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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
The incoming administration’s ultimate impact on defense contractors is sure to prove more complicated than Wall Street’s post-election euphoria. Since President-elect Donald Trump’s unexpected victory on November 8, no sector has benefited more from the uptick in stocks than the defense industry. The stock prices of major defense-related companies, on average, have rallied some 6%.

Investment analysts are bullish on defense stocks because candidate Trump vowed, as pillars of his “Make America Great Again” platform, to boost national security spending, buttress U.S. manufacturing, and slash corporate income tax rates. With Republicans controlling both sides of Capitol Hill, prospects are good that defense spending will climb – and in a hurry.

But before defense and aerospace lobbyists begin popping champagne corks, they should take a careful look at Trump’s tweeting proclivities and what they say about his mindset. Since Election Day, Trump has gone out of his way to be prickly toward big-dollar projects. Observes Patrick M. McCarthy, a defense policy specialist at PwC, “As has been telegraphed by the president-elect, it is likely that project cost overruns will be highly scrutinized.”

First Trump skewered aircraft maker Boeing for supposedly running up costs on the new Air Force One after Boeing’s CEO urged the president-elect to reassess his opposition to the Trans-Pacific Partnership. “Boeing is building a brand new 747 Air Force One for future presidents, but costs are out of control, more than $4 billion, Cancel order!” Trump tweeted in early December.

Then he upbraided Lockheed Martin over alleged cost overruns on the F-35, the Joint Strike Force fighter plane. “The F-35 program cost is out of control. Billions of dollars can and will be saved on military (and other) purchases after January 20th,” Trump tweeted on December 16.

A week later he was back at it, hectoring Boeing to price out a comparable aircraft in response to the “tremendous cost” of Lockheed Martin's F-35. Trump's barbs pricked the stock prices of both companies but each has recovered.

Although Trump’s grasp of strategic and procurement realities may have left something to be desired, his tweets have nevertheless sparked legitimate questions about whether taxpayers are being well served by these projects. His criticisms have also served as a wake-up call to defense companies that might find themselves on the business end of a presidential tweet.

Defense companies cannot afford to stay on the defensive when it comes to demonstrating their value to national security. Having a career CEO instead of a career politician in the White House may compel defense companies to alter their approach to selling. In contemplating cuts, the new administration likely will look first at big-dollar targets.

Defense contractors, therefore, need to aggressively communicate the value of their products and services – to national and homeland security, to communities, to military personnel and their families, and to local jobs and growth.

If a defense contractor doesn’t tell its own story, competitors or detractors will tell it for them. Especially in an era when “fake news” has become pervasive, defense companies need to exert maximum control over their own narratives. They provide life-saving services that too often get taken for granted. Defense companies need to begin communicating now with stakeholders, enlisting allies and empowering champions, particularly in an era when wars are won with intelligence and highly focused strikes.

The nomination of retired Marine (USMC) General James Mattis as Secretary of Defense may portend a couple of possible trends that defense companies should factor into their planning, predicts PwC’s McCarthy. “It is likely that General Mattis will seek to trim the Department of Defense’s (DoD) reliance on contractors for the performance of life support functions. Marines travels lean and mean and General Mattis will no doubt bring that thought process to DoD.

“Second, I would expect General Mattis to push hard for innovation in virtually all areas where DoD expends funds. Innovation is a key component of every USMC officer’s DNA; therefore, one can expect this sort of approach to accompany Mattis’ ‘assumption of command.’ What this could mean for contractors is DoD’s greater use of non-US Navy ships to move and house US military personnel and equipment around the world’s oceans, greater reliance on sustainable autonomous and semi-autonomous weapons systems, and similar innovative approaches to maintain fire power and reach, at less cost,” McCarthy says.

Trump has also threatened to disrupt global security alliances, NATO among them – eventualities that could hamstring defense and aerospace companies. International trade and travel will suffer if
agreements that affect the cost of key components are overhauled or displaced.

Yes, defense spending is almost certain to increase in 2017 and beyond. But with it comes increased pressure on defense companies to demonstrate their value to the new administration. Now is the time for defense contractors to add concerted communications to their arsenal of weapons.
January 14, 2017

Forbes: The Feds Move On VW: Does Fiat Chrysler Get The Message?
The timing is exquisite if not intended. On Thursday, the EPA accused Fiat Chrysler of knowingly using software that enables its diesel trucks to circumvent emissions tests.

It was a mere one day after federal prosecutors announced they’d filed criminal charges against six Volkswagen executives for committing the same crime.

Fiat Chrysler denied the allegations and said its software does comply with regulatory requirements. For Volkswagen, the denial train is long derailed. U.S. regulators started looking at Volkswagen early in 2014 when a West Virginia University study revealed that its diesel cars pollute far more after than during emissions tests.

VW responded obstructively, providing false information for more than a year to the California Air Resources Board as well as the EPA. The company has admitted, for example, that its employees destroyed emails and other evidence in 2015. “When a publicly traded company destroys evidence, it might as well wrap itself in the deadliest form of catnip,” says Rachel Cannon, a litigation partner at Dentons and former federal prosecutor. “Both prosecutors and judges will be overwhelmingly tempted to view its actions as an assault on the legal system.”

At the same time, presumption of innocence is a golden rule where I come from and right now it applies to Fiat Chrysler in equal measure. But I can’t help thinking of those moments on Law and Order when the cops say to the suspect, “Listen pal, if you’ve got anything to tell us, now’s the time to tell it.” One ill-advised denial isn’t fatal, but Fiat Chrysler should understand the full context in which the company has been accused before it digs itself in any further. A few realities distinguish that context.

First, the Volkswagen employees who were charged on Wednesday are all rank-and-file line managers, not C-Suite or Board members. They include brand development, engine development, and quality management overseers as well as a regulatory liaison. True, higher-ups at VW can, for now at least, breathe a little easier; they can still go home at night.

Yet when line managers are culpable at multiple operational levels, it suggests systemic malfeasance. The accountability of those at the top is as much about what they should have known as what they actually knew. How confident is Fiat Chrysler that its current denial of the EPA charges is well-enough informed? The days ahead demand of Fiat Chrysler some very careful thinking to determine its next best move.

Second, it’s all to the point that Fiat Chrysler is accused of the same software manipulation that could land at least one VW executive in jail sooner rather than later. (That VW exec was picked up in Florida; the others are in Germany.) This software activates pollution controls during government tests and switches them off during actual drives, allowing nitrogen oxide emissions up to forty times above legal limits.

So who else might be fudging the software?

“To have a pandemic in these kinds of cases, you typically need an industry-wide design defect,” says Bill Powers, chair of Jackson Walker’s Government and Internal Investigations Group and formerly chair of the special committee that examined Enron’s financial transactions. “Depending on the extent of its usage, the software in question might well constitute just such a defect and therefore represent the agency of a pandemic.”

Federal investigators have confirmed that they’re pondering the same possibility. If a design defect affects two major manufacturers, why not a third or fourth or fifth? Fiat Chrysler may not be the only company that needs to engage in some strategic soul-searching at this particular moment in time.

Third, Fiat Chrysler must be realistic about both the current political climate and the realities that will likely still pertain after Trump takes office. The criminal charges against the Volkswagen executives are clearly a parting shot from the Obama regulators, all the louder in response to criticism that they’ve been too soft on corporate criminals in the past. But don’t expect the legal burdens to suddenly lighten after January 20.

“Maybe you can repeal Obamacare, but these kind of prosecutorial initiatives don’t unwind just because we’ve had a change in leadership, however dramatic,” says litigator Charles “Chip” Babcock, also a partner at Jackson Walker. “My advice to clients is to worry about potential prosecutions – and to keep on worrying about them.”

Besides, state regulators won’t be affected much one way or another, advises Kent Sullivan, Babcock’s colleague at Jackson Walker who as Texas First Assistant Attorney General was that state’s second-most powerful enforcement official. “States traditionally have broader consumer protection and enforcement purview,” he says. Nor do state regulators and prosecutors typically blunt their swords because of political philosophies and affiliations.

Finally, the sheer enormity of the Volkswagen case should directly
impact Chrysler and the treatment it can expect as the inquiry goes forward. Even compared to the mega-settlements of recent years, VW’s financial cost is staggering. At $4.3 billion in criminal and civil penalties, with another $15.7 billion to settle car owner suits, it’s one of the most expensive scandals ever.

But it’s not just about penalties. “At its core this case is not merely one large scandal but three,” says Pete Anderson, a former DOJ environmental crimes prosecutor who now leads the White Collar/Compliance group at Beveridge & Diamond. “It involved serious violations of the Clean Air Act, multiple lies and cover-ups, and the fraudulent sale of automobiles. The other aggravating facts that give this case such shock value are the calculated means of the deceptions and the significant financial gains that motivated the crimes.”

It is therefore a very hard case that will make very tough law. No doubt the VW investigation culminates the policy codified in September 2015 when Deputy Attorney General Sally Yates told prosecutors to focus on going after company officials. And what Volkswagen culminates, Fiat Chrysler inherits. Even if that aforesaid “pandemic” goes no further than Fiat Chrysler, regulators won’t want to blow the Act Two finale, no matter which president or governor they work for.

Again, presumption of innocence above all, especially when people might face incarceration. Yet, as Leslie Caldwell, an assistant U.S. attorney general, advised, “Volkswagen…lied to the regulators and the Department of Justice once our investigation had started…That’s what distinguishes this” (my emphasis).

For Fiat Chrysler, VW is thus a “reminder that corporate secrets rarely stay secret for long,” as Pete Anderson puts it. “Despite wishful thinking or rationalizations, significant regulatory crimes eventually leak out. When they do, the consequences are far worse.”
January 17, 2017

Forbes: Dodd-Frank: Another Fossil Of The Pre- Trump Past?
No mystery, no surprise. When Donald Trump announced Sullivan & Cromwell partner Jay Clayton as his nominee for SEC Chairman, the President-elect himself neatly summarized what Wall Street and corporate America can expect as a result: “We need to undo many regulations which have stifled investment in American businesses,” said Trump.

The financial community may have further reason for euphoria: Clayton has no government background, which will likely mean less if any of the prosecutorial instinct that’s been driving the SEC’s agenda over the past eight years. The contrast to current Chair Mary Jo White – formerly a star-power U.S. Attorney – could not be bolder. Clayton’s career has been all about capital formation and complex financial instruments.

Top of the regulatory hit list is, of course, Dodd-Frank – yet, as with any radical policy departure, the devil’s in the proverbial details, especially as the whistleblower provisions are impacted. Of all the law’s provisions, these mandated incentives for employees to report corporate misdeeds have borne the most impressive results. Tamper with that and you invite a political firestorm even this confrontational President might not welcome, especially if huge new corporate scandals follow in the aftermath.

“It would be very surprising to see the whistleblower provisions go away,” says Clifford Histed, a partner at K&L Gates and former supervisory federal prosecutor with the Commodity Futures Trading Commission (CFTC). “Money is a powerful motivator and the whistleblower awards have enabled the SEC and CFTC to bring significant cases. It would be surprising for any administration to affirmatively cut off a source of leads unless there are appropriate countervailing considerations.”

To be sure, top Trump advisors like Paul Atkins remain unequivocally hostile to Dodd-Frank. In 2011 testimony before the Senate banking committee, Atkins, a former SEC commissioner and key Trump transition team member, dubbed Dodd-Frank a “calamity.” He also urged that whistleblowers be required to first report internally, a suggested revision to the law that’s all the more telling because it comes from someone whose views are widely read as predictive of the new administration’s agenda.

Indeed, this insistence on prior internal reporting may well be the new administration’s fallback position: Keep the SEC’s whistleblower office in place but drastically lighten the burden on companies by giving them a first chance to investigate and remediate.

“We can, for example, forget compulsory disclosure of CEO/employee pay ratios. We can probably bid farewell to tougher proposed rules governing investment advisory standards and non-governmental examination of the advisers. We can certainly say goodbye to the requirement that companies disclose when their products include or utilize conflict minerals.

Public companies can also look forward to reduced penalties for misconduct, with more enforcement focus on offending individuals. When he was an SEC commissioner, Paul Atkins persistently argued for identifying who actually profits from a specific malfeasance. It’s reasonable to expect the same kind of thinking from someone of Jay Clayton’s background. They clearly favor better safeguards for shareholders from the consequences of a company’s illegal activities, as opposed to punishing shareholders by punishing the companies they invest in.

“The SEC’s penalty program punishes current shareholders for misdeeds of persons who frequently have left the company,” says Frenkel. “Some penalties are grossly disproportionate to alleged as well as actual conduct. There’s an apparent absence of rhyme or reason to these amounts that makes you scratch your head.”

Finally, on the positive side of the Trump agenda, expect vigorous support for the 2012 Jumpstart Our Business Startups Act, which went into effect in May, 2016. That law reduces the regulatory burden on smaller companies seeking to raise capital. Among multiple other
provisions, it gives new companies three more years to begin complying with specific requirements (including some that originated with Sarbanes-Oxley). Some voices in the Trump camp want to go further by exempting companies raising capital from state regulations.

“Capital formation is one of the two fundamental missions of the Commission,” says Frenkel. “Moving away from capital strangulation and back towards a supportive marketplace for innovation and growth will be welcome to market participants.”

Ideologically, the SEC agenda under Trump thus assuages nearly every sore spot that's irritated free market enthusiasts in recent years. The equity markets have responded accordingly, as we all know, but there may be a downside as well. People get giddy when heavy burdens are suddenly lifted from their shoulders, and giddy people do very giddy things. We all had to pay for that in 2008.

I just hope it doesn't happen again.
January 23, 2017

Forbes: How To Beat Trump’s Tweets: A Primer For Corporations In An Age Of Presidential Activism
Imagine for a moment that you’re an executive at Ford or Lockheed Martin or United Technologies (the parent of Carrier) or any of the half dozen other companies that have been at the business end of now-President Donald Trump’s tweets in recent weeks.

What should be your mindset in an age of unprecedented presidential activism? What strategy would you recommend if suddenly the spotlight were thrust on your company thanks to a patented Trump tweet storm, e.g., heavy on the rhetoric and light on the facts?

For companies caught in Trump’s maelstrom, such considerations cut right to their bottom line. After Trump skewered Lockheed Martin for cost overruns on the F-35 joint strike fighter project, in a matter of one afternoon the company lost $4 billion in market capitalization. Its stock price recovered quickly enough, but Trump’s jab led to some anxious moments – not only in Lockheed Martin’s executive suites but along its assembly lines, too.

Donald Trump has mastered the art and science of the quick Twitter hit, invigorating oomph into a social media platform that many experts believe had run its course. He’s got a good chunk of corporate America nervously eyeing their cellphones. The question is, “How long is it going to last?”

In truth, none of us know. We’ve entered uncharted territory that, in the aftermath of his inauguration, will get even more rugged and remote.

Indeed, his swearing-in could represent a new chapter in the saga. Rules prohibit presidents from endorsing individual companies, which means that Trump’s pre-inaugural tweet to “buy LL Bean” is, at least in principle, now forbidden. Will that mean he redoubles his focus on negative tweets?

It’s not just that Trump enjoys a bare-knuckled brawl; it’s that the proliferation of digital media, fake news, and social mores that no longer appear to value facts have changed the rules. Since Election Day, I have given a number of presentations to corporate executives and boards of directors, advising them on what to do in the event Trump comes tweeting.

For the first time since the Internet revolution began, from the tone of their questions and the look in their eyes, it was clear they recognize they now face a level of institutional threat that obviates their whole crisis playbook. They might as well burn their old crisis plans.

To avoid an unwelcomed dispute with the new administration, executives and board members need to negotiate a thorny path. All of a sudden, people who aren’t customers or shareholders can have an extraordinary impact on shareholder value. Companies now need to know not only the buying habits of their customers, but their politics, too.

So if your company gets hit by a Trump blitz, what’s the correct rejoinder? The right response – at least for most publicly traded companies for the foreseeable future – is the easy one. Give Trump an early victory lap so long as his “demands” won’t unduly damage your brand or bottom line. As we’ve learned observing the controversies surrounding L.L. Bean, Yeungling, and New Balance, at the moment it does not appear that public support from Trump will result in more than an incremental loss of customers. The obverse could prove more problematic.

The dynamic could be flipped pretty quickly when a company – most likely a business-to-consumer tech firm that has millions of customers who welcome social engagement – decides to defy Trump and lives to tell the tale.

In the interim, there are four key considerations for publicly traded companies.

**Use peacetime wisely.** Companies need to fight Twitter fire with Twitter fire. Reduce your key facts and messages into 140 characters; create photos and videos for other social channels (Facebook, Snapchat, YouTube, etc.) that make your argument emotionally powerful; monitor social media in a smart way that foretells trends; and cultivate a social army that can speak to your success in spurring U.S. jobs and growth.

**Cultivate employees.** Trump owes his electoral victory to the “forgotten” voters in America’s industrial heartland, many of them union or former union members. If Trump issues an adversarial tweet, a company will want to use its most credible grassroots, its employees and, if applicable, local and national labor leaders. Business, like politics, makes strange bedfellows. Get employees prepped and ready to speak to the company’s commitment to job growth and the community. It is what Carrier and General Motors did; it got them significant coverage without the companies themselves looking obstinate.

**Empower allies.** Enlisting third-party champions has always been integral for companies but in this climate it’s an absolute must. A company’s vendors, suppliers, customers, community leaders, local
environmental champions, philanthropic heads, business group leaders, et al., are likely to pack more wallop than corporate executives as public spokespeople. The closer they are to the “real” grassroots, the better.

**Plan for a lightning-quick turnaround.** As mentioned, Donald Trump’s thumbs have rendered out-of-date almost every crisis communications plan in corporate America. There’s no time for a conventional crisis response. If a company is being attacked via social media, it cannot take the time to research the real facts and find the social activists to communicate it. That’s what peacetime is for. Gather the rosebuds while ye may so that you already have the messages and the messengers now, including your third parties, photos, videos, social supporters and sympathetic journalists. A company needs to establish fast-turnaround systems that rely on cutting-edge media. Build your arsenal of information, army of activists, and quick reflexes now. Make sure that Digital reports directly to the board. Bust your silos so that the legal team works closely with GR, PR, Digital, and Brand. Don’t hesitate to put senior teams through crisis drills. Here’s the critical part – silos may have worked for 70 years, but Trump’s presidency marks the conversion of entertainment, capitalism, and democracy. Never before have your IR professionals needed to understand how Washington works (or doesn’t work) so deeply; nor has Legal needed to understand the power of grassroots social movements, the multidisciplinary needs of the news electronic politics, social activism, and – most threateningly – presidential activism. It all demands interdisciplinary teams whose understanding extends far beyond their traditional expertise.

President Trump isn’t the only one who can move in a hurry.
January 30, 2017

Forbes: Muslim Travel Ban Roils Corporate America -- President Trump Goes From Powerful Thumbs To All Thumbs
The ninth in a series of columns about the impact of the new Trump administration on key industries – and what smart companies should be doing about it.

Well, that didn’t take long.

 Barely a week into his presidency, Donald Trump’s executive order restricting immigration from seven Muslim-majority countries (none of which, incidentally, have Trump, Inc. investments) has drawn the ire of some of Silicon Valley’s most prominent companies. Technology giants Google, Microsoft, Apple, Facebook, and Netflix have all assailed Trump’s 90-day moratorium on visa entry from the designated countries. Other companies, including Starbucks, Lyft, and even Goldman Sachs and Koch Industries, are following suit. Meanwhile, 16 state attorneys general have vowed to fight Trump’s ban.

 As of this writing (Monday, January 30), five federal judges, amid protests at airports throughout the country, have halted the implementation of Trump’s order – but all that is temporary. The White House is challenging the court’s primacy. A massive constitutional fight is sure to play out in the courts.

 And heaven only knows what week two of the Age of Trump will bring us.

 Since Election Day in this space, I’ve repeatedly advised publicly traded companies at the business end of Trump’s tweets to genuflect, as long as the request could be accommodated without endangering the company’s brand or bottom line. When facing the most powerful thumbs in the world, I’ve counseled, do what’s best for your shareholders. Do what Ford, General Motors, Carrier, and others have done. Meet the president more than halfway and give him an early victory lap.

 I also predicted that it was only a matter of time before companies – most likely led by tech behemoths with the most to lose given Trump’s views on trade and immigration – would begin to fight back. But I figured it would take months for that debate to take shape. In the meantime, companies should develop contingency plans for dealing with presidential barbs, preparing Tweet-savvy materials, prepping spokespeople, and – above all – enlisting empathetic third parties who could be counted on in the clutch.

 But we now live in Trump World, where presidential honeymoons don’t exist, governance is carried out by manic Twitter feeds (that aren’t even vetted within the president’s own party!), and every hour brings a new crisis with an executive order to match. Companies’ reaction time under this administration has been reduced to hours and minutes – not days and weeks. As presidential advisor Kellyanne Conway warned us last week, we’d better get used to it. It’s how President Trump plans to operate.

 To their credit, Google, Microsoft, Apple, and the others reacted swiftly and decisively to Trump’s ban on Muslim travel. At least initially, they were ready – which is more than can be said for the administration’s chaotic enforcement of the ban.

 Google and Microsoft both had data on hand to support their claim that the Trump ban would devastate the personal and professional lives of their many hundreds of Muslim employees and decimate their capacity to recruit talent, not only abroad but here in the U.S., too.

 Google CEO Sundar Pichai urged scores of Google employees traveling overseas to return to the U.S. right away to avoid being denied entry by Trump’s order. Microsoft CEO Satya Nadella railed against the order “as an immigrant and as a CEO.”

 Facebook CEO Mark Zuckerberg also cited his immigrant heritage in arguing that the Trump ban would “make all Americans less safe by diverting resources, while millions of undocumented folks who don’t pose a threat will live in fear of deportation. . . . We are a nation of immigrants, and we all benefit when the best and brightest from around the world can live, work and contribute here.”

 But my favorite line came from Apple CEO Tim Cook, who quoted Dr. Martin Luther King: “We may have all come on different ships, but we are in the same boat now.”

 Much of corporate America is now huddled in the same boat as Muslim refugees and the tech industry executives nervously looking over their shoulders as they travel abroad.

 What should smart corporations do now? My post-Election Day counsel to meet Trump halfway is now almost as obsolete as the crisis plan that sits in the bookcase and laptop of every C-suite executive.

 So, rev up your response time. Break down your silos. Get Legal and Communications to talk to Investor Relations and Human Relations, and most of all, get them all talking with Public and Government Affairs. There is a new sheriff and he doesn’t understand how the town works. Your communications needs to be fully integrated; your executives have to understand how politics now disrupts everything.
Find out what’s at stake for your company in the ban. If it’s going to undermine your business operations, jeopardize your plans for growth, and violate your company’s core values, say so.

Get ready for more tweet storms. But this time, plan to go on the offensive. Expect the worst, including roiled global markets and trade retaliation. Get those third parties lined up. None of us — not even members of the president’s own party — will be immune from attacks. Ask Senators John McCain and Lindsey Graham, who Trump skewered after they came out against the ban.

In petitioning corporations to rally against Trump’s travel ban, Paul Holmes, the publisher of the public relations industry journal The Holmes Report, wrote, “This does not feel like a blip in American history that ends four years from now with a return to social and political norms and a peaceful transition of power. This has the feel of a ‘Daddy, what did you do when . . .’ moment. American companies may need to think about how they will answer that question.”

Former Office of United States Trade Representative General Counsel Ira Shapiro, author of The Last Great Senate, opined that “in his first 10 days in office, President Trump has done extraordinary damage to the American brand all over the world. It is gratifying that some of our global business leaders have criticized his actions, which are contrary to both America’s ideals and its interests.”

I thought it would take months for the emperor to be seen without clothes; instead, it’s taken just a week. As Paul and Ira have noted, companies by the dozens are pushing back on the new president, increasingly followed by members of his own party. At a time when we are told by that administration that, “The media is the opposition party,” the new rule is not to genuflect but to stand up and be heard.

Courage is a powerful brand.
February 6, 2017

Forbes: After The Trump Shocker: Three Questions You Should Ask Your Market Researchers Now
The tenth 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 both an observer of American democracy and as a corporate executive, you just witnessed a presidential election in which virtually all the pollsters and pundits got it wrong – including me! Now the marketer in you is probably wondering what this means for the validity and direction of your company’s research.

The truth is that political polling and marketing research are different sciences, although both generally rely on surveys as a foundation. Once the outcome of the election was clear, pundits immediately began proffering theories as to why polling surveys had failed to accurately predict voting behavior.

Theories like “shy Trump voters” cast doubt on the ability of survey research to extract people’s true intentions, but these theories have been largely debunked. In fact, it turns out that the pollsters did a better job statistically than they did in 2012. The 2016 election was much closer and more disruptive; so the margin of error this time put pollsters on the wrong side of right.

The big problem appears to be in how pollsters predicted voter turnout. Ipsos, which is in a unique position to comment as both a leading market researcher and an online polling firm, has done a good job explaining what happened. The bottom line is that pollsters not only need to take the pulse of those eligible to vote, but to divine who actually will show up at the polls. Failure to get turnout right is what undid most polls.

In politics, results are binary. Pollists get it right on Election Day, or they get it wrong, but there are no do-overs. Corporate marketing, thank heavens, is gentler.

Although corporations now need to take into account the political leanings of their customers, there’s still no real analog to “turnout.” Even in the most time-sensitive situations, marketing predictions rarely need to be right on any given day to be right in fact. Target buyers can of course choose to opt out of a category on any given day, to delay a purchase or satisfy their needs temporarily with goods from an adjacent category, but time generally mitigates the effect.

The more “staple” the good, the less likely differential turnout is to create false signals. People can’t just decide to stop buying deodorant – at least we hope not. And the list of staple goods grows every day, especially with the rise of personal technology. Who lives without a cellphone now?

That said, consider your nagging suspicions about survey research as a great opportunity to call up your research agency and grill them a little. Here are three questions to ask:

**What are you doing to improve survey quality?**
We live in a mobile world; your research should, too. Is your supplier doing to ensure that respondents can take your survey on any device at any time? What steps is your provider taking to reduce the length and improve the on-screen design of your surveys, so people actually take them and mean what they say? Today, smart researchers are also using behavioral science to improve survey design, to avoid predictable biases in response and improve data reliability. Shouldn’t yours being doing that, too?

**How are you sourcing survey samples?**
The “shy Trumpers” theory might have been off the mark, but the underlying question – “Are we sure our research is reaching representative populations?” – is a valid one. In a post-landline world, surveys should still be able to reach broad populations – or at least the targets for your specific research needs. Ask your researchers how they reach non-panel audiences. Ask how they ensure diverse audiences. Ask where they get their samples from – you should know this already, of course, but see if the answers have changed over time.

**Do you believe surveys alone are enough for us?**
The other aspect of the “shy Trumpers” theory relates to gauging the emotional and non-conscious, as well as the rational, aspects of decision-making. With the help of behavioral science and techniques like implicit reaction time, which measures speed of response to determine conviction, surveys can deduce both aspects of choice better than ever. But sophisticated researchers are filling in the picture with other ways of getting at the truth, too. So ask what else your researcher can do for you. Ask about facial coding and other forms of what’s known as “neurophysical” monitoring, which measures a respondent’s emotional enthusiasm or lack thereof. Ask about passive clickstream (which measures whether a respondent is truly engaged or just going through the motions) and usage data (which gauges a customer’s online behavior) and about geo-triggering surveys (which tracks the nexus between use and location) on mobile devices, and about social media monitoring. Ask about virtual and augmented (which combines “real” with “virtual”) reality. Ask what other data sources exist that could augment the findings of your surveys and help paint a sharper picture of consumer motivations and choices. Sure, you might get a little sales
pitch, but as the landscape continues to rapidly shift, it’s probably a pitch to which you should listen.

The answers you get to these questions should give you with some comfort – and some ideas on how your marketing research can improve. If they don’t, then maybe it’s time for you to exercise your own kind of change.
Yahoo!’s announcement late last year that it had been victimized by not one but two separate data breaches was the Gettysburg of corporate cyber attacks – the biggest battle yet waged.

The first attack, which occurred in 2014, impacted more than 500 million Yahoo! user accounts, while the second assault, in August 2013, was nearly twice as malevolent.

As with the Union Army at Gettysburg, Yahoo! was fortunate to prevail. Next time, it may not be so lucky.

The two attacks, the largest known security breaches of one company’s computer network, triggered several class action lawsuits against the tech giant. They also put Verizon’s $4.83 billion pending acquisition of Yahoo! in jeopardy. Yahoo!’s hacking episode was just the latest in a Murderers’ Row of cyber attacks on mega brands such as Home Depot, Sony, and Target. Despite the untold damage and dislocation caused by cybercrime, some companies inexplicably choose to ignore the threat.

Certain corporate boards and C-level executives think that because their company owns cyber insurance they don’t need to worry, observes Donald Good, Director of Global Legal Technology Solutions at Navigant. “Instead, they should be planning and thinking about the repercussions of a cyber breach and how it will hurt their bottom line,” Good recommends.

Good stresses that corporate leaders need to strengthen their organization’s cybersecurity. “It starts at the top and goes down from there and that’s where we’ve seen companies be successful,” he says. “There needs to be a balance among the right people, the right technology, and the right processes in place.”

Companies that lack a creditable cybersecurity strategy are playing a game of Russian roulette. According to Juniper Research, cybercrime will cost businesses $2.1 trillion globally by 2019, quadrupling the estimated cost of breaches in 2015. The average cost of a data breach in 2020 will exceed $150 million by 2020, as more business infrastructure gets connected.

It’s also important to note that by 2020 cyber losses will amount to far more than data – they are sure to include financial, health, safety, and security information. We are rapidly entering the age where free credit reporting as a consumer-facing recovery strategy will do more harm to brands than good.

To be sure, large and publicly traded companies are getting better at recognizing the cybersecurity threat and how to inoculate their data systems from a computer breach. But some boards still are too quick to relegate the issue to the IT department and fail to appreciate that cyber attacks represent a risk that could decimate the entire company.

“Is the CEO and the board committed to cybersecurity or is it just another line item that will get funded, but without the personal leadership that’s required?” asks Jim Trainor, senior VP for Aon Risk Solutions and former assistant director for the cyber division at the Federal Bureau of Investigation (FBI).

When it comes to cyber security, there’s now an onus on boards and C-suite executives to establish accountability and delineate clear lines of communication.

Jamie Barnett, Rear Admiral (Ret.), Co-Chair of Venable’s Telecommunications Group and a partner in the firm’s Cybersecurity Practice, said, “Our collective mindset has been that cybersecurity is an information technology (IT) thing, but we have to drive it into enterprise-wide risk management. It is part of finance, sales, human resources and every other aspect of the risk of the business—and it must be managed that way.”

Judy Selby, managing director, Technology Advisory for BDO, a global accounting and management consulting firm, points out that the problems associated with cybercrime “need to be communicated in ways that boards will understand. Going into a board room and starting to speak in tech jargon may not be the best approach…You have to use the information you have as an asset.”

She argues that companies should also insist on crisis management planning for cybersecurity, which can help extrapolate a company’s level of risk and its readiness to combat a cyber attack.

“Expect the effect to be the opposite of silos,” Selby says, regarding adequate cyber defenses. “You need a team approach to plan for cyber attacks and fix them once there’s a breach. You also need a readiness for [cybersecurity] regulations.”

Carefully monitoring regulations is especially relevant to corporations doing business in the European Union (EU). New rules in place for next year will increase the EU’s data security penalties to four percent of global annual revenue.
“The model is very much based on the EU’s antitrust model,” says Jonathan Armstrong, a partner at Cordery, a London-based law firm specializing in compliance. “The EU has raised just under $8 billion in the last five years in antitrust fines. It wants to enforce data security in similar fashion.”

Armstrong agrees that board engagement is key but also wants businesses to educate their employees on the issues. “The new rules allow just three days to report a breach. That’s not a lot of time when you may need to report to multiple regulators. Some businesses have plans that are too complex – some none at all. Our experience has taught us that you need to deal with a breach like a fire in a building. Raise the alarm immediately and let the specialists take over. And like good fire prevention drills you need to rehearse data breach response so that muscle memory kicks in when the worst happens.”

A major obstacle to effective cybersecurity is that too many boards of directors and C-level execs have not been effectively educated and are under the mistaken belief that, “It can’t happen here.”

To shift their mindset on cybersecurity – and demonstrate to multiple stakeholders that the company takes it very seriously – boards of directors and C-suite executives should take the following steps.

