



DIRECTORS
ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Susan Yashar

General Counsel, Deloitte Global

THE SPEAKERS



Susan Yashar
*General Counsel,
Deloitte Global*



Jonathan Ansell
*Executive Vice President and
General Counsel, ViacomCBS
Media Networks*



Daniel Laster
*Former General Counsel & COO
of PATH and Associate Professor
of University of Washington
School of Law*



Ron Hutcheson
*Managing Director,
Hill+Knowlton Strategies*



James Farrell
Partner, Latham & Watkins LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of the achievements of our distinguished Guest of Honor and her colleagues, we are presenting Susan Yashar and the Legal Department of Deloitte Global with the leading global honor for General Counsel and law departments. In operation for nearly 175 years, Deloitte is a leading “Big 4” global professional services firm.

The program, led by Ms. Yashar, focused on “Managing Your Corporate Reputation in a 24-Hour News Cycle.” Ms. Yashar and the panelists discussed response vs. liability; handling the narrative and various media outlets; and regulatory considerations.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel. Join us on social media for the latest news for Directors on corporate governance and other important VIP issues.



Susan Yashar
General Counsel



Susan joined Deloitte Global in 2008 and was appointed as General Counsel in October 2014. She has been a member of the Executive team since 2014, and, as Global General Counsel is deeply involved in all legal and governance matters impacting Deloitte Global and all brand impacting matters regardless of where they originate. Prior to becoming General Counsel, Susan served as Deputy General Counsel for Regulatory matters at Deloitte Global, developing legal and strategic thinking on regulatory matters impacting Deloitte Global and Deloitte firms around the globe.

Susan joined Deloitte after a long career in the U.S. Government and private practice. Susan spent 16 years at the U.S. Securities and Exchange Commission (SEC) in a wide range of roles, including Assistant Director in the Office of International Affairs (leading the international enforcement program

and serving as the U.S. Representative to IOSCO for enforcement matters (Standing Committee 4); Branch Chief in the Division of Enforcement (leading a branch of enforcement attorneys); and as a litigator in the Office of General Counsel (prosecuting accountants and lawyers). Immediately prior to joining Deloitte, Susan served as the Associate General Counsel at the U.S. Public Company Accounting Oversight Board (PCAOB) with responsibility for enforcement and international matters. Prior to her government service, Susan was a commercial litigator in private practice in Seattle and in Washington, D.C.

Susan has two adult daughters, lives in Washington D.C., and is passionate about golf, entertaining, and family.

Deloitte Global

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KAREN TODD: Good morning!

AUDIENCE: [LAUGHTER] Good morning!

KAREN TODD: Thank you! I appreciate that! My name is Karen Todd, and I'm the Executive Director and Chief Operating Officer of the Directors Roundtable.

We're very pleased that you're here today. I want to especially thank the people of Deloitte and the outside law firms who came to the program today. We're also very appreciative that Latham & Watkins allowed us to use their beautiful office space, and their staff really bent over backwards to help me put this event on, so I'd like to acknowledge them at this time – please give them a hand. [APPLAUSE]

The Directors Roundtable is a civic group whose mission is to organize the finest programming on a national and global basis for Boards of Directors and their advisors, which include General Counsel and their legal departments. Over the last 28 years, this has resulted in more than 800 programs on six continents. Our Chairman, Jack Friedman, started this series after speaking with corporate directors, who told him that it was rare for a large corporation to be validated for the good they do. He decided to provide a forum for executives and corporate counsel to talk about their companies, the accomplishments in which they take pride, and how they've overcome the obstacles of running a business in today's modern world that's constantly changing. We honor General Counsel and their law departments so they may share their successful actions and strategies with the Directors Roundtable community via today's program and the full-color transcript that will go out to about 100,000 people globally.

Today, it's our pleasure to honor Susan Yashar, General Counsel, and the Legal Department of Deloitte Global, many of whom are here today. I would like to acknowledge Deloitte at this point, and the Legal Department that are here. [APPLAUSE]



I would also like to introduce our Distinguished Panelists. The first one is Jonathan Anschell, who is the Executive Vice President and General Counsel of ViacomCBS Media Networks. Next to him is Ron Hutcheson, a Managing Director of Hill+Knowlton Strategies. Then we have Daniel Laster, who is the former General Counsel and COO of PATH and an Associate Professor of the University of Washington School of Law. Then, we have James Farrell, who goes by "Jim," who is a partner at Latham & Watkins.

Now, I have a special letter for Susan which is from Dean Onwuachi-Willig of the Boston University School of Law, that I would like to read to you as a surprise for Susan.

Dear Susan:

On behalf of everyone at Boston University School of Law, I offer you my enthusiastic congratulations for this tremendous honor. The Directors Roundtable's recognition of your exceptional work as general counsel for Deloitte Global places you among an esteemed group of the most distinguished in-house counsel in the world, including your fellow alumna, Maria Green, who was honored last year for her work at Ingersoll Rand. I am particularly pleased to celebrate yet another female executive who is breaking barriers and increasing gender diversity in the top echelon of the legal profession.

Leading the Law Department for the largest professional services network in the world,

with more than 300,000 professionals and \$46 billion in annual revenue, is no small task. It demands superb strategic, diplomatic and leadership skills, as well as legal acumen. These are qualities we seek to instill in all of our students at BU Law, and you are an exemplary role model.

Indeed, in-house counsel serve a unique role within the legal field. Success requires a combination of professional qualifications and personal qualities unlike other areas of legal practice.

It is for this reason we offer students robust opportunities to get hands-on experience through corporate counsel externships and semesters in practice with corporations such as Wayfair, TripAdvisor, State Street, and more. Perhaps we might add Deloitte to this list in the future, offering more BU Law students a chance to consider following in your footsteps.

Again, please accept my sincere congratulations for this well-deserved award. We are honored to count you among our alumni.

Sincerely,

Angela Onwuachi-Willig

[APPLAUSE]

Now, I'm going to turn it over to Susan.

SUSAN YASHAR: I'm bringing this [my iPhone] over here because my family likes to say that once I get in front of a mic, the rest of the evening is gone. I'm going to try to limit



what I have to say to a reasonable period of time, because there's a lot yet to come.

Karen, I want to start by thanking you and the Directors Roundtable. I was going to say a couple of things about what an amazing organization this is; Karen has really described much of what they do and how important they are to managing organizations, and I feel really fortunate to be honored by you and have the opportunity to be here in front of a group that contributes directly to bringing together advisors who are really key in helping to manage and counsel our respective organizations. I also want to thank Latham. You do so many things for us; offering this beautiful space is just one of many.

Before I actually get to my formal remarks – and I know Karen has introduced how this award has been framed up – I want to recognize, as well, the entire office of the General Counsel. This award is only a little bit about me; it's much more importantly about the entire office. This is a very small group of highly dedicated, hard-working people who work across time zones on really unique and challenging issues, and they are rightly known for their fine counsel and good judgment. I could not do what I do without this incredible team. This award is really a tribute to you and all the difference that you make. Thank you very much.

As you know, I am the General Counsel for a professional services firm, and that's not an organization in which lawyers are aplenty. In fact, it used to be when people would have to call a lawyer, you could see the frown on their face, like, "Ugh! I've got to go to you now!"

It's not every day that I get to share the room with fellow General Counsels, legal advisors and other people who play such a key role in the risk area.

I love my title – General Counsel – it's fabulous, because it suggests a high degree of authority and responsibility – all of which are true – but it also suggests a tremendous amount of control. What we are going to talk about today is crisis and crisis management. When those situations hit, it is really clear just how much or how little control you have about what is unfolding in front of you, and the events that are leading up to it.

But the truth is, whether you are a General Counsel or you are another member of the c-suite, every day, you get up, you focus instantly on what's come in on your iPhone over the course of the last night; and, at least for me, this all happens before you've had your coffee to wake up. Of course, what you see on your iPhone is frequently alarming, exciting, demanding; and it requires some pretty instant response.

Like many of you, I square my shoulders, put on my armor, and march forward with competence and with authority. I'm really grateful to be here in the company of people who understand just what that's like. Even though I'm sure our jobs are not identical, in many ways, I expect that they're very similar, because we all have to be reactive, and if we're doing our jobs well, we're also proactive.

We help our businesses develop strategy and strong governance; we are absolutely managing or supporting litigation and risk and regulatory events; and, in each and every one of these functions, as you well know, you need not only to *be* but to *be seen as* a trusted advisor. That is not easy. It's not

easy when times are good, when everything's going great – I'm not sure when that is, when there's no event that you need to manage. But what we're going to talk about today is what happens when things aren't going well, what happens in a crisis in our 24-hour news media cycle. When *that* happens, our job is a certain kind of special. Because we're tasked with protecting the legal realities of the situation which may be present today, tomorrow or in the future, and balancing those, as well, against the business needs to manage reputational risk. That's not an easy balance, especially in the near-term.

We are often doing this on an international scale with different stakeholders, different cultural sensitivities – we talked a lot about this with my panelists last night and again this morning – different time zones, different legal requirements and regulatory requirements that are not necessarily consistent or clearly overlapping, and a lot of cultural sensitivities. This is a topic that, as I said, I could talk about forever, but I promised you that I won't, and I'm going to keep to that. What I'm going to try to do is limit my remarks to some basic thoughts that I hope will help navigate crises, and then I'm going to open it up to this panel.

Let's start with a hypothetical. Let's say you're the General Counsel of a large international organization – and for many of you in this room, I know you know what that feels like; and the year is 2017, and you just got this new baby: your big, new iPhone 8+ (it's pretty heavy); and you've just witnessed the solar eclipse, which is pretty cool, and you kept your glasses on – you didn't take them off, and you didn't look directly at the sun; and then your phone rings. It's your Chief Communications Officer, and she says, "I have an investigative journalist on the line from a leading publication in Europe. The journalist says he has information from a source that one of your organization's servers has been hacked. Confidential data may have been compromised, and he's planning on filing a story immediately, whether or not you provide

a comment.” Then you get the question, “Should I patch him through?”

I’m looking at your faces and I see two reactions, which is, “I’ve been there,” or “I hope that doesn’t happen to me.” I can say, from experience, that *I* hope it doesn’t happen to you, either, but the reality is, in today’s world, that it’s not difficult to imagine a cyber event impacting any one of us. Many will say it’s not a question of *whether* you’re going to have a cyber event, but *when* you’re going to have a cyber event, and whether you recognize it when it’s happening.

As you might imagine – I’m using this hypothetical because something somewhat similar happened to Deloitte. It played out in the public, which is why I feel comfortable raising it here as part of this hypothetical – and it happened fresh on the heels of Equifax, when public trust in the way companies handle cyber security was already at an all-time low. I should add that Deloitte is known throughout the world as a leading cyber security consultant practice. This kind of event hit us right in the sweet spot, so to speak.

In those first moments of crisis – and I’m sure everyone in this room has some experience with this; probably a lot – it can feel difficult to feel anything but panic. It can be difficult to remember that there are steps that you can take to make a crisis – even a global one – more manageable. Of course, the truth is that a crisis isn’t *one* event with *one* response, but it’s a cycle, or sometimes it feels like a *cyclone* with a pre-storm calm and a post-storm surge that can challenge and maybe even alter the fabric of your organization, but – importantly, I’d say – just like a storm, there’s usually a window to prepare, an opportunity to respond, and then a chance to recover and rebuild. I call that the three stages of crisis. I’m going to talk about, briefly, each of those stages, I’m going to identify what I call some Basic Truths, and I’m going to limit them to four. Let’s get started.

