Lead Director Network
ViewPoints
December 15, 2014

Board leadership in crisis management

Members of the Lead Director Network (LDN)[1] met in New York City on November 13, 2014, to discuss crisis management and cybersecurity. Dan McGinn, a communications expert with more than three decades of experience advising large organizations during crises, joined members for part of the meeting. In a separate session, King & Spalding partners with expertise in cybersecurity presented a case study about the 2013 cybersecurity breach at Target. For further information about the LDN, see "About this document," on page 8. For a list of participants, see the appendix on page 9.

Executive summary

This *ViewPoints* summarizes member discussions in two key areas:[2]

- **Responding to a crisis** *(page 1)*

  Corporate crises, though by their nature rare, are terribly disruptive and can threaten the existence of an organization. Crisis response means empowering the right mix of well-prepared company insiders to work hand in hand with outside experts trained specifically to manage crises in a time-sensitive environment. This team must then strike a delicate balance between disseminating the key facts to a range of skeptical stakeholders in a timely way and guaranteeing the accuracy of that information. Simultaneously, the board must ensure that no conflict or other limitation suggests management will not be able to manage the crisis. If management is in control, the board's primary role is to provide perspective behind the scenes. If management caused the crisis or is otherwise unable to handle the crisis, the board must take a more public role in the response.

- **Preparing for a crisis** *(page 6)*

  It is imperative to prepare response plans that empower leaders to act decisively during a crisis, even knowing that crises do not usually go according to plan. Steps like selecting company spokespeople and requiring them to undergo media training, retaining the right crisis management experts, ensuring that employees are empowered to report wrongdoing and that the company follows up on these reports, and applying lessons from other crises are some of the ways a company can prepare for when a crisis eventually hits – and, in some cases, to avoid it altogether.

Responding to a crisis

Corporate crises are all around us. Examples are too easy to find: product recalls at General Motors,[3] the cybersecurity attack against JPMorgan Chase,[4] the death of the CEO of French oil company Total when

[1] Lead Director Network documents use the term "lead director" to refer interchangeably to the titles lead director, presiding director, and non-executive chair, unless otherwise stated.

[2] *ViewPoints* reflects the network's use of a modified version of the Chatham House Rule whereby names of members and their company affiliations are a matter of public record, but comments are not attributed to individuals or corporations. Italicized quotations reflect comments made in connection with the meeting by network members and other meeting participants.

[3] General Motors, "GM Expands Ignition Switch Recall," news release, February 25, 2014.

[4] Tom Braithwaite, "JPMorgan Cyber Attack Hits 76m Households," *Financial Times*, October 2, 2014.

his airplane collided with a snowplow in Russia,[5] and alleged sexual and financial misconduct by the CEO of American Apparel.[6]

Members noted that determining how to deal with, recover from, and prevent crises requires more than just knowing a crisis when you see it. However, clear definitions are hard to find. One academic definition of an organizational crisis is "a low-probability, high-impact event that threatens the viability of an organization and is characterized by ambiguity of cause, effect, and means of resolution, as well as by a belief that decisions must be made swiftly."[7] Mr. McGinn offered the members a simpler description of a crisis: *"any event where the fundamental reputation of the company is truly at stake."* He said that some common characteristics of a crisis include sustained media attention, issues that are not restricted to a particular industry, and public interest from legislators and regulators.

King & Spalding partner Chris Wray explained that during a crisis, *"a company has to learn, tell, fix, and not make it worse - unfortunately all at the same time."* This requires a high-functioning crisis team working together in a coordinated effort to satisfy critical, time-sensitive demands. To respond to a crisis, the board should ensure that management takes critical actions: confirming the existence of a crisis, defining the roles of those involved in the response, striking the right tone in public statements, and coordinating with others affected by the crisis.

Confirm the existence of a crisis

The first and often most important step is recognizing that a crisis is at hand. Members said that if management misses the warning signs of a crisis, then their response, no matter how thoughtful, may come too late. One member said, *"It can be hard for management to be sensitive to what is actually a crisis. Most times they want to think things are containable within the company."*

Mr. McGinn also cautioned members not to rush to early conclusions about the scope of a crisis. He said that it can be easy to underestimate a crisis at the outset, noting, *"I can no longer judge when a case is going to become a big public issue."* He advised members that there is no substitute for making the right decisions early in the process: *"The vast majority of situations, when handled properly, don't become crises."*

Companies should guard against overreacting. Boards and management teams must also recognize when something is *not* a crisis and therefore does not warrant a full crisis response. One member said, *"If you get bad information up front and misdiagnose the problem, you can create a problem where there wasn't one."*

[5] Andrew E. Kramer and Stanley Reed, "The Death of Total's Chief Executive Is Felt Across National Borders," *New York Times*, October 21, 2014.