1. Adopt the cybersecurity defenses advocated by the National Institute of Standards and Technology (NIST), which offer a blueprint on how brands and organizations can protect themselves against computer hacking.

2. Account for so-called “dwell time,” or the period it takes for a company to realize that its computer systems have been hacked, which often takes months or, in some cases, years.

3. Consider whether the company has the resources – both financial and human – to combat cybercrime for the long haul and how to work more effectively with network providers to assist and improve the company’s cyber defenses.

Cyber attacks are inevitable. It’s not a matter of if, but when – and how malignant the harm.

The challenge is to mitigate the damage once it’s done, contain the fallout, and assure key stakeholders that the company is doing everything it can to avoid getting embroiled in a cyber Gettysburg.
CommPRO: #6 MOST-READ in 2017: Donald Trump Rants and Raves at the Press in a Classic Example of Misdirection
Rave (verb) is “to talk irrationally in or as if in delirium; to speak out wildly; to talk with extreme enthusiasm.”

When President Trump stood up on Thursday in a press conference, he was bombastic and declamatory. He vehemently scolded the press. And he spoke out wildly for a full hour and 18 minutes. “Tomorrow, they will say, ‘Donald Trump rants and raves at the press,’” he said. And boy, was he right.

Almost immediately after the press conference was over, journalists weighed in. CNN’s Jake Tapper called it “an airing of grievances” and said it was “unhinged.” Shep Smith from FOX News – a network that has been more friendly than most toward the Trump Administration – railed against it, saying “It’s crazy what we’re watching every day.” And seemingly every journalist in between weighed in with a similar sentiment.

Monitoring Twitter in the hours after the presser ended, many agreed that it was one of the top five craziest press conferences in modern history – up there with former South Carolina Governor (and current U.S. Representative) Mark Sanford’s press conference announcing that he was not, in fact, hiking the Appalachian Trail but was instead engaging in an illicit affair and former Rep. Anthony Weiner’s press conference admitting to sending lewd photos via Twitter.

In short, it was a circus, but it was what we have come to expect from this unorthodox administration.

Much has been written unpacking the President’s claims from the press conference, and fact checking the easily-disproven falsehoods he pushes from the podium. Here’s the thing, though. The President achieved what I suspect was his ultimate goal, which was change the subject.

The past few weeks’ revelations about his administration’s close ties to Russia were truly damaging stuff. News that his National Security Advisor had discussed sanctions with his Russian counterpart before the inauguration violated longstanding protocols that dictated the United States has one President at a time.

Shortly after General Flynn resigned, more news came to light that officials from his campaign had been in contact with Russian intelligence officials in the year before the election in communications that were intercepted by American law enforcement and intelligence agencies. The investigation thus far is classified, so we don’t have all of the details. We don’t know what was discussed or how many of the President’s campaign advisors were talking to the Russians.

But this had the potential to be a big scandal and was getting wall-to-wall coverage in every form of media. People were throwing around the term “Watergate,” and not as hyperbole. And then, out of nowhere, came “the press conference.”

Let’s make no mistake: the press conference was juicy and fun to watch. There were almost too many things to cover. And by giving a wealth of things to cover, the President ensured that Russia was unlikely to be one of them.

Look at Friday’s newspaper front pages. The New York Times had three stories above the fold, two of which were about the presser. The Wall Street Journal, Washington Post, Los Angeles Times, and Chicago Tribune had similar front page treatments. We are no longer talking about the highly damaging Russia story.

Ranting and raving is Donald Trump’s modus operandi, and has been since he became a player on the political scene several years ago. During the early years of the Obama Administration he ranted and raved, peddling conspiracy theories about President Obama’s birthplace and religion. During his campaign, he ranted and raved about his opponents. This is what he does. He is who we thought he was. But every time he does it, the media covers his ranting and raving in an almost too self-aware way. Every minute they spend accusing him of ranting and raving plays into his narrative that the media is out to get them, and it’s another minute they aren’t spending covering the real-world impact of his policy proposals and his actions.

Magicians and con artists alike learn the classic art of misdirection as one of the first lessons of their craft, as it is the foundation for their ability to trick you. Regardless of whether you think the President is a magician or a con artist, we should all stop falling for the trick. It isn’t magic, and we would all be better off paying attention to the coin hidden in the other hand.
February 21, 2017

Forbes: Will Trump’s Win Change The Business Dynamic In The Middle East?
Donald Trump’s surprising ascension to the White House has generated mixed emotions across the Middle East.

The six Arab Gulf nations that compose the Gulf Cooperation Council – the oil-rich economies of Saudi Arabia, Bahrain, Kuwait, Oman, Qatar and the United Arab Emirates (UAE) – have adopted a wait-and-see attitude toward the new U.S. administration.

Indeed, across the Middle East the prevailing sentiment vis-à-vis Trump is “uncertainty,” observes Nidal Abou Zaki, the Managing Director of Orient Planet, a communications consulting group headquartered in Dubai.

“Arab political leaders were quick to send congratulatory notes to the new U.S. president. But given Trump’s dearth of diplomatic experience, his unfamiliarity with the Middle East’s political and military exigencies, his impolitic remarks about Islam, and his hastily-conceived Muslim travel ban, regional leaders remain apprehensive about a Trump presidency,” says Abou Zaki.

The volatile area continues to be plagued by instability. Violent civil strife haunts Libya, Syria, Iraq and Yemen, while the global glut in oil production hampers Arab Gulf economies, complicating their efforts to modernize. Iran’s January 29 ballistic missile test, though a failure, nevertheless drew a sharp rebuke from the Trump administration, which imposed additional economic sanctions and refused to take military retaliation off the table. Put all these factors together, Abou Zaki points out, and “a Trump administration is a serious concern for the whole Middle East region.”

Given the Middle East’s ongoing tensions, as well as the U.S.-led coalition’s landmark nuclear deal with Iran that Trump repeatedly assailed during the campaign, the Trump administration has no choice but to engage in the region. “Had Hillary Clinton won, the expectation is that her administration would have maintained long-established regional alliances and economic partnerships. Now the onus is on Donald Trump to ally concerns by clarifying his administration’s approach to these important relationships, especially in the wake of his abrupt attempt to impose the Muslim travel restriction,” says Abou Zaki.

Call it what you like, but there is little question that this is how the Middle East views Trump’s actions on the travel ban. A lesson for the new president is clear – had he gone through the Departments of State and Justice, he could have gotten what he wanted without drawing such uniform resistance – opposition that has only served to make business interests more sensitive.

Although Gulf Cooperation Council (GCC) stock markets initially dipped over fears surrounding Trump’s impulsive behavior, they have since recovered. Industry analysts worry that, over the long haul, Trump’s protectionist views could have an adverse effect on open sky policies. The region’s burgeoning aviation sector, which has made significant investments in the U.S., could be undermined if Trump persists in pursuing narrow economic policies.

Since the Trump Organization has had substantial business interests in the Middle East stretching over a number of years, such protectionist policies would surprise his long-time regional partners. Still, Middle Eastern business leaders are preparing for all scenarios, good and bad.

To be sure, certain regional leaders have been open in their praise of Trump. Saudi Prince Al Waleed Bin Talal, the head of Kingdom Holding, clearly sent conciliatory signals to Trump after engaging in a 2016 Twitter quarrel with him. “President elect @realDonaldTrump whatever the past differences, America has spoken, congratulations & best wishes for your presidency,” he tweeted.

Sabahat Khan, a senior analyst at the Institute for Near East and Gulf Military Analysis in Dubai, has expressed confidence in Trump’s presidency, maintaining that deep ties between the UAE and US will not be affected and will continue to “flourish.”

“[Donald Trump] should communicate in the right terms and not dictate, because that will never be accepted,” he said.

Dubai businessman Khalaf Al Habtoor was less effusive, dismissing Trump’s Muslim barbs as “for elections only” and volunteering that GCC leaders would be willing to offer a clean slate if Trump is forthright. “[Donald Trump] should communicate in the right terms and not dictate, because that will never be accepted,” he said.

Overall, Abou Zaki notes, there is at least a modicum of confidence that Donald Trump’s win will not sever the deep ties between GCC nations and the U.S. Indeed, many view Trump’s win as a new opportunity to reengage the U.S. in its global role to maintain stability in the region.

The UAE’s Minister of State for Foreign Affairs, Dr. Anwar Gargash, has urged the Trump Administration to seize the opportunity to work with regional officials in devising an overarching strategy for the region, a gesture that would be welcomed by opinion leaders as long overdue.
“Rarely has it been more important for a new administration to articulate clear goals and principles,” maintain Middle East scholars James Jeffrey and Dennis Ross in a recent paper released by the Washington Institute for Near East Policy.

“With 30 percent of the world’s hydrocarbons still flowing from the Middle East, safeguarding that supply remains a critical U.S. national security interest, along with preventing nuclear proliferation, countering terrorism, and preserving stability,” write Jeffrey and Ross. Jeffrey served as U.S. Ambassador to Turkey and Iraq; Ross as U.S. point man on the Middle East peace process in both the George H. W. Bush and Clinton administrations.

Abou Zaki calls the Middle East’s reaction to a Trump presidency a “tug of war between faith and skepticism.” Given Trump’s rhetoric and actions in his first three weeks in office, that tug of war is going to be spirited.
February 28, 2017
Forbes: Uber’s Halfway Point: From Animal House To IPO
No corporation – especially one of Silicon Valley’s most iconic brands – wants to be confronted with charges that it has harbored an “Animal House” workplace hostile to women. Nor does a California–based company’s human resources function – the very services that are supposed to distinguish it from the rest of the cold corporate world – want to be accused of corrosive behavior that borders on the Neanderthal.

Yet that’s what happened to Uber when a female engineer, Susan Fowler, leveled explosive sexual harassment charges against the company and the New York Times followed with an equally damaging investigation. These toxic headlines came just weeks after the #DeleteUber movement went viral following the company’s oddly tone-deaf initial response to protests against President Donald Trump’s Muslim travel ban and the CEO’s apparent eagerness — since rescinded — to serve on a Trump business advisory council.

Ms. Fowler’s allegations triggered a chain reaction, including high-level dismissals, a public vow from Uber CEO Travis Kalanick to overhaul the company’s culture, the empowerment of the Uber’s board’s most prominent female member – Arianna Huffington – to hold the leadership team accountable, and the retention of former U.S. Attorney General Eric to conduct a purportedly no-holds-barred investigation.

Make no mistake: Kalanick and company are up against it. A group of Uber investors are already skewering Holder for his lack of independence, assailing the integrity of his probe, and questioning the company’s capacity to institute change.

So has Uber gone about its housecleaning the right way? Is it taking the essential steps to cleanse its culture and restore its brand integrity, especially among investors, female executives, and the millennials who – want to be accused of corrosive behavior that borders on the Neanderthal.

The Times’ piece illustrates the depth of the hole that Uber has dug for itself. Only time and the rehabilitation of Uber’s reputation (and market share!) will tell, but early signs point toward the positive. Since the bombshell hit, they’ve made the right recuperative moves; more impressively, they’ve made them in a hurry, wisely using a three-day holiday.

“Hurry” is central to the Uber story. In a few short years, it has gone from a start-up with a frat party ethos to a formidable multinational, a maturation process that, not surprisingly, has carried with it some thorny challenges. Early on, it sadly confused a circle of male buddies with the mature professionals needed to run a global enterprise.

It is never easy for a founder to bring in new leadership as corporate growth outstrips skills, but loyalty alone should not be confused with wisdom. The litany of past bad acts makes clear that no matter how smart Kalanick may be as an entrepreneur, he looked the other way when male supervisors engaged in execrable conduct that would have gotten them thrown out of Delta House.

Either out of ignorance or fear of reprisal, Uber’s human resources function abdicated its responsibility. So did senior management.

Kalanick acknowledged as much when he promised to be far more proactive and transparent in revamping Uber’s culture and in authorizing an “urgent” and “independent” investigation. It was a good first step – a powerful message well communicated, if albeit a bit of a rerun.

Still, there’s no doubt that the two initiatives Kalanick and his team launched over the long weekend helped mitigate the harsh media narrative, changing the headlines from “company out-of-control” to “company seeking to get house in order.” Both could ultimately prove pivotal in enabling Uber to surmount the crisis.

Kalanick gave board member Huffington, founder of The Huffington Post, the authority to “hold the leadership’s team’s feet to the fire” in stamping our harassment and creating a healthier work climate. Ms. Huffington’s comments after meeting with Kalanick and Uber’s new human resources head reflected the gravity of the situation and the company’s resolve to fix it: “Travis spoke very honestly about the mistakes he’s made — and how he wants to take the events of the last 48-hours to build a better Uber. It was great to see employees holding managers accountable.”

Uber’s strategy is clear – tapping Huffington’s credibility and gender to help them acknowledge their mistakes and begin turning the page. In the coming months, the message Uber needs to repeatedly convey, through company spokespeople and respected third parties, is: “It’s a new day here. That was then. This is now.”

But the ultimate test for Uber will come with Holder’s report, which must be seen as genuinely independent and forthright, with no interference from the Kalanick leadership team. Holder must be given the authority and latitude to leave no stone unturned.

An “Open Letter to the Uber Board and Investors” written by a pair of angel investors, Mitch and Freda Kapor, points to Uber’s deplorable track record on workplace civility issues. It also reveals why so many company observers are cynical about the role of Huffington and Holder.
“Uber’s outsize success in terms of growth of market share, revenues and valuation are impressive, but can never excuse a culture plagued by disrespect, exclusionary cliques, lack of diversity, and tolerance for bullying and harassment of every form,” the Kapors wrote on February 23. “We are disappointed to see that Uber has selected a team of insiders to investigate its destructive culture and make recommendations for change. To us, this decision is yet another example of Uber’s continued unwillingness to be open, transparent, and direct.”

The Kapors aren’t alone. Susan Fowler is addressing many of the same questions. Her blog, a popular destination for Uber employees and detractors, gives her a strong platform to engage reporters and shape the issues governing the company’s handling of the investigation. Her latest post posits that some people are indeed capable of change, but others, given their prejudices and lack of self-awareness, are not. It’s a smart and ironic commentary sure to keep the controversy alive.

Fowler will no doubt continue to define the terms of the debate as she seeks to light the path toward a more enlightened American workplace.

Clearly then, the onus is on Uber to demonstrate that its commitment to a new day is genuine. One weekend does not a crisis recovery plan make. Holder’s investigation and subsequent report may well be make-or-break.

Uber is not only going to need to engage in a series of constructive and conciliatory actions, it must make a meaningful sacrifice to demonstrate its remorse and win back the confidence of its constituents.

As Jonathan Puth of Correia & Puth, PLLC, a Washington DC law firm that represents sex harassment plaintiffs puts it, “Susan Fowler put a spotlight on sex harassment in an industry that is not just male dominated but has exaggerated regard for pace of innovation at the expense of valuing women. They appear to be doing the right thing, but Uber has a huge hill to climb to hire more women, create a culture open to airing complaints of discrimination, while protecting employees from reprisal of any kind.”

One way for Uber to show that it now “gets it” is to hire more senior female executives and to encourage more young women to pursue careers in the computer sciences and engineering. Uber should consider working with Bay Area colleges and secondary schools to break down the academic and social barriers that discourage women from studying engineering and the sciences. It can lead the way in Silicon Valley by funding studies, endowing scholarships, engaging in school partnerships, and making itself more accessible to school and community groups.

Given the disquieting revelations that have surfaced, Uber’s corporate social responsibility programs must run much deeper and longer than most. The frat party days are over.
March 7, 2017

Forbes: New U.S.-Asia Foundation Aimed At Transforming Trade, Spurring U.S. Infrastructure Investment
Few economic relationships are attracting greater scrutiny from the new administration’s policymakers than the trade dynamic between the U.S. and Asia, especially given the news that President Donald Trump will withdraw from the Trans-Pacific Partnership (TPP) negotiated by the Obama Administration.

Over the past decade, the goods and services exchanged among the U.S. with China, Japan, and Korea have dramatically increased. A decade ago, China supplanted Canada as America’s biggest trading partner. Japan and Korea are not far behind.

Should trade tension among the countries escalate, all four economies would likely suffer. If China’s economy slows in the aftermath of tariffs being imposed, there’s a strong likelihood that it would buy fewer goods from its trading partners. But if trade tensions among the four nations can be mitigated, the rising tide could lift all boats.

That’s certainly the rationale behind a new organization being formed to foster greater understanding between the U.S. and Asia on economic issues. A week before Donald Trump was inaugurated another potentially historic event took place in Washington, D.C., one that could bring tangible benefits to America’s infrastructure and trade deficit. The venerable Willard Hotel hosted a signing ceremony for a memorandum of understanding that will guide the establishment of a new trade and investment advocacy institute aimed at stimulating free and fair trade, known as the U.S.-Asia Foundation.

It’s not every day that business rivals from Japan, Korea, and China gather under one roof to consummate a cooperative agreement, but that’s what happened in January. The future foundation aims to bring corporate leaders and public decision-makers together from all three Asian economic superpowers. Their goal is to spur closer financial, cultural, and diplomatic ties with the U.S., whose economy and infrastructure the Asian business leaders see as a primary target for investment.

Once the foundation gets formally underway later this year, its biggest priority will be to work with Trump administration officials, congressional leaders, and private sector executives to stimulate the overhaul of U.S. infrastructure. The Asian interests represented in the prospective foundation have already set aside some $200 billion earmarked for that purpose. Why? Because it’s their conviction that until the U.S. rehabilitates its transportation and telecommunications systems, it cannot achieve its economic growth potential – a view shared by many international economists.

The foundation principals have formidable resources at their disposal. The Asian organizations represented in the foundation have a combined $3 trillion in assets.

Rob Schroeder, the Senior Vice President for International Strategy and Operations at the U.S. Chamber of Commerce, was there to salute the endeavor and extol the importance of Asian investment in the U.S. and vice versa. He stressed the need to break down cultural and economic barriers and strengthen public-private cooperation.

One Asian official volunteered that the intent of the foundation is to help usher in a new era of “global mercantilism,” entrepreneurship, and sustained growth. Foundation leaders maintain that conventional political approaches are not the best way to solve such systemic global problems as low growth and income inequality. They believe that President Trump will help spark a profound change in the way economic issues are addressed by relying on business-driven methodologies.

The organizers want their foundation to be independent, free to enter into partnerships and agreements with a wide spectrum of private interests, academia, and economic institutes and think tanks. This new era, they say, holds the potential to transform U.S.-Asia relations. Their objective is to create a unique niche – a value proposition – for their foundation that no other group has.

It’s a worthy goal that’s appreciated by opinion leaders. As retired Admiral Samuel Locklear, the former commander of the U.S. Pacific Command who now serves as an advisor to PwC, puts it: “We live and do business in an interconnected world. American corporations see the growth potential in selling goods and services to Asia, just as Asian companies see the potential to grow their markets in the U.S. PwC and our clients believe that it is absolutely imperative that both sides understand each other and seek to overcome the issues that prevent increased trade.”

In the early days of the Trump presidency, we don’t yet know whether – or what – tensions might arise among governmental bodies. But the new U.S.-Asian Foundation is poised to help U.S.-Asian trade grow and prosper in the 21st century.
March 15, 2017

Forbes: New Rules Of Engagement For General Counsels In The Age Of Presidential Tweets
Reverberations from President Donald Trump’s recasting of political behavior are being felt in every corporate counsel’s office – not only in the U.S., but abroad, too.

Civility, subtlety, even facts, are out. Confrontation, predawn tweeting, and “alternative facts” are in.

When coupled with the disquieting new realities of the digital age, does that mean that general counsels need to throw out their blueprints and overhaul their approach to managing risk and fending off threats – legal, political, market-driven, and otherwise – to the corporate brand?

To a pretty significant degree, yes.

In early March, I participated in a pair of roundtables with other battle-scarred veterans of legal and public affairs fights. We grappled with how the Era of Trump is forcing corporate counsels – not to mention their colleagues in communications – to rethink their way of doing business. Our strategic premise? When the general counsel’s office asks the right questions and establishes the right goals, the lawyers can fundamentally strengthen a company’s capacity to protect its brand.

We all agreed that “conventional” playbooks have been rendered obsolete and that quick response and worst-case scenario planning are even more important now than they used to be. The traditional top-down “control” over events that most corporate counsels covet is much tougher to attain in today’s climate.

Here’s a list of consensus imperatives that every corporate counsel’s office should consider.

Sharpen your antennae – and reflexes. As former Senator Byron Dorgan (D-ND), now a senior policy advisor at Arent Fox, observed, corporations these days find themselves in a precarious spot. If Trump chooses to tweak them and their stock price plummets, they can lose hundreds of millions in market capitalization in a matter of minutes. Ask Boeing, Toyota, and Lockheed Martin, all of which had unsettling experiences in the immediate aftermath of Trump tweets only loosely tethered to the truth.

Overhaul your crisis response capabilities. As Senator Dorgan’s Arent Fox colleague Pamela Deese pointed out, it’s essential for companies to establish lightning-fast capacities to respond to presidential tweets and unforeseen crises – unless it wants to see its stock price in free-fall and its brand unnecessarily tarnished. Cyber threats, online harassment, grassroots consumer protests, and a dozen other potentially debilitating threats all demand that companies beef up their crisis response and recovery capabilities and that legal counsel be involved early.

Use “peacetime” wisely. I’ve been advising companies in recent months to get everything – messages, materials, testimonials, spokespeople, compelling video and photographs, third-party allies, et al. – lined up before the tweet or crisis hits. Make sure the guts of the company’s story can be distilled into 140 (or fewer) characters or molded into a tweet storm. Like it or not, fire usually must be fought with fire. It’s not just the message and messenger, it’s how companies communicate emotionally, in an emotionally charged environment, that will carry the day.

Break down silos. Betsy Fischer Martin, former longtime executive producer of Meet the Press and currently a strategic corporate media adviser, advises that companies in today’s environment develop a “hair-trigger” ability to respond to a variety of scenarios. The general counsel’s office needs to ensure that the silos between legal and public affairs, between marketing and corporate communications, between the CEO’s office and the rest of the C-suite officers, and between the C-suite execs and mid-level officers, get broken down and that communications be honest, open, and nonjudgmental. It is very possible that the most significant exposure may not be legal or even share value, but reputation. Only through open conversation will the real risk be appreciated. Never before has investor relations been forced to understand so much about politics; board members about digital; or the general counsel about brand. But that’s the new reality. Your adversaries view issues holistically. You need to view them the same way.

Insist on rehearsal and role-playing. Everyone from the CEO on down needs to contemplate unpleasant contingencies and what their specific role is, not only in quelling them – and facilitating a return to normal operations. Responding to a crisis is not unlike putting on a play – it cannot succeed without rehearsals. The general counsel’s office needs to ensure that tabletop exercises and full-scale crisis drills become a regular part of the corporate regimen, not because you will be anticipating every risk, but because you will build trust-and-crisis-response DNA. Most crises are not lost because of the initial event but because of the response – or usually, the absence of response -- by an inexperienced team more afraid of failure than the existential threat.

Reaffirm your core values. President Trump can get away with bluster and a tenuous grasp of the truth: publicly-traded companies cannot. Few institutions should be mimicking his style of communications. Far smarter for corporate counsels to ensure that their companies...
rededicate themselves to articulating their core values – and making sure that corporate social responsibility and community service constitute the core of those core values. Keep in mind that just because the Supreme Court has ruled that companies can make largely unlimited political contributions doesn't mean that they are absent risk. All of your company’s activities, from campaign funding to serving on a presidential commission; from lobbying to CSR make up the body of work which will make you either a darling or a target of a vast array of new audiences. Make sure they are consistent because they will become transparent.

**Know ‘em before you need ‘em.** More than any other time, your adversaries and allies define you in the court of public opinion. Make sure your corporate communications professionals have built allies on both sides of the aisle who can help define an issue for the public before it becomes a crisis. Nothing has greater credibility than third parties who can speak on your behalf. Make sure your CSR is strategic, not just philanthropic, and build deep relationships with key allies. Make sure enterprise risk management is watching digital and social trends now to anticipate a movement in the nascent stages – Uber, Yuengling Beer, Mylan’s Epipen, Wells Fargo, and many others missed clear signs that certain constituencies were mobilizing. There is no better time than now to prepare. In the panel’s experience, ERM still focuses too much on traditional risks and isn’t sufficiently trained on digital and social risks and may present a greater threat than other traditional areas.

**Deeply understand your core customers.** Starbucks, L.L. Bean, and Nordstrom fully appreciated the political leanings of their customers as much as their buying habits. This made their strategies easier to define when faced with angry tweets from the President. If you don’t understand the politics, you cannot develop a strategy.

Planning now for the new reality will pay significant dividends down the road, especially if the reverberations from Trump or other sources should turn bumpy. The greatest challenge in a crisis is the absence of leadership when no one is sure who should handle the rudder. Change the leadership DNA now and you will positively change the outcome later.
March 21, 2017

Forbes: Trump’s U.S. Attorney Purge: The Telling Moments Are Yet To Come
All in all, the Trump administration’s “Sunday night massacre,” the firing of 46 U.S. Attorneys en masse, has caused somewhat less of a furor than we might have expected after the March 12 announcement.

There was some initial outrage and a trickle of subsequent revelations. For example, Preet Bharara, is said to have been investigating stock transactions by Department of Health and Human Services Secretary Tom Price who allegedly traded shares in healthcare companies even as he sponsored industry-related legislation while in Congress.

Bharara, of course, was U.S. Attorney for the Southern District of New York, the most important and aggressive jurisdiction for corporate and securities enforcement. Along with speculation that Bharara was investigating Trump associates, a few specific circumstances gave further pause.

First, during the transition Trump reportedly asked Bharara to stay on, then seems to have abruptly changed his mind as if he’d become aware last-minute of some self-interested reason why Bharara had to go. More portentously, on the day he was fired Bharara tweeted that he now knew “what the Moreland Commission felt like,” an apparent reference to a 2014 commission created by New York Governor Andrew Cuomo, and then disbanded by Cuomo once the inquiries got too close to home. At the time, Bharara investigated and found no evidence of a crime. Today, his tweet sounds like an ominous cue for investigative journalists to spring into action.

One might have also expected a louder outcry from former federal prosecutors as to the impact of such a massive purge on both ongoing cases and public perception. “The Trump Administration’s blanket decision exhibited a lack of thoughtfulness for the necessary transition of the most sensitive investigations being conducted around the nation,” wrote former Assistant U.S. Attorney Patrick Collins. “Having US Attorneys lead sensitive investigations on Friday only to be effectively denied access to their offices on Monday sends a perverse – and unnecessary – message to the community.”

Other observers seem less indignant. “It’s not about sending a DOJ- specific message. It’s about loyalty administration-wide and the premium put on loyalty by the new president,” says Philip Khinda, a partner in the SEC and White Collar Defense practice at Steptoe & Johnson LLP. But political ideology notwithstanding, the persistent instinct of a chief enforcement officer is to enforce. That won’t change; it is therefore “foolish” for anyone to interpret the purge as a license to skirt the law, warns Khinda. Actually, he adds, interpreting the move as solely and selectively pro-business would be encouraged if Trump had fired, not 46, but just two or three U.S. Attorneys – whichever ones have, like Bharara (the purported “Sheriff of Wall Street”), gone after sensitive business interests in the past and would surely do so in the future.

“I don’t think the replacement of U.S. Attorneys has any policy implications,” agrees Jeff Cramer, a former federal prosecutor and now Managing Director at Berkeley Research Group. “The manner of the change, and telling these dedicated public servants to ‘get out’ by the end of the day, is crass but predictably characteristic of the President’s style.”

Cramer understands that Attorney General Jeff Sessions’ agenda is to focus on violent crime and “roll back law enforcement to the 1990s even though crime is down nationwide.” While that agenda, memorialized in the AG’s March 8 memo to all 94 U.S. Attorneys, may influence U.S. Attorneys as a guideline, it will not prevent them from pursuing appropriate investigations of any sort. As such, “no companies should read anything into the firings,” says Cramer. It is instead the “choice of replacements” that “will certainly send the real message to Wall Street and Main Street. And it could be years for some offices to get a new boss.” Until then, career prosecutors still run the show.

In the long term, however, what does “loyalty” really mean for the men and women who replace the fired U.S. Attorneys? Obviously, the instinct of a U.S. Attorney is to prosecute; that’s how career prosecutors advance their careers, be it from U.S. Attorney to Attorney General or from State Attorney General to Governor.

Yet a politically feasible priority like “violent crime” provides cover at multiple levels. It answers to the Sessions agenda, playing persuasively to Trump supporters and beyond. The new DOJ agenda has even won lavish praise from at least one Democratic potentate, Chicago Mayor Rahm Emanuel. In such a context, it’s easier for even zealous prosecutors to turn a blind eye to corporate and white collar crime. Priorities are priorities, after all.

We’ve already gotten some foretaste of what can happen when a spoils system reshapes the criminal justice system. Maybe Bharara was fired because he was investigating Tom Price, maybe not – but the perception of impropriety remains. Meanwhile, Marc Mukasey’s name is being bandied about as Bharara’s replacement; his private practice clients include Roger Ailes, the chairman of Fox News, which is the target of an ongoing inquiry by the very office for which Mukasey is allegedly being considered. Maybe all that’s just talk as well, but it’s the kind of thing that
an administration with real concern for the integrity of our system would take immediate pains to clarify.

So sure, let’s not make too much of the 46 firings per se. But let’s not make too little of them either, especially as a harbinger of some truly self-interested decisions ahead. □
CommPRO: Republicans Deal their Leader a Major Defeat in his First Legislative Battle as Donald Trump’s Tower of Cards Collapses (Op-Ed)
Over the past 7 years under President Obama, the House of Representatives voted more than 60 times to repeal the Affordable Care Act (ACA) – h-is signature health care legislation.

They used it as a lever to unspend Congressional leadership, seizing control of the House, the Senate, and, ultimately, the Presidency. On Friday, under President Trump, with complete control of the legislative and executive branches, they proved they can't even vote to repeal it once.

This is, to put it lightly, a really big deal. For seven years, through four congressional and two presidential elections, they have campaigned on a promise to repeal the law outright. And today, all signs from the press conferences given by Speaker of the House Paul Ryan and the President himself indicate that the battle is over, and they are conceding defeat. Make no mistake, Obamacare is here to stay for the foreseeable future, dejecting stunned Republicans and delighting Democrats who are finally seeing their big gamble pay dividends as public support for the law rises.

This is a big defeat for the governing party as a whole, but for President Trump and Speaker Ryan, the consequences of their failure will be exponential. For one, they spent the last several weeks doubling down on a repeal bill that saw its approval rating slide to a paltry 17 percent. As they looked to placate the uber-conservative Freedom Caucus in an attempt to secure their votes, they agreed to cut ten essential health benefits offered by the ACA that have become extremely popular as the bill sped toward implementation, including maternity and newborn care and pediatric services. By making these changes to placate one faction of the party, they completely turned off another. And after punting the bill for a full day after the vote was supposed to happen, by 3:31 on Friday it was completely dead.

Initial reports on how the bill got pulled were conflicting. Some reported that Speaker Ryan pleaded with the President to pull the bill, and others reported that President Trump made the call. This reflects the harsh reality of life in politics that somebody always has to take the fall and get stuck with the blame. The jury is still out on whether the American people – and, specifically, the constituents who were suckered into believing that a government under complete Republican control could get the job done – will see this as Trump’s failure or Ryan’s.

But the reports coming out of the decision to abort tell an important story. Speaker Ryan, trying to mediate between and preside over a highly fractured caucus, went to the podium alone. President Trump gave his own statement, separate from the Speaker’s. Democratic leader Nancy Pelosi walked out to the podium flanked by her entire leadership team – a strong sign of unity given the dominant story line of chaos within the Republican caucus.

I suspect the biggest loser in this, however, is Donald Trump’s reputation as dealmaker-in-chief. His projections of business success and his use of wealth as evidence of smart business tactics – all of which were a core component of his campaign ethos – have really taken a substantial hit. Twitter was abuzz with things the President tweeted prior to his political career and quotes from his book “The Art of the Deal” that undermined his credibility in this area.

Former Representative John Dingell – who, at 59 years of Congressional service, holds the record for longest Congressional tenure in U.S. history – retweeted one of President Trump’s twitter musings from 2013: “I have never met a successful person that was a quitter. Successful people never, ever, give up!” Well, today Trump and his party gave up.

