



305 - Helpline - What's Your Crisis?

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Faculty Biographies

Camille Corbin
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Steven Shapiro

Steven Shapiro is currently vice president, general counsel and corporate secretary of eLoyalty Corporation, in Lake Forest, Illinois, a leading provider of enterprise customer relationship management services and solutions. In addition to counseling eLoyalty's management and Board of Directors on all matters, including securities law, corporate governance and compensation issues, he oversees the contract management of hundreds of sophisticated consulting contracts with complex intellectual property issues as well as eLoyalty's privacy law compliance.

Previously, Mr. Shapiro was executive vice president and corporate secretary of First Midwest Bancorp, Inc. At First Midwest Bancorp, he oversaw the legal, corporate governance, securities disclosure, investor relations, executive compensation and corporate development functions. Before joining First Midwest Bancorp, Mr. Shapiro served as deputy general counsel and Assistant Secretary of FMC Technologies, where he counseled its food processing and airport products divisions; supervised the Chicago Law Department; oversaw the human relations, benefits compliance and governmental relations legal functions; and acted as lead counsel on all corporate, securities and merger and acquisition matters. He acted as lead counsel for FMC Technologies' initial public offering and its subsequent spin-off of FMC Technologies from FMC Corporation.

Mr. Shapiro is a nationally recognized speaker on these and other topics, author of numerous articles and founder of a number of continuing legal education programs. He is a former president of the Chicago Chapter of the American Society of Corporate Secretaries and currently serves on its advisory committee.

Mr. Shapiro graduated cum laude from Columbia University and from the University of Chicago Law School.

Kim Stollar

Kim Stollar is counsel for environmental, health and safety for The Boeing Company in Seal Beach, California. Her responsibilities include advice and training on environmental and safety issues; representing the company at Superfund sites; managing environmental and OSHA litigation; and handling environmental aspects of contracts and real property transactions.

Prior to joining Boeing, Ms. Stollar served in a similar position with International Paper Company in Memphis, TN. Ms. Stollar has also worked as an environmental law associate for the law firms of Squire, Sanders LLP and Foley Hoag LLP.

Ms. Stollar is active in the ABA Section of international law, international environmental law committee, serving as an executive editor for the international environmental news. She also is an active member of the ACC environmental, health & safety committee and the ABA section of environment, energy, and resources.

Ms. Stollar received a B.M. from The Ohio State University and is a graduate of Case Western Reserve University School of Law.



Session 305: Helpline - What's Your Crisis?

Kim Stollar, Counsel, The Boeing Company

Steven Shapiro, Vice President, General Counsel and Corporate Secretary, eLoyalty Corporation

Camille Corbin, Attorney, American Airlines



What we mean by “Crisis”?

- What is a crisis event?
- Examples of potential crisis events
 - Security
 - Legal
 - Incidents involving senior leaders
 - Safety
 - Environmental



Before a Crisis - Preparation

- Identify core crisis team members and backups
 - Legal-Internal/External
 - Corporate Communications/Public Relations
 - Business Unit Leadership
 - Senior Leadership
 - Technical Experts

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Before a Crisis - Preparation

- Develop communication process for use during the crisis event
 - Establish mechanism for handling initial call about the crisis event
 - Hotline-Internal/External
 - Develop criteria for routing the call to the appropriate core crisis team member/part of the organization

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Before a Crisis - Preparation

- Evaluate potential union involvement in the investigation process
 - Determine applicability of collective bargaining agreements to employee injury investigations
 - Develop strategy for communicating with the union if investigation is conducted under Attorney-Client Privilege

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Before a Crisis – Establishing the lines of communication

- Establishing Credibility
 - Accuracy/ Reliability
 - Lose the ego
 - Striking the Right Tone
 - Concern for the organization
 - Lack of blame
 - Perspective
 - Openness
 - Good news same as bad news
 - Preventative Measures

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Impending Crisis – What Can Be Done!?

- Information Gathering and Advice
- Determinations of Privilege
- Establishing Privilege and Legal Holds/Freezes
- Conducting the Investigation
- Reporting

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Impending Crisis – Your Communications

- Be Preemptive
- Be Prepared
- Help evaluate risk objectively
 - Assign likelihood
 - Not “parade of horrors”
- Be Constructive
 - What can be done?
 - What can't be done?

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During the Crisis – You Get the Call ... What Next!?

