

FRIEDMAN & FEIGER

ATTORNEYS AT LAW

Is Your Company Media Ready?



untouched—Donald Trump would have had to say to all of those apprentices ... **YOU'RE FIRED!!!**

IF Donald Trump assembled his panel of apprentices and assigned them the task of preparing a Media Communications Plan to protect their company's reputation in the face of a potential public crisis and the apprentices came back with any of the plans used: by Texas Presbyterian Hospital in the last 30 days after it became known that the Hospital released Thomas Duncan from its Emergency Room after reporting a 103 degree fever, nausea, and a recent trip from West Africa; by the NFL after Ray Rice knocked out his fiancé (now wife) in the elevator of an Atlantic City Hotel; or, by the US Secret Service after Omar Gonzalez jumped the White House fence, ran across the North Lawn, barged through the unlocked door of the North Portico, knocked down a Secret Service agent, and sprinted through the Central Hall to the East Room of the White House, virtually

These seemingly random, unrelated incidents have several things in common. They are perfect examples of excellent organizations that were NOT READY for the Media when disaster struck. They did not anticipate the catastrophe. They did not properly investigate it. They did not get the facts under control. They were not able to explain the facts to the public and they did not get out in front of the story.

Obviously, each instance involved a mistake by a member of their organization. Each involved a foreseeable risk—a risk the company already knew could be a problem. And, each event went viral--immediately. Unfortunately, in each instance, the Company WAS NOT MEDIA READY...not ready to get the facts out. Not ready to get their own message out. Not ready to educate the public about what they could expect in the future and not ready to publicize their plan of action. But, the media WAS READY. The infrastructure for getting a message out by the media was already in place.

The media plays an important role in the event of a crisis. The media provides an important public service--broadcasting alerts, warnings, and advisories. They also play a helpful role in supplying needed information to decision makers. They also shape the public view, frame social, political, and legal issues and can increase or decrease the value of your Company and your Brand...instantly.

No country has the number of news organizations and media as the US. The media can be complimentary, critical, or indifferent. In the old days, the media paced itself. Television, radio, and print were the pathways of information dissemination and, for the most part, presented yesterday's news. Today, the media NEVER SLEEPS: the news cycle runs 24/7. This is a whole new day in media reporting. It is online news, Twitter, Facebook, YouTube, Google Plus, Instagram, Vine, Buzz Feed, Blogs and all of it is broadcast in real time.

If you value your Company and your Brand you must have a Media Communications Plan in place in case of a crisis, emergency or catastrophic event—because for any Company of any shape or size, disaster will strike and when it strikes you must be prepared.

You must prepare a Media Communications Plan in advance and it must be detailed. It should include sending Internal Alerts to staff/employees using – email, texts, voice messages, phone, fax, Facebook, Twitter, your website, or even creating a CRISIS WEBSITE. Each message should be designed and prepared for the specific audience – media, employees, families, customers, vendors, and government regulators.

When formulating your Media Communications Plan, consideration should be given to the following: SENIOR MANAGEMENT SUPPORT is essential. Without it you won't be able to formulate a plan, and could be faced with unfavorable media coverage and possibly even lawsuits. KEEP IT SIMPLE. A well organized, step-by-step plan with relevant information at your fingertips will help you get through most incidents. FOCUS EMERGENCY COMMUNICATIONS ON RELEVANT INFORMATION. Provide only the relevant facts as they are available, get them out quickly and proactively, follow up regularly, keep relevant parties informed, resolve incorrect information and always tell the truth about the situation. REVIEW AND TEST. Once the plan is complete, review and exercise it to ensure that the documented procedures make sense and supporting materials (e.g., press releases, media briefing arrangements, lists of critical contacts) are updated.

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In The Spotlight



Forrest Smith joined the Firm as a Senior Partner in August 2014. He has been a well-known and well-respected fixture of the Dallas/Ft. Worth metroplex for many years, including a 33-year career as Tax Counsel for Mobil Oil Corporation, 4 years as the President of the Greater Dallas Chamber of Commerce and a partner with prestigious private practice law firms. Forrest is currently a member of the D/FW Airport Board and the Chairman of the Better Business Bureau. He and his wife Martha have five daughters, who all reside locally. He is also a member of the Potter's House of Dallas.