Andy Grove, who, as you know, is the founder and CEO of Intel, once said,

“What we are going to talk about today is crisis and crisis management. When those situations hit, it is really clear just how much or how little control you have about what is unfolding in front of you, and the events that are leading up to it.”

– Susan Yashar

“Only the paranoid survive.” Well, I totally agree with that, but I’d add one caveat, which is that only the paranoid *and* the prepared survive, because in your response to a crisis, it cannot just be “reactive.” It needs to be proactive, as well. Basic Truth #1 is this: The outcome of a crisis is impacted by the steps you take before the crisis ever hits. I would encourage *all* of you – and I remind myself of this continually – to adopt a mindset of productive paranoia. To me, it means a couple of things, including: understanding your surroundings, your team, the broader team central to a crisis, the law and the risks of the current moment. Simply stated, “mid-crisis” is *not* the time to identify the central team or to develop protocols and strategies, or to determine decision makers; that all should be set in advance. “Mid-crisis,” equally, isn’t the time to build trust and rapport with your people and the people who are going to be central to managing that crisis. Get to know those people *now*, including, if you need external experts, identify them. Make sure you know who you’re going to turn to, whether they are external PR firms or specialists in certain areas. “Mid-crisis” *isn’t* the time to be learning about relevant laws related to key risks that your organization faces. Our obligation as lawyers and risk people, is to keep up with all of that. More and more, that means developing in-house expertise to address those areas, and, where you don’t have that expertise, to identify, upfront and in advance, those to whom you can turn.

It’s *really* important today to keep current on risks facing your organization, and to recognize whether individual events are part of a larger trend which ultimately leads to a crisis. We’ll probably talk about that on the panel.

We don’t have to look any further than the #MeToo movement for evidence of that, because it was *always* unacceptable to keep a known harasser on staff. Today, with the flood of allegations that we’ve seen about sexual harassment and all the public consciousness around that, *any* company that doesn’t have an anti-harassment policy, that doesn’t have training, and that doesn’t punish or outright dismiss known offenders – at least in the public’s view – is worthy of any criticism that they get.

What happened in Equifax isn’t the same as what happened at Deloitte, and it won’t be the same as any cyber-attack that you have had or that you might face. Tolstoy says – and I think it’s really true – “every unhappy family is unhappy in its own way.” The same, of course, is true of a crisis. Anyone who has ever dealt with one knows that they are all unhappy, and they’re unclear, and they’re unpredictable in their own way. That can make preparing for them feel more like guesswork than game-work, but that doesn’t mean you can’t prepare. I think it’s really key that you do just that.

If there’s one point that I want to emphasize about the pre-crisis preparation, I would say, be *really* focused on designating decision makers. Consensus is fantastic – we all love it, bringing everybody together – but at the end of a really tense day, in the midst of what looks like a potential crisis or is a full-blown crisis, a day that’s difficult and likely heated, someone has got to make a decision. Democracy is great in the government, but it’s not so good in a crisis. (And I might add, I don’t think it’s good in raising children, but that’s a whole “other” conversation!) [LAUGHTER]

My view is that preparing for a crisis allows you to avoid relying on your instinct. I bet everybody in this room would say they have great instinct – I’m sure you do. But in my view, one of the biggest mistakes you can make in a crisis, is to rely on your instincts over your head.

Let’s go back to our hypothetical: it’s 2017. You’ve been informed of this data breach and all these allegations about confidential client data; IP has been compromised; and, importantly, your clients’ trust in you, as well. This leads to what I consider Basic Truth #2: When the press reports a story about your data being compromised, it absolutely will threaten your clients’ or your customers’ trust in you, regardless of whether that story is true.

Now, fortunately, you’ve been productively paranoid; you’ve built your relationships with stakeholders; you know the law; you know the relevant risks; you’ve seen this play out in the public; and you’ve gotten a sense of how other organizations have handled it. You’ve crafted plans and designated decision makers – in other words, you’ve been as productively paranoid as you could possibly be, and now it’s in a crisis, and it’s your turn to react. You have to react.

That starts by taking stock of all the stuff that you couldn’t have done pre-crisis. That starts by understanding what actually happened, and the facts. In a situation like this, it’s really tempting to close off an already crowded room – a room that’s filled with your CEO, your General Counsel, your communications people, your strategy people, your regulatory people, your public policy people – just to name a few. But in my view, the only way to truly understand what you’re dealing with is to hear directly from the people involved and the experts in that area. Now is *not* the time to filter information through your General Counsel, your communications people or others. Bring those expert people into the room, make sure you and other decision makers understand what happened. This is

going to save time; it’s going to avoid or minimize the likelihood of miscommunication or misunderstanding. For those of you who are not technical and who leave that to others – that includes me – this is the time to get technical and get detail-oriented, and make sure you really understand what happened. Make sure that others who are charged with decision making do, as well.

Once you start, if it’s the kind of matter that involves an investigation – and many of them do – a clearer picture of the risk is going to start to emerge as you do that investigation. It will evolve, and it will continue to change and evolve as you continue to move through the investigation. This evolution is really important to recognize, as you consider what you’re going to say, when you’re going to say it, and how you’re going to say it.

That was certainly the case in the experience that we had. It took a lot of due diligence for us to reach conclusions about what had occurred; the risks that we faced; the nature of those risks; and the extent to which anybody was impacted. We ultimately determined, fortunately, that the general public *wasn’t* at risk and that our clients weren’t actually impacted. None of that investigation, and none of that learning, was easy, particularly as time is definitely not on your side. In our experience, the media wasn’t, either. It’s really important to be able to understand and strike a balance between responding quickly on the one hand, and fully understanding the facts and the potential risks and liabilities on the other.

This is where I come to Basic Truth #3: If you aren’t actively crafting and sharing your story, it will be crafted and shared for you and about you and around you.

In our situation, it took us a while to get our version of the story out, and by that, I mean the truth out. In the interim, the press had a reported story that had a lot of misinformation in it; and it was the only one that the public knew. It was ultimately picked up by



other well-known news outlets, and ultimately by a cyber security blogger; and it began to spread relatively quickly. As you might imagine, it raised concerns.

It was challenging for us to watch this happening, but we were very careful not to tell our story – and by that, I mean a full story – until we could tell it with certainty. Once we did understand the full story, we did two really important things. One, we posted a statement on our website; we put it up there for our people, our clients, the public and the press to understand what had actually happened. The result of that was actually very remarkable and, pretty quickly so – because the concern, the confusion and the intrigue were over. Then we allowed two forensic experts to talk to a major publication on background, and articles were published after that. That decision to wait until we had all the facts wasn’t easy. There were a lot of contentious discussions – we’ve got our media person back there; she can attest to that – including between the lawyers and the comms people. There was a lot of disagreement or spirited debate among leaders at various levels and at various geographies about how quickly we should respond publicly, and in our own voice.

Another challenge that many of us face is the reality of dealing with a crisis with many stakeholders, in many geographies, with many cultural expectations and backgrounds. The time difference was a big issue for us; and rather than fight that, we actually chose to take advantage of time differences. Our point people were in the U.S.

and the Netherlands, and we took shifts. It helped that my morning coincided with my Dutch colleagues' evening. This was not just strategic; it was also pragmatic. One of the things that we learned is that it's much easier to manage a 24-hour news cycle when you break it out into 12-hour shifts.

That brings me to my last thought about "mid-crisis." Taking care of your people and yourself is absolutely key. That means making sure that every member of your team is assigned to the right role. It means rotating them in and out of the line of fire as often as is possible, and it means valuing self-care and letting your teammates and others know that it's okay to do the same. I suspect that these are all things we are great at talking about, but we're far less good at implementing, particularly when it comes to ourselves.

Eventually, as you know, the long nights start to wane; you're no longer ordering high-sodium, high-fat food into the office at 7:00 p.m.; your company's name will fade from the headlines and maybe even, if you're lucky, it will disappear altogether. You're going to have a moment to pause and reflect on what happened.

This brings me to the last of my Basic Truths: Never let a good crisis go to waste, ever. We really ascribe to that at Deloitte, if for no other reason than that a crisis takes a lot of time, money and energy. It's too costly to throw away. I'd also add that post-crisis, your ability to make important changes to managing the risks that your organization face is probably at an all-time high.

I know I'm getting a little bit ahead of myself, because as a crisis starts to wane, the first question you ask yourself is not, "How can I turn *this* into an opportunity?" The first question you ask is, "Is this crisis really over?"

Sometimes the answer is going to be a unilateral "yes" or an emphatic "no," but most often – at least in my experience, and I'm interested to know what you guys on the



panel have to say about this – the answer is, "kind of." The crisis is over in the press, but it's still a problem for your customers or your clients, or it's lingering in the press, even if your stakeholders are satisfied with your response. Or there's some public trust issues, even unconscious ones, that you haven't yet been able to address. Or there may be legal threats or regulatory threats that continue to be out there that you haven't even begun to see or that haven't played out fully.

In the end, I would say a crisis doesn't have to be 100% over for you to prepare for the next one. That, of course, entails revisiting and revising your crisis response plans.

It's not about pointing fingers (which is easy to do in the midst of a crisis when tempers are high). I'm talking here about a post-mortem on your collective response, to identify areas of weakness and ensure you address them to prevent future issues. It's just as important to identify what went well as what didn't go well, to share those learnings with your colleagues, and institutionalize them as best practice. I'm a *huge* fan of wargaming, which is highly stressful post-crisis, but which, in my personal view, is invaluable. It serves as a great diagnostic of what you did well and what you didn't do well, and allows you, then, to record in real time the things that you need to work on.

More broadly, at the end of a crisis, you get to come back to what now feels like that happy state of productive paranoia, meaning maintaining a rapport with your people, monitoring legal and regulatory developments, paying attention to key risks and larger trends – both those that played out in the crisis that you just managed, and those that didn't.

Inevitably, the crisis is going to end. When that happens, at least for me – and I'm interested in what the panel has to say about this – I experienced a real adrenaline let-down. Last night, the panelists were talking about this, and I said it's a little bit like coming down off crack (which, by the way, I've never had to do, to be clear!) [LAUGHTER]

There's this incredible adrenaline let-down, when you are no longer in the center of every single conversation about every single thing that's absolutely important; everybody wants to have your opinion and you have many people standing around you, trying to support you. This is the moment, probably, when most people need to go into a padded room and not interact with those they love. I'm not saying that I'm looking or hoping for the next crisis – don't get me wrong. But I do know that there *will* be other crisis moments; we will face them; every one of us will face them; and they won't necessarily look like the last crisis that we managed. What I'd like to think, and what I expect, is that we're going to be better prepared for that next crisis.

I told you I'd give you four truths, those are "Susan's Basic Truths." What I want to do now is close down my formal remarks, move over to the cozy little tables that we've set up here, and I hope what I've had to say was thoughtful or at least thought-provoking. I'm going to ask you all to contribute to the discussion towards the end of the panel, and I'm going to look forward to opening up with this tremendous panel. [APPLAUSE]

Let me tell you what's going to happen next. I'm going to ask that Dan, Jon, Ron and Jim to introduce themselves. Karen did a



little bit of that, but I want the panelists to give the audience a flavor for why they are up here and what they are going to contribute to this discussion; no pressure.

