
ACC DOCKET

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Seize the Hidden Opportunities of Crisis

Skills and Professional Development





CHEAT SHEET

- **Trial and error.** Although legal departments often set parameters for when failure is acceptable, breaking out of these restrictions during a crisis fosters experimentation.
- **Strive for the best.** It's important to decide what success and failure look like, and then evaluate all options and their likely outcomes to effectively achieve your goals.
- **Turn decision to action.** To ensure success, each team member must understand his or her role in its entirety before attempting to execute key objectives.
- **Adapt, adapt, adapt.** To make the most of any crisis management process, it is critical to adapt past strategies and use them as normal practice in future scenarios.

“You never let a good crisis go to waste. It's an opportunity to do things you thought you could not before.”

Rahm Emanuel, mayor of Chicago and former White House chief of staff

You were lucky enough to get a heads-up email that an urgent matter is exploding today. You get the meeting invite, entitled “crisis management,” and glance at the list of invitees. It looks like all hands on deck. There goes your day. You're frustrated but you like the action. It's time to “do something.” At the meeting, your quality control colleague briefs the team about a serious product quality issue. You learn that with such a far-reaching problem, many considerations are in play: media interest, customer safety and trust, root-cause analysis, stakeholder management, and the ever-present harm to the bottom line. By the end of the meeting, a robust plan is in place and the team executes it over the following weeks. By all accounts the response was a success and the agreed-upon objectives were met. The crisis has been managed and the cross-functional team disbands to return to their day jobs. Another hermetically sealed, unbridled triumph.

Or was it?

Many good organizations would be very pleased with this result. But therein lies one of the differences between competent organizations and industry leaders. This gap can be bridged by savvy in-house counsel who are calm enough during an emergency to rise above the chaos, see hidden opportunities, and drive their organization to superior future performance.

However, this does not happen on its own. It takes a crystal clear objective, thoughtful planning, and disciplined execution. There must be a willingness to experiment under fire, evaluate past mistakes, and design anew. That is the type of experimentation and learning that ultimately moves the needle. Former US President Dwight Eisenhower famously said: “Plans are worthless, but planning is everything.” Think of preparation as exercise for your brain. No crisis-management strategy will be exactly like your training but, by preparing beforehand, you will enter into the next scenario with a broader perspective when it's game time. This is where in-house counsel can add that elusive “value” over-and-above what our external counterparts provide. With enough practice, you will earn the respect and trust of your business leaders and earn a place at the table.

This is no place for the faint of heart. Try some of these 10 practical steps before, during, and after

your next calamity in order to take your team and organization to the next level.

1. Set defaults

Behavioural economics is a field that lawyers ignore at their own peril. It is the study of why people often make irrational economic choices. Organizations in crisis are particularly at risk of making decisions based on biases and erroneous mental models, often leading them down the wrong path. One of the field's most powerful tools is defaults, which serves as what happens when people do not make an active choice. Inertia, procrastination, and a lack of self-control can cripple an effective strategy. Set predetermined options that need to be opted out, rather than opted in. For example, determine in advance who is on the rapid response team, where and when the team meets, and who informs whom. Not only is valuable time saved in the moment, but any change to the default plan requires an active decision.

Hidden opportunity: Process is molded by those who determine the defaults. Organizations are often beholden to short-term gains. By thinking beyond simple tasks and shaping future events by design, significant and long-lasting change can be made. Set initial defaults with care, as you will lose credibility and time if they fail under their first pressure test. That means spending time getting input from key stakeholders before a crisis hits.

2. Experiment and fail by design

You're going to fail. Don't wish it away or pretend it won't happen. Instead of making it a crash-and-burn career limiting move, why not design the inevitable moment to be a learning experience. In ["Failing By Design"](#) Columbia Business School's Rita McGrath writes about creating no-fail zones, formalizing rules for when failure is acceptable. This includes failing in such a way that it never touches the customer. One of the critical steps in intelligent failure is McGrath's advice to convert assumptions into knowledge, as "your initial assumptions are almost certain to be incorrect." Make your assumptions explicit with the team by writing them down, she advises, and then test them out through experimentation.