Others retweeted sage Trump advice from 2014, where he noted “Young entrepreneurs – Remember that your first deals are the most important of your career. Win & gain confidence.” On his first opportunity to demonstrate deal-making prowess, the President fell short.

The Trump White House has attempted in recent hours to pin the blame on Congressional Democrats. This will not work. Republicans now, at long last, have the responsibility of governance, which they are finding is no easy task. And with certain factions in the Republican caucus dejected and others emboldened, it is not going to get easier.

As they move forward, the Republican caucus is likely to remain divided, which will certainly imperil the rest of their legislative agenda. They will no doubt be eager to change the subject, but until they can heal this tremendous divide, their problems will only become more complicated – not less. Repealing Obamacare was something that every Republican could agree on for seven years, but the devil is in the details. Anyone who thinks tax reform or an infrastructure package will be less fraught with bogies is simply delusional.

In 2009, while the House of Representatives was voting on the first version of the Affordable Care Act, I was standing right off the floor of the House, waiting for the vote to conclude so I could meet the Representative I was working for and advise him on media strategy. The enthusiasm in the air from Democrats rushing out of the House chamber was palpable. The bars that evening were full of joyful staffers and members, celebrating and toasting the massive undertaking they had just accomplished. We knew the fight was far from over, but we had taken the first step toward a long-held goal.
I suspect DC pubs will be equally full tonight. Some will be celebrating and some will be mourning, but the bartenders will surely earn their keep. And in the halls of Congress and the White House, strategists will be furiously working to figure out how to put the Trump Tower of Cards back together.
April 5, 2017

Forbes: A Fox In The Bill O’Reilly House: A Study In ‘Mercantile Activism’
For Fox and other companies tolerant of “star-misbehavior” that have promised zero-tolerance for abhorrent workplace behavior and vowed to clean up a misogynistic culture that sounds like a Mad Men episode, they’d better make good on their promises.

Because if they don’t, their credibility is going to be tainted, their market share is almost certain to absorb a hit, and their corporate partners may decide to take their money and influence elsewhere.

In just the few days since the latest tawdry Fox revelations surfaced, approximately two dozen companies have suspended their advertising on O’Reilly’s highly rated evening program. This is to be lauded in an era when companies have “personalities” beyond their brands and are increasingly adept at speed-of-events leadership.

We are only at halftime of this unfolding drama. At the moment, Fox does not appear to have “lost” the bulk of that revenue; it’s been “reassigned” (or “re-expressed,” as articulated in a recent Fox statement) to other programming.

Stay tuned: the protests are escalating and so are the demands of the consuming public.

As for sponsors in this new age, the current goal line is reward enough. Standing up for civility and a safe workplace and sacrificing a direct conduit to a Fox-obsessed president is a strong and courageous statement.

At least for now. But if all that happens is a reshuffling of advertising dollars to other Fox programs, then the recent acts of corporate leadership and sacrifice will be subsequently criticized by many who view these companies as simply redistributing their advertising dollars from Bonnie to Clyde.

The list of corporate protestors, which appears to be growing by the hour, was spearheaded by Mercedes-Benz, a brand most consumers would not necessarily associate with social activism. But perhaps Mercedes’ action is better described as “mercantile activism,” a new phenomenon where companies assert leadership and cultivate better relations with customers and constituents by “speaking” with their pocketbooks.

“The allegations are disturbing and, given the importance of women in every aspect of our business, we don’t feel this is a good environment in which to advertise our products right now,” Mercedes-Benz said in making its announcement. Their stern words were soon echoed by two other automotive companies, Hyundai and BMW of North America, as well as pharmaceutical giant GlaxoSmithKline and Sanofi Consumer Healthcare, among a host of others.

All these companies are successful because they know by heart the social and political mores of their respective customer bases — and they’re willing to act on them. They also know how to navigate an ever-changing consumer activist climate driven by unspiring social media. Twitter and Facebook and all the rest exploded this week when the Fox News story hit.

Make no mistake, this is a new era. While corporate activism has existed for centuries, it is increasingly a daily occurrence where investor relations professionals need to understand politics as well as the market and board members need to think differently. Companies also know that in many U.S. households, women control spending decisions. Furthermore, many of their male customers are as deeply offended as females by boorish workplace behavior. They also know hypocrisy when they see it.

Fox News could have avoided this debacle had they adhered to their own public promise. When it dismissed Roger Ailes in July 2016, Fox News swore it was instituting a new workplace culture of openness and accountability, that sexual harassment would no longer be tolerated, and that offenders would be severely dealt with. The public was told that Fox would make harassment education and training compulsory for all employees.

Instead, as Fox pointed out in multiple statements by O’Reilly and the network, complaining women didn’t even use the Fox HR hotline to report their complaints. It’s appalling that in a culture where sexual predatory culture is apparently written into the leadership manual, women would fear for their anonymity.

Why has Fox gone down the route of victim-shaming while treating O’Reilly with kid gloves and seeming so eager to keep him on the air? Two reasons: money and attitude.
O’Reilly’s program has been a longtime cash cow for Fox News, generating five times the amount of 2016 advertising revenue as his ideological “rival” Rachel Maddow on MSNBC. Since 2014, some half a billion dollars worth of advertising has appeared on O’Reilly’s show.

Which explains why Fox was willing to shell out $13 million — in their view, a small price to pay for doing business — to settle the latest harassment actions against O’Reilly, although other charges may be in the offing.

Fox over the years has made no secret of its disdain for institutions that, in its view, feel compelled to practice political correctness and “do the right thing.” It looks as if last year’s unveiling of tough new standards to eradicate harassment was swallowed up by Fox’s cultural arrogance and a belief that the rules that apply to other companies don’t apply to them.

Only time will tell if Fox can afford such arrogance moving forward. Maybe the new mercantile activists in some of the world’s best-connected C-suites will be satisfied that O’Reilly and Fox have learned their lesson and ultimately allow advertising back onto his show. Or maybe they’ll continue to be repulsed by Fox’s disingenuousness and conclude that O’Reilly remains radioactive.

Either way, corporate activists, consumers, distributors, vendors, suppliers, shareholders, and every other constituency up and down the value chain is now empowered thanks to this new age of social media-fueled activism. In a time when neither the president nor America’s leading television network are apparently interested in standing up for the decorum that Ronald Reagan made so famous, this might just be the start of a new epoch where we look to capitalist leaders for a collective sense of right and wrong.

If Fox News does not want to incur the wrath of mercantile activism, it needs to overhaul its workplace culture. In a hurry.
Forbes: Will The Real Oscar Munoz Please Stand Up?
The United Airlines story, which by now is more saga than story, has a larger significance for at least three reasons beyond the glare of recent disastrous events.

First, future chroniclers will be taking a good look at how the airline industry itself changes as a result, if it changes at all, as such recurrent incidents deplete its reputational equity. Yes, United seems to be its real problem child at the moment; the violent removal of Dr. David Dao, a Chinese-American, from that Louisville-bound airplane was just the latest in a series of callous mishaps. It’s been, for example, only a scant two weeks since United drew viral fire for compelling a passenger to change her leggings before boarding.

Nor is there any reason to think that similar abuses don’t lie ahead. Even as the Louisville story unfolded, United made separate headlines because it had also denied service and threatened to handcuff first-class passenger Geoff Fears who was removed from a Hawaii flight to make room for a “higher-profile” customer.

But United is symptomatic of industry-wide problems that the entire industry must confront. Most obviously, what other industry denies service to prepaid customers and for such outrageous reasons? While Virgin and JetBlue are trumpeting the fact that they don’t bump boarded passengers, the fact that most airlines indulge the practice bespeaks a unique collective arrogance. My guess is, such oligarchic practices won’t change all by themselves, not when the audience is a captive one. That being the case, the airlines will have no one to blame but themselves if Congress and the FAA finally take decisive action.

Second, future attention will naturally focus on the lessons in public communications and miscommunications that the United saga provides. Far from apologizing, Munoz initially blamed the victim; Dr. Dao was “disruptive” and “belligerent.” Public scorn was so unanimous, the threatened boycotts here and abroad so widespread, that CEOs far less astute than Munoz would have gotten the message.

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Note that the perception in China — with a full 20 million views per hour of the infamous mugging videos — was that of a company-sanctioned violent racist incident. Since the Chinese market, where United has invested 30 years of effort, is key to the airline’s future, it’s no surprise that the Chinese response drove the stock down all day, remarkably so for a non-crash airline incident. So Munoz, a full three days later, finally got the message and issued the heartfelt and convincing apology that he should have issued within hours of the incident. Apparently, violence is not enough to get your attention but stock price is.

There’s an obvious lesson here all about the need for speedy effectiveness during crises, while the ultimate reputational impact of Tuesday’s follow-up apology remains to be seen. That apology was Munoz at his articulate and credible best but how big a price will United
still pay for the delay? (Munoz on Tuesday was implicitly apologizing for not apologizing, a unique specimen of public communications warranting a separate chapter in future practicums on crisis management.)

Americans do love apologies of any sort and Munoz may well have defused the situation stateside or at least begun to. But his latest apology did not address the charge of racial selectivity that now reverberates in China; even if it had, one can only surmise as to its impact in a market that United has been so concertedly targeting.

Munoz’ delay is also a reminder of how woefully inadequate some major corporations still are when it comes to monitoring social media and effectively responding to what they find. The airline’s response time was shockingly slow: 17 hours from incident to initial statement. United apparently didn’t even consider the story worthy of comment until traditional media picked it up on Monday. It’s a classic example of corporate intransigence as United had apparently learned nothing from past incidents (“United breaks guitars” to leggings) and, instead, still treats social media as insensitively as they treat customers. We assume too readily that corporations have equipped themselves with digital defense systems but how many others are similarly antediluvian?

That brings us to our third lesson, which is all about leadership and the resources that even the most intuitive leaders need in order to be effective. When Oscar Munoz was honored by PR Week as “Communicator of the Year” less than a month before the Louisville flight incident, I was one of many communications professionals who agreed that he deserved it. During his tenure at CSX, Munoz set admirable new standards in crisis management. Any railway mishaps affecting a local community led to unstinted support, financial and otherwise, from CSX. A few weeks after the honorific, we were therefore mystified that this veteran of disastrous train crashes did not understand that the United mishap was really the equivalent of a plane crash and needed to be handled as such.

Yet leaders are no better than those whom they lead and the intelligence that subordinates provide. Munoz’ initial crisis response was tone-deaf in any event but one wonders how much better it might have been if United’s systems had provided any inkling of just how dark the looming thunderclouds. If that requisite intelligence had been culled, would someone at United have had the guts to fully debrief their CEO? Even benevolent CEOs must take separate, explicit steps to elicit bad news from those around them. (All that said, it’s still hard to imagine Munoz not knowing what the whole world already knew.)

Leadership is about honesty, humility, and empathy. Munoz, I believe, has all three virtues in spades but he was caught in a trap of inexorable events without the resources to effectively master those events. A few days ago, there were calls for his ouster. Today, instead, there’s tangible need for him to reassert leadership in an exhaustive review of how and why the events of April 9 got so terribly out of hand. He has promised nothing less.

Everything hinges on what he does next. A real apology, even three days late, is a good start. But Munoz may also want to include as part of that review a tougher look at the unhealthy policies and practices of his entire industry. No one is better positioned to do so, after all, in large part because of the lessons he’s presumably learned from his and the company’s recent missteps. To be sure, there will be future headline-grabbing incidents like the one that occurred on April 9 — and there’s a limit to how many apologies even Americans are willing to accept.

As for the Chinese, it may already be too late.
April 12, 2017

The Hill: Washington needs to involve more doctors in policymaking
Differing proposals from opposite sides of the political spectrum and conflicting information are the source of the fundamental disconnect regarding healthcare playing out on Capitol Hill and in communities nationwide. As the arguments continue following the March 24 failure of the American Health Care Act (AHCA), it seems that no one in Washington has a clue of how to define the problem, much less solve it.

While the Freedom Caucus claims to be nearing an agreement on legislation that its members and moderate Republicans can support, it is doubtful that any action taken will be bipartisan. We should recall that the Affordable Care Act (ACA) was also passed on a straight party-line vote – with no Republicans supporting ObamaCare.

Most would argue that despite all the rhetoric and fierce debate, health care should not be a partisan issue, or even a political one in the first place.

Why are people looking to Washington to fix the health care system? Why are politicians the ones offering ideas, crunching numbers, and debating the merits of something most know little, or even anything about? Of course, laws and regulations are needed to institute a system that is fair and effective, but perhaps we are looking in the wrong place for ideas to fix the problem.

Hence, we must ask ourselves – where are the doctors?

While the newly appointed secretary of health and human services, Tom Price, is a doctor and there are some physicians in Congress, it seems that something peculiar happens when doctors come to Washington – they transform into politicians. It is not just a phenomenon with medical professionals, most Capitol Hill staff members can relate to the constant stream of company and association representatives that join various fly-ins. Rather than offering the local, on the ground perspective that Washington needs to hear, participants start talking politics and end up doing a disservice to the very advocacy position they were attempting to represent in the first place.

To fix the deteriorating health care system, we should look to those who are on the front lines every day. We should ask the doctors about their experiences and ideas, outside of their political opinions.

Any strategic communications advisor will tell you that for a message to have credibility, it must be supported by evidence, action, and most importantly, be delivered by a trusted source. Who better than doctors (the kind that take care of patients) to address the health care issues that influence them professionally, and their patients (all of us) personally.

Dr. Andrew Gurman, president of the American Medical Association, wrote in a March 1 blog:

Health system reform will remain a major focus of our work in 2017, because, as physicians, we stand in a unique position to advocate for our patients to ensure that the progress already achieved in coverage gains and increased access to care are not pulled out from under their feet. Whether advocating for our patients in the House of Medicine or before your elected officials in the Halls of Congress, I urge you to be an active voice in the health reform debate in our country today.

Gurman should go a step further to help these physicians move beyond just “being an active voice” to effectively communicating the realities they face in their exam rooms day in and day out. This unique perspective is something that can create real solutions.

With the current system, and proposed fixes to it, there are more entities involved in health care decisions than anyone wants to admit. These bureaucratic and business challenges get in the way of the medical care that patients need and physicians want to provide. If the medical community could unite around this message of prioritizing patient care, reforms that allow doctors to focus on producing good health outcomes, not spending unnecessary time filling out paperwork and fighting with insurance companies, would be the natural result.

The solution to the health care problem will not come from Washington, D.C. Instead, once the voices of practicing physicians are unified, roadblocks that inhibit care and wellness can start to be removed. By focusing on what is medically necessary as decided by the doctor and patient, instead of what the insurance or government mandates, the health care crisis can be resolved in a unifying, bipartisan way.

The first step is for physicians to start communicating effectively – advocating for their patients and their profession. They have the credibility, trust, and a winning message – a surefire prescription for success.

We look to doctors to solve problems all the time – and many times they are successful. We can’t say the same thing about politicians.
CommPRO: Steve Bannon’s Big Mistake: Taking President Trump Literally (Op-Ed)
On the day after last year’s presidential election, when the world was still stunned at Donald Trump’s shocking upset, many stars were on the rise.

But perhaps no star in the media world was rising as fast as that of Salena Zito, a journalist who had spent 11 years at the Pittsburgh Tribune review before moving on to cover the campaign for a variety of outlets from the New York Post to the Atlantic.

As the results started to come in on Election night and the media cognoscenti started to realize the turning tide, MSNBC’s Chris Matthews referenced a now well-spread and oft-quoted column that Ms. Zito wrote for the Atlantic about a speech that Mr. Trump gave in Pittsburgh. In that column, she summed up one of the biggest misconceptions that seemingly everybody got wrong about the Trump campaign. Throughout the campaign, then-candidate Trump would make claims and use statistics that were quickly set upon by fact checkers and journalists eager to show another example of an inaccuracy from the candidate’s mouth.

“When he makes claims like this,” Zito wrote, “the press takes him literally, but not seriously; his supporters take him seriously, but not literally.”

As noted in a post-election profile in Politico, “Zito was mocked – by fellow reporters and social media trolls alike – for extrapolating anecdotes onto the electorate.” Two months later, Zito was a household name in the media world, widely credited for seeing the canary in the coal mine while everyone else was preparing the champagne for the certain coming of a Clinton Administration.

Her analogy was later parsed and used as an example far and wide of the thinking of Trump voters across the country. Many Trump supporters weren’t so much concerned about a physical wall on the border, other reporters (and even Republican Senator Ron Johnson) claimed, but they saw the wall as a metaphor for the need to secure the border and address the problems that Middle America blamed on illegal immigration.

The early stages of Mr. Trump’s transition and presidency were replete with speculation about whether the world should take him literally, i.e. holding him to his campaign promises, or seriously, giving him some leeway.

As the Trump transition progressed, one of his first moves was to name Steve Bannon – the former Breitbart executive chairman who had served as chief executive officer on the Trump campaign – as a senior advisor, a position that officially installed Mr. Bannon’s nationalist ideology in a West Wing office steps from the Resolute desk. And as The New Yorker’s Ryan Lizza and others have noted, Mr. Bannon’s office included “an enormous whiteboard on which he has scrawled every promise that Donald Trump made during the campaign.”

A better symbol of taking the president literally can hardly be found. We’re now almost at the 100-day marker of the Trump presidency, and Bannon’s focus on making good on the literal promises is clear through multiple actions that have widely been regarded as executive missteps. President Trump’s approval ratings are a full 15 points below where they were on Inauguration Day. It seems that the “seriously but not literally” analogy may still be telling, nearly seven months after Zito first pinpointed the trend.

Bannon’s tenure in the West Wing has been fraught with controversy from day one, and it hasn’t helped that he’s found himself at odds with other senior staffers and advisors who have the President’s ear. But the past two weeks have seen a dramatic shift in President Trump’s governance – what, for now, seems to be a marked sea change from governing literally to governing seriously.

The launch of missiles against a Syrian government airbase a week ago was the first big break from his campaign rhetoric, and, to be sure, it riled the far right nationalist elements that supported him from the outset of his White House bid. But it also brought a number of stories about Bannon’s waning influence and his attempts to talk the President out of the attack in favor of remaining focused on Bannon’s nationalist worldview.

Since then, the hits have continued to pile up, with the President seeming to go out of his way to neuter his Chief Strategist, saying Bannon was just “a guy who works for me” and “I’m my own strategist.” In the last few days, he turned several other nationalist pillars of his campaign rhetoric upside-down with his claim that NATO is “no longer obsolete” and that China isn’t manipulating his currency.

The missile strike in Syria was widely praised by many across the political spectrum, and the coverage of it was overwhelmingly favorable. After nearly 100 days of missteps, President Trump seems to be finding that those who took him seriously may not have necessarily wanted to take him literally. And that has left Bannon – and his promise board – on the outs. Whether he remains in his West Wing war room office remains to be seen, but at least one piece of writing is on the wall: the old saw about campaigning in poetry and governing in prose, first said by Mario Cuomo in 1985, has never been truer.

Only now, we might want to update it for 2017: you campaign literally and you govern seriously. With all due credit to Salena Zito, of course.
Jones Day is the global law firm hired by Volkswagen in 2015 to conduct a comprehensive internal investigation and provide authorities in Europe and the United States with independent findings as to how the now-famous diesel emissions violations occurred and who was responsible. Based on those findings, VW pleaded guilty in Detroit earlier in March to fraud, obstruction, and other charges.

Now, however, it seems painfully obvious that the authorities in Germany weren’t quite satisfied with the investigation. (The Jones Day sortie was one of a series of raids that included Audi facilities as well as private homes elsewhere in Germany.) Along with raising doubts as to how credible the recent guilty plea was, the very fact that the authorities saw fit to take the drastic step of searching files at a major law firm creates reputational exposure for Jones Day as well as Volkswagen. The search was not wholly unprecedented; in 2009, Russian officials raided DLA Piper and White & Case while investigating a Moscow hotel development — but that was Putin’s Russia, not Merkel’s Germany.

Internal investigations have been relatively commonplace in the U.S. for decades yet they continue to raise what one lawyer speaking to their ethical issues in an American Bar Association publication called “a veritable minefield for all involved.” In other countries, the issue is even muddier. In a soon-to-be-published survey by the Association of Corporate Counsel, less than 40% of European respondents (all in-house counsel) said they enjoy privilege. Even so, the German authorities were taking no chances; they buttressed their position by maintaining that, while hired by Volkswagen, Jones Day was not functioning as the company’s legal representative. Privilege, assuming there’s any to begin with, cannot therefore apply in this instance.

For the Germans, “privilege law is nuanced,” says Rachel Cannon, a partner at Dentons U.S. “Authorities may believe they can seize Volkswagen’s records from Jones Day because they plan to prosecute individual employees not represented by the firm. But the government should be careful: it’s a razor’s edge any time they search a law office. One misstep, even an unintentional one, and an entire case can dissolve in a sea of violated rights.”

In England, “companies instruct outside counsel to first ensure that privilege is preserved” before launching an internal investigation, says Johanna Walsh, a lawyer specializing in corporate crime at Kingsley Napley in London. “It would be unheard-of for prosecutors to raid law firms in the way we’ve seen in Germany. The Serious Fraud Office, which investigates and prosecutes the most serious corruption, has said it finds investigations which ‘churn up the crime scene’ to be unhelpful. The SFO prefers genuine cooperation with their own investigation rather than one by the company itself.”

Last month’s raid on Jones Day in Munich by German authorities triggered a number of differing responses, depending on where you happen to sit geographically and professionally. Based on those findings, VW pleaded guilty in Detroit earlier in March to fraud, obstruction, and other charges.

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The ethical parameters are, in any event, tough enough for credibly independent investigators to decode on a global basis; much worse when the investigations are seen as whitewashes because, as one Forbes commentator observed of the Enron investigation conducted by Vinson & Elkins early in this century, “management [is] hiring lawyers to investigate management.” All too often, the middle-level executives wind up in the soup while C-Suites go home for dinner. It seems the happy exception when law firms deliver a final report that, like Shearman & Sterling’s investigation of Wells Fargo, is generally perceived as “scathing” in its treatment of C-Suites (and even that report has been read by some observers as a “whitewash” of the bank’s directors).

From a public communications standpoint, these investigations are thus a double-edged sword. In this case, VW was pressured by U.S. regulators to retain an independent auditor as was another German giant, Siemens, during its mammoth FCPA bribery case in 2015. Yet regardless of whether or not they’re being compelled by the government, companies can achieve significant optical benefits when they take such ostensibly resolute steps toward total compliance and transparency. Shareholders are reassured, regulators are pacified, and everybody else can now shift their attention to some other headline-grabbing scandal. Siemens, for one, garnered some nearly giddy praise for its cultural transformation of which the independent investigation was presumably one important agency.

Alas, it’s clearly been a bumpier road for Volkswagen. Optics perceived to be eyewash simply create bigger, potentially unmanageable crises in public confidence. The raid on Jones Day only encourages that perception. Conversely, the vexing questions as to the actions taken by the Munich prosecutor are all the more vexing in light of the real possibility that the authorities leaked news of the raid in order to make examples of both Volkswagen and Jones Day. VW responded aggressively — unusually so for the cautious culture of German business practice — condemning the Jones Day search as “unacceptable” and “a clear breach of the principles of the rule of law.”

How well-advised was that strong response? “The company would have been better advised to fight against the prosecutor’s office rather quietly,” observes Uwe Wolff, Chief Executive Officer of NAIMA Strategic Legal Services GmbH in Berlin. “Volkswagen is not (yet) in a position to stylize itself as a victim of an overeager prosecution and its loud response to the searches is very harmful,” adds Wolff. “It seems the lawyers are driving communications while the communicators are left to pick up the shards.” VW’s aggressive response devolves around a legalistic point; i.e., the propriety of raiding a law office. But the public is a lot less concerned with that than with the underlying substance of the matter.

Volkswagen faces at least one more big decision in the weeks and months ahead. While the company has taken an aggressive position in the Court of Public Opinion, the company must now determine the likely impact on its business that a protracted legal case in Europe will have.

On the one hand, many more European drivers use diesel fuel; drawing a line in the sand could lessen VW’s considerable exposure in civil courts throughout the continent. In combating these cases, Volkswagen has the benefit of weaker consumer laws and less onerous discovery requirements.

On the other hand, even successful contestation might be a Pyrrhic victory if it keeps Dieselgate front and center in public consciousness for the foreseeable future. “The public has a deep impression that VW wants to keep the truth from coming to light,” comments Wolff. “It is not interested in legal skirmishes.”

To be sure, businesses need speedier closure in order to rehabilitate and protect their wounded brands. Unfortunately, this pressure to achieve that closure, to return to business as usual, gives their public sector adversaries a negotiating advantage, whatever a raid on a corporate law firm discloses or fails to disclose.
The Hill: Will hotels destroy faster than Airbnb builds?
Morton Blackwell, founder of the conservative Leadership Institute, is well-known for establishing the “Laws of the Public Policy Process.” Blackwell’s rules have guided countless successful political and policy campaigns since the institute’s founding in 1979.

Despite the long track record of success of those that heed Blackwell’s counsel, powerful business people, lobbyists, and some of the most seasoned communicators on Capitol Hill either forget or willfully ignore his tried and true advice.

Success rarely comes to those who break the rules. Consider Blackwell’s law #23, which states in part, “a builder can build faster than a destroyer can destroy.” Now consider how the largest hotel chains and their trade association were revealed this week to be attempting to thwart the growing success of home-sharing marketplace Airbnb by throwing up political roadblocks.

Documents obtained by journalists show how the American Hotel and Lodging Association (AHLA) is waging an all-out political war on Airbnb. Hotel chains like Marriott, Hilton, and Hyatt are pumping millions to lobbyists to fight Airbnb on Capitol Hill, in state capitols, and even in local communities. Rather than discuss the benefits that the traditional hotel industry offers consumers, the multi-billion dollar industry has banded together to fight an exponentially smaller, yet very successful innovator.

The hotel industry’s actions show that the giants like Marriott, Hilton, and Hyatt see competition as a threat. While it is natural for any business to want to beat the competition, the consumer only wins when the fight is fair. By utilizing established political power, and pouring even more money into Washington, the industry can cause a lot of trouble for Airbnb. But these headaches will not be enough to put an end to the competition.

Successful competitors and communicators have something in common – we are in favor of something. It simply isn’t enough to just be against a company or policy – we must be the builders in Blackwell’s law #23.

In the ongoing hospitality industry battle, Airbnb continues to claim that builder role. In a blog post released soon after the hotel industry documents were disclosed, the company beautifully told its story, exposing why the industry is seeking to tear down Airbnb instead of competing fairly. The communication from Airbnb speaks much more about the benefits the service offers consumers – lower prices, more consumer choice, flexibility, etc. – rather than dwelling on negatives.

From beginning to end, the Airbnb post builds favorable public sentiment and support for the business. The service positions itself as a vindicator and the hotel industry as the villain. The opening states, “Airbnb has long believed that for us to win, no one has to lose. Even as more people share their homes, traditional hotels continue to take in robust or even record profits. Home sharing helps more people travel and that should be good news for everyone.” It closes with a call to action: “We hope you’ll read the hotel industry agenda for yourself. If you’re an Airbnb host and don’t like what you see, join a Home Sharing Club and speak out.”

When juxtaposed against the defensive statement issued by AHLA, Airbnb’s blog seems even more magnanimous. The AHLA instead discussed its “clear mandate and mission to vigorously advocate on behalf of the hospitality industry and its millions of employees.” Furthermore, it argued that “it should come as no surprise that AHLA’s political action committee, HotelPAC, makes political disbursements in a strategic, bi-partisan, bi-cameral fashion to support pro-lodging members of Congress and candidates’ campaigns. We stand firm in support of our shared goal: to protect communities and travelers from the commercial operators who use websites like Airbnb to run illegal hotels in residential properties.”

When statements sound defensive, the audience thinks there is a reason to be defensive, perhaps something to hide. However, here, AHLA and the hotel industry do have a valid point to raise. An attempt to level the playing field for fair competition is something everyone can support.

Steve Shur, president of the Travel Technology Association, of which Airbnb is a member, makes a great point that “competition in the marketplace, encourages innovation and preserves consumer choice. It is up to the hotel industry to decide how it wants to communicate its value proposition in this new marketplace.”

There are many positive differences to staying in traditional hotel versus an Airbnb. Predictable accommodations, staffing, room service, and an accountable “brand” are important differentiators. However, when communicating what is wrong with Airbnb, the industry loses an opportunity to communicate what is right with these choices, and the benefits they offer consumers.

With the growing popularity of Airbnb, the hotel industry should be expected to react now that it is facing new competition. The documents exposed this week, however, could be a great wake-up call to switch
strategies and start communicating its value proposition directly to the consumer. Public trust is better than political power any day.

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April 25, 2017

Forbes: Invasion Of The Body Snatchers: A Public-Private Partnership Is Needed to Combat Cybersecurity Threats
Cyber threats – hacking from competitors, meddling by rogue individuals and nation-states, harassment by hostile activists, breaches of company and customer financial data – seem to metastasize by the day, while effective remedies remain hard to come by.

Cybercrime is an insidious growth industry where “risks are low,” as the Center for Strategic and International Studies put it in a recent report. Cyber damage costs the global economy at least a half-trillion dollars a year – and probably more, a figure larger than the gross national product of many countries.

For thousands of executives and board members, cybersecurity has become their #1 risk management concern. Why the sleepless nights? Two reasons. A company’s usual cyber incident response – two years of credit monitoring – is increasingly unsatisfactory for aggrieved parties. Equally troubling, cyber insurance is evolving behind the pace of both the sophistication and frequency of these attacks.

In addition to corporate security, cyber also carries with it profound national security repercussions. In the words of retired Admiral Michael Mullen, the former Chairman of the Joint Chiefs of Staff, cybersecurity has become one of the country’s “biggest existential threats.” The cyber risk to government databases at every level is potentially crippling. Since all parties have so much at stake and information-sharing on best practices is so crucial, the ultimate solution to cyber defense is to bring the private sector together with the public sector. As former Homeland Security Secretary Tom Ridge, now the head of Ridge Global, recently told attendees of a risk management conference in Miami, “[I] believe an unbroken chain of cyber resilience must be created in the market. The chain would lay private sector capital, in the form of broad insurance coverage for the enterprise, to internal financial reserves that serve as an internal buffer to catastrophic stop-loss, and ultimately to government-backed risk sharing pools.”

Among the biggest challenges to realizing Secretary Ridge’s vision of private-public partnership is that cyber insurance policies are only in their nascent state of evolution. Many, if not most, U.S. companies have their cyber operations covered only through provisions in their Errors and Omissions (E&O) policies, a reality that leaves too many American businesses exposed and vulnerable. Some 60% of small companies that suffer a cyberattack are out of business within six months, the Denver Post has reported.

What can be done to mitigate these risks and create stoke private-public cooperation that’s needed?

Secretary Ridge recently elaborated on his prescription, maintaining that protection against cyber incidents is everyone’s responsibility, from the board room to entry-level employees and from human resources to investor relations. “Board members who are not as experienced with cybersecurity need to see it at the forefront of financial risks that could impact their bottom line,” said Ridge. “We need to have more information-sharing and more conversations about cyber risk at the board level, and not just within companies’ IT departments.”

Together, the private and public sectors must go on the offensive to protect our intellectual property, our resources, and ultimately, American lives. The Electricity Subsector Coordinating Council (ESCC)’s work with the Department of Energy (DOE) is a prime example of how critical infrastructure groups, a growing target for cyber criminals, can effectively partner with government. Similarly, Business Executives for a National Security (BENS), a nonpartisan organization, is pairing senior business executives with government leaders to assess cyber threats more accurately and devise cutting-edge solutions.

The Internet was founded on the principle that any connected machine could communicate with any other device. The Internet of Things has complicated this maxim – all machines are about to become alive, a la 1950s science fiction. Private companies have worked for years to isolate their networks, creating an increasing number of barriers that must be overcome to achieve flexibility in communication. The Internet initially assumed edge security, like firewalls, as opposed to built-in core security, such as input authentication to ensure the owner of the device is the person making changes to it. Companies creating and shipping Internet-connect devices may be using less secure practices and may not have enough IT staff to monitor these devices.

If somehow we cannot get back to the sense of openness that allowed for files to be shared across networks and across nations, we will – as Secretary Ridge cautions – “have a long way to go before we minimize risk.”

Few issues cause as much angst in general counsels’ offices, C-suites, and boardrooms as cybersecurity.
April 27, 2017

The Hill, ObamaCare must be fixed before it collapses.
While many may not want to admit it, President Trump is correct. While policymakers disagree on the solution, the problems with the Affordable Care Act (ACA) need to be fixed before the system collapses. The lack of choices, skyrocketing premiums, and growing burdens on physicians are impacting all Americans regardless of their insurance or health.

