

Surviving a Governmental Investigation without a Black Eye:
Key Legal, Communications and Crisis Response
Considerations for Nonprofits

Tuesday, May 20, 2014, 12:30 p.m. – 2:00 p.m. ET

Venable LLP, Washington, DC

Moderator:

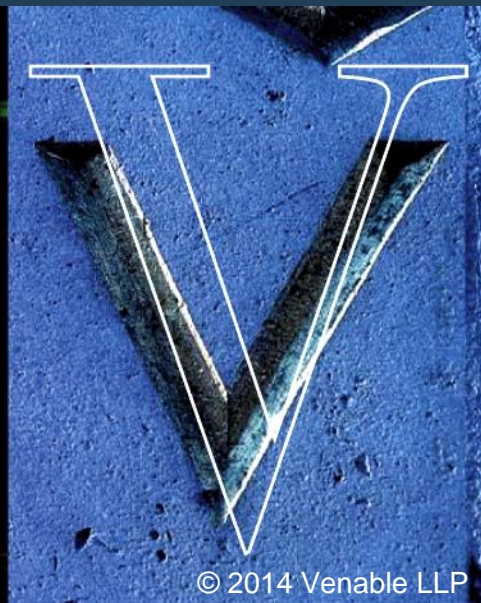
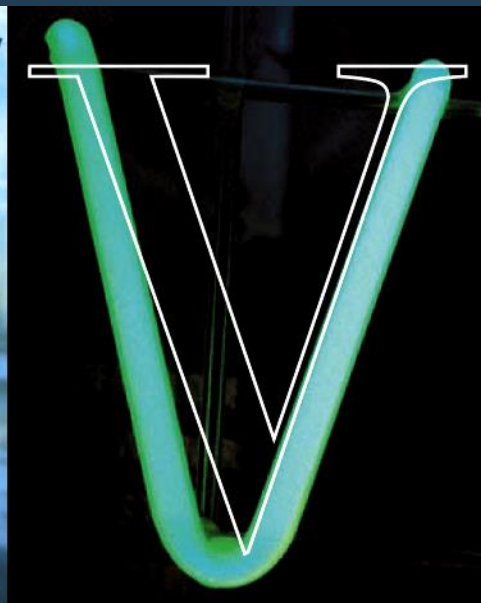
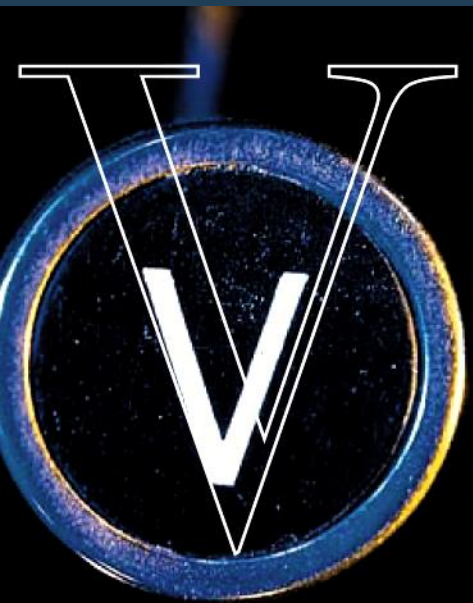
Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists:

Jamie Moeller, Ogilvy Public Relations

Kathy Baird Westfall, Ogilvy Public Relations

Ronald M. Jacobs, Esq., Venable LLP



Upcoming Venable Nonprofit Events

Register Now

June 18, 2014 – [Performance Management and Discipline in Nonprofits: Common Pitfalls, Unique Challenges, Effective Solutions](#)

July 17, 2014 – [Key Trademark and Copyright Rules for Nonprofits to Follow – and Break!](#)



Upcoming Venable Nonprofit Events

Mark Your Calendars

August 13, 2014 – [Privacy and Data Security for Your Nonprofit: Understanding Your Legal Obligations and Insuring against Risk](#)

September 16, 2014 – [What's Ahead for 2015: Preparing Your Nonprofit's Group Health Plan for the Employer Mandate](#)



Agenda

- Protecting Brands in Turbulent Times
 - Crisis Characteristics and Origin
 - Crisis Management Protocol
 - Crisis Action Steps
- Trends, Platforms, and Data
 - Trends
 - Corporate Responses
 - Social Media Opportunity
 - A Social Media Crisis Framework
- Legal Considerations
 - Common Legal Issues in an Investigation
 - Planning Ahead and Risk Management
 - Protecting Your Information
 - Interacting and Negotiating with the Government
 - Internal Investigations
 - Congressional Hearings



