

MEDIA TRAINING FOR CRISIS MANAGEMENT SITUATIONS

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PANEL SESSION 401 ACC MUNICH 2007

OUTLINE

- I. **MICROPHONES & CAMERAS**
 - A. IN TIME OF CRISIS, WHAT YOU SAY IS NOT ALWAYS WHAT THE AUDIENCE HEARS
 - B. EVERYONE WANTS TO KNOW - PRESS, TV, AUTHORITIES, PROSECUTORS, JUDGES, PARENTS, FRIENDS OF VICTIMS
 - 1. WHY IT HAPPENED
 - 2. WHY IT WAS NOT AVOIDED
 - 3. WHY IT WAS NOT "BETTER" MANAGED
- II. **THE POWER OF THE MEDIA**
 - A. POWERFUL MICROSCOPES SEARCH FOR THE TRUTH WHICH INEVITABLY WILL UNVEIL
 - B. SHORTFALLS IN THE CONDUCT OF WHO SHOULD HAVE
 - 1. PREVENTED
 - 2. MITIGATED
 - 3. WARNEDWILL BE UNCOVERED
- III. **HOW TO HANDLE THE MEDIA**
 - A. COOPERATION AND FULL INFORMATION, NO MENTAL RESERVATION, NO HALF TRUTHS
 - 1. WINNING TRUMP IS HONESTY
 - 2. OBSTRUCTION IS LOOSER
 - 3. "NO COMMENT" IS UNACCEPTABLE
 - B. SOMEONE ELSE WILL SPEAK AND YOU LOSE OPPORTUNITY TO TELL YOUR STORY
- IV. **NEVER LIE TO THE MEDIA - THE WORST THING TO DO**
 - A. "DISHONESTY IN THE DISSEMINATION OF FACTS" (AL GORE)
- V. **THE ROLE OF THE MEDIA**
 - A. GOOD RELATIONSHIP WITH THE MEDIA HAS BECOME PARAMOUNT
 - B. THE FIRST INFORMATION BY THE MEDIA WILL STAY WITH THE PUBLIC
 - C. IT WILL BE HARD TO CHANGE IT
 - D. THERE IS NO SECOND CHANCE TO MAKE A FIRST IMPRESSION
- VI. **GLOBAL INFORMATION**
 - A. NOTHING CAN BE HIDDEN
 - B. SPEAK UP IMMEDIATELY
 - C. BE CLEAR AND EXHAUSTIVE FROM THE OUTSET
- VII. **SAY WHAT YOU KNOW**
 - A. TO OBTAIN AN ETHICAL RESULT (TRUTH)
 - B. TO USE THE MEDIA AS A POSITIVE INSTRUMENT OF CRISIS MANAGEMENT
- VIII. **THE MESSAGE TO CONVEY**
 - A. WHATEVER THE CRISIS SPOKESMAN SAYS BECOMES A SIGNAL ABOUT
 - 1. HOW HE WILL CONDUCT HIMSELF
 - 2. WHICH QUALITY OF INFORMATION HE IS WILLING AND ABLE TO CONVEY, AND
 - 3. HOW HE UNDERSTANDS THE VALUES OF SOCIETY

- IX. **THE CRISIS COMMUNICATION TEAM**
 - A. SELECT THE COMMUNICATION TEAM MEMBERS
 - B. PREPARE MATERIAL (MANUAL)
 - C. EXPLAIN AND ASSIGN ROLES
 - D. MAINTAIN AWARENESS

- X. **SELECT THE COMMAND POST**
 - A. SMALL TASK FORCE COMPRISING THE FOLLOWING (OR A SELECTION THEREOF)
 - B. HIGH RANKING EXECUTIVE
 - C. MANUFACTURING
 - D. PRODUCTS, RESEARCH
 - E. SALES & MARKETING
 - F. PUBLIC RELATIONS & GOV'T AFFAIRS
 - G. LEGAL, HR