In a week that began with discussions of tax overhauls and funding for a border wall, and could end with a government shutdown as we pass Trump’s first 100 days in office, one would think that healthcare reform would be on the back burner. Considering the failure of the American Health Care Act (AHCA) last month and recent polling that shows that the more Republicans try to fix ObamaCare, the more popular it gets, it is amazing so many have withstood the pressure and stayed in this fight. Trump should be applauded for continuing to move forward on this issue. Republicans defending their positions at town hall meetings deserve recognition too. Sticking with a right and just cause, even when it feels like a losing battle, is admirable. However, doing the same thing over and over again and expecting a different result is the definition of insanity.

So, what should be done differently?

The lack of physician input in creating solutions to the healthcare mess is a good start. However, costs for medical care itself have yet to be adequately addressed.

Dr. Hal Scherz, the founder of Docs4PatientCare Foundation, said recently that “the entirety of the healthcare debate is focused on insurance and coverage, instead of the elephant in the room, which is the high cost of the care patients receive. Unless healthcare costs are dramatically reduced, no changes in how people purchase insurance is going to result in meaningful improvement in overall healthcare costs.”

A recent meeting between Dr. Scherz and Health and Human Services Secretary Tom Price “focused on the regulatory burden on doctors and the necessity of freeing physicians to spend more time with patients.”

Dr. Scherz has a point. What better way to bring down medical costs than to reduce obstacles to providing it? Perhaps it is time to argue for deregulating doctors.

Roadblocks to the “repeal and replace” of ObamaCare have proven difficult for even the most conservative Freedom Caucus members. Rather than tinker with details, Republicans should realize that there is no shame in changing strategy if you stay true to the core objective. And deregulation is something everyone in the GOP will embrace.

Utah Sen. Mike Lee, who seems to be on the physician deregulation bandwagon, recently wrote that “the heart of the problem is the Washington-created, one-size-fits-all regulations that treat Utah’s unique population the same as that of Florida or Massachusetts. Each of our 50 states has different populations with different health care needs. There is no reason we should all be forced to buy the same ‘essential health benefit’ package when we shop for health insurance.”

When it comes to deregulation, the doctors already have a head start on the politicians. Many physicians have begun to adopt a direct primary care (DPC) model where patients pay a flat fee to their doctor and avoid going through insurance for basic care. By taking the insurance regulations out of the picture, it saves doctors time and patients money. Imagine the improvements and savings if some of the government regulations were eased too.

Lower costs and better care – that’s something everyone can support. Staying true to a campaign promise to repeal and replace ObamaCare with slight strategy adjustments that entail deregulating doctors isn’t just a win – it’s a bonus. Who knows, with this new approach, maybe healthcare reform could come this week !
CommPRO: Trump’s 100-Day Speech in Harrisburg: Presidential “Leadership” Turned on Its Head
Restraint and reflection? They’re for losers, Trump has been communicating in word and deed since Inauguration Day.

Trump won the White House by flouting tradition and thumbing his nose at political convention. His Twitter-driven defiance reached full boil Saturday night, when he delivered a red-meat speech to a rabid crowd in Harrisburg, PA.

What made Trump’s Harrisburg moment so remarkable was not its rhetorical content – after all, we’ve heard many times his belligerent attacks against the media and political adversaries – but its timing and optics. It came at the 100-day mark of his administration – a measuring stick that scholars and reporters have used to appraise presidential effectiveness since Franklin D. Roosevelt’s fabled first term. During the campaign, in fact, candidate Trump constantly framed his agenda around the 100-day goal, promising to deliver. Bigly.

To be charitable, it hasn’t quite worked the way Trump envisioned. He has been forced to beat a retreat on a host of fronts, from repealing and replacing Obamacare to building a wall on the Mexican border to imposing a Muslim travel ban. Many of his difficulties can be traced to his leadership style, which combines bombast with an erratic fealty to policy proposals, some of which appear to have a shelf life of days, if not hours. One afternoon the Trump White House vows to scrap the North American Free Trade Agreement (NAFTA). The next morning it announces that NAFTA just needs to be reformed, not rejected. If the American public seem confused, imagine how Canada and Mexico must feel.

But Trump's Harrisburg "speech" was not about substance, it was about show business – with a healthy dose of P.T. Barnum thrown into the mix. The president’s aides knew for weeks that the event would take place directly opposite the White House Correspondents Dinner. They deliberately concocted a split-screen contrast: Trump revving up his working-class base as Washington and Hollywood elites wined and dined in black tie while making snarky comments about the president. The optics, at least superficially, worked in Trump’s favor – and he and his staff exploited them. Pundits may decry Trump’s absence from the correspondents’ dinner but my guess is that his hard-core supporters – whose disdain for elitism propelled Trump’s rise to power – loved it.

With its nasty skewering of the media, the Harrisburg event may not have embodied the “leadership” that most communications professionals associate with U.S. presidents. But it’s the only form of leadership that Donald Trump, at least at this point in his presidency, knows how to pursue.

Will it work over the long haul? As a veteran of public affairs wars, I can say without hesitation that Trump violates most of the “rules” to which I’ve subscribed for the length of my career.

He has made the media his enemy and branded any coverage he doesn’t like “fake news.” Never get into a public wrestling match with organizations that buy ink by the barrel is one of our industry’s precepts. Another is never let a dispute with a news organization get personal. Trump has thrown both maxims off the Truman Balcony.

Still, every communications professional should have palpitations over Trump’s blame-the-press-at-all-times strategy. When the Forth Estate becomes the enemy, when an American president attacks the media at every turn, our democracy suffers.

In their remarks at the correspondents’ dinner, Bob Woodward and Carl Bernstein, the two crusading journalists whose investigative work was instrumental in exposing the Watergate scandal, deplored Trump’s contempt for the media.

Woodward and Bernstein reminded us that Trump may be scoring points with the 40-odd percent of voters who hate the media as much as he does (or at least pretends to), but a strong majority of the country still believes in a free and vigorous press. Most journalists take their responsibilities seriously; they don’t like the president attacking their integrity. Eventually, they will have their day.

Plus, there’s that small matter of reporters writing the first draft of history. Get your victory laps in now, Woodward and Bernstein seemed to be telling Trump. No one outruns the First Amendment. And no amount of optic manipulation and film score music can unmake where history will go.

The system – Congress, the courts, the media, and state and local governments – has so far proven a formidable “check” against Trump.

If asked to define “presidential leadership,” most communications professionals would, I suspect, cite such traditional qualities as consistency, thoughtfulness, and the capacity to rise above narrow partisanship. To which the current occupant of the White House, New York native Donald Trump, would snarl: “Fuggedaboutit!”
To achieve a legacy of anything beyond divisiveness, he’ll need to school himself in the very things he loathes: civility and the limitations of presidential power.

A president takes an oath of office to the entire country, not just his base. Trump to date has not shown much interest in reaching out to Democrats, independents, and nervous Republicans.

Whatever that is, it’s not leadership.
The Hill: Mercer shouldn’t lose his composure in IRS battle
As time passes, policy debates in Washington become less authentic, less civil, and less focused.

Instead of making a rational case supported by evidence, political and policy exchanges become more about scoring points than making one. Attacks on funding sources are one of the most common ways that issue campaigns are undermined. While disclosure regulations can help expose cozy relationships, all too often these rules are used in intellectually dishonest attempts to undermine valid policy positions.

Earlier this week, reports about Robert Mercer’s IRS battles began generating more headlines. A billionaire hedge fund manager disagreeing with the IRS over taxes would normally miserably fail the newsworthiness test. However, when paired with the Mercer family’s political activities, specifically their financial support of conservative candidates and causes, the story becomes much more interesting.

Mercer critics readily point to the more than $22 million he donated to help elect an anti-regulation president. Financial support of endeavors by top White House advisors including David Bossie’s Citizens United and Steve Bannon and Peter Schweizer’s Government Accountability Institute are also quick to be mentioned in the same context of a disputed tax bill of an estimated $7 billion.

It would be disingenuous not to at least concede there is an appearance of quid-pro-quo when these and other groups apply pressure to remove the IRS Commissioner. While these are admittedly bad optics, there is much more to the story.

Back in 2010, when Lois Lerner was the IRS’s director for exempt organizations, Tea Party-inspired groups were targeted by the agency. Years of investigations and a less publicized missing emails scandal exposed how, under Lerner’s leadership, the IRS used its power to silence conservative voices (some of which were supported by Mercer.)

These IRS abuses are well-documented through the work of Congressional investigators and conservative organizations. As the scandal was exposed, the pressure began to generate results. Lerner resigned in September of 2013, but despite the overwhelming evidence presented, the Department of Justice closed its investigation into the matter in October 2015.

Conservative legislators, think tanks, and advocacy organizations are not about to let this matter go. Now focus is shifting to what has been described as a cover-up by IRS Commissioner John Koskinen, who began his leadership tenure in late 2013. Although Lerner escaped without penalty, the environment is growing more hostile for Koskinen and the IRS. There is even a ten-minute video from the United States House Committee on Oversight and Government Reform explaining the matter and demanding accountability.

Earlier this month, a letter to President Trump signed by Rep. Jason Chaffetz (R-Utah) and more than three dozen other legislators stated, “So long as the IRS commissioner is a man who has misled the people, destroyed evidence, and failed his legal duties to the people’s representatives in Congress, the IRS is not ‘controlled by the people...’ For that reason, we request you immediately remove Koskinen.”

It is no secret that many of the politicians and organizations that worked to expose the scandal and currently oppose Koskinen have received financial support from Mercer, his family, or connected organizations. While these contributions do not change the IRS’ past treatment of conservative groups, they are being used by critics to change the subject – a typical diversion tactic. There is little that can be done to defend the IRS in this matter, so the strategy to distract by going after Mercer makes strategic sense – and should have been expected.

Spending $22 million to help put an administration in power that can theoretically save you $7 billion is an accusation everyone should have seen coming. It is a page right out of the playbook of those who exposed favors for donors to the Clinton Foundation.

Elections laws and political disclosure requirements are beneficial tools, but facts without context can equip critics and provide an opening to reframe the debate.

Robert Mercer and his family have a First Amendment right to support political candidates and causes, no matter where they fall on the political spectrum. They should be unapologetic about their support and continue to go on offense. They have been successful in supporting winning campaigns on the politics and policy fronts and serve as a major contributor in the marketplace of ideas.

If the IRS scandal continues to unfold as typical Washington arguments do, we will soon see the “follow the money” conspiracy theory narrative that attempt to malign Mercer. The agitators will generate headlines that completely miss the original point – on purpose. While Mercer’s battle with the IRS and the Lerner/Koskinen scandal are separate matters, efforts to conflate them to portray Mercer as the villain and the IRS as the victim are already underway. This tactic is effective at first, as the zingers in the debate lead the discussion. But distraction stories rarely influence support, and never change the facts.
In the face of escalating attacks, Mercer must stay true to his message (while fighting the IRS on two separate fronts.) The legislators and organizations that played a vital role in exposing the actions at the IRS will have the same challenge to justify their pursuits. Everyone will be tested. It will be tempting to react to the charges and start justifying actions and contributions, but that would be a big mistake. The minute that a communications strategy switches from proactive to reactive is the instant it begins losing support.
The Foreign Corrupt Practices Act (FCPA), the U.S.’s ambitious attempt to deter corruption in international business dealings, officially turns 40 this year. Like a lot of things reaching middle age, FCPA is revered by many and reviled by more than a few.

Even as the FCPA enters its fifth decade, bribery scandals continue to beleaguer the industrialized and developing worlds, hamstringing growth and contributing to government instability. Every year, the World Bank estimates businesses and individuals pay an estimated $1.5 trillion in bribes – the rough equivalent of two percent of global GDP—and a staggering ten times the value of overseas development assistance.

Proponents of the FCPA point to its success in promoting American values around the world, in cracking down on bribery and fraudulent scheming, and in making international business deliberations more predictable and forthright. It has also generated significant funds for the U.S. Treasury: in 2016 alone, the government collected more than $2.4 billion in penalties from some two dozen companies charged with FCPA violations.

Detractors say its benefits are exaggerated, that it puts American companies at a competitive disadvantage, and that its compliance costs are prohibitive for many companies. Since one of FCPA’s most outspoken critics now happens to occupy the White House, its future direction is drawing a lot of scrutiny these days.

What does this all mean for the FCPA?

“It’s too early to say with any certainty where FCPA enforcement will go under the Trump Administration,” says Leslie A. Shubert, co-leader of Sidley & Austin’s FCPA and anticorruption practice. “While President Trump has publicly criticized the Act, Attorney General Jeff Sessions recently reiterated the Department of Justice’s continued commitment to enforce the FCPA, including a continuation of the prior administration’s focus on prosecuting individuals and encouraging self-disclosure.”

Still, Shubert says, given Donald Trump’s pro-business stance, FCPA enforcement could change in two respects. First, the administration could seek to level the playing field for U.S. companies by subjecting foreign entities to greater scrutiny and possible prosecution. And second, Shubert anticipates that U.S. companies that have instituted concerted compliance programs may receive greater deference when the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) exercise prosecutorial discretion.

“Enforcement of the FCPA has been a DOJ and SEC priority for decades now, cutting across both Democratic and Republican administrations,” observes Mark Mendelsohn of Paul Weiss, an FCPA expert who served as deputy chief of the Fraud Section of the DOJ’s Criminal Division from 2005-2010. “But the level of resources committed has steadily increased over time. And DOJ and SEC have employed more expansive and novel theories in recent years. While it is highly unlikely that the U.S.’s core commitment to enforcement of the FCPA will wane, we could see some adjustments at the margins that could be significant for companies operating global businesses.”

FCPA proponents have no illusions about the difficulties inherent in seeking greater anticorruption compliance. But they know how imperative it is for global economic growth that bribery be curbed. The coming years could prove to be a critical test for international regulators and multilateral institutions to assume leadership positions in the global fight against corruption.

The bottom line is that if the FCPA is having a mid-life crisis, it’s likely to survive it. Too much is at stake for the global business community to abandon efforts to mitigate corruption worldwide.
The Hill: Genuine veteran charities face a challenge beating the fakes

May 17, 2017
Many of them set up as charities or nonprofit organizations. Americans are very generous and vigorously support causes that help those in need. Donor resource Charity Navigator recently reported that Americans gave more than $373.25 billion to charitable organizations in 2015 alone.

As the U.S. celebrates National Military Appreciation Month this May, organizations dedicated to military and veterans’ causes are ramping up their appeals, raising money for worthwhile projects to benefit the heroes who bravely serve our country. Unfortunately, nefarious actors are simultaneously on the prowl, looking to take advantage of the American spirit of generosity and steal money intended for veterans and their families.

While issues of abuses in charities are not limited to those focusing on the military, it is some of the most fertile ground to seed confusion and prey on the generosity and patriotism of others. Scammers who take advantage of the sense of pride and gratitude that comes from supporting military charities causing some donors to take on a “give at your own risk” attitude that jeopardizes legitimate operations.

Last week, financial records revealed that donations to the Wounded Warrior Project dropped more than $70 million in the second half of last year. While fully exonerated by forensic accountants, unfounded allegations at the charity last year (and the resulting shake of its leadership) caused a profoundly negative impact on the organization’s bottom line — in terms of reputation, fundraising, and impact.

One must ponder: had the perception of military charities been different at the outset of the perceived scandal, would confidence have been so quickly lost and difficult to earn back?

With the ample negative news about charity scams out there, there is no wonder that snap judgments are made without evidence.

In April, California Attorney General Xavier Becerra, acted quickly and filed civil lawsuits against the leaders of fake veteran charities that used hundreds of thousands of donations intended to help veterans for personal use, including shopping, paying off personal credit card debt, traveling, dining, and other luxuries. Becerra called this use of charity funds as a personal ATM as a “breach of the public trust” and described how these crimes are “worse when you do so at the expense of our veterans.”

Becerra’s actions are just one of the many illustrations of how things are getting tougher for the con artists out there. However, when combined with an existing skepticism, things are getting tougher for the legitimate organizations too.

Even a former member of Congress, Corrine Brown was convicted for stealing money from a fake charity.

Jason Lynch from the Charity Defense Council points out that scams (real or alleged) are headline generating, which gives the impression that they’re happening all the time. In reality, however, scams are rare and the clear majority of organizations are doing honest, important work.

 Authorities are stepping up enforcement, Congress is getting more involved, and charity watchdogs are monitoring and reporting on nonprofits. Most importantly, honest charities are communicating more effectively than ever before and showing the benefits of their work.

While regulatory agencies and watchdogs are becoming more active, they must be careful not to stir up unnecessary outrage, such as in the Wounded Warrior Project situation. Lynch argues that “when the work of good charities is misconstrued, the charity suffers and those in need lose the most.”

“In the media’s push for clicks and ratings, we have seen good groups unfairly maligned by false and misleading claims. For example, overhead spending should not be conflated with fraud. Regulators and watchdogs should be asking about impact and results. The public deserves a more thoughtful approach to accountability than they’ve been given so far.”

Charities that make a big effort to illustrate their positive impact can blunt possible critics and mitigate risk. These proactive outreach efforts will simultaneously position their work apart from competitors, attract more donors, and ultimately create bigger social impact.

For example, Helping a Hero, which builds homes for wounded soldiers, has impressive credentials, high grades from watchdogs but, above all, a great story to tell. Meredith Iler, the chairman emeritus of the Houston-based organization, is a persistent advocate, sharing how the charity improves lives and communities.

“It helps our supporters to know that Helping a Hero is certified as a transparent charity by the Better Business Bureau, but what really makes a difference is when they see all of the homes we build,” Iler explained.

“In the next 45 days, wounded warriors in Texas, North Carolina, Kentucky, and Oklahoma will have public welcome home ceremonies where their neighbors are invited to come see the homes and meet the veterans who have sacrificed so much for our freedom.”

No con artist can fake the events sponsored by Helping a Hero. They
show existing donors and potential supporters exactly how their donations will be used and the real world benefits. In a culture of growing skepticism, charities must show donors tangible results.

Communicating benefits, progress, and success more than statistics or aspirations instills a sense of trust. Without that trust, even the most active and successful nonprofit will be met with skepticism and doubt.
The Hill: Gianforte can ‘beat the press’ by apologizing at the right time
At some point, everyone loses their temper. From simple shouting matches to incidents of road rage there are a mountain of reasons that we can demonstrate volcanic behavior.

While every incident has the potential to damage even the strongest human bonds, the existing reputation and relationship can matter just as much as the apologies that often follow explosive behavior. In the case of the incident between Greg Gianforte and The Guardian reporter Ben Jacobs, the situation will play out on a national and even international stage. The next steps by Gianforte must be carefully considered as these actions will determine if the election eve assault was just a stressful lapse in judgment or a reputational defining moment.

Moments after Jacobs claimed Gianforte “body slammed” him for asking questions about the candidate’s position on health care, the news media and social media channels were buzzing with the news. Would the Republicans end up throwing away a seat that Donald Trump carried by 20 points? The answer lies in the work Gianforte did to define his reputation leading up to the incident, and the actions taken immediately afterward.

In addition to his opponent and related supporters, many have been fast to be critical of Gianforte, including the recension of endorsements by two newspapers (The Montana Billings-Gazette and The Missoulian). Additionally, dozens of legislators from both sides of the aisle were quick to join the criticism including South Carolina Representative Mark Sanford using the term, “horrendous” and North Carolina Representative Robert Pittenger calling the behavior, “nonsense.” House Minority Leader Nancy Pelosi went so far to call Gianforte a “wannabe Trump.”

Behaving like President Trump in Montana may lead to building support. He did win the state overwhelmingly, however, it is much more likely that Gianforte’s efforts to build his reputation over time, made this incident something that could possibly allow him to move forward without significant damage.

Leading up to and during his time as a candidate, Gianforte used his peace time wisely, allowing him to make a case to the voters why he would make a good congressman. He worked hard to earn the support of the voters making him an early favorite in the race. Those actions may give him the benefit of the doubt in this situation – and likely a lot more.

As political commentator Jim Ellis described in his newsletter, “Since so many Montanans have already cast their ballot for today’s election, this incident is unlikely to greatly affect the final outcome. Because of the large number of mailed ballots already in possession of local county election officials, it appears we will see a very high turnout. According to the Montana Secretary of State, 357,957 voters requested absentee ballots, the termination Montana election officials use to describe pre-election voting, and, as of yesterday, 259,312 ballots have been returned and are ready for processing.”

So, in addition to building up a reputation and the benefit of the doubt Gianforte locked many early votes too. Unlike with the local papers and some politician endorsements, these ballots cannot be rescinded.

Now calls for early voting changes are underway. Additionally, calls for an apology are mounting too. In handled well, a genuine apology from Gianforte could serve him well.

There are many athletes, politicians, and business leaders that have been in similar situations and dug themselves in deeper by attempting to be defensive or justify their actions. Even if Gianforte thinks he is right, now is not the time to express anything but remorse. A good apology could completely diffuse the situation.

When people make mistakes and express remorse, forgiveness is rarely denied. If the perceived offending party admits to the mistake there is little else that an agitator can do – other than look petty by continuing to “pile on.”

Most people realize that allowing one incident allow us to cloud the image of someone’s character is fundamentally unfair.

With the strong work to build a reputation, combined with a truly sincerely apology, Gianforte may be able to peacefully beat the press that he surely feels are trying to take him down.
June 2, 2017

The Hill: Business moguls can learn from Trump: Winners never quit, quitters never win
Reactions were strong on Thursday as President Trump made good on another campaign promise to withdraw from the Paris climate deal.

Leaders from other nations (including the Pope), elected officials, interest groups and business leaders, made this a difficult decision for the president. Even Secretary of State Rex Tillerson and the president’s daughter, Ivanka, were reportedly advocating for Trump to reconsider his plan to exit the agreement.

Despite the significant pressure, the president presented a compelling case that his decision was the best move for the American people. As he offered his reasoning for withdraw in a Rose Garden speech, he described the deal as, “the latest example of Washington entering into an agreement that disadvantages the United States, to the exclusive benefit of other countries, leaving American workers, who I love, and taxpayers to absorb the cost in terms of lost jobs, lower wages, shuttered factories and vastly diminished economic production.”

Supporters were inspired by this latest bold move by Trump. Speaker Paul Ryan called the Paris agreement a “raw deal for America. Senate Majority Leader Mitch McConnell described the decision as one “protecting middle class families ... from higher energy prices and potential job loss.” Many other free market groups joined this chorus of supportive voices too.

Unsurprisingly, despite Trump’s “America first” foundation to support the withdraw, critics were furious and blunt in their sharp rebuke. Among the world leaders and industry titans that made disappoint known, there were two specific reactions that were particularly notable. SpaceX and Tesla Chief Executive, Elon Musk and Disney CEO Robert Iger used the withdraw as their excuse to resign from the president’s bipartisan Strategic and Advisory Forum that was designed to guide the White House on policy matters.

Musk and Iger are not the only leaders to have resigned from the business advisory council. In February, Uber CEO Travis Kalanick dropped out citing differences over immigration policy.

While the latest resignation stunt was likely intended to demonstrate how much they care about the environment — it may have the opposite of its intended effect. In politics, as in business, things do not always go the way one hopes, or plans. Walking away is rarely a successful strategy as it is always easier to change things from the inside or in a position of power or influence.

When assembling various leaders for the forum, Trump called the group the “best and brightest” knowing full well that many were ideological opponents. Giving these individuals a platform and a voice will shape better public policy, and ensure more voices are heard – even if they are, at times, dissenting.

Despite the last-minute lobbying, the Paris deal announcement was hardly unexpected. Musk even singled that he would resign the day before if the president continued down the path to withdraw. In his Laws of the Public Policy Process, Morton Blackwell advises, “Don’t fully trust anyone until he has stuck with a good cause which he saw was losing.” It is sound counsel – those who are persistent can eventually win, those who give up, can lose trust.

While Trump similarly left the bargaining table of the Paris climate agreement — he left the door open to pursuing new environmental solutions and a renegotiation of the Paris deal on more favorable terms. He stated specifically, “I’m willing to immediately work with Democratic leaders to either negotiate our way back into Paris, under the terms that are fair to the United States and its workers, or to negotiate a new deal that protects our country and its taxpayers... I will work to ensure that America remains the world’s leader on environmental issues, but under a framework that is fair...” Trump has not quit on climate policy.

Trump has left the door open – while critics try to slam it shut. Leaders who are truly committed to growing the economy, creating jobs and protecting the environment, should keep up the fight from the inside and maintain their seat at the table.

As future debates are sparked, the decision to leave the table is likely one these leaders will regret. Regardless of how it was intended, the departure can be perceived to be much more about politics than policy.

When facing perceived failure, leaders can be guided by Vince Lombardi, “Quitters never win, and winners never quit.”
CommPRO: #1 MOST-READ in 2017: The Trump Administration Faces Another Lose-Lose Situation As the Comey Saga Gets More Interesting (Op-Ed)
Well, as professionals across Washington and the country started to finish out the work week and prepared for the weekend, the James Comey saga that continues to plague the White House continued to get more interesting.

Presidential advisor Kellyanne Conway, appearing on ABC’s Good Morning America, refused to rule out the possibility of President Donald Trump invoking Presidential privilege to block recently-ousted FBI director James Comey from testifying before the Senate Intelligence Committee.

Let’s make no mistake here: this situation is yet another lose-lose for the Trump Administration, and it’s not solely because Mr. Comey could have an axe or two to grind over the circumstances of his sudden firing and the derogatory comments that the President subsequently made about his character. Allowing Mr. Comey to testify causes the story about his campaign’s alleged connections to – and possible coordination with – Russia to continue rapidly deepening. Blocking Mr. Comey from testifying leads the occasional whispers about formal obstruction of justice to become ever louder and spoken by ever more credible voices. And if this happens, talk of impeachment moves from the shadows into more prominent venues.

Every elected official is in a constant state of reassessing a delicate political calculus that will guide and impact their next electoral contest. This story is rapidly forging into the territory where that calculus reaches a tipping point and members must make a decision about whether the risks of being seen as part of the obstruction outweigh the benefit of sticking with their party’s leader. The best embodiment of this, perhaps, was the trip on August 7, 1974 in which U.S. Senator Barry Goldwater (R-Ariz.), U.S. House Minority Leader John Rhodes (R-Ariz.), and U.S. Senate Minority Leader Hugh Scott (R-Pa.) traveled to the White House to inform then-President Richard Nixon that his impeachment, conviction, and removal from office was all but guaranteed. The jig was up, and Nixon announced his resignation the next day.

Up until that point, Nixon had dug in his heels and fought, much like President Trump is today. While there have certainly been many damning pieces of evidence as the layers of this onion are peeled back, the perception of outright obstruction will be hard for leaders in Congress – who have, for the most part, kept their options open but stuck with the President – to deny.

Making matters more difficult, the U.S. Senate Select Committee on Intelligence, which has taken the reins of this investigation, has been the rare body acting in a truly bipartisan fashion in today’s deeply-divided Washington. It is hard to see Republican committee Chairman Richard Burr reacting favorably to White House intervention, and I can only imagine that Democratic ranking member Mark Warner would be nothing short of apoplectic at efforts to stymie the investigation that has thus far been carried out responsibly and thoroughly.

If President Trump invokes executive privilege, it will almost certainly be seen as an admission from the White House that the Trump Administration has something to hide that it is deeply fearful will be brought to light. This charge has been levied repeatedly at the Administration based on President Trump’s refusal to release his tax returns.

There is a big difference, however. There is no requirement beyond tradition and custom for a President or a candidate to release their tax information. America’s democracy and democratic systems, though, are the bedrock of our nation, and they are something that Democrats and Republicans alike deeply cherish and revere. Nobody on Capitol Hill wants history to reflect on them as the person who chose party over country, and therein lies the rub.

While we’ve learned much about this story over the past several months, we are likely just at the tip of the iceberg. Mr. Trump thrives on creating chaos around him, and as a result his administration has thus far been completely unable to get its story straight. He undermines his communications professionals and they undermine each other. Mass confusion persists. This is not how a strategic response, with an eye toward long-term management and recovery, is done.

Mr. Trump has a big decision to make in the coming days. Whatever he decides, he would be wise to think through, fully, where he will go with it next.
CommPRO: On Comey-mas Eve, the Former FBI Director’s First Bombshell Becomes a Washington ‘Must Read’
Since the beginning of the week, the major news networks have had the countdown clocks in their ever-present chyrons ticking: 5 Days Until Comey Takes the Hill; 2 Days Until Comey Testifies Before Senate Intelligence Committee, and so on, fueling increasing levels of hype and hysteria.

We’re now counting hours and minutes, though, and the anticipation is growing at a level normally reserved for Presidential debates, State of the Union addresses, and the Super Bowl. Just like with these events, bars and other venues across DC have spent the week making headlines for their attempts to capitalize on the heavy interest, luring audiences with watch events and drink specials related to the hearing and its surrounding circus. There may not be enough breakfast booze in Washington to satisfy everyone who tunes in at 10 am.

I was headed into a meeting at around 2:00 this afternoon when the initial stories broke that the ousted FBI director’s opening remarks had been released to the public. Already, my colleagues were buzzing about it and reading it on their smartphones while we waited for our meeting to call to order.

Many are wondering whether there was a strategy behind making the comments public well in advance of the event’s commencement. Doing so certainly had a few key outcomes: it thrust tomorrow’s story even further into today, all but obliterating the rather uneventful testimony from the four heads of federal intelligence agencies. And, as if the anticipation wasn’t already at peak levels, it further hyped the Thursday hearing, which was already slated to override regularly scheduled daytime programming on ABC, CBS, and NBC.

As noted in the Washington Post, the list of Congressional hearings that have had sufficient public import to preempt regular programming is extremely short. That list includes the Army-McCarthy hearings in 1954, Watergate hearings in 1973, Iran-contra hearings in 1987, Anita Hill-Clarence Thomas hearings in 1991, and President Bill Clinton’s impeachment hearings in 1998. Look at that list again, because this is on that level.

We now know how Mr. Comey is going to start, and it’s as much of a doozy as we expected. From 2:00 on Wednesday well through Thursday and into the weekend, this will be the leader in every newscast and cocktail hour conversation across the country.

So, the question has been posed, why was the testimony released a day in advance?

It’s important, and noteworthy, to remember that releasing it early was not Mr. Comey’s decision, but rather that of the Senate Intelligence Committee. This committee, as this investigation has unfolded, has operated as a rare bipartisan body in a Congress otherwise deadlocked by partisanship. But despite the close and mutually-respectful working relationship between its Republican Chairman and Democratic Ranking Member, the Republican leadership of the committee holds the ultimate decision-making power over what – and when – materials are posted.

It may be similarly noteworthy to remember that releasing witness testimony well in advance of a hearing is a relatively standard procedure. In fact, it would be much more uncommon for the opening remarks to be withheld.

Remember that the Senate Intelligence Committee took the reins of this investigation after the similarly bipartisan relationship between the Chairman and Ranking Member of the House Intelligence Committee broke down, caused in part by its Republican leader going rogue and cutting the Ranking Member out of the process. Thus, by following standard protocols on materials release, even though it lengthened the window of media coverage and intense media scrutiny, the Senate Intelligence Committee maintained the reputation of the bipartisan investigation, which, by its very nature, is perpetually walking a fine tightrope. Unpleasant as it may be for Republicans looking to stand with the leader of their party, if this relationship breaks down, the entire legislative oversight apparatus is called into question. And that would spell big trouble for our democracy.

Releasing the statement today also, as much as it could, gave the White House an opportunity to respond in advance and get in front of the story. And they did take that opportunity. Through his private attorney, the President said he felt “completely and totally vindicated” by the remarks, as “Mr. Comey has finally publicly confirmed his private reports that the President was not under investigation in any Russian probe.” Well, I guess that is one bright spot, I suppose – and one that will certainly be the key talking point from the President’s defiant supporters.