DANIEL LASTER: Good morning, everyone! I'm Dan Laster. I'm the West Coast representative on the panel, and I did decide to dress up and wear a tie. Look smart, even if you're not. My background is I've done a bunch of things. What's relevant for this audience, actually, is I was at Microsoft in the '90s – I led all IP other than patents, and I actually got involved during the DOJ experience and how we managed through that crisis is interesting. Most recently, and the reason Susan asked me to join this panel, is for the past 10 years, I've been with PATH, a non-profit that's been around 40 years. Its mission is health equity, trying through innovation to develop products, tools, diagnostics, vaccines, and health service innovations in low-resource centers for those most in need. We touch 70 countries; we're involved in research, clinical trials with vulnerable populations, working in little villages, and you can imagine risks arise in that context. That's why I'm here.

JAMES FARRELL: Hi, I'm Jim Farrell, a partner here at Latham. Like many of my colleagues, I handle complex commercial litigation, regulatory matters, and at hourly rates, every case is a bet the company takes. That's why I'm up here.

RON HUTCHESON: I'm Ron Hutcheson with Hill+Knowlton. I'm the only non-lawyer

on this panel, and maybe the only non-lawyer in the room, so I feel a bit like a cat at the dog show here. [LAUGHTER]

I do a lot of work with lawyers, especially when it comes to risk and crisis management. We do a lot of that at Hill+Knowlton.

I've worked with clients in multiple sectors and on multiple continents. I spent ten years with the International Olympic Committee in an engagement that started as a crisis when the torch relay was violently attacked in Paris, London and San Francisco.

One reason I like risk and crisis management so much is, in my previous career as a journalist, my job was trying to *foment* risk and crises. I spent 25+ years covering everything from the suburban school boards in the Dallas-Ft. Worth area to the White House – I covered the George W. Bush administration and was president of the White House Correspondents' Association. I'm very happy to be here with this panel.

JONATHAN ANSHELL: I'm Jonathan Anshell. I'm the Deputy General Counsel of CBS Corporation [now CBSViacom], and also the General Counsel of CBS Television [now ViacomCBS Media Networks]. One of the interesting both opportunities and challenges that those of us in the media face is that we're often the subject of the crisis, as well as needing to cover the crisis. That's a little bit of a unique aspect of our experience dealing with the issues that Susan talked about, where you find yourself both

wanting to manage the crisis but at the same time dealing with the fact that you're in the business of covering it.

SUSAN YASHAR: Now that's a great tee up. Thank you.

I'm going to pose questions, and this panel is hopefully going to be interactive. Then, as I said, we're going to leave time for the audience, and I would encourage you not to be shy; I don't expect that you will be, at all.

I'm going to start with something that you teed up for me – thank you so much – which is, it's really about trust and building trusted relationships. There is a 2019 Edelman Trust Barometer which reports that, in the last decade, we've seen a profound loss of trust in traditional authority figures and institutions. You don't need to be the Edelman Trust Barometer to know that fact, but that is where it's coming from.

The crisis of trust has led people to shift their trust away from traditional institutions in society, such as government, media and NGOs, to the relationships within their control.

Jonathan, you spent over two decades at a news outlet that covers both crises and response to its own. That puts you, as you said, in a really unique role in this panel, because you've had to build trust internally with your clients and externally with your audience. I'd like you to speak a little bit to the special issues that you face in dealing with

a crisis, when you are also tasked with reporting on it. I imagine that these trust issues take on a special importance in this context.

JONATHAN ANSCHELL: They do. Particularly when media companies facing coverage in the midst of the crisis made me realize that there's probably an additional set of stakeholders, separate and apart from what any other ordinary company would be dealing with. You have your internal stakeholders and wanting to communicate internally and present transparency and accountability there. You have the external stakeholders that would be typical of any company – the shareholders, the investment community and so on. In the media business, you also have your audience. It's always a question as to how best to cover a crisis where your own company is not just covering it, but also is part of the story. Like a lot of media organizations, we do our best to maintain what we call a “church/state divide,” so that the corporate crisis response is not dictating the media organization coverage of the crisis. We've been pretty good at that, as have, candidly, a lot of other media organizations that have been through similar experiences over the last few years. It's not an easy balance to strike, but it's an important responsibility.

What comes along with that is a level of transparency. You can't ignore the fact that, as a company, you're wearing two hats. There are different settings in which you're able to do that in a fairly candid way, and that helps maintain the trust, particularly with your audience – acknowledging the fact that you are in the eye of the storm, but at the same time, doing the best that you can to cover it and explain to the public what's going on.

SUSAN YASHAR: Can you talk a little bit about whether that perspective changes depending on who you're dealing with? If you're dealing with high-profile individuals, how does the First Amendment align or disalign with reporting on those high-profile individuals who may be inside your company?



JONATHAN ANSCHELL: Whether you're reporting on a controversy that is internal or external, as a media organization, you're going to want to make sure that you're bound by and acting in accordance with the highest journalistic principles. Those are every bit as binding when you're covering a crisis that your company is involved in as it is when you're covering something external. The real tension, theoretically, at least, emerges as to how you make sure that there's not a temptation to pull punches or to go a little easier on yourselves than you might on others, or, conversely, to err in the opposite direction.

That, again, I would say, underscores the importance, as a media organization, of maintaining a division between the team that responds to the crisis and the team that is covering the crisis. Just as a practical level, as a law department, we have a very clear division between lawyers at the corporate level and lawyers who represent and advise CBS News who are first and foremost news lawyers. They don't wear corporate hats; they don't have corporate jobs; they don't interact with the board or with corporate communications or with any of the constituencies that would be the outward-facing crisis response of the corporation. Their job is to represent and advise the news organization.

SUSAN YASHAR: I want to pick up some of that and throw it out to the panel at large, and talk about how you manage crises which you come in to deal with on one level or another, and your role is to have a trusted relationship with your client. How do you manage that when you may be learning things in an investigation that are hard to hear? How do you remain a trusted advisor when you have to deliver news to your client, and that client, that designated person is the source of the bad news or related to it? Then that raises a third question – I'm going to throw these all out there, because I know you guys can remember this, and I see many of you have pads. Who are you aligned with, as the General Counsel? Who is your client, and at what point do you need to start to think about shifting up your thinking around that?

Dan, let me start with you.

DANIEL LASTER: Back to the pre-crisis phase, because thinking in the context of PATH, in first meetings with executives, when you're *not* in crisis, creating clarity about roles and responsibilities and ultimate duty to the board, including with your CEO, so that you've set a tone of ultimately who you're representing. Then in non-crisis situations, everybody's quite clear who the client is.

That's the place you start, but, in the midst of a crisis, this is a very challenging situation which I have encountered in terms of working with project teams. You may find that life didn't go perfectly, how you're working with your colleagues, but you need to be constructively and candidly honest. Explain that if we don't really understand what happened, we really can't solve it.

There is also this piece of separating dealing with a crisis vs. looking into areas for improvement or discipline or what have you.

Again, it's not a “church and state,” but that concept comes into play as you're dealing with a crisis. You have to deal with the crisis, but you need to make sure people understand that others should help.

Ultimately, other issues have emerged through the learning process.

SUSAN YASHAR: Jim, do you have a perspective on this?

JAMES FARRELL: Yes, I agree. I think that, as Dan says, that's going to evolve. That's what I would say. Crisis management is won by being the master of the facts. All of this falls away. You follow the facts, and when you're the master of the facts, that's when you speak, and not before. The reporting chain, as you allude to, has to evolve with those facts. I know Jon knows some things about that. You have to let that guide all of those decisions. You can plan and have an executive decision team, but that can migrate.

SUSAN YASHAR: For an external advisor, does your thinking change there?

RON HUTCHESON: It's one of the great advantages of being an external advisor. Maybe it's a little different for a law firm, but in my role, I don't really care about offending the client. If it needs to be said, I'm going to say it. Often, what I'm saying is what the internal communications person wants to say and can't, or has said and is disregarded because they're internal and I'll say the exact same thing and they think I'm a genius.

SUSAN YASHAR: I've never heard that, actually. [LAUGHTER]

RON HUTCHESON: I've also dealt with that situation with CEO misconduct, where you have to go to the board. You have to figure out who to go to, and it is challenging.

SUSAN YASHAR: Yes. This is, at least in my mind, where the rubber meets the road; this is what you get paid to do. It's really, to me, this issue about following the facts to wherever they lead, which is critical. Then being able to address the facts as they exist and do it in a way that demonstrates that you have your eye on the ball, which is your



organization. It's not a particular individual. But being able to demonstrate that, continue to be a trusted advisor, as things are being uncovered as there are challenges associated with the people who are sitting in that leadership room potentially. That, to me, that's a real moment, to state the obvious.

I want to talk a little bit about the role of outside counselors. That would be legal counselors, PR folks. When a crisis hits, many of us enlist counselors to provide a broad view of the potential legal issues that our organization faces, and how that should inform the statements we give to external audiences.

Jim, unlike most of your panelists, you're not the General Counsel for a specific company, and you're working for a law firm. That law firm works for many of us sitting in the room. From your experience, what should a company's first step be when they find themselves with a crisis, and where do companies most often make mistakes?

JAMES FARRELL: Good questions. I would say most companies make mistakes in that it's too late by the time the person said so. They're not ready, as you talked about; you have to have a plan in advance. You have to know, because when it's in crisis, if it's not on the checklist, if it's not rehearsed, you're going to be consumed by the "every moment" issue. I would say, by

then it's too late if you're reacting to a crisis. I would stress that you need the right team and it often needs to be external. That's self-preservation. Companies have great internal people, and the executives and the staff of companies know their industry best. They hire really talented people, and as a result, they tend to think that that's the team that can address the crisis.

A crisis, in my definition, would be something exceptional, something unusual. You need external expertise in order to supplement what will be a great team. If you don't do that, you just overload the good team that you have and not think that's a mistake.

SUSAN YASHAR: I agree with you. When do you know the crisis is building? When do you begin that process, and what kind of antennae do you have to have? I'm sure that we're all looking across our organizations all the time to try to figure out what's really happening, figure out how big the issue is. We can be accused of creating crises when none exist. Lawyers are famous for being known for that. Or not identifying it early enough so we can get ahead of it. Thoughts?

RON HUTCHESON: Social media is the canary in the coal mine for our industry. You've got to monitor the hell out of social media. It's a function of volume, engagement, but also who tweets. If Susan puts out something, nobody's going to care.



SUSAN YASHAR: It's true!

RON HUTCHESON: Got back at you there! [LAUGHTER]

If it's Beyonce, it's going to go viral. You've got to watch all of those things.

You've got to watch different stakeholders, too, because we've seen the power of employees in places like Google, where a bunch of employees circulated a petition. The next thing you know, they're walking away from up to \$250 million in contracts. You've got all kinds of stakeholders to care about, who may not be chattering on social media, but really do matter: your shareholders and all kinds of people.

