2016 in Review.
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It wasn’t exactly as big a “miss” as DEWEY DEFEATS TRUMAN, but—like virtually every other commentator on the planet—I got the biggest story of the year wrong.

In a series of 2016 Forbes.com columns, I opined that Donald Trump didn’t have much of chance of beating Hillary Clinton. The voters of Michigan, Wisconsin, and Pennsylvania had other ideas.

Still, I’d like to think my Trump call was an aberration. I was among the first to point out Wells Fargo’s vulnerability on the fraudulent account issue, seize on the significance of Britain’s Brexit vote in back-to-back columns, commend Chipotle for its efforts to make its restaurants safer, and try to balance the criticism leveled at pharmaceutical giant Mylan, the manufacturer of allergy antidote EpiPen.

I also penned a series of articles that interviewed expert lobbyists, attorneys, and industry analysts about the impact of the new administration on various industries – a series that extended into 2017. At the rate Trump is issuing executive orders, the series may not end for a while.

Richard S. Levick, Esq.
Chairman & CEO
Businesses Can Expect Radically Different Labor Policies Under Trump

December 19, 2016
A series of columns about the likely impact of the new Trump Administration on key industries – and what smart companies should be doing about it.

President-elect Donald Trump owes his surprise victory to the working men and women of America’s industrial heartland, an area long considered a Democratic stronghold. Many Trump supporters in the Rust Belt belong to labor unions – or at least did at one point in their lives.

The Trump juggernaut severed the traditional ties between organized labor and the Democratic Party, a development that could have profound consequences for corporate America and the future of workplaces across the country. In Andy Puzder, the chief executive of two fast food chains, the president-elect has nominated a cabinet secretary whose company has been sued by the Department of Labor for violating many of the rules he’ll now be charged with enforcing.

This sea change in the Rust Belt did not occur overnight. When President Reagan successfully took on the air traffic controllers union 35 years ago, organized labor wielded considerably greater power. Some 20% of private-sector workers belonged to unions in the early 1980s, compared with just 7% today.

Republican policy experts believe that for much of the past generation organized labor’s leadership has been out of step with its grassroots membership. This rift between union leaders and their rank and file became more pronounced when U.S. manufacturing stagnated in recent years while much of the rest of the country prospered. A strong antipathy toward liberal immigration policies and international trade deals took root. From the moment he descended that escalator in the summer of 2015, Trump understood that frustration and gave angry workers an outlet to voice it.

Now another disconnect is brewing: the tension between Trump’s populist rhetoric, which promised to make rural and industrial America “great again” – and in a hurry; and Secretary-designate Puzder’s clear comfort level to replace workers with automated machines to save money, not to mention pursue policies that provide a path to citizenship for undocumented immigrants. Those views aren’t likely to endear him to denizens of the Rust Belt, unless theories of creating jobs through mechanization prove true.

Nor will the hard-line positions on worker protections that Puzder spelled out in a book six years ago endear him to labor organizers. Weeks before his confirmation hearings are scheduled to begin; Puzder has already become a lightning rod. “Expect a mission to roll back virtually all worker protection initiatives launched under President Obama,” says employment and labor policy specialist Deborah Kelly of Blank Rome.

Assuming, Kelly muses, that: a) Puzder is confirmed by the Senate; b) Trump fills two of the five seats on the National Labor Relations Board (the agency that hears labor-union disputes and is empowered to protect the rights of workers to organize); and c) Trump does not renounce his campaign pledge to help the working class, what do these somewhat contradictory developments mean for corporate America and its short- and long-term relations with the labor community?

It certainly means, she says, that “the agency with the most ability to affect workers’ wages and police how employees of government contractors are treated – namely, the Department of Labor – will be run by a man whose fast-food empire is built on low-wage workers and who has made clear that he opposes increasing the federal minimum wage to $15.00 and expanding those eligible for overtime. Remember, but for the decision of the U.S. District Court in Texas last month, the new overtime pay regulations would have gone into effect this month. A universe of no one thinks the Trump Administration will take action to revive them.

“Puzder is also on record against the Affordable Care Act because, he argues, its costs hurt fast-food profitability. Puzder has testified that, rather than be forced to bear the costs of offering health insurance to his workers, he would ‘reduce the labor force and also automate positions.’ Given that Puzder is no stranger to testifying before Congress, we also know that he opposes NLRB’s call to expand the definition of joint employment to make franchisors responsible as joint employers of those who work for their franchisees.”

Bets are, Kelly notes, that the Trump administration will push a national right-to-work law that allows workers to opt out of joining a union, take measures to prevent unions from deducting dues from paychecks, and back off on enforcing laws that protect workers.

“A lasting love between unions and Mr. Trump is unlikely,” Kelly says. “Consider the comments of Chuck Jones, President of the United Steelworkers Union 1999. Last week, Jones noted that, ‘Trump lied his (posterior) off’ when he said the Carrier deal saved the jobs of over 1,000 people. Not one to turn the proverbial cheek, Trump again took to Twitter to assail the union leader, snarling that ‘he has done a terrible job representing workers.”

The sea change that brought together a corporate mogul with Rust Belt voters is about to swamp the Department of Labor, too. Only time will tell how well U.S. workers and the larger economy will weather the storm.■
December 12, 2016

Does The Pope Smoke Camels?

Fake News Is Now Business News
As we spend these anxious months prognosticating the industry-by-industry business impact of a Donald Trump presidency, we should pause to consider how the very fact of his political ascendancy already compels companies to confront fake news as a new normal.

It’s been tough enough in past years for corporations to control their own narratives; to prevail in the court of public opinion against ideologically or competitively motivated assaults. But how does a sane person respond to the most preposterous fabrication or play a game with no rules whatsoever? If you’re mass-marketing products or services, how do you protect market share even when you are able to debunk the allegation? Each wild accusation inexorably erodes brand equity no matter what you prove.

Let’s back up and take another look at the phenomenon itself. It’s been one of the biggest post-election news stories, and no wonder. From August to November 8, fake news engagement on Facebook (shares and reactions, not just hits) totaled 8.7 million, according to a November 16 Buzzfeed report, 1.4 million more than “mainstream stories.” The top 20 fake election stories generated more engagement than the top 20 real ones.

Mark Zuckerberg’s ordeal is being chronicled on a daily basis. Facebook algorithms instantaneously spread and virally promote all popular stories to multiple users, which makes it almost impossible to catch every fake story soon enough. Will Facebook institute new controls, and how will those controls affect both his business model and free speech issues?

“No one wants Facebook to deploy one million fact-checkers on every single post,” said Alexios Mantzarlis of the Poynter Institute, an international fact-checking network. “The problem is the stuff that surfaces all the way to the trending section. That’s a place where Facebook could make a large impact with relatively small commitment.”

Perhaps, but it may not matter. Given an ideal Facebook solution, the purveyors of fake news can eventually find other effective distribution mechanisms if they’re organized and resolute enough. As long as ideologues lack scruples, and kids in Macedonia need money, the threat remains real.

If anything, fake news can be all the more pernicious when there isn’t a national election to win. Imagine the full impact of a powerful PAC-like entity (or the White House itself) when only a few thousand votes make the difference. There can be no balance of power when Congressmen tremble in anticipation that Bannon will call out the “flying monkeys.”

True, politicians since Pericles have persistently told blatant lies to advance their agendas. Some commentators seem almost reassured to note the fake news of the past. They offer many “this is nothing new” examples; my favorite is Benjamin Franklin, who fancifully reported gruesome British war crimes during the Revolutionary War and even fabricated a letter from John Paul Jones to vivify the gore.

Alas, that’s all cold comfort. News in Franklin’s day did not circulate virally and lies weren’t monetized. Nor was there fear of hostile foreign intervention in Franklin’s disinformation, as there is of the Russians for us. (More than 200 websites were identified as purveyors of Russian propaganda during the campaign, reaching at least 1.5 million people.) Perhaps most disconcerting, the profit motive that drives fake news in our world is irresistible. Get rid of Goebbels and the Nazi propaganda machine founders – but stymie fake news on Facebook or Twitter and someone will build a better mousetrap. That’s the capitalist way.

The good news for capitalism is that some vital areas are immune simply because fake news is driven by demand. A lot of users want stories about how Hillary Clinton collaborates with ISIS but not about tomorrow’s weather forecast. Likewise, blatant lies about share price or profit reports are assiduously tracked down and corrected because people who invest in public companies abhor false data.

The bad news for capitalism is that people who buy cars often do not. Or pizza. While fake news has recently victimized large public companies, the travail of Comet Ping Pong is particularly disconcerting because it shows just how everyone can be infected in the epidemic. The owner of this pizzeria received hundreds of death threats after his restaurant was reported to be the secret headquarters of a child sex-trafficking ring run by Hillary Clinton.

On the corporate side, companies are in no-win situations. Athletic brand New Balance was falsely said by the white supremacist site Daily Stormer to have publicly supported Trump, for which the site favored the company with the dubious honorific of selling “the official shoes of white people.” New Brand’s mistake was to have spoken favorably of Trump’s opposition to the TPP agreement, earning it the presumptuous racist endorsement as well as a boycott by anti-Trump consumers.

When PepsiCo CEO Indra Nooyi publicly reflected on the ugliness of the campaign and employees’ anxiety over the outcome – even while simultaneously calling for national unity – she also stepped into a maelstrom. Calls for online boycotts arose, fueled by fake news that Nooyi “loathed” Trump and “hated” his supporters. A Twitter hashtag circulated claims that Nooyi told Trump voters to “take their business elsewhere.”
PepsiCo responded with standard language that Nooyi “never intended to imply that all employees feel the same way. We are incredibly proud of the diverse views...and we are united in our desire for a brighter future.”

Is there nothing more that companies can say and do in this lethal environment? My sense is that corporations are being cautious, in part because that’s their nature, in part because they just don’t know what else to do. If they agree with Trump and say so, they pay for it. If they disagree and say so, they pay for it.

Some companies may just be waiting for the ugly clouds to pass – which is a big, big mistake. Even if President-elect Trump and his team were to suddenly morph into responsible statesmen, the cat’s out of the bag. The fake news weaponry has proven its efficacy: NGOs, plaintiffs’ lawyers, business competitors, disgruntled employees, citizens with a grudge – anyone with an agenda may be using it.

For starters, we need to exponentially step up our battle-tested practices, especially software that monitors social media 24/7 along with cross-departmental rapid response teams motivated by an urgent sense of the fake news threat. “Remember that it’s not just Twitter and Facebook but also blog sites, wikis, discussion forums, and video sites,” says Greg Mancusi-Ungaro, CMO of BrandProtect, which protects against and mitigates cyber threats.

Mancusi-Ungaro cites a recent Ponemon Institute Survey asking 500 enterprises to assess their security controls of fake news and similar external threats. “Alarmingly, very few have a formal process in place to monitor for potentially harmful online activities and statements,” he says. “In fact, almost 40% do not monitor the Internet at all. Only 17% have a formal external threat monitoring and escalation process applied consistently across their companies. It’s a shocking result in today’s threat environment.”

The Ponemon study also shows different industries at different levels of maturity for external monitoring of fake news. Financial Services was the most mature segment, yet even here only 26% have a formal process in place. At the bottom of the pile, only 11% of manufacturers are requisitely prepared.

“A fake news event is just like any other business-altering crisis,” adds Mancusi-Ungaro. “Each incident has a different potential impact and a different ideal response. What every incident shares, however, is the need for speed.”

The goal is to nip the big lie in the bud before it reaches the Facebook trending section or other tipping points. That unfortunate pizzeria owner might not have the wherewithal to fight back but corporations do.
December 5, 2016

The “Trump Effect”: Consumer Boycotts Could Become Pervasive On Both Sides
Companies should plan for widespread pocketbook protests.

The third in a series of columns about the likely impact of the new Trump Administration on key industries – and what smart companies should be doing about it.

As the country splits between those who view the incoming Trump Administration as a fumigant for a do-nothing Washington and those who find it a threat to global stability and social progress, a new battleground is emerging beyond the nation’s capital, a no-holds-barred fight that could profoundly transform this country’s political and consumer culture.

Rest assured that anti-Trump activists will not be satisfied with waiting until the 2018 mid-term elections to register their disdain for the new administration. They’ve already organized grassroots protests against those brands and products they see as too closely aligned to Trump. The online video-driven boycott against American-made New Balance athletic shoes, whose marketing head indicated a willingness to cooperate with Trump on trade matters and got skewered for it, is no aberration. It may serve as a template for future anti-Trump boycotts.

“That said, boycotts invite unwanted PR and can damage a brand. Companies that are sensitive to their image and directly serve customers, such as Nike or Disney, should be especially well prepared,” Schweitzer counsels.

On the obverse side, Trump enthusiasts have begun waging a battle against those companies whose leadership expressed public misgivings – and, in some cases, abject horror – at the specter of a Trump presidency. For Trump die-hards, two of the companies that loom largest in their crosshairs are PepsiCo and Starbucks. Their respective CEOs were openly concerned about the anxieties of non-whites in the aftermath of the election.

Politically inspired boycotts are not new to our society. Well before the election, in fact, evangelicals launched boycotts of Wells Fargo and Target over the companies’ supposed support for marriage equality, typical of the religious right’s long-standing tradition of organizing pocketbook protests driven by hot-button social issues. Combative progressives, meanwhile, have historically assailed such companies as Walmart and Exxon Mobil for their alleged connections to divisive racial, employment, and environmental policies.

The difference between these past boycotts and the outcry triggered on both sides by Trump is its scope and severity, fueled in no small measure by the pervasive influence of online media and fake news sites. Thanks to Reddit, Twitter, Facebook, and all the rest, a single spark of dissent or misinformation can quickly become an inferno.

Videos of protestors making bonfires out of New Balance sneakers were viewed by tens of thousands of (mainly) millennials within hours of being posted on social media. With the presidential inaugural capping off this year’s holiday season, retailers and product-makers should expect threats of boycotts, and the inevitable counter-boycotts, to reach a fever pitch.

We live in a belligerent age where style points are not awarded for subtlety. Whether such confrontational tactics are effective is an open question, however.

“Boycotts typically have more symbolic value than economic impact,” says Professor Maurice Schweitzer, the Cecilia Yen Koo Professor of Operations and Information Management at the University of Pennsylvania’s Wharton School and an expert in corporate boycott trends.

“Most boycotts fail to achieve more than symbolic aims. This is true even when the sentiment in support of a boycott is strong and there are easy opportunities to shift business to competitors. Many politically inspired boycotts actually energize boycott opponents. For example, many people rallied behind Chick-fil-A after they were the target of a boycott. Similarly, Ivanka Trump’s clothing line has been both the target of a boycott and boosted by Trump enthusiasts.

“That said, boycotts invite unwanted PR and can damage a brand. Companies that are sensitive to their image and directly serve customers, such as Nike or Disney, should be especially well prepared,” Schweitzer counsels.

He cautions that the rules of engagement for corporate boycotts could well change in the Trump era. The #GrabYourWallet campaign, co-created by San Francisco brand and digital strategist Shannon Coulter after Trump’s infamous Access Hollywood tape, came to light in October. Coulter encourages female shoppers to refrain from frequenting retailers that work with Donald or Ivanka Trump or carry their clothing and accessories lines. She lists the contact information for each business via a public spreadsheet prominently featured on her site, spotlighting ways that consumers can express their outrage.

Among other currently named targets are NASCAR and Yuengling Beer, whose CEOs have publicly embraced Trump. Coulter and others will exert pressure on institutions committed to racial and gender diversity to join anti-Trump movements.
Trump adherents have been busy, too. Two online lists (one has already been banned) were published on Reddit by an anonymous user called “WhiteChristianMan.” It singled out corporations that alt-right and traditional conservatives should boycott. The banned list has gained traction, with more than 5,000 “upvotes” recorded, which means other Reddit users want to see similar content populate their newsfeed.

That’s peanuts compared to the Subreddit section called /r/The_Donald. Reddit’s chief executive Steve Huffman was roundly criticized for admitting that he personally softened negative comments left there by Trump supporters.

The corporate boycott wars of the Trump era are just beginning. What does it mean for smart corporate executives? It means being extra circumspect in what they say – even “privately” – about Trump and contentious social issues. In this hothouse environment, the most innocuous statements can be taken out of context and exploited by boycotters.

Smart companies also need to install cutting-edge monitoring and empower rapid response teams. Online threats of boycotts cannot be ignored. Employees, vendors, suppliers, shareholders, and other critical constituencies will need to know right away how a company plans to address a threatened boycott. For many corporations, it is exceedingly difficult for senior executives and boards to excel at digital tea-leaf reading. Understanding perilous questions and what is – and is not – an acceptable answer from less junior corporate executives is a critical exercise in peacetime.
Contentious energy and environmental issues are almost guaranteed to make headlines during the Trump transition and the early days of the new administration. At this writing, exactly what course the president-elect will chart on energy and environment policy remains unclear, but green advocates are urging followers to prepare for the worst.

This much is certain: whatever energy and environmental policies Donald Trump embraces will be sharply different from those of his predecessor. Regulatory regimes governing coal and other fossil fuels are sure to be scaled back and possibly even overhauled. The reach and authority of the federal Environmental Protection Agency (EPA) is almost certain to be curtailed. And the president-elect has already made it abundantly clear that he remains a skeptic about climate change and efforts to combat it.

Still, as pointed out by William L. Thomas, the head of Willkie Farr & Gallagher’s Environment, Health, and Safety practice, the outlook for environmental advocates may not be all doom and gloom. If Trump abides by his promises on infrastructure investment – no easy task given the anti-government spending proclivities of the GOP majority on both sides of Capitol Hill – the quality of drinking water may improve, especially in cash-strapped urban areas.

Moreover, Thomas says, Trump’s expansive “all energy options on the table” philosophy bodes well for innovators across the sector, from fossil fuels to renewables. It also figures to test enterprise definitions of “sustainability” and “green” for firms in carbon-intensive supply chains.

Christopher H. Marraro, an environmental and tort litigator at Baker Hostetler, agrees that profound changes are afoot. “Trump has promised a significant rollback in environmental and energy regulatory activity at the federal level. Astute companies should not be looking for the short term or quick fix but should be pursuing strategies that can deliver real structural changes that would lead to more rational and efficient regulation and agency decision-making,” Marraro says.

As an example, Marraro points out that the courts’ recent tendency to defer to the substantive judgments of administrative agencies in rulemaking – or in reviewing an agency’s interpretation of its own regulations – could well be reexamined. Rules exceeding a certain level of impact might require legislative oversight before becoming effective and cost-effectiveness analysis might become a required component of all major rules.

“These types of structural changes would help promote more predictability within the business community, which is a driving force in unleashing capital,” Marraro says.

Whether or not America quits the Paris climate accord, as the president-elect has vowed, the 2016 campaign revealed yet again how meaningful progress on climate change and other environmental and energy issues will remain elusive until the two political parties – and the various constituency groups beholden to them – start listening to one another.

As Willkie Farr’s Thomas puts it, “For the foreseeable future, perhaps more than ever, the most effective enterprises will be those with strategies that account for sustainability factors at the core of the business, and the capacity to measure and communicate performance on the merits.”

The contrast between the Obama and Trump administrations will be pronounced in virtually every area of policy. But the coming debate on energy and environmental issues looks to be hotter than ever.
November 17, 2016

The Trump Presidency: Outlook For The Technology and Telecommunications
The End Of Net Neutrality?