At my organization, the biopharmaceutical company, Pfizer, we celebrate colleague innovation and experiment through biannual awards called "Dare to Try." All colleagues, including those in the legal division, are encouraged to submit applications describing, "bold and fresh risk taking and experimentation that provides learning to the greater organization." As an innovator, Pfizer recognizes that failure is inherent in the discovery process. The awards offer a safe zone for learning from successes and learning-sized failures.

Hidden opportunity: Legal departments often unknowingly draft the rules for when failure is acceptable. This is an opportunity to frame the organizational tolerance for certain types of failure. Learn from McGrath and give your organization a wide berth, as long as it meets certain preset criteria such as not touching the customer. One of Pfizer's Dare to Try behaviours is "greenhousing" — protecting creative ideas and allowing them to either die naturally or grow into something that can be further explored. Constraints can be liberating. Imagine children in a schoolyard near a busy street. The fence allows them to run around the whole yard, instead of remaining huddled near the teachers for their own safety. Design these constraints to protect your organization, encourage experimentation and intelligent failure, and greenhouse wild ideas within this safe zone.

3. Activate your network ... you have one, right?

It's tempting for high performers in a crisis to try to solve problems by themselves. This can be unproductive and dangerous. Part of crisis preparation is having a group of trusted advisors with experience and imagination. Communications, human resources, information technology, and finance can all be part of your crisis team. Make sure you cultivate this network before you need it. Don't make your first call to someone in the middle of an emergency. It takes the odd coffee meeting. Seeking out the opinions of others also protects us against our own innate shortcomings. As the father of behavioural economics, Daniel Kahneman, cleverly states: "We're blind to our blindness. We have very little idea of how little we know. We're not designed to know how little we know."

Hidden opportunity: Lead but allow others to act. It's often tempting for leaders to take the reins in a crisis, but you cannot develop people only when it's convenient. This is the chance for you to test your team and allow them to be stressed and stretched in order to learn. Getting knocked down is part of the process.

Daring to try

Engaging employees at all levels of an organization in the innovation and experimentation process is invaluable. I have been fortunate to be part of several "Dare to Try" initiatives at Pfizer Canada. The first resulted in a group award recognizing a Canadian project that developed a new payment support program to create a closer connection with patients. Along with four other winning submissions, the initiative was chosen using a crowdsourcing system, by which more than 13,000 colleagues worldwide reviewed 345 nominations to select finalists. A panel of Dare to Try "champions" served as an expert committee for the final selection. Dare to Try is more than a simple contest. The program offers a framework and assistance to colleagues who are wrestling with a problem. The framework is divided into six stages related to innovation and then experimentation, offering specific tools designed to accelerate the creative process. Participants can also reach out to a nearby colleague, who has trained as a champion in the craft of facilitation in order to help tease out and resolve issues. I was recently asked to participate in a short Dare to Try initiative as a so-called "wild card" — a colleague who is inserted into an innovation and experimentation session to stir the pot. Over the course of the day we challenged our assumptions as to what the customer needed and how we could meet those challenges, including legal ones. Even in a crisis, this type of facilitated session can be worth exploring if your business is looking for breakthrough ideas.

4. Fully define the problem and ask if this is really new

Emergencies feel palpably novel and we often treat each new scenario as an exception that requires a unique solution. Instead, ask whether this is a generic situation or an exception. If it is something that underlies a great many occurrences and is "generic," then the solution lies in a principle that should be followed to address the issue. Only unique events, which are rare by definition, require individualized solutions. Rely on your greatest asset — experience in similar situations. Ask if the problem or any of its parts can benefit from past experience. Follow management guru Peter Drucker's advice and assume that the problem is generic before you "test for signs that something is atypical."

Hidden opportunity: When scanning our memory for similar situations and potential solutions, we

tend to focus disproportionately on those that occurred recently because they are more easily accessible in memory. Guard against this immediacy bias and inquire with whom you haven't collaborated with recently. This process also expands and strengthens your network beyond your current go-to people.