JONATHAN ANSCHELL: I just want to pick up on that, because it's important to recognize that there are going to be several stages in the crisis, and to some extent, several points at which you can have an impact. It's a judgment call on each one of those, because the danger in overreacting to a social media cycle is you could give more oxygen to the story and lead the way to a second cycle. One of the challenges that in-house lawyers, as well as their communications colleagues, face is at what point do you engage, and on what level? Overreacting can hit something that might have passed as just a social media blip and turn it into a mainstream media story. We are always trying to strike that balance.

DANIEL LASTER: I would just echo that. It is tricky when you really think it's not an incident and it's full-blown. In the context I work, it is sometimes "when does the fire cross the highway"? Where you have the experts, like working with those who really know the media *know* the different sources and say, this, for us, is a domestic or an international crisis. It changes how you respond. There is also the issue of to whom, and with whom you engage. You don't jump how high to everyone. Certain writers are just out to tell *their* story, not any accurate reflection. It may not be prudent to respond to those as it's not going to help you. You need to look to your media experts to guide that.

SUSAN YASHAR: Yes, when I was young and naïve – you can decide when that was – I had a simplistic perspective that responding to media inquiries or stories will add fuel to the fire. It is a somewhat naïve perspective, that you can't shape the story. You can create a *longer* story, a *bigger* story; you can throw more stuff out there in the public for the journalist to latch on to and create more energy around it. I'm not sure that that's accurate today. It's worth thinking about – and I'd love your perspectives on this – what kind of a story is a story that you can shape? I'd also like to hear whether you're thinking about that changes depending on the geography that you're in and how to manage that, including who you engage to get a story out there – whether that is professors, media experts, or retired governmental people – the proactive part of a story. There are several questions in here, and I just throw them out to you guys for your thoughts.

JONATHAN ANSCHELL: I think any story is a story that you can shape. To your point, there's a natural reluctance to say anything – especially on the part of lawyers and people who are in the business of managing risk – because that's the safest and feels like the most risk-adverse approach. In a perverse way, that's really taking risk by letting the story run away with itself. Regardless of what it is that you're dealing with and what kind of crisis it is, one of the important pieces

is to remember that it is important to have a response moment by moment. Sometimes that response just might be an indication that your company's taking it seriously; that you're looking into it; that these are very important issues. To your point, there's not a lot of value in being perceived as just being in a defensive crouch.

DANIEL LASTER: I would also add, again coming from PATH, where there might be misunderstandings of the science or the underlying issues, looking to see who might be your influentials. Then even if you know who your influentials are, whether they're willing to speak is a separate challenge. That's where you have to play the long game; you know that you're going to take lots of shots short-term with people not understanding and trying to build momentum for truth in the long-term.

SUSAN YASHAR: Yes. We frequently have this conversation when we have crisis moments – and by that, I don't mean gigantic crises; I just mean the kinds of things that you know are going to appear in the press. How do you craft your response to that, and who does that? Sometimes, I'm told, you don't want the lawyers to do it, because they speak in that clunky way that's intended to prevent anything they say from being used against anybody in any context, at all, ever. Is that actually helpful at all? How do you find that right voice, which is an art and not a science? Particularly when you're the lawyer sitting in the room next to Ron or next to communications people, who want to go out there and talk in the way that people really speak.

JAMES FARRELL: I'm going to speak up for lawyers. [LAUGHTER]

SUSAN YASHAR: Go for it!

JAMES FARRELL: All that clunky jargon is critical. It's really important, but it does illustrate my point earlier, which is, this is why it takes a village. You need a team; you *don't* want the lawyers to do it. In the PR world, the latest trend is "admissions."

You have to have your apology. You *have* to come out, as soon as something happens.

SUSAN YASHAR: I'm sorry – that was my next question!

JAMES FARRELL: I just can't – my blood turns cold every time! [LAUGHTER] Kidding aside, you *can* embrace the jargon and maybe the media and PR experts up here can speak to it better. If you embrace the jargon, it *can* work if you have a safe harbor. You really have to make it clear that this is just a belief; this is not a fact. You can't have it both ways. You can't say this is a definitive, concrete fact – we know it – and then here's the speech about why this is a non-actionable statement – you can't do that. If you have authenticity in it, you can keep the jargon, because it clarifies the real meaning. I think of these TV ads for drugs, they used to come on and just read everything that could possibly be the side-effect of this drug, as fast as they possibly could. You *knew* something was in there that was designed to kill you and you were skeptical. [LAUGHTER]

Today, they have really good commercials. They bring it in to the commercial, and it's more like, "Yes, this is something to think about and maybe ask your doctor, because there can be these alternatives." When they do that, it persuades. It *can* happen, but you definitely don't want to ask a lawyer – that's why you need an expert.

DANIEL LASTER: From the lens that I've experienced, in a place like PATH, my view is, you let those who really know write the story. Before they start writing, you identify where are the challenging areas, so that you've done your discussion about "these are areas" – especially in our world – we may have seven partners. Exactly what our role is, to flag that, but then those subject matter experts do their work, and then always have the lawyer as the last vetting source. I definitely lean towards that side.

We had one situation where it was well into a crisis, and it had been brewing. We knew a

lot of the facts; and it was a moment where we really needed to change the dialogue. We decided to have somebody write a very long piece that went to partners, government, stakeholders – really detailed; and we knew all our facts. That was a very non-lawyer document, and I just made sure that there was nothing particularly troubling. It was quite detailed, and it was just the right moment in the crisis.

RON HUTCHESON: We tend to look at a statement through the five R's, which are Regret, Responsibility, Resolution, Restitution and Repair. Generally, at the beginning, it's the first two – regret and responsibility. That always scares the hell out of lawyers. We're not saying, "We did it; we screwed up." It could just be, if somebody dies, show some human empathy. "We regret that this bad thing happened." Then what are you responsible for? You're not necessarily responsible for what happened. You're responsible – and you touched on this – for getting to the bottom of what happened. What really kills you is if you say nothing and you look like you're in a defensive crouch. Come out with something that says, "Yes, we get it – something really bad happened; it was terrible; and we're trying find out what to do about it," basically.

When it really works is – I love the way you described it – when the lawyer and the comms person sit down and say, "What about this word? What about that word?" You come to a way you can get some of the jargon out and find that happy ground in the middle.

SUSAN YASHAR: Thoughts on this, Jon?

JONATHAN ANSHELL: Sure. Just touching with Jim's point, as well as Ron's, you can acknowledge this is the gravity of the situation; you can express that regret *without admitting liability*. The role of the lawyer in that moment is to help thread that needle, so that you're a responsible corporate citizen, without falling on your sword and creating a record that then is going to be hard for Jim to defend if the crisis turns into a lawsuit.



SUSAN YASHAR: Right. There are so many varieties of this – it's not like we're having vanilla and chocolate only here – but if you have a crisis moment that goes to the heart of your company's values, at least in my view, that's a moment when you *don't* do a whole lot of investigation before you step up and talk about what your company's values are. Recognizing that there may be an investigation yet to happen. In those instances, there's a different kind of need, on a *timing* level, to get out ahead of the story, to make sure that the story that's out there actually goes to the heart of the values that your company is known for, that you want them to be known for. That you hear it; you take it very seriously; and as appropriate, you're looking through whatever happened. That's an area where there have been many recent events where there's not an admission as much as a proactive statement about what you value, recognizing that there's work to do behind it.

RON HUTCHESON: If you have a solid policy, you can cite policy, too.

SUSAN YASHAR: Yes, exactly.

RON HUTCHESON: You'd better make sure you've got one, though, as you said in your opening remarks.

SUSAN YASHAR: Absolutely. This is also an area that we talked about a little bit, and that's getting to know your stakeholders. Your first conversation with your communications

person should not be when the crisis hits. You need to know these people really well, and they need to know you. You need to have trust in each other, because your gut reaction is likely going to be different from the gut reaction of your communications specialist, in terms of how you frame up a story. Being able to step back and know that you guys have each other's backs and that you are aligned towards the same goal, and that you can work through the language challenges is really critical.

I want to talk a little bit about fake news. I want to preface this section by sharing a story with you. I had the privilege of being at game five of the World Series, which was in Washington, D.C. You were there with me (pointing to an attendee)! [LAUGHTER]

Of course, it was a blow-out, so that was the bad news if you were a Washington fan. It all came out alright at the end, as we know.

It was this really interesting game, and the President was announced at one point – you may have watched or you may have read about it – and there were 45 or 46,000 people in the stadium. A lot of them had something to say about the President being there; it wasn't pretty. It wasn't attractive, but it was loud. It felt like it was pretty uniform, although I feel very confident that everybody in the stadium did not have the same views of the President. What was happening around was undeniably deafening in a negative way.

There was a young man sitting directly in the row in front of me, and he was a Trump supporter. I'm sure he's not the only one in the stadium, but he's the only one that I could see visibly responding. You will have read the news about people shouting things, and there were hand signals and all kinds of things going on, which I can't share with you today, but you can guess what they were. [LAUGHTER]

The young man ahead of me turned to his friend, who was texting about this, and his friend was texting, "You would not believe what's happening in this stadium,

“Of course, the truth is that a crisis isn't one event with one response, but it's a cycle, or sometimes it feel likes a cyclone with a pre-storm calm and a post-storm surge that can challenge and maybe even alter the fabric of your organization, but – importantly, I'd say – just like a storm, there's usually a window to prepare, an opportunity to respond, and then a chance to recover and rebuild.”

– Susan Yashar

and the negative stuff that's being said about the President.”

The guy to his left turns to his friend, and he says, "That is fake news, because I'm here, and I'm a supporter of the President. What you're texting is simply wrong."

That's a long way of saying that the term "fake news" is not necessarily describing content that was intentionally false or inaccurate. It's now being used to describe stories that people just don't agree with personally, or they don't like. Objective facts have become a lot less influential in shaping public opinion that appeals to emotion and personal beliefs. We've got this new-found level of mistrust surrounding both fake and real stories. Does that make successful communication more difficult?

Let me just tee it up like that. [LAUGHTER]

Ron, do you have a perspective on the outlook for truth?

RON HUTCHESON: Yes, it's grim. [LAUGHTER]

Of course, it does make it more challenging. All you can really do – and you touched on this in your opening remarks – is find people who have credibility to deliver the message for you, because they're going to be more credible than you speaking for yourself.

It's a challenge. Also, it goes to what we discussed a minute ago, too. A lot of it is so ridiculous, you can ignore it because it's

not going to take hold and you don't want to dignify it with a response. I don't know how we get out of this cycle, truthfully.

SUSAN YASHAR: Thoughts on how we get out of this?

JONATHAN ANSCHELL: Sure, we've got a ways to go in restoring public confidence in the media, broadly speaking, because there's been so much distortion, and the term "fake news" has been thrown around so liberally. Again, in responding to a crisis, there are a couple things to keep in mind. One is to try to find legitimate voices, which is not always easy to do. The other is – again, this is focused specifically on the media – as a media company, to explain your methods, and to be pretty transparent in what it is that you do, and *how* you do it, so as to distinguish real news from fake news.

JAMES FARRELL: Yes, I would echo that. That's what I was going to say, Jon, but I would say it slightly differently. Both of you really typify this. CBS is a great credible voice. There are other sources of news that are not. Deloitte also, in doing audits, for example, has real value.

SUSAN YASHAR: Keep that going! [LAUGHTER]

JAMES FARRELL: It has real value. I'll pick up on your analogy that the one person in the 45,000, that voice doesn't carry. I believe that the truth does win out. Again, master the facts, be armed with that, be first with that, and you do win crisis management.