- XI. **HAVE A PLAN**
 - A. OBTAIN BUY-IN OF KEY EXECUTIVES
 - B. BRIEF THE ENTIRE ORGANIZATION
 - C. OBTAIN AUTHORITY & SUPPORT OF CEO

- XII. **PREPARE YOUR MESSAGE**
 - A. GATHER INTELLIGENCE ON PRODUCTS AND SAFETY RECORDS, VALUE TO SOCIETY, NUMBER OF EMPLOYEES
 - B. HANDLING OF PREVIOUS CRISES, VIOLATION OF SAFETY/ENVIRONMENTAL CODES (IF ANY)
 - C. SUPPORT TO THE COMMUNITY
 - D. SUCCESS STORIES

- XIII. **TEAM RESPONSIBILITIES**
 - A. KNOWLEDGE OF CORPORATE FACTS
 - B. DYNAMICS OF EVENT
 - C. PREPARED KEY MESSAGES
 - D. SLIDES, ANIMATION, MOVIES
 - E. AUTHORITY & INTERNAL LINES
 - F. HOW TO HANDLE INQUIRIES
 - G. MAN TELEPHONE STATIONS
 - H. EVALUATE NEED/JUSTIFICATION OF REMOTE SITE COMMAND POSTS

- XIV. **REVIEW THE PUBLICS**
 - A. ENABLING PUBLICS
 - B. AGENCIES
 - C. FUNCTIONAL PUBLICS
 - D. LABOR
 - E. NORMATIVE PUBLICS
 - F. GROUPS, ASSOCIATIONS
 - G. DIFFUSED PUBLICS
 - H. PRESS AND OTHERS

- XV. **SELECT THE PUBLICS**
 - A. FAMILY MEMBERS
 - B. GOVERNMENT/REGULATORY AGENCIES
 - C. BOARD, PLANTS, EMPLOYEES, UNIONS
 - D. COMMUNITY AND CIVIC LEADERS, NEIGHBORS
 - E. CUSTOMERS, CLIENTS
 - F. FINANCIAL PARTNERS, ANALYSTS
 - G. MEDIA