Technology and telecommunications issues barely surfaced during the slugfest that was disguised as the 2016 presidential campaign. Donald Trump did on occasion reference “infrastructure,” but never in the context of building new wireless broadband facilities to meet the burgeoning demand for mobile data, or in facilitating a more “connected” economy or the Internet of Things, or in strengthening the deployment of 5G and other next-wave communications technologies.

Remarkably, suggestions on how to bridge the “Digital Divide,” the gap that exists in both rural and urban America between tech-savvy “haves” and “have-nots” that remains one of our society’s most daunting challenges went virtually unacknowledged during the fall campaign. Since Election Day, however, a phalanx of lobbyists and policy advocates has been clamoring to get the attention of President-elect Trump’s transition team.

Not to mention the president-elect himself, since the self-styled “populist” surprised members of his own party by coming out strongly against the proposed merger of communications giants AT&T and Time Warner on the campaign trail, claiming it was “too much concentration of power in the hands of too few.” Campaign rhetoric is one thing; real-world governance is another. How the new administration approaches the proposed deal will send an early signal, not only to the rest of the industry but to the whole of Corporate America.

Given the predilections of the rank-and-file members of the GOP, however, it is almost certain that there will be a strong deregulatory push on tech and telecom policy by a Trump Administration and a Republican-led Federal Communications Commission (FCC). Certain industry leaders and the Republican minority at the FCC have long maintained that the Obama Administration and the Democratic FCC appointees have been too regulation-happy, thereby hindering investment in wireless broadband and other communications infrastructure.

A probable target of the next Republican Congress and a Trump FCC will be the Open Internet Order (also known as Net Neutrality), which Chairman Tom Wheeler and the Democratic-majority FCC pushed through in 2015 over the outspoken opposition of the two Republican FCC commissioners and the Republican congressional majority. Conservatives argue that Net Neutrality rules, aimed at increasing transparency and prohibiting discrimination and paid prioritization by Internet providers, are unduly convoluted and thereby discourage investment in wireless broadband and other communications infrastructure.

There will undoubtedly be a concerted push early in the Trump Administration to repeal or mitigate those rules, which allow the FCC to regulate Internet Service Providers (ISPs) on the grounds that they are “common carriers.” Such trade groups as the Cellular Telecommunications Industry Association and the U.S. Telecom Association, both of which represent big carriers, will redouble their efforts to see Net Neutrality eliminated – and they won’t be reticent about expending resources.

Public Knowledge, a Washington-based advocacy group that strongly favors an Open Internet, is worried about the potential fallout if Net Neutrality is repealed.

“We just saw in this election the vital importance of everyone having access to real news information rather than ‘fake news sites’ promoting one party or another,” says Harold Feld, a senior vice president at Public Knowledge.

“Imagine a world where the five largest carriers, which serve the majority of American broadband users, decide to do a favor for the party in power and prioritize news sites that favor one side while degrading service to news sites that offer a different perspective. Given that the difference in many battleground states was a handful of votes, it doesn’t take much for prioritization or degradation of service to have a huge impact.

“As FCC Chairman Tom Wheeler said on the day the Commission voted for the current Net Neutrality rules, ‘Internet access is now too important to broadband providers to be the ones to set the rules,’” Feld says.

"It is almost certain that there will be a strong deregulatory push on tech and telecom policy by a Trump Administration and a Republican-led Federal Communications Commission (FCC)."

If indeed the Net Neutrality rules are reversed or weakened, it will free ISPs from FCC regulation, including a new regimen of Internet privacy and data security oversight that the Democratic FCC adopted just weeks before the election. The Republican chairmen of the House and Senate Commerce committees have already sent stern letters to the FCC warning the Democrats on the Commission not to issue any substantive rulings between now and Inauguration Day.

“The new administration may try to refocus the FCC in other ways, in the name of deregulation and free enterprise,” says James M. Smith, a telecom policy specialist at Davis Wright Tremaine.

“For example, the-GOP controlled Congress may enact legislation to delete the common carrier exception to the Federal Trade Commission (FTC) Act, so that the FTC rather than the FCC would be charged with
policing the allegedly unfair trade practices by tech and telecom companies,” Smith points out.

If the FCC is indeed defanged, then such big telecom providers as AT&T, Verizon, T-Mobile, U.S. Cellular, and Sprint – not to mention scores of their vendors and suppliers – will suddenly be playing offense on Capitol Hill and at the Executive Office Buildings. They’ll have no shortage of champions.

It won’t be easy for Hill Democrats and their allies at policy institutes like Public Knowledge to impede what will be a well-funded and well-orchestrated campaign.

Clearly, the fear of robotics and new technology taking away people’s jobs was a huge factor in Trump’s unexpected victory. The new administration’s approach to tech and telecom policy may not get the attention of health care or energy or defense, but it may prove to be every bit as important.
Rich or Poor, Grandparents Drive New Markets
Now consider these demographics: As of 2016, there were 74 million grandparents in the United States with nearly two million added to those ranks every year. Grandparents already head up around 40% of all U.S. households and that number is increasing at a disproportionate rate compared to “traditional” households.

Grandparents also control 75% of the nation’s wealth. It’s an obviously compelling statistic from a business standpoint and, of course, thousands of companies are already focused directly or indirectly on this sector. But that’s not to say there isn’t room for further growth or clever new ways to market to these buyers. To what extent, for example, have nonprofits articulated outreach strategies, a particularly salient question in light of the fact that 45% of all their cash contributions are now made by grandparents?

But there’s a sub-demographic as well, and I have no statistics to calculate the size of this population. Along with moneyed seniors, American society is rife with families headed up by grandparents only because the parents themselves have disappeared, died, or are serving time. They don’t need travel agents who specialize in multigenerational vacation packages. Their very different needs would seem to be the subject of a wholly different discussion—but not necessarily.

Enter Jim Moore. Moore is the head of business and community initiatives for Grands Matter, a resource center designed to serve the needs of grandparents of every socio-economic stripe. “We envision something very different from what important organizations like AARP provide,” says Moore. “We’re not a clearinghouse for insurance or other products, and we don’t do public advocacy. Instead, we work directly with grandparents to enhance how they play out their roles as grandparents—to make being a grandparent an even richer experience—as well as solve the diverse problems they’re facing.”

For the rich, that might mean suggesting new strategies in estate planning and hooking them up with estate planners in their areas who can help. For the poor, it might mean finding local daycare facilities at no cost or affordable cost.

Such initiatives are all the more interesting when they occupy space that no one else or few others have ventured, and when their initiators can point to past success that surpassed expectations and promise future success. Moore can check off both those boxes. In 1998, he founded Watch D.O.G.S. (Dad of Great Students), which has enlisted a whopping 600,000 fathers to volunteer at their children’s schools. They tutor, supervise recess, patrol the grounds after school. Dads, kids, and public schools themselves benefit.

Moore was mentored by Dr. Ken Canfield, the nationally known founder of the National Center for Fathering, into which Watch D.O.G.S. was eventually folded. Canfield, richly experienced in both the inner city and wealthy suburbs, would go on to found Grands Matter. Like the National Center for Fathering, Canfield and Moore are tackling the broadest venue of issues—from grandparenting special needs children to long distance grandparenting as well as those whose grandchildren were acquired via marriage.

For the wealthier families, business succession is often an issue. “Some 70% of businesses ultimately fail to meet the succession challenge because their advisors, trained in tax law or financial planning, are not trained in passing the relational baton to the next generation,” says Canfield. “We are helping business owners, who are now grandparents, enrich their own relationships so that they can develop a succession plan that preserves their values, their codes of conduct, as a defining part of the business two generations hence—even while their children or grandchildren have enough autonomy to run the business as their own.”

For the poorer families, the biggest issue is pacing themselves emotionally, physically, and financially. “Right now grandparents have 7.5 million kids in their custodial care and they need to tap into ancillary resources,” says Moore. That can mean Boys and Girls Clubs, Big Brothers and Big Sisters, local school resources of which they may not be aware, municipally sponsored programs, and so forth. “We communicate with relentless focus,” adds Moore, “because our message is, ‘don’t give up.’”

It seems significant that, as Canfield points out, grandparents are very seldom the victims of an inner city drive-by shooting. They command respect even from those with so little respect to give. Which points to an important fact about all grandparents that further defines the Grands Matter mission: Grandparents don’t just need resources; they are a resource, one of the richest we’ve yet to tap.
October 28, 2016

Dasvidaniya, WikiLeaks—Hello, 'WikiHacks'
In the oft-colliding worlds of journalism, technology and politics, a place where the rules of engagement constantly evolve, language still matters.

There is no overlap, in the Venn diagram of journalistic terms, between “leak” and “hack.” They are completely separate and distinct methods of revealing confidential information through the media.

The former is a logical (and often necessary) extension of the First Amendment; the latter is a potential violation of the Fourth Amendment when committed by the state, and a possible felony when perpetrated by an individual. Furthermore, a hack is divulging someone’s personal email: at best, a distasteful and disingenuous exercise; at worst, a criminal enterprise.

Any reporter who disagrees is free to publish their personal email’s login and username. Nobody wants their private and confidential correspondence exposed to the world – nor should it be.

The distinction is clear to those of us who have orchestrated strategic leaks over the years and are loath to hack for ethical, moral and legal reasons. Note to careful readers – it’s all three reasons, not just a “pick ’em.”

Although I’m an attorney and a long-time communications counselor, I’ve never presumed to be a sage on journalistic ethics. But no matter how salacious the revelations about “Bill Clinton, Inc.,” it is disquieting for me to witness the daily dumping of hacked private information labeled a “leak.”

Frankly, it’s an insult to the profession of journalism and to those of us who leak. A hack isn’t “on background” or “not-for-attribution.” It’s thievery.

Reporters have fallen prey to a misleading brand name. Reporters are calling the hacked emails of political operatives “leaks,” in part because they originated with an organization with “leak” in its name. If it were called “WikiHacks” or “WikiSteal,” the difference in perception would be profound. Media outlets might think long and hard before breathlessly recounting hacked information or accepting it on its face, while ignoring Russia’s capacity to deceive, distort and disrupt.

As a lifelong champion of the First Amendment, especially those court decisions safeguarding reporters’ right to protect confidential sources, I am being forced to confront my own hypocrisy on this issue. Years ago, I was an admirer of both WikiLeaks and Edward Snowden. Then WikiLeaks’ founder Julian Assange sought political asylum on rape and molestation charges; and Snowden felt the only way to protect his freedom of speech was to embrace Vladimir Putin.

Neither act was in the spirit of “The truth shall set you free.” Are we now at a point where either boundless money or hacking treachery determines the future of a democracy? Heaven help us when they are one.

When someone leaks information to reporters, the last thing they want is public acknowledgment. Indeed, leaks are often used as a way to protect clients and enervate their competitors, while, not incidentally, making the public aware of things they should know.

By necessity, sources and communications professionals must have a “frien-emies” relationship with reporters. We help them – but at the end of the day, we each have our own jobs to do. Wanton hacking threatens to shred that delicate balance.

Language matters. A “hack” is a hack. A “leak” is a leak. When media outlets mix up the two, they’re not advancing the cause of truth-seeking or an informed citizenry. They’re hastening its demise.
October 20, 2016

Trump Isn't Going Anyplace — But His Brand Is
With apologies not only to Dylan Thomas but to every American suffering from 2016 campaign fatigue, Donald Trump is not going to go gently into that good night. The execrable reality show that has been disguised as the Trump presidential campaign will – despite the prayers of millions – not be canceled in the aftermath of what surely will be a crushing electoral defeat.

Instead, Trump-alooza will take on a new and, thanks to campaign CEO and former alt-right Breitbart maestro Steve Bannon, a shamelessly monetized form. Trump will need the cash. By peddling bigotry and misogyny nonstop since descending that escalator 16 months ago, he’s done incalculable damage to his brand.

There’s an ironic disconnect between Trump-branded properties that cater to affluent urbanites and Trump political supporters, the bulk of whom tend to be rural-based and middle- to lower-middle-class. As entrepreneur Mark Cuban has surmised, if they’re not hemorrhaging already, Trump’s gaming, hotel, and commercial real estate businesses might be soon.

The market share of Trump casinos, hotels, and golf courses has plummeted some 14% since his trip down the escalator. Data suggests that Trump’s hardest-hit venues were in New York and Chicago, while the drop-off was sharpest among upscale women living in blue states.

Fearing backlash from millennial consumers, Trump has even changed the name of his newest line of hotels to Scion. When a megalomaniac like The Donald takes T-R-U-M-P off a hotel marquee, you know something big is going on. It is. Recent surveys suggest that among consumers earning more than $150,000 a year, the brand value of “Trump” has taken a nosedive.

Trump has also inflicted serious damage to American culture and our body politic. Almost forgotten in the torrent of sexual abuse allegations leveled against Trump in recent weeks is the way he has repeatedly incited violence. He’s guilty of not just egging on scuffles at his rallies but of disparaging immigrants, Muslims, and people of color and of hinting at “Second Amendment solutions” to silence his opponents.

When Trump threatens to throw Hillary Clinton in jail after he’s elected president, or provokes his rapid followers to chant “Lock her up,” or encourages them to catcall the media, he’s engaging in some of the most destructive demagoguery in the history of our Republic. And here’s more harm: Nine women have been physically assaulted or verbally abused by supporters at Trump rallies, including a Muslim and an African American.

Belief in the integrity of free and fair elections is the bedrock of American democracy. Once that bedrock has been shattered, it will undermine the very foundation of our civil society.

And here’s more harm: Nine women have been physically assaulted or verbally abused by supporters at Trump rallies, including a Muslim and an African American. This map shows all the disparate acts of Trump-inspired violence that have been perpetrated across the country.

For weeks now, he’s also been screeching that the election is “rigged” and that the media, state and local election officials, certain “treasonous” Republicans, and the entire machinery of the Democratic Party are all colluding to deny him the presidency. His declaration in the final debate that he might not accept the outcome of the election is, as Secretary Clinton correctly put it, “horrifying” – the anti-democratic scenario that Adams, Jefferson, and the other Founding Fathers worried most about.

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With apologies not only to Dylan Thomas but to every American suffering from 2016 campaign fatigue, Donald Trump is not going to go gently into that good night. The execrable reality show that has been disguised as the Trump presidential campaign will – despite the prayers of millions – not be canceled in the aftermath of what surely will be a crushing electoral defeat.
Why? Does he actually believe all this folderol? Does he understand that he's risking the viability of what was once a truly Grand Old Party?

Who knows? This much I do know. He’s going to continue exploiting those folks who show up at his rallies; the people who can least afford the pricey monthly subscription to the new TRUMP political network and newsletter that will inevitably go over the air and online in early 2017. It will be Steve Bannon’s grand alt-right (read “extreme right”) dream: steal a big chunk of Fox’s viewership, take over effective control of the Republican Party or whatever conservative apparatus emerges from the ash heap of 2016 – and make a lot of money while doing it.
October 13, 2016

Memorandum To
Tim Sloan, Wells Fargo's New CEO
How to effectuate the “that-was-then, this-is-now” strategy.

Contrary to popular belief, you don’t hire attorneys, lobbyists or crisis communications counselors to get you out of trouble. You hire them to help you assess the future, anticipate trends, identify potential threats and keep you from getting into trouble in the first place.

Therein lays the quandary in which Wells Fargo now finds itself. In truth, you and your colleagues should have seen much of this coming. Yet somehow Wells Fargo’s inner circle failed to appreciate the dangers inherent in appearing before a U.S. Senate committee two months prior to the most contentious presidential election in the past century, on which sits the country’s most outspoken consumer champion – Senator Elizabeth Warren. “Besides that, Mrs. Lincoln, how was the show?”

Once you fall behind a crisis, recovery is far more expensive and takes far longer than if you had chosen the sacrifice and made it before the government demanded it.

The road to recovery will not be easy. But there is a path forward.

By easing CEO John Stumpf into retirement, you have taken the first step toward brand restoration. It was a tacit admission that Wells Fargo’s response to the fraudulent account scandal was sluggish and inadequate. As I articulated in these pages a few weeks ago, you have finally made a substantive sacrifice which at least begins to articulate in deeds not just words that “we get it.” Credibility 101.

Now you need to embrace transparency, engage in an honest reckoning of what went wrong, and mount a company-wide campaign to ensure that it never happens again. You also need to make yourself bulletproof. You need a clear and compelling answer to the question: “Why Tim Sloan?” You need a raison d’etre, a credible message platform about why a Wells Fargo insider is the best candidate to restore luster to a tainted brand. You need to anticipate the question that as an insider “why didn’t you stop this sooner?”

And you better have a darn good answer. After all, this is a new beginning.

The company’s failure to recognize how your problems metastasized, and how radically the business-consumer dynamic has changed in the new era of social media and the never-ending news cycle – not to mention its impact on how Washington works these days (“Never kick a person while he’s up – it’s too much work”), has put Wells Fargo behind the eight-ball and eroded the brand equity that the company has spent 164 years assiduously building.

But the damage to your brand can be ameliorated – if you adopt a “that-was-then, this-is-now” strategy, aggressively pivot toward it, and enlist employees, key stakeholders, and influential third-party allies in your quest to revive Wells Fargo.

Given the company’s deep roots in America’s pioneer history, Wells Fargo has brand equity that is far more powerful than most U.S. companies. It also has a well-earned reputation as the bank of the little guy, of small businesses and Main Street. It’s a strong foundation in which Wells Fargo would do well to reinvest.

Here are seven core principles to keep uppermost in mind as you inculcate a new culture at Wells Fargo that goes back to the future.

1. Be speedy. The regulatory and legislative scrutiny of Wells Fargo’s business practices are a long way from over. Always move before the regulators do. It isn’t just the size of your sacrifice but the timing. Credibility is found in being first. Audiences will forgive mistakes — even corruption — but they won’t forgive arrogance. Waiting for someone else to demand a sacrifice is the definition of arrogance. The hiring of Capitol Hill veteran Michael Bopp, a financial services specialist at Gibson Dunn, was a huge step in the right direction.

2. Use foresight. The outcome of the Senate hearing with Elizabeth Warren was eminently foreseeable. Surely, Wells Fargo understood that it would be political theater – and that a significant sacrifice was required before the curtain went up. As comparable opportunities arise in the coming months before federal or state officials, Wells Fargo will need to be more proactive and ultra-sensitive.

3. Make sacrifice personal. Crisis communications is about actually fixing – not spinning – the problem. By making no personal sacrifice and cashiering 5,300 low-level workers who were following Wells Fargo’s prescribed requirements is not a corporate sacrifice, it’s a human sacrifice – and a disquieting one at that. Crisis communications is ultimately about doing the right thing, not pretending you’re doing the right thing. Saying “we’re sorry” is not nearly as important as showing your sorry. You have to earn your credibility.

4. Get bad news out in a hurry. The last few months have been a tutorial in how not to handle adverse development. The bad news – the unearthing of the scandals, the mass firings, the adversarial hearing,
the spread of fraudulent practices, the awkward claw back, the states temporarily withdrawing their business, filing of class action suits, the disappointing quarterly earnings, the Stumpf departure, et al. – have come in a slow drip rather than all at once. Wells Fargo needs to remember Machiavelli: “Sévérités should be dealt out all at once, so that their suddenness may give less offense; benefits ought to be handed drop by drop, so that they may be relished the more.” Rip off the Band-aid and let yourself start with a new day.

5. Stop the hemorrhaging, move to gold standard. The company’s future success will hinge on how well you first stop the bleeding. Then you need to adopt gold-standard practices moving forward – the most credible transparency, the best employee training, the best ethics training, the best top-down accountability, et al., in the financial services industry – all of which will enable you to say, “Yes, we made a mistake so we not only made it better, we made it better than anyone in the industry.”

