

Staying Nimble in a Time of Tumult

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Note: This is a written summary of part of a short Webex presentation sponsored by the MTA on March 20, 2020. The presentation also included outstanding presentations from Matt Marrin from the Federal Motor Carrier Safety Administration and Captain Jon Olsen from the Minnesota State Patrol.

Motor carriers, logistics providers, couriers and passenger carriers are in the COVID-19 crisis with the rest the world. At a rate none of us anticipated, except those with a military background, MTA members are asked to pivot on a moment's notice to respond to changed circumstances, a new law, a news story, a piece of social media, or a personal plea from an employee or client. How to timely respond? In circumstances like this, doing nothing is almost never the right answer.

I suggest you use a process or procedure, adapted to the time available, to make a careful, reasoned decision with all the information you can gather in the moment. Bring in others you trust or experts into the decision-making process to help you. If that is not possible, you may need to go it alone. But the process is the same.

Full disclosure, I offer this process from a lawyer perspective. The genesis of this process is based on my experiences in commercial litigation. Usually, that involves a company trying to explain what it did, when it did it, and why. Typically the opposing party is challenging the result which usually went bad, sometimes hurting someone physically or financially. On occasion, it's a governmental entity questioning your decision making. In all these situations, you are asked to recreate for an investigator, judge, arbitrator, or jury what you did. Businesses enjoy wide latitude in their decisions, if they can be reasonably and rationally explained. Could you explain,

several years later, the process you used to address a problem? Could you describe the important parts of the process in five or six minutes? Convincingly? I call this the "speech." Every speech starts literally or figuratively with the, "Here was the problem..." followed by "Here's how we addressed it..." Usually, you only have to explain if something went wrong. If everything went great no one is ever going to ask about it.

I think this process will help.

First, think about the problem. What is the obstacle in front of you or what is the result you are trying to achieve? For example, in the COVID-19 world, you are concerned your drivers are being exposed to the virus many times over during their pick up, driving and delivery duties. What can you do? In thinking about it, brainstorm alone or with others. Write down your ideas. In our example that might be simple things like equipping trucks with masks, shields, gloves, and hand sanitizer. Some of those things might be in short supply for a while. You might also consider invoking a "no touch freight policy. You might stock cleaning supplies in the truck cab or trailer. You might also consider proactively telling customers and consignees what you are going to do before they come up with their own ideas.

Second, research your ideas. Use others you know. Use industry resources and associations. Use the internet. Use common sense. Use experts you trust. Write down their ideas. Collect data if you have time to gather it.

Third, meet about it. Gather those you trust and talk through all of the ideas, even the crazy ones. Those meetings may need to be by phone, teleconference, across a large room or collaborative email exchange. The important thing is to vet the ideas. Discuss pros, cons, sustainability, costs, and implementation obstacles.



Maybe you reach a tentative conclusion that extensive driver protection and sealed spotted trailers are the right thing to do. You may also tentatively decide to affirmatively tell all those concerned (drivers, dispatchers, customers, and consignees) what you are going to do and why. Keep these materials so you can later refresh your recollection and give that “speech” if you have to.

Fourth, decide and write it down. This is important because it really is the reduction (to use a cooking term) of everything you’ve done to this point. In our example, maybe you decided to equip your drivers with protective devices and require no touch freight when possible. Next you decide to clearly communicate what you are going to do to protect everyone involved and why. Keep the written version of what you decided. You are almost done with the material for your “speech.”

Fifth, communicate it. Your decision included a communication component to tell those concerned what you are going to do. However, you need to communicate it to your drivers and operations staff and conduct the training to implement it. You need to communicate to your customers, too. Keep copies of all those communications. These are the final touches on your “speech.”

Sixth, and last, evaluate it. In these times, the

evaluation process may be constant as new problems or obstacles appear. Use a shortened version of this process to make small adjustments to address implementation problems.

Adjust your “speech.” If your evaluation reveals your decision, even with adjustments, is not working, abandon it and start all over. Document why you decided to change your mind. Remember, even a carefully created but later abandoned failure is defensible.

Using this process will create a record of careful consideration and implementation of a solution to address a difficult problem. If necessary, you can refer back to these materials for your “speech,” justifying your decision making. That “speech” and the materials supporting it will go a long way to extricating you from legal trouble should you need.

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