SUSAN YASHAR: We have the great honor, many of us, of working across cultural barriers. Multi-national corporations have experienced first-hand the challenges of managing diverse stakeholders from different cultural backgrounds and life experiences, and different political incentives around stories. I want to talk a little bit about how that stakeholder diversity can complicate how a crisis is managed.

I'm going to turn first to you, Dan, and your experience at PATH, but feel free to talk about others, as well. I'm going to talk about facts that are out there in the public about a particular crisis which involved a JV [joint venture] relationship that PATH had with the Indian government. There was a PR crisis in India that had to balance duties as a partner to the government, which had a lot of competing interests – not a singular interest there – with responsibilities to manage and resolve the crisis. What I'd love to hear a little bit about is how you manage diverse stakeholders in a crisis, including different political interests, including between those who are benefited by having the story continue to play out, and those who might have an interest in stopping it.

DANIEL LASTER: I can do that. First of all – and this happens in the United States, as well, but where you have multi-stakeholders involved, you may be operating at the federal level or at the state level, and at each level, there may be diverging interests among your partners. Then you've got to add to the mix that there are elections, and those who you initially partner with may change.

In our situation, you, of course, also have funders, and then you have our primary interest – and you can never lose sight of it – which is the human individuals with whom you're engaging, trying to improve their lives. You've always got to keep your compass.

What I would say – and Susan referred to this earlier, as did someone else – that the notion of transparency becomes critically important. You just start with learning the



situation, learning the roles, make sure you know everybody's roles, and then have a multitrack plan for communicating. It's not that the facts are different, but the level of detail and what matters to different stakeholders is going to be dramatically different.

The timing and sequencing of sharing information becomes really complicated. If you're working at the state level, do you let the person at the state level know first, or the federal level or your funders?

I don't have any answers, but the considerations are, make sure you know who your stakeholders are, and know that they may have competing interests; and try to manage through.

Also know when you should lead versus when you really need to sit back, because if you lead, then you may get punched in the face. Whereas if you sit back you can shape the story or misshape it. If you lead too early, then you become the center of the bullseye of the issues; if you can sit back, you might try to find out who might be primarily those who should be speaking, and who may have better credibility – especially if you're an international NGO in India.

SUSAN YASHAR: It's really helpful. Jim, I'm going to turn to you because you've worked in a lot of different geographies, a

significant amount of international experience with clients in Asia, in the Middle East, in Europe and in the U.S. Can you talk about how this plays out in different countries and different cultures, and what American companies can learn from how overseas companies manage crisis?

JAMES FARRELL: I'll try to pick up on what Dan was saying. The diversity of your stakeholders and understanding their perspectives is only increasingly complex when you add cultural diversity into it. We were talking about having to fire a CEO, and I had one of those conversations with the CEO. If you bring your U.S.- or UK-centric view, and think, "I caught you. You did something wrong. You're going to get fired, and here's why – we're going to lay it out." That doesn't go over well.

SUSAN YASHAR: That's what I heard, actually! [LAUGHTER]

JAMES FARRELL: He was wearing a sword and they were not happy. I thought, "At least everyone else will be on my side." They were *not* and I had to run out of there! [LAUGHTER]

There *are* cultural aspects – that little anecdote aside – even in places where privacy is more important, where employment is more important, where we have a mindset – we would just naturally fire or punish a wrongdoer. The facts led you to this isolated person, that person's not a scapegoat – they should be fired – they're a wrongdoer. In some cultures, that's just not at all acceptable. You think, "Wow! That can't be the right reaction here." You have to layer in the complexity of the cultural differences in these different stakeholders' perspectives on it.

It's complicated, and I don't have any lesson for folks other than, look to see if people are wearing swords when you're having meetings. [LAUGHTER]

I look, now, when I start a meeting, but I don't have any great lesson for how to do that.

RON HUTCHESON: The main lesson is, “Make sure you’ve got local help.” We worked a LIBOR case that involved a European Bank with authorities in Japan, the UK, Europe, and the U.S. Not only is the legal system completely different in Japan, the media system is completely different, and there was no way I could have navigated that. We’d get together in person at least once a month and regularly by phone to make sure we were all synced up.

JONATHAN ANSHELL: I just want to pick up on the points that were made about being sensitive to the cultures of wherever you’re doing business, and how insensitivity to that can create a problem.

We co-produce a show called *The Amazing Race*. I don’t know if there are any fans – any *Amazing Race* fans? Alright, good! [LAUGHTER]

In one cycle of *The Amazing Race*, the contestants were traveling through Tanzania, and they were going through the airport in Arusha, Tanzania. As is very typical of producing television here, the cameras crews followed them along, and there was a glimpse of a woman who worked for the Tanzanian airline and who was behind the counter.

Now, if we were doing that in this country, people would be craning their necks to get in front of the camera, “Great! I’m going to be on *The Amazing Race*!”

That led to a protracted lawsuit in Tanzania, because the cultural sensitivities are different, and photographing somebody without their consent is a *big deal* there. It really was a helpful reminder to us, as a company that does business all over the world, to be mindful of those cultural differences. It’s a story that we use a lot just because of that – you wouldn’t necessarily think of it – and, again, anywhere in the Western world, that would be so totally incidental and would be a fun thing for the person involved – not so much in Tanzania.

DANIEL LASTER: One quick example of how you can be completely wrong goes

to making sure you understand the cultural context. We had a situation: we have lots of drivers going to small villages. These roads are unsafe, and we had an unfortunate situation where there was a caravan of cars and someone was killed – a villager – actually *not* in the car our driver was driving, but in *another* car.

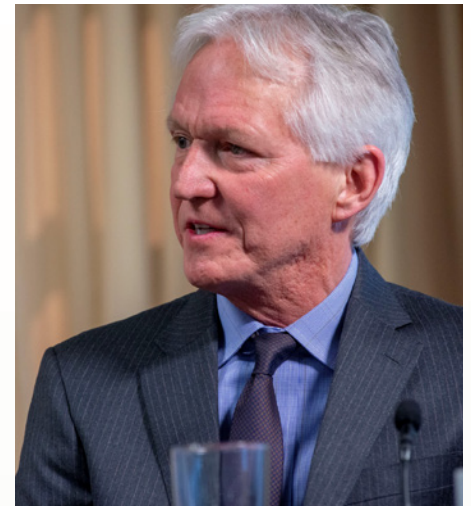
In any event, I get into the office first thing in the morning and I get the incident report, and I learn that our driver is in jail in this tiny little village. My initial lawyer response, is, “I’ve got to get this person out of jail.” Luckily, I didn’t act on my instincts, and I talked to my country program leader. I said, “Okay. Which lawyer are we going to use to get him out of jail?” My country program leader said, “What? Jail is the safest place. Thank goodness they put him in jail – he would have been killed.”

My lens was 180 degrees wrong and would have led to a different crisis.

It’s important to know and lean on your experts, who may be leaders or PR people in a country. You have your instincts but check them with the environment.

SUSAN YASHAR: I want to ask a question that’s going to feel really basic but to me, it comes back to this question of, what are you relying on in the midst of the crisis – instinct, or actually thought-out plans? What does a communication plan look like? What are the essentials of it, in the near-term, the medium-term and the long-term, and who takes charge of that?

RON HUTCHESON: You touched on it in the opening remarks. You first have to identify all your known risks and have what you’re going to say if that happens. Absolutely, putting together the right team is really critical. It’s going to be different, depending on what the crisis is. You can game that out in advance, but the key thing is – and, again, you hit it in the opening remarks – you need a decider. You have to have somebody who’s going to bang the gavel, because otherwise it’s paralysis by



analysis – that kills you in a crisis situation. It can easily make a risk turn into a crisis.

SUSAN YASHAR: Yes. One of the things that we do at Deloitte – and I’m sure we’re not unique or special in this although we *are* unique and special, but not in this way, particularly – is we chart out various different forms of communication and approaches, depending on how the situation evolves. It’s always open to change, and obviously nothing is set in stone, but what we have is the beginning of the analysis if the situation worsens to A, B, C or D over this period of time or that period of time. We continually revisit those plans, so it’s not as if they sit on a shelf and then the question comes in and you just pull the answer. We have the start of something, so that when the reporter calls you and says, “We’re going to publish a story” – and it’s always a 10-minute deadline – you have something that you’re pulling off the shelf that’s the beginning of an outline of how to manage the event. I know this sounds really basic and practical, but I share that with you because it’s absolutely essential.

I remember that when I first started getting engaged in this kind of stuff, our comms people used to create these booklets that had phone numbers of whom to contact, and I thought, “What is this about?”

What it’s about is it’s giving you a route to get in touch with the right people at the right

moment so that everybody can be on board, and some pre-analyzed thinking about how that communication should be shaped up.

DANIEL LASTER: It's also important – and this goes back to identifying the risks, which others have spoken to – but separating – and you asked earlier about incident vs. crisis.

Even though it was art rather than science, if it was more at an incident level, then who the deciders are, who is primarily involved in the loop may vary. If you are reevaluating, you have in most organizations an ultimate head of crisis. Make sure you're paying attention to figure out whether something moves from just a local incident to a crisis, because then the players involved changes, the team changes.

SUSAN YASHAR: Yes.

RON HUTCHESON: When you are in a crisis, it's really important to figure out or define what success looks like, especially for managing up. A lot of people think, "You can just make this go away and everything's going to be great." [LAUGHTER]

A lot of times, you're just going to make a bad situation less bad, so you can get back to normal operation.

SUSAN YASHAR: Right. That doesn't ever make you feel like you're the savior. Managing that expectation is really key.

JONATHAN ANSHELL: That's absolutely right. You want to find a flow chart, as you described, so that there is a game plan and you're not improvising beat by beat.

SUSAN YASHAR: Yes. Now I'd like to talk about the best and the worst outcome situation. This is the best outcome we expect from all the bad ones. People look at you like, "Is that the best you can do?" The answer is, "Yes, because the other outcomes look even worse, so let's get our mind around what the real universe of the

possible is here, and then let's try to work towards the best bad outcome." That's why people love to talk to me. [LAUGHTER]

I want to turn to well-being. It's so great that we can talk about well-being among a bunch of lawyers and risk people. As I spoke up there a little bit before, one of the first things to go out the window in a crisis is your own routines around managing your stress levels. I'm going to venture to guess that everybody in this room has a fair amount of anxiety and paranoia just generally – that's why you're doing what you do. That's part of what makes you so successful, that you have this thing that drives you. Some people might call it "insecurity"; some people might call it "paranoia"; but I think it's a factor for success, personally.

Anyway, we're all trying to manage that, generally, every day. Eating healthy, maybe working out, but in the crisis situation, you're working long hours; you're in stressful situations. It's the perfect recipe for all those good practices to go out the window.

Dan, I want to start with you, because I know you're an avid runner and just have a little stress, as a general human being. How do you manage this? What do *you* do?

DANIEL LASTER: I'm probably extreme, because I used to commute to work by running, which I actually think is a great thing, whether you run or walk, because it gives you this period of transition and outdoor air. It sounds flaky but it really is true. It lets you start to digest what you're about to enter.