6. Strengthen whistle-blower program. Wells Fargo also needs to have a whistle-blower program that is a model for the rest of the industry. Given the potentially withering effect of the shareholder and former employee individual litigation and class action suits that are moving through the courts, Wells Fargo must have a system in place where integrity wins.

7. Reverse the culture. Above all, you need to overhaul the culture at Wells Fargo. The “people’s bank” has become something far more remote and sinister. By going back to the future, Wells Fargo can re-earn that trust.

Wells Fargo can restore your good name and revive your potent brand – but not with talk or ads. You need do that with action and by forging a culture that first and foremost honors integrity, not artificial financial goals.
Profiles In Cowardice: Trump Flunks The Art Of The Apology
No, this one came via pre-recorded video. Courage never comes from hiding.

Forty-eight hours later, by the time the town hall debate was over, Donald Trump had largely gotten over the vulgar 2005 video tape, but not because he successfully apologized or because voters were going to forgive him. Like the dense relative who never understands why he has to apologize, we all realized that this was the best we were going to get. Asking Donald Trump to be reflective and thoughtful is asking too much.

Imagine if rather than a personal crisis, this had been Pearl Harbor, 9/11, or even something like the Gulf Oil spill. Is this the sluggish and tone-deaf reaction we want from a President? A half-day with only an excuse tweet that made matters worse, an appalling absence of sincerity and a pre-recorded video?

Crisis requires leadership. Donald Trump failed to exhibit anything even remotely resembling that trait.

Finally, the way someone handles a crisis is a test – a glimpse into the window of his soul.

As I waited in the green room of CNN's Washington studio early Saturday morning to assess the Trump campaign's handling of that day's bombshell revelation that the GOP nominee had made misogynistic comments during the b-roll of a 2005 television taping, it occurred to me that the whole episode was like a perverse version of the Battle of Britain. Instead of heroes everywhere demonstrating selfless valor, the lewd video was about one villain evincing repugnant behavior, quickly “apologizing,” then blaming others. It was the “my sibling started it” form of apology we never accept from our children.

So when my post-midnight turn came with CNN host Don Lemon just after Trump released his feeble “apology” video, I turned Winston Churchill's famous quote on its head. I volunteered that, "Never have so many waited so long for so little."

Trump's apology wasn't just too little. It was way too late. The campaign had known about the existence of the damning tape for nearly 12 hours at that point. They had ample time to come up with a more effective response than the defiant non-apology tweet Trump issued a few hours into the crisis or the execrable video that followed so late that night.

Twelve hours into the crisis the best the campaign could devise was a 90-second talking head video that was more commercial than apology? It looked like a hostage video. Among the first rules of crisis communications is speed. Leadership requires action, not indecision.

As bad as it looked, however, the strategy underlying the video – along with its messaging – was much worse. In fact, the Trump campaign violated four core principles of crisis communications and recovery.

First, as noted in these pages two weeks ago in addressing the challenges confronting Wells Fargo, an institution caught in crisis must make a good-faith sacrifice to win back the confidence of its constituents. In this case, the Trump campaign, as I emphasized to Lemon, was not in a position to make the obvious offer of sacrifice – which was taking Trump off the ticket. Had the Republican Party been our client, we would have advised that they immediately push for Trump's withdrawal and not wait for the inevitable ugly recrimination to mushroom, which is what soon happened.

Second, when a prominent person expresses remorse for regrettable behavior, it has to be credible and heartfelt. Trump's “apology” was neither. There wasn't an ounce of genuine contrition in Trump's video. It appeared to be just another campaign commercial and a poorly executed one at that.

Third, the video soon degenerated into an attack on his opponent, which drowned out whatever feeble attempt Trump was making to say he was sorry. He should have stuck with remorse, vowing never again to repeat the mistake and chart a new path forward.

Trump's video all but shouted, “I'm not really sorry and I haven't learned my lesson! You're right not to trust me!” He doubled down on that boorish behavior during the town hall debate Sunday night, when he stalked Secretary Clinton around the stage. If he was trying to assuage fears of being a predator, he failed. Miserably.

Finally, the way someone handles a crisis is a test – a glimpse into the window of his soul. If this is how Trump handles an embarrassing hot mic moment from a Hollywood sound stage, how would he fare in tough deliberations with a nuclear power or in the midst of a terrorist attack?

His ham-handed reaction to the tape reinforced all of the troubling questions about his fitness to serve as president and commander in chief.

With no hope of a last-minute substitute, Republican National Committee Chairman Reince Priebus has been forced to say that the party is “fully behind Trump” – which is exactly what the party did not want as its legacy. As President Kennedy noted, “those who foolishly seek
power by riding the back of the tiger often end up inside.” The question is not how to save Trump, but how to save the GOP.

One of my favorite old films is Elia Kazan’s “A Face in the Crowd,” the 1957 indictment of America’s superficial political culture. The young Andy Griffith plays a huckster who through cynical manipulation becomes a champion of the working man. Sound familiar?

Griffith’s character is finally undone when he blurts damaging comments into a hot mic. Anyone in the entertainment or news business has known for three generations that when microphones are around, discretion is paramount. But discretion has never been a Trump watchword.

Bigotry and ignorance have always been his currency. Given his hateful screeds against women, African-Americans, Latinos, POWs and Muslims, it’s a sad commentary on the party of Lincoln that Trump lasted this long before being ostracized.

Trump will soon have plenty of time to catch up on old movies. He and his demagogic views, came far too close to winning over the American crowd.
October 6, 2016

The Election Issue
No One Is Talking About
Political TV advertising may be dead. Will local television follow?

There have been a handful of remarkable dates in the annals of television history since Philo Farnsworth pioneered the first receiver in 1927. From Richard Nixon’s “Checkers” speech to the rescue of baby Jessica, which heralded the arrival of CNN and its cable scions, to “Who Shot J.R.?” television has been a significant part of all of our lives. But that could be changing.

In years divisible by four, owning a local television station – especially one located in America’s industrial heartland, a.k.a., a “battleground state” – has historically been a license to print money. Election year advertising has been such a bonanza for local TV outlets that many have constructed entire business plans around it.

Those days, alas, may be coming to an end. The 2016 election cycle has been long on acrimony but short on actual campaign ads. This year’s combustible campaign has generated relatively few commercials placed on local TV.

Even with the economy going into a tailspin that fall, the year 2008 saw a record $2.6 billion spent on political television advertising, with $2 billion allocated to local broadcast television in battleground states. Four years later, a recovering economy produced political advertising revenue only marginally behind the 2008 clip. Indeed, for this year’s cycle, Moody’s Investor Services projected an increase of some 18% in ad revenues from the 2012 rate for television broadcasters.

Yet it’s not likely to get even close to that level. Political broadcast advertising aired from August 19 to September 15 this year was down a whopping 42% from the comparable period four years ago; local stations are struggling to meet their election year revenue thresholds. Even the top-rated cable networks – CNN, Fox News and MSNBC – are not coming close to their election year ad projections.

While Democratic presidential nominee Hillary Clinton’s advertising spending is roughly consistent with that of President Obama’s during the 2012 election cycle, Republican presidential nominee Donald Trump did not purchase any television advertising space prior to August, which is unprecedented for a major party candidate during the peak of election season.

Even if Trump sticks to his promise of infusing $100 million worth of TV ads into the campaign’s home stretch (a vow that many analysts question), his total “buy” would still be puny compared to previous GOP presidential campaigns. Only one election cycle ago, this would be unthinkable.

Along with armed forces recruiting and automobile sales, political advertising has been among the biggest sources of advertising revenue for local television stations. A big election year often makes up for sluggish revenue growth in other sectors. That is likely to no longer be the case.

The Atlanta-based television broadcaster Gray Television Inc., which owns stations in 51 markets, recently announced it was reducing its forecast for political ad spending for the remainder of 2016. Given Trump’s heavy reliance on earned and social media, the company opined that future Trump spending on paid media is “currently impossible to predict.”

Sinclair Broadcast Group Inc., which owns more local TV stations than any corporation in America, announced third-quarter political ad sales would miss forecasts by up to $22 million because of Trump’s reluctance to spend. In 2012, political ad spending accounted for some 11% of Sinclair Broadcast’s annual revenue.

Unless 2016 is an anomaly, local television stations will have to look beyond political campaigns for revenue. It’s not going to be easy.
September 30, 2016

Making Sacrifices For Wells Fargo Crisis Recovery
Wells Fargo now finds itself in a situation that may require the company to dole out millions—above and beyond the $40-plus million the company appears to have “clawed back” from the CEO’s bonus. But the extra millions won’t go toward wholesome affinity marketing. They’ll be used to settle the crippling lawsuits that have been brought against the company by enraged consumers and government investigators over the scandal that triggered the dismissal of more than 5,200 Wells Fargo employees: the brazen creation of two million unauthorized and fraudulent bank accounts.

Not unlike pharmaceutical giant Mylan in its handling of allergy drug EpiPen, Wells Fargo needs a refresher course in the first rule of crisis recovery: Make a meaningful sacrifice and make it before the government requires it. As I watched Senator Elizabeth Warren (D-MA) skewer— and there’s no other word for it—CEO John Stumpf in the Senate hearing, it became crystal clear that Wells Fargo should have made tangible sacrifices before the company was hauled in front of Congress.

This was an entirely anticipatable event. Testifying on Capitol Hill when your role in a Shakespearean tragedy is the villain, is never a good place to be, but even worse when the hero of the story is a highly articulate populist icon. There were lots of choices for CEO Stumpf, ranging from returning part or all of his estimated $200 million bonus (which is on top of his $2.8 million annual salary), firing C-suite executives (not just mid-level or junior staffers), or if he really wanted to be heroic, resigning but still testifying.

Had Stumpf come to the Hill in the wake of denying himself a bonus or instituting the most demanding employee training regimen in the industry, he would have been a more sympathetic figure and, critically, had an argument—a life raft—to cling to. “I may not have done enough then, but we are doing the right thing now.” “That was then, this is now,” is always a better place to be than “Message: we don’t seem to care enough to change.”

Senator Warren would still have been rough on him, but at least he would have had something to point to in rejoinder. It could have served as a pivot point for Wells Fargo to unveil rigorous new standards of conduct.

Now it’s being reported that Stumpf will claw back some 20% of the bonus he paid himself during the era of these nefarious practices. It’s a step in the right direction, but Stumpf and Wells Fargo may regret having waited so long. Instead of being part of a good-faith cleansing strategy that would have defined a new path forward, Stumpf’s concession will instead be seen as defensive and disingenuous.

Fixing a crisis is not about taking your bad day on Capitol Hill, saying you’re sorry, doing something cosmetic, and moving on. Fixing a crisis means making a sacrifice—and not just something symbolic, but something significant that cuts to the core of a corporation’s commitment to integrity. TYLENOL, BP, Dubai Ports, and scores of other companies caught in crises have accelerated their recoveries by imposing self-sacrifice and using it as an inflection point. It’s called leadership.

Do Mylan’s recent efforts to make EpiPen more affordable and accessible constitute a sufficiently large sacrifice? Given the size of the profits that Mylan has generated from raising the price of EpiPen, most neutral observers would say “no.” It’s still incumbent on Mylan to prove to regulators and consumer advocates that they’ve heard the messages loud and clear.

Wells Fargo, fortuitously for their shareholders, skated past the 2007-2008 banking crisis. It’s always been seen as a Main Street institution serving consumers and small businesses. But now in the minds of many, they’re “just another Wall Street bank” whose trustworthiness has been called into question. It may well be that the scandal’s highest cost is not the claw back, the lawsuits, the California one-year suspension, or the potential regulatory fines, but the accounts not opened by hundreds of thousands of potential customers who no longer trust the brand.

Almost every company at some point takes missteps. The key is to acknowledge those mistakes, institute controls to ensure they never happen again, and aggressively communicate that new vision to stakeholders and decision-makers. Integrity is something that hurts, but pays extraordinary dividends in the long run. Crisis communications is not “spin.” It is about doing the right thing.

The Wells Fargo wagon can still be coming down the street for eager customers. And hiring Gibson Dunn & Crutcher partner and Capitol Hill veteran Michael Bopp is a smart move, albeit late. But only if they readily acknowledge that the wagon’s chassis needs fixing. It will take no small measure of sacrifice for Wells Fargo to make the necessary repairs.
September 20, 2016

Beyond The Bloodshed: Chicago's Startup Boom
Back in the day when Hizzoner Richard J. Daley ran the show, Chicago was touted “the city that works.” Autocratic leadership ostensibly guaranteed efficiencies that, for anyone living or opening businesses in the Second City, happily covered a multitude of aldermanic sins.

Well, all good things must come to an end. The Loop and Lake Shore Drive may have enjoyed the benefits of Machine rule. Daley’s own neighborhood, working-class Bridgeport, certainly did. But the seeds of decrepitude grew apace in so many other places: Englewood and Austin, Garfield Park and Gage Park. By the end of the last century, murder rates were sky-high while, today, Chicago is in danger of being wholly defined by the 500 homicides committed so far this year. Add in the city’s ongoing fiscal crisis; the bad press has been unremitting.

Of course, such “brand” perception is one-dimensional, and all the more vicious a circle if it fuels stakeholder demand for corporate relocations or the reductions in HQ staff sizes that seem to be a trend in Chicago. Meanwhile, you’d assume small businesses would be fleeing in droves amid these shadows of urban disruption and lifestyle adversity.

But whaddya know! If you take a real look, if you actually talk to the people who run some of the city’s most interesting companies, they’ll tell you quite a different story. Their confidence is incandescent, enough so that Chicago can rightly claim to be one of our most vibrant startup corridors.

Let’s listen to these voices.

“Chicago is becoming one of the key tech and innovation hubs in the country,” advises John Patterson, CEO of NextCapital, an enterprise digital advice firm that recently set up downtown, and which just raised $18 million in new financing. “Entrepreneurs are coming to Chicago because of multiple factors, which collectively provide a setting for growth, including education, training, a persistent venture capital base, and multi-stage companies from startup to mature firms.”

In 2015, 140-plus local tech companies collectively raised over $1.7 billion in capital funding and debt financing – up 8.6% from 2014.

The housing shortages and horrible rush hour traffic are nothing new, here or in many great cities. But as Patterson reminds us, Chicago has a singular selling point: a cost of living much less than Silicon Valley or New York. “As a result, Chicago is benefiting more in today’s market than [it has] in the past,” he adds.

Also, “today’s startups are profiting from the fruits and labor of earlier entrepreneurs and VCs,” says Chee-Young Kim, co-founder of NowSecure, which does mobile tech security work for some of the world’s largest institutions. “Newer VCs such as Lightbank were started by entrepreneurs who are now pumping investment dollars to startups. We have InvestHer Ventures that funds female founders of technology companies. And the Pritzker Group that’s been lighting the way for Chicago entrepreneurs, startups, and the ecosystem for many, many years.

“Because we are still a smaller community than Silicon Valley and New York, we realize that rising tides lift all boats,” adds Kim. “Founders want other founders to succeed. It is not a zero-sum game for us. We have organizations such as Built In Chicago, Illinois Technology Association, and 1871 spreading awareness and cultivating new startups and providing tools for them to succeed.”

Evidence of ongoing success is more than anecdotal, while NextCapital’s recent funding is by no means unique: In 2015, 140-plus local tech companies collectively raised over $1.7 billion in capital funding and debt financing – up 8.6% from 2014. The statistics on FinTech alone are “pretty staggering,” says Patterson. His own company has benefitted from a new Department of Labor fiduciary rule driving the investment industry to embrace digital advice; it caused a national trend that’s especially tangible in Chicago with its “tech ecosystem that rewards startups as well as promotes long-term investments.”

“Both financial services and healthcare stand out based on the deep talent pool that exists in Chicago, and because of the concentration of established companies in those sectors,” adds venture capitalist Sach Chitnis, Managing Partner of Jump Capital. “Within financial services, both trading and insurance are incredible areas of strength for Chicago, while digital manufacturing is another sector driven by the proximity of manufacturing companies and plants in the Midwest.”

Predictably, entrepreneurs feast on ready talent from local educational institutions. But these institutions don’t just send resumes; they foster startup creation as directly as their counterparts in Silicon Valley or Massachusetts. Two companies in the Jump Capital portfolio, for example, were birthed at Northwestern. Narrative Science grew from university research and 4C was founded by a professor there, Alok Choudhary.

If Chicago’s fiscal crisis worries entrepreneurs, it’s not so much the crisis per se but the unintended consequences of the “solutions” public officials devise. Of particular concern is the “cloud tax,” an onerous 9% levy on streamed entertainment. Netflix, for one, will be adding on that tax to customer bills. It’s exactly “what the city should not be doing to
promote long-term growth and economic stability,” says Patterson. It’s a lose-lose proposition that won’t even raise all that much revenue ($12 million) while sending the worst possible message about Chicago’s fiscal hospitableness.

“Depending on moves by political leadership, many companies are at risk due to the shifting economic winds,” acknowledges Lance Neuhauser, CEO of 4C. That said, silly tax schemes won’t stem this rising tide. Like everyone you talk to here, Neuhauser says the talent pool “exceeds expectations...Young people are staying in Chicago for the jobs, cost of living, and the benefits of a thriving arts and cultural scene.”

Listen to the VCs themselves. “Rarely do we see or hear from entrepreneurs that the fiscal issues at the city or state level hamper them in launching or scaling their business,” according to Chitnis. Like Patterson, he says there are “absolutely” more startups now than in the past. There’s more capital available at the earlier stages, more resources to get a company off the ground.

“The money is coming from an increase in the number of institutional funds based in the Midwest,” adds Chitnis. “But it’s also coming from more high-net-worth and angel investments, and from more coastal VCs interested in opportunities outside of San Francisco or New York.” Chitnis emphasizes proximity to customers; 34 Fortune 500 companies still reside in Illinois. Many are “older, legacy businesses with unique challenges to innovation. Those customers require experience in their industries and physical proximity to develop meaningful relationships.”

Big Data companies like 4C are key to this legacy company/startup company nexus. “Companies like ours are developing new solutions to problems that businesses have had for decades,” says Neuhauser. “As the pace of change confronts a variety of industries, Big Data is the accelerant. It’s how industries will evolve.”

“Many entrepreneurs come out of larger institutions having identified inefficiencies in their own industry,” observes Chitnis. “Insurance tech is a great example of a category that will prosper here as five of the largest life or P&C insurance companies are in Illinois. We now see local entrepreneurs building businesses to serve those customers.”

Chicago always was at the center of things, geographically and otherwise. Historic ties – railway ties and cultural ties – were bound here. With its indomitable will and the fabled tenacity of its people, Chicago was predestined to succeed. The digital age hasn’t changed that; quite to the contrary.
September 12, 2016

The Gutting Of Wounded Warrior: How To Kill A Charity
There ought to be a separate chapter for nonprofits in any standard text on crisis management. The dynamics are different; the issues and challenges unique; the agonies their stakeholders suffer are particularly exquisite.

Ask anyone with a personal stake in the Wounded Warrior Project (WWP), the organization founded in 2003 to provide programs and services for injured U.S. military personnel. You'll recall that, in January 2016, WWP was the target of twin exposés by major media outlets, the New York Times and CBS News. The allegations are an extreme example of the generic charge often levelled against charity organizations: that they spend too much on themselves, often for lavish perquisites, and too little on those they're supposed to help. Donors don't realize what their money is being used for. If they did, they'd think twice. Or so the argument goes.

