

Right.

[STEPHEN PIEPGRASS]

And we kept the public relations folks at the table through the entire matter. And ended up with a very successful result, saving the college, replacing the board and the president with those that the alumni picked. But I think that sort of approach can actually lead to much better results for the client. When it's appropriate. Then picking a purely defensive one.

[CAROL COOKERLY]

That was a very, for me, iconic situation because growing up in the DC area, Sweet Briar was on my list. And being an equestrian, Sweet Briar was on my list.

[STEPHEN PIEPGRASS]

Absolutely.

[CAROL COOKERLY]

Being in the prettiest part of Virginia, Sweet Briar was on my list. Unfortunately, I was a legacy Dukey. But I would really, Sweet Briar I visited, I just thought it was spectacular. So I paid attention and you had all the right elements on that. And you executed very well. What's interesting about that, as you know and the audience should know my firm was not involved in that. But it was well done. What's funny

[STEPHEN PIEPGRASS]

Because we didn't know you at the time.

[CAROL COOKERLY]

Right, right. Okay. But, here's the thing. We got an inquiry from a school in California from alum who used the Sweet Briar experience, and this wasn't too long ago, as a reference point of what they needed to do with the school about which they're passionate, and I don't even know if it was a college, it might have been a prep school. But anyway, the point is they referenced, they knew about that experience. Look, the art of leverage is everything. And you all sized up beautifully where the real problems were. You wouldn't have gotten the results and you would have prolonged the death and it would have been a death by a thousand cuts, if you had just done a little bit, or just waded into the baby pool. You all, you dove in knowing that the board was making lots of bad decisions. The administration was making some very bad decisions. And people had to change. You know, once you realize

whether people have to change then it helps you know what buttons to push. And those are, have to be honest assessments between our two parties.

[STEPHEN PIEPGRASS]

Before we wrap things up, I thought it might be worth talking a little bit of nuts and bolts, for those who are going through crises and thinking about crisis communications. In terms of engaging with folks like Cookerly, if they can engage them through us, through the law firm, that probably puts us in the best position to protect the confidentiality and maintain the attorney-client privilege. Also would recommend as you're working through the communications issues when they have a legal angle, to make sure that you keep the attorney involved in those communications. Again, to protect the privilege as much as possible. Copy attorneys on your correspondence when you're working with a PR company and putting together your messaging. Any other sort of nuts and bolts advice that you have in terms of developing an escalation plan or anything like that, you could probably talk for days on just that point alone but you need a few items to share.

[CAROL COOKERLY]

I won't do that to you or the audience. But I want to underscore what you just said. It's incredibly important that we come in under the partnership and actually be the client of the attorney so that we have the freedom to discuss things. If a comms firm, if a communications firm, is just going through the motions and feeling like they just have to copy the attorney for the privilege, then they're missing the opportunity to co-strategize. So, if you don't, if you're not looking at your attorney in this situation as a partner then you're missing an opportunity and I would just say it's the wrong comms firm. So the copying is the least of it. The most of it is the energy that comes from it. Because I get great ideas from my attorney partners, so I love that part. And the other thing, as we discussed at the beginning, is staying so connected that we're just brainstorming.

[STEPHEN PIEPGRASS]

Yes.

[CAROL COOKERLY]

We're just brainstorming. It's just one big constant brainstorm to action, brainstorm to action, brainstorm to action, it makes all the difference. On-boarding with us is very easy. If you've been in the regulatory space one or twice or three times, and you've worked across the spectrum from EPA to FAA to all the different state environmental departments to the SEC, there's a certain language about it. And you have it and we have it. Your colleagues have it. You just know how to cover the waterfront and think in terms of what is necessary to be respectful to keep them informed, how to work with them. It all makes a big difference. But we remind each other of good ways to do that. And that makes a big difference too.

[STEPHEN PIEPGRASS]

And that's why I love working with you all at Cookerly. You're very user-friendly for the law firm but also for the client. You speak the language and understand the language and make it

very, very easy for us to work together to come up with a creative strategy that can help the client to reach really the best result possible and to protect the wealth of the client as you put it. Which is our ultimate end-goal. Well Carol, it's been wonderful chatting with you. I've very much enjoyed our time together. Love working with you and look forward to many more opportunities to work with Cookerly going forward and reach great results for our mutual clients.

[CAROL COOKERLY]

Stephen, you are all-pro, as all of you are and we appreciate you and your team.

[STEPHEN PIEPGRASS]

Thank you.

[CAROL COOKERLY]

Thank you very much.

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