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Protecting Brands in Turbulent Times

Issue vs. Crisis

- **Crisis** – *An event that immediately stops the work of the day in order to handle. It can affect the viability of a company. It is most often a reactive situation.*
- **Issue** – *A problem that, while important, can be contained with adequate advance planning and follow-up. If handled incorrectly, an issue can turn into a crisis.*



7 Characteristics of a Crisis

1. Sudden change in circumstances
2. Insufficient information
3. Escalating flow of events
4. Beginning of loss of control
5. Intense scrutiny from outsiders and insiders
6. Beginning of the siege mentality
7. Panic



Where Do Crises Begin?

INTERNAL

- Industrial Accident/Environmental Issue
- Investigation/Lawsuit/Fine/Settlement
- Poor Financials/Stock Performance
- Structure/Ownership Issue (M&A, etc.)
- Management Change/Dismissal
- Incident/Allegation of Mismanagement
- Incident/Allegation of Wrongdoing
- Consumer Complaint/Issue
- Product Defect/Recall
- Employee Complaint/Issue
- Labor Dispute
- Workplace Injury/Fatality

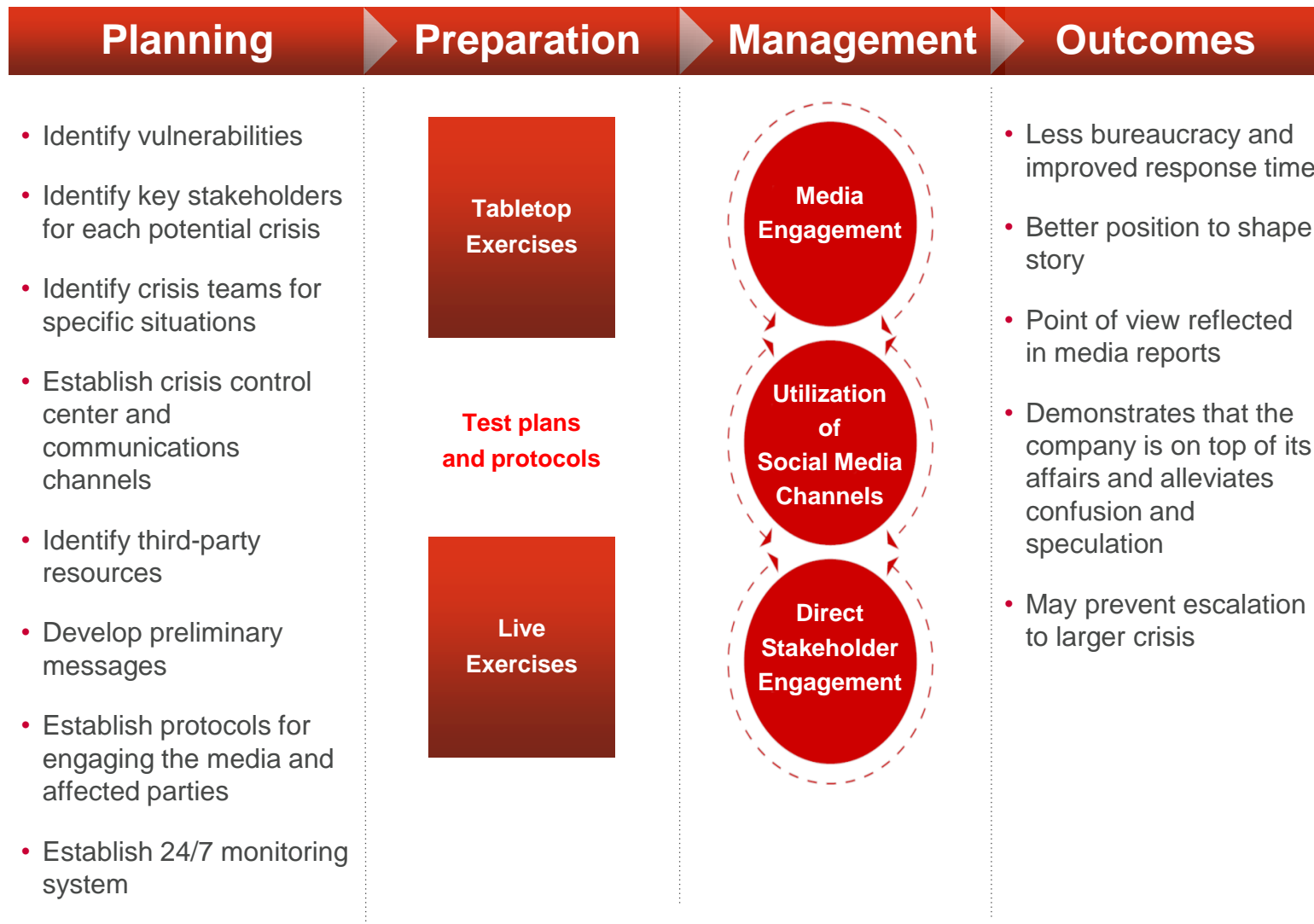
EXTERNAL

- Natural Catastrophe
- Terrorist/Criminal Threat/Incident
- Activist Issue/Protest

Of the 15 major crisis categories, only 3 have predominantly external triggers.



Crisis Management Protocol



Action Steps

Preparation	First 3 Hours	First 6 Hours	First 24 Hours	Ongoing	Outcomes
<ul style="list-style-type: none"> • Vulnerability assessment • Crisis planning • Third-party development • Tabletop exercise • Message development • Materials development • Resource and asset mapping • Social media audit • Monitoring 	<ul style="list-style-type: none"> • Validate situation • Alert crisis team • Convene team meeting • Increase monitoring frequency • Institute preliminary protocol • Identify Needs 	<ul style="list-style-type: none"> • Begin to implement tailored plan • Leverage third-parties • Tailor approach for specific incident • Prioritize activities • Tailor messages for specific incident • Develop additional material including statement, fact sheet, etc. 	<ul style="list-style-type: none"> • Communicate with key stakeholders • Release materials to the press • Conduct interviews • Engage with online influencers • Conduct outreach to offline influencers • Monitor for, and correct, inaccuracies 	<ul style="list-style-type: none"> • Hold morning and afternoon meetings to review progress • Depending on intensity, institute war-room with permanent monitoring and response, staffed by government and Ogilvy personnel • Analyze impact of messaging and revise as appropriate 	<ul style="list-style-type: none"> • Voice in media reports • Larger share of voice • Helped establish correct context and frame the situation • Potentially shorter duration • Potentially less criticism