Forrest brings a wealth of knowledge and experience in state and local property tax law to the Firm. He also serves as mediator in complex civil cases. Forrest's impressive resume is below and he is ready to be of service to you.

Present Community Activities:

- Member Dallas Fort Worth International Airport Board
- Chairman of the Board of the Dallas Better Business Bureau
- Honorary Consul General Thailand
- Member Dallas Advisory Board, Compass Bank
- Member Board of Dallas American Heart Association

Honors:

- Recipient of Dallas Lawyers Auxiliary "Justinian Award" 1998
- Recipient of the Russell H. Perry Free Enterprise Award 1996
- Honorary Doctor of Humanities Degree, Dallas Baptist University 1991
- Dallas Hispanic Chamber of Commerce Chairman's Award 1989
- Distinguished Alumnus Southwestern University 1987
- Dallas Father of the Year by the Dallas Morning News and Haggar International 1986
- Outstanding Alumnus Lon Morris Junior College 1985
- Recipient Dallas Life Legends Award (2012)
- Recipient "Lifetime Achievement Award" Texas General Counsel Forum (2011)
- Texas General Counsel Forum creates the Forrest Smith Scholarship at SMU (2012)

- Created Minority Counsel Program for Hispanic and African American Attorneys 1994
- Member of the Select Committee on Tax Equity (Governors' appointee) 1968
- Member of the Texas Youth Council (Governors' appointee) 1986
- Founder and former Chairman, Russell Perry Free Enterprise Award Foundation 1990
- Board of Directors, Greater Dallas Crime Commission 1990
- Chairman, City of Dallas Adopt-A-Block 1991
- Chairman, Save the Children Advisory Council 1989
- Member, Dallas County Hospital District Board of Managers 1978-1983 and 1989-1990
- Member, Dallas/Fort Worth Airport Marketing Committee 1985
- Co-Chairman and Founder, Committee for a Qualified Judiciary, 1981-1983
- Member, Dallas Park and Recreation Board, 1983
- Chairman, Dallas County Juvenile Justice Task Force
- Member, Board of Trustees, Southwestern University, Georgetown, Texas 1987
- Chairman, City of Dallas Economic Development Corporation 1994
- Cofounder – Texas General Counsel Forum 1995
- Founder – Dallas Life Legends of Service Award 2007

All Dates Approximate

Previous Community Activities:

Forrest Smith can be reached at (972) 788-1400 or e-mail him at fsmith@fflawoffice.com

UPDATED. The plan must be updated regularly as needed. BE FLEXIBLE. A basic plan template and supporting document

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files should be sufficient for managing a variety of emergency situations. COORDINATE WITH CORPORATE PR. If your company has its own internal public relations department, work closely with the staff in developing emergency communications plans as that department will probably coordinate all external and internal communications.

In addition to a step-by-step plan designed specifically for your Company, your MEDIA COMMUNICATIONS PLAN should do the following:

TEN THINGS YOUR EMERGENCY MEDIA PLAN MUST DO:

1. Be able to launch immediately.
2. Brief Senior Management on the situation.
3. Identify a Company Spokesperson for the situation.

(continued on page 3)

Waiver: Speak Now Or Forever Hold Your Peace **By Jim Krause**

Most of us do not find confrontation to be particularly pleasant, and most will avoid it when it's not necessary. Ultimately, what it comes down to is where you draw the line between "necessary" engagement and "unnecessary" confrontation.

Most of us cringe at the thought of anyone speaking up during a wedding ceremony and expressing his or her doubts about the union. That's an easy one. But in a contract or business situation, it may not be as obvious to you when you need to speak up.

For example, let's say that you find out that a business with which you have a contract misrepresented some fact to you before you signed the contract. However, because you really want to renew the contract with that business, you don't mention or complain about the misrepresentation and then renew the contract with the dishonest party. One of the unpleasant consequences of silence or inaction in a business or contract situation is the doctrine of "waiver" and its close cousin, "ratification." In all likelihood, by signing a renewal with the dishonest party, you have waived, or ratified the misrepresentation, essentially releasing the other party from liability. Another scenario involves the failure of one party to perform some contractual duty, but nevertheless, the other party continues to perform its own contractual duties without protesting the failure of the other party.