Now, whenever two media behemoths “break” the same story at the exact same time, it's likely the same sources were feeding both. Here those sources included disgruntled ex-employees (most of them fired for cause) who apparently coordinated their strategy via a Facebook FB +0.16% page closed to the public. Another source, the charity “watchdog” Charity Navigator, provided ostensibly damning information to both the Times and CBS CBS +0.40%; in particular, that WWP spends 40% of its revenue ($124 million) on itself.

Yet one wonders how carefully the media vetted Charity Navigator. In its 2005 report on this and other watchdogs, the prestigious Stanford Social Innovation Review reported that, “Our review of their methodologies indicates that these sites individually and collectively fall well short of providing meaningful guidance for donors who want to support more efficient and effective nonprofits.”

“Charity Navigator uses its own accounting model, which has no resemblance to the GAAP protocol we use,” adds former WWP COO Al Giordano, disputing the 60-40 finding. Doug White, former Director of Columbia University's Master of Science in Fundraising Management program, goes further. He was Charity Navigator's first employee and now says “these people know nothing about charities.”

If WWP deserves vindication, White could be a pivotal vindicator.

Earlier this year, donors and supporters of WWP contacted him to report disinterestedly on the issues in the case. White agreed, without compensation and offering no prior reassurances. He expected to produce a 10-15 page report. He wrote 75 eye-opening pages instead.

From our perspective, the most telling point in White’s report – indeed, in this whole sad story – is that WWP revenue did not begin to substantially diminish in the aftermath of the bad media coverage. Instead, the chickens came home months later, after WWP's Board fired CEO Steve Nardizzi as well as Giordano, neither of whom was permitted by the Board to respond to any of the published allegations.

It was essentially a cave-in, all the worse, says White, “because at least they could have given a persuasive reason for doing so.” Accompanied by bland assurances that WWP would now move forward to regain trust, the firings were tantamount to a confession. “The Board was like a deer in the headlights,” adds White.

One thing seems irrefutable: not media allegations, but WWP’s misguided response seems to have provided the coup de grâce. There's a crisis communications bromide that, to placate the wolves at your door, make a sacrifice. That usually means human sacrifice; i.e., firing people. But herein lies the danger of all bromides: they don't fit all situations.

Shareholders may still believe they can make money by investing in a publicly traded company when it makes such a sacrifice. But nonprofits face different expectations. In their case, once trust is broken or a confession made, the trust cannot be regained. Donors will simply make donations elsewhere.

Since the firings, WWP annual contributions have, in fact, shrunk by a projected $200 million. Nine offices have been shuttered. Soldiers and veterans are paying the price. The Transition Training Academy, which prepared service personnel for IT certification, has been cancelled. Soldier Ride, which provides cycling to remediate physical and emotional wounds, has been drastically curtailed.

When Giordano was COO, WWP served 85,000 people, a gain of 59,000 since 2013. All that progress is in jeopardy now; who knows how dramatically this retrenchment will spiral. “WWP was literally the fastest-growing charity in history,” says Giordano. “It is now the fastest-tanking charity in history.”

Imputed reasons for the Board’s full-scale surrender are not pretty. Among them, Giordano suggests it was when CBS did a follow-up story in March that the directors really panicked. Reporters were suddenly showing up at their homes. There was talk of separate inquiries into how donor contributions were invested in Board activities, not just for operating expenses.

Directors have learned in this century about the extent of their personal liabilities. Sometimes that motivates them to work more closely with compliance departments in order to assure governance credibility. But sometimes it may compel directors to simply insulate themselves, out of harm’s way, and let the organizational chips fall where they may.
If the Board’s motives are murky, so too are the forces that drove the story in the first place. According to Giordano, the financials that WWP posts on its website are the most transparent in the business. White advises that the law requires that only the three most recent tax returns (Form 990) be made public; WWP makes all of them available. Yet none of WWP’s accusers seem to have cared, much less read them.

“We’ve stepped over a lot of other nonprofits serving veterans, so perhaps we’re now sitting targets,” Giordano speculates. (WWP was, for example, involved in a litigious squabble with another veterans’ charity.) Maybe the deck was stacked but, among the myriad of lessons for other nonprofits in this story, there is the need to constantly dramatize value. Here, as the crisis unfurled, WWP’s Board did just the opposite.

Along with muzzling Nardizzi and Giordano, it banned TV promotions dramatizing the suffering of veterans. The Board may have been yielding to Department of Defense pressures not to paint too horrible a picture of what combat does to people. Visuals are, in any event, the most effective way to convey human impact, yet it was the first thing WWP relinquished when it was needed the most.

The assiduous work of disinterested third parties like White is invaluable but it’s not enough. WWP, for one, needs to start affirming its value as it did before the crisis, by talking to the whole world and not just defending itself in nonprofit trades. They should take a cue from Dan Pallotta, whom I’ve written about in this column before. To defend the high salaries and perks that nonprofits offer to attract and incentivize talent, Pallotta has done Ted Talks and emails everybody he knows who owns a computer.

As White points out, nonprofits cannot affirm value based only on the quantitative indices that constitute traditional investor relations. White himself provides something of a model for how and what nonprofits must communicate. He lists 15 WWP services with both quantitative and qualitative performance impacts in each instance. As an example of a simple, straightforward way to affirm value: “There were 1,000 participants in Education Services in fiscal year 2015, with 96 percent of the respondents reporting they feel more confident and prepared for their educational future. Total Education Services expenses were $2,642,657, including grants of $86,602 for the year.”

The Wounded Warrior Project has many such stories to tell but, at this juncture, who is resolute enough to tell them? The deer is still gawking at the headlight.

The original idea for WWP was inspired in the immediate aftermath of 9/11. “We all knew there was going to be a war,” as Giordano recalls. Unfortunately, not all wars get fought by the rules. Especially the ones in your own home. ■
September 6, 2016

Trump’s New Brand: Parlaying Political Disgrace Into A Media Empire
A few minutes into Donald Trump’s hideous diatribe on immigration Wednesday evening, the depravity of his message and modus operandi became brutally apparent. Trump has no intention of trying to win the presidency as a conventional GOP conservative “pivoting” toward the center. He’s either going to win as a hate-spewing demagogue or — far more likely — go down in flames and try to shamelessly cash in on his immolation.

It’s also painfully evident that he doesn’t care who or what gets incinerated with him, whether it’s individual GOP officeholders, a proud party forged by Abraham Lincoln, or the integrity of the U.S. electoral system, which he chillingly claims is “rigged” against him.

Ego and greed have always motivated Trump. For four decades, he’s carefully cultivated a brand based on his penchant for aggressive deal-making and his appetite for conspicuous consumption. For good or for ill, “Trump” has always been synonymous with free-wheeling business deals and living the good life.

But now he’s trading in that hard-earned brand for something new and extremely risky: a persona based on bigotry and ignorance. Should Trump lose in November — and the smart money, despite tightening polls, suggests he’s going to get drubbed — he runs the risk of derailing deals in his traditional business segments, among them commercial real estate, hotels, and gaming. Even long-time partners and investors are going to think twice about continuing to do business with a bully whose campaign exploited racism and misogyny.

As Miami-based branding expert Steve Halsey, managing director of G&G Business Communications shared with me, “Trump has taken one of the world’s most recognized business brands and co-opted it into something very different. He has allowed his brand persona to shift from being the ultimate businessman to the ultimate partisan. Add on the negatives associated with some of his more controversial positions and it is bad news for his core business brand.

“Trump has intuited all this, which explains his decision to elevate Breitbart News’ executive chairman Steve Bannon to be the CEO of his presidential campaign. For years, Bannon has trafficked in ignorance. Bannon took Breitbart, originally a journal of principled right-wing commentary, and turned it into ugly filth, unless you believe, as Bannon’s website does, that Gabby Giffords, the Member of Congress tragically wounded in a mass shooting, is the “Gun Control Movement’s Human Shield,” or that “Birth Control Makes Women Unattractive and Crazy.”

Longtime Washington-based media commentator Jonathan Aberman argues that the U.S., thanks in no small measure to Bannon and his adherents, may be in the midst of its first “post-fact” election.

“The playbook started by Fox and followed by many in the Republican Party has been to at least try to provide their viewpoints with some connection to shared facts and context,” Jonathan told me. “The point of the game was to discredit the ‘liberal media’ to make Fox and its ilk the only trusted news source, and to keep the GOP base close and reliant.

“But, Fox spun facts to provide a viewpoint. Bannon and his ilk are not encumbered in this way — shared facts, or indeed demonstrable facts, are lost behind viewpoint and activism. Trump has been at the front of this parade for a long time. He was a “birther” and has expounded various conspiracy theories. Whether Trump wins or loses this election, his brand as the spokesman for the post-fact media is assured.”

Trump and Bannon want to become the trumpeters of the alt-right, ultra conservatives who have created their own post-fact, dystopian universe and are contemptuous of anyone who doesn’t swallow their dark worldview. They want to out-fox Fox in creating a new media empire that caters to — and bilks — a far more reckless breed of conservative. If Trump loses, he wins — at the cash register. The old Trump brand may founder but the new one is likely to flourish.

George Bernard Shaw was right: hatred is indeed the refuge of cowards and bullies. But Shaw never anticipated how profitable it could be.
Mylan's #EpiGate Tsunami: Early Warning Signs Went Unheeded
It's hardly front-page news when a pharmaceutical company charges high fees for a new or coveted drug. It happens all the time.

So why is Mylan NV’s handling of the allergy antidote EpiPen generating newspaper headlines and outraged discussions on morning shows and talk radio? And why has the story become a lightning rod for social and digital media? In recent weeks, there have been spikes across social platforms in “Mylan” mentions and what’s been dubbed #EpiGate — some 200,000 mentions in the month of August alone.

What can companies learn from Mylan’s experience? Especially given the exigencies of social and digital media, are there certain signposts in today’s world that every company should proactively monitor and heed?

To be fair, since the issue escalated into a crisis, Mylan has acquitted itself reasonably well. First, it offered a discounted purchasing plan. Then it took the unprecedented step of developing a generic alternative to compete with EpiPen. The CEO made herself accessible to the media, took ownership of the story, and did not run away from it.

Still, the question is, did Mylan miss some storm signals this summer as it persisted in raising prices on EpiPen? Had Mylan recognized that such a storm was brewing, would it have taken ameliorative steps?

The timeline on the EpiPen controversy is instructive. It demonstrates just how quickly, in our social media-fueled world, a single act can become a grassroots movement — and a grassroots movement can become an out-and-out tsunami. It used to be that a crisis didn’t become a crisis until the mainstream media and elected officials began zeroing in. Mylan’s crisis was precipitated weeks before the national media and Congress picked up on it.

The timeline begins on July 6, 2016 when a parent-activist, a self-described Peanut Allergy Mom, criticized EpiPen pricing on Facebook. It attracted 4,300 “likes.” Less than a week later, Mellini Kantaya, an actress in Brooklyn, adopted the cause, initiating an online petition to Congress that generated 118,000 signatures and was shared on Facebook more than 164,000 times. Mylan’s alarm bells should have sounded at that point.

Another activist, the founder of Allergykids.com, began posting the personal accounts of parents struggling to meet the costs of EpiPen on August 15. Three days later, she developed the #EpiGate hashtag, which quickly went viral. Within days if not hours, Senate Bernie Sanders (D-VT), Senator Amy Klobuchar (D-MN) (who has a daughter suffering from allergies and carries EpiPen), and Senator Richard Blumenthal (D-CT), were posting on Facebook as well as tweeting and re-tweeting.

On August 21, Forbes became the first national media outlet to file a story, soon followed by the New York Times, the Wall Street Journal, the morning shows, and talk radio. The pièce de résistance came on August 24 when Democratic presidential nominee Hillary Clinton began posting on Twitter and Facebook.

The social media tipping point came on the 24th when a picture was uploaded on the image-sharing site Imgur that showed EpiPen being sold in New Zealand for one-fourth what it costs in the U.S. It generated nearly 120,000 views and some 600 comments. Imgur has more than 150 million users; no wonder the issue kicked up so much attention. This was the moment that an aggressive communications strategy emphasizing transparency and cooperation should have been executed.

Looking back, all the elements of a consumer tempest were present in the EpiPen story: an industry with a track record of precipitous price-gouging; an easily understood disease (who doesn’t know someone with severe allergies?); sympathetic victims, many of them children; thousands of motivated parents with the wherewithal to organize online protests and take their campaign to the media; and celebrities such as Sarah Jessica Parker with kids who suffer from severe peanut and bee-sting allergies, the very things that EpiPen was designed to combat.

**To be fair, since the issue escalated into a crisis, Mylan has acquitted itself reasonably well.**

From the outset, the EpiPen saga was played out on social media. When Sarah Jessica Parker cut her ties as a Mylan spokesperson, she chose to do it via her Instagram account. Her post alone has received more than 44,000 “likes,” a phenomenon that comes as no surprise to observers of the pharmaceutical industry. Remember Turing Pharmaceuticals’ CEO Martin Shkreli, who inflamed anti-drug company sentiments a year ago by precipitously jacking up the price of his company’s lifesaving AIDS drug?

No doubt much of Mylan’s stated rationale for hiking EpiPen’s price — insurance companies’ high deductibles and a U.S. healthcare system that incentivizes and encourages ever-increasing prices for pharmaceuticals — is legitimate. But the company waited too long to begin articulating that rationale. And, it did not tap credible third-party allies — allergists, health care professionals, patient representatives, et al. — to explain its position.

By the time the storm reached broadcast media and social media platforms, Mylan was swamped. A company that has done laudable work in the community became a caricature of a corporate villain.

Branding guru Martin Lindstrom, the author of Small Data: The Tiny Clues That Uncover Huge Trends, argues that every big corporate crisis and/or societal movement contains identifiable moments — call them “canaries in a coal mine” — when smart leaders can sense that the issue has turned serious and may well be turning against them.
The key, of course, is to sense that these trends are brewing and not wait until they erupt.

“You’ll typically be able to detect a potential social media crisis up to six weeks before it breaks through, based on small data left by users across a group of social media sites,” says Lindstrom.

“The words used, how the messages spread, who the messengers are, and how they retweet, all indicate if a looming crisis is on the horizon,” he adds. “Most of today’s brands still haven’t experienced how bad things can go – and thus they time after time miss the small data warning signs, signs which in up to 95% of the cases help to avoid a potential brand disaster.”

In Mylan’s case, the canaries were chirping loud and long. In truth, from the day that Mylan acquired EpiPen in 2007, it should have recognized the special responsibilities it now bore as the progenitor of a life-saving drug upon which hundreds of thousands of people rely. Medication that saves the lives of severe allergy sufferers, especially children, is not just another drug. It brings with it profound social responsibility.

In today’s digital age, social responsibility means vigilance in social listening. Certain postings may at times prove to be false prophets, but only by listening to them and conducting analysis can companies know which ones are harbingers of things to come.

It’s not just pharmaceutical companies making life-saving drugs that find themselves in the path of social and digital media storms. In today’s world, it can happen to almost any company. Early warning systems have to be put in place and heeded – or the organization may drown.
Manafort Allegations Could Point To Olympian Hubris
The feel-good Rio Olympics came along at the perfect time for Americans already weary of presidential politics. Donald Trump has been spewing so much incendiary garbage this summer that it’s been hard to distinguish one crazy accusation from the next.

But at least at the moment, Trump’s antics may be diverting attention away from the most disquieting revelation yet uncovered this campaign season. In fact, it may be the most outrageous exposé of seditious double-dealing since the Iran-Contra debacle in the second Reagan Administration.

Roll over Ollie North—and tell Alger Hiss the news.

The New York Times’ August 15 story that Paul Manafort, Trump’s campaign manager, has received $12.7 million in secret cash payments from a pro-Putin group in the Ukraine is symptomatic of what’s wrong with American politics these days. It is one thing for Manafort’s consulting group to represent—aftboard—a foreign faction whose interests are inimical to those of the U.S. That is fairly commonplace among American legal, business, communications, and lobbying firms. Indeed, over the years my firm has represented foreign nationals and institutions that have caused some heartburn at the State Department and the White House. Such representation can be a constructive influence in bringing together people to overcome their differences. Many a diplomatic rapprochement owes its origins to a business deal.

Within reason, everyone deserves representation. The key imperative, of course, is transparency.

But if the Times’ allegations are true, it’s beyond the pale for Manafort to be taking clandestine payments from avowed adversaries of the U.S. and our European allies. That’s a combination of North-like hubris and Hiss-like deceit that most of us would find distasteful. It certainly ought to make the Obama Administration think long and hard about disclosing any sensitive information via intelligence briefings to the Trump campaign.

Attorney William Minor of DLA Piper, a specialist in ethics and international representation, shared this observation: “The reports of payments to Paul Manafort shown in a Ukrainian political party ledger raise questions about whether Manafort and his firm should have been registered under the U.S. Foreign Agents Registration Act (FARA). We don’t yet know whether those payments were actually made, or the purpose of them, but the ledgers seem to underscore the significance of the work performed by Manafort and his firm for the party of the-then Prime Minister.

“Originally enacted before World War II to address Nazi propaganda agents, FARA is a criminal statute designed to shed light on advocacy efforts by foreign interests in the U.S. It requires registration and reporting to the Department of Justice when an individual or firm acts as an agent of a foreign government or political party and engages within the U.S. in activities designed to influence U.S. policymakers or the public. It is not clear why Manafort’s firm did not register for this client, although the firm had been registered previously for other foreign clients.”

At this writing, just a few hours after the story broke, I have no idea if Manafort can survive and keep his job as head of Trump’s campaign. I’ll leave that conjecture to the pundits.

But as a citizen who cares deeply about the U.S.-European alliance, I am troubled about the Republican presidential nominee’s slipshod approach to our NATO allies and his bizarre admiration for Russia’s current political position. What’s next? Hacking an opponent party’s emails?

Especially with the threat posed by terrorism, this country cannot afford any diminution in our resolve to maintain the bonds that exist between the U.S. and Europe.

Between the Manafort bombshell and the new exposé that the Clinton Foundation may have been pushing unqualified donors to serve as “experts” on State Department advisory panels, it is almost enough to make you forget how great the Olympics have been.
August 2, 2016

ExxonMobil's Climate Change Ordeal: Did Regulators Cross The Line?
I grew up in the “movement” – Birkenstocks, “No Nukes” T-shirts, long hair. I became a lawyer believing that integrity was measured, not just by what you demand of others, but by applying the same rules to yourself, without convenient exceptions.

I have also long believed that global warming and unchecked industrialism threaten the planet. I believe in the First Amendment as well, and the right to express an opinion without fear of criminalization. In short, the rules matter for all of us.

At the same time, some activism operates on a very dubious supposition: the supposition that science is a monolith, that its pronouncements on a topic like climate change are unanimous and incontestable. If that were true, of course, it would not be science. E equals mc2 only until someone takes the same crack at Einstein that Einstein once took at Newton. In politics (especially during an election year), it’s regrettable when anyone ignores or misuses science. In lawmaking and law enforcement, however, it is always unacceptable.

Yet that may be exactly what began to happen last fall when New York’s Attorney General, Democrat Eric Schneiderman, subpoenaed ExxonMobil XOM +0.16%, charging that the company misled investors and the public on the impact of climate change.

Massachusetts joined New York and, in March 2016, the Virgin Islands opened an anti-racketeering investigation, not only of ExxonMobil but – a really slippery slope – of the think tanks and institutions it supports.

Sixteen state attorneys general then formed AGs United for Clean Power to announce that they too will target energy companies that purportedly misunderstand their stakeholders.

These actions by the government disturb me for two reasons.