[6] Soraya Nadia McDonald, "So Many Sex, Financial Allegations Involving American Apparel's Dov Charney That Company Couldn't Afford the Insurance," *Washington Post*, June 23, 2014.

[7] Christine M. Pearson and Judith A Clair, "Reframing Crisis Management," *Academy of Management Review* 23, no. 1 (January 1998), 60.

Define the board's role

The board's role during a crisis varies widely depending on the nature of the event. Members said that when the board and management are collaborating during a crisis, directors primarily work behind the scenes to support management and its advisors. One member said, *"The board should remain silent [publicly] if management is doing it right."* Another member added, *"Board action can send an unintended signal and escalate the situation. The board should only step in publicly if the public posture management takes is inappropriate."*

Behind the scenes, the board has an important role. One member said, *"We need to mentor, advise, and offer expertise to management as it manages through a crisis. That includes asking probing questions."* Part of this responsibility involves helping management find perspective. One member said, *"The board should make sure the CEO steps away from the immediacy of the situation and takes time to reflect."*

In rare instances, however, the board may be more involved in managing crisis response, either because it seems clear that management's actions caused the crisis or because the board doubts management's ability to handle the crisis. In those cases where the board leads the crisis response, Mr. McGinn advised making sure that (1) key constituents *"know that the board is fully engaged and takes this matter very seriously,"* and (2) *"key board leaders know everything of relevance – this helps avoid any underinformed or incorrect comments from the company at a time it can ill afford them."*

Define the roles of management and external advisors

Members stressed the importance of assigning the right resources to crisis management while also ensuring that business proceeds as usual. Some members said that this means having the CEO delegate as much of the crisis response as possible. Mr. McGinn said that one natural option that frequently works well is having the general counsel take on more of the day-to-day responsibility: *"A crisis is handled best when a lawyer who has real authority and a feel for the culture of the organization is in the lead."* He added, *"You don't want a publicist or marketer in the lead communications role because in these cases you want to tone the attention down. The goal in a crisis is to create boredom."*

Beyond leadership at the top, members discussed the importance of building the right team to manage the crisis response. Mr. McGinn said that having too many people involved can unnecessarily slow down the process: *"It is hard to make a decision when you are getting conflicting advice from four or five different public relations firms."* Instead, Mr. McGinn and members suggested that companies empower a small group to make key decisions in order to keep pace with the speed of the crisis. In particular, he highlighted the importance of appointing someone to monitor and respond to commentary about the crisis on Twitter and other forms of social media. Mr. McGinn said, *"If you try to get a big committee together, forget it. Corporations that go through a detailed review process for public communications in the middle of a crisis are at a disadvantage."*

Members said that the nature of the crisis should determine resource allocation and the mix of internal and external participants on the team. One said, *"If the crisis is in the middle of what they do, management* *often has it covered. It is a bigger problem if the crisis is ancillary to the business."* As a result, members said that it is important for the board to quickly assess whether management is equipped to handle a specific crisis and, if not, to make sure it has the right resources available to assist.

Strike the right tone in public statements

Mr. McGinn emphasized that one of the keys to successful crisis management is minimizing reputational damage; as a result, *"it is not enough to be legally and factually correct."* Mr. Wray explained, *"Some measure of harm is usually inevitable; the key is to come out of a crisis without being fatally wounded. Successes are companies that get through a crisis without looking worse. And the most successful ones are those that can define themselves in the longer-term more by the solution than by the problem."* Members discussed three sometimes-competing factors to consider in crafting a public response that helps preserve a company's reputation during a crisis:

- **Timing.** Members contemplated when a company should make its first public statement during a crisis. They acknowledged the need for a prompt response, but also expressed concerns about responding before the company has completed an initial investigation. Mr. McGinn advised that companies should keep the public apprised of their progress, even when they have little to report: *"One of the best things you can do is empower someone to say, 'We're working on it.'"* That response only lasts so long, however. Mr. McGinn explained that companies often get in trouble when it takes longer for them to respond than the public perceives it should – which is most of the time. He joked that a firm specializing in crisis management should be called *"Horse Out of the Barn Communications."*
- **Consistency.** Members generally agreed that the greatest harm a company can suffer during a crisis comes from having to change its story because it initially provided incorrect information. It is better, they said, to be slow to address the public but have accurate information than to rush to the microphone. One member said, *"You need to do as much as you can to get the facts right the first time."* Mr. McGinn said that the company must do everything to avoid making mistakes in public statements regarding the facts of a crisis. He explained, *"You are in a race to get command of the facts. Efforts to be forthcoming are not rewarded if something is missing."* Before the meeting, one member shared an example where the board and senior management embargoed information until they could confirm its truth: *"We wanted to say what we knew to be true, not what we hoped to be true."*
- **Authenticity.** Mr. McGinn said, *"Be as authentic as possible. The public has a desire to see authenticity."* In a *Wall Street Journal* opinion piece about the 2010 BP oil spill in the Gulf of Mexico, Mr. McGinn advised companies to tell the full story during a crisis: "In an age of ubiquitous cameras, microphones, and global social networks, there aren't many secrets. The bigger problem is that in case after case, stories are told in chapters, prolonging pain and undermining credibility. When confronted by a catastrophe, don't hold back."[8] Members said that one benefit to full disclosure is controlling the

[8] Peter D. Hart and Dan McGinn, "Advice for BP's Reputation Crisis," *Wall Street Journal,* May 27, 2010.

message. If the company is providing honest and complete statements, the media will have less to cover and therefore lose interest.

Coordinate with others affected by the crisis

Members discussed the importance of working with others who are also affected by the crisis. One said, *"It is seldom the case where the company is on its own to control the message during a crisis. The interests of the different stakeholders don't always align."* While it may not be possible to satisfy all constituencies, members explained the benefits of a response effort that considers the following groups:

- **Business partners.** Most crises affect more than one company. Members discussed the challenges of working through a crisis when customers, suppliers, or other business partners do not share the same goals. And even when they do share the same goals, different company cultures can lead to different conclusions about the same problem. One member said, *"It is hard to control the messages when business partners have conflicting plans."*
- **Employees.** Members were concerned about how employees may react during a crisis. Before the meeting, one lead director emphasized keeping the workforce focused on the task at hand: *"The key thing … was reaching out to employees and saying, 'The most important thing you can do is continue to do your day-to-day job flawlessly.'"* Other members highlighted the value of an internally publicized response plan that identifies what employees should – and, more importantly, should not – do or say during a crisis. Mr. McGinn advised, *"Communicate with employees from the first minute. Don't create barriers or borders within the organization."*
- **The government.** Companies must also think about the response from prosecutors and regulators as they manage through a crisis. This often means cooperating with representatives from an increasingly wide array of both federal enforcers and state governments. Mr. Wray said, *"Federal authorities have been aggressively investigating crises for many years, and now state attorneys general and even more traditional regulators are doing the same thing."* As a result, members said it is no longer enough to satisfy one agency. One said, *"A crisis can catch the attention of many agencies. It is frustrating when your response is blessed by one, then another says they don't care."* King & Spalding partner Dixie Johnson added that there are even disputes within the same government organization: *"The SEC has been issuing more split decisions that include dissents. So you can agree to a non-fraud settlement after a crisis and still have a commissioner say that there was fraud."*
- **Potential victims.** Members said that in many crises, the most important thing a company can do is engage in a reasonable dialogue with those who were or may have been harmed. One member provided an example of a crisis caused by a string of employment discrimination claims: *"People raising issues aren't always out to get you. They believe in their cases. If the team handling the situation doesn't get that, we need to rethink the team."* Mr. McGinn said that in such a crisis, a company should *"think about being on the other side; if I were them, I would want to put pressure on you and make demands of your time."*

Cybersecurity case study: Target

One type of crisis that network members repeatedly identified as a major risk is a cybersecurity breach. As part of this meeting, King & Spalding partners, Phyllis Sumner, Michael Smith, Dixie Johnson, and Chris Wray led a discussion about lessons for boards of directors from the cybersecurity breach at Target in late 2013. The King & Spalding attorneys advised directors to consider whether their companies are adequately prepared to identify and prevent cyber attacks, respond to signs of such an attack, and timely handle public disclosure of a cybersecurity incident. They also discussed the following potential areas of inquiry for board members:

- **Resources.** Directors should ensure that their management teams have the appropriate resources in place to predict and address a breach. Target was criticized for not having the information security infrastructure in place to alert senior managers to the company's vulnerabilities, including a chief information security officer. Members were interested in how best to prioritize spending in this area. Mr. Wray stressed the importance of focusing *"not just on prevention, but on response,"* given the near-inevitability of breaches in today's environment. Ms. Sumner said that it is worthwhile to *"customize an information security program for your company that includes a detailed response plan with instructions for people to act and respond quickly."* She added that companies should consider hiring a third-party consultant to help with forensic analysis, both for their technical expertise and because they are often more credible witnesses if a breach results in litigation.

- **Diligence.** Companies must continually test and update their cybersecurity program and response plan. One member said, *"It is a healthy sign when management is restless about cybersecurity."* Another said, *"Culture is critical. A company with an open culture is more likely to encourage escalation [of threats]."* Ms. Sumner explained that Target suffered serious reputational damage not just because the breach occurred but because it lacked an adequate response plan. Many believe it took the company too long to respond. On top of that, the company's response was viewed as insufficient because it underestimated the scope of the breach.

- **Oversight and board liability.** Members discussed how their boards divide oversight responsibilities for cybersecurity. At many companies, the audit committee addresses these issues, though some companies are moving cybersecurity responsibilities to a risk committee or elsewhere. Mr. Smith observed that directors are increasingly being sued following cyber breaches under "failure of oversight" theories. To protect the company and reduce the risk of litigation, Mr. Smith suggested that directors in the cybersecurity oversight role take the following steps: know the company's cybersecurity history including prior intrusion attempts, confirm there is a "*lock on the door,"* understand the company's vulnerability and the steps management is taking to reduce it, ensure the company is complying with existing standards and is taking the reasonable and necessary steps to address cybersecurity issues.

Preparing for a crisis

Having discussed different approaches to responding to a crisis, members and Mr. McGinn considered how those lessons apply to crisis preparation. Members said that preparation takes many different forms, depending on factors such as the organization's size, industry, past experience, and competitive landscape. They identified specific steps that boards should take to ensure their companies are prepared for a crisis:

- **Understand management's response plans.** Most members said that their boards rely heavily on management to prepare and update crisis plans for the company. Members said that as directors one of their most important roles in the planning process is to ask the right questions. One said, *"We need to ask management, 'Do you spend time thinking about the unpleasant?'"* Mr. McGinn said that directors do not need to look for detailed plans, but they should make sure that management is taking the right steps to prepare. Well-thought-out crisis response plans frequently include naming crisis spokespeople, creating a defined chain of command and a set of standard operating procedures, educating the workforce and other stakeholders about what to do and say during a crisis (and what not to do and say), identifying the information the team is likely to need for its response, establishing a secure means for the crisis team to communicate with one another, and ascertaining the appropriate law enforcement or government officials to contact.[9]
- **Confirm that response leaders understand their roles.** Although members recommended against creating detailed plans for every possible crisis, some recommended assigning specific responsibilities to people on the crisis response teams in advance of a crisis. Mr. McGinn said, *"It is important to streamline the process. Going through every possible check slows things down."* He recommended directors make sure that their companies identify the people who will perform certain specified roles, depending on the type of crisis. Members agreed that the response plan must be flexible. One said, *"The same team that handles one crisis would not handle another. We need to ask management, 'What areas can you plan for? Do you have the right teams in place?'"*
- **Ensure a culture of open communication.** Members said that companies are better prepared for a crisis when employees are empowered to discuss potential problems. Mr. McGinn added that a company is also more likely to see the warning signs of a potential crisis well in advance in circumstances where employees are comfortable elevating issues as they see them. One member said, *"It can be embarrassing for a company when you keep the risk behind closed doors."* Another added, *"It starts with tone at the top. It is important that there is always an open dialogue between the board and management team."*
- **Train company spokespeople.** Mr. McGinn said, *"Large organizations struggle to have someone who is good in front of a camera. Pick the spokespeople as part of the planning process and get them media training."* Members, too, were struck by the number of crises that featured senior corporate officers who were not ready for the media spotlight. One said that as part of crisis preparation, *"You need to put the spokesperson in uncomfortable situations and really push them. That very first video*

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[9] King & Spalding, *Crisis Management: Key Questions,* Conversations on Governance (King & Spalding, April 2014), 3-5.

can be really embarrassing." Mr. McGinn explained that once the right spokespeople are selected, they do not need to become experts on all the potential crisis scenarios – they just need to be sufficiently prepared so that they can convey a compelling story. Mr. McGinn said that if the board is going to take a lead role in responding to the crisis, any director on the front lines should get the same training.