5. Raise your solution to the highest possible conceptual level and make few decisions

A crisis often lowers the decision making process on the conceptual ladder. Lightly solving the immediate symptoms at the expense of longer term problems is the beginning of the end for many organizations. Play the long game. Ask: "If I had to live with this for a long time, would I be willing to?" If the answer is "no," raise your solution up one conceptual level and find a more comprehensive answer. Ask yourself: "Is this problem really new?" Then fully define it and raise your solution up the conceptual ladder. You should be making fewer but higher quality decisions. Find the minimum amount of decisions needed to resolve the problem and execute accordingly. By recalling of all your products, you get a short-term problem off the shelves. However, the quick decision may be overly broad and cause undue panic. You must understand what your decision is designed to accomplish. It must be both effective and of appropriate scale. Reflect on whether action is really necessary at all. Ask what will happen if nothing is done. This often requires courage against organizational pressure to "do something!" As Drucker commented: "Every business decision and action is like surgery. It is an intervention into a system and therefore carries with it the risk of shock."

Hidden opportunity: Research demonstrates that the quality of our decision making deteriorates as we make more decisions. Avoid this "decision fatigue" by making your most important ones early in the day and keep them to a minimum. If possible, avoid end-of-day meetings to address complex issues in a crisis. This may not always be possible, but there is enormous value in asking people to greenhouse ideas overnight and holding the meeting at 9 a.m. the next day. Always ask whether this is something that needs to be decided, because once you have syphoned off your mental energy to focus on a particular issue, there is that much less of you for the next decision. Use the strategy of defaults discussed above to limit the number of decisions the group must make.

Helpful principles of good design from *The Design of Everyday Things* by Donald A. Norman

Visibility. By looking, the user can tell the state of the device and the alternatives for action. In the context of the in-house counsel, this may be as simple as drawing a mind-map or other diagram that show the relationships between concepts. I always try to bring a notebook to meetings, not to take notes but to have a place to draw such visuals. In a world of PowerPoint, smart boards, and protracted email exchanges, a simple drawing will often cut to the heart of the issue. Just take a picture of it with your phone, it's fine!

A good conceptual model. The designer provides a good conceptual model for the user, with consistency in the presentation of operations and results, and a coherent, consistent system image. Shared mental models are critical to the ability of corporate counsel to provide advice that addresses business need. Before any actions are taken, take the time to repeat out loud, or in writing, if appropriate, the facts, assumptions, and objectives. Misalignment on this early critical phase can be easily avoided.

Good mappings. It is possible to determine the relationship between actions and results, between the

controls and their effects, and between the system state and what is visible. Whenever feasible, advise your business to choose actions that create visible results. For example, when reviewing a contract for promotional services, look for provisions that map advertising metrics to certain actions. If it's not in the contract, explore why not. This is the type of value-add legal advice that not only protects your client, but gives the double benefit of a functional contract that provides feedback mapped to what the business has paid for.

Feedback. The user receives full and continuous feedback about the results of actions. Visible, immediate feedback is ideal in a crisis. If the next available feedback from your organization's decision will be the front page of the newspaper, you need to create some weigh stations along the way, in order to get micro-feedback that will allow you to change course. Can you have a preliminary discussion with the newspaper reporter? Can you take some smaller actions and gauge the results of those trial balloons? Once those checkpoints are reached, it's critical to regroup with the team and make decisions based on the results of those actions.

6. Start with the perfect solution and only compromise from there

We often immediately seek a compromise to reduce anxiety and get a "fair" result. Crisis can make you forget your original objectives, and can result in a lost opportunity. Keep the end in mind. It is impossible to decide between options unless you have a clear goal. You don't know what the "right" compromise is unless you know what the perfect solution looks like. Decide what success and failure look like before you act. Establish objectives and ruthlessly evaluate all options and their likely outcomes against them. Keep your organization's values and mission clear. They must guide you. There isn't a company in the world that doesn't have "integrity" as a core value, but stakeholders and the public want to see action, especially when the issue is in the media. This is an opportunity to tell a story about your company by how you respond to adversity.

Hidden opportunity: Creative results never come from starting with a compromise. The best decision makers pause for lateral thinking, even in a rush. Accelerate your vision. After triaging the wound, you have a chance to propel your organization toward its long-term vision. Just like the development of people, the shaping of an organization happens in the face of adversity. This is your organization's opportunity to ensure that its mission statement is not empty words.