- XVI. **COMMUNICATE WITH PUBLICS**
 - A. NEWS CONFERENCE & PRESS RELEASE, VNRs (VIDEO NEWS RELEASES), TELEVISION

- B. WEB SITE - ELECTRONIC MAIL
 - C. TELEPHONE CALLS, PERSONAL VISITS, INTERVIEWS
 - D. LETTERS, TELEGRAMS, TELEFAXES, MEMOS, NEWSLETTERS
 - E. ADVERTISEMENTS
- XVII. OPPORTUNITY OF RELATIONSHIP WITH THE MEDIA**
- A. BE ACTIVE, TRY TO AVOID BEING REACTIVE, CONTROL YOUR MESSAGES
 - B. TALKING TO THE MEDIA FACILITATES CORRECTING MISINFORMATION
 - C. MEETING WITH THE MEDIA SHOWS CONFIDENCE
 - D. MEDIA IS THE BEST VEHICLE TO CONVEY MESSAGES TO YOUR PUBLICS
- XVIII. IDENTIFY AND HELP MEDIA**
- A. SECURE NAMES AND TELEPHONE NUMBERS (INCLUDING CELLULAR, EVENING AND HOME NUMBERS)
 - B. FIND OUT DEADLINES TO PROVIDE INFORMATION, AND WHEN PUBLICATION/ON-AIR WILL OCCUR
 - C. FIND OUT DESIRED FORMAT OF INFORMATION
 - D. ARRANGE SITE VISITS (IF LEGALLY POSSIBLE)
 - E. PROVIDE PHOTOGRAPHS & VIDEORECORDINGS
 - F. PROVIDE WRITTEN MATERIAL
 - G. CONDUCT PRESENTATIONS
- XIX. TIPS**
- A. USE IMAGERY
 - B. DO NOT COMMENT "OFF THE RECORD"
 - C. DO NOT STONEWALL
 - D. CORRECT UNPRECISE STATEMENTS PUT IN YOUR MOUTH
 - E. DO NOT INTERRUPT QUESTIONS, DO NOT GET ANGRY
 - F. DO NOT SPECULATE
 - G. DO NOT ANSWER LEGAL QUESTIONS (UNLESS YOU ARE A LAWYER, KNOW THE ANSWER, AND PREMATURE DISCLOSURE WILL NOT HURT YOUR LEGAL POSITION)
 - H. LISTEN TO GOOD INTERVIEWS OF OTHERS
- XX. TRACK PUBLIC OPINION**
- A. YOU MUST KNOW HOW WHAT YOU ARE DOING IS PERCEIVED
 - 1. TRACKING TELEPHONE CALLS, KEEPING MAIL LOGS, PRESS LOGS AND CLIPPINGS, TALK SHOWS, CALL-IN OPINIONS
 - a. BUT "AVOID DANCING TO THE TUNE OF THE MEDIA"
 - 2. WATCH OUT FOR (AND CORRECT) MISREPRESENTATIONS
 - 3. TAKE STRAW VOTES, ADJUST PLAN
- XXI. THE SPOKESPERSON**
- A. DOES NOT LIE
 - B. DOES NOT PANIC
 - C. DOES NOT LOSE CONTROL
 - D. DOES NOT TAKE DEFENSIVE POSTURES
 - E. DOES NOT MAKE PROMISES HE/SHE CANNOT MAINTAIN
 - F. DOES FOLLOW UP
 - G. DOES NOT BELIEVE IN "CONFIDENTIAL" STATEMENTS
- XXII. ASSESS AND EVALUATE**
- A. PERCEPTION/IMAGE OF COMPANY
 - B. ANY MISCOMMUNICATION?
 - C. IMMEDIATE NEEDS HANDLED SWIFTLY AND CAPABLY?
 - D. WERE ALL PUBLICS REACHED?
 - E. HOW DID COMMAND POST(S) HANDLE NEEDS?