- **Retain the right outside specialists.** Members reported that almost all of their companies have external teams on standby to assist with crisis management. Members stressed the importance of engaging specialists who have specific experience with crises. Mr. McGinn said that having to hire outside consultants during a crisis puts a company at a distinct disadvantage: *"You need to have the relationships ahead of time. It is important for [the consultants] to have a feel for the company culture to help it get through a crisis."*
- **Apply lessons from other crises.** Ms. Johnson told members to *"use someone else's crisis to test your own plans."* Members said that their companies monitor crises at their competitors and assess how they would have handled a similar crisis. One member said, *"You see these things happen and realize it could be you."* Mr. McGinn said, *"A lot of attention gets paid to the negative responses because the positive happens behind the scenes. But companies can learn from both the good and the bad."* Members also said that their companies have benefitted from reassessing their crisis plans after a near crisis. One said, *"We thought we had it right, but realized we had a lot of work to do."*

Conclusion

Mr. McGinn said that in a perfectly managed crisis, a company has *"an engaged, responsible board acting behind the scenes."* This requires independent directors to understand the details of management's crisis response plans before there is any evidence of a crisis, to be available to offer advice and perspective to management as it manages through the crisis, and to ensure that sufficient resources are allocated so that the company can emerge from the crisis ready to face its next challenge. Small steps in advance of and during a crisis often make the difference between a successful response that minimizes reputational damage and a crisis that causes permanent harm to the company.

About this document

The Lead Director Network (LDN) is sponsored by King & Spalding and convened by Tapestry Networks. The LDN is a group of lead independent directors, presiding directors, and non-executive chairmen drawn from America's leading corporations who are committed to improving the performance of their companies and to earning the trust of their shareholders through more effective board leadership. The views expressed in this document do not constitute the advice of network members, their companies, King & Spalding, or Tapestry Networks.

Appendix: Network participants

The following network members participated in the meeting:

- Dick Auchinleck, Presiding Director, ConocoPhillips
- Dan Carp, Non-Executive Chair, Delta Air Lines
- Don Felsinger, Lead Director, Archer Daniels Midland Corporation and Northrop Grumman Corporation
- Ann Maynard Gray, Non-Executive Chair, Duke Energy Corporation
- Ann Hackett, Lead Director, Capital One Financial Corp
- Phil Humann, Presiding Director, Coca-Cola Enterprises and Equifax; Lead Director, Haverty Furniture Companies
- Linda Fayne Levinson, Non-Executive Chair, Hertz
- Ellen Marram, Lead Director, Eli Lilly; Presiding Director, Ford Motor Company
- Rich Roedel, Guest, Director at IHS, Lorillard, Luna Innovations, and Six Flags
- Ed Rust, Presiding Director, Caterpillar; Lead Director, McGraw-Hill Financial

The following network members took part in pre-meeting discussions:

- Greg Brenneman, Lead Director, Home Depot
- Peter Browning, Lead Director, Acuity Brands
- Loren Carroll, Non-Executive Chair, KBR
- Ed Kangas, Non-Executive Chair, Tenet Healthcare and United Technologies
- Jack O'Brien, Non-Executive Chair, Cabot; Lead Director, TJX
- Tom Wajnert, Non-Executive Chair, Reynolds American

The following King & Spalding attorneys participated in all or some of the meeting:

- Dixie Johnson, Partner; Special Matters and Government Investigations Practice Group
- Tracie Renfroe, Partner; Tort and Environmental Practice Group
- Michael Smith, Partner; Co-Chair, Securities Litigation Practice Group
- Phyllis Sumner, Partner; Business Litigation Practice Group
- Chris Wray, Partner; Chair, Special Matters and Government Investigations Practice Group