First, all 16 AGs are Blue State Democrats. It’s no secret that Left and Right are generally polarized on the subject, as they are on social issues like abortion or gay marriage. But climate change is not about local values related to personal behavior. It should be about empirical evidence impacting public safety. In a criminal trial, DNA forensics are not open to different interpretations based on political affiliation. Yet, in this case, Democrats and Republicans are using altogether different microscopes. That’s bad science all around, and a recipe for disaster.

Second, and worse, the polarization suggests that fact-finders, operating in good faith, can be penalized for reaching what their opponents consider to be the wrong conclusions. In this matter, ExxonMobil has been doing research since the early 1970s, providing the results to dozens of independent journals while participating in events such as the U.N. Intergovernmental Panel on Climate Change.

Granted, it’s possible that their publicly disclosed research was not only self-serving but fraudulent. Anything is possible, but I wonder if the government can prove that ExxonMobil’s research, or its participation in public forums, was willfully intended to deceive. Did the AGs even take into account the actual science pursued by ExxonMobil before acting against the company? If not, there’s an injustice being done here. Ironically, the government may be the one that’s stifling science. From a legal perspective, the government does not even have to establish intent. Schneiderman’s investigation is being conducted under New York’s 1921 Martin Act, which is designed to protect investors. It does not require the government to show intent to defraud or even that an investor relied on a misrepresentation or omission.

But climate change is not about local values related to personal behavior. It should be about empirical evidence impacting public safety.

According to some fairly neutral observers, ExxonMobil did not even commit misrepresentation or omission, willful or otherwise. Instead, the company published findings that actually “lined up with mainstream climatology.” The burden on the government should then be to show that ExxonMobil acted as a supportive silent partner in climate change denial campaigns, ignoring or contradicting its own definitive findings. Sound like a fishing expedition to you?

A recent op-ed by Dennis Vacco – a Republican who served as attorney general of New York from 1995 to 1999 – adds broader dimension. Vacco was one of 46 state AGs who signed the 1998 tobacco Master Settlement Agreement. There, the government did indeed show there was willful, protracted deceit by an entire industry. Because the government’s action was decisively bipartisan, a powerful sequence of happy outcomes ensued, including the restrictions that protect young people.

“The first states to actually bring [tobacco] litigation were all represented by attorneys general who were elected as Democrats,” Vacco tells us. “It is fair to say that, without the addition of AGs from New York, California, Texas and Illinois – states with significant Medicaid expenditures – who were elected as Republicans, the final resolution of the litigation would have been much different.

“When issues attract a bipartisan focus, the resolution is typically more robust,” adds Vacco, now a partner at Lippes Mathias Wexler Friedman.
He cites the bipartisan coalition of AGs that has successfully targeted the payday loan industry as a current example.

Vacco also reminds us that the tobacco campaign was, not just bipartisan, but disinterested, at least insofar as no single AG was aligned with competing businesses or industries that stood to gain from the assault on tobacco.

By contrast, in the ExxonMobil case, the AGs seem hardly concerned to hide their private sector affiliations. One of their press conferences even featured a renewable energy spokesperson, as thirteen dissenting AGs complained in a June 15 letter. That letter, on the Alabama AG’s letterhead, rebukes the action against Exxon, also emphasizing that climate change “exaggeration” is no less “fraud” than climate change “minimization.” To be sure, the ideological polarization among the AGs is thus complete.

Again, advocacy is one sphere of action and law enforcement is another. We run a perilous course when we mix the two. Over-reaching on the enforcement side can only discredit the cause of climate preservation, a cause that must be won, as well as alienate the mega-powers who might significantly contribute to a solution.

When no good deed goes unpunished, global corporations tend to do fewer good deeds.
Hey-La, Hey-La: Chipotle May Be Back
When talking to corporate executives about crisis management, crisis consultants often cite Johnson & Johnson’s handling of the Tylenol tampering case of the early 1980s as the gold standard – and with good reason. The company made itself accountable, seized responsibility, expressed regret, conveyed empathy to the victims and their families, conducted itself in a forthright and transparent way, brought in third party experts to ensure that its new safety practices were rigorous and reliable, and – not incidentally – managed to recover most of its market share in relatively short order.

Most heroically, their now legendary CEO, the late James Burke, overcame FBI resistance, and announced – before any government regulatory body required it – a recall of not only Tylenol, but all of its over-the-counter medications. A move that to this day lives atop the annals of courageous CEO actions.

Chipotle’s senior leadership demonstrated a real commitment to fixing the chain’s systemic problems in its food preparation practices, not just hoping the problems would disappear.

To be sure, J&J’s performance three and a half decades ago wasn’t flawless. Any institution caught in the klieg lights of a mega-crisis is going to make certain missteps. The key is to learn from them on the fly – and not repeat them.

Will Chipotle Mexican Grill’s management of the unfortunate E. coli and Norovirus outbreaks that sickened hundreds of its customers last fall ultimately merit the same praise? It’s too early to tell. But Chipotle has taken a series of constructive actions that other companies in crisis situations would do well to emulate. Criticism of Chipotle has been significant, but isn’t that where leadership comes from? Acting in the face of criticism to do the right thing?

First, from the outset, Chipotle’s senior leadership demonstrated a real commitment to fixing the chain’s systemic problems in its food preparation practices, not just hoping the problems would disappear. In the first days of the crisis, the statements of some individual restaurateurs may have come across as flippant to their local customer bases. But those statements were quickly corrected. Meanwhile, the messages emanating from Chipotle headquarters in Denver were compassionate, factually accurate, and timely – a difficult feat often underappreciated by laymen.

Second, the team of scientific and industry experts that Chipotle assembled to assess the efficacy of its efforts was genuinely independent. Chipotle smartly included critics of the company on its third-party team, strengthening its credibility. It hired James Marsden, a Distinguished Professor of Food Safety and Security at Kansas State University, to head its internal food safety team, and added David Acheson, a former food safety officer at the Food and Drug Administration (FDA), and David Theno, a consultant who’s credited with helping Jack-in-the-Box rededicate itself to customer safety, to help ensure that Chipotle honors its commitment to make the chain an industry leader in food safety. By giving such authority to an independent team of experts, Chipotle is reinforcing a core theme: It wants to fundamentally solve the problem, not just make media attention go away.

And finally, Chipotle’s executive leadership acknowledged the nexus between the company’s unique brand identity as caring, community-focused, and committed to global sustainability and its need to assuage consumers’ legitimate fears over health and safety. Many of Chipotle’s millennial customers want organic, small, and local – but they also want safe. It’s imperative for Chipotle to continue recognizing that they are not necessarily the same thing.

The challenge with “small” is that it’s hard to trace. When a company encounters a problem, how does it find the source? Even with Chipotle’s move toward larger supply chains, the company is still devoting $10 million to small farms. Its commitment to sustainability is at the heart of Chipotle’s brand essence.

J&J’s experience with Tylenol is instructive. Just before the tampering occurred, Extra Strength Tylenol had a 37% market share. In the weeks that followed, it plummeted to 7%.

Twelve months later, market share was back to 30%, still not completely recovered but heading in the correct direction. The moral of the story is clear: Even a campaign as effective as J&J’s takes time to fully take root. Only our memories make us think that there was no time lag from crisis to historic recovery.

Chris Arnold, Chipotle’s Communications Director, told me that the company is seeing “encouraging signs” of recovery. In many restaurants, customer traffic is now approaching their pre-crisis thresholds. Business Insider moreover, recently referenced a YouGov study that shows
Chipotle’s “daily buzz” and consumer sentiment metrics are on the upswing. The reassuring messages that customers are hearing from social media, earned media, and – most importantly – the word-of-mouth they’re hearing from friends and work colleagues appears to be steadily improving Chipotle’s image.

Arnold also volunteered that there is more in Chipotle’s queue to stimulate traffic. The company is instituting a rewards program aimed at winning back those customers that might still have lingering concerns.

Chipotle is also smartly reviving the distinctive paid advertising (including animated short films) that helped forge their unique brand in the first place. The ads will remind customers that the company continues to put community first – and that it’s striving to buttress its commitment to health and safety.

Its third-party experts cannot be a flak jacket designed to deflect incoming fire; they must be as woven into the fabric of Chipotle’s identity as its fealty to environmental protection and sustainability. Chipotle must continue drumming home the message that it has embraced the ethos of food safety. The company wants its experts to help it become a global leader in food and food safety. That’s not “media.” It’s leadership.

Thirty-four years from now, in the year 2050 (now there’s a sobering thought!), will Chipotle’s handling of its food safety situation rank up there with the most effective corporate crisis campaigns in history? There’s a long way to go but the early returns are encouraging. Hey-la, hey-la, hey-la.
June 29, 2016

Brexit Ain't Over: The Next Phase Of A Protracted Debate
Forbes.com Columns: A Year in Review

Yogi Berra, God rest his beautiful soul, might not have grasped the economic and geopolitical ramifications of Britain’s vote to leave the European Union (EU). But a classic Yogi aphorism animates the next phase of the Brexit imbroglio: “It ain’t over ‘till it’s over.” And Brexit ain’t over. Not by a long shot.

Don’t take this Yank’s word for it. Three days after British voters shocked the world (and, no doubt, themselves) by voting to leave the EU, I met with James Hunt, a Brit who has spent a lifetime studying his countrymen’s cantankerous and sometimes contradictory voting habits. James’ conviction is that Britain’s exit from the EU is by no means “done and dusted.” With apologies to my British cricket-loving friends, it’s a British colloquialism that means the Brexit contest has at least a couple more innings to go before it’s declared “over.”

Here’s what a lot of us don’t understand about the Brexit “Leave” vote. Not only was the referendum nonbinding but to institute even the most rudimentary British separation from the EU requires Parliamentary intervention and approval. Brexit is anything but rudimentary. To consummate a final divorce from the EU demands a mind-numbing array of actions on all manner of issues – from competition and antitrust concerns to rules governing product liability and data protection. At minimum, there will be a six-month “scoping exercise” to chart a path toward separation, followed by a two-year “notice period” to effectuate Britain’s actual exit from the EU.

Exactly what will happen and who will be in charge is hard to predict. But the House of Commons’ legislative and regulatory actions could become, in effect, a referendum on the referendum.

There’s no guarantee, therefore, that “Leave” is a fait accompli. The House of Commons is composed of 650 Members of Parliament (MPs). Given the divisiveness that exists inside the Conservative and Labor parties, both of which were badly split on Brexit, coupled with the gruesome specter of the “Leave” coalition’s leadership reneging on practically everything they promised during the campaign (most notably, decreased immigration and increased funding for the National Health Service and education), the House of Commons may be in no mood to embrace an agenda that has become toxic. James Hunt estimates that “Leave” forces could only muster a maximum of some 200 supporters in the House of Commons were Brexit to be voted on in the near future – far short of a majority.

One plausible scenario is that come this fall, when David Cameron steps aside, the new British Prime Minister, sensing the country’s tumult, would feel duty-bound to ask Parliament to support invocation of the suddenly famous Article 50. If they were to defy the electorate and say “no,” the new PM may, in turn, decide that a General election would need to take place in early 2017. Those elections would in essence become the Brexit debate 2.0 – and could ultimately spell its rejection.

Britain’s Tories may not automatically line up behind Boris Johnson, the acerbic former London mayor who, much to his astonishment found himself on the “winning” side of the Brexit vote. Johnson’s “victory” may turn out to be so debilitating for his party, his country, and his own political future that “Pyrrhic Victory” could someday be replaced in the dictionary by “Boris Victory.”

Theresa May, a far less incendiary figure who has served with distinction as Britain’s Home Secretary, could end up the Tory leader – and Britain’s new PM. It may well fall on Ms. May, a centrist supporter of Britain “remaining” in the EU, to navigate a way out of Britain’s self-inflicted morass. In some Tory opinion polls, Ms. May has already inched ahead of Johnson, mostly because she is seen as a compromise candidate. And the campaign hasn’t even gotten underway yet.

Marc Donfrancesco, the head of public relations for the international law and business consulting firm Eversheds, told me on June 30: “Events in the coming weeks will make fascinating viewing to many; full of speculation, twists and turns. However, back in the world of business and helping clients navigate through challenge and opportunity, if there was a time to repeat the great British quote of ‘Keep calm and carry on’, this is it!”

Separated by 3,000 miles and, as George Bernard Shaw famously quipped, a common language, James Hunt, Marc Donfrancesco, and I agree that the debate over Brexit isn’t ending. It’s barely begun. How it will turn out is anyone’s guess. The very thing that corporate decision-makers, economists, and diplomats prize above all else – a sense of certainty – is likely to remain elusive for quite some time in Great Britain.

“It ain’t over ‘till it’s over.” Somewhere – I hope it’s in a field of dreams – Yogi Berra is smiling. And learning to love cricket.
The Beast of Brexit: The Power — and Danger — of Emotional Messaging
Well, that pretty much sums up the transatlantic reaction to the abrupt and potentially catastrophic decision by British voters to leave the European Union – and not just at 10 Downing Street and the White House, but at investment banks, economic policy foundations, think tanks, corporate suites, media headquarters, et al. Everyone is trying to make sense of what appears to be a profound rejection of global economic integration, “establishment” institutions, “elite” opinion, and the status quo. Whatever you may think of him and his policies, British Prime Minister David Cameron certainly deserved a more dignified departure than being devoured by the beast of Brexit.

Strip away all the macroeconomic and geo-strategic back and forth and the debate over Brexit came down to this: the seductive power and danger of visceral messaging. It’s not exactly a revelation in our digital media and myth-driven age that emotion – if you’ll forgive the verb – trumps fact.

First and foremost, never underestimate the power of emotion in public discourse.

Early on in the debate, the “Leave” forces, abetted by an unsuspecting media, seized the upper hand. First, they took an enormously complex issue and caricatured it, reducing it to a harmless-sounding phrase. “Brexit” sounds like something you sprinkle on your oatmeal, not a painful split that will profoundly disrupt, if not sever, the UK’s economic ties to the world. Once “Brexit” became the all-purpose euphemism to describe the referendum, the “Leave” forces were halfway home.

Consider this: What if the shorthand phrase had been “DivorceEU”? Think the outcome would have been the same?

The opposition’s other Machiavellian move was to make “Leave” the vessel through which embittered voters could express their frustrations on any and all issues. As my colleague James Hunt, the head of the London-Brussels communications firm Aspect Consulting, told me a few hours after the polls closed: “Britain made its decision based on lies, misunderstandings, and misconceptions. The ‘Leave’ campaign made no effort to tell the truth, or to contextualize; or at least, not when anyone was listening.

“Instead it was all about Britons ‘taking back control,’ and therefore being able to unilaterally stop immigration (which we can’t and won’t), prevent a European army (which wasn’t on the table), and stop sending 350bn GBP a week to Brussels (which is a gross exaggeration; it’s about one-third that amount). The ‘Leave’ campaign knew that most working class voters understood very little about the nature of Britain’s membership in the EU. Although it’s being presented as an elite vs. anti-elite battle, the reality is that a certain section of the elite knowingly spread falsehoods, leading voters to an outcome that many of them now regret.”

The “Remain” forces figured out too late that lofty arguments about reciprocal trade fall flat when the other side is telling voters that the European Union is the bogeyman behind all their ills. Upset that jobs have left your community? Vote Brexit. Concerned about immigrants taking over? Vote Brexit. Want stronger national health care? Vote Brexit.

One of the many ironies of the debate was Google’s revelation that British-based searches for the “EU” or “What will happen if Britain leaves the EU?” went astronomically up after the polls closed. Brits may not have understood what they were voting against but, by golly, they were voting against it! My friend James Hunt isn’t the only Brit who believes that voters are already suffering from buyer’s remorse. Alas, they don’t get a do-over.

From day one, “Remain” should have waged a campaign rooted in emotion, extolling in understandable terms and images the everyday benefits of Britain’s membership in the EU. And on the flip side, they should have painted in dramatic colors the consequences of a “Leave” vote. Not citing white papers from the London School of Economics or the views of this professor or that but tapping working people to talk in simple language about the dangers inherent in divorcing Britain from the EU.

Prime Minister Cameron and the British establishment allowed extremists to define this vote. They didn’t fight fire with fire. They fought fire with salt and very quickly lost control of a conflagration that, left unchecked, threatens to engulf the global economy.

What lessons can be drawn from this debacle? First and foremost, never underestimate the power of emotion in public discourse. In troubled times, especially when “elites” make a convenient foil, voters will seize on the visceral, ignoring facts and logic.
Norwegian-born business communications strategist Rolf Olsen, the CEO of Swiss-based Leidar, observes, “It will be extremely important for the EU leadership to listen and find ways to engage people in Europe in their affairs. One way could be to let people participate in the election of the President. EU leadership failed to unite behind a strong narrative and should feel deeply responsible for Brexit. Hopefully this vote will inspire some positive change in Brussels.”

What H.L. Mencken feared most was democracy run amok, the dire repercussions of ignorance controlling the ballot box. Remember what happened after the beachgoers in Jaws got over their initial shock? They started running away from the water willy-nilly.

Let’s hope cooler heads prevail in the wake of Brexit. The leaders of the industrialized world need to step up and assuage fears.

Donald Trump’s initial reaction to the Brexit vote – speculating about how a shattered British pound might fatten the coffers of his Scottish golf resort – is not likely to be seen as statesmanship in action. But The Donald doesn’t care. Soon enough, he will figure out how to politically exploit – in shameless, emotional terms worthy of the back page of a British tabloid – the meaning of Britain’s defiance.

Secretary Clinton: forewarned is forearmed.
June 17, 2016

How Businesses Should Prepare For President Trump
Donald Trump has made it vividly clear that it won’t be business as usual with him in the Oval Office. He will seek to impose tariffs on products made in the foreign plants of U.S. companies that, he avers, should have remained in the U.S. Millions of U.S. residents could be expelled and international agreements torn up.

Key alliances will be maintained only if our partners agree to what Trump deems a more equitable partnership.

First and foremost, businesses should start preparing right now for the inherent dangers and difficulties of such a volatile administration, regardless of what chances Trump has of actually prevailing in November.

Specific companies have, of course, already felt the wrath of the demagogue. Trump says he’ll levy new taxes on Carrier air conditioning units manufactured in Mexico as retribution for that company’s decision to move production out of Indiana. In April, he labeled Ford Motor’s decision to build a $1.6 billion assembly plant in Mexico an “absolute disgrace,” vowing that that would never happen if he were president. Trump has been on Ford’s case since last June, threatening a 35% tariff on Ford’s Mexican exports to the United States. (He’ll need to somehow tear up NAFTA first.)

Ford CEO Mark Fields has been responding well, focusing on the $10 billion the company has invested in U.S. facilities as well as the 25,000 U.S. workers it’s hired since 2011 — along with the additional $9 billion it plans to invest stateside during the next four years.

While there’s an implicit threat here — i.e., punishing us for exporting jobs today may well cost you more jobs tomorrow — Fields has tempered his message with cool indifference. He said he hasn’t actually been listening to Trump. “It’s [just] presidential politics,” he mused. As a best IR practice, Fields’ equanimity cannot be lost on shareholders nor his calm reassurance that Ford won’t back away from foreign investments that make sense.

Of course presidents don’t pass laws, Congress does. Any immediate policy changes will be subject to the limitations of what Trump can effect through executive orders. Additionally, the vast majority of the federal government is run by thousands of civil servants who will steer the ship while Trump tries to deploy his lieutenants, many of whom will require Senate confirmation.

Yet it still makes sense to start now, months before the election, with a risk management approach that identifies potential Trump policy scenarios.