Value of Planning

According to a study by the insurance firm Marsh, every \$1 spent in crisis planning is worth \$7 in losses averted.



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Trends Work in Combination with Platforms and Data

Trend 1:

Massively Parallel Processing:
The Mouse That Roared



Trend 2:
I Am a Camera



Trend 3:
Convening the Masses



Trend 4:

Data, Data Everywhere



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Corporate Responses

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Social Media Opportunity

Opportunity 1:
Crowd-Sourced Information



Opportunity 2:
Hyper-communications



Opportunity 3:
Compelling Narratives



Opportunity 4:
One-to-Many/One-to-One



Opportunity 5:
Tracking Sentiment in Real Time



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A Social Media Crisis Framework

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Legal Considerations

Common Legal Issues in an Investigation

- Document production
- Internal investigation
- Witness interviews
- Congressional hearings
- Private lawsuits
- Criminal investigations



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Before the Storm

Planning Ahead



Documents

Retention Policies

- Reduce the number of documents
- Organize the documents

Risk Management

- Board
- Senior management
- Information flow



Controls

- Theft
- Regulatory filings
- Policy development
- Public communications



A Plan

Organizational notifications

Document holds

Information gathering

Press

Retention of experts



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In the Storm

Protecting Your Information

- Have the lawyer hire the experts
 - PR
 - Internal investigations
- Carefully review documents to be produced
- Congress isn't big on the attorney-client privilege
- Consider who in the organization gets the information



Interacting with the Government

- Different strategies with different agencies
- Consider relative power/authority
- Consider negotiating position
- Develop good relationships



Document Requests/Subpoenas

Review request/subpoena with experienced in-house counsel and/or outside counsel

Establish a custodian of records

Identify employees who may have responsive materials and conduct interviews

Establish a litigation hold (including electronic documents)