7. Organize dissent

A crisis is a breeding ground for confirmation bias and groupthink. Senior members of the organization are more likely to attend meetings and be part of the decision making process. One of them is apt to voice an opinion. The group often grabs hold of that first seemingly viable solution and seeks out the only evidence that supports it. Consider William Wrigley's observation: "When two people in a business always agree, one of them is unnecessary." Seek out people who disagree with you or set up a devil's advocate whose job it is to poke holes in your plan. Find out why people disagree and you'll uncover new avenues to explore. The only true way to assess a theory is by seeking out disaffirming evidence to see if it can withstand scrutiny. Seeking out confirmatory evidence ultimately leads to false positives and can be extremely risky.

Hidden opportunity: Remember the flip side of all of this and offer to be the devil's advocate for

another team grappling with its own problem down the hall. You'll build your network, exercise your mind, and be exposed to lateral thinking that is likely to help you solve future problems.

8. Convert the decision into action

After a decision is made, teams often feel good but flounder because of inaction. Unless the team walks away with a very clear idea of who does what, there is little chance that even the most groundbreaking strategy has any chance of success. So don't leave that meeting until it's been said out loud. If nobody is saying it, ask very specifically for confirmation of each team member's individual task. You'll often find that you just experienced a near miss. Effective teams resolve scenarios by acting explicitly, and starting the next meeting with a follow-up on the same items. In-house counsel are often seen as the glue between departments. Try pulling on that glue a bit in order to inject some rigour into the process.

Hidden opportunity: Microfeedback is a rarely used but effective tool. Don't just take action and blindly move to the next decision. Watch the consequences that result from each decision and create small opportunities to evaluate them. It's like driving a car. You make thousands of small adjustments on the steering wheel over time based on visual feedback from the road. What you don't do, however, is swing wildly from side-to-side, making huge and infrequent changes along the way.

9. Monitor and engage social media

During the 1962 Cuban missile crisis, all it took was a phony story about US President John F. Kennedy having a cold to throw the public off for days, allowing him to conduct secret negotiations with Soviet Premier Nikita Khrushchev. Today, your crisis is likely to be trending on Twitter before you're even aware of a problem. Work with your corporate communications team and embrace social media. Ensure that the public gets timely, credible information directly from you about your products. It's what they demand and deserve.

Hidden opportunity: Watch how competitors and other organizations deal with emergencies. Fortune magazine recently called Nestlé's response to its Maggi noodle crisis in India, "[a cautionary tale of mangled crisis management on an epic scale.](#)" Whether that's accurate or not is for the reader to decide, but paying attention to such market activity allows your organization to consider how to improve its own crisis management, including the use of social media.

10. Manage up (and across)

Urgent events are often surprises. Don't let them be ongoing surprises. Keep your boss updated. In the classic article, "Managing Your Boss," John Gabarro and John Kotter emphasize that we should not passively assume that we know what the boss expects. We too often underestimate what our bosses need to know — and what they do know. Aim to keep your boss informed through processes that fit his or her style. Be forthright about both the good and the bad news. Do not forget your peers. In any large organization, the timely, appropriate dissemination of information is key to proper functioning. Take a moment before making a decision and think about who is impacted and who needs to be informed so they can brief their management.

Hidden opportunity: Trust is forged — or broken — in crisis. Being in the trenches with management on urgent issues is what you will both remember. Communicate more rather than less. Build trust for the next event. Maintain your credibility, even when in the mud.

11. Principles of good crisis response design

In the book, *The Design of Everyday Things*, Donald Norman amuses us with stories about being unable to open doors, operate digital watches, or set dryers that are poorly designed. Such failure is often a result of unhelpful, untimely, or non-existent feedback. Think about that time you pressed the button on the projector and nothing happened — do you press it again? “Intuitive diagnosis is reliable when people have a lot of relevant feedback,” Kahneman says. “But people are very often willing to make intuitive diagnoses even when they’re very likely to be wrong.” In the context of organizational crises, we often move from crisis to crisis without reflecting on our efforts and their outcomes. Instead, use the principles of good industrial design to your advantage. Make the system visible to those working on the project so they see other moving parts work efficiently. Allow for visible, immediate feedback for actions so people can self-correct without requiring a group meeting. Align on a clear mental model of what the entire team is doing and what success looks like. All of these design principles allow a large team of people to coherently work toward a common goal without heavy-handed oversight.

