

Crisis Leadership: The Role of the General Counsel

July 2020

Today's Presenters

- Lisa Krigsten, Partner at Dentons
 - Former Principal Deputy Assistant Attorney General at the US Department of Justice, Civil Rights Division and former federal prosecutor
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- Laura McCarthy, Managing Director at Global Prairie
 - Former Spokesperson for US Department of Justice, Criminal Division

What does “Crisis” Mean?

- The triggering event for a crisis is not - in and of - itself a negative event.
- A crisis likely is a situation with following hallmarks: a lack of control of the outcome + materiality of the issue + a necessary, immediate response
 - Merriam-Webster: “crisis” means a situation that has reached a critical phase.
- In the corporate setting, a “crisis” often is a business issue that has reached a critical phase and requires an “all hands” response, including a legal response or consideration of legal factors.

"It's Handled"



The corporate response to Black Lives Matter in 2020

Black Lives Matter



Examples of Corporate Responses

Nike, Twitter, Square, the New York Times, and Vox Media are instating Juneteenth, a celebration of Emancipation, as a paid holiday.

Ben and Jerry's, a **Unilever** brand, committed itself to supporting the fight against systemic racism, including through the advocacy of a bill investigating slavery reparations and a bipartisan task force into police reform – on top of its continued financial and advocacy support of Black Lives Matter and criminal justice reform.

PwC is creating a D&I Staff Advisory Council and will begin this summer releasing a new diversity plan and regular updates, among other actions.

Sephora signed the “15% Pledge” and committed to devoting 15% of its shelf space to products from black-owned businesses.

Walmart, Walgreens, and CVS will stop placing African-American beauty products in anti-theft cases, alongside other beauty products not given the same protections.

NASCAR banned the Confederate flag from appearing at its races.

* From Just Capital (www.justcapital.com/news/notable-corporate-responses-to-the-george-floyd-protests)

Recent Headlines

July 20, 2020

The Washington Post

Edition: [U.S. & World](#) | [Regional](#)

Democracy Dies in Darkness

Business

As big corporations say ‘black lives matter,’ their track records raise skepticism

Pushed by employees in some cases, and in others by a fear of losing customers, corporations are being forced to examine their roles in perpetuating inequalities in hiring, pay and promotion, fostering toxic workplace cultures and consumer discrimination. Their track records have raised skepticism about whether they will indeed introduce the kind of change that would make this moment a turning point for racial equity.

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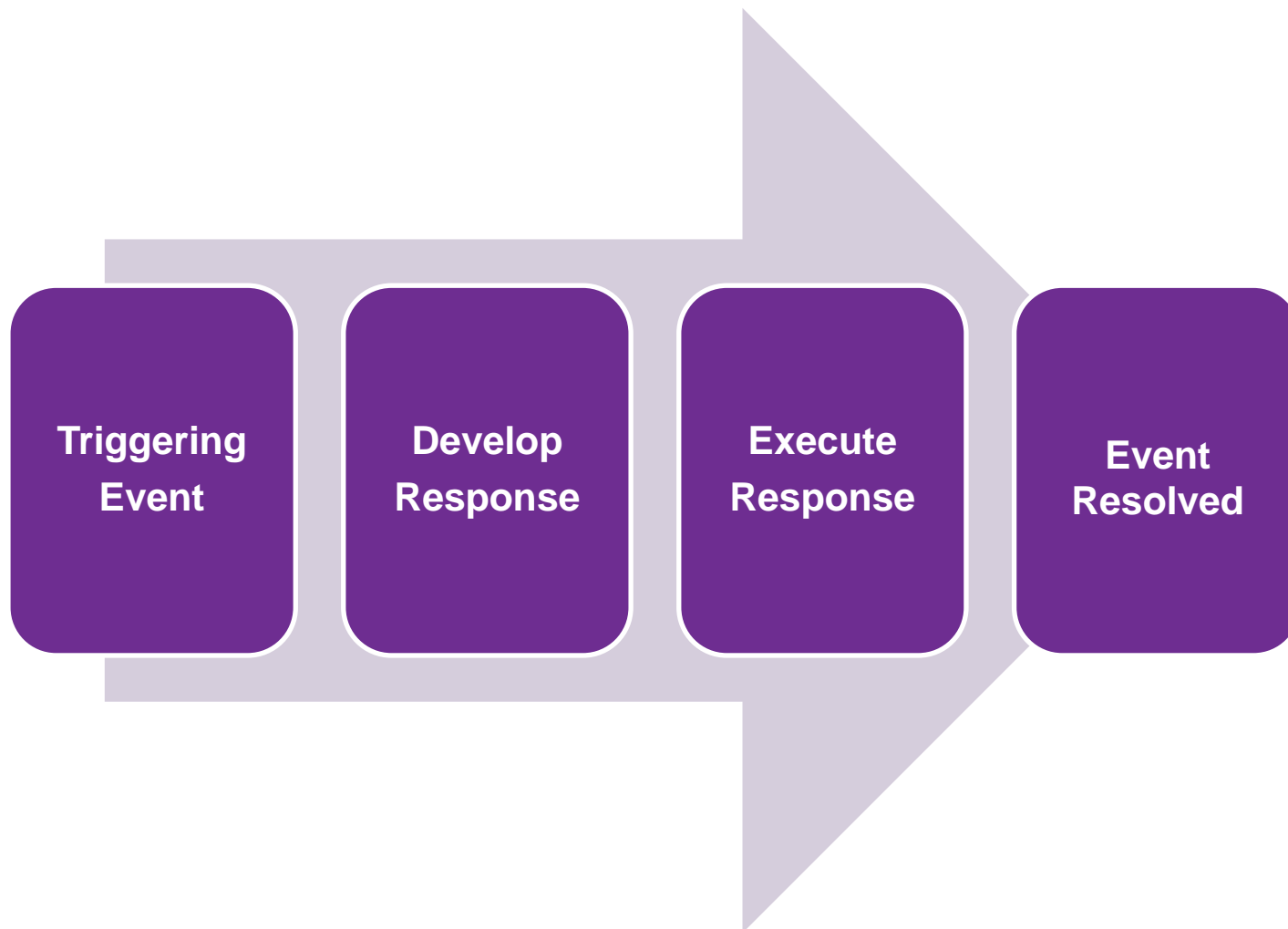
Thousands of U.S. workers walk out in 'Strike for Black Lives'