**EXAMPLES OF EFFECTIVE AND INEFFECTIVE COMMUNICATION IN SITUATIONS WITH
POOR OR NO MEDIA TRAINING**

- XXIII. NO MEDIA TRAINING - THE "TYLENOL" CRISIS - EFFECTIVE OUTCOME**
- A. BEFORE THIS EVENT, J&J THOUGHT THAT IF IT HAD AN EXCELLENT MANAGEMENT TEAM NO ADVANCE TRAINING WAS NEEDED
 - B. COMMUNICATION WAS WELL HANDLED
 - C. JIM BURKE DID NOT AVOID THE MEDIA: HE APPEARED ON TV ("SIXTY MINUTES"), TOLD HIS STORY, & CONQUERED THE AUDIENCE
- XXIV. J&J's INGREDIENTS**
- A. SWIFT ACTION
 - B. CLEAR OBJECTIVES
 - C. HIGH VISIBILITY
 - D. HONESTY
 - E. BASED ON THE CO's "CREED" (CONSUMERS, EMPLOYEES, COMMUNITY, SHAREHOLDERS)
- XXV. GEISMAR LOCK OUT - JUNE 15, 1984 - FEB. 6, 1989 (1220 DAYS)**
- A. UNION, UNABLE TO WIN LABOR DISPUTE IN COURT, RESORTED TO THE MEDIA
 - 1. BASF CHEMICALS. GATEWAY TO CANCER ALLEY
 - 2. BASF: BHOPAL ON THE BAYOU
 - 3. BLACK LIST
 - 4. APARTHEID
 - 5. CO-CONSPIRATORS OF THE THIRD REICH
- XXVI. COORDINATED WORLDWIDE CAMPAIGN AGAINST MULTINATIONAL COMPANY**
- A. WRONG TARGET
 - 1. BASF A DETERMINED COMPANY
 - B. WRONG PLACE
 - 1. OCAW BROUGHT THE U.S. LABOR DISPUTE TO GERMANY
 - C. BASED ON LIES
 - 1. METHYLISOCYANATE (BHOPAL) WAS NOT PRODUCED BY BASF IN GEISMAR
 - 2. SECOND WORLD WAR CYCLON "B" WAS NOT PRODUCED BY BASF
- XXVII. HOW TO CONQUER THE MEDIA - BABY BENZ - EFFECTIVE OUTCOME**
- A. AFTER TILTING AT ELKS, MERCEDES RUSHED A CRISIS PLAN TO RIGHT ITS REPUTATION
 - B. THE NEW BORN BABY BENZ WAS SHOWN TO 450 JOURNALISTS AT THE GOODYEAR TEST TRACK IN MIRÉVAL
 - C. TO OVERCOME IRONIC JOKES, MERCEDES DISTRIBUTED TO ALL PRESENT PIN-UP NEEDLES SHOWING THE ELK
- XXVIII. CERMIS TRAGEDY - FEBRUARY 3, 1998**
- A. THE AMERICAN EA-6B PROWLER WARPLANE SET OFF FROM THE AVIANO NATO MILITARY BASE AT 2 P.M. AT 3.18 P.M. THE SIRENS WAILED IN THE FIEMME VALLEY. THE 3,600 INHABITANTS OF CAVALESE, A SKI RESORT IN THE DOLOMITES, THOUGHT THERE MUST HAVE BEEN A FIRE; THE TRUTH WAS FAR WORSE. THE PLANE, **FLYING EXTREMELY LOW**, HAD PASSED BENEATH A CABLE OF THE CERMIS CABLEWAY, CLIPPING IT WITH ITS TAIL AND CUTTING RIGHT THROUGH IT. THE CABLE CAR FELL 100 METRES AND SMASHED TO THE GROUND. MOST OF THE TWENTY PEOPLE KILLED WERE FOREIGN HOLIDAYMAKERS
- XXIX. INADEQUATE MEDIA TRAINING - THE GENERAL**
- A. GEN. VAN DER LINDEN APPEARING IN ARMY FATIGUE BEFORE THE PRESS STATED THAT
 - 1. THE PROWLER WAS ON THE PRESCRIBED ROUTE AND ALTITUDE

