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THE ROLE OF BOARDS IN CRISIS

10 Steps for Directors Before, During and After Crisis

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We see it every day in our headlines: as crisis has become a new global norm, the board's responsibility in crisis is changing rapidly.

No longer is plausible deniability acceptable, either for boards or for management. Corporate and nonprofit boards alike are expected to know of problems that are brewing deep within their organizations. And they are expected to act upon that knowledge swiftly. The public, shareholders, and media are holding boards responsible for corporate missteps as never before, and therefore the role of governance leading up to, during, and after crisis is transforming as we speak.

ON THE DEFENSIVE

Take organizations such as Volkswagen, G.M., Target,and Penn State. A *New York Times* article, "G.M.'s Board Is Seen as Slow in Reacting to Safety Crisis," discusses several lawsuits filed by G.M. shareholders "against current and former board members for failing to exercise their fiduciary duty to oversee management." A lawyer for one of the plaintiffs is quoted as saying, "They set up a system that is calculated not to inform them about safety issues."

Even the board chair is quoted as saying "the ignition switch recall basically raised the bar in terms of increased involvement." But did it take a crisis to raise the bar? What is the responsibility of boards to prepare for crisis before it hits, rather than afterwards?

At Penn State, the board was seemingly blindsided by the magnitude of the sexual impropriety – criminality – that had been going on for years under Joe Paterno's watch. Whether news of the attacks on young boys never made it to the board level, whether the board was bewitched by Paterno's aura so that they didn't believe any reports they did hear, or worst of all, they actively chose not to follow up on reports they did hear and believe – the nonprofit board put itself on the defensive as never before.

In the end, they submitted to a two-page exposé in the media of their inner workings around the time of the crisis, in order to attempt to explain their behavior. And for boards – whose standard is not transparency, but confidentiality – it was an unprecedented step.

WHAT'S A BOARD TO DO?

So, what are boards to do in order to prepare for, possibly prevent, respond to, and recover from the inevitable crises that will befall their institutions?

Based on our 25 years' experience helping almost every kind of board imaginable through crisis, following is a list of 10 considerations:

ADVICE TO BOARDS ON CRISIS

- **Know that the buck will really stop with you.** Public expectation is much clearer today than ever before, and places the responsibility for proper crisis response squarely on the shoulders of the board, as well as management. If heads will roll, they will roll on the board as well as in the executive suite, and further destabilization of the company will result.

- **Proactivity is needed.** It not only looks bad, it is bad when boards are forced to act by circumstances, as opposed to their getting out in front of problems on their own. Target's board faced exactly this situation when their seeking to ride out the data theft storm, and back management's decisions, backfired, and they were forced to replace the CEO in response to the furor. Boards that are seen as only reactive to crisis are no longer seen to be exercising their proper governance function.

- **Rebalance your levels of intrusiveness vs. hands-off governance.** The governance mantra used to be "noses in, thumbs out." But that truism has now changed, due to the ubiquity of crisis and denial, and the rapidity of communication. No longer can boards even presume that they will be alerted to every issue the public will expect them to know about. Each board must find its own new balance with management on how to increase its oversight to appropriate levels.

- **Risk committees are necessary, but not sufficient.** Many boards are creating stand-alone risk committees (or subcommittees under audit). We would caution that they not look only at risk metrics, rather begin to include room for anecdotal data and information to bubble up through the organization. Too many stories that could prove to be early warning signs can elude the metrics. There are many new and improved ways to do this, making use of social media scans, as well as internal surveys and hotlines. But the committee must be open to them all, rather than be guided only by management's statistical reports and data.

- **The full board also needs to monitor emerging risks.** We suggest that a report on emerging issues and risks – some new form of dashboard – needs to be a part of almost every full board executive session. Old issues need to be monitored and new ones identified to the entire board. Even letters to the board need to be rethought. Whereas all complaint letters to board members are usually forwarded directly to management to handle, the board now needs to pay more attention to their content, basis, and eventual resolution, we believe. Please note, we are not suggesting here that individual board members "go rogue" and either address concerns on their own, or speak in public on the issues. We are suggesting that the reflexive practice of board members immediately turning over complaint letters sent to them be questioned. Boards do need to exercise more discretion in taking these complaints seriously, assuring that management provide a successful and fair resolution to the issues the board has been written about.

- **Do not put too much credence in crisis planning.** Even though most organizations have some predictable, identifiable crises, the real killers are the black swan crises that come out of nowhere. Whereas it is imperative to plan for whatever you can, in our experience, most crisis plans are sugar pills to help companies believe they are prepared for the unpreparable. Mostly they are useful to swell the coffers of the firms that prepare them: they are almost useless in the breach. The one thing they are good for, and that should be embraced, is laying out the processes the board and management will use in crisis. A totally functional, fast-moving crisis team really does need to be put in place before any issue arises. Channels of communication – between board and management, and management and shareholders, employees, customers, and stakeholders, as well as with law enforcement and regulators – need to be primed long before they are deployed. And the crisis team does need to be trained and drilled as to how to react optimally in real-time to unimaginable, as well as imaginable, situations.

- **Don't let the lawyers control everything.** Of course, legal counsel is critical in a crisis. However, lawyers often want to control the entire crisis response, and boards should not let them. It is the rare counsel who can understand public opinion and response as well as he or she understands legal response. And these days, the court of public opinion truly can trump the court of law, especially in social media and for reputational concerns. It is best to insist upon a great partnership between outside advisers, both legal and crisis/public affairs counselors. They can and do work together very well, but not all the time; it is imperative they do in the time of crisis.

- **Adjust your expectation of timing: Immediacy must rule.** Remember J&J's Tylenol crisis of 1982? At the time, and for many years later, it was heralded as the best case in crisis management. Yet were a crisis to be handled in the same way today, it would be judged an abysmal failure. Why? The company took at least three days to figure out what to do – whether to recall Tylenol from the nation's shelves. Today, when news travels at the speed-of-electrons around the globe, organizations realistically have no more than 15 minutes to half an hour to publicly respond in some way to a crisis – even if that response is "We just don't know yet, but are doing everything in our power to find out immediately. We will stay in close communication with you as we do."

- **Make sure your board is high-functioning before a crisis occurs.** Boardrooms can turn porous in a crisis. Any long-standing disagreements or factions on the board will not only severely hobble efficacy, every dysfunction will come to the fore, often publicly. So clean house now, in order not to create a major impediment later.

- **Finally, the Board can provide a firm moral center to its organization in crisis.** Indeed, it must. The board can inspire the right kind of action and attitude throughout the organization, and vis-à-vis the outside world. This, more than anything else, is the board's opportunity to help the organization recover from crisis not only with its reputation intact, but stronger than ever.

In a crisis, sins of omission become equally or more important than sins of commission. High-performing crisis boards know this. They are constantly mining for more information. They allow sound management autonomy, but are ready to jump in to shore up weaker management. They make sure their own functioning is high – and they never forget their dual responsibilities: to their shareholders to keep the organization sound; and to their public stakeholders, to assure their organization does the right things, in the right ways, in real time – in order to prepare for, react to, and recover from crisis with grace, efficacy, and strength.

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