- Information Gathering and Advice
- Determinations of Privilege
- Establishing Privilege and Legal Holds/Freezes
- Conducting the Investigation
- Potential Reporting

*Internal
Communications*

*External
Communications*

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During the Crisis – Information gathering and Advice

- Who, what, why, when, where
 - Checklists
- Amount of initial information will vary
- Be sensitive to timing constraints of those “on the ground...”
- ...But at the same time need to be in position to take charge and provide timely guidance.
- Geography – who can get there to assist?
 - If not you, prescreened outside counsel list

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During the Crisis –Determination of Privilege

- Privilege – is there an anticipation of litigation?
- Things to consider in conducting a privileged investigation – levels of risk
 - Employees/workers comp coverage/exclusions
 - Contractors/vendors/suppliers
 - Other third parties

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During the Crisis – Establishing the Privilege

- “Upjohn” it
 - Upjohn Co. v. U.S., 449 U.S. 383 (1981), where the U.S. Supreme Court held that lower level employees could invoke attorney-client privilege when protection was necessary to defend against litigation.
 - Executive, business unit management, facility manager

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During the Crisis – Establishing the Privilege

- Request for attorney-client privileged investigation:
 - Requesting a confidential investigation
 - Description of the issue in general terms
 - Express the possibility and/or likelihood that a significant portion of the information generated by the investigation will be involved in some way in future litigation.
 - Instruction to treat the investigation as “confidential” – i.e., do not discuss with anyone other than Company X employees or retained consultants who have a need to know and might be helpful in providing information necessary for the conduct of the investigation.
 - Reporting findings of the investigation

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During the Crisis – Establishing the Privilege

- Investigation Procedures Instructions
 - Designate investigation team who will work as agents of legal department
 - All information, including any and all information generated by outside consultants, prepared for the legal department and forwarded to attorney leading the investigation – then distributed through counsel
 - All documents, regardless of form, marked with privilege stamp:
 - Privileged/Confidential communication
 - Attorney/Client Privilege
 - Attorney Work Product
 - Material prepared at the request of Company X's counsel in anticipation of litigation

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During the Crisis –Legal Holds or Freezes

- Duty to preserve evidence whenever litigation is reasonably anticipated
 - Likely during crisis events
- Directive to suspend the destruction or disposition of documents related to threatened or pending proceeding
 - Both hardcopy and electronic
- Have a process already in place
 - Document management – separate files/folders
 - Drafts

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During the Crisis: Conducting the Investigation

- Choosing investigation team
 - Not too big – circumstance usually determines scope
 - May include: business/facility manager, operations manager, human resources, communications, risk management, specialists (security, ethics, audits, EHS, etc.)
 - Goal: Manage information flow and efficiency

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During the Crisis: Conducting the Investigation

- Short term decisions
 - Attorney-lead versus agent-lead at direction of counsel
 - Inside versus outside counsel
 - Geography
 - Other sensitivities
 - Managing communications, both internally and externally
 - Document management

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During the Crisis: Conducting the Investigation

- Short term decisions (cont'd)
 - Scope of investigation
 - Location of interviews
 - Former employees
 - Potential legal exposure of employees and provision of counsel
 - Location of files and who will review
 - Need for technical/expert assistance
 - Prior incidents/corrective measures
 - Immediate actions to reduce risk of property loss or personal injury
 - Third party knowledge of allegations
 - Legal implications/analysis

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Some Thoughts on Communications

- Can make or break crisis response – for both you and the company
- Employee communications
 - Alleviating uncertainty without compromising investigation
 - Communicating lessons learned or corrective actions in a timely manner (e.g., action alerts)
 - Union representatives
- Management communications – should occur throughout the process
 - Make sure appropriate protections in place
- External – media, government agencies, community groups

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During the Crisis – Reporting

- Mandatory
 - E.g., OSHA reporting requirement: a fatality or three or more in-patient hospitalizations
- Courtesy calls
- Self-Disclosure for mitigation of violations
- Internal reporting to Management
- Managing government investigations

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After the Crisis – Lessons Learned

- One of most important parts of crisis response is learning from the incident.
- Written versus oral reports
- Things to consider in a written report
 - Incident description
 - Root cause analysis
 - Violations of company processes and procedures
 - Or identification of deficiencies
 - Corrective actions taken and applicability to other parts of the organization

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After the Crisis – Lessons Learned

- Other company communications
 - Action alerts
 - Communiqués
 - Training
 - Policy and Procedure reviews/revisions

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