



## When Legal and Reputational Issues Intersect

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We are often asked by clients and their counsel how to communicate around legal issues that have the potential to – or already have - caused reputational harm. The answer can be complicated, particularly in white collar matters when an indictment may be imminent or has already been filed, because the most important audiences are prosecutors, judges, and juries. Although there is no “one size fits all” solution and many situation-specific variables come into play, there are some guiding principles and high-level considerations that inform how we advise our clients.

### 1. **Align legal and communications strategies**

First and foremost, all communication strategies must align with and complement the legal strategy. While that may argue for communicating only via legal filings, that is not always an acceptable option for clients who feel the need to communicate with their stakeholders – including employees, customers, investors, and the media – is a reputational imperative. In these matters, we recommend developing a fact-driven core narrative in consultation with the client and legal counsel. The goal is to develop and disseminate consistent messaging that protects reputation and value but does not compromise the legal strategy.

### 2. **Do no harm**

Doing no harm can mean many things. In white collar matters, it means not saying anything that could antagonize prosecutors and/or the presiding judge, such as appearing to be litigating the case in the press. It also means not saying anything publicly that could be used against the client or open a new line of discovery. It is also critical not to get ahead of the facts, which is especially relevant when a matter becomes public before all the facts are known. Credibility is key, and over-communicating or communicating prematurely can end up exacerbating an already bad situation. Clients that are forced to backtrack and correct erroneous facts they've stated publicly lose credibility and trust, both of which are difficult to regain.



### **3. Calibrate media strategy**

It is similarly important to avoid inviting attention where none exists. Whether and how to engage with the media about a white collar matter is situation-specific and depends on the facts of the case, the profile of the client, legal strategy, and timing, among other factors. If a decision is made to communicate proactively, reactively, or both, there are a range of ways to either seed or combat false narratives that involve varying degrees of attributability to a client and/or counsel. As an alternative or supplement to an on-the-record statement, key reporters and editors can be briefed on background or off-the-record. These are effective ways to help ensure that the client's side of the story is presented accurately and persuasively.

### **4. Be prepared**

In white collar matters, planning for the different scenarios that may unfold – including the possibility of a leak – is crucial. Once potential scenarios are identified and the legal and PR strategies are aligned, messaging should be created for each scenario with the understanding that it may need to be modified or calibrated based on how the matter unfolds. Having foundational messaging in place ahead of time prepares clients to navigate new developments swiftly and strategically. Unless a decision has been made to stay silent, we always want a client to be prepared to respond and avoid a situation in which a story is published without the client's side of the story being told.

The best way to appropriately balance legal and reputational priorities in white collar matters is through a bespoke, tailored communications strategy guided by these principles and executed in lockstep with legal counsel.

To learn more about August's litigation and investigations communications services, [please contact our professionals.](#)