- XXX. DAMAGE THE DAMAGE - THE PILOT**
- A. AT TIME OF IMPACT I FLEW AT THE PRESCRIBED ALTITUDE
 - 1. THE PROWLER WAS FLYING AT A HEIGHT OF 358 FEET (109 METERS), 642 FEET (196 METERS) LOWER THAN THE PRESCRIBED 1,000-FOOT LIMIT, WHEN IT HIT
 - B. U.S. FLYERS USE ONLY AMERICAN MAPS
 - 1. ON U.S. MAPS THE CABLEWAY IS NOT MARKED (SEE ATTACHMENT 1)
 - C. MY ALTIMETER HAD A HISTORY OF MALFUNCTIONING
 - 1. IT DID NOT WORK ON THIS OCCASION (PILOT NOT ALLOWED TO FLY)
- XXXI. A COMMUNICATION DISASTER - THE GENERAL LOST CREDIBILITY**
- A. BECAUSE HE STATED THAT THE U.S. AIRCRAFT WAS ORDERED, ULTIMATELY BY HIM, TO FLY AT 358 FT HEIGHT (FROM THE GROUND) ON A DIRECT COLLISION ROUTE WITH THE CABLEWAY (SEE ATTACHMENT 2)
 - 1. IMPLIEDLY, THE PILOT WAS ORDERED TO KILL TWENTY SKIERS: ON THE "ORDERED" ROUTE AND TRACK, IMPACT WITH CABLEWAY WAS INEVITABLE
 - a. PILOT WAS NOT IN A RESTRICTED MOA
 - b. IT WAS NOT WARTIME, AND NOT COMBAT ZONE
 - c. HE WAS FLYING OVER A "CONGESTED" AREA (SEE, IN USA, ¶91.119 FAR)
- XXXII. A COMMUNICATION DISASTER - MISINFORMATION**
- A. IT IS PHYSICALLY IMPOSSIBLE TO HIT A CABLEWAY WHICH RUNS AT A HEIGHT OF 358 FT WHILE FLYING AT 1,000 FT (OR HIGHER, AS PRESCRIBED)
 - B. IT COULD EASILY BE DETERMINED THAT THE CERMIS CABLEWAY IS MARKED ON U.S. MAPS
- XXXIII. HOW SHOULD IT HAVE BEEN HANDLED**
- A. "A [NAVAL] OFFICER WILL NOT LIE, CHEAT, NOR WILL HE MISLEAD OR DECEIVE ANYONE AS TO KNOWN FACTS, NO MATTER WHAT THE COST TO HIMSELF" (USNA)
- XXXIV. MILITARY JUSTICE - IT WAS NOT A PERSONAL TRAGEDY FOR THE PILOT**
- A. PILOT "NOT GUILTY" BY C.M. CAMP LEJEUNE
 - 1. FLEW AT PRESCRIBED HEIGHT
 - 2. CABLEWAY NOT ON MAP
 - 3. DEFECTIVE ALTIMETER
 - B. WAS CONVICTED, ON PROBATION, FOR HAVING DESTROYED, UPON RETURN TO AVIANO AB, A TAPE ON WHICH THE FLIGHT WAS RECORDED - BEFORE THE AUTHORITIES COULD SEIZE THE TAPE
- XXXV. THE UNITED STATES ALIENATED ITS ALLIES BECAUSE IT WAS PERCEIVED AS CONDONING ILLEGAL CONDUCT**
- XXXVI. NO PLAN IN PLACE - PEPSI COLA - EFFECTIVE OUTCOME**
- A. NEEDLES REPORTED FOUND IN CANS
 - B. CRAIGH WEATHERUP FOUGHT THESE TAMPERING CLAIMS THROUGH PUBLIC RELATIONS PUSH
 - 1. "NIGHTLINE", "THE MACNEIL-LEHRER NEWS HOUR"
 - 2. ANIMATION SHOWING BOTTLING
 - C. PUBLIC SYMPATHIZED WITH GOLIATH
- XXXVII. THREE MILE ISLAND - INEFFECTIVE OUTCOME**
- A. BOTH MetEd AND NRC HAD NO PLAN ON HOW TO COMMUNICATE IN CASE OF A NUCLEAR MISHAP
 - B. BABCOCK & WILSON DID NOT COMMENT
 - C. WILLIAM KUHN (GPU) SUGGESTED THAT JOURNALISTS SHOULD STUDY NUCLEAR PHYSICS
- XXXVIII. LOSING OUT**
- A. JOHN HERBEIN (MetEd)
 - B. "I DON'T KNOW WHY WE NEED TO TELL YOU EACH AND EVERY THING THAT WE DO

SPECIFICALLY” (RESPONDING TO A JOURNALIST’S INQUIRY ABOUT 1,200 MILLIREMS PER HOUR)

- C. THE RIGHT TO COMMUNICATE WAS TAKEN FROM MetEd AND GIVEN TO
 - 1. NRC
 - 2. PA GOVERNOR
 - 3. WHITE HOUSE
- D. MetEd HAD LOST ALL CREDIBILITY

XXXIX. EXXON VALDEZ - INEFFECTIVE COMMUNICATION

- A. THIRD MATE RUN SHIP AGROUND ON BLYTH REEF
- B. SKIMMERS, CONTAINMENT BOOMS, SEA CURTAINS: NOTHING WAS AT HAND
- C. CHEMICAL DISPERSANT COREXIT 9527 WAS AUTHORIZED IN CALIFORNIA, NOT IN ALASKA
 - 1. THOUGH EXXON’S TANKERS REGULARLY SAILED TO AND FROM ALASKA