Then on the tail end, whether it is, for me, probably it's extreme – you're running *miles* home – but if you're walking or having bookends so that you, both, for your health, but actually, it helps you deal better strategically with a crisis. One of the things in a crisis is you have to keep going with a microscope, panning in, panning out. Everybody who's worked with me knows I have this phrase, "power of the pause." Especially in



a crisis, everybody thinks, "We've got to run around." Actually, that's when you need to pause. You don't really need to pause for that long. I have the six-six-six rule, which is, if you have to make a decision in six minutes – if you would think about it six months down the road, how are you going to feel about that decision; and then six years, how's that all going to look? Usually, if you go to the six years, you'll think, "I'm going to pause a little more before I make a decision in six minutes, and maybe I'll hold it."

Anyway, self-care is critically important. You may have to condense it, but you can't lose it, because, if you lose it, especially if one of the crises that was alluded to was many years – they're different trajectories.

The other thing that is just as important is the care and feeding of your team and having people's backs. That can take many different forms. In that respect, in the midst of this one crisis I got in one morning, and the news had just blown up in India. I was with the CEO and one VP, and we just realized our poor leader needed our support. I was on a plane by the afternoon. That wasn't about *my* care and feeding of *me*, but it was care and feeding of others. You need to be looking at your team.

The other thing, in terms of managing stress, organizationally – and I learned this at Microsoft when we were dealing with the DOJ – is making sure there's – this is almost church and state – the team that is handling

the crisis, and the team that is doing their job. Except for certain leadership, which can cross-over, that really puts those that are just trying to do their job at ease. You've got to take that team that's on the crisis and try to take their day job off their plate.

SUSAN YASHAR: Yes. Also, when you're talking about the person or persons who are at the center of the crisis situation, you talked about providing a buttress or structure around that person. One of the things that is worth thinking about is, do you actually deploy someone as a counselor or support? I don't mean to suggest that this is my role, but when you're sitting up there and everything is circling around you, it doesn't feel there's any downtime; and it also may feel like there's nobody you can talk to. You have no peers. One of the things that we do is we actually think about who can we deploy – sometimes it's virtual – to actually be a support system for the person who's got this *huge* amount of responsibility sitting on their shoulders – the ultimate decision maker – that person doesn't really have peers.

DANIEL LASTER: That's where I've had an executive team level – that's really got to be your first team. In our situation, there was the vice president for this area of the company, and there was me in my role, and then the CEO. You're trying to share the load and determine who's handling what.

RON HUTCHESON: Who do you deploy in a situation where somebody doesn't really have peers?

SUSAN YASHAR: It depends on the situation, but we might deploy another senior leader from another geography who's a peer but not within the country. Somebody who has the experience, who can be a calming influence, who can be a sounding board for a whole bunch of ideas and notions that otherwise this singular individual is sitting with themselves. Obviously, all of our jobs are to provide that support; but, to be honest, you're not at the same level, most often.

“In the end, I would say a crisis doesn't have to be 100% over for you to prepare for the next one. That, of course, entails revisiting and revising your crisis response plans.”

– Susan Yashar

When you have that ultimate decision maker – let's assume it's the CEO, the head of the entity – and they're not taking care of themselves, they're not sleeping, and they're stressed. We all know that no sleep is a form of torture and it does *not* bring out the best in you. Do you have those conversations? Do you try to help them take a load off?

JAMES FARRELL: Yes, you should. This is classic project management. The legal industry is particularly susceptible to this hero mindset of, “I can just do it; I can just handle it.” It's ingrained in the culture. If you want to be an effective leader, as you were saying, you really have to think of yourself as just one person on the team that you're on. If you think about it from that perspective, you're not doing anyone any favors by burning yourself out.

SUSAN YASHAR: Let's open up the questions to the audience.

[AUDIENCE MEMBER]: The question is for whoever wants to answer. Suppose the Duke of York engaged you to assist him going forward starting today. What specifically would you do?

JONATHAN ANSCELL: I think we could create a reality show around the Duke of York! [LAUGHTER]

That's what *I* would do!

SUSAN YASHAR: I think *you* need to answer that first, Ron, yeah.

RON HUTCHESON: I would call my friends on this panel to see what they'd say. He never should have done that interview, obviously. He's just got to go to ground now. I don't think there's anything he can do that would not do more damage.

SUSAN YASHAR: What does “go to ground” mean?

RON HUTCHESON: Just disappear for a while and let this blow over. That was such a big mistake to do that interview. He wasn't prepped, obviously. That's a challenge that we have. We have a client right now who thinks he's fantastic, and he's not, and nobody around him wants to say, “You're not so good, boss.” That was clearly the case with him.

DANIEL LASTER: One of the things in a crisis is figuring out who will be your voice and your face, especially in a multicultural context. Sometimes, in our situation, it can be really awkward. We had some people who really wanted to, and we had to say, “You're not the right one.”

RON HUTCHESON: The funny thing about that story is it had largely died. There was no reason for him to give it new life. That was a case where engaging was a big mistake.

SUSAN YASHAR: Why would he?

RON HUTCHESON: It's a mystery to me. I don't get it. I really don't understand it at all and the old, “I don't sweat” thing is just absurd.

SUSAN YASHAR: Should I let that one die right there? [LAUGHTER]

“Go to ground” on that? [LAUGHTER]

[AUDIENCE MEMBER]: I'd be interested in the view of each of the panel members on the issue of apologies. To what extent do you apologize for whatever happened, without exacerbating your legal position?

SUSAN YASHAR: I'll start. This is a big issue oftentimes in crisis communication. When do you say, "We got it wrong"? Do you *ever* say, "We got it wrong"? Are there other things that you say about how seriously you take the situation, and how strong your values are around the issue that's cropped up? As a lawyer, I would be very hard-pressed to be comfortable with a communication that has potential liability ramifications around – that's an admission, basically.

That, having been said – and again, this is going to depend on the nature of the issue – but if it's an issue, for instance, about whether your company and its values are reflected in the training they do or that's leaked to the public, I don't think you need to have an admission against interest in responding to that story, as much as you need to stand up clearly and say that these are the values that your company stands for, and somehow communicate that you take this matter very seriously. I would be personally very opposed to having an admission in almost any story, while at the same time indicating that your values are key, that you're going to continue to abide by them, and that you may have further work to do around the particular item that's come up.

JAMES FARRELL: I'll jump in on that and I'd echo all of that. John Wayne used to say, "Never apologize; it makes a man seem weak." I bring that up for some humor, but to really say that's just the mindset of yesterday – you just can't do that. I guess I would distinguish an apology from an admission, and Jon said that really well. That's the distinction. I, like you, can't stand hearing admissions, but I think British Petroleum (BP), for example – I'd love to get the panel's view on it – I thought they handled that crisis really well. It seemed like the equivalent of an oil tanker crashing every day for 60 days or so; and the way they came forward and apologized and gave immediately a fund to compensate. Maybe a few who are expert in this, think they didn't handle it well. I felt that it seemed authentic; it was an apology that was meaningful, but not a complete



admission. They seemed to navigate that quite well. That's a real art.

SUSAN YASHAR: Yes, and they put a spokesperson out there who could communicate that genuinely and sincerely, which is really important. You touched on it a little bit, Dan, which is who do you put out there? A lot of people will be backing away at that moment, by the way, and saying, "No, thank you, I don't want to be the spokesperson." But there *are* people in each instance, who are best suited to communicate that information. We can look at other situations, including, recently, an airline company that was testifying before Congress about the exact opposite of that. How do you fail to communicate a lack of real concern around certain issues?

DANIEL LASTER: It was said before, but it starts with empathy. Empathy is not about admissions. Empathy is trying to understand what others may be experiencing. How you translate that culturally is important, but you start there, and then, as Susan said, you bring in your values.

RON HUTCHESON: There's one thing on the BP example. It was a case of the person at the top not getting support, because what I remember most about that guy was the CEO saying he wanted his life back.

That quote really *stuck*. Otherwise, I agree with you – it was a great job. It's a case where the person just needed a peer to talk to, and maybe we know it's bad on you, but I won't say that out loud. [LAUGHTER]

On the whole apology front, it's pretty much covered. The whole thing about PR is that if you do the right thing, people like you. Part of our job is to get our clients to do the right thing.

I said that to my boss when I had a terrible client one time, and he said, "Yes, I don't think that client got the memo," and it was true. We ended up having to fire him and he ended up going to prison. That's another story. [LAUGHTER]

In any case, if you've really screwed up, an apology is a good thing, and you've got to find a way to do it so you're not taking on a legal liability. Sometimes, like in a BP situation, you have to weigh if an apology will dig the hole any deeper or possibly help you.

[AUDIENCE MEMBER]: I have a question about corporate culture, with respect to getting together a crisis management team so that everyone is prepared, so that if one does occur, everyone's on board, and to get to know all the players involved.

However, particularly today, you have a number of corporations, where departments have very intense interdepartmental rivalries for resources, and some barely talk to each other. How do you go about constructing a crisis management team with various departments and units who basically have the wagons surrounded and are protecting their turf, to be able to participate when a crisis really does occur?

JONATHAN ANSHELL: I can jump in on that. It has to start long before the crisis. The danger in corporations of having a siloed mentality really manifests itself when you have to deal with a crisis, so it speaks to a much more long-term task that all managers face, which is breaking down

those silos and getting everybody rowing in the right direction.

DANIEL LASTER: The only thing I'd add to that is sometimes you have this situation where one unit or one division is, dare I use the word "caused" or "engaged in" a crisis; and then you have other units where there are ripple effects to those other groups. You can sometimes have tensions flowing from a crisis. Having a good internal communication plan with leaders of those other groups, keeps them informed of the strategies to deal with the crisis. They may be second-guessing, and they may go towards attacking rather than supporting. You've got to have the communication plan there.

SUSAN YASHAR: Right. There is a lot of natural inclination to look for the person or persons that are at fault. I would say it's really important to pause right there, because what you need to be sure you're doing well in a crisis is having everybody see what the goal is. There will be plenty of time to deconstruct what went wrong. The middle of a crisis is, in my view, the absolute wrong time to do that, because you need *everybody* to circle in the same direction. This is why I said in my remarks, do post-mortems; do wargaming; figure out what went right and went wrong. In the crisis moment, make sure that there are communications that are intended to bring the team together. We, actually, right up front, state, "This is not about figuring out who went wrong or what went wrong, except to the extent that it's critical to us to move forward in this crisis. There will be time for us to deconstruct, to learn lessons; we'll do that all in an appropriate way."

I want to come back to the first comment that was made on this, which is the right time to start that is not in the crisis. It's really important to set those expectations, to align yourself, to network yourself. Much easier said than done, in the pre-crisis moments.

RON HUTCHESON: Doing a tabletop exercise or some kind of war game can

be the forcing mechanism to break down some of those barriers. You get everybody in a room, and they have to play along in a scenario situation, it can help focus their attention and make it work better when the real thing happens.

SUSAN YASHAR: Yes. There's another question here.

[AUDIENCE MEMBER]: Jim mentioned the mistakes you have seen handling these. Do you believe some of the crises can be avoided to begin with?

JAMES FARRELL: We're touching right on it. First, you've got to plan ahead and develop the right mindset. In my view, culture and leadership have to be about humility first and building a team and seeking the right goal, not conflicts. If you have that, everything flows from it. Ultimately, with a good team, reliable, smart people, and diverse expertise, it doesn't really matter what the problem is.