This is an area of the law that follows a common sense approach: if you are willing to renew a contract with someone you believe made a misrepresentation to you, then the Courts will follow your lead and find that you ratified or forgave the fraud. Similarly, if you lay behind the log and remain silent -- causing someone to believe that his or her actions are acceptable -- then the Courts will follow your lead and find that you waived any complaint about the wrong.

The defense of waiver can be asserted against a party who intentionally relinquishes a known right or engages in intentional conduct inconsistent with claiming that right. *Tenneco Inc. v Enter. Prod. Co.*, 925 S.W.2d 640, 643-644 (Tex. 1996). *Silence or inaction, for so long a period as to show an intention to yield the known right, is also enough to prove waiver. Id.* In *Tenneco*, the Texas Supreme Court found that silence in the face of a failure to comply with a contractual right for a period of three years constituted waiver as a matter of law. There are, however, other cases finding waiver in as little as two months. These cases often turn on whether a party gained an advantage by remaining silent, and the other side of the transaction relied upon the silence and changed his position.

By simply remaining silent, you may inadvertently modify your contractual arrangements without *any* discussion about a modification or formal writing. In fact, the Courts often rely upon the doctrine of waiver when evidence of the negotiation of a modification is not available.

So, if you suspect that something is amiss in a business situation, let us help you sort that out. You may not need to speak up now, but it is better to know what your options are and make that choice before someone accuses you of unknowingly waiving your contract rights. We can help you identify when you must complain and, if the situation calls for it, help you communicate your complaints in a professional way that will not damage your business relationship.

Jim Krause can be reached at (972) 788-1400 or email him at jkrause@flawoffice.com

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4. Prepare and issue Company statements, press releases, emails to the media.
5. Organize and facilitate broadcast media coverage.
6. Communicate information and instructions to employees, families, customers, vendors, and others.
7. Communicate with employees, families, and your community.
8. Adapt to changing events associated with the crisis—and keep the media advised.
9. Be accessible to the public by TV, Newspaper, Radio, Cable, Facebook, Twitter, Website, etc.
10. Show you care about the public and the victims.

For more information about formulating a Media Communications Plan or for assistance in planning, please contact Larry Friedman at lfriedman@flawoffice.com.



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Congratulations Jason Friedman!

Jason Friedman was recently elected to the position of Committee Chairman of the Texas State Bar 6th District Grievance Committee. Jason is also a member of the Dallas Association of Young Lawyers and the Dallas Bar Association. He recently gave a speech on Ethics at the CLE International's 9th Annual Dallas Eminent Domain Conference at The Adolphus Hotel.



Jason is an award-winning lawyer receiving the 2014 Super Lawyers Texas Rising Star award by Thomson Reuters and the 2010 Outstanding Attorney Under 40 award by the Cardozo Society of the Jewish Federation of Greater Dallas, among others. Jason is always available to take your call and help you with your case. You can contact Jason via email at jhfriedman@fflawoffice.com or by phone 972-788-1400.

Upcoming Events

Friedman & Feiger Calendar

- October 7, 2014 Friedman & Feiger sponsors the Robert H. Dedman Award for Ethics and Law Dinner honoring Carlos Hernandez, Belo Mansion.
- October 16, 2014 Friedman & Feiger sponsors a Birthday Celebration and Fund Raising Reception for Judge Andrea Plumlee, 330th District Court, 5:30 pm – 7:30 pm, at The Standard Pour, 2900 McKinney, Dallas.
- October 24, 2014 Friedman & Feiger sponsors A Taste of Chamberlain's ISF Gala—Bridging the Gap, benefiting the International Student Foundation, Belo Mansion.
- November 3, 2014 Friedman & Feiger's Christian Alcala of the Puerto Rico office wins the *Caribbean Business* "40 Under 40" Award.
- November 19, 2014 Friedman & Feiger sponsors the Yes! Luncheon On Stage with Jane Pauley benefiting The Legacy Senior Communities, Winspear Opera House at the AT&T Performing Arts Center.
- November 19, 2014 Janelle Friedman and Yvette Feiger host the Essential Energy female business leaders' networking reception with TV personality Jocelyn White, 6 pm to 8 pm, Arlington Hall at Lee Park, 3333 Turtle Creek Blvd., Dallas.
RSVP: clegrand@fflawoffice.com

Contact for Info: jfriedman@fflawoffice.com