XL. NEVER DO - FINGER POINTING

- A. USE OF COREXIT DELAYED BY TWO DAYS, STRONG WINDS HAD SPREAD THE SPILL OVER A THOUSAND MILE COAST LINE
- B. LAWRENCE RAWL BLAMED IT ON THE COAST GUARD

XLI. NEVER DO – ALIENATING THE PUBLICS

- A. “ONE OF THE THINGS I FEEL STRONGLY ABOUT - THIS CATCHING HELL FOR TWO DAYS’ DELAY - IS THAT I DON’T THINK WE’VE GOTTEN A FAIR SHAKE. THE BASIC PROBLEM WE RAN INTO WAS THAT WE HAD ENVIRONMENTALISTS ADVISING THE ALASKAN DEPT. OF ENVIRONMENTAL CONSERVATION THAT THE DISPERSANT COULD BE TOXIC. IN FACT, THE DISPERSANT HAS BEEN APPROVED FOR USE IN CALIFORNIA, WHICH IS A DIFFICULT PLACE TO GET THESE THINGS APPROVED, AND IT WAS APPROVED BY THE U.S. EPA” (RAWL)

XLII. NEVER EVER DO – INSULTING THE PUBLICS

- A. “I WOULD ORDER OUR PEOPLE TO SPRAY DISPERSANTS IMMEDIATELY, AND IF THEY’D SAY ‘WE DON’T HAVE PERMISSION’, I’D SAY: FLY THE PLANES, THEY’RE EITHER GOING TO HAVE TO SHOOT YOU DOWN OR GET A COURT INJUNCTION” (STATEMENT MADE BY LEE RAYMOND FIVE MONTHS AFTER THE FACT)

XLIII. NEVER DO – MAKE JOURNALISTS’ LIFE MISERABLE

- A. WHAT EXXON DID: IT PLACED THE COMMAND POST IN VALDEZ

THE U.S. MAP

Lambert Conformal Conic Projection
 Standard Parallels 41°20' and 46°20'
 Convergence factor 0.69491

CAUTION
 AIR INFORMATION CURRENT THROUGH
 14 AUGUST 1992
 Consult NOTAMS and Flight Information
 Publications for the latest air information; the
 DMO Aeronautical Chart Updating Manual or
 MOA (NA) Aeronautical Chart Amendment
 Document for ailer chart revision information.

ISOLINES OF EQUAL MAGNETIC VARIATION FOR 1990
 (Annual Rate of Change - 4' increase easterly)
 5' decrease westerly



STOCK NO. TPCXXF02B



ED. NO. 009

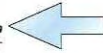
TPC F-2B

AUSTRIA, BOSNIA AND HERZEGOVINA, CRC
 CZECHOSLOVAKIA, FEDERAL REPUBLIC OF
 GERMANY, HUNGARY, ITALY, SERBIA, SLOV
 SCALE 1:500,000

Prepared and published by the Defense Mapping
 Agency Aerospace Center, St. Louis, Missouri.
 Compiled March 1958. Revised March 1992.
 (Revision limited to aeronautical information and
 correction of CHUM conditions.)

Formal to CHUM 010

SERIES TPC
 SHEET F-2B
 EDITION 9



CITY/TOWN CLASSIFICATION
 For importance - 100000
 Special importance - 100000
 Town importance - 10000

LANDMARK FEATURE SYMBOLS

Cable
 Church
 Ferry
 Lighthouse
 Monument
 Parkland belt
 Shipwreck
 Tower
 Well
 Windmill
 Wellhead
 Wellhead

ATTENTION
 THIS CHART OBTAINS MATERIAL
 SELECTED FROM THE
 1:500,000 SERIES (1:500,000)
 The chart contains information on terrain, hydrography, and other features which are not shown on the 1:500,000 series. It is not intended to be used as a substitute for the 1:500,000 series.

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It does not show information on the terrain which is shown on the 1:500,000 series. It is not intended to be used as a substitute for the 1:500,000 series.

AERONAUTICAL INFORMATION