SUSAN YASHAR: You're not saying that you could avoid all crises?

JAMES FARRELL: No.

SUSAN YASHAR: If you are, I want the recipe! **[LAUGHTER]**

JAMES FARRELL: How big a crisis is depends on how well that initial reaction is. Sometimes I've been fortunate enough to avoid what would have been a massive story and a big crisis by being on the right team, taking input from people, and listening. When you act with an edict, when you think you know, that, to me, is what drives the crisis into that larger level.

SUSAN YASHAR: Yes.

DANIEL LASTER: Things are going to go wrong. You've got to set the tone. The test I always use is: has it happened in spite of the way we do business, or because of the way we do business? You want to be on the right side of that, and, to the extent you're



not, then that means you need to change something about your culture, your policies or practices. That's the simple test.

RON HUTCHESON: You need to be proactive when you see a risk. Susan's point about engaging with the media with some experts, that can do a lot. I've got a great social media example. In the run up to the Vancouver Olympic games, Lindsey Vonn crowd-sourced the design on her helmet. The winner had a helmet with a big "Vonn" on it, but advertising is not allowed in Olympic games. That was really her brand that was being advertised. The IOC [International Olympic Committee] said, "No, you can't do that." She goes on Twitter and starts to rally the troops and, of course, she's got a huge following. Somebody at the IOC noticed it and reached out to her and explained the reasoning, and she called off the dogs. It wouldn't have been a full-bore crisis, but it would have been a definite distraction. Monitoring, reacting quickly, and trying to be proactive whenever you can, you can avoid a lot of big problems.

SUSAN YASHAR: I want to add one other thought to that. I agree wholeheartedly with it. Being a really good leader sometimes means that you need to recognize and share with others, you got this piece wrong, and you're ready to pivot. That takes a certain

kind of strength, and it's absolutely key in good and enduring leadership that you've got people who can see where they're going, and then have the confidence to say, "We need to shift this now. We got this wrong," or "We need to think about this differently." That can be hard, particularly in a crisis, where you feel like you have to keep moving forward through that tunnel.

This is where post-crisis learnings and institutionalizing and sharing those learnings, and wargaming are really helpful, and they are critical.

[AUDIENCE MEMBER]: Nobody has mentioned the role of the board of directors. Would anybody care to comment on calling a special meeting of the board?

SUSAN YASHAR: It's a great question, and thank you for bringing it up, particularly given this audience.

My personal view is the board needs to be absolutely informed of what's going on; the board needs to be comfortable with how this is being managed; these need to be real-time communications. They will frequently, in my view, given the kinds of organizations that we work for, be phone calls rather than waiting for in-person meetings. Those updates and engagement, particularly with your Chair, need to be happening in real-time. If this is a matter that's significant to your organization, recognizing what the role of the board is, and their oversight role, you need to keep them very close and satisfy them that the steps that you're taking are consistent.

I would say the same thing about your management committee. The people in the center of the organization need to understand where you're going; they need to be aligned with the approach. I don't think democracy is the right approach to crisis decision making, but this should all be transparent within an organization at those levels.

JONATHAN ANSHELL: I would just add that it's important to maintain the



balance and distinction between the board and management, and that plays out in a couple of different ways.

To Susan's point, you want to be communicating, but that's different than handing over the keys. The vast majority of crisis situations that you're dealing with are best handled at the management level. You can't make those decisions by consensus on a board call, and you need to be willing to act moment to moment.

Having said that, there are situations, and our company certainly went through one, where you realize that if management is somehow the focus of that crisis, sometimes the board does need to have more of an oversight role. You may need to have, for example, an independent investigation that reports directly to the board, so that there's confidence among *all* stakeholders – internal and external – that the process wasn't in any way compromised by the role of management.

It's a balance that has to be struck differently for every crisis, so that you're respecting the role of the board without unduly enlarging it.

DANIEL LASTER: The only thing I'd add to that, and it may be unique to an organization like PATH, where you have board members from all over the world, is making

sure board members know, if they are reached by press, who they refer to. Imagine if you have a crisis in India and you have an Indian board member; they are prominent in the community. You don't want them to get caught with their pants down.

SUSAN YASHAR: One thing that I say to my board, and I take this really seriously, is it should be the exception that you're reading about a brand-impacting matter *in the news* before you've heard about it from me. Now, I can't always deliver on that promise, depending on what's happening, but my view, as the General Counsel, is to make sure that they know that *I'm* on the beat, that *I* have my eyes open to what's going on, and that management is engaged and managing the crisis.

RON HUTCHESON: I don't know how many cases I've been in when the board hasn't been appropriately informed and managed up, and somebody on the board says, "I've got a friend who can deal with this." The next thing you know, there's some new person in the room, and it's not doing anything. It gets so frustrating. I totally agree with what you said – the board should have a limited role except when management can't do it. I also agree with what Susan said – the way to avoid it is to keep the board informed, keep them reassured that somebody is dealing with this stuff, so that they don't start meddling, is the way I'd put it.

SUSAN YASHAR: We always will identify the person that you should be going to with questions about the crisis, and for sure, we identify who can speak to the public. It's definitely not a free-for-all. That doesn't always work, by the way, but that is our goal in almost every instance. In every instance that involves a potential brand matter, we make sure that we have identified those who should be speaking and we hew very closely to that.

[AUDIENCE MEMBER]: Thank you. Just a small comment relative to her question about how to manage things. I might be

the only other non-lawyer in the room; but when I saw that Deloitte was going to be the lead-off speaker, I sent the notice to my son. He was an army officer five years and then was hired by Deloitte in Washington in their Government Consulting Unit, so he's been there about five years. I sent him this invite, and he said, "At Deloitte, reputation is everything. They spend a lot of time trying to not get sued and keep us out of trouble." That message does get through down to the troops!

SUSAN YASHAR: True! You've got that right! Thank you.

[AUDIENCE MEMBER]: Thank you. I'm also not a lawyer, so there's a few of us in the room.

SUSAN YASHAR: How many non-lawyers are there in this room? [several hands go up] **[LAUGHTER]**

A lot.

[AUDIENCE MEMBER]: Speaking from the position of advising many corporations on crisis and reputation, as well, I wanted to build on the point of the board's role and looking at it in terms of all of the great conversations we've had today in terms of preparation. You see so many boards who stack the deck with the lawyers, the chief risk officers and others, and they're looking at the hard risks. Reputation is now something that cannot be ignored. Boards have a role now, to make that a priority and stack the deck of the board with people who know how to deal with those issues. Whether that's a communicator or someone with those sorts of skills. I'm interested in your opinion and your experiences on how boards can start to do that more often.

DANIEL LASTER: Thinking of PATH, and actually I just joined a board in Kenya, both have people that have communications or brand expertise. It goes to, when you're building up your board, you look at a capabilities matrix. I agree with you; in this day and age, if you don't have someone who

“If you aren't actively crafting and sharing your story, it will be crafted and shared for you and about you and around you.”

– Susan Yashar

has that subject matter expertise, bring it to the table, that's a shortcoming.

RON HUTCHESON: I think you're onto something; you're seeing that awareness is spreading.

SUSAN YASHAR: Boards deal with this in a lot of different ways, too. Whether it's through their risk committees, their assessments about risk – short-term, medium-term, long-term – one of the things that boards and general counsels and other advisors to companies need to be mindful of is, what are the risks your company is facing, whether they face them today, and are we prepared to deal with them tomorrow and going forward. That's a constant evolution around risk management for companies to be doing.

[AUDIENCE MEMBER]: I have a followup question on the board of directors. Is it true that big companies have outside directors and inside directors? It seems that the majority is usually inside directors. If that is true, then when they hit upon an issue, the inside directors will insist that what they did was right; the outside directors don't do their duty of an independent investigation whether they did it right or wrong; and they cave in. What purpose does that board serve where this is the situation?

JONATHAN ANSHELL: I'll start on that. For most publicly traded companies, you're going to find a predominantly independent board of directors, because that's a standard that companies need to follow to trade on the public exchanges here. Companies try to be attentive to that.

Now, there will be a variety of different situations that may emerge at the board level, where certain business interests or other interests on the part of certain board

members *may* warrant forming a special committee of directors who are independent on that specific issue. There are a number of tools available to anybody counseling a board of directors, to make sure that the independence is maintained. The first is starting off with a board that satisfies those independence criteria, but then on a situational basis, being nimble enough to form special committees that maintain independence as to a specific issue.

JAMES FARRELL: I couldn't say it any better. I would only add, an audit committee chair will typically be a mandatory outside director. This gets into corporate governance and a lot of factors that are worthy of looking at, but there are a lot of tools, as Jon said, that are designed to help ensure that the board is a useful tool in addressing a crisis or any judgment that a company has to decide on.

SUSAN YASHAR: The only other thing I'd add to what's been said already, and I agree with, by the way, is that I would typically look to management to be making the first assessment about whether an internal or an external investigation is required. I would expect that they're sharing that with the board, how they're approaching it, why they're approaching it in the way that they have. Every matter warrants its own evaluation of how to manage that. Big crises will often involve external advisors for a whole host of reasons, not just because of independence, although sometimes that can be valuable, but also because that's what the public wants and expects. That's going to help serve you in defending some potential legal action or regulatory action or public scrutiny at the end of the day, which is that you didn't take the most interested people and task them with uncovering what actually happened in your event, whatever it is.

[AUDIENCE MEMBER]: Your advice has been to construct your team before the crisis occurs, and the other suggestion you had was to use outside experts. Are these experts put on a retainer, or you just agree who the team is, and then the fees are discussed at the time that they're actually called in.

SUSAN YASHAR: We do a combination of that, by the way. There's not one-size-fits-all. We do, for instance, have external counsel that are going to support us in certain ways that we know we may need in a crisis, and we have them on retainer. We have PR firms that we work with on a regular basis, and sometimes we have them on retainer, sometimes we don't. We have identified those experts across the risk areas that we think we're likely to face, and we have an ongoing relationship with them. It really just depends on the nature of their expertise.

DANIEL LASTER: For instance, in this day and age, small organizations can't afford to have a true IP expert who can deal with hacking and cyber security issues. It borders on being remiss not to have lined up who you would engage, because in those situations, you need somebody to solve the problem, but also to technically be able to explain it. From a risk management, if you don't have, you can't always afford it, depending on size. Again, it goes to when you're looking at the risk register or however you do it from an enterprise risk management, making sure you know your mitigation and you have the experts on call, or as close to on the ready.

[AUDIENCE MEMBER]: Thank you. It used to be, in organizations such as Deloitte, it was cultural that the staff, employees kept information about issues and problems, whether it was proprietary or client information, very close and limited. In today's world, that information seems to fly about all over the place. How do you manage and possibly enforce a policy to limit that?

SUSAN YASHAR: Are you talking about in the context of crisis management, now?



[AUDIENCE MEMBER]: Yes.

SUSAN YASHAR: There's a tension, obviously, in a crisis management situation, between getting the right people in the room, making sure it's the right size, making sure you have all the facts, making sure that everybody understands what's at stake here, how you handle that, who's overseeing it, is your entire crisis being managed by counsel, and are you framing it up as privileged and confidential. These are really important considerations at the very front end of the crisis. What's the structure that you're going to put around that? I'm looking at some of my friends who I happen to know well and making sure that you've thought that out.

