

# Keep Calm & (Try to) Carry On:

## *Strategies for Developing and Carrying Out Effective Communications*

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## Key Facts *(for this panel)*:

- Board Chair and his wife **arrested for assault** during a personal trip in Asia.
- Both are **20-year Board members**; she is also Secretary/Treasurer.
- Both arrested wearing **T-shirts advertising org's** last \$10k fundraiser.
- **Chair's son demanding** to know which law firm the organization has hired.

# For context:

- You're the GC of **three affiliated organizations**: IRC section 501(c)(6), 501(c)(3) and 501(c)(4) entities.
- Missions are aligned, but legal/compliance **frameworks are different**.
- Three **distinct Boards** of Directors.
- **Different constituencies**: c6 members, c3 donors, other stakeholders for c4.
- 501(c)(6) org's Board meeting is next Friday. Will decisions and **communications strategy** spill over to the other organizations?

# It's a Matter of Trust

- Trust is a nonprofit's **most valuable asset**.
- Trust **must be restored** to emerge from crisis.
- **Fiduciary compliance** is measured by steps taken —or not taken —in response to crisis.
- **Effective communications** strategy is critical to restoring trust.



# Risk of Inaction

- Legal & financial exposure
- Reputational damage
- Ceding of narrative
- Loss of confidence
- Reduction of services & programs
- Exodus of staff & leadership
- Regulatory monitoring
- Dissolution and/or closure



# Stay Focused on the Mission



- In determining course of action, the Board's deliberations and decision should be **grounded in the organization's mission**.
- Communications / PR **messaging must also resonate** with the mission.

# When to Retain **Outside Counsel**

- Expanded bandwidth to prepare for a brewing, time-sensitive crisis.
- Specialized expertise or relationships (tax law, employment/labor law, criminal law).
- Policy, privacy, sensitivity or internal dynamics make in-house GC impractical or conflicted. (Outside counsel can be the “bad cop.”)
- Sheer volume of work requires additional support (doc production, doc review).



# Protect Attorney-Client Privilege

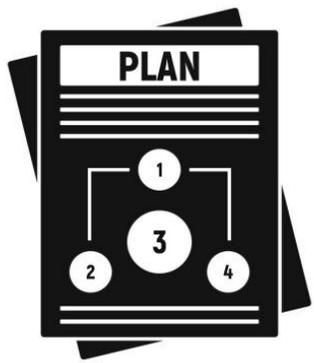
- GC or outside counsel should engage the Crisis Comms team and memorialize the agreement with a *Kovel* letter. See U.S. v. Kovel, 296 F. 2d 918 (2d Cir. 1961)
- Kovel agreement should:
  - Identify the **Client**, and define the scope of Client’s “**Legal Matter**” at issue.
  - State that [Crisis Comms] support is **required to assist Counsel in giving legal advice** on a **confidential and privileged basis** to Client, and as needed, to defend Client, in connection with the specific Legal Matter.
  - Specify that the Comms team works **under Counsel’s direction and supervision**.
  - Define and protect **Confidential Materials** (workpapers, drafts, data, etc.).
  - Require **segregation of files**.
  - Cover **billing** terms, and include Client’s **signature**.

# When to Retain **Crisis Comms Team**

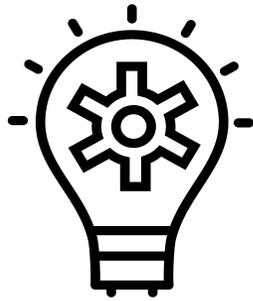
- Pending personnel matter causing concern among staff, Board, donors, other key constituencies
- Unexpected changes to organizational leadership, mission, strategic vision
- Org. becomes target of federal or state investigation; other regulatory concerns
- At first/any indication that news outlet(s) may be sniffing around for a story



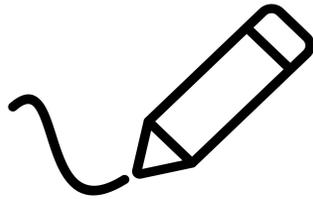
# Why to Retain **Crisis Comms Team**



Scenario  
Planning



Strategic  
partnership



Messaging  
Support



Media  
Relations



Sentiment  
Monitoring

# Time For Action



# Recovery team

*Identify team and roles quickly.*

## 1. Organize Team

- i. Board Committee or Task Force?
- ii. Legal, Communications, Financial, HR
- iii. Additional members based on facts

2. Determine **internal and external roles** and responsibilities

3. **Protect privilege** and confidentiality

4. **Adjust.** Team **composition will likely change** as you advance through stages (onset, during and post-crisis), as you balance privacy, risk, and other factors. **Circle will expand over time.**



# Recovery plan

## Key *Objectives*:

- Transparency
- Accountability
- Finality\*

(\* *Is there such thing?*)



# The buck stops with the Board

- As fiduciaries and stewards of the nonprofit's assets, the Board is ultimately responsible for implementing the recovery plan.
- **Board reforms** may be required.
- Board relationship with leaders/staff critical:
  - *Transparency*
  - *Partnership*
  - *Communication*



# Decision Time: Special Board Meeting

- Call a Board meeting, with proper **notice**, in accordance with Bylaws.

## Agenda:

- (i) Discuss and decide whether the Chair and the Corporate Secretary/Treasurer should be **removed** at this time, based on recent developments.
  - (ii) If necessary, elect successors to fill Chair and officer positions.
  - (iii) Adopt **Communications Plan** to explain Board decisions to internal and external **stakeholders**.
  - (iv) Determine approach to **government reporting**, if necessary.
- Invite both Counsel and Comms Team, whose insight re: potential consequences of different approaches may be critical.

# Recovery stakeholders

## *Determine target audiences*

- **Stakeholder planning and mapping** enables tailored responses, messaging and timing of communications

Donors

Employees

Regulators

Clients

Members

Grantees

Beneficiaries

Media

Volunteers

Vendors

Community

Advocates

# Decision Time: Considerations

- **Arrested vs. Convicted:** Does it matter? Perspectives may differ.
- **Alternative Paths** (depending on facts): Removal, Leave of Absence pending resolution, Resignation.
- **Legal Defense:** Not the organization's responsibility.
- How (if at all) should the Chair and Secretary/Treasurer be consulted about messaging re: their own departures?



# Q&A