Tomorrow’s hearing will undoubtedly be must see TV not just for politicos but for people around the world. We know how it will start, but the real fireworks will be in Mr. Comey’s responses to intense questioning from both sides of the aisle. After the hearing concludes, the subsequent commentary from Congressional leadership will be just as interesting, as they will have to focus on the uncomfortable allegations that the President’s repeated attempts constitute real, honest-to-goodness obstruction of justice. Ringling Brothers might have recently brought down the big top for good, but the circus is very much in town. We’ll all be tuned in tomorrow morning to see how the plot thickens.
June 8, 2017

CommPRO: Trump’s Game of Limbo Will Be Overwhelmed by Clarion Call to Exercise Constitutional Duty
The tipoff that the testimony of former FBI Director James Comey might pose a mortal threat to the Trump presidency is that the chief executive spent the last ten days playing a game of Twitter-fueled limbo.

Just how low could this president go? Cede America’s moral leadership on climate issues by pulling out of a non-binding global pact to reduce carbon emissions? Nope, not low enough.

Eviscerate the credibility of his legal and communications counsel by describing the administration’s efforts to strengthen immigrant vetting as a Muslim “travel ban” – the very thing his lawyers and aides have spent months trying to debunk? Despicably low, but still room to go lower.

Attack the mayor of our historic ally’s capital city in the wake of a deadly terrorist attack? Since the man happens to be of Middle Eastern ancestry, Trump apparently felt it was fair game to maliciously distort the mayor’s words and impugn his integrity. Really, really low, but still not rock bottom.

Rock bottom will likely come as Trump desperately tries to defend himself in the wake of Comey’s explosive allegations. The White House’s first salvo came right out of Richard Nixon’s “I am not a crook” playbook, with Deputy White House Press Secretary Sarah Huckabee Sanders claiming that “The president is not a liar.” It will play just as well as Nixon’s notorious comment.

Repeated efforts to thwart or short-circuit a criminal investigation get people into deep trouble in our society. Ask six top executives at Volkswagen, all of whom are or will soon be serving time.

The classic response for any institution caught in a crisis is to try and change the conversation. Trump’s crisis team (the right idea, but to date, somehow never executed) is trying to proclaim, “See, no smoking gun with Comey!”

The tipoff that the testimony of former FBI Director James Comey might pose a mortal threat to the Trump presidency is that the chief executive spent the last ten days playing a game of Twitter-fueled limbo.
wasn’t steeped in the long-running protocols that establish the relationships between the DOJ, FBI, and White House. He’s just new to this.”

The question hovering over Comey’s testimony is: Has the president violated his oath of office to uphold the Constitution? And if so, does that violation constitute a “high crime and misdemeanor” – the constitutional threshold for impeachment?

This is the rule of law versus the rule of a man – a man prone to authoritarian tendencies, erratic behavior, and contempt for democratic norms.

Washington hasn’t waited with bated breath like this since former Nixon White House counsel John Dean testified before the Senate Select Committee on Watergate 44 years ago. Dean told the nation that he had warned President Nixon there was a “cancer” on his presidency. The criminality of the Watergate cover-up was far worse than the venality of the original burglary, Dean said.

Comey in his own way was sounding a similar warning about cancerous deceit inside the Trump White House. The former FBI director described waking up in the middle of the night after Trump tweeted that there might be tapes and realized there “might be corroboration” about their meeting. This spurred him to leak his notes to a friend at Columbia Law School, who in turn leaked them to the press. As a result, a special counsel was appointed, fulfilling Comey’s ultimate goal.

To Donald Trump, all of this is a game, an extension of his reality TV show that aired on NBC and continues to run between his ears. If Trump was bluffing about the existence of tapes, Comey called him on it, giving his full consent and urging to release them. Trump, in effect, challenged Comey to a game of chicken, and it appears now that Trump has been trampled. His frenetic tweeting is about salvaging the “ratings,” in this case his standing with core supporters.

Right now, those ratings are not good. His approval numbers are down to the mid-30s. He’s cratering among Democrats and Independents and slowly beginning to slip significantly among Republicans. It is this latter number which, more than the law, will dictate the future.

With wary eyes glued on the Robert Mueller investigation, few people seem willing to join his administration. The White House has only sent to the Senate some 20 percent of the executive branch nominees that require Senate confirmation.

We’re rapidly approaching one of those rare moments in history where a clarion call gets issued. That call may be difficult for some congressional Republicans to hear – but given time, most will eventually see their constitutional responsibility. They’ve taken oaths, too.

The American presidency is not a reality TV limbo contest that caters only to Trump’s angry base – white voters in the heartland left behind by a rapidly changing world. The presidency hinges on a solemn and sacred duty to uphold the Constitution, adhere to the rule of law, and safeguard the people.

It’s not about seeing how low we can go.
June 8, 2017

The Hill: Comey’s testimony entirely free of substance
There has not been this much excitement in D.C. since, well, Election Day. Just like on Election Day, however, there will surely be disappointment with the results.

Many critics of President Trump are not only asking themselves, but fully expecting that James Comey’s Senate testimony will finally take down the Donald Trump White House. Some are even sensing the smell of impeachment in the air. Even with the axe he must have to grind, that’s a tall order, even for the 6’ 8” former FBI director.

As expectations are running high, nothing is being done to calm them. The cable shows have their countdown clocks building anticipation, the national networks will sacrifice millions in ad revenue to take the hearing live, and every pundit with an opinion is lining up to explain how this is the biggest thing since Watergate, Iran-Contra, or even the Army-McCarthy hearings.

Even the House Intelligence Committee Democrats are stirring the pot, raising expectations. Congressman Adam Schiff (D-Calif.) released a statement highlighting how Comey’s testimony is expected to “confirm a host of allegations concerning the President’s conduct.”

The reality is, this is likely to be a huge let down for those expecting anything other than the “nothing-burger” this is shaping up to be. Bombshell style announcements are only effective when they are indeed surprising.

If Comey ever thought that Trump was attempting to obstruct justice, he had an obligation to report it. He didn’t and if he chooses to make that claim now, his own motivations would be called in to question to say the least. Comey’s introductory remarks are out now. It seems that they too support that there was no obstruction of justice and in fact, he told Trump he was not under investigation as part of the Russia related probe. Yet, the prognosticators who claimed to be “close to Comey” or “familiar with his thinking” are refusing to give up, holding out hope that there will be some evidence or smoking gun produced.

Comey’s testimony is only going to give Trump what he wants – a fight. By making a big deal of his testimony today, opponents are giving Trump exactly what he wants – and needs – to satisfy the base of voters who put him in office in the first place. The sentiment that got Trump elected is support of a candidate that would put ‘America first’ and someone that could identify with real “main street” problems in an effective way. The more opponents try to distract with the Russia narrative, the more frustrated these voters become.

When the fundamental questions being discussed in mainstream America households are about uncertainty about where the next paycheck is coming from, or worries about gang activity in their child’s school, or about the availability or affordability of health insurance – Comey’s remarks are not going to matter much.

The unsupported narrative about Russia – and Trump’s fight of it – will surely rally support around him – especially after a hearing that proves nothing.

While the surrounding hype around the hearings is fun to watch, waiting for the knock-out blow that never comes will surely frustrate even most the optimistic Trump-haters. Today’s testimony truly is a must-see nothing burger. The good news is that at least the bars are opening early.
June 13, 2017

Forbes: Grocery Industry’s Cybersecurity Challenges: Harbinger Of Threats To Corporate America
BY RICHARD LEVICK

Forbes: Grocery Industry’s Cybersecurity Challenges: Harbinger Of Threats To Corporate America | June 13, 2017

Button up your overcoat; it’s about to rain cyberthreats

Few businesspeople have as much on the line every moment of every day as grocers. When disquieting events happen at a grocery store, customers can be more than just inconvenienced. In extreme circumstances, grocery products can be the cause of illness, even death.

What makes the grocery industry so susceptible to calamities is that food is a necessity, not a luxury. Threats to food safety have the potential to create panic. If a company is the sole retailer affected, there’s a sobering chance it could lose customers — but perhaps only temporarily. The length of customers’ disaffection all depends on the effectiveness of the company’s response.

What constitutes an effective response? When it comes to cybersecurity, it’s not always easy to say. It’s scary, but data breaches, ransomware, malware, phishing and other cybersecurity issues are all still in their infancy. There are no widely accepted industry standards for incident response, leaving “reasonable” action in the eye of the beholder. One thing is for sure — the miracle of the Internet is being turned into weaponization by a myriad of bad actors.

The specter of malicious product tampering or computer hacks that prevent items from being properly refrigerated are among the risks that keep grocers awake at night. In many ways, they’re a microcosm of the pressures faced these days by corporate CEOs, communications executives, and their legal counsel. Fears surrounding cybersecurity and attendant liability nightmares have become Corporate America’s #1 risk management concern. For the past decade, the threat of hacking was largely limited to information. Now, life, health, and safety are becoming a necessity, not a luxury. Threats to food safety have the potential to create panic. If a company thinks free credit reporting is still a satisfactory response, it is more unprepared than it realizes.

In early June, I was among the crisis response specialists invited to participate in a crisis management conference organized by Pillsbury Winthrop Shaw Pittman LLP. The panel was given a cybersecurity scenario that involved a ransomware breach disrupting customer transactions in dozens of stores across a nationwide chain.

The scenario cut right to the heart of the grocery industry’s biggest fear: the reputational impact of a liability or injury lawsuit stemming from a single incident, an episode whose repercussions could overwhelm decades of conscientious customer and community service.

Here’s the strategic premise I shared for grocery industry executives caught in the klieg lights: from the moment the crisis hits, their brand reputation hinges on empathetic communications that keeps their customers front and center. Yes, regulatory and legal liability will provide a threshold for them to respond, but their efforts to go above and beyond mere compliance will be what customers remember. As cybercrime gets more sophisticated, audiences from customers to shareholders expect a more fulsome response. “Hey, we are a victim, too,” will only get you so far, and less and less each day.

A company should frame its response through the prism of its customers — a young mom trying to get food for her children, or a son that needs to pick up medicine for his sick father, or a family living paycheck to paycheck.

Always act out of an abundance of compassion and caution, I counseled. Anticipate the health-and-safety questions customers are likely to have and develop emotionally resonant answers. Identify resourceful ways to make their lives easier. A response that surmounts basic regulatory requirements will cultivate good will and could win over lifelong customers.

With that in mind, I advised industry executives to use all channels available to communicate with consumers — from signage at store shelves to social media and online postings. They should also consider having employees outside each affected retail location to talk with customers as they arrive. Employees that are the face of the company are often best equipped to explain facts, answer questions, and collect insight about customer concerns.

Not only do grocery stores face the same cyberthreats that other retailers face, but they also have tremendous financial capital at risk if a significant event disturbs refrigeration or inventory systems. These additional operational systems must be considered in a company’s Incident Response Plan, just as they would be in Business Continuity planning for bad weather power outages.

It is imperative companies establish Business Continuity Plans, Incident Response Plans, and Crisis Communications Plans. Those plans should be examined against detailed risk assessments and help guide employee training. Plans should be validated through simulated exercises. This builds a culture where cybersecurity is a priority and employees understand their role in protecting the brand.

Tom Campbell, the head of Pillsbury’s crisis management practice and the host of the conference, warns that, “Failing to prevent a cyber breach will injure a company but failing to rapidly respond to the crisis that follows can kill it.”
Brian Finch, co-chair of Pillsbury’s Privacy, Data Protection, and Cybersecurity team, adds that, “Businesses of all stripes have to understand that today’s cyberthreats go well beyond simple ‘smash and grab’ data thefts. Their preparation, and by extension their legal exposure, most be attuned to stopping or minimizing the impact of cyberattacks that could slow or stop their revenue intake.”

Cyberattacks, data breaches, and information security issues have become so pervasive that people may generally forgive companies for a breach — but not for slipshod communications about it. And not for failing to take proactive measures to protect information and assets in the first place, whether it’s installing the latest patches or conducting security penetration tests.

Cybersecurity is not just a technology issue. It’s a risk management issue. Everyone in the company should understand the company’s objectives when it comes to cybersecurity and incident response. Employees are a critical first audience for security messaging and communications; it is inevitable that they will receive questions when an incident occurs.

When it comes to messaging to external stakeholders — from investors to industry analysts to consumers — the critical component is quick and consistent messaging. Telling key audiences what happened, what the company is doing to fix it, and what it is doing to prevent the episode from happening again is paramount.

The fact is that a company’s risk will never be zero. When it comes to cybersecurity and data breaches, the old axiom “Not if, but when” has never been more true.
June 13, 2017

CommPRO: The Consequences of Trump Firing Mueller Would Be Catastrophic
The President Is Slowly Running Out of Plank

While cable news commentators wrestled last week with the nuances of former FBI Director James Comey’s testimony and bloviated about who leaked what to whom, a far more significant development in the investigation of the Trump-Russian connection went virtually unacknowledged. Special Counsel Robert Mueller hired as his chief lieutenant Michael Dreeben, the Deputy Solicitor General and a savvy prosecutor who happens to be an expert in criminal law. Dreeben has argued cases before the U.S. Supreme Court more than 100 times, compiling a formidable track record.

Why does Dreeben’s hiring change the complexion of the probe? Because it means Mueller sees a full-blown criminal, not just civil, investigation. It guarantees that with Dreeben’s fastidious help, Mueller will leave no stone unturned in exposing the depth and depravity of Russia’s interference in America’s electoral institutions.

It’s clear that the White House has already concluded that Mueller and Dreeben, investigators of impeccable reputation, represent an existential threat to the Trump presidency. On the Sunday talk shows, Trump surrogates began floating the prospect of firing Mueller before his investigation even gets untracked. Is dismissing Mueller just a trial balloon fueled by Trumpian hot air? Or is the president seriously going to trigger a crisis that could tear apart the fabric of our constitutional democracy and potentially decimate the Grand Old Party of Lincoln and Reagan to which Trump at least nominally belongs?

Republican Senators Lindsey Graham (SC) and Susan Collins (ME) spoke for the conscience wing of the GOP by immediately puncturing the balloon. “It would be a disaster,” Graham said. “There’s no reason to fire Mueller. What’s he done to be fired?” Collins warned that cashiering Mueller would “certainly be an extraordinarily unwise move.”

Sadly, “unwise” pretty much sums up Trump’s handling to date of the Russia investigation. So does “shameful.” But this is a president who would appear to have no shame.

He also appears to have painted himself into a no-win political corner. Per the latest polls, the number of Americans who disapprove of Trump’s performance (well above the 50th percentile) essentially doubles the number of Americans who strongly approve. This means, remarkably, that it’s nearly impossible for him to ever climb out of his hole and surpass the 50 percent approval mark.

The Mueller firing trial balloon has the fingerprints of combative senior aide Steve Bannon all over it: “Ready, fire, aim!” Trump and Bannon are focused solely on their base, which continues to shrink as women, traditional Republicans, and non-college educated white men peel – slowly but surely – away from the Trump coalition.

All of which explains why Trump continues to deploy belligerent rhetoric and pursue extreme positions – pulling out of the Paris climate accords, thwarting Cuban normalization, shredding environmental protections, and inflaming our allies in Europe and around the world.

It also explains, in part, Trump’s unconscionable failure to raise national security concerns in his deliberations with the former FBI director over Russia’s intervention in the 2016 elections. Trump and Comey met or talked on nine separate occasions. At no point in those conversations did Trump – as president-elect or as president – ever express concern or even mild curiosity about the repercussions of Russian hacking on America’s democratic institutions.

Some 39 states had their electoral systems disrupted, perhaps compromised, last fall. There’s no assurance whatsoever that it won’t happen again, especially if the president refuses to admit that it happened.

Moreover, it’s now apparent that the Russians have been hell-bent on short-circuiting the U.S. military, too. Exactly how much damage Russian hackers have inflicted on military computer systems – not to mention operational readiness and morale – is unclear. But the mere fact that they’ve done it (are doing it?) ought to send chills up every American’s spine.

A hostile foreign power attacks the very foundations of our Republic – and there’s nary a word of concern from our new president about its effect on national security?

Somewhere the spirit of Founding Father Alexander Hamilton is seething – and maybe a little sheepish. Back when plenty of new Americans were skeptical about the level of power delegated to the chief executive in our nascent Constitution, Hamilton assured people in Federalist Paper 68 that, “The process of election affords a moral certainty that the office of president will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single state; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union.”

“Low intrigue” and “little arts of popularity,” thy name is Donald Trump. Poor Hamilton could never have foreseen this scenario. It makes the
treachery of Aaron Burr, Hamilton's adversary and a genuine threat to the Republic, look like child's play.

Before it’s all said and done, the Russia scandal may make Watergate look like child’s play, too. If Trump goes after Mueller, it will further split the GOP, leaving the old Reagan coalition in tatters. Impugning Mueller and attacking the independence of the judiciary could accelerate the beginning of the end. The scary part is that Trump may back away from firing Mueller now – only to reverse himself down the road once the investigation turns dicey.

They may never volunteer it out loud, but most Republican leaders, nervous about the 2018 mid-term elections and the specter of losing control of Congress, would breathe easier with a President Pence. If Trump’s popularity continues to plummet, it may not take much more to get congressional Republicans to start joining Democrats in calls for the president’s ouster.

Trump has misplayed every step of this sordid episode. He is slowly running out of plank. ❯
CommPRO: In UK Politics, Tabloid Newspapers Offer a Different Take on the Political Endorsement
Newspapers here in the United States are no stranger to telling their readers how to vote.

In every electoral campaign, one of the big tasks as Election Day nears is the gaining, or regaining, of an editorial board’s endorsement. In my days of running communications in electoral politics, I’ve seen some newspapers haul the candidate into long meetings for interviews where the candidate had to defend their record. I’ve had to take first pen at filling out long questionnaires on seemingly every issue under the sun. And I’ve seen newspapers undertake the whole process on their own, conducting a deep dive into the candidate’s record and public statements before making a final determination of who they think is best for the country, state, district, or locality.

When a newspaper comes out in support of your candidate, it’s an instant boost throughout the campaign organization. It adds a spring in the step of the field team and becomes part of their talking points as they talk to voters. The finance team finds it a boon to fundraising. And the communications team trumpets it far and wide as further evidence that their candidate is the one to back.

It’s not uncommon for American newspapers to weigh in on every ballot line: President, Governor, federal legislature, state legislature, Attorney General and other statewide positions, ballot questions, and, where such positions exist, all the way down to dogcatcher. Sometimes the endorsements are predictable: a more conservatively-leaning newspaper, for example, might historically back more conservative-leaning candidates. And other times, a newspaper’s endorsement might make major national waves, as was the case when the Arizona Republic, which had never endorsed a Democrat for President since its inception in 1890, endorsed Hillary Clinton in 2016.

Major broadsheets in the UK, like The Guardian (backing Labour) and The Daily Telegraph (backing the Conservatives) offered similar, well-thought and reasoned endorsements in advance of the snap election last week. The Guardian even offered an inside look at how they decided who to back, which is a quality read for anyone interested in media issues.

But not all endorsements have to be dry, straightforward affairs, and for a sterling example of this, we can turn to the tabloid press, which offered a more entertaining take on who should lead the country.

Newspaper covers like these are not wholly unfamiliar to American audiences, who are bombarded with all-too-familiar white headlines over unflattering photos in grocery store checkout lines and newspaper kiosks. Headlines promise inside information about the salacious private lives of celebrities or the secret details about the latest political controversy, drawing readers in with the promise of fresh scandal.

While American tabloids enjoy surprisingly wide circulation, with The New York Post reaching roughly 500,000 readers, The Sun and The Daily Mail in the U.K. are much more widely read, with both newspapers reaching daily circulation numbers of about 1.5 million citizens daily.

Given their tremendous outreach and eye-catching front pages, British tabloids – with their bad puns and little boxes in the top right corner of the front covers – have the same potential to make a genuine electoral impact on the various positions held by the citizens of Great Britain as the mainstream publications.

And, if you ask them, perhaps they have.

Following the 1992 election in the United Kingdom, The Sun ran the following headline:

In this chest-thumping display of “told-you-so”, The Sun cemented themselves in British society as a goliath and subtly warned that the power of their press was not to be underestimated, as they saw the victory of Tory candidate John Major as a direct result of their tipping the scales.

As the Guardian noted in their column about the process that goes into their endorsements, “a general election endorsement is probably the most important editorial that a newspaper can publish – and almost certainly the longest too.”

In the 2016 U.S. Presidential election, the New York Times’ endorsement of Hillary Clinton certainly met the Guardian’s standard for length, coming in at 1,419 words. The Guardian’s endorsement of Labour earlier this month came in at 1,366. The New York Post elected to endorse Donald Trump in the Republican Primary, with a 540 word justification. But when they chose not to endorse for the general election in November, their Election Day cover left their feelings pretty clear:

The lines between news and entertainment are growing ever more blurred and the attention span of the electorate is growing ever more narrow. The tabloid treatment of our elected officials reflects this. It’s certainly a different take on how outlets attempt to influence our choices at the ballot box, and it’s one that we should not discount at home or abroad.
CommPRO: Effective Republican Messaging on Health Care Needs the One Thing They Don’t Have but Democrats Do: Unity
A curious thing happened just about two hours after the Senate Republicans unveiled their long-awaited health care bill: President Trump admitted that there were no tapes of his conversations with former FBI Director James Comey.

This, I suspect, was no accident, and although the two are completely unrelated, it should be seen as a telling forecast of the difficulties that Senate Republicans will face in messaging their health care legislation beyond the halls of Congress. By diluting the big news of the day with another major story that was bound to come out eventually, the President effectively diluted the coverage that both news items would receive. The networks reflected that by jumping back and forth between coverage of the two as they tried to give them both the “breaking news” treatment.

For weeks, Republicans in the upper chamber have been slammed for the secretive process by which they attempted to draft their supposedly eight-years-in-the-making health care repeal and replace effort. Tweets and on-camera statements were dug up from the archives of prominent Republicans – including then-Congressman Mike Pence and Senator Mitch McConnell – blasting what they alleged was a closed process, despite the Democrats’ legislation undergoing robust action in three House committees and two Senate committees and hours of bipartisan floor debate. This bill, comparatively, is not scheduled for any Senate committee action at this time.

While the bill was being drafted in secret and kept under lock and key, Democrats have been out in full force with their messaging about what it would likely entail and why they felt it would negatively impact the country.

It’s an oft-cited axiom in the communications business that playing defense in a communications campaign is almost always a weaker position than playing offense. This has been the case for millennia, and Chinese military strategist outlined as much in his famous 5th century B.C. military treatise The Art of War. In Chapter 6, on weak points and strong, Sun Tzu said “Whoever is first in the field and awaits the coming of the enemy, will be fresh for the fight; whoever is second in the field and has to hasten to battle will arrive exhausted.”

Nothing could more clearly illustrate the current situation. Democrats’ messaging has defined the narrative here already, before the bill text was even released. Republicans have been put on the defensive from the start of this process, and there are no signs that it will be letting up any time soon.

After the bill was released to the public, Democrats were quick to blitz across local and national TV networks with their criticism, which will almost certainly leave Republicans exhausted as they try to play defense. Pennsylvania Senator Bob Casey was quick to take to his twitter account, offering line-by-line criticisms – each of which Republicans will have to defend before this debate is over. Republicans hoping to vote on this next week before they leave for their July 4th recess are in for a long couple of days indeed.

Further frustrating Republicans’ messaging efforts, four Republican Senators – Rand Paul of Kentucky, Ted Cruz of Texas, Ron Johnson of Wisconsin, and Mike Lee of Utah – quickly came out opposing the bill in its current form. Still others have already expressed serious concerns or are expected to have problems with specific provisions. Republicans’ overall messaging is not helped when they can’t even count on their own to either hold their nose and support it or at least keep quiet about their individual issues.

While I suspect President Trump made a strategic decision to issue his Comey confession right after the Senate bill dropped in an attempt to dilute coverage and scrutiny of both issues, Republicans in the Senate will still have to defend their legislation now that it is in the public sphere. And they will have to speak with one voice if they want to have any shot at winning the messaging and political war. That may be a long way off and time is not on their side.

In the meantime, as Republicans try to find their common ground, Democrats are demonstrating unity and putting forth a strong offense. And, as Sun Tzu would remind us, “once people are unified, the brave cannot proceed alone, the timid cannot retreat alone – this is the rule for employing a group.”

The next week will surely be interesting as both sides continue girding for battle.
June 22, 2017

Forbes: Now Minus Kalanick, Uber Is At A Crossroads: Can It Move Beyond Its Frat House Ethos?
Mistreating and underpaying drivers while bullying reporters. In the history of American capitalism, one is hard-pressed to think of other companies that went from visionary and disruptive darlings to gangsters more quickly than Uber.

Uber is learning the lesson that too much access to private money without shareholder responsibility does not necessarily a great company make. It seems that the thing Uber has learned to do better and faster than any other company in recent memory is hemorrhage good will.

Remember when Uber wore the white hat for disrupting a monolithic taxi industry? Suddenly, we are all seeing yellow and checkers again – and feeling good about it.

What amazes me most about Uber is how it wasted its assets in this crisis as quickly and efficiently as it did its reservoir of good will. Board member Arianna Huffington comes out the best, but she alone cannot erase the taint.

The insightful and helpful Perkins Coie report? Released a full week before former Attorney General Eric Holder’s report, thus ensuring a week of bad headlines. Sound crisis communications would have shared the bad news all at once, followed by a listening tour.

CEO Travis Kalanick’s resignation? In all the time Uber had to get this right, it never occurred to them to get a feel for how their largest investors felt? Call me cynical, but isn’t this what planning is for?

Throughout the past year, I have been rooting for Uber to get it right, to use its second and third and fourth chances to right its ship and say, “That was then, this is now.”

But instead of leadership and sacrifice, we have gotten half-filled promises. Susan Fowler, the former employee, whose blog brought sunlight to much of Uber’s Dark Ages employment practices, has never found Uber’s changes substantial. Real changes and sacrifice might have led to a chorus of comments from investors and critics alike that Uber was changing. The lesson for all of us is that when you argue that you’re changing, those changes better be real and painful. Change is not a word but an action.

Uber can recover lost market share by remaining committed to cleansing its corporate culture, embracing diversity, and avoiding the pitfalls that gave it a “frat house” patina even among Silicon Valley start-ups. Kalanick’s surprise decision to resign gives Uber a welcome chance to start over.

Since its inception eight years ago, Uber has thrived off customer loyalty and a compelling business strategy – underprice the competition at every turn. A June 9 ruling by a New York labor judge that Uber drivers should be considered employees, not contractors, could have profound repercussions. But Kalanick’s resignation and the judge’s decision notwithstanding, Uber is still making it unduly hard on itself.

By stretching out the release of the two investigative reports, Uber took too long to tear off the band-aid, which had the unfortunate effect of muddying the rollout of the enlightened “new Uber.” Uber wants the media and stakeholders – including investors and prospective investors – to focus on its next phase of development, not the bumpy road it just navigated.

The sexist comment by board member David Bonderman could not have come at a worse time. But Uber, to its credit, moved aggressively in denouncing the remark. Unless there’s a repetition, Bonderman’s insensitivity should prove only a distraction.

The next big challenge for Uber, especially as far as Wall Street is concerned, will be to handle its CEO search with alacrity and focus. It also needs to make a series of strategic hires to fill its many vacant C-suite positions. The next few weeks will give Uber a chance to demonstrate that it got the message of the two reports – that integrity, diversity, and maturity will be its watchwords moving forward.

Kalanick’s original letter saying he was planning to take a leave of absence was a little like cotton candy – good at the beginning but ultimately not very filling. No wonder it caused such unease among investors. Its content should have been more forthright and conciliatory, with greater emphasis on his vision for Uber’s future. Instead, Kalanick’s words betrayed a lack of maturity. Referring to himself in the third person – “Travis 2.0” – stepped on his message of a better future.

In addition to hiring qualified women and minorities, Uber must retain the services of a first-rate general counsel. GCs are the backbone of any company. Uber’s revolving door of GCs is symptomatic of a company caught in the throes of growing pains.

An organization confronting as many legal issues as Uber needs a mission-driven GC. The last thing Uber wants is a rent-a-lawyer. Like President Trump’s White House, Uber is no doubt going to have trouble hiring attorneys. Nevertheless, the legal department must be at the epicenter of the new Uber, along with a reconstituted human resources department, which needs to pursue best practices and institute enlightened policies.
As Philip J. Bezanson, a white-collar defense lawyer and the head of Bracewell’s Seattle office, explained, “The recent investigation accouchements and leadership changes point to an invigorated commitment to creating a strong tone at the top – that the company wants to be responsible and ethical. For a variety of reasons, it will be up to new leadership to ensure that there is meaningful cultural change throughout Uber’s ranks. If Uber’s efforts prove successful and can be documented and presented effectively, it will no doubt help the Company as it navigates through its pending legal and government investigation challenges.”

As a crisis counselor, I would advise Uber to shift from defense to offense, endeavoring to control the message through constructive initiatives, both internally and externally. Three goals should guide their proactive communications strategy.

First, they want to position themselves as a surviving player in the tech space. Second, as their market inevitably matures, they want to come across as a dominant and ultimately profitable company without necessarily wearing a black hat. And third, they want to appear as a major player on driverless cars, if indeed autonomous cars come to disrupt the marketplace. Uber needs to convey that it’s more than a fad taxi service.

Uber also needs a dynamic media strategy that goes beyond compliance and Kalanick’s departure. Uber’s challenge is to position itself as an industry leader, not just a company that’s fixing its cultural problems.

The public leadership of board member Huffington will be crucial for Uber as it transitions into its next phase. She has the gravitas that other Uber spokespeople lack. Uber would do well to take her counsel to heart and continue to tap her as an honest broker and public advocate.

Uber is at the crossroads – and its many audiences will be scrutinizing the direction it chooses to take. The company ought to heed the old African proverb: “When there is no enemy within, the enemies outside cannot hurt you.”
Forbes: How Activists And Populists Now Control Your Corporate Brand – And What You Can Do About It
C-suite executives and board members often ask if their corporations need a new Facebook strategy or a better way to communicate on Twitter. As pleased as I am that they’re exploring ways to institute change, I worry that they’re asking the wrong questions. It is as if they’re asking, “Do we need a telephone strategy?” What is happening is a loss of control of corporate messaging – in brands, litigation, crisis, and regulation, and vis-à-vis activist investors. This is not about tactics.

We are in the early throes of a revolution every bit as significant as the agricultural and industrial revolutions. Raising faster horses will not keep pace with the Model-T. Nor could a Model-T outrace a Saturn rocket. The game is well under way; it demands a fundamental head-to-toe rethinking.

While there is much to admire about the evolution of sophisticated corporate brand communications, the same cannot be said for the risk side of corporations, from investor relations (IR) and enterprise risk management (ERM) to litigation communications and public affairs (PA). The Internet has not just revolutionized the way people receive information; it has transformed the way they share it, infusing them with a contagious sense of empowerment. They no longer need to be customers or shareholders to wage campaigns, let alone highly successful ones. And if they are investors, particularly activist investors, we are seeing the execution of thread-the-needle strategies so sophisticated that most companies don’t even recognize them as orchestrated campaigns before they surrender.

The Arab Spring, Jasmine Summer, Brexit, and the election of Donald Trump all illustrate how conventional opinion leaders did not grasp how fundamentally their nations had changed. The same is true for corporations. No longer do they control the “brand” of a crisis, litigation, shareholder action, or other risks. This is increasingly the purview of activist investors, the plaintiffs’ bar, NGOs, and even regulators. The expertise and level of coordination among your adversaries is as formidable as it is frightening.

C-suite executives and board members must embrace Machiavellian change and new thinking, unless they want their companies to fall victim to activist campaigns and the klieg lights that often follow.

Whenever I’m asked these days to speak to corporate executives or board members, I advise them to start by adhering to three imperatives in overhauling their communications operations.

First and foremost is speed. This doesn’t mean moving faster; it means changing the way things are done. Companies no longer have the luxury of waiting a couple of news cycles to respond to an adverse story the way they used to. Nor can they hope that a nasty social media-driven boycott will disappear of its own volition, if it has gotten past the critical early stages (a pattern recognizable with enough study). Companies must have access to the expertise to recognize early warning signs on other platforms besides traditional media and the experienced and trained teams to move instantaneously and with great discipline. Which means that it must use “peacetime” wisely to institute state-of-the-art monitoring, worst-case contingency planning, and intensive crisis training.

Hard as it is to believe, global corporate crises such as the recent United Airlines-sanctioned violent passenger removal, Mylan’s EpiPen price gouging, and Wells Fargo’s fabricated accounts, ignored social and media warnings and waited until traditional press made the pain so apparent that they were forced to act.