To be sure, the risk extends well beyond the tax threats facing Carrier and Ford. Antitrust, for instance, should be a real concern for the likes of Trump critic Jeff Bezos whose ownership of The Washington Post led Trump to warn that Amazon does indeed have an antitrust problem. Remember, antitrust enforcement is full of gray areas, with many options for revenge-minded politicians.

Anyone doing business overseas also needs to start pondering worst-case scenarios. “It’s not unlikely that a President Trump will confront other countries — like Russia and China — so aggressively on trade or other issues that those powers will retaliate against U.S. companies doing business there,” says Alex Manning, Senior Government Relations Director at Arent Fox. Manning can envision excessive “hurdles” that, if not overtly confiscatory, may make it impossible to successfully compete.

“Who knows how Trump might react to an espionage or cyber incident,” adds Manning. As risk management options in such situations, Manning does not rule out simply moving headquarters to a different country or at least “calling out” the Trump Administration so vigorously as to persuade Moscow or Beijing that the company is a staunch ally and punitive measures are therefore ill-advised.

In this maelstrom, keep as cool a head as Mark Fields. Identify what’s important to your company in terms of federal policy priorities. What are the likely policy changes and who will be responsible for them? Build your information collection and analysis around your key objectives in order to collect what is most relevant to your company, without the distractions of bold headlines that may not ultimately matter to your bottom line.
At this stage of the game, companies can further anticipate relevant policy changes by projecting who’s going to actually execute those changes. It is advisable to use an objective source of information to gather intelligence on the key personalities advising Trump as well as those who are considered leading bets to take on cabinet and sub-cabinet appointments, including their track records and policy positions.

Once a company knows who has a voice on policymaking, it can then form an engagement strategy that starts before Trump begins naming his appointees. Trump’s “kitchen cabinet” is equally important. It currently includes Newt Gingrich, Carl Icahn, John Bolton, Michael Flynn, Rudy Giuliani, and former Trump campaign staffer Roger Stone, along with others. These names provide an initial lens through which specific incipient changes can be seen.

The comprehensive political risk analysis we’re talking about is equal parts art and science – and should always be directly translatable into action if it is done early and in a risk-focused, disciplined manner. That’s the good news.

The bad news is that we have to be having this particular conversation in the first place.
June 1, 2016

Billionaires Club: The Peter Thiel-Gawker Debacle Has Troubling Repercussions For Press Freedoms
The atmospherics surrounding billionaire investor Peter Thiel’s vendetta against Gawker Media – big money, sexual intrigue, Silicon Valley gossip, libertarianism run amok, and the pièce de résistance, a futile connection to a World Wrestling Federation icon, no less! – obscure the episode’s troubling repercussions. If the super-wealthy succeed in destroying media outlets that run stories they don’t like for one reason or another (even if there is merit behind the reason), then what kind of deterrent effect is that going to have on press freedoms moving forward?

**Historically, danger always lurks when bullying tycoons go unchallenged.**

Yes, the media has the right – I would argue the obligation – to aggressively exercise its First Amendment guarantees. And yes, businesspeople and private citizens have the right to file lawsuits if they feel they’ve been unfairly damaged or defamed.

The societal tension between these two rights has gotten thornier of late, as has the financial pressure confronting media outlets. Whether “new” or “traditional,” many media businesses in today’s fractured climate are struggling to remain viable. Can American democracy survive if print, broadcast, and online outlets are chronically cowed by the threat of lawsuits that could ruin them? So what is the new legal standard – not malice aforesaid but an offended billionaire reader? The reason for such a high bar in libel cases is to avoid the chilling effect on the First Amendment, but if all you need are a billion dollars and a thin skin to chill the First Amendment, then we are in far greater peril than the Founding Fathers dreamed.

To be sure, there are facets of Gawker’s decade-old coverage of Thiel that are unsettling. Someone’s sexual orientation ought to be a private matter unless they choose to make it public. “Outing” still strikes many of us as an abhorrent exercise. Gawker may not have intended to be mean-spirited or snarky in its 2007 “Valleywag” item – but Thiel and his business partners were within their rights to be angry.

Still, does such enmity justify the clandestine underwriting of lawsuits bent on revenge – with the clear objective of delivering a knockout blow to the “offending” outlet? There’s a big difference between the tone and tenor of the New York Times NYT +1.23% and new media such as Gawker and TMZ. Attorney David Lat, founder of the blog “Above the Law,” asserts that, “Peter Thiel was within his rights in deciding to finance litigation against Gawker, and Gawker shouldn’t have put itself in a position where an enemy like Thiel could have caused the company so much harm. I don’t support Gawker’s posting of the Hulk Hogan sex tape – and I suspect that Gawker has some regrets about it as well.

“But I am concerned about whether this trend of billionaires financing litigation against media companies could spread to outlets that are less controversial than Gawker and lawsuits that are less meritorious. There’s schadenfreude over Gawker’s troubles right now because Gawker has made some enemies over the years. But how will people feel if weaponized litigation starts targeting better-loved news outlets that are breaking important stories on matters of undisputed public concern?”

Five years ago, Washington Redskins owner Daniel Snyder pursued a vengeance suit against Washington, D.C.’s City Paper for printing an unflattering, albeit well-documented, story about his personal foibles and prickly management style. His express goal was to force City Paper to spend so much on legal fees that its finances would be decimated. Many observers found Snyder’s tactics heavy-handed and petty. After seven contentious months, he dropped the suit, but not before the paper spent money it could ill afford on legal representation.

Nick Denton, Gawker’s managing editor, emailed me this conviction on May 31: “Billionaires like Peter Thiel have vastly more influence than most politicians, but generally do not believe they should be subject to the same kind of attention and scrutiny.”

On that same day, writer Stephen Marche, a frequent foil of Gawker’s, wrote in the New York Times: "Mr. Thiel meanwhile seems to want a world in which he, personally, encounters no resistance, whether it comes from government or the free press or anyone else for that matter. He has declared, ‘I no longer believe that freedom and democracy are compatible,’ and he is on the board at Facebook FB +0.22%. The new breed of technologists who are taking control of the news media do not feel they should pay taxes or submit to regulation or offer anything more than disruption to their employees. They need to be challenged. And Gawker, at least, has challenged them.”

Historically, danger always lurks when bullying tycoons go unchallenged. While a lake and yacht club seemed like a great idea to Andrew Carnegie in the late 1880s, his lieutenant Henry Clay Frick chose to dangerously cut corners by refusing to use qualified engineers. The unintended consequence was one of America’s greatest “natural” disasters, the Johnstown Flood, which tragically killed more than 2,000 innocent people. By secretly exploiting Hulk Hogan and a bevy of lawsuits, Thiel triggered a deluge of unintended consequences for the First Amendment.
“Seek revenge and you should dig two graves, one for yourself,” Amazon founder and Washington Post owner Jeff Bezos said when asked about Thiel’s tactics. I’m not going to defend everything that gets published in new or old media. Much of it is only loosely tethered to the truth; some of it is downright scurrilous. But I can’t help but think that Thomas Jefferson would take a dim view of Thiel and Snyder and other bigwigs who resort to legal belligerence to stifle the press.

“The basis of our governments being the opinion of the people,” Jefferson famously wrote, “the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.”
Washington's Old High-Tech Corridors Deserve New Glory
Back in the day, there were three high-tech corridors that defined the evolving frontier of American capitalism. There was Silicon Valley, of course, and there was Route 128 in Massachusetts. The third was the Greater Washington Region, stretching from Northern Virginia across state lines through D.C. into Montgomery County, Maryland and its fabled biotech culture.

That “day” did not end with the dot.com crash. Hardly. People still use computers and they want them smarter every year. The pace of medical and biotechnological innovation has only accelerated. Artificial Intelligence and Robotics now allure. If anything, the scope of innovation has exponentially broadened; cybersecurity, for instance, is a new realm unimaginable by the visionaries who changed the world at the turn of this century.

Credit: Shutterstock

Yet permanent revolution doesn’t necessarily mean permanent growth on a regional basis. Of the three aforementioned corridors, the Greater Washington Region has lost some luster and now finds itself in a unique and rather challenging situation.

“As the numbers show, our region’s entrepreneurship is not presently being driven by venture capital,” says Jonathan Aberman, founder of McLean, Va.-based Amplifier Ventures, a McLean, Va.-based group of consulting and investment management businesses. “It was more in the 1990s, when we were ground zero for the Internet and telecommunications explosion, that the venture money poured in and job growth accelerated. Over the last ten years, innovation has turned more towards the government, particularly cybersecurity and healthcare.”

Venture capitalist Jonathan Ebinger agrees. “As an investor in the D.C. area in the late 1990s and early 2000s, I was highly confident that great things would emerge in the communications ecosystem, from the likes of AOL, UUNet, PSINet, MCI, and Bell Atlantic (now Verizon),” says Ebinger, who’s General Partner at BlueRun Ventures.

“These types of companies are there [in the Washington area] and have attracted dollars from outside the area. Alaram.com is a great example, as is BlueCart,” adds Ebinger. “The intellectual capital in D.C. is undisputedly strong. I would not be surprised to see some very interesting companies come out that are broadened beyond government-sponsored to commercially accessible applications.”

Nevertheless, the report quantifies some disturbing trends. Often, when the money comes in, it exits. Since the mid-1990s, 105 area businesses have fetched more than $1 billion, but in only sixteen instances were those acquired companies purchased by local buyers. Seventy-five percent of the 6,000 business sales during this period were to out-of-region purchasers.

To be sure, the area has the resources in the form of federal spend, which is naturally focused to a great extent on security. Yet even the government is hedging its bets. In the last year, for example, the Defense Department, State Department, Homeland Security, and the Army have opened offices in California in order to partner with private sector entities in the search for innovation.

For the Washington area, it’s a double whammy. Even as other regions challenge local relationships with national security agencies, the traditional linkage between D.C.-area startups and those agencies is itself a big obstacle to revitalizing the hot house atmosphere that once attracted venture capital to this region.

We’re talking about the “company town” stigma, the assumption that you’re “dependent” on federal support; that support is a virtual lock; and that you are not therefore entrepreneurial in the real sense. Yours is not quite the kind of culture that floats VC boats.

Nor do venture capitalists necessarily believe that security and defense businesses are as promising as other cutting-edge sectors. “These businesses are vitally important, but they are often viewed as limited in their potential upside for commercial or consumer adoption,” says Ebinger. “Seeing new businesses totally untethered to any real or perceived federal overhang would be welcome.

“Those types of companies are there [in the Washington area] and have attracted dollars from outside the area. Alaram.com is a great example, as is BlueCart,” adds Ebinger. “The intellectual capital in D.C. is undisputedly strong. I would not be surprised to see some very interesting companies come out that are broadened beyond government-sponsored to commercially accessible applications.”

So the challenge is to further persuade willing-to-listen investors like Ebinger that area entrepreneurs do indeed have a life outside Uncle Sam and that entrepreneurship in this region is not limited to defense or cybersecurity (much of which is top secret anyway and therefore not useful for marketing purposes). Message: we led in software and biotech yesterday, we’ll lead in AI and robotics tomorrow.
At the same time, the federal presence can be a decisive advantage — if played right. To that end, the “company town” narrative that discourages potential investors needs to be replaced. The alternative message: All successful towns are company towns to one extent or another. Entrepreneurs don’t isolate themselves; they don’t innovate in vacuums. To the contrary, they position themselves in the most promising places where they can leverage powerful customers and funding sources. Such opportunism defines entrepreneurship. It’s why the Route 128 wizards want to be close to MIT, while Stanford was a big contributor to growth in Silicon Valley.

In part, then, the D.C. region has a selling job to do in order to excite out-of-region investors; the “on the dole” canard needs debunking. We say “in part” because Aberman’s study goes further, with specific recommendations on parlaying the region’s existing strengths — which include but are not limited to the proximity of federal support — into invigorated growth.

This “Greater Washington Model of Entrepreneurship” is about much more than building better mousetraps. It is about creating new business models that link innovative technology to local need. The model can be as simple as Cvent, a software-as-a-service (SaaS) event planning company that has succeeded because there are so many events in the Washington region that need to be planned. Uber doesn’t own exclusive rights to this kind of supply/demand thinking.

Cvent was acquired last month by Vista Equity Partners, a national firm. As Aberman emphasizes, M&A is an essential indicator of pandemic entrepreneurial thinking and robust small business growth. It is also the best trigger for getting venture capitalists to come calling. Of course, it is even better for the region when the acquirer is also local — so focusing area corporations in that direction is a top priority for local influencers like Aberman. Where indeed was Hilton Hotels, home-officed right there in Northern Virginia, when Cvent was up for grabs? Are there no events to plan at Hilton’s hotels?

“Greater Washington needs to integrate its larger and smaller businesses more similarly to how Silicon Valley or Boston operates — we must help connect larger companies such as Lockheed Martin or Hilton to startups in the area,” advises Aberman. “Incubators and local development organizations do some of this now, but the region will benefit from a neutral entity that can help larger companies find acquisitions or partnerships with startups.”

Needless to say, in the last analysis it’s all about jobs as well. After all, most new ones come from smaller businesses, whether they’re selling apps or apples.
May 5, 2016

The NFL Draft: Spectacle Requires Balancing Risks With Brand Strategies
On its face, the National Football League’s annual draft of college players ought to be a ho-hum affair. After all, it’s just a series of fairly mundane announcements confirming which players have been selected by what teams.

But the draft is anything but dull. The NFL and ESPN, its broadcast partner, have brilliantly turned it into must-see TV. April 28’s first round led all cable shows that night with 6.29 million viewers, easily besting the baseball, hockey, and basketball games on that evening. Just as spectacularly, the City of Chicago, the host of the multi-day event the past two years, has transformed it into “Draft-a-palooza” – erecting a “Draft Town” in Grant Park as a spring warm-up to Taste of Chicago and the Lollapalooza music festival.

Super Bowl trophies, tens of billions of dollars, and – perhaps most importantly – fan bragging rights are at stake. Complete with a ticking clock, glimpses of “war rooms” full of personnel experts wielding high-tech analytics, quick cutaway shots to thrilled (and sometimes dejected) players, and breathless instant commentary from analysts, the draft has become part corporate gamesmanship and part soap opera. The plight of Laremy Tunsil, the University of Mississippi offensive tackle whose draft stock fell in the wake of “character” allegations that may or may not be grounded in truth, made for compelling drama on draft night.

Fans’ preoccupation with the draft doesn’t end when ESPN signs off. On social media, as well as more traditional locations for discussing sports, i.e. around water coolers, cubicles, and backyard barbeques, we continue to debate our favorite team’s personnel moves.

Yet for all we think we know about the NFL draft, there are new methodologies going on behind the scenes that will have a profound effect on its future. An NFL franchise is, above all, a brand – and no ordinary brand at that, but one whose product and reputation is followed passionately by millions. As they consider draft candidates, NFL teams have no choice but to assess how that particular player will potentially strengthen or weaken the brand promise that clubs have made to their markets and constituencies.

Quantifying such an exercise is not an easy proposition, but PwC’s new Sports Intelligence Group (SIG) has already made substantial inroads. As documented by this Threat Landscape graphic, SIG helps professional sports franchises assess the risks posed to their brand, with selectees in the draft at the top of the list.

“Strategies surrounding talent evaluation and risk management are at the heart of why the stakes in professional sports are so high, and why the industry is constantly under such scrutiny,” Glenn Ware, Principal in PwC’s SIG, says. “Organizations that proactively mitigate threats and risks affecting their most valuable assets will be better positioned to secure success in today’s 24-hour news culture.”

Given the recent draft and the Tunsil situation, SIG offers assessments of the potential damage inflicted by “player misconduct” that’s generating the most attention. Twelve teams passed on Tunsil, considered by many the best prospect in the draft, before the Miami Dolphins took him as the 13th player selected in the first round. Maybe his cell phone truly had been hacked and certain photos were fabricated – or not. Either way, he lost millions in signing money. And the Dolphins may have acquired someone whose behavior off of the field could hurt their brand in South Florida and around the country.

If anything, America’s love affair with big-time sports is waxing, not waning. For proof, just look at the sports channels that have proliferated on cable and dish networks. Metrics are increasingly important in football, as they are in all sports, but the human elements of sheer talent and calculated risk remain imperative. Combining the right balance of instinct with the smart use of data analytics is the key to maintaining success on the field while intelligently managing risk and preserving brand reputation.

One thing is certain: At Taste of Chicago and Lollapalooza this summer, people will be debating the Bears’ draft picks while they wait for the next line-up and sip on their craft IPA. If past is prologue, soon they’ll be arguing over draft analytics and off the field intelligence gathering, ensuring that the NFL draft spectacle will never be ho-hum.
April 27, 2016

The Donald, The Bern And The Cell Phone: How Mobile Is Changing Politics
For those of us who prize civility and constructive debate in public life, the 2016 campaign cycle has been, well, pretty gruesome. But for those of us also fascinated by the ever-evolving tools used by candidates and the media to communicate and optimize interaction with voters, the 2016 cycle has been a revelation – and a revolution.

It is not an exaggeration to say that mobile technologies are transforming the face of American politics. Mobile traffic now surpasses desktop traffic in a dozen countries, including the United States. Campaigns are staying smart: They know that Google estimates more than half of all political searches occur on mobile devices, justifying Google’s new algorithm that prioritizes sites optimized for mobile devices over those fit for desktop visits. Digital and social media are profoundly altering how all election stakeholders – from the candidates on down to first-time voters – absorb and process political news and developments.

So we can call The Donald and The Bern the clear “winners” of the 2016 social media campaign, right?

Aaron Smith, an expert in campaign techniques at the Pew Research Center, maintains that the use of mobile technologies by political campaigns in this year’s election cycle rivals the Obama campaign’s breakthrough use of social media platforms like Facebook and Twitter in 2008. It is the ubiquity and far-ranging applications of mobile devices, and the speed and ease with which voters can access campaign messaging and media coverage, which make this cycle stand out.

Bernie Sanders has managed to raise record amounts of money at the grassroots level through aggressive use of text messaging. How? It took years of back-and-forth, but a company called Revolution Messaging finally obtained permission from the Federal Election Commission to deploy direct text-to-donate tools. Its primary client? Bernie 2016.

Mobile video ads have become a particularly big factor in 2016’s political equation. For the first time since such trends have been recorded, three political ads this winter ranked among YouTube’s 10 most-watched commercials. They were, in order, Bernie’s “America,” the (anti-Trump) Our Principles PAC’s “The Trump Tapes, Vol. 1.” and Cruz’s “Invasion.” Moreover, the Washington Post reported that in early caucus and primary states this year, YouTube’s reserved ad time – in other words, the placements that advertisers can buy on a reserved basis instead of through an auction – sold out, a clear signal that campaigns now recognize the urgency of using the YouTube platform to instantaneously reach voters on their cellphone screens. No wonder campaigns will spend some $300 million on online ads in the 2016 cycle, substantially more than they will spend on newspaper and radio ads combined.

Although YouTube remains across all demographics the most widely used video platform, Facebook accounts for an estimated eight billion video views a day. Facebook has also incorporated an added feature that enables videos to play automatically in a user’s newsfeed. For people in the business of politics, that is huge, because it increases the likelihood that a voter will see at least a portion of a campaign-authorized video while quickly scrolling past the video on their newsfeed.