Hidden opportunity: Capture near misses. In-house counsel often struggle with measuring and demonstrating the value of their services. It’s not an obvious exercise in our profession. Showcasing proper risk management processes is an excellent way to demonstrate the value of proper planning. Keep a running list of media non-events or complaints that never made it to litigation, and measure the time and resources saved by not having to address them during an emergency. Nobody needs another series of action items on their already long list. The key to making any of these hidden opportunities materialize is to make them part of your normal response to a crisis. Make a crisis checklist and remind yourself to search for opportunities.

Overall, during a crisis, always be gracious — in success and failure. People will remember your behaviour, not the result.

FURTHER READING

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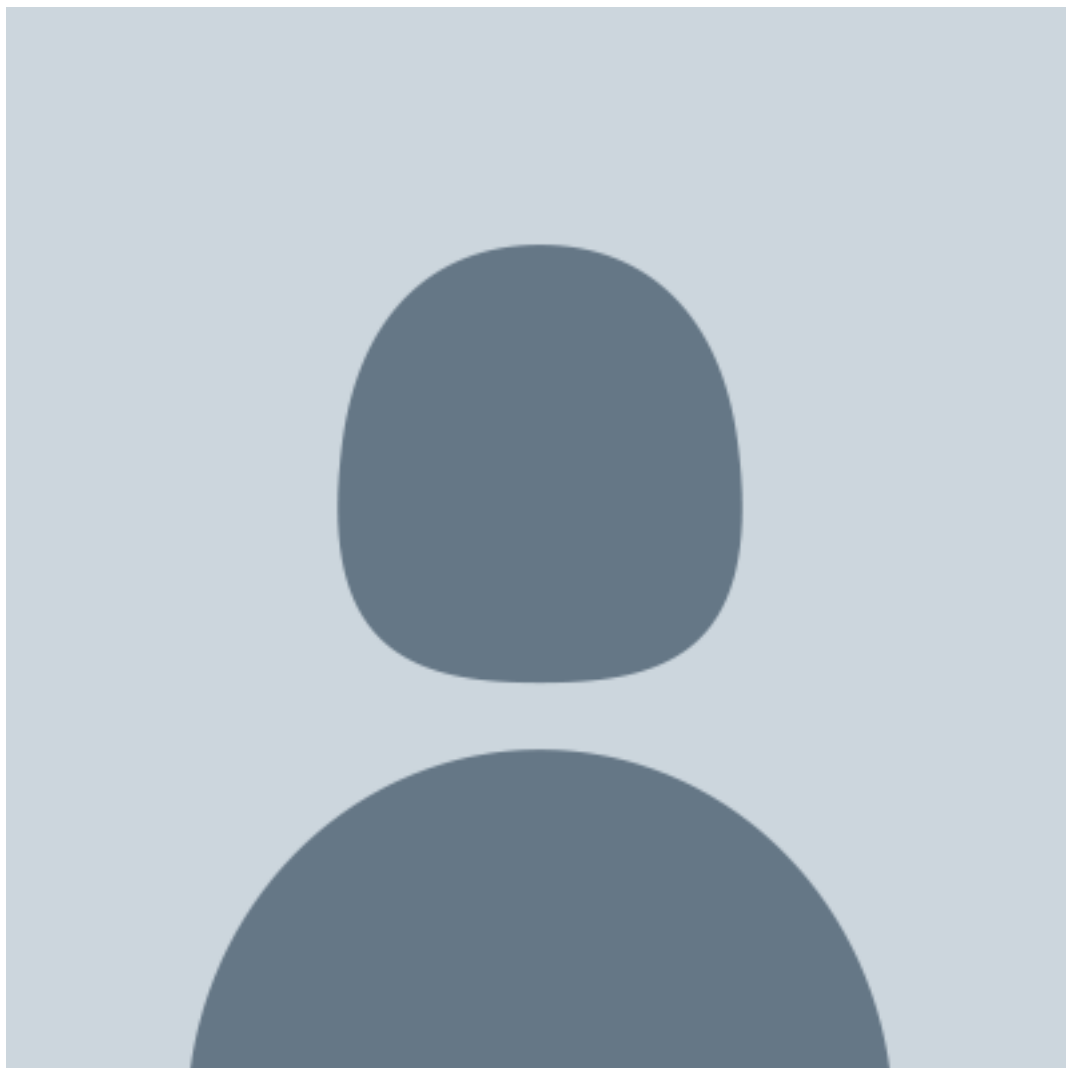
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