What’s most interesting about these three examples is that two – United Airlines and Mylan – were spontaneous grassroots organizing stemming from outrage; in United Airline’s case, taking 17 hours; in Mylan’s case, 60 days, to reach critical mass. The Wells Fargo crisis was triggered by a combination of whistleblowers and hardworking journalists laboring over a period of five years, yet all three events took the companies, their CEOs, and boards by surprise. Note that Washington, D.C. doesn’t like to kick a person while they’re standing because it’s too much work; they wait until he or she is wounded before they pile on. All of which points to why early detection and preparation is so critical. Mylan, a year later, is still in hearings.

These days, we no longer have the luxury of reacting. We must act. This is uncomfortable and threatens the very DNA of your communications and public affairs professionals who have spent their careers in control and with a home field advantage. It’s why understanding how your adversaries think is so critical. Otherwise, your efforts at damage control will result, at best, in reduction, not elimination, of systemic risk.

The second imperative is transparency, of the uncomfortable variety. Getting hacked or having your systems breached in some way isn’t a
remote probability; these days it is a certainty. This provides a risk at multiple levels: first, that embarrassing information will leak; and second, that competitors or activist investors will gain access to information that you wished they did not have.

In your planning, anticipate the worst. Watch what is happening at the nation-state level and ask what you would do if it happened at your company. Keep in mind that Russian hacking engages armies of rogue hackers so that if they’re caught, the government has deniability. What do you think these Russian hackers are doing when not working for the government?

The third imperative is intelligence-gathering. Companies must recognize their own brand vulnerabilities, marketplace anomalies, competitors, and adversaries and construct the best possible intelligence collection and analysis capability. The activist investors and certain members of the plaintiffs’ bar are a full generation ahead. It is time to catch up.

This is not “Big Data.” Big Data is fine, such as it is, and no doubt provides critically important information and patterns about the customer side of the equation. But real intelligence requires the human element to understand who is behind it.

Who was the first person to tweet on an issue? Where are they from? Have you compared the Twitter personalities with the lobbying disclosure and foreign agent representation requirements to know who is working with and for whom? Where is the URL located? What language or languages are being used? How are they getting their information? What about search engine modification campaigns or the source of online campaign videos? The fundraising appeals of NGOs or changes to their website campaigns?

Forewarned is forearmed. I’ve been involved in grassroots communications for 40 years; for years, I have witnessed campaigns that have impressed me with their sophistication, yet left clear footprints. What I have seen in the past few months, however, has awed me. And their footprints take far more sleuthing. There is no strategy without intelligence, just guessing. A company’s values should not be left to guessing.

In my experience, activists, NGOs, and the plaintiffs’ bar are far more adept at weaponizing social media than corporations are at deploying it for defensive purposes. Somewhere, the spirit of Machiavelli is not happy. Change isn’t just desirable. In today’s marketplace, it’s an absolute necessity.
Forbes: The Game Changes: Is Bristol-Myers Squibb The End Of An Era?
Trump’s travel ban may be the focus of current media interest but no recent Supreme Court decision has a potentially greater impact than Bristol-Myers Squibb v. Superior Court of California.

It fundamentally changes the rules governing where corporate defendants can be sued and effectively limits the forum-shopping that has driven “mass action” lawsuits in the past.

It’s about a lot more than procedural technicalities. For decades, aggressive plaintiffs’ lawyers have brought multi-party cases against companies — not just in states where the companies are based — but in so-called “plaintiffs’ havens” where local laws and/or jury pools generally hostile to corporate defendants tilt the odds in favor of the claimants. “Judicial hellholes” is another telling moniker with which these jurisdictions are commonly dubbed. (The American Tort Reform Foundation issues an annual list of such hostile venues.)

In Bristol-Myers Squibb, the Court ruled that a mass tort brought against the drug company failed to establish specific jurisdiction in California because there was an insufficient link between their claims and that state. “Plaintiffs’ counsel will now be less inclined to bring such large, monolithic lawsuits,” says Jeremy Gilman, a partner at Benesch, Friedlander, Coplan & Aronoff where he co-chairs the firm’s Class Action Litigation Practice Group. “If they do, defense counsel will more vigorously mount jurisdictional challenges to the non-resident plaintiffs’ claims, and courts will more readily grant motions to dismiss. Before Bristol-Myers Squibb, some courts might have taken a more relaxed approach to assessing jurisdiction. Those days are over.”

“The decision alters the landscape,” adds Scott Solberg, a partner at Eimer Stahl and co-lead of the firm’s Commercial Litigation section. “Any nationwide mass action will have to be brought in the defendant’s home state court, which is usually low on the plaintiff’s forum-shopping list, or they will have to break the case up into multiple single state mass actions, each with less ‘mass’ and lower stakes than a nationwide case.”

Such prognoses were almost instantly confirmed. Within hours of the Bristol-Myers Squibb decision, a judge in St. Louis granted a mistrial in a wrongful death case against Johnson & Johnson. There were three plaintiffs in that case, one of whom is a native of St. Louis. It’s additionally significant that that city currently ranks first on the aforementioned list of judicial hellholes. Not surprisingly, lawyers expect a flurry of motions nationwide to dismiss cases from the get-go.

The Bristol-Myers Squibb case concerned a blood-thinner called Plavix; the suit was brought in California by more than 678 plaintiffs, only 86 of whom live there. According to the 8-1 SCOTUS majority, “the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California. The mere fact that other plaintiffs were prescribed, obtained, and ingested Plavix in California...does not allow the state to assert specific jurisdiction over the nonresidents’ claims.”

Note, though, that this case does not directly impact class actions, only mass torts. The difference is that plaintiffs in mass torts are treated as individuals and file their suits as individuals. Mass torts do not, therefore, have to be certified. It remains to be seen how class actions will in turn be affected by Bristol-Myers, a concern Justice Sotomayor, in her lone dissent, specifically underscores. At the very least, “I would expect that class action defendants will use this decision to seek dismissal of the individual claims of some class members,” says Solberg.

It is significant that Justice Sotomayor was not joined in her dissent by the other liberal justices on the Court. It suggests that concern among such judges over forum-shopping abuses now outweighs their socioeconomic affinities. “Tort reform” is a problematic agenda; there are too many ways in which claimants, especially poor ones, can be denied their day in court as a result of zealous reform. That said, it’s hard to justify putting a corporation on trial in Corpus Christi simply because people in Corpus Christi purportedly hate corporations.

Expect plaintiffs’ lawyers to now work harder to establish a connection between their claims and the jurisdictions where they hope to adjudicate. Whatever connection they come up with will be aggressively contested; in Bristol-Myers, they failed to pass jurisdictional muster even though Bristol-Myers Squibb has 250 sales representatives in California as well as five R&D facilities, around 160 employees, and a government relations office. Nor did it matter that 187 million Plavix dosages worth over $900 million in revenue were sold in California over a six-year period. The fact that the company used a California-based distributor (McKesson Corp.) was also deemed too tenuous a connection.

If their odds are getting longer, how might plaintiffs’ lawyers change their business models to make up for their losses? Knowing these lawyers as I do — having fought with them and against them on multiple occasions — I know they can be depended on to seek and find creative ways to protect their interests.

Andrew Downs, a partner at Bullivant Houser Bailey, tends to agree. “The plaintiff’s bar is creative and resourceful and will find a way to bring these
claims," he says. "Bristol-Myers simply makes it more difficult in the short term but it may actually result in more, if smaller, mass actions in multiple jurisdictions."

"The plaintiffs' bar is undoubtedly dissecting Bristol-Myers Squibb with a view to structuring future mass tort cases in a manner that will overcome jurisdictional hurdles for as many claimants as possible," adds Gilman. "If, as the Court noted, Bristol-Myers Squibb did not develop Plavix in California, or create a marketing strategy, manufacture, label, package, or work on regulatory approval there, plaintiffs' counsel are likely to more aggressively target venues where companies do engage in those activities." With respect to pharmaceuticals, for example, "those hubs, depending on the facts of the case, might include greater Boston, New York, Chicago, San Francisco, and Los Angeles, as well as New Jersey."

Here then is a cautionary note for corporations and their lawyers: Bristol-Meyers is a decisive win but the war goes on as the litigation picture simply morphs and shifts. "There may be more actions in more jurisdictions or more actions in headquarters jurisdictions," says Downs. "Not all corporate headquarters jurisdictions are defense-friendly."

No victory over the plaintiffs' bar is ever really final. They are, after all, among the most entrepreneurial people in the world. \[\]
Forbes: Blackout: The Other Russian Hacking Scandal
This column is about the other Russian hacking scandal, the one that so far hasn’t caused palpitations among cable news commentators. But it should.

Almost lost amid the Watergate-level tsunami of media coverage over incriminating emails and what constitutes “collusion” is the U.S. government’s early July revelation that Russian hackers were behind cyber-intrusions into the U.S. energy power grid. FBI and Department of Homeland Security (DHS) officials believe that the hackers’ primary targets were nuclear power companies and other energy facilities.

To date, those officials say, there is no evidence that plant operating systems have been compromised or that public safety have been placed in jeopardy. Hackers have so far “only” succeeded in breaking into administrative systems, pilfering log-in and password information.

Still, it’s a sobering development – one every bit as threatening to national security as the integrity of our election system. Chaos, it has long been said, is only an extended blackout away. It’s been a matter of public record for more than two months that nefarious Russian hackers have zeroed in on U.S. energy companies. The only thing more frightening than having a hostile nation proven capable of controlling your energy grid is the execution of that control.

It’s also a matter of public record that Russian hackers deliberately disabled the Ukrainian electric system in December 2015, leaving a quarter of a million Ukrainians without power for hours on end. The Russians have since tested a cyberweapon capable, experts say, of upending power grids on every continent, with nuclear facilities at the top of their target list.

Information warfare expert Molly McKew of Fianna Strategies maintains that “Russia views these asymmetric means as critical tools to give them advantage in a shadow war against the West -- and the development and deployment of these tools is escalating. One category of hybrid warfare is economic warfare, and targeting critical infrastructure as pressure, disruption, or leverage is a part of that. These threats and attacks from the Kremlin are part of a concerted campaign to weaken America.”

Palpitations, anyone?

Mark Farley, co-chair of Katten’s Environmental and Workplace Safety practice and crisis response counsel to some of the largest global energy companies and chemical manufacturers, also worries about the integrity of America’s industrial infrastructure. “Chemical manufacturing facilities and oil refineries represent targets for terrorists or others committed to industrial sabotage,” Farley says, pointing out that facilities that rely on automated process control systems could be especially vulnerable to intrusion.

Farley emphasizes that unsavory elements are hatching computer viruses that specifically attack industrial processes. “The emergence of the Stuxnet worm in 2010, which is believed to be the first malware created specifically to target such control systems, exposed their vulnerability to cyberattack, not just by terrorists, but by foreign governments,” he says. A rogue command at a chemical or energy plant could cause a pipe to rupture or a storage tank to explode, endangering workers, the public, and the environment, warns Farley.

Hackers could foist similar chaos onto the control systems of the financial services industry or any sector they choose, experts say. McKew observes that such attacks, left unmolested, will surely weaken the U.S. economy and, with it, national security.

What can we do about it?

On a national level, McKew says, we need to harden our energy grid and gather better intelligence about foreign threats. Other critical U.S. infrastructure – including our communications grids, our fiber-optic transmission lines, and our water extraction and distribution systems – should also be strengthened.

On a corporate level, what remedies can facility owners and operators take to mitigate risk and strengthen their capacity to fend off cyberattacks? Mark Farley and I offer this quick prescription:

• Evaluate your site security by assessing overall plant vulnerability, particularly your control systems;

• Review your plant network architecture and assess the vulnerability of your Internet and corporate information networks;

• Update your employee crisis training to include a cyberattack scenario from a hostile foreign power and regularly conduct drills to ensure that everyone is on the lookout for telltale cyber intrusions and aware of their take-charge responsibilities should one occur;
• Have worst-case-scenario materials ready to go, from statements and tweets from the CEO to testimonials from third-party cybersecurity experts;

• Ensure that your communications people are expert at tapping social and digital media channels as well as conventional outlets – in a cyber crisis, you’ll need to dispel myths and misinformation and get the facts out in a hurry; and

• Track adversarial online communications and examine its original source – look for patterns and things that don’t seem to make sense. Most nation-state attacks leave footprints along the way that don’t necessarily tell you what is about to happen but can point you in the right direction.

Cyberattacks have become an unfortunate reality for every business and institution, regardless of size or mission. Having your systems breached or blatantly assaulted is not a matter of if – it’s a matter of when.

Companies in these perilous times have no choice but to ready themselves for the nightmare contingency that America’s biggest adversary could be hell bent on disrupting their operations.

After the success of Russia’s interference in the energy grids of its satellite countries, we have little doubt about either their intent or capability. We also have an early warning.

Don’t palpitate. Prepare.
CommPRO: Sean Spicer, Tokyo-on-the-Potomac’s First Casualty
In many ways, Sean Spicer was always an outsider in the Trump organization, even though he’s been one of the most popular and well known figures within it.

He’s been lampooned by Melissa McCarthy on Saturday Night Live and his on-camera press briefings – back in the old days when they were a regular occurrence – quickly became 2017’s must-see political TV. Where Press Secretaries of the past were bit players in the Washington drama, largely unrecognizable except to the junkies and wannabe pundits, Spicer had a nationwide name recognition of 60 percent, which, to say the least, is pretty impressive.

Throughout all of this – the gum-chomping caricatures and the sharp critiques by the President and the Press alike, Spicer remained a steady presence, a loyalist’s loyalist, and, as Mark Leibovich noted in his July 11 New York Times Magazine article, “a crossover player, someone who comfortably inhabited the old Tokyo-on-the-Potomac before Godzilla was elected and put him to work.” It’s possible that he wasn’t always comfortable as Godzilla’s mouthpiece, but if so, he never showed it.

In that old Tokyo, Spicer was a key figure in the establishment, well-known, mostly liked, and generally respected for his role as a strategist. A staple and loyal soldier at the Republican National Committee, he played a major role in rebuilding the party’s media apparatus after the Obama wave in 2008 and again in 2012. It was amazing how quickly the Trumpists adopted him as one of their own, given his position as a power player in the swamp they so loathed.

When he started at the White House, he was supposed to be a stabilizing force like his old boss, Chief of Staff Reince Priebus – another allegedly embattled member of Team Trump. The two were supposed to bring legitimate experience in helping the White House navigate Washington’s power centers and run like a real Presidency. Where the campaign, though successful, was sometimes amateurish, there was real governing to be done and a long list of conservative priorities to achieve. Both of these things proved to be Sisyphean, to say the least.

I suppose the question now, dear readers, is what does it all mean and where do we go from here?

The main takeaways from the TV chyrons and the headlines are that this latest staff shakeup is the mark of a White House in chaos. That has been true, and, if we’re betting dollars to donuts, it’s likely to continue that way.

At the end of the day, the government is a massive bureaucracy that one person cannot manage alone – especially one with no governing experience. Many people voted for Trump because he was supposedly a successful businessman, but the government is not a business and shouldn’t be run like one. One area where the two have similarities, though, is that to be effective, a President – like the leader of any complex organization – has to create a vision and bring on the right deputies to implement it.

For all of the Trump Administration’s “Make America Great Again” sloganeering and #MAGA hashtagging, that does not a vision make. It may be great branding, but it lacks the details for successful implementation. And where there should be a clear vision – on health care, for example – this President has put so many contradicting ideas out there that it’s clear there is no vision other than rolling back the clock.

We have now a President without experience governing and a Communications Director without experience in communications strategy. This, it seems, was Sean Spicer’s red line. After 182 days as Trump’s mouthpiece, Spicer leaves the White House with one of the shortest tenures in modern history.

For all the alternative facts he spewed day in and day out, the blanket denials and the combative press conferences, it seems that Spicer finally had to reckon with the fact that the new Tokyo-on-the-Potomac was here to stay. And, as the old movies go, Godzilla never leaves things better than he finds them. ☑️
Dealing with NGOs, activist investors, and other corporate detractors these days is a little like combatting the zombies in "Fear The Walking Dead." You may think you have them licked, but they just keep exhuming themselves and coming at you.

The lines between hacking and social activists’ attacks have become blurred. Once information has been hacked, its use is fair game. Just because the hackers’ sponsor – a nation state or corporate espionage profiteer – doesn’t need or want certain information, it doesn’t mean that it can’t be used by others in support or their own agendas. Sometimes it is private information made public, other times it has been modified surreptitiously to look damning. Genies are out of the bottle everywhere.

You now need to expect to confront a slew of freshly empowered adversaries that are weaponizing social and digital media, pirating thefts of your databases, leaking your customers’ proprietary information, and trying to deflate your stock price while twisting your earned media coverage.

I started my career as an activist and I’ve been advising corporations for three decades on how to counter activist campaigns and thought I’d seen it all. But the cutthroat tactics and diabolical sophistication of today’s agitators put their forerunners to shame.

The contemporary business climate may not be poisoned by zombies but it sure has an apocalyptic feel, especially given the lethal tenor of social and digital media. For corporate executives, board members, and legal counsel, the challenges are likely to get tougher before they get any easier.

Javier Lesaca, a Visiting Scholar at the George Washington University School of Media and Public Affairs, argues that "popularization of social media networks and democratization in the access to audiovisual, editing, and recording devices, have eroded the influence of traditional media."

"The formation of public opinion has become an immense battlefield where a multitude of agents battle with all kinds of weapons, and without any rule or restriction, to seduce, fascinate and mobilize their potential audiences toward their own interests. Activists and sub-national groups of every condition and ideology all around the world have found in these tools their best weapons to challenge companies and institutions in the field of public opinion, image, and reputation."

What are the latest social and digital media weapons that corporations should anticipate, especially since everything is magnified in the Age of Trump? How can a company’s strategic intelligence activities be strengthened to recognize canary-in-the-coal-mine moments in social and digital media?
The disquieting experience of New Balance shoes is instructive, both in what sparked the episode and how the company responded to dispel myths and tamp down the crisis.

An innocuous statement in the fall of 2016 from a New Balance executive that the company welcomed the chance to work with President-elect Trump on trade issues – not exactly an earth-shattering declaration from one of the few remaining American shoe companies – unleashed an online storm that spilled into the mainstream media. Twisting the executive’s words into a full-blown “endorsement” of Trump, activists and NGOs took to social media demanding that consumers boycott New Balance shoes. The movement gained traction, threatening to hurt the company’s carefully cultivated, enviro-friendly brand. And that’s when the episode turned ugly.

A neo-Nazi blogger declared that New Balance was “the official shoes of white people” and other white supremacist groups began chiming in, causing an immediate uproar. Suddenly New Balance was being attacked from the activist left and the incendiary right, with both sides waging nasty social and digital media campaigns. New Balance went into damage control, urging consumers via online and through conventional media to examine the facts before leaping to conclusions.

It has taken New Balance months of carefully targeted outreach but the company has succeeded in quieting the storm.

What can other companies learn from New Balance’s caught-in-the-middle nightmare?

• First of all, recognize the emphasis on “months.” Too often, companies put out the “facts,” and think they alone speak louder than emotion. What we believe is what we hear over and over, over time, and from many different voices, including, importantly, trusted voices. That is, people and brands we already trust. If you don’t know who your target audiences trust, then you aren’t heard.

• Think differently. Companies used to control the message by advertising, some PR and political support. In essence, shouting louder than anyone else, which was easy before the Internet. Now, it is not about volume but integrity. People buy from whom they trust and forgive them for their mistakes. One need only look at Apple and the Foxconn crises to see much a trusted brand is given leeway in times of trouble.

• Be doubly careful about any public statements that could be construed as “political” in today’s highly-charged climate and understand that what used to be considered safe is no longer to be assumed. We live in an age of symbols and imagery. A cartoon frog and the mention of a symphony used to be just that. Now they are racists memes. This is one more reason why it is critical to have highly integrated teams – legal, communications, HR, etc. who collectively understand a brave new world;

• Use sophisticated intelligence-gathering to aggressively monitor social and digital media. Locate the source of the first critical tweets – who they are will tell you a great deal about their intent; understand if bloggers are high authority or lone wolves – a blog or Facebook posts with lots of readers, likes, or followers can start or influence a movement; have relations with NGOs that monitor your industry and build trust – in this way you can calmly discuss threats of boycotts and negotiate changes early, rather than pick up the shattered pieces of your brand afterwards; and carefully look for early signs of trouble on the Web. Too often, executives are more afraid of speaking truth to power when they see just a couple of stars in a constellation (no one wants to be branded for “crying wolf”) than they are of the collapse of a brand;

• Understand who your adversaries are. If they are a fair-minded NGO, the best response starts with listening. But if they are hackers, a competitor, plaintiffs’ lawyers or activists’ investors in disguise, then it is a whole different game. Often times, when the adversary is Boris and Natasha rather than Moose and Squirrel, sunlight is a highly effective strategy;

• Break down any silos that might separate communications, branding, marketing, and legal teams – in any kind of crisis, but especially a consumer boycott attracting headlines and social and digital media buzz, a company will need seamless coordination and the capacity to move in a hurry; and

• Redouble worst-case contingency planning and conduct regular exercises to ensure that everyone understands their roles in de-weaponizing social and digital media. This means that intelligence always informs strategy. If you don’t know who your adversary is and what motivates them, you don’t have a strategy, only a faint hope.

Zombies may be the only activist group that companies don’t need to worry about these days. Everybody else, including neo-Nazi groups and nation-states, are exploiting social and digital media. Sometimes you are the target, other times just the collateral damage. Either way, it is an entirely new world.
July 26, 2017

The Hill: Trump may get a big win with a renewed commitment to water infrastructure
Distractions in Washington have continued to jeopardize key reforms that President Trump committed to pursuing during his campaign. Initiatives that Republicans hoped to pursue have been blocked, rejected, or stalled by unceasing Democratic obstruction.

But there are some battles that could change the tide, bring the Republican Party together, fulfill some of Trump’s campaign promises, and even gain support from key Democrats. If the administration and congressional leadership were to focus on infrastructure reform proposals, discussed at length during Infrastructure Week, they could start to put upheaval behind them and score some much-needed wins.

On behalf of the National Association of Clean Water Agencies (NACWA), Andrew Kricun testified this month before the Fisheries, Water, and Wildlife subcommittee of the United States Senate. In his testimony, he highlighted nonpartisan infrastructure investment issues that could be tackled by renewed prioritization, focus, and commitment.

In his testimony, Kricun warned, “Nationally, the cost of clean water services has increased faster than the rate of inflation for 15 consecutive years. For households with low or stagnant incomes, the amount they are spending on water often exceeds what EPA considers affordable … Municipalities are facing enormous pressure to set rates based on the often-growing percentages of low-income households in their service area — even if it means deferring investments. A safety net for the lowest-income households would better position utilities to charge rates that fully reflect the true cost of service.”

The NACWA points out a very interesting situation. Without investment in critical infrastructure, the prices we pay as rate payers will continue to increase such that we will need to pay for the true value of water — something essential for life itself. Considering the neglect of our aging water infrastructure, further compounded by overuse and additional population demands, the continued delivery of clean and safe drinking water can no longer be deferred simply to keep prices low.

At a conference this week in St. Louis, NACWA leaders will be meeting to discuss how to better communicate the value of water, all while attracting more public investments for the infrastructure delivering it. Without these solutions, combined with a social understanding and acceptance of the importance of water, prices will continue to rise all while the delivery infrastructure continues to crumble, literally putting lives at risk.

In partnership with utility leaders, politicians now have an opportunity to get in front of this situation by committing to investing in clean water — now — before it becomes even more expensive, or the situation becomes more dangerous. All stakeholders have a role to play and all can benefit as utility leaders and rate payers hold political leaders accountable by communicating the true dangers ahead and the human expense of doing nothing.

By proactively communicating the value of the product utilities produce — it will make it much more difficult for anyone to question the increasing water bills they receive. By investing in water infrastructure, politicians can take a greater ownership in taking credit for trying to lower those bills too. It’s a win for all involved.

While infighting and partisanship are nothing new, neither are the woes of a crumbling infrastructure. And while many focus on the “roads and bridges” part of infrastructure investment, we must not forget about the reliance we all have on these systems — specifically those that bring clean water to our taps. Yet when it comes to water, most still take it for granted, until there is a problem such as a water main break, or worse, a crisis such as the one in Flint, Michigan.

While we all need water to live, its affordability is in jeopardy, making the need to redouble our commitment to water infrastructure investment of paramount importance.
August 9, 2017

Forbes: Protecting Your Brand From The Cyber Bandits In The Age Of Hacking
No corporate entity or institution – no matter how pure of heart – is immune from cyberattacks. When it comes to wreaking havoc or scamming money, cyber bandits are equal-opportunity thugs: if the cash or cause is right, they’ll go after anybody or anything.

Just ask some of the biggest companies in the world: Fedex, Maersk, Mondelez, and Merck, all of which have missed 2017 earnings projections because of ransomware attacks. The assault on Merck was so crippling that it was forced to halt production of its key drug lines, a disruption likely to undercut profits for the rest of the year.

Or ask these restaurant chains – Wendy’s, Noodles, and CiCi’s Pizza – which have been thwarted by recent breaches of customer payment information, malware contamination, and point-of-purchase hacking.

Or these technology companies – Yahoo, LinkedIn, MacKeeper (a performance-optimizing software for Apple computers), and Dropbox – which have had proprietary information on millions of their customers compromised.

Or the Hyatt chain, which revealed a year ago that malware had corrupted the customer credit card systems at 250 hotels.

Or Citibank, which was flummoxed by a vengeful ex-employee whose malicious tampering shut down nine of its 10 global control center routers.

Cyberattacks are not just getting more pervasive, malevolent, and destructive – they’re threatening the foundations of our economy and democracy. “Hackers with possible ties to nation-states continue to target infrastructure as well as systems for political insight,” warns a report from the Heritage Foundation that documents the nefarious activities of cyber criminals associated with the Russian government’s Russia Main Intelligence Directorate (GRU) and Federal Security Service (FSB).

Cyber warfare experts at the FBI and Department of Homeland Security are worried about far more than Russia. Not long ago, hackers tied to Iran’s Islamic Revolutionary Guard Corps tried to gain control of the sluice system at New York State’s Bowman Dam and nearly succeeded.

U.S. authorities believe that global activists and radical extremists, including ISIS, are launching cyberattacks against corporations and government agencies at the same time they’ve learned how to weaponize social media.

Paul Ferrillo, who helps direct Weil Gotshal & Manges LLP’s Cybersecurity, Data Privacy & Information Management practice, advises that, “There are tough times ahead for companies that are not prepared. With sophisticated exploits readily available on the Internet, it is hard to tell the difference between nation-state activity and cybercriminal activity – they are equally well equipped to do harm.”

Eddie Block, who helps lead Gardere Wynne Sewell LLP’s cybersecurity practice and served as the Chief Information Security Officer for the State of Texas, observes that, “Companies that ignore the threats to their technology infrastructures are sticking their heads in the sand. Cyberattacks are a ‘when not if’ event. Developing and testing response plans should be a key business priority.”

Matt Comyns, the managing partner of Caldwell Partners’ Cybersecurity Practice and an expert in helping companies institute anti-hacking measures, adds, “Jobs that focused on cybersecurity were once considered to be low-level and not strategic. Companies must now elevate those roles to keep pace with the serious risks posed by cyber threats. The best cyber leaders are much more than tactical technicians. They put cyber risk into real business terms that boards and C-level executives can understand.”

Not every company can put their employees through intensive off-campus training to contain cyberattacks. But here’s a quick Ferrillo-Block-Comyns-Levick prescription for what every company should be contemplating on the cyber front.

• Prepare, test, and evaluate an incident response plan (IRP), business continuity plan (BCP), and a crisis communications plan to streamline the investigation and remediation process and buoy communications with shareholders, customers, and other stakeholders when a breach does occur;

• Map data flows to assess where critical, personal, or regulated data is stored and how it is transmitted;

• Conduct a privacy impact assessment to assess depth and vulnerability of data (wherever it is located) and how it can be protected;

• Educate employees, executives, and board members on such cybersecurity must-knows as breach response, spear phishing, social media best practices, and password protocols;
• Prepare internal policies dealing with privacy issues at work (social media use, workplace surveillance, monitoring internet activity, etc.); and

• Get back to basics, such as timely patching of software and a regular back-up process for your networks and desktops.

Institutions need to do much more, of course. But nothing, no matter how comprehensive, guarantees 100 percent protection from cyber bandits.

In today’s world, cyberattacks are as inevitable as sluggish quarters and bumpy shareholder meetings. The companies that steel themselves for the cyber turbulence to come will be best equipped to contain the damage and recover quickly enough to make their numbers and return to normal operations.
Forbes: Finding Courage After Charlottesville: A Primer for Companies Distancing Themselves from Trump
This is the fifth in a series of columns addressing how companies can protect their brand from radical extremists and other activists in today’s volatile and dangerous climate.

When Donald Trump first took office, his dark Inaugural Address focused on his base, not the country. It prompted many CEOs to take a wait-and-see attitude on the business tycoon turned president.

Less than two weeks into his presidency Trump issued Executive Order #13,769, “the Muslim Travel Ban,” triggering spontaneous protests and a disquieting fear that the new president had overreached. CEOs became at least somewhat less fearful of the President’s tweets -- a threat considered by the Eurasia Group in early January as the greatest enterprise risk for companies in 2017.

Now comes the tragedy of Charlottesville, the byproduct of five years of Trump's courtship of far-right extremism – from “Birtherism”, a Klan endorsement, and “Mexicans are rapists,” to the Voter Fraud Commission designed to suppress minority votes and the hiring of the alt-right brain trust of Steve Bannon, Sebastian Gorka, and Stephen Miller into senior White House positions.

The president not only squandered an opportunity to assert moral leadership but demonstrated an inability to detach himself from the albatross of racism. It started with tweets attacking Kenneth Frazier, Merck’s courageous CEO, who had left Trump’s manufacturing advisory council, and got worse as the week wore on, only briefly interrupted by a mechanical press conference condoning racism, clearly forced upon the president by wiser counsel. On Tuesday, he tweeted an image of the Trump “train” plowing into a CNN reporter, then doubled down on his specious claim that “both sides” were at fault in Charlottesville. All this while Trump was on display first thing Monday, then late Tuesday afternoon at the impromptu press conference.

Trump’s Monday-morning tweet skewering Frazier, one of the highest-profile African Americans in business, devalued anything that Trump would later read from the lectern. The president, it is said, tweets from the heart, but his scripted speeches come straight from his pollsters.

Frazier's poignant statement – “America’s leaders must honor our fundamental values by clearly rejecting expressions of hatred, bigotry, and group supremacy” – was precisely the message that Trump should have articulated the instant the protests turned ugly on Saturday.

Soon joined by Under Armour’s Kevin Plank, Intel’s Brian Krzanich, and the AFL-CIO’s Richard Trumka, Merck’s Frazier acted with courage and conviction in resigning his position in the wake of Trump’s utter failure to seize the moment. Like countless leaders before him - but few presidents - Trump waited too long and said too little in the face of a formidable crisis.

With Frazier providing the leadership model – following examples set by the president by albatross of racism. It started with tweets attacking Kenneth Frazier, Merck's courageous CEO, who had left Trump's manufacturing advisory council, and got worse as the week wore on, only briefly interrupted by a mechanical press conference condoning racism, clearly forced upon the president by wiser counsel. On Tuesday, he tweeted an image of the Trump "train" plowing into a CNN reporter, then doubled down on his specious claim that "both sides" were at fault in Charlottesville. All this while Trump was on display first thing Monday, then late Tuesday afternoon at the impromptu press conference.

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With Frazier providing the leadership model – following examples set weeks ago by Elon Musk of Tesla and Bob Iger of Disney, both of whom resigned from presidential councils after Trump unilaterally quit the Paris climate accords. The President has now disbanded his CEO councils. Increasingly the question is, “How can CEOs maintain any relationship to this administration?”

Showing leadership at this point, taking on the president, is not easy. We already know that this president picks winners and losers and can make life very difficult for those he sees as personally attacking him. But this is a battle we fought and won a century and a half ago. It is how President Johnson chose to honor the legacy of John F. Kennedy, by passing the Civil Rights and Voting Rights acts – an effort that looks more and more Herculean as the years go by. Companies too close to the president will pay a heavy price in the future, as some German companies still pay a tax today for the sins of seven decades gone by.
Many of us fear that Trump is no longer dog-whistling racial animus – he’s screeching it through a bullhorn. Will his brief and awkward Monday backpedal keep other CEOs from divorcing themselves from his administration?