Determine scope of privileged materials



Electronic Documents

- Meet with Company I.T.
- Identify electronic media covered by subpoena
- Don't forget all removable/portable media
- Preserve electronic documents covered by request/subpoena
- Suspend electronic document destruction procedures and policies
- Consider hiring an outside vendor

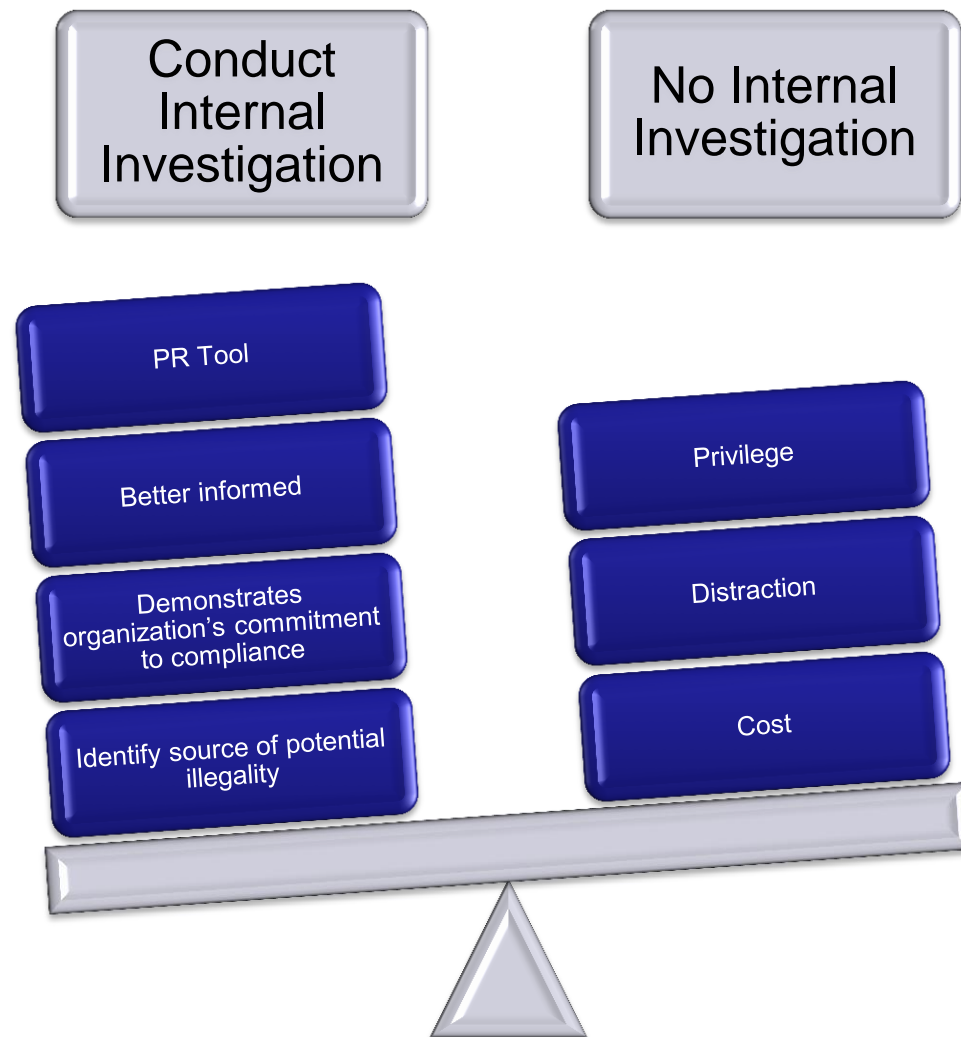


Negotiate with Government

- Negotiate the scope of the request
 - What does the Government want?
 - What does the Government need?
 - What is practical to obtain?
 - What is practical to provide?
- Format of production
 - Paper vs. electronic
 - E-mails
- Timing of production
 - Rolling vs. set date
- Confidential and/or privileged documents



Internal Investigation



Employee/Officer Interviews

- Be sure document collection and fact-gathering are complete before agreeing to interviews
- Conduct mock interviews to prepare employee/officer



Congressional Hearings

- Written testimony should be prepared with counsel
- Identify allies on the committee
- 18 U.S.C. § 1001
- Conduct mock Q&A
- Pleading the Fifth
- PREPARE, PREPARE, PREPARE



Questions?

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