Then there's a cultural aspect to this, too, which is actually helping people understand that what you say here around maintaining confidentiality and privilege, it's not a nice-to-have; it's a must-have. We're all really familiar with what happens when employees leak information, intentionally or otherwise; it's a nightmare.

There are lots of things that you can put in place, and then you also have to recognize there is always the potential that things

are leaking. In terms of how you send your communications out, how they're framed up, that's really important. There are a lot of times when we do internal communications. For instance, in the midst of a crisis, if you're communicating internally to your people and you're framing it up as confidential or even privileged, it's really important to have the lens of what is that going to look like if it appears on the front page of *The New York Times* or *The Wall Street Journal*, and how comfortable are you going to be with what you put down on paper, and does that create additional crises that you have to manage? I don't think there's a scientific answer to your question, but there are a whole lot of considerations that need to go into thinking about it.

SUSAN YASHAR: I want to thank you all for being so attentive and patient with us. I want to thank my panelists for coming from near and far. I had a lot of fun up here, so that, I'm going to make that the determinant of how good it went. [LAUGHTER]

Thank you all. [APPLAUSE]



Jonathan Anshell
*Executive Vice President
and General Counsel*

VIACOMCBS

Jonathan H. Anshell currently serves as Executive Vice President and General Counsel of ViacomCBS Media Networks, as a result of the recent merger.

Previously, he served as Executive Vice President, Deputy General Counsel and Secretary for CBS Corporation. Anshell oversaw the Company's securities, corporate governance, executive compensation, ERISA and real estate matters, and worked with the General Counsel on Board of Directors matters. Anshell also supervised the CBS Law Department's intellectual property and labor and employment practice groups.

In addition to his corporate role, Anshell served as Executive Vice President and General Counsel of CBS Broadcasting Inc. In that capacity, Anshell oversaw the

legal affairs and standards and practices functions for the company's televised entertainment and news operations.

Before joining CBS in 2004, Anshell was a partner in White O'Connor Curry LLP, a Los Angeles law firm, where he maintained a trial and appellate practice with particular emphasis on entertainment and media-related matters.

Originally from Canada, Anshell received his J.D. from the University of Toronto, where he also earned his undergraduate degree in political science and history. He lives in Southern California with his wife and two children.

ViacomCBS Inc.

On December 4, 2019, ViacomCBS Inc. announced the completion of the merger between CBS Corporation and Viacom Inc. The combined company, which is renamed ViacomCBS, creates a premium content powerhouse with global scale, including leadership positions in markets across the U.S., Europe, Latin America and Asia. "This is a historic moment that brings together two iconic companies to form one of the world's most important content producers and providers," said Bob Bakish, President and Chief Executive Officer of ViacomCBS. "Through the combination of CBS's and Viacom's complementary assets, capabilities and talented teams, ViacomCBS will create and deliver premium content for

its own platforms and for others, while providing innovative solutions for advertisers and distributors globally. I am excited about the opportunity we have to serve our audiences, creative and commercial partners, and employees, while generating significant long-term value for our shareholders.

"Building on an extraordinary collection of culture-defining franchises and partnerships with creative talent around the world, ViacomCBS will be home to more than 140,000 premium TV episodes and 3,600 film titles, with global production capabilities and more than \$13 billion in annual content investment. The company will account for 22% of TV viewership in the U.S. and hold the highest share of broadcast and cable viewing across key

audience demographics, with strength in all categories, including News, Sports, General Entertainment, Pop Culture, Comedy, Music and Kids. Through the strength and scale of these assets, ViacomCBS will be well-equipped to maximize the value of its content for its own platforms and for others, as it meets the growing global demand for third-party premium content. The company's content scale will support a robust streaming strategy, including ViacomCBS's own suite of advertising and subscription-based offerings. In addition, the company's broad reach, extensive intellectual property portfolio and expertise in advanced marketing solutions will enable it to strengthen its partnerships with distributors and advertisers globally.



Daniel Laster

*Former General Counsel & COO
of PATH and Associate Professor
of University of Washington
School of Law*



Daniel is currently an Assistant Professor at the University of Washington Law School where he has taught since 2003. He joined the University of Washington as a Guest Lecturer in 1992 and has also been an Adjunct Professor there. He was nominated for University Distinguished Teacher Award in 2005 and is a member of the Curriculum Committee. Previously, he was a Senior Lecturer at the University of Otago in Dunedin, New Zealand.

In his legal career, he has been COO and Chief Legal Officer at PATH. Based in Seattle, PATH is a global nonprofit health organization that partners with ministries of health, public health agencies, academia, the pharmaceutical and biotech industries, and major funders like the Bill & Melinda Gates Foundation – all to promote health equity and improve health outcomes in the world's most impoverished countries and communities.

His legal practice has also included retention by 3M Corporation as an expert and testimony in a trademark infringement trial

and being an Independent Consultant at various Fortune 500 companies for special projects and intellectual property expertise.

He worked in Microsoft's legal department from 1992 until 2001, starting as a corporate attorney in their trademark practice and formulating company trading policies. While there, he led a campaign to register and enforce the WINDOWS trademark. He advanced in the corporation and eventually held the position of Associate General Counsel, where he managed copyright, trademark, trade secrets, standards and research practices; was Chair of the Orientation Committee for law and corporate affairs department and a continued role in devising corporate policies in practice areas. He also coordinated efforts advising on open-source software issues.

Daniel has also worked as an Associate at Perkins Coie and Monroe, Stokes, Eitelbach & Lawrence, P.S., both in Seattle, Washington. His practice areas were intellectual property (excluding patents) and commercial litigation.

University of Washington School of Law

The University of Washington School of Law is the law school of the University of Washington, located on the northwest corner of the main campus in Seattle, Washington.

The 2020 *U.S. News & World Report* law school rankings place Washington at #44 making it the highest-ranking law school in the Pacific Northwest.

The school was first organized in 1899. The current law building, the William H. Gates Hall, was completed and occupied in September 2003, funded by and named after William H. Gates Sr., the father of

Microsoft founder Bill Gates. Its architecture is modern and energy-efficient, with windows and skylights allowing natural light to fill the library and corridors. The school was previously located in the second Condon Hall from 1974-2003, located several blocks west of the main campus. From 1933-74 the law school occupied the first Condon Hall in The Quad, which was renamed "Gowen Hall" in 1974.

The school is fully accredited by the American Bar Association and has been a member of the Association of American Law Schools since 1909.



Ron Hutcheson
Managing Director



Ron has provided strategic counsel, crisis management, public affairs, media relations and other services to a broad range of clients in the U.S., Europe, Asia and the Middle East. His sector experience includes health care, sports, technology, philanthropy, automotive, defense, energy, financial services, food service and entertainment. Ron has extensive experience with litigation and crisis management. He has assisted a European bank faced with a multi-jurisdiction Libor case, a telecom company accused of violating the Foreign Corrupt Practices Act and a pharmaceutical company faced with a Justice Department investigation. He has also worked alongside investigators, including a former FBI director and a former head of the London Metropolitan Police Service.

Ron came to H+K after a journalism career that included coverage of Congress, the U.S. Supreme Court and the White House.

In 2004, he was elected by his peers in the print and broadcast media to serve as president of the White House Correspondents' Association. In that role, he was the chief spokesman for the White House press corps and helped coordinate media logistics for all domestic and international presidential trips. Ron has been widely quoted on issues involving politics, the federal government and journalism in media outlets that include *The New York Times*, National Public Radio, Fox News, MSNBC and the Tokyo Broadcasting System.

Hill+Knowlton Strategies

Hill+Knowlton Strategies (H+K) is an international communications and public relations network with more than 2,000 employees in more than 80 offices around the globe. Our strategists and content creators are structured around sectors to deliver deep industry knowledge as well as expertise in risk and crisis management, litigation communications and other essential services. This model allows us to assemble the right team to meet client needs anywhere in the world.

Our extensive risk and crisis experience spans issues related to data breaches, CEO misconduct, environmental contamination, labor unrest, regulatory investigations, criminal investigations, congressional investigations, European Union investigations, ethical sourcing, product recalls, factory closures, corporate breakups, and mergers and acquisitions. We are always mindful that any organization facing a major public relations challenge is ultimately judged not for the crisis, but for how it handles the crisis.

We also help clients avoid problems by ensuring that they are prepared to successfully manage potential risks. Our proprietary 360° Reputation Monitor tracks brand and

reputation metrics within and across multiple key constituencies; our Canary risk predictor uses an algorithm to scour data from multiple platforms and databases; our Flight School crisis scenario exercise helps organizations improve their risk readiness; and our Crisis Control app gives clients anytime/anywhere access to an actionable crisis management plan on their mobile devices.

We recognize that successful litigation communications requires a balancing act that protects the client's enduring reputation among key constituencies without undermining the legal strategy. In striking the right balance, the legal strategy should always be paramount.



James Farrell
Partner

LATHAM & WATKINS^{LLP}

Latham & Watkins LLP

Since 1934, Latham & Watkins has served clients based on an ethic of hard work and a commitment to quality, values which continue to guide the firm today. From a beginning of three lawyers focused on labor and tax law, we have grown into a global full-service law firm. Latham offers clients:

- More than 2,700 lawyers in the world's major financial, business, and regulatory centers, located in 14 countries
- More than 60 internationally recognized practices across a number of industries
- Latham lawyers speak more than 60 languages

Consistently ranked in the top tier by leading legal and business publications such as *The American Lawyer*, *Financial Times*,

James Farrell, a partner in the New York office of Latham & Watkins and a member of the firm's Litigation & Trial Department, has broad experience in a wide variety of complex civil litigation, with particular emphasis on securities and professional liability matters. During the last 20 years, Mr. Farrell has worked on many large securities class action lawsuits and accountants' liability cases throughout the U.S. and internationally.

He specializes in defending cases involving a range of complex accounting issues, such as revenue recognition, securitizations, off-balance sheet entities, reserves, and various structured finance transactions. For example, Mr. Farrell defended Arthur Andersen in the multi-billion dollar claims asserted in the consolidated class actions regarding Enron. He has also handled all phases of securities litigation, including matters related to hostile takeovers, management buyouts, directors' and officers' liability, and class action securities disputes. He has defended regulatory matters involving the

DOJ, SEC, PCAOB, and other government agencies. He has served as lead trial counsel in civil and regulatory matters.

Mr. Farrell has a significant international practice. He has defended clients and conducted internal investigations around the globe, including in the UK, Switzerland, Ireland, Portugal, Mexico, Thailand, the Middle East, and Hong Kong. He successfully defended an ICC arbitration involving claims over US\$1 billion, and he is certified in the International Standards on Auditing (ISA).

Mr. Farrell's financial services litigation work has been recognized by *The Legal 500 U.S.* He has served as volunteer trial counsel for the Los Angeles City Attorneys' Office and as a member of the National Association of Corporate Directors (NACD). He is currently on the board of the Association of Business Trial Lawyers, the Advisory Board for the Journal of Taxation and Regulation of Financial Institutions, and the Legal Aid Foundation of Los Angeles.

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Women Enriching Business (WEB): Our women's initiative promotes business relationships among women and invests in the long-term success of Latham's women lawyers. Since its founding more than a decade ago, WEB has held more than 700 successful events throughout the United States, Europe, the Middle East, and Asia.