Maybe. But with Trump, the next calamity is never more than a couple of news cycles away. Scores of companies are now taking a no-nonsense look at their relationship with this president. If the current exodus continues, Frazier, Musk, Iger, Plank, Trumka, et al., will have plenty of company.

Merck had little time to plan its communications and public affairs strategy before Frazier elected to act. Nevertheless, its statement was sharp, to-the-point, and empathetic. As a pharmaceutical company that markets its products under many different names, the Merck brand is somewhat less exposed than other manufacturing concerns or direct-to-consumer product makers, although they still heavily rely on the U.S. government as a customer.

All in all, Merck is still likely to face a backlash from pro-Trump supporters and heartland consumers that won’t dissipate anytime soon. But their ineffective boycotts to date, not to mention the sheer number of companies they now need to boycott, is a challenge for his deteriorating base. Preliminary market data suggests that Intel and Under Armour are getting a brand boost by resisting Trump. My guess is that Frazier will go down in history with Jim Burke of Johnson & Johnson (Tylenol), a visionary CEO willing to endure a bumpy quarter for three decades of leadership in pharmaceutical development.

The ability to look into the future is critical when this president is always going to return to form. Poor Alex Gorsky, the current CEO of Johnson & Johnson, who issued a commendable statement condemning racism but choosing to stay on the council, only to find a day later the President retreating into the very behavior he had condemned.

What strategic considerations should smart CEOs take into account as they contemplate disassociating themselves from Trump?

Recognize tipping points and moments in history. This is an inflection, the point at which an association with Trump may well become burdensome.

Talk through the repercussions with your team, including investor relations, government relations, legal, corporate communications, human relations, and board members.

Be consistent and make it clear what you stand for, as opposed to attacking the president.

Plan to make a sacrifice. The president has an enemies list and you are sure to be on it. But this is about the long game, not the short one.

Rather than focus just on the potential return, ask yourself, is this behavior you would accept inside your company?

Follow your own procedures. Google gave the alt-right a poster boy in James Damore by appearing to fire him without the step of intervention, making them appear to some as thought police. Strongly support your position, take measured steps, and act with courage and uniformity.

Do it early. Courage is what you do in war time, not how you rewrite history afterward.

Find third party voices, particularly among grassroots Republican officeholders and former officeholders, in unions, if appropriate, academia, etc., so they can become an echo chamber emphasizing your sacrifice and leadership.

“Out, damn spot.” Make your exit simple and do not overplay it. A Shakespearean tragedy is remembered for the brevity of its lines, not the length of its pages.

Meet individually with trusted members of traditional and social media so they appreciate your position.

Needless to say, make sure it is genuine. This will be history’s only judge.

Trump’s deafening silence followed by a new low means that Americans once more must wage a fight to attain our most precious and inalienable right – that “all men [and women!] are created equal.”

We need to take to heart JFK’s famous paraphrase from Dante: “The hottest places in Hell are reserved for those who in time of moral crisis preserve their neutrality.”


Forbes: No Easy Solutions: Facebook’s Response To Russian Hacking May Determine Tech’s Regulatory Future
In many ways, Mark Zuckerberg is a talisman for the rest of Silicon Valley. The Facebook founder and social media pioneer has always embodied the Valley’s swashbuckling entrepreneurship.

But Zuckerberg’s libertarian buccaneering days are likely behind him as he has finally started to recognize the perils facing Facebook and his industry, not to mention owning up to his responsibility in cleaning up the Russian hacking of his company’s services that tainted the 2016 election. The same holds true for the rest of the tech community, much of which (Twitter, DreamHost, and Disqus, to name but a few) was manipulated by cyber crooks working under the thumb and index finger of Vladimir Putin.

Suddenly Silicon Valley has become the front line in America’s fight to keep hostile foreign powers from throttling our democratic institutions. Russia’s thuggish behavior is especially thorny for the Big Five, the so-called FAANG companies – Facebook, Amazon, Apple, Netflix, and Google.

In recent weeks it has become apparent that Russia’s military intelligence unit, the GRU, an offshoot of Putin’s alma mater, the KGB secret police, targeted Facebook and other Web-hosting platforms to trumpet the emails it had stolen from Hillary Clinton’s campaign and the Democratic National Committee. All this follows revelations that the Russians tapped phony Facebook accounts to spread malicious anti-minority and anti-immigrant messaging and to purchase at least $100,000 worth of anti-Clinton advertising.

Zuckerberg and Facebook were slow to recognize the gravity of the Russian threat. In the immediate wake of President Trump’s surprise victory, Zuckerberg said it was “crazy” to believe that his company’s platforms had been exploited by a foreign adversary. But after he and President Obama had a private conversation in mid-November 2016 and evidence of Russia’s skullduggery mounted, Zuckerberg has acknowledged that Facebook has a responsibility to atone for its missteps.

Russia’s depravity runs deep. One of the GRU’s hacking divisions, the cyber thieves that experts suspect were behind the original DNC breach, goes by the obnoxious moniker Fancy Bear. Another is known as The Troll Factory. If Zuckerberg doesn’t figure out a way to contain these thugs he runs the risk of watching his company and other tech giants get devoured by federal regulation – the scenario that Silicon Valley has managed to avert all these years.

Zuckerberg’s recent tour of the country demonstrates that he and Facebook are beginning to understand the implications of Russia’s meddling. Facebook executives are publishers – not cowboys – with, at least, it would seem, some of the responsibility of legacy media. Now the issue becomes: How much of a leadership role is Facebook willing to take in finding real solutions? And how far will it go in disclosing its own corrective actions? Without concerted disclosure and transparency, Zuckerberg could become, in the public’s eye, just another robber baron. In 2011, Facebook argued before the Federal Election Commission that its ads were “small items,” like campaign buttons, and should be exempt from campaign disclosure rules.

Facebook’s public affairs and communications strategy is only now evolving. The phalanx of Washington lobbyists they’ve retained rivals Exxon-Mobil and dwarfs the big Wall Street firms. Yet so far they’ve all stayed mum about Facebook’s strategy.

The potential regulations faced by Facebook and others are not insignificant. In the last few days, these regulatory ideas have begun to percolate in policymaking circles:

- Web platforms with more than one million users would be compelled to publicly disclose the names of individuals and organizations that spend more than $10,000 on election-related advertisements.
- Providers would be required to establish a public database and display digital copies of all relevant ads.
- The database would also have to house all “electioneering communications,” including a description of its targeted audiences, its view count, the exact timing of its placement, its price, and detailed contract information.

And that’s just the beginning. The draconian antitrust fines and taxes that the European Union has begun to assess against the FAANG companies could find their way across the Atlantic. It’s entirely plausible to suggest that Web companies could be looking at a regulatory regimen not unlike that imposed by the Federal Communications Commission on television and radio broadcasting in the 1950s and ’60s: a “fairness doctrine,” This is the third in an occasional series (column 1 & column 2) that explores the public affairs challenges facing technology companies in a daunting new world filled with hostile foreign powers, unsettling labor, employment, and intellectual property issues, and unprecedented concerns over freedom of speech and privacy.
requirements for community service and public-spirited broadcasting, an insistence on children’s educational programming, prohibitions against “obscene” or “indecent” material, et al.

Robert Corn-Revere, a partner at Davis Wright Tremaine who specializes in communication and information technology law, notes that, “People who worry about large, unaccountable tech companies should worry more about large tech companies subject to the control of politicians and regulators. In that regard, the experience of Europe — not to mention our own history with regulating communications technologies — should serve as a cautionary tale.”

Veteran technology policy lobbyist Kim Koontz Bayliss of Perry Bayliss adds, “How tech companies respond to mounting Congressional criticism is extremely important and will dictate how policymakers treat them going forward on everything from antitrust to zero-rating. The more integral these companies become to the lives of average Americans, the more serious the threat. They must work harder to educate policymakers about how they are conducting their business.”

The FAANG companies must also work harder at communicating the economic, educational, and cultural benefits that technology brings every minute of every day to American life — and not just to policymakers and opinion leaders, but to everyone. They need to enlist grassroots and grasstops allies that can take their message to those parts of America that feel left behind in the information revolution.

They need to ramp up their corporate social responsibility programs and rededicate themselves to bridging the Technology Divide that separates the upwardly mobile from those struggling to get ahead. Too often, that gap makes rural and less fortunate communities feel abused and forgotten. If technology has separated those with 20th century skills in a 21st century workplace, it must now help bridge that gap so that anger subsides and reason — and hope — return.

When Americans living along the East or West Coast hear “robotics” or the “Internet of Things” they look forward to the prospect of mastering new technology. When a rural or at-risk American hears about exotic breakthroughs, they fear their jobs and way of life are being threatened.

Beyond the specter of added taxation and regulation, there is another bête noire with which the Big Five must grapple. Part of it is a byproduct of the Technology Divide but in truth its roots run much deeper.

Trump’s victory heralded a new kind of American populism — a contempt for big money and big institutions that is far more belligerent than its predecessor of a century ago.

The radical nationalist movement championed by Trump Svengali Steve Bannon is not just anti-establishment; it’s anti-anything that smacks of the ruling class, with Big Tech at the top of the list. Many Americans — and not just Trump voters living in small towns — resent tech’s ubiquitous presence and prodigious money-making. They would applaud any leader slapping it down.

This anti-elite populism is likely to survive Trump’s tempestuous presidency. Mark Zuckerberg, his Silicon Valley compatriots, and this country are facing some serious cyber hurdles. It’s not just Fancy Bear that lurks on our pathway.
October 3, 2017

BRINK: Always On: Litigation and Crisis Communication in the Digital Age
What separates success and failure in high-profile litigation and crisis? In working on hundreds if not thousands of high-profile matters around the world, we have found three consistent rules that separate success and failure, each involving basic behavioral tendencies that can dramatically alter the course of a crisis if not addressed with an “eyes wide open” attitude.

Fear. Companies hire senior executives for their monetizing skills in order to grow the company. Precious little time is spent during the hiring and integration stage focusing on the descendant side of the curve. How will a prospective company leader respond in a crisis? Most people have never been in the foxhole and they are just not doing at their best under fire. Even in the military, when highly trained soldiers go into combat, it is known that some of them just won’t fire their weapons. If your teams are not tested, haven’t prepared for a crisis, are not accustomed to making rapid, critical decisions with the information at hand, they will be ruled by fear. Fear never allows for the best decisions. Only through practice and drilling do we develop the instincts that overcome the power of fear.

“What got you here won’t get you there.” Because the careers of most crisis team members are all about building the company and success, their perception is to just keep doing more of the same in a crisis; presumably, that will work as well as it did prior to the crisis. The presumption is natural but it’s wildly unjustified. In a high-profile matter, all the rules change. Your audience is different because it’s now comprised largely of non-customers and non-shareholders. You are no longer trusted. Prior to the high-profile event, all you needed to do to be on the side of truth was to say that you were on the side of truth. Now, you need others to do the evangelizing and it’s all subject to proof in any event. Nor is everyone within the company rowing in the same direction. The longer a crisis goes on, the likelier it is that people will start worrying about their division, their personal liability, and, of course, their job. It’s no longer the brand first, no longer command and control. You need to look at the situation differently and act differently.

“Why we can’t.” These three simple words are the most damaging at the critical moment of a high-profile matter. A smart company gets its crisis team together and human resources makes a suggestion about firing someone and legal will say “why we can’t.” Or legal will make a suggestion and HR will say “why we can’t.” It goes on and on until the moment of opportunity when a sacrifice, an apology, an act of contrition, or simple generosity would contain the cancer. But at that moment, no team member has the stomach to take the risk and recommend a sacrifice, be it a temporary dip in share value, a product recall, or the firing of a division head. So the team makes no decision at all until they can “gather all the facts.” Alas, in a crisis, such moments of opportunity do not return—and failures to seize such moments are far more common and far more damaging than most of our less-than-perfect decisions. “Why we can’t” is the opposite of opportunity.

Get in the Game
To some extent, the “best practices” for crisis communications are not new; they evolved under circumstances that were exigent at the dawn of the century during the early stages of Internet influence. That said, they are more important and more urgent now than ever before. Companies and their counselors who, at that earlier juncture, saw the need to fundamentally rethink their priorities are today reaping the benefits. But most other companies must now play catch-up, a task all the more daunting in light of the accelerated speed with which the social media are expanding, even as regulators, plaintiffs’ lawyers, activist investors, the media, and nongovernmental organizations relentlessly up the ante. Daunting or not, 21st century businesses and their lawyers have no choice but to play the game.

Intelligence informs strategy. Always. Almost all defense lawyers and even most communications professionals operate on what they have learned over a lifetime. As valuable as that has been, it means they operate backwards in a pre-Information Revolution style.

Nixon opened relations with China by taking only a dozen reporters with him—yet he was assured of communicating with all of America. You simply cannot do that today.

When truth was dominated by those with access to treasured gatekeepers (journalists, op-ed writers, think tanks, financial analysts, Hill staff, etc.) and those who had the largest advertising budgets, strategy was easy. In fact, it really wasn’t strategy at all but rather a series of tactics: press conference, press release, photo, advertisements, or a liberally oiled echo chamber. You were a communications genius if you knew to focus on the morning or afternoon newspaper or with which of the three television networks to advertise. Today, though, real strategy matters. If it doesn’t feel genuine, it doesn’t work.

Punching at Shadows
Too many companies still look at enterprise risk management as if it’s about studying history and extrapolating the future. While that has a place, it misses the most significant side of the Ouija board. In order to
respond ASAP, you must know ASAP what you’ll have to be responding
to. To that end, the legal and/or crisis team should have regular access
to risk experts who deploy the most efficient technology to monitor the
digital and social media and to develop risk maps. Effective risk mapping
identifies where trouble is likely to come from, from whom, what they’re
saying, and what their weaknesses are. If you understand who your
adversary is and what motivates them, you can develop strategy. Without
it, you are just guessing.

Once you know what you’re dealing with, then and only then can you
engage in strategy. In industry after industry, high-profile matter after
high-profile matter, litigation after litigation, defense lawyers digest
tons of information but almost nothing as to the deep background of
their potential or actual adversaries. Yet there are highly sophisticated
plaintiff’s lawyers who know precisely with which reporters to plant leaks
in a given industry in order to effect maximum pain. Or how to control
search engines to dominate results. Or when to release an emotion-
packed video to change perceptions about who the villain and hero are.
Or how to engage state attorneys general, thereby mounting a highly
effective one-two punch of regulation and litigation. Some activist
investors are so savvy in both the traditional and social media that they
can clandestinely deploy NGOs in a public attack in order to advance
their private agendas. Absent an awareness of these subtle powers,
targeted companies are only punching at shadows in their attempts to
keep pace and influence the governing narrative.

‘Human Intelligence’ is the Key
Here’s the key: This level of risk intelligence is not about “big data.” It
is about human intelligence in the study of social media users, trends,
and activities; it’s about looking at lobbying disclosures, foreign country
representations, and other public databases to see who’s in bed with
whom. It includes the study of foreign regulation and litigation to
discern patterns and practices; it’s about political donations and activities
and reviewing dozens if not hundreds of other sources to disclose the
intricate inter-relationships of relevant parties. Once you understand the
factors that drive your adversaries, you can develop the strategies to win.

With a robust risk monitoring and analysis system in place, decisions
can then be made about the importance of any mention—which can be
simply ignored, or publicly refuted, or deciphered as an early warning
sign of a much larger storm that might be brewing. It will provide
the ability to discern that certain bloggers are “high authority” and
usually justify the team’s attention. And it will give you the ability to see
certain patterns that may emerge when, for example, an outlier, earlier
dismissed as a crank, now seems to be gaining attention and credibility
among more traditional audiences.

A crisis is a multi-front war that demands coordination among many
facets of an organization. The right strategy requires the ability to
fearlessly act on data relentlessly collected and analyzed by a team that
understands history and politics as much as law and business and sees
trends and understands their implications. Crisis is when leadership—
trust, vulnerability, perspective, and speed—are tested. There is no better
time to prepare than now, in “peacetime.” Waiting for a crisis in the
digital age, no matter how good your reflexes, is just too late.

Part two of this two-part series will appear in tomorrow’s edition of
BRINK.
October 4, 2017

Forbes: Puerto Rico’s Calamity Demands Marshall Plan-Type Recovery
U.S. Pharmaceutical Industry in Peril?

It shouldn’t take a catastrophe to make us appreciate a place’s vitality. But that’s exactly what’s happened in the wake of Hurricane Maria’s devastation of Puerto Rico.

Suddenly an American commonwealth that too many of us have ignored over the years has become all-too-real. Three-and-a-half million of our fellow citizens – a population larger than nearly two dozen U.S. states – are suffering, a staggering number left homeless and destitute.

The tragedy is unimaginable, on a scale even more horrific than the 2005 damage wrought by Hurricane Katrina in Louisiana and Mississippi. It will be months before electrical power is restored to most Puerto Rican homes and businesses. It may take years to repair key bridges, ports, and dams. Entire communities remain inundated two weeks after the storm. Relief workers are just now able to reach stricken towns in the island’s interior.

Forests and farm land have been obliterated. Half the island lacks access to drinkable water. Officials in overwhelmed medical facilities fear they’ll be unable to contain outbreaks of cholera and other diseases. The Food and Drug Administration (FDA) has issued warnings that Puerto Rico is currently facing critical shortages in the availability of medical drugs.

Pharmaceutical manufacturing is one of the island’s main producers of jobs and economic growth; Maria has completely shut it down. Lured by tax incentives, some eight major U.S. pharmaceutical companies and two of their European counterparts maintain Puerto Rican manufacturing facilities. Johnson & Johnson alone has seven plants on the island.

Puerto Rican plants provide so many of the vaccines and medicines on which the world relies that industry analysts fear long-term disruption in supply. Most pharmaceutical facilities are not expected to reopen in the next few weeks unless backup power generators become more plentiful. Tens of thousands of desperately needed jobs are at risk.

It doesn’t seem possible that Americans could be subjected to such calamitous conditions in the year 2017. But it’s unfolding before our eyes. And it’s likely to get worse before it gets better.

The U.S. government’s response earlier this year to Hurricane Harvey in Texas and to Hurricane Irma in Florida may not have been flawless – disaster services never are – but it was swift and mainly sure.

The full resources of the Federal Emergency Management Agency (FEMA), along with military and hospital ships, were instantly made available to the people of Texas and Florida. The shipping limitations imposed by the Jones Act, which require that materiel traveling from one place to another be carried on vessels not only owned by U.S. companies, but built and staffed by U.S. workers and seamen, were quickly waived. Jones Act requirements often inflate the prices of shipped goods, complicating disaster relief efforts.

Regrettably, the response to Maria has been more sluggish. It took ten days for the Jones Act to be waived – and then only for a tragically short window – and too long in the eyes of experts for military hospital vessels and emergency relief personnel to arrive en masse on the island. Until the last few days, moreover, the U.S. media’s coverage of Puerto Rico lacked the intensity of its post-Harvey and -Irma focus. As a result, too few mainlanders understand the plight of Puerto Rico. Until very recently, the media-driven here’s-how-you-can-help drumbeat has been missing.

“‘The devastation and pain caused by these two hurricanes is indescribable,’” observes Puerto Rico’s former governor, Luis G. Fortuño, a partner in Steptoe & Johnson’s Washington office. “‘The lives of 3.5 million Americans have been impacted forever. Once the rescue effort is complete and basic services reestablished, my hope is that this crisis is used to reconstruct the island’s infrastructure smartly to make Puerto Rico stronger.’”

“We are an incredibly resilient people, and we will rebuild a better Puerto Rico,” adds Jason Borschow, an entrepreneur who has built successful enterprises on the island. “The question is whether Washington has a conscience and will support us when we need help the most.”

To be sure, Puerto Rico has had its struggles of late – its debt is unmanageable, its budget is bloated, too much of its infrastructure is antiquated, and a half-million young people have left the island – but shouldn’t this crisis trigger a Puerto Rican Marshall Plan?

With its beauty and natural resources, coupled with its experience in tourism and pharmaceutical manufacturing, Puerto Rico has the makings of an economic powerhouse. Why can’t this be an opportunity to make Puerto Rico what it deserves to be?

If we don’t take immediate steps to rebuild Puerto Rico, the exodus of young people seeking better opportunities will only intensify, exacerbating the island’s woes for at least another generation. Investing in the economy now will create jobs that will persuade people to stay. Since Puerto Ricans pay U.S. federal taxes, everyone will benefit.

In the meantime, what can we do alleviate the human suffering in Puerto Rico and stimulate the recovery? Here are two places to contribute and sign up to volunteer to do more: Foundation for Puerto Rico - http://foundationforpuertorico.org/; and conPRmetidos - http://www.conprmetidos.org/.
October 17, 2017

Forbes: Upstart Firm Commandeers Snapchat, StubHub, Treehouse Masters And Other Mega-Cases
This article is the first in a series profiling the disruptors who are changing the professional services – the way those services are provided, the new business models that make it possible, and how clients are benefiting as a result.

Most of us know what a “safety sell” is. As buyers, we instinctively hire the biggest or most well-established vendors and advisors under the proverbial wisdom that no one ever got fired for choosing IBM. It may not be the best or smartest decision; it may not even lead to success, but it’s a reliable CYA in any event. At the same time, as sellers, we chafe with frustration when potential clients reject our eminently innovative approach simply because we have one or two offices rather than one- or two-hundred.

Yet the world abounds with examples of Davids who habitually bring diverse Goliaths to heel. One example is law firm Pierce Sergenian LLP, a seven-lawyer firm founded this year by alumni of Quinn Emanuel, at 700 or so lawyers, the world’s biggest litigation-only firm. In just these nine months, the Pierce Sergenian attorneys are already besting larger AmLaw 100 firms in a series of high-profile cases. (Note: We do not have a business relationship with Pierce Sergenian.)

The new firm is battling it out with the Allen Matkins firm in a widely-followed case against Snap Inc., where their client, a laid-off whistleblower, has accused Snapchat of doctoring growth numbers ahead of an IPO. Among many other cases in its short life, the firm has taken on Quinn Emanuel in a major trade secrets case against StubHub, winning an early round by successfully disqualifying StubHub’s Stanford University source code expert. The firm recently disqualified Perkins Coie LLP from a high-profile eight-figure litigation among the former producers of the smash reality show Treehouse Masters.

David and Goliath scenarios are usually compelling but nowhere more so than in the hide-bound business of law where instincts are ubiquitously conservative, firm size (or “platform”) of paramount consideration, and in-house legal service purchasers are already wedded to the safety sell. Pierce Sergenian is not the first “boutique” to challenge such assumptions of their profession, but founder John Pierce has a particularly focused commitment to an alternative model, inspired in part by the organizational philosophy of CrossLead, a consulting firm headed by former Navy SEAL (and co-author of the best-selling Team of Teams) Dave Silverman.

Silverman has drawn on his military experience to develop and scale software applications to the needs of businesses in an environment where, as he says, “complexity is the new norm.” It is, he adds, the latest iteration of the “agile software development,” around since the early days of the century, and including notable examples such as Scrum and Kanban.

John Pierce also has a military background, but the lesson here has nothing to do with strictly regimented military-style hierarchies. It is rather the need for the incessant inter-connectedness of team members when, for example, a terrorist may be pointing a rocket in their general direction. At Pierce Sergenian, the operational dynamic filters down to the minutest detail of the firm’s daily work.

Pierce cites the example of Slack, a chat app that guarantees immediate connectedness among all internal parties with none of the inefficiencies of traditional email. “At least 35% of big-firm lawyers’ time is spent on email, much of it just managing the in-box and navigating through internal firm spam. Billions are wasted as a result,” says Pierce. By contrast, Slack is set up to “focus everyone’s immediate attention on the key information relating to the problem at hand,” which reduces decision-making time exponentially.

“Technology is evolving in a way that is antithetical to the traditional way firms practiced law,” says Pierce. “In the industrial age, it was all about careful planning and efficient assembly lines, so law firms were built around large numbers of associates performing commoditized work and dutifully reporting up the pyramid structure to a few partners overseeing the empire from the top. Profits were based on leverage, on billable hours. Today’s world is about speed, aggressiveness, collaboration. Today, it takes a network to beat a network.

“What is needed now in the professional services sector is not a pyramid but a tower of balsa wood, lightweight, mobile, but able to hold massive resources to engage and win in the digital age,” adds Pierce. “I’d rather be pondering how new AI systems will empower our work rather than who’s falling short of some billables quota.”

Pierce acknowledges that smaller firms may not be suitable in huge global fracases, but he says those kinds of cases are rarities in the world of litigation. For other good-sized if less seismic lawsuits, Pierce Sergenian has found an innovative new weapon in litigation funding. A cottage industry has arisen of hedge funds and private equity firms bankrolling law firms that bring actions against big organizations. The largest is Burford Capital, with $3.6 billion invested and available to invest and a $2.9 billion market capitalization, according to CEO Christopher Bogart.

“We seek out complex commercial litigation at any stage,” says Bogart. “We value cases led by experienced litigation counsel with successful track records and a strategic approach.”
For many of these investors, it’s proven controversial as tort reformers and Chambers of Commerce have gone on the attack against what they see as a pernicious trend that adds to the costs and risks already bedeviling American business. “The Chamber asserts that legal finance leads to frivolous litigation, but simple logic proves that we have no interest in providing non-recourse capital to claims without merit,” says Bogart. “A stunning 90% of GCs surveyed by an independent research partner see no connection between legal finance and frivolous litigation.”

For law firms, it’s a win-win that helps them do more with less and allows them to shoulder the risk of doing many cases on contingency – which, in turn, gives David an even better chance at holding sundry Goliaths accountable for their misdeeds.

Meanwhile, says Pierce, the integrated teamwork that defines his firm’s business model helps explain its success so far. With Snapchat, he and his lawyers were immediately able to see the case as ripe for a whistleblower claim in federal court. In StubHub, a decision was made in a matter of hours to sue the company (rather than just one individual) and later to seek (successfully, it turned out) to disqualify the other side’s expert witness. “It would have taken most big firms two weeks at least to arrive at these conclusions,” he says.

It’s a business model that attracts the best and the brightest. Julian Burns, for example, was attracted to Pierce Sergenian in part by the high likelihood of partnership in a relatively short period of time with no need to undergo the factory-like promotion track in force at traditional firms. “We don’t hire a lawyer unless we fully anticipate making him or her a partner,” says Pierce. That avowal sounds credible; with the model that Pierce Sergenian follows, all lawyers must already be functioning at or near partner level in terms of their mission-critical contributions – including their contributions to new business development.

Business development is where the old elongated partnership track model really proves dysfunctional. “In order to make partner, you need to develop clients, yet most big firms don’t make any effort to train associates in that skill,” says Burns. “Business and professional practice are segregated in the sense that partners are valued most of all for developing business while associates are valued mainly for grinding out the actual work. It can make the final decision to promote or not promote a very subjective and very frustrating process.”

A lawyer at a huge firm once told me that “we don’t promote lawyers, we promote rolodexes.” Those rolodexes most often belong to the graduates of Ivy League schools who, because they attended those schools, have the kind of connections to newly minted business school alumni for which big law firms salivate. It all makes for a terrible waste of talent and resources, extending an oligarchic pattern by which drones log 2,000 hours per year as corporate clients foot the bill for collective wheel-spinning.

It may be that corporate clients have only themselves to blame when they complain, as they so persistently do, about being under-served and over-billed by their current law firms.

After all, they do have alternatives.
The Hill: The Democratic effort to politicize a tragedy is a disservice to America and its veterans
Delivering bad news or consoling someone after a loss is never easy. Communicating in these instances is often awkward and uncomfortable for everyone involved. So it’s quite a mystery why Rep. Frederica Wilson (D-Fla.) is making such an issue with the call the president placed to the family of U.S. Army Sgt. La David Johnson after his heroic death fighting terrorism in Niger. To use this situation to score political points, attack the president, or advance an agenda is shameful.

Days after President Trump’s telephone call to Johnson’s family, the media is still hungry for drama. Considering for a moment the possibility that words could have been taken out of context or misunderstood, surely it would have been appropriate for the president to have been afforded the opportunity to privately clarify his admiration and respect. Instead Wilson decided to use the situation, and worse, a grieving family, to attack a political adversary. It’s a page straight out of the “never let a good crisis go to waste” playbook.

Given the rapid pace of the news cycle, it is understandable why those with an agenda will use a crisis as quickly as possible to advance a message. However, there should be some sense of privacy, decency, reverence provided to honor the victims, heroes, and those who love them.

Using a tragedy to advance a political feud is a disservice to everyone impacted by the event and the memory of the victims.

Predictably, Trump reacted to the situation by disputing Wilson’s account, tweeting, “The Fake News is going crazy with wacky Congresswoman Wilson(D), who was SECRETLY on a very personal call, and gave a total lie on content!”

Trump made some very important points. Why would he possibly allow such an accusation go unanswered? As commander in chief, he cannot allow such a wild accusation to harm the morale of those who protect us, or their support network.

In an effort to calm the situation, White House Chief of Staff Gen. John Kelly shared his own story of receiving that painful news when his son was killed in Afghanistan. He correctly pointed out that there is “no perfect way to make that phone call.”

There is, however, a common sense of decency that not only Wilson lacks, but also many others who have jumped on the bandwagon to use this situation to be critical of the president. So many are revealing their own character as they pile on without regard for the message they are sending to soldiers and their families.

And as the drama has unfolded, it has gone from shameful to absurd. Wilson described herself as a “rockstar” for generating this attention, serving to further distract from the veteran’s memory. She added, “Let me tell you what my mother told me when I was little. She said, ‘The dog can bark at the moon all night long, but it doesn’t become an issue until the moon barks back’.”

The death of American hero La David Johnson is sad and tragic. The fact that selfish politicians would use this event and a grieving family to score political points hurts us all. We must remember what truly matters, and we must not allow hate-filled political agendas to distract us from honoring those who made the ultimate sacrifice.
Forbes: Procter & Gamble’s ‘Rumble’ Could Be A Harbinger Of Your Board’s Proxy Fight
In a climate increasingly dominated by activist investors – some of whom used to be known as “corporate raiders” before a smart re-brand – bare-knuckled proxy fights are becoming commonplace. So pervasive are these battles, in fact, that those companies that haven’t yet experienced one should prepare themselves for the inevitable.

Just ask board members and shareholders of Procter & Gamble, the heartland-based producer of dozens of consumer brands. They’re weathering a months-long boardroom battle that’s missing only switchblades and a Leonard Bernstein musical score from degenerating into a bad – and very expensive – remake of “West Side Story.” It’s likely to take several more weeks before the curtain comes down on P&G’s board rumble – and years before its wounds heal.

If such a nasty spat can happen to an iconic company that prides itself on discipline and traditional values, it can happen to anyone.

The outsiders in the fight for a seat on the company’s 12-member board were spearheaded by activist investor Nelson Peltz, the head of Trian Fund Management, a hedge fund. Peltz waged an aggressive and costly campaign, emulating tactics he previously used to acquire sizeable stakes in – and influence the strategic direction of – such corporations as H.J. Heinz and DuPont. His platform – a global restructuring of the company coupled with a radical new approach to product development – was viewed as divisive, even inflammatory, by P&G’s incumbent regime.

P&G’s insiders were led by Chief Executive Officer David Taylor, who argued the company has already begun to regain market share and revamp its R&D. Taylor and his board allies claim to have “won” the battle by engineering a narrow defeat of Peltz’s bid. The referendum on Peltz’ effort was so closely contested – said to be just .02% short of a literal dead heat – that the matter has gone to a recount expected to take weeks.

When a corporate proxy fight turns this venomous, it’s referred to in the industry as a “snake pit.” Even a genius like Bernstein would have been hard-pressed to come up with music that captures the sound of hissing reptiles.

Should P&G’s insiders emerge from the pit, it may turn out to be a Pyrrhic victory.

The staggering $100 million or so the P&G regime spent to keep Peltz off its board – shareholders were inundated with leaflets, emails, podcasts, and videos at a clip New Hampshire presidential primary voters would have appreciated – did not deter Peltz from persuading select board members and a substantial chunk of shareholders to embrace his shake-up agenda. Peltz may not win a seat on the P&G board, but, over time, his antidotes stand a good chance to be absorbed into P&G’s growth strategy.

Beyond what the future holds for P&G, the Peltz board fight may be a harbinger of what lies ahead for Corporate America. More and more activists – motivated by both financial and political imperatives – are targeting board control as a way of advancing their goals. The P&G experience may serve as a template for other activist investors, some of them with track records and grand designs far less constructive than Peltz’s.