Upstart mobile video applications, including Snapchat, are quickly catching up to older players, such as Facebook and YouTube. With a total of 7 billion daily video views, Snapchat has helped mobilize younger voters with its “Live Stories” feature, a tool that curates content from different users at one location and broadcasts highlights across the platform. Add that to Snapchat’s geotag filters – a popular advertising tactic that allows users to insert colorful overlays to their photos based on proximity to local, national, and global happenings – and it can directly boost a campaign’s appeal. Scott Goodstein, the chief executive officer of Revolution Messaging, credits the success of the Sanders campaign’s grassroots strategy to its unmatched embrace of new social media tools.

Further, as Fast Company noted, the Sanders campaign purchased Snapchat filters leading up to the Iowa caucuses, which offered “feel the Bern” as a photo frame for Snapchat users, spurring a sense of excitement among younger voters. The Sanders campaign’s Snapchat success explains in part why #feelthebern experiences an average of more than 2,000 retweets per hour, quadrupling activity related to Clinton’s #imwithher, which has an average of 425 retweets per hour.

All of these trends are reflected in the social media dominance of this cycle’s two most prominent anti-establishment candidates. According to data from SocialFlow, Twitter maestro Donald Trump’s organic reach across social media channels is the rough equivalent of some $380 million in paid advertising. Trump’s Twitter buzz, albeit much of it negative, has fueled huge audiences at his rallies and buoyed his earned media coverage.

So we can call The Donald and The Bern the clear “winners” of the 2016 social media campaign, right?

Well, not so fast. Correct the Record, a super PAC tied to Hillary Clinton, just established a new $1 million task force to counter critics who have gone after Clinton on Twitter, Facebook, Reddit, and Instagram. Unlike
eight years ago when her campaign was caught flat-footed, today the Clinton campaign has a strong online presence and a creditable social and digital following. Its tactics have just not been as engaging as Bernie’s.

So where do we go from here? The U.S. is not headed anytime soon in the direction of the real-time online voting proposal that Google submitted in February to the U.S. Patent and Trademark Office. That is too ambitious for a society still torn over voter identification issues. And it raises the specter of what recent headlines called Google’s “Search Engine Manipulation Effect,” a fear that Google may be unduly influencing elections around the world.

Social and digital media and the phenomenon of mobile video advertising are sure to be invaluable vehicles as we inch closer to November 8. If the GOP convention this summer is half as contentious as pundits predict, live mobile videos from Cleveland will be devoured by tens of millions, many of whom will be looking for a glimpse of the proceedings that the networks cannot – or will not – provide. An “amateur” Facebook Live or Snapchat practitioner can access people and places that “professionals” cannot.

Does this proliferation of social and digital media pose a threat to traditional media’s campaign coverage? Absolutely, but I am not suggesting that CNN, Fox News, and MSNBC will be shuttering their doors anytime soon. Social and digital media will never completely supplant the broadcast networks. But with millennial viewers in mind, the traditional outlets need to revamp their coverage to encompass elements that look and feel like “new” media.

The networks should get busy adapting to these realities. Think of the extraordinary leaps that have taken place in the use of social and digital media platforms between 2008 and this year’s cycle. Now think about what is in store for 2020 and beyond.
Panama Papers: Tech Companies Could Be Up Next
Having reached the ripe old age of two weeks (a near-eternity in the Age of Twitter), the Panama Papers saga continues to cause hearts to palpitate – and, presumably, checkbooks to snap shut – on six continents.

In the week-plus since I offered my initial prescription comment in these pages for those institutions and individuals that could find themselves embroiled in the Panama Papers, it has not been entirely clear how the next act of the story might unfold.

If activists have anything to say about it – and they do – we now have a pretty good clue.

Linking the controversy to the income equality gap in the U.S., Oxfam and other groups have begun clamoring for the government to crack down on technology companies that put a substantial portion of their earnings into overseas tax havens. Oxfam points to the Panama Papers as evidence that what it derides as “off-shore stashing” costs the U.S. treasury more than a $100 billion a year in lost revenue. Over the years, almost all our iconic tech companies, from “A” (Apple) to “Q” (Qualcomm), have put tens of billions of dollars into off-shore accounts. They also own numerous subsidiaries in countries considered tax havens.

U.S. tech companies aren’t alone, of course. Other multinationals across the spectrum, from manufacturing and financial services giant General Electric to the big pharmaceutical companies, engage in similar off-shore tactics, as do scores of others.

There’s nothing illegal or illicit about American companies sheltering income overseas. But there’s little doubt that the activist community is exploiting the Panama Papers controversy to push for an overhaul of tax laws to make it tougher on companies to engage in off-shore tax avoidance. Activists are making headway: They’ve succeeded in generating sensationalized headlines about U.S. tech companies “hiding a trillion dollars” overseas. During one 24-hour period last week, more than 190 million people worldwide were abuzz on Twitter about this issue. That dwarfs topics like GMOs.

Willie Sutton famously robbed banks “because that’s where the money is.” Twitter-era activists are targeting tech mega-companies in the fallout over the Panama Papers because that’s where the headlines, and the klieg-light glamor, and the social media tumult are – all of which leads to enhanced fundraising. Their smartly focused zealotry is not likely to fade anytime soon.

Activists aren’t the only ones hoping this drama has a third and fourth act. The International Consortium of Investigative Journalists, the Washington, D.C.-based group that with help from an anonymous whistleblower unearthed the Panama Papers, did yeoman’s work in coordinating research and reporting assignments for a year prior to the release. The consortium also did a masterful job in leveraging the release of the Papers. According to our sources, it is likely that, well beyond week three, the revelations and their repercussions will continue to grab notoriety around the world.

To bastardize Mark Twain, “a story that may or may not have adverse economic consequences, or be cause for alarm or remedial action, can travel halfway around the world while the truth is putting on its shoes.”

Twain would probably not have cared much for Twitter or for our Wiki-fueled world. Nor would it have shocked the sage of the Gilded Age that wealthy entrepreneurs are sheltering their income.
April 6, 2016

The U.S. Shoe In The 'Panama Papers' Case Is About To Drop
Almost lost amid the global tumult surrounding the release of the “Panama Papers” is this titillating fact: In the 72 hours since the story first hit, virtually no American institution or individual has been named or implicated in the myriad off-shore tax evasion schemes that lie at the heart of the controversy. That’s about to change.

Yes – some names are starting to surface, but as of this writing, none of them are particularly noteworthy. As a matter of fact, none of the people mentioned so far manage to fall under the classification of “high net worth” individual.

This will doubtless change in coming days, but for now, the big fish that are floating to the surface of the Panama Papers saga are bubbling up far from U.S. shores.

Why is the arc of the Panama Papers narrative shaping up in this way? We don’t yet know; but as a communications strategist, I can speculate that it’s because the International Consortium of Investigative Journalists, the Washington, D.C.-based entity that’s orchestrating the revelations, wants its story to have big second, third and fourth acts. This is theater, after all.

The surest way to guarantee sustained coverage is to hold more juicy exposés about iconic U.S. companies, prominent investors, name-brand celebrities and the white-shoe law and accounting firms that may have advised them to take advantage of certain off-shore accounts, in reserve for measured release. If organizations like the ICU learned anything from the mistakes made by Wikileaks in 2010, they learned that dumping mass quantities of data all at once, as Wikileaks did with the Iraq and Afghan War Logs revelations, leads to rapid audience fatigue and disinterest.

There’s also a distinct possibility that the U.S. authorities and regulators that have been approached by the journalistic consortium for comment have requested extra time to get their investigative ducks in a row. After the chilling effect the Department of Justice’s UBS case of 2009 had on the ability of U.S. high-rollers to squirrel their billions away in anonymous Swiss bank accounts, it stands to reason that the full weight of the DOJ scandal would be formidable. But in the context of the central themes that are driving the rhetoric of the Democratic Party presidential primary season, in the lead-up to the November general election – that is, that the U.S. economy is rigged in favor of the wealthy and the powerful – it could get downright dicey.

In a matter of minutes, the story could go from the wires to a Bernie Sanders I-told-you-so talking point – and then go totally viral from there, jeopardizing brand equity and tainting an institution’s reputation among customers, shareholders and employees, among many other internal and external stakeholders, not the least of which are law enforcement and regulatory officials.

Bernie Sanders’ barbs, no matter how toxic, may end up being insignificant compared to probes launched by the Department of Justice, the Securities and Exchange Commission, and the Internal Revenue Service, to name but three agencies.

What should U.S. companies and investors that may have availed themselves of the off-shore tax havens targeted by the Panama Papers be doing to protect themselves?

Plan for the worst. Get your messages and messengers lined up now – before the bombshells hit. Spell out your rationale in easily understood positions. Identify your key constituencies. Track the story hourly digitally and see how it is growing. Twitter-based tracking software, for example, can tell you hourly how a story is trending. Figure out your areas of greatest vulnerability and whose concerns need to be assuaged, first and foremost. Enlist third party champions to put the story in perspective.

Crisis abhors a vacuum and if the only people talking are the motivated adversaries, the story will only be seen in the worst possible light.

Certain companies may want to “go public” now – before the consortium’s bombshells hit – to try their best to shape coverage and control the fallout.

Compelling cases can be made that off-shore tax havens are not only legal – they’re desirable, for a whole host of economic and business-savvy imperatives. But understand: The incentives of cash starved regulators looking for revenue and the “optics” of off-shore investing, especially in a campaign season gripped by the recrimination surrounding income inequality, could be radioactive.
March 30, 2016

Are Google, Apple And Amazon Europe's New Villains?
Google got the lion’s share of attention last April when, after prolonged negotiations, Margrethe Vestager, the European Commissioner for Competition, issued a “statement of objections” with respect to Google’s purportedly diverting traffic to favor its own comparison shopping sites. Google’s exposure is significant; potentially more than €6 billion. The company would have to rethink its search practices, and therefore its entire European operation, if it cannot placate the regulators.

The case is seen as the biggest antitrust case (at least in the tech sector) since Microsoft’s Armageddon of the 2000s. Yet Vestager has also been busy on other significant fronts. Indeed, one separate prong of her agenda may ultimately prove the most significant on a long-term basis as it certainly affects businesses in all industries. Here, among other examples, the EC is looking into Apple’s low-tax arrangements in Ireland and Amazon’s in Luxembourg – the idea being that favorable tax breaks can create un-level playing fields.

“If one company has higher costs and another company has lower costs solely because of aggressive tax arrangements, then you have a problem,” said Vestager. Here too, Google is under siege; earlier this year, Vestager announced that she might investigate a $1.85 billion tax settlement reached with the U.K. The scenario has ideological undertones, pitting the aggressive regulator against Prime Minister David Cameron’s conservative regime.

It must be emphasized that, while the U.S. tech giants have been getting the most attention, all global companies are sorely affected. To wit: Vestager has already ordered Luxembourg to recover about $34 million in unpaid taxes from Fiat. The Netherlands has been directed to recoup about the same amount from Starbucks. Vestager likewise wants Belgium to claw back about $765 million from some 35 companies, including Anheuser-Busch InBev.

Dr. Frank Montag, a Brussels-based partner at Freshfields Bruckhaus Deringer, explains that, according to EU “State aid” law, tax considerations extended by an EU member state can be prohibited state subsidies if they provide multinationals with preferential treatment over national companies. For example, excess profit exemptions for multinationals as in Belgium raise red flags, adds Montag. High-interest loans to a European branch of a company by another branch based in a low tax country are likewise on the regulatory hit list as those high interest rates reduce taxable profit margins for the European entity even as the money still stays in the corporate coffers.

“I am quite confident that the EC will only be applying and enforcing the State Aid rules with greater frequency to preferential tax rules going forward,” says Montag.

European antitrust regulators thus have a powerful tool in their arsenal; for businesses, tax breaks that seem to be pure windfalls may really be ticking time bombs. Meanwhile, Vestager’s actions have resulted in a complex and sensitive political dynamic via-a-vis the U.S.

On the tax end, it’s likely all welcome news to American liberals apoplectic about corporate tax windfalls of any sort – while conservative interests, including the National Association of Manufacturers (NAM), want to push back against the country-by-country reporting that State aid law entails.

In other areas, the U.S. and the EU may have even fewer interests in common, especially where Vestager’s campaign has ignited concerns in the U.S. that she and the EC are using competition law to, in effect, stifle competition. President Obama himself voiced precisely that concern, urging the EU against “commercially driven decisions” that target American competitors.

“President Obama’s statement underscores the gravity of the potential threat to U.S. tech companies in Europe,” says Eliot Edwards, Director of Public Affairs & Government Relations at Aspect Consulting, a strategic European corporate communications and government relations agency based in Brussels. “U.S. tech firms seem to be in continuous fire-fighting mode in Brussels, from antitrust probes and competition issues, on the one hand, to disputes around privacy and sweetheart tax deals, on the other. They have little choice but to come to an accommodation with Vestager, for the lifespan [expiring in 2019] of the Jean-Claude Juncker Commission at least.”

That said, U.S. companies do certainly have strategic weapons at their disposal. They need to “urgently join forces with bona fide European stakeholders and more cannily leverage whatever political support they have on the ground in individual member states,” says Edwards, especially if the U.K. exits the EU. In that event, “you can bet your bottom dollar that U.S. companies will face even more problems in Brussels as the Brits would no longer be a moderating influence on some of their more protectionist counterparts.”

Vestager, in turn, insists that her actions are not protectionist; that, in fact, they were prompted, at least in part, by complaints from American companies, notably Microsoft. It’s an interesting position for Microsoft, which was the target of EU competition initiatives in the past. “There’s
a long backstory that explains why Microsoft now acts as it does,” says Edwards. “The most glaring difference between Microsoft and Google is that the former has been quick to learn lessons the hard way and, as a result, now boxes clever in Brussels, although, in all fairness, Google has become more sensitive to the cultural peculiarities at work at the EU level in recent months.”

In any event, the political tensions will simmer as long as major cases like Google drag on. And new cases of considerable magnitude are being born every day. For example, in a separate matter brought against Google, it will take years for European regulators to investigate whether Google violated the law by pre-installing Android smartphones with the apps and services that allegedly provide an unduly favorable advantage. Meanwhile, the agreement on the huge search case reached with Google in February 2014 – and hailed by then-European Commissioner for Competition Joaquin Almunia as “far-reaching and creat[ing] a level playing field across Europe” – was never finalized. That agreement included harsh penalties but protected Google’s secret algorithm from regulatory oversight. Vestager, who succeeded Almunia in 2014, now says the EC needs more data to get a “comprehensive” picture, not just Google’s version.

Frank Montag points out that – while Google was perceived by the regulators to have been biding its time as much as possible in order to avoid making changes for as long as possible – there has also been much criticism of the EC for reaching too many settlements.

“Absent final decisions in significant cases, there can be no reliable guidelines – and what businesses need most is predictability,” says Montag. Meanwhile, Vestager has become a veritable regulatory celeb. (She’s the inspiration for the popular Danish TV show Borgen.) Vox populi being vox populi, one can safely assume she’ll stand firm against perceived corporate Goliaths, upping the ante wherever she can.

Yet Montag, for one, praises her consistency and transparency. “American businesses need to remember that European Commissioners have cabinet-level rank; they are responsible for all EU policies from foreign affairs to agriculture, not just narrow regulatory issues,” he says. “In Europe, Vestager has a profile similar to what the Attorney General has in the U.S.”

For even the most judicious politician, however, the hero’s role is hard to resist. For U.S. companies, especially those that still like to think of themselves as feistily iconoclastic, the villain’s role is hard to swallow.
March 10, 2016

Donald Trump's Latino Problem: It's One Alienated Voter Segment Too Many
Amid the vitriolic anti-immigration rhetoric and its accompanying ethnic insults, a quick glance at the primary data thus far suggests that, when a whole sector of the population is attacked, it tends to fight back.

The U.S. political landscape has changed. Establishment messages from establishment figureheads are not going to significantly sway the vote, at least not this year. If power in shaping this election lies not in the establishment, but in vox populi, that’s good news and bad news for Donald Trump.

Trump’s bad news lies in the ongoing rise of the Latino voting bloc: from 23 million in 2012 to 28 million in 2016, when Barack Obama reaped the tangible benefits of their goodwill.

There are 58 million Latinos in the U.S. By 2050, they will comprise nearly a quarter of the entire population. Of the 28 million eligible to vote, nearly half are Latino Millennials. Every 30 seconds in the U.S., a Latino turns 18. Moreover, as a natural response to stepped-up initiatives against illegal immigrants, naturalization applications have increased by 11% from fiscal year 2014 to 2015. There are 8.8 million legal U.S. residents eligible to naturalize. Of these, roughly 1.2 million are Latino.

The political significance cannot be understated as a unified Latino electorate could drive many millions of votes to the candidate – most likely Hillary Clinton – who ultimately runs against Donald Trump, at this point the presumptive GOP nominee. In states like Colorado, the impact was already felt at the Presidential level in 2012 when President Obama won 75% of the Latino vote, an increase from the 61% percent Latino vote he garnered in 2008. That’s all the more impressive, considering that Colorado’s Latino electorate only increased one percent, from 13% in 2008 to 14%, in 2012.

The next four months will see eight more primaries in states where Latino voters make up more than 10% of the voting population. In Arizona and California, that figure is above 20%. In New Mexico, it’s more than 40%. At the same time, the National Association of Latino Elected and Appointed Officials Education Fund is projecting for 2016 a 9% jump in Latino voter turnout over 2012. These numbers could well increase as the push to mobilize Latino voters continues.

The Latino community will be the game changer come Election Day as it was in 2012. It is likely too late for the GOP to stop Trump, but there’s an invaluable lesson here for the mid-terms that needs to be learned right now. And, for Hillary, well, the stakes couldn’t be any higher. You know the old saw: Those who ignore history are doomed to repeat it.
March 8, 2016

Toyota, Takata, Tepco: The Problem Is Ethos, Not Ethics
Perhaps no other phrase defines traditional Japanese crisis management so eloquently. Pride and shame play an outsized role in Japanese corporate decision-making. It is a noble tradition in which everyone from the CEO on down bears a personal responsibility for the behavior of their organizations.

At the same time, it’s a corporate culture that presents unique challenges. Japanese companies that have found themselves in public crises – Takata, Toyota, Honda, GS Yuasa, Tepco (in the wake of Fukushima) – are hindered by a culture particularly ill-suited for the fast pace, transparency, and high-accountability of today’s westward-facing crisis management.

Despite rapid and widespread globalization, most Japanese companies, with only a handful of exceptions, have been slow to understand how crises unfold and are effectively handled in other parts of the world. As a result, they defer to norms that have endured for thousands of years – often to their extreme detriment.

There is nothing like a dose of reality to shock a corporate culture into action and build the strong relationships capable of making quick decisions when necessary.

In this context, such companies are not cold corporate entities indifferent to customer safety; they are, rather, victims of their own historic culture. That culture made Japanese companies the envy of the industrial world for more than half a century – but now serves to inhibit these great companies in their efforts to manage crises not only outside Japan, but sometimes in their own home market as well.

A cultural aversion to open disagreement, especially between people in the same company, further dis-incentivizes employees to come forward when problems arise. When an issue does finally grow large enough to warrant an internal discussion, there is great reluctance to criticize one’s peers. Again, it is a venerable tradition, but one that stands in the way of transparent conversations about the future.

As a result, constructive but critical insights are reserved for post-meeting e-mail exchanges that deal with key issues one at a time, and that dramatically slow the decision-making process. Here is likely one reason why, in recent instances, product liabilities weren’t adequately addressed for sometimes as long as a decade after first being detected. The problem isn’t ethics; it’s ethos.

Having grown used to the insular Japanese media, regulatory, and B2B environments, Japanese companies assume that time is on their side. As a result, they bring an eastern approach to crises impacting millions of western individuals and numerous western business interests. They pay huge prices in lost market share, slumping share prices, expected regulatory penalties, added government scrutiny, increased competition, and significant blows to the sense of corporate pride that such companies work so hard to inculcate in their own people.