BUSINESS INSIDER

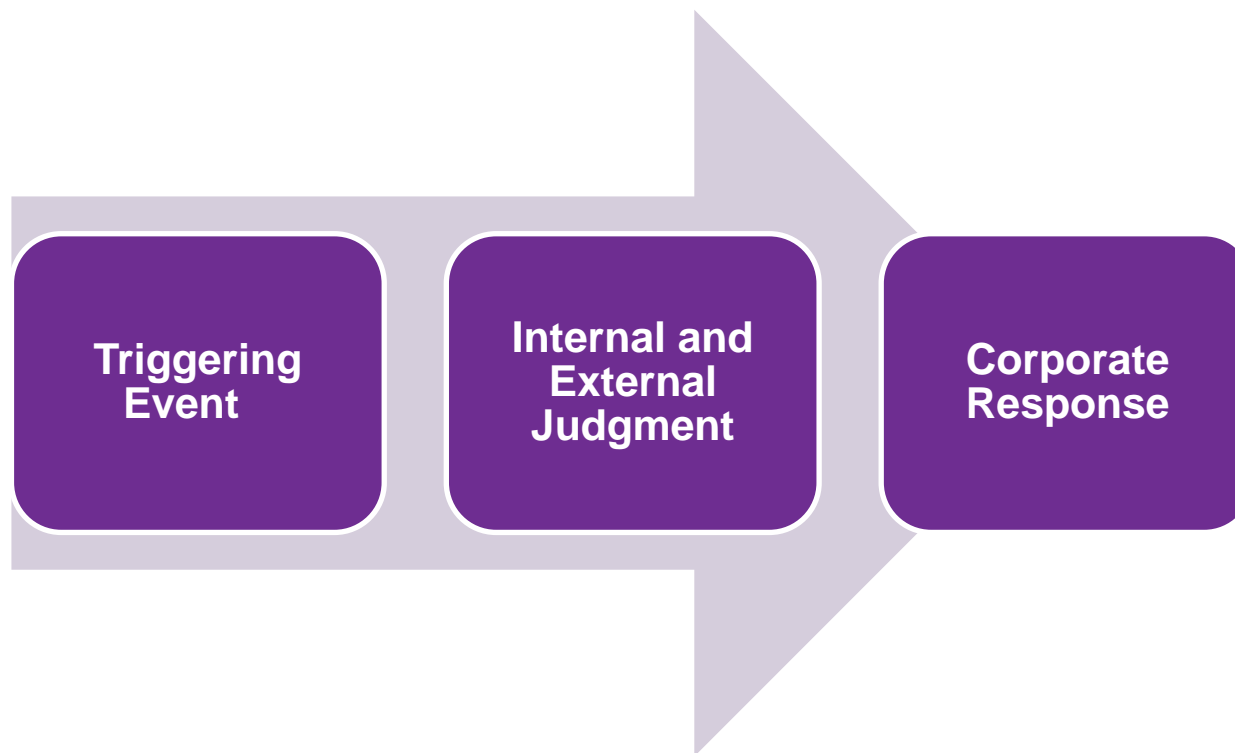
What Whole Foods and Chick-fil-A need to consider when workers wear Black Lives Matter masks, according to an employment and discrimination lawyer

What does planning for a crisis mean?

The *Ideal* Lifecycle of a Crisis Situation



The *Likely* Lifecycle of a Crisis



Planning for a Crisis

- **Have a fixed internal team and know how to reach them.**
 - This includes business leaders, technical support, and others
- **Have key documents readily available.**
- **Have the external team in place, including:**
 - Data breach vendors
 - Communications
 - Crisis counsel
 - Governance counsel
- **As they say in sports, “practice as you play.”**
 - Regularly work together in responding to issues.
 - Get to know individual work styles.



What can corporate counsel do to prepare for a crisis situation?

Considerations in Calibrating the Response

- What are the potential health and/or safety concerns?
- Could there be a material consequence to a business segment?
- What is the likelihood of government interest or an investigation?
- What type of viable civil litigation could result?
- Do customer/vendor contracts require or encourage notice?
- Are there other notice or disclosure requirements?
(i.e. outside auditors or public filings)
- How will your internal constituents react or what will they expect from the company?
- Will there be robust traditional or social media interest?

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What are best practices for leading through a crisis situation?

Some Key Responsibilities of Corporate Counsel

- **Addressing and/or coordinating responses to:**
 - employee and other internal stakeholder inquiries or concerns.
 - vendor inquiries, concerns, and compliance with contractual requirements.
 - consumer inquiries, concerns, and compliance with contractual requirements.
 - public statements to be issued by the company.
 - government-required notices or disclosures, including SEC filings.

What is the internal leadership needed to weather a crisis through its lifecycle?

Leadership in a Crisis Situation

- **Actively search for blind spots. Questions to consider:**
 - What if the opposite were true?
 - Is there an "and" instead of an "or"?
 - If I end up being wrong, why?
- **Seek out diverse thoughts and ideas.**
 - Be open to unpleasantness.
 - Consider designating a “contrarian” in each key discussion.
- **Encourage “informed courage” in decision making.**

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