We are very likely entering a volatile new era of proxy fights – and that’s not necessarily a bad thing for companies seeking healthy back-and-forth contributions from their board members. It’s arguable that certain activists are better educated regarding marketplace dynamics and business risks than many traditional directors. Buttressed by big data, activists can come to the boardroom armed with facts in hand and multiple strategic options, not to mention a disdain for boardroom politics that could prove useful. Of course, they might also just be motivated by more handsomely rewarding their own position.

In sum, the right activist board members can help their companies make informed decisions and properly assess attendant risks. But the wrong activist board members can become albatrosses, dragging a company farther down. The key for smart company boards is to attract participation from constructive – not destructive – activists.

“There is no doubt that the level of activism and the number of companies impacted by it are on the rise,” commented Brian V. Breheny, a Skadden partner and merger-and-acquisition specialist who once headed the U.S. Securities and Exchange Commission’s M&A office.

“Activist campaigns have evolved into sophisticated movements. As a result, advanced planning and preparation by companies of all sizes are advisable.”

Douglas Chia, the Executive Director of the Governance Center for The Conference Board, adds, “Activist investors are challenging the way a public company director carries out his/her duties. In some cases, a more
aggressive style of a dissident director could be just what a sleepy board needs. In others, intentionally disruptive behavior risks chilling open discussion in the boardroom. Incumbent board members may all of a sudden feel threatened and put on the defensive. Critical discussion that should take place with the entire board may move offline to one-on-one communications. Boards have traditionally made consensus-based decisions. The prospect of activists in the boardroom highlights the importance of an independent chair or lead director who possesses high ‘E.Q.’ and the ability to build consensus in the face of rapidly changing group dynamics.”

Messrs. Breheny and Chia are right: building consensus in a rapidly changing marketplace is the challenge for every corporate board these days. With such high stakes, and with outsiders being so adept at social media, no wonder so many proxy fights have turned ugly.

Still, not every board of directors’ battle will take on the patina of a rumble. But corporate boards would be well advised to recognize the inevitability of proxy fights, institute transparency where they can, and prepare for every contingency, no matter how unpleasant. No board wants to hear the sound of snakes hissing.
The Hill: If Flake and Corker mean what they say, they should quit today
If we were to believe all the senators’ criticisms of Trump and his supposed “reckless, outrageous, and undignified behavior,” it would be a situation in which any rational person would want no part. Yet, each has refused make any effort to remove themselves from the hostile Washington environment they so viciously describe.

By staying in the Senate and simultaneously not seeking re-election, both senators put the seats they currently hold (on behalf of those they represent) at risk. If they truly believed in principles of the Republican party such as limited government, individual liberty, and serving the American people, they should make every effort to serve their states and the conservative ideals they supposedly represent.

Instead, these senators (and others) have decided to derail the very agenda that conservatives have waited nearly a decade to accomplish. Tax reform, repealing and replacing ObamaCare, infrastructure investment and so many other important policy matters are all in jeopardy because a few senators have decided to put petty bickering above meaningful change.

If Flake really cared about serving the people of Arizona, he could do more than just drop out of the race for re-election. He should allow Gov. Doug Ducey to appoint a replacement who could focus on real legislative priorities rather than making dramatic speeches and thwarting legislative progress.

If Corker were truly concerned about the American people and our global concerns, surely Gov. Bill Haslam could make an appointment that would please the people of Tennessee.

Open seats will be more competitive, forcing money and other resources to be spent on what will surely be hard-fought campaigns. While Corker and Flake are currently unreliable votes in the Senate for what really matters, there are benefits to a political party holding the majority. Those include the ability to set the agenda, make committees assignments, and prioritize policy debates. Even if only a procedural difference, it can help make the difference between progress and stalemate. Flake and Corker are putting this all at risk and blunting progress simply to continue their petty feud with Trump.

It is obvious these legislators, who have fought the very policies and principles they supposedly believe in, have lost their way in Washington. By joining with their political opponents on an anti-Trump bandwagon, they have decided to make this about themselves instead of the people they serve. In fact, as Trump has stated many times, neither Flake nor Corker had much of a chance for reelection in their states anyway – in large part due to their obstructionist actions. And he is right.

Flake suggested he has “regrets” about his decision to leave the Senate. But the more salient reason hastening his departure is likely poll data that shows he has poor standing among Arizona Republicans and that he would likely lose to both GOP challenger Kelli Ward, a former state senator, and U.S. Rep. Kyrsten Sinema (D-Phoenix).

Contrary to analysis from the media and from the Democratic Party, the Republicans’ chances of holding this Senate seat actually improve with Flake’s departure. It was clear that his presidential sparring with Trump had left him worse for wear, and the GOP will likely be able to nominate a less encumbered, and thereby stronger, general election candidate.

If Flake cares about what happens next in Washington, why not increase that advantage and go now?

Trump’s promise to drain the swamp in Washington seems to have started in a place no one would have expected: Republicans in the U.S. Senate. If these officials are not willing to be part of a solution, they should go now, and stop contributing to the problem.
October 30, 2017

CommPRO: A Communications Primer for the Mueller Investigation
The Mueller investigation will be difficult for anyone in its path, but the communications strategy for most is going to be direct. For all but the ultimate targets, the truth shall set them free – but only if they’re the first to tell it.

But things just got more convoluted now that the first indictments have been unsealed and a surprise conviction secured. Seriously, did anyone around a water cooler anywhere in America have 30-year-old George Papadopoulos as the first to cop a plea? I suspect he’ll be far from the last surprise as Special Counsel Robert Mueller and his team unspool a wide-ranging and multifaceted case.

Here’s a quick primer outlining the key principals’ communications strategies.

For Special Counsel Mueller, he doesn’t talk out of school and appears averse to leaking. As has always been his way, his team will continue doggedly pursuing the facts, wherever those facts may lead. His prosecuting will be done in courtrooms, not broadcast studios. Indictments will be sealed until they’re not. The Mueller dragnet may extend far deeper than originally believed. If he was trying to send an early message to targets and potential targets with the announcement of the Papadopoulos plea, then “Mission accomplished, sir.” A lot of Trump campaign officials have already lawyered up. At best, this is going to be a terrible distraction. At worst, it will involve the specter of orange jumpsuits.

For President Trump and his legal team, it’s to buttress their “3-D-B” strategy: deny, delay, distract – and blame others. The White House has been pushing diversionary stories about the Clinton connections to Russia and finding ready audiences on right-wing radio, Fox News, and other Rupert Murdoch-owned outlets. But the diversions may not stick much longer, especially since the President’s political base is shrinking and he has little political capital to spend. The Murdoch sons – James and Lachlan – seem less likely to give this president a free pass. Given the White House’s bumpy relationship with the Republican leadership on Capitol Hill, made all the worse over the past few weeks, how much longer can House and Senate leaders afford to defend Trump if Mueller’s investigation continues to swirl and escalate? Remember all those nasty tweets the President issued to Majority Leader McConnell and Speaker Ryan? He may wish he could take them back. The White House will need more effective go-to spokespeople. When the discredited Chris Christie is your lead defensive voice, you are in trouble.

For targets and potential targets of the prosecution, it’s to remember to what and to whom they owe their allegiance. It’s a short list, and it begins with country, family, and self, and ends – maybe – with party and, lastly, the president. See “Papadopoulos, George.” As we learn more about the twists and turns of the Mueller investigation, I suspect White House officials are going to find out they’re not at the top of people’s loyalty lists.

Anyone who says they know with certitude where the Mueller prosecution is heading and what will happen when it gets there is fibbing. We’re not even at the one-mile mark of what is likely to be a marathon investigation. We may still be searching for the finish line a year from now.

I do know this. Among the dozen charges faced by former Trump campaign chair Paul Manafort and his deputy Rick Gates is “conspiracy against the United States.” This isn’t your run-of-the-mill charge of bribery or financial malfeasance or a business partnership gone sour – the legal challenges to which seasoned fans of Washington intrigue are accustomed.

More to the point, this isn’t President Grant or President Harding letting their cronies get out of hand and making illicit money off federal property. This isn’t even President Nixon lying about Watergate.

No, this saga smacks of conspiring with a hostile foreign power whose express goal is to destabilize America as a superpower and pervert our democratic institutions. If that’s not treason, it’s dangerously close to it.

If Mueller continues building his case – if the steady drip, drip, drip of his revelations becomes a tsunami – no communications strategy will save his ultimate targets from drowning. For everyone else, the best advice is to cooperate and get out of the way.
Forbes: Credit Card Delinquencies Are Rising Fast -- And There’s Only One Sustainable Solution
It's one of those nagging problems that we tend to ignore when the stock market is at record highs and unemployment reassuringly low.

The fact is, consumer debt is no less an issue – and, in many ways, should generate more concern – during the good times.

The persistence of burdensome debt after a recovery underscores systemic problems. Jobs still fly to other countries amid the rosy numbers. College still gets more expensive and student debt accelerates. In some ways, prosperity can even guarantee a worsening debt crisis when, for example, neighborhoods gentrify and resident populations of homeowners and small businesses cannot keep up.

Such dynamics may help explain recent data from The Center for Microeconomic Data. Earlier this year, the CMD, an arm of the Federal Reserve Bank of New York that centralizes the collection and analysis of microeconomic data, found a 0.9% increase in total household debt, reaching a historic high of $12.84 trillion. While the percentage increase may seem modest, serious credit card delinquencies rose for the third straight quarter, a trend that has not been seen since 2009 – which, as you’ll recall, was right after an economic collapse.

Never mind the toll in human terms. It’s also disquieting from a strictly economic perspective as no one benefits when people owe more without spending more.

There seems to be only one obvious solution, which is to help people manage or eliminate their debt. There are two alternatives, for-profit debt settlement service providers and not-for-profit credit counselors of which the NFCC, founded in 1951, is the nation’s first and largest dedicated to improving people’s financial well-being. (Full disclosure: I am a past NFCC Board Trustee.)

Let’s compare the two options and think about where we, as a nation, want to focus our support.

NFCC member agencies provide financial education to millions of consumers in person, over the phone, or online. They take a holistic approach and complete a full financial review and personal financial action plan for each client aligned with their goals. NFCC Certified Counselors address the full gamut, from credit card debt and bankruptcy counseling to first-time home buyers, from student debt to comprehensive financial education. It’s noteworthy too that one-third of NFCC’s members are multi-service agencies that participate in youth mentoring, substance abuse programs, etc.

“We know from many years of experience that the most powerful way to solve debt problems is to empower consumers with the knowledge and experience they need to map a solid plan of action and to develop the perseverance to follow through with that plan,” says Debbie Bianucci, NFCC Board Chair and President and CEO of BAI, a 90-year-old firm serving financial services companies. “At BAI, we consider the NFCC to be a critical player in the industry because of its impact on consumers and the high-quality information and services provided by the nationwide network of agencies. They take the time to listen and understand the consumer’s situation without judgment or profit motives.”

The numbers confirm Bianucci’s prognosis. Last spring, the NFCC released an independent report conducted by researchers at The Ohio State University that measured the impact of its “Sharpen Your Financial Focus” program on clients. Among the findings based on credit report outcomes, there was a $17,000 average decrease in total personal debt, an $8,000 average decrease in total revolving debt, and a 50-point average increase in credit scores. What’s especially impressive is that these are long-term results tracked over a six-quarter period.

Clients also feel better about their own prospects. While 73% of respondents reported after three months that they pay their debts more consistently, 70% say they’re more financially confident and 67% believe they’re now better money managers.

Not all debt relief options are backed by the same reassuring data, which makes it more important than ever for consumers to understand the differences and make informed choices about what is best suited for their needs. For some, debt settlement is considered an attractive alternative based on the promise of partial debt forgiveness. Past outcomes for some who put their faith in for-profit debt settlement offer a cautionary tale.

“Although the NFCC supports the concept of a less than full-balance solution for some consumers, we are concerned that people often do not achieve the results they expected from for-profit debt settlement offers,” says Jeff Faulkner, the NFCC’s Acting President and Chief Executive Officer. “As revealed in the industry’s own data submitted to the Federal Trade Commission, we know that, three years after enrolling
in a third-party debt settlement plan, two-thirds of consumers were still unsuccessful in settling a significant portion of their original debt.”

Disinterested sources reveal even lower success rates among the for-profits. For example, a report from the Colorado State Attorney General cited in a GAO study disclosed that only 10% of residents enrolled in for-profit debt settlement programs achieved success between 2008 and 2010. Just this month, the Maryland AG settled a case against five California companies that allegedly failed to settle most debts but still charged full fees. Outright scams are common. As of this writing, the FTC is continuing to work with eleven states in a crackdown on phony student loan debt relief companies. In one Florida case earlier this year, companies were even accused by the state and the FTC of claiming nonprofit status.

“Unfortunately, the for-profit counseling agencies have not always put consumers first,” says Catherine A. Allen, Chairman and CEO of The Santa Fe Group, which focuses on cybersecurity and risk management. “As nonprofit organizations, the NFCC members have a mandate to provide financial education as a part of their debt management programs and other services. Their effectiveness is based on a comprehensive counselor certification training program, a rigorous independent accreditation process for member agencies, and a strong set of member standards that ensure they put the needs of their clients before all else.”

What then is the “mandate” for the rest of us? A good place to start is with the banks and financial institutions that support organizations like the NFCC. Again, let’s think not just about human but economic factors as well. When banks make commitments to nonprofit financial advocates like NFCC member agencies, they take a billion dollars or more out of aged receivables. In 2016 alone, the NFCC was responsible for $1.2 billion in total debt paid back to creditors, according to the organization’s own numbers.

In turn, consumers face significantly less danger of having to cover bad debts via usurious interest rates. Seems pretty obvious, but banks are often oddly penny-wise and inexplicably pound-foolish. More need to join this win-win game. As a matter of both public responsibility and self-interest, they need to do more than provide referrals or list debt counselors on their websites. They need to invest in the nonprofits that so heavily invest in them.

“I am passionate about financial education and the mission of the NFCC,” says Allen. “My father was a small-town banker who gave advice to people in our town, so I grew up seeing the value of sound financial education.” Allen co-authored a book, The Retirement Boom, about Boomers reinventing themselves in retirement — “some because they wanted to, others because they hadn’t saved enough or lost what they had in the recession,” she says. “Much of what motivated me to write the book was from what I learned by talking to NFCC counselors.”

It is imperative to build on the demonstrable gains made by the nonprofits; our support must be unstinted. Among the critical action points going forward, Bianucci emphasizes three: continued expansion of services with a focus on expanding innovative first-time home buying programs and student loan counseling; less dependence on face-to-face interaction along with more advanced use of digital delivery; and a better funding model that includes some services for which consumers are willing to pay a fee.

In the last analysis, debt settlements alone only temporarily extinguish symptoms of the debt problem. Our economy demands that we treat the problem itself.
Forbes: From Clunker To Hot Rod: Catalyst Catalyzes The Former Pacific E&P
Pacific E&P was, until recently, the archetypal company-in-distress. Once a major player in South America’s energy industry, it absorbed a direct hit in the 2011 oil price disruption and struggled to regain its footing.

After accumulating more than $5.6 billion of debt to finance acquisitions and construct massive water and electricity transmission projects, the company faced a liquidity crisis, which culminated in an unsustainable net leverage position. In light of these operational and financial challenges, Pacific E&P sat down with its bank lenders and noteholders at the end of 2015 and developed a pre-packaged restructuring plan.

In the world of distressed investing, there are “chop shops” and “workshops.” The chop shops – which too often see bankrupt companies as vehicles to scrap and sell for parts – vastly outnumber those that see an opportunity for genuine restructuring. If so inclined, private equity firms can take over a distressed company, disassemble it piece by piece, turn a quick profit, and move on. Numerous firms are based on this model; many of them are quite lucrative.

Turning an oil company with a $5 billion debt into something profitable, however, takes a steady hand and an intimate knowledge of the schematics driving the industry. In the case of Pacific E&P, Toronto-based Catalyst Capital Group Inc. chose to bring the ailing company into its workshop, despite daunting risks.

Those risks included the judicial proceedings that accompany bankruptcy, the volatility of oil prices, and the possibility that Catalyst principals could not reach a satisfactory agreement with creditors or relist Pacific E&P on a leading stock exchange. Catalyst’s quixotic mission also had to factor in the political instability of the Latin American countries in which Pacific E&P operates: Mexico, Colombia, Guatemala, Brazil, Guyana, and Peru.

Catalyst was ultimately selected by Pacific E&P and the creditors’ committee to participate in the Creditor/Catalyst Plan and as the best financial partner for the reorganized business moving forward. By November 2016, Catalyst and Pacific E&P completed their restructuring transaction. With the blessing of Pacific E&P’s bondholders, the firm took the first steps towards rehabilitating the company by recapitalizing Pacific E&P with some $500 million in debtor-in-possession financing. The Creditor/Catalyst Plan represents the most significant CCAA restructuring plan to be recognized in Colombia to date.

Pacific E&P came out of its recapitalization with a renewed strategic focus, positive cash flow, a strong balance sheet, and significantly reduced payables. Its incumbent board was replaced by a new group of independent directors with a global vision, led by Catalyst Managing Director Gabriel de Alba. They salvaged the company rather than breaking it apart, taking the more arduous – but ultimately more rewarding – path.

The company relisted on the Toronto Stock Exchange, transforming itself as the Frontera Energy Corporation, a strong player in Latin America’s low-cost oil and gas market. In essence, Frontera went into the garage as a clunker and emerged a hot rod. Most importantly, Catalyst buoyed shareholders, debtholders, and employees by rebuilding the erstwhile Pacific E&P into a successful oil and gas producer, one that spurs local, regional, and hemispheric growth.

When Frontera left Catalyst’s shop, heads turned and the world took notice. R. William Ide III, a partner and corporate governance specialist at Dentons, commended Catalyst for “taking the long view – not the short one. The easy path is to divide the company into small pieces. The harder path is to develop the vision to see the company’s potential despite its imperfections and recreate something enduring for its employees and stakeholders. That’s real enterprise management.”

Catalyst earned the Turnaround Management Association’s International Turnaround of the Year Award last month for successful restructuring, its sixth industry award of 2017.

Pacific E&P’s case study proves that not only is it possible for a firm to bring a company back from the brink, but that it can be done without inflicting undue harm on the employees and communities that rely on it.

Over time, Catalyst’s handling of Pacific E&P could prove a template for private equity firms and hedge funds. When circumstances dictate, workshops are preferable to chop shops.
Forbes: Crisis Contingency Planning, Risk Assessment Doubly Vital In Today’s Climate
No industry or corporate brand these days is immune from being overwhelmed by natural or man-made tragedies.

One day this fall, employees of a Marriott resort on the Caribbean island of St. Thomas were helping visitors bask in a tropical paradise. A day later, after Hurricane Maria hit, those same employees were helping guests escape to higher ground as they fled onrushing floodwater.

No good deed goes unpunished: after video of the Marriott employees’ heroics went viral, they were criticized — unfairly, it turns out — for not offering assistance to non-resort evacuees.

The day before Halloween proved unremarkable for employees of the Passaic (NJ) Home Depot. Twenty-four hours later they were huddled in front of TVs, horrified to learn that a truck rented at their facility had been used to kill eight people across the Hudson River in Lower Manhattan. There, amid the yellow police tape and buzzing helicopters, was an abandoned vehicle with “The Home Depot” painfully visible.

In the wake of the mass shootings that sadly plague our society, it’s not just gun and ammunition makers that are vulnerable to public outcry and brand diminution. As happened in the Las Vegas massacre, elements of the hospitality, tourism, gaming, and entertainment industries suddenly found themselves embroiled in a nightmare.

“Nightmare” doesn’t begin to describe what befell the people of Sutherland Springs, Texas, on Sunday morning, November 5. Who knows what institutions will face liability as investigators establish how a convicted domestic abuser dishonorably discharged from the U.S. Air Force could get his hands on an assault rifle, a cache of other automatic weapons, and enough ammunition to arm a small militia?

The point is that every organization, especially corporations with recognizable names and consumer-driven products and services, must prepare for the eventuality of being caught in a debilitating crisis not of their own making. As we’ve learned this fall, sometimes these crises are not the organization’s fault, but “acts of God,” enemies, or nature.

At workshops all over the country, corporate general counsels tell me that cybersecurity breaches — often the handiwork of craven competitors or foreign troublemakers — are their biggest threat these days.

What should smart companies be doing to prepare for potentially catastrophic contingencies?

First and foremost, use peacetime wisely. Now, before the calamity hits, is the time to update the crisis plan and conduct company-wide drills and table-top exercises for select personnel. Encourage people to think outside the box when planning the drills. No scenario is too wild these days. Pull together the organizations’ “greatest hits” and have positive video and online materials in the can and ready to go. It’s not about anticipating all of the possible scenarios or checking boxes. It’s about changing the DNA so people act in crisis, not freeze.

Second, strike down the silos. Get Legal working hand-in-glove with Public Affairs, Communications, Investor Relations, Human Relations, and Marketing. The Information Technology people will be vital in the event of big trouble. Incorporate them into planning from day one and make them integral members of the team. In a hyper-democratic and transparent economy, adversaries strike at corporate Achilles heals, almost always in the cleavage between the silos where potentially responsible executives are likely to think “not my job.” Integrated threats require integrated defenses.

Third, engage C-suite executives. Don’t delegate crisis planning to mid- and junior-level staff. The CEO and senior staff need to roll up their sleeves and troubleshoot along with managers and supervisors. A crisis is where leadership earns its money. Almost anyone can handle peacetime.

Fourth, reach out to local officials and decision-makers. Let community leaders know that you’re doing the drills to protect jobs and the local physical and economic environment. If there’s a role they can play in the planning rollout, tap them. Their support will be needed in the event of a real crisis.

And finally, constantly assess new and evolving threats through sophisticated risk-mapping. Natural disasters don’t first surface on Facebook, but most other orchestrated crises do. Plaintiffs firms have to go fishing for plaintiffs; regulators for examples; and NGOs for marchers. There’s almost always a canary in the coal mine. Your Enterprise Risk Management team needs to think and act differently: Who is the first person tweeting on an issue? In what language? Who is following them? Has someone filed Lobbying Disclosure Act paperwork that indicates there is a paying adversary? Have you noticed a change media activity or NGO fundraising appeals?

Social movements in their nascent stages leave footprints. In almost every industry — food, sugar, energy, technology, entertainment — early warning signs were ignored due to the intoxicating comfort of the present. Forewarned is forearmed.

As Deborah Kelly, a partner at Manatt, is fond of saying, “Only on TV is winning a suit enthralling. Prevention is the right thing to do and
far more inexpensive; litigation is exorbitant and, at best, only partially ‘cleans up’ a mess. A lawsuit invariably damages a company’s brand and is front-page fodder; if an exoneration comes it takes years and is buried in section D. Companies need to get ahead of the curve and make sure they have the best practices in place so no one inadvertently steps on a legal landmine."

No amount of employee training or prevention will preclude a hurricane or some other natural disaster from disrupting company operations. But contingency planning and risk assessment are indispensable in helping companies combat and recover from storms of all shapes and sizes. As President Kennedy famously observed, “The time to repair the roof is when the sun is shining.” ☼
CommPRO: AT&T-Time Warner vs. Trump’s DoJ: The Slugfest in the Swamp
It was at that moment that officials at the Department of Justice (DoJ) announced the administration’s intention to oppose AT&T’s $85 billion acquisition of Time Warner.

If the flurry at the opening bell is any indication, Washington is in for a slugfest. With apologies to the late (and truly great) Muhammad Ali, it promises to be the “Thrill-a on Capitol Hill-a” – not to mention the West Wing of the White House, the DoJ’s Antitrust Division, the U.S. District Court for the District of Columbia, prominent think tanks, lobbying shops, and virtually every other repository of power in Washington.

In one corner (oddly, the left one) sits the Trump Administration’s DoJ, making good on candidate Trump’s vow in October 2016 to scuttle the proposed AT&T-Time Warner deal because it represents “too much concentration of power in the hands of too few.” The administration’s cornermen include a strange-bedfellow alliance of consumer champions, telecom and technology competition advocates, “big is bad” anti-corporatists, and an array of media detractors.

Senators Bernie Sanders (I-VT) and Elizabeth Warren (D-MA), meet fellow alliance member Steve Bannon of Breitbart, who will never be mistaken for a fiery progressive. Common Cause, say hello to your new friends, the Tea Party Patriots. It could be the only issue on which these combatants ever shake hands.

In the other corner sits the political influence amassed by the nation’s largest telecommunications conglomerate, which also happens to be a huge Internet provider, plus its putative merger partner, one of the world’s most lucrative media and entertainment empires and the “parent” behind such iconic offspring as Warner Bros., HBO, Turner Classic Movies, and, perhaps not incidentally, CNN, the all-news network at the business end of dozens of angry Donald Trump tweets. A small army of lawyers is poised to challenge the administration’s lawsuit in D.C.’s U.S. District Court.

Ultimately the decision will hinge, observes antitrust expert Raymond Jacobsen of McDermott, Will & Emery, on “vertical” vs. “horizontal” interpretations of market dominance and antitrust law. Even DoJ attorneys will concede that AT&T subsidiaries and Time Warner companies don’t compete horizontally.

“It is very unusual for DoJ to challenge a purely vertical merger” such as AT&T-Time Warner, says Jacobsen. “It has not done so successfully in over 45 years. In challenging horizontal mergers, if DoJ shows that the merger creates a firm with a high market share, DoJ gets the benefit of a presumption that the merger is unlawful. That doesn’t occur with vertical mergers.”

The onus will be on DoJ, Jacobsen points out, to prove that AT&T already has a high market share in distribution, that if the deal goes through AT&T will likely raise the cost of Time Warner programming, and that consumers will consequently be harmed. Since AT&T’s current presence in many markets is at the low end of shares deemed “dominant,” it won’t be easy for DoJ to demonstrate that consumers will be harmed, Jacobsen notes.

Much is stake in these deliberations. Proponents of the deal maintain that it will enable the merged entity to offer reasonably priced programming packages and popular TV channels a la carte, which could trigger lower prices and forge greater consumer choice in technology and entertainment.

Opponents argue that a merger would inevitably lead to higher monthly consumer bills and a stifling of technological development. Critics worry that consumers might be forced to subscribe to AT&T’s services to gain access to Time Warner programming.
Look for the pro-merger forces to pursue an aggressive communications strategy that spotlights the job growth, marketplace efficiencies, and competitive benefits that an approved merger could bring to the U.S. economy and grassroots consumers. Get ready for white papers, testimonials from left- and right-wing commentators, endorsements from such disparate allies as corporate CEOs and one-time labor activists, and a barrage of broadcast appearances and op-eds authored by everyone from Nobel laureate economists to the head of the local cable outlet.

The anti-merger forces will be sure to retort with counterpunches of their own, thrown by the likes of Public Knowledge, the Writer’s Guild of America, Bannon allies, and other elements of the incongruent coalition that’s rallied to this cause. Watch the way both sides distill arcane metrics of market dominance into sound bites that may or may not illuminate understanding of the issue.

Very soon, we may not need our usual amounts of morning caffeine: a quick glance at an op-ed page ought to get everyone’s heart thumping.

Neither side is likely to play “rope-a-dope”: this bout is almost certain to be contested toe-to-toe in the middle of the ring. It may not be Ali vs. Joe Frazier in Manila. But it’s the closest Washington may ever come. ❯
December 6, 2017
CommPRO: How to Read the Mueller Tea Leaves
Veterans of high-profile prosecutions are marveling at the button-down discipline being exhibited by Special Counsel Robert Mueller in unearthing the Trump inner circle’s dealings with Russia.

Yet within its methodical modus operandi, the Mueller team has managed to inject just enough intrigue and human drama into the proceedings to make them easier to follow for laypeople and the media.

In documenting former National Security Adviser Michael Flynn’s December 1 guilty plea, Mueller’s team chose to include a “road map” that identified, without naming names, a series of interactions between Flynn and “very senior officials” that took place during the presidential transition in late 2016 and early 2017 at Mar-a-Lago, Trump’s Florida resort.

It wasn’t compelled by law or tradition, so why include such detail in Flynn’s guilty plea? What would Mueller’s motivation be in telegraphing part of what his team had already established in its negotiations with Flynn?

“Mueller knows who his audiences are – and he’s playing to them,” maintains Jeffrey Cramer, a long-time federal prosecutor who now serves as managing director of the Berkeley Research Group, LLC, a strategic advisory consultancy. The prosecutor’s primary audience, Cramer notes, is the president and his phalanx of current and former aides. But keeping the press and public engaged also matters to Mueller’s team.

“It’s Prosecution 101,” Cramer adds. “Mueller used the Flynn plea to tell his other targets, ‘Look, I’ve got a flipper who’s telling me what I need to know’ about what transpired in these discussions with Russia. Lack of cooperation or lying to the FBI will bring severe consequences.”

Getting 30-year-old George Papadopoulos to flip was one thing, but Flynn’s guilty plea represents a far greater existential threat to the Trump White House, Cramer points out.

“Papadopoulos could be brushed off as a kid who got out of control. With Flynn, the dynamics have changed. He was a very senior foreign policy adviser. Put politics aside for a moment. Most objective observers would say, ‘This is a serious problem for Trump,’” Cramer says.

My colleague Randall Samborn, the head of LEVICK’s Chicago office and a former assistant prosecutor and spokesman for the Chicago U.S. Attorney’s office, observes that Mueller’s approach, e.g., the Papadopoulos arrest and guilty plea and now the Flynn guilty plea, “is playing exactly by-the-book with little or no deviation. Mueller and his team are laser-focused on Russia. They’re charging crimes and fashioning pleas that reflect an investigation that is on track and not on a detour such as charging prior financial crimes – as some critics of the (Paul) Manafort and (Richard) Gates indictment have claimed.”

If Mueller’s team is adhering to a conventional prosecutorial playbook, then Trump’s legal team is cobbling together its own blueprint – and it’s got experts scratching their heads.

Cramer characterized as “boneheaded” Trump’s December 2 tweet acknowledging, in effect, that the president knew his former national security adviser had lied to the FBI when Trump urged FBI Director James Comey to drop his investigation.

The Trump team’s gaffe was “huge,” Cramer says, pointing as evidence to the “incredible machinations” White House lawyers have undertaken in recent days to distance themselves from the damaging tweet. Trump’s personal attorney, John Dowd, an experienced and respected criminal counsel, has performed all manner of verbal gymnastics to claim the tweet was somehow his fault, not the president’s. Either way, it went out on the president’s Twitter account. Trump’s offending tweet may have strengthened the obstruction of justice case against him and his aides, but that doesn’t mean the president can be criminally indicted for obstruction, Cramer argues. The president is not above the law, as recent statements from Dowd and others insinuate, but legal and constitutional scholars differ as to whether a sitting president can be indicted.

Sitting presidential aides can certainly be indicted, however; it’s almost guaranteed that more members of the Trump inner circle will be charged in the days and weeks to come. Mueller’s Mar-a-Lago road map meant that it took analysts a matter of seconds to conclude – and have it confirmed by sources close to the investigation – that one of the “very senior officials” from whom career military officer Flynn was taking orders was Jared Kushner, the president’s son-in-law.

Who else is likely to draw indictments? Mueller will let us know soon enough.

There’s no shortage of candidates, but Samborn warns not to fixate on a “whodunit” checklist. “We know that any number of people – from Flynn to Papadopoulos to Kushner to Donald Trump, Jr., to Carter Page and even to Attorney General Jeff Sessions – that they all had direct contact with various Russians during the campaign and transition. In that sense, ‘they all did it,’” Samborn asserts.
“The questions go to state of mind: what did they understand they were doing, what was their subjective intent? Did they intend to collude with a foreign government to influence the election or were they naively meeting with anyone who came their way?” he asks.

It also doesn’t help that the White House’s talking points would appear, as columnist Dana Millbank of the Washington Post points out, to be evolving (or is it “devolving”?): from “we had no contact with Russia,” to “we had no collusion with Russia,” to “the president cannot be charged with a crime.” That’s not a good trajectory.

Mueller is going to pick and choose; no indictment will be issued unless he’s convinced it’s going to materially strengthen the investigation.

No one knows how this is all going to turn out. We’re much closer to the beginning than we are to the end.

If Mueller issues indictments or secures guilty pleas in the coming weeks – and the betting here is that he will – look for the next road map in the details. He could be leaving a trail of bread crumbs.

Is Mueller so button-down that his buttons have buttons? Yes. But is he impervious to the needs of our fast-moving media world? No.