The fear of shame means that settlements with regulators – even offers that represent a fraction of the original burdens that agencies could have imposed – are usually avoided at, well, all costs. Regulators know this. They know that, in dealing with Japan, the charge is almost as good as the verdict.

Moving forward, Japanese companies with Western interests need to react faster and with greater accountability when crisis strikes. Fundamentally, that means relying more on those in the company who understand their foreign markets and the expectations that govern those markets.

At a very basic level, it demands that crisis teams must be led and empowered where the problem exists, and not in the Tokyo headquarters. When Tokyo directs a crisis, time zones work against the company and, at best, ensure delays, which, in turn, lead to missed opportunities.

More cross-silo cooperation is also needed, particularly between the communications and legal teams, so that threats to the brand and reputation can be accurately assessed in real time. When I am in Japan, I’m still surprised by how few corporate lawyers and corporate communicators work together as a matter of course. Because they have no history, there is no trust between teams that bear equal responsibility for the company’s well-being.

Opportunity is lost while one silo vets solutions proposed by other silos. Those who must commandeer the crisis response are stuck mediating between conflicting factions. All the crucial benefits that accrue when a single team works on preparing and implementing solutions are lost. Often, the reputational damage is done before the defense even takes the field.
Japanese companies are further well-advised to use peacetime – those blessed months of business as usual – to hone their resources; for example, to practice crisis response in lifelike role-playing scenarios. There is nothing like a dose of reality to shock a corporate culture into action and build the strong relationships capable of making quick decisions when necessary. Now is the time to break down barriers and build internal trust. Once the crisis strikes, it is too late.

Finally, there is a strong case to be made for having executives spend more time abroad as they rise through the ranks. They deserve opportunities to become comfortable with different markets, particularly the U.S. and Europe. China sends a million students to be educated in the West every year. Japan needs to be just as aggressive with its rising executive class.

As an American and a businessman, I so admire the ethical instincts that define Japanese business. But as crises happen faster and more frequently, as they play out more on global stages, the game is increasingly governed by western rules. It is far better to learn those rules now rather than to allow great companies to crumble for the sake of pride or deference, however genuinely felt.

Old habits, rooted in centuries of rich tradition, are hard to break. But if Takata, Toyota, Tepco, and other recent examples have taught us anything, the lesson is that time is not a luxury – and that the acceptance of a little shame now, by both the employee and the company, is often the best way to save face over the long run.

There’s another Japanese proverb that should offer the Japanese better guidance at this juncture. Ryoooyaku Kuchi ni Nigashi. Translation: Bitter pills may have welcome effects.
The Pay Ratio Rule: Businesses Face Unprecedented Executive Pay Disclosure Burden
If anything, 2016 is shaping up as a sort of perfect storm. Democratic frontrunner Hillary Clinton, under pressure from challenger Bernie Sanders, made executive pay a rallying cry in 2015 and will likely intensify the clamor as she seeks to differentiate herself both from Republican competitors and a surprisingly resilient Sanders.

Meanwhile, politicians and activists are increasingly tying executive pay to another hot-button campaign issue, the minimum wage. It’s no longer just modest-profile, grassroots groups such as The Other 98% beating that drum. Organizations with budgets large enough to make themselves heard are increasingly joining the effort. In late 2015, The Economic Policy Institute ran paid ads on Google under the keywords “CEO pay” and “CEO wages,” linking searches to its well-publicized report, “CEO Pay Continues to Rise as Typical Workers Are Paid Less.” Earlier, the organization’s video, “Runaway CEO Pay in 30 Seconds” garnered 25,000 views on YouTube.

The 11.6 million-member AFL-CIO, with 69,000 Twitter followers and 161,000 Facebook likes, has made the issue a key part of its campaign. Search the term “CEO pay” on Google, and see what pops up in first position: The AFL-CIO’s eye-catching page “Executive Paywatch” features animated figures furiously toiling at a variety of tasks, juxtaposed with bold numbers showing how many hundreds or thousands of hours those workers must clock to earn the equivalent of a single hour’s pay for CEOs of various publicly traded companies. In fact, Internet searches reflect increasing focus not just on high CEO pay, but comparing what they earn to the earnings of rank and file employees. In 2015, Google searches for the keywords “CEO pay ratio” spiked 50% to an average of 720 per month. In the digital age, search prominence equals control of the conversation—meaning that advocacy groups and other critics, not companies, may increasingly shape the narrative on CEO compensation.

Amid this inflammatory climate, publicly traded companies in 2016 must turn their attention quickly to the new “pay ratio” reporting mandate stemming from Dodd-Frank legislation. Although the rule doesn’t kick in until 2017 (with reporting due in 2018), calculating the simple-sounding ratio – CEO pay divided by the annual median salary of all other employees – will actually entail herculean bookkeeping for large, diverse companies. According to the rule, these companies must factor in salaries, not just of full-time staff, but all part-timers, temps, and seasonal workers, both in the United States and abroad. It’s a process that companies with subsidiaries, divisions, and departments scattered across the world (in all likelihood unaccustomed to reciprocal communications) simply can’t afford to undergo in terms of the real time investment required.

Yet even more important than the logistics, consider the outcome once the numbers are finally juggled: the pay ratio rule will effectively provide critics with a potent new weapon to shame individual companies they see as bad actors. It’s like digging your own grave in the hot summer sun.

We’re talking about something of potentially greater significance than Say on Pay, the requirement since 2011 that companies allow shareholders to vote up or down on CEO salaries. Not that Say on Pay hasn’t itself caused a sea change. While shareholders vote with management recommendations more than 90% of the time, and their votes are advisory rather than binding, there is some evidence that Say on Pay is causing companies to rethink compensation policies. According to the Wall Street Journal/Hay Group’s most recent study, CEO salaries and incentives rose 4.1 percent in 2014, while total shareholder return jumped 16.6 percent. Increasingly, the study found, “shareholders’ views are being heard.”

But now the pay ratio rule ups the ante as the views aired won’t be from individual shareholders but from louder, more tendentious voices on the hunt for suspects to exemplify their narrative all about corporate greed. “The numbers may be used to embarrass companies or CEOs,” as Charmaine Slack, a New York-based partner in the executive compensation practice at Jones Day, succinctly puts it.

Heretofore, comparisons such as those on the AFL-CIO site only needed to compare an individual CEO’s pay against impersonal national statistics. Pay ratio adds a new element, directly revealing how much a top executive earns in relation to his or her own flesh-and-blood employees. The results, however debatable their relevance, can have potentially powerful consequences for employee morale as well as in the larger public debate.

So companies have all the more reason to act now, not just gathering the necessary numbers but strategizing how to tell their compensation story to diverse stakeholders. “Getting a comfort level up front avoids potentially having a crisis on the back end,” Slack says. “It’s about a company being able to put things into context and telling its story, explaining the numbers.”

A struggling company may, for example, need to staff turnaround specialists. “If you needed to frontload or backload their salary to get them on board, and the company was in a really poor performance position,” explaining these contingencies clearly and openly “might help explain numbers that might seem extreme or out of the ordinary,” Slack advises. “That might all be part of your compensation disclosure, folding in the pay ratio and putting things in context.”
Some business groups criticize both Say on Pay and the pay ratio rule as too onerous; indeed, they bewail the whole harsh spotlight on pay as generally unwarranted. Unfortunately, these corporate arguments, their actual merits notwithstanding, don't get much traction these days. Indeed, prominent observers such as Sarah Anderson of the Institute for Policy Studies sense a fundamental shift in the national conversation on executive pay. “For so long, those executives had been seen as supermen who deserved that much more because they were so brilliant,” she says. “I think the financial crisis was a turning point.”

If anything, Anderson sees room for more regulation, not less, in the years ahead. Tops on her personal target list: a combined $3.2 billion in tax-deferred savings set aside for the retirements of Fortune 500 CEOs. “It’s typical for companies to set up tax deferment accounts for executives with no limit on what can be set aside,” Anderson says. “Average workers who are lucky enough to have 401(k)s have very strict limits on what they can put in each year. Why a special tax avoidance strategy for people who need it the least?”

The approach that clearly won’t work for public companies is to lay low and hope the storm blows over. Instead, the best defense for companies is proactive:

Commit to performance. Nobody cares that CEOs work hard. What they do care about are profitable results for all constituents, including workers. Committing to performance means expanding the definition of that term way beyond just stock price. The best corporate managers seek evaluation against many criteria. Have executives provided excellent returns on invested capital? Have they strengthened the company’s ability to acquire other companies? Have they created jobs?

Avoid legalese. People want to be spoken to clearly. They appreciate straightforward information. Attempting to mask pay practices under a cloud of jargon and statistics no longer fools investors, regulators, reporters, or consumers. It will only heighten suspicion and jeopardize the trust of those whom the company relies on for success. Clarity runs hand in hand with telling the truth, honestly and openly.

Do your homework. Take the time to listen to your critics. Understand their strategies, tactics, and targets, as well as the fact that what is driving them does not have to be a zero-sum game. Look for opportunities to be the white hat in the debate.

Be real. Leadership is about what you do, not what you say. Implement policies that position you as a visionary on compensation and benefits issues. The more you do now, the less you defend later.
January 26, 2016

Big Decision Time For Business As Cyber Security And Privacy Collide Again
It’s one of those events where the major issues of our day get writ large even as so many sundry devils lurk in the details.

Last December President Obama signed into law new cybersecurity measures that included the Cyber Security Information Sharing Act (CISA). The legislation, motored in Congress by concern over the high-profile breaches at Target, Home Depot, the Office of Personnel Management, and elsewhere, incentivizes private industry to share cyber threat information with the Department of Homeland Security by providing liability protections, as well as trade secret protections, for participating businesses. No charges or actions (including antitrust actions) can be brought against businesses based on specific activities authorized by CISA, while CISA also exempts shared information from FOIA disclosures.

Every industry has a dog in the fight, and not just to keep their data secure. There’s a real brand and reputational challenge at hand.

The data to be electronically shared includes malicious computer codes, security vulnerabilities, specific damages caused by past incidents, and procedures undertaken to interdict or mitigate known or suspected threats. Additional information for sharing will be identified by the government in the coming months. Importantly, participating businesses must remove all personal information before sending it to DHS.

While the guarantees of protection to participating companies are legally mandated and purportedly inviolable, privacy advocates and some business interests are still wary. Among the criticisms now percolating:

First, it’s been observed that CISA proponents cannot actually point to a single recent breach, high-profile or otherwise, that this program would definitely have prevented.

Second, protections extend to companies that share information with the Department of Homeland Security – but there’s the concern that DHS could then provide data to other entities like the NSA, which, as you may recall, aren’t always reliably committed to privacy rights under any circumstances.

Third, companies may feel compelled to participate in the CISA sharing program because, if they don’t, they can miss out on potentially valuable cyber threat information that their competitors – who do participate – openly exchange and benefit from. As such, there is at least some de facto coercion to participate.

Conversely, there is the concern that participating companies have about their own data being protected. “As forthcoming guidelines are issued, we will know more about the risk of a participant’s information falling into the hands of a competitor,” says Jo Cicchetti, co-chair of the Data Privacy and Cybersecurity Task Force at Carlton Fields. “It is worth noting, however, that, along with protections for trade secrets and intellectual property rights, CISA permits an entity that shares information under the Act to designate such information as the commercial, financial, and proprietary information of that entity.”

Its reservations notwithstanding, “the private sector has long clamored for the types of protections provided by CISA. The Chamber of Commerce, for one, supported passage of the bill,” according to Joseph Swanson, also Data Privacy and Cybersecurity Task Force co-chair at Carlton Fields. Indeed, businesses in certain sectors are already actively involved in Information Sharing and Analysis Centers (“ISACs”); CISA explicitly does not limit or modify such existing information-sharing relationships, nor does it prohibit new ones. But it does represent a critical next step as this is the first time such a broad digital information-sharing process, albeit voluntary, has become the law of the land.

Given the level of marketplace demand for a beneficial public/private partnership, “we expect that many businesses will react positively to passage of CISA,” says Swanson.

No doubt the debate as new guidelines are rolled out will be especially critical to those specific industries that have much to gain by participating or possibly much to lose if they don’t. (Swanson points out that some of those industries, such as utilities, healthcare, and financial services, already maintain ISACs to track cyber threat indicators and share information regarding defenses.)

For instance, CISA has certainly led to much discussion within the healthcare sector, which is not surprising since a separate section of the bill deals directly with that industry. This section mandates an industry task force focused on healthcare security issues and calls for a plan to ensure a single source of practicable threat-related data, available at no cost to all healthcare organizations. The attractions of such an accessible resource, and potentially of many other initiatives mandated or inspired by CISA, could prove irresistible to industry members.

Actually, every industry has a dog in the fight, and not just to keep their data secure. There’s a real brand and reputational challenge at hand. “CISA’s passage may contribute to an expectation by customers, employees, and the plaintiffs’ bar that companies will, in fact, share and act on received information in an effort to stave off cyber-attacks,” says Cicchetti. “Where a company does not engage in information-sharing...
under CISA, or fails to respond to information it receives, and that company later experiences a breach, critics – and litigants – armed with the benefit of hindsight, may use that company’s inaction against it.”

Such challenges for business only underscore the importance of the next several months, during which federal agencies will be tasked to develop further guidelines and logistics. To do so effectively, these agencies must prepare to respond to each and every concern raised by the privacy mavens. Therein may lie the real historical significance of CISA.

After all, there’s a larger debate going on in our world, which hinges around the equally compelling priorities of security and privacy; of our survival as a society, and of the basic human rights that make surviving worth the bother. CISA in and of itself will not, of course, resolve those mega-issues, yet it does at least provide one more opportunity to thrash out the issues, to find workable common ground among competing interests, and to begin to define best practices that can keep us both freer and safer.

Considering the passions that drive the discussion from both the security and privacy directions, I am not overly confident that that ground will soon be reached. But every honest conversation gets us one baby step closer.
January 15, 2016

Three Fights That Will Decide Super Tuesday For The GOP
Three Fights That Will Decide Super Tuesday For The GOP | January 15, 2016

With the first Republican presidential primary debate of 2016 in the books, the race to Super Tuesday has begun in earnest. On March 1, voters from twelve states will cast ballots and cut the slate of viable candidates from seven to three.

Between now and then, 45 days of campaigning, four early primaries, and three big fights will decide who those three candidates will be—and how they will be positioned for the stretch run. We already know two of them. Who is the third?

The Main Event: Trump vs. Cruz

Last night’s debate was the continuation of a week that saw sharp attacks exchanged between the Iowa frontrunners Donald Trump and Ted Cruz. It was also a sign of things to come as the two duke it out for the campaign’s first big prize.

There’s more to the attack than Jeb’s frustration with being skipped in line for the White House for a second time

Trump holds double digit leads in New Hampshire, South Carolina, and Nevada; so a loss in Iowa wouldn’t be the death knell that the Party establishment once hoped to see. But make no mistake, a candidate all about “winning” doesn’t want to take a loss right out of the gate. Moreover, a clean sweep of all four early primaries would give Trump all the momentum heading into Super Tuesday and a comfortable delegate lead from which to absorb some likely losses in the south on March 1.

Six of Super Tuesday’s twelve contests take place in southern states with heavy delegate counts. That’s where Cruz’s support is strongest; so a loss in Iowa wouldn’t mortally wound him either. But no Republican in this century has won the nomination without winning at least one of the first four primaries—so Cruz needs Iowa if he wants to avoid testing an ominous trend.

Expect Trump to continue hammering Cruz on fringe issues ranging from his citizenship status to a questionable loan taken from a big bank he’s criticized repeatedly on the campaign trail. At the same time, look for him to play up assets that Cruz currently lacks—including big leads in the other three early primaries, the “outsider” advantage, and a firm grip on the anger vote.

Expect Cruz to double down on his characterizations of Trump as an out-of-touch billionaire whose “New York values” don’t jive with those of Iowa Republicans (or many Republican below the Mason Dixon Line). Also, look for Cruz to make the first real stand against Trump’s fast and loose use of facts and figures, his inexperience, and his electability.

Trump was loudly booed for the first time last night during the discussion of Cruz’s citizenship. That may be the moment of vulnerability that finally emboldens the field to start attacking him. Then again, we’ve thought we’d come to that line time and time again before. Courage anyone? If those attacks do come to fruition, no candidate has more to gain from testing the waters than Cruz.

The Undercard: Rubio vs. the Governors

A few minutes before last night’s debate began, Fox Business viewers were treated to one of the campaign’s first attack ads. It came from Jeb Bush and called out Ricky Rubio for his stance on amnesty for illegal immigrants and a perceived penchant for D.C.-style flip-flopping. There’s more to the attack than Jeb’s frustration with being skipped in line for the White House for a second time (first it was his little brother, now it’s his protégé).

Rubio is the establishment’s frontrunner in all four of the early primaries; but his lead is far from insurmountable for the other three candidates seeking the establishment’s stamp of approval; Bush, Chris Christie, and John Kasich.

Rubio’s support stands between 13 and eleven percent in each of the early primaries, meaning an instant jump into double digits for any of the governors who might be successful in siphoning off his support. The undercard bout to come isn’t about winning in Iowa, New Hampshire, South Carolina, or Nevada; it’s about showing well enough in each of these contests to coalesce establishment support (and money) around one candidate whose name won’t be Trump, Cruz, or Carson—and doing so in time to make a real impact on March 1.

Expect an aggressive anti-Rubio campaign from all three of the governors over the next 45 days. Bush’s attack ads will increase in volume and vitriol. Christie – already quoted as saying Rubio “can’t sleaze his way into the White House” – will step up the rhetoric and continue attacks on Rubio’s ineffectiveness in the Senate. Even Kasich will come to realize that his record in Ohio isn’t enough to get him over the hump. He will have to take the gloves off at some point and Rubio will be the target. All three will look to lock up establishment support by vying to be Hillary Clinton’s harshest and most effective critic.

In response, expect Rubio to spend more of his war chest playing defense than he would prefer. The party establishment is smart enough to know that it has to come together around one candidate sooner than later—and Rubio is still the likely option. But that all depends on
how effectively he drowns out Bush, Christie, and Kasich in their push
to unseat him as the candidate with the experience, policy chops, and
widespread appeal to beat the Democrats in the general election.

The Wildcard: Carson’s Delegates Up for Grabs

For six months, the big question has been who will scoop up Trump’s
voters upon his inevitable decline. That decline hasn’t materialized, and
doesn’t look likely any time soon. Meanwhile, Ben Carson is in free fall.
Once running neck-and-neck with Trump, he is down to nine percent
support in Iowa and South Carolina, six percent in Nevada, and under
four percent in New Hampshire. Maybe it wasn’t an apple Isaac Newton
saw after all that confirmed the force of gravity.

The biggest beneficiary to date has been Ted Cruz, whose rise has
corresponded in lock-step with Carson’s demise. Cruz has effectively
defined himself as the electable evangelical among Republicans; but
his brusque manner and harsh campaign style have left a lot of Carson’s
votes on the table.

Like Icarus before him, Carson’s inevitable decline will continue (his
debate performance will only accelerate it). Will Cruz keep reaping the
rewards? Or will another candidate emerge who can talk religion and
values like Cruz, but walk the walk with greater effect? Carson’s early
success demonstrates that the evangelical vote remains a mainstay in
Republican politics. The candidate who fills the vacuum left in Carson’s
wake stands to make big gains in the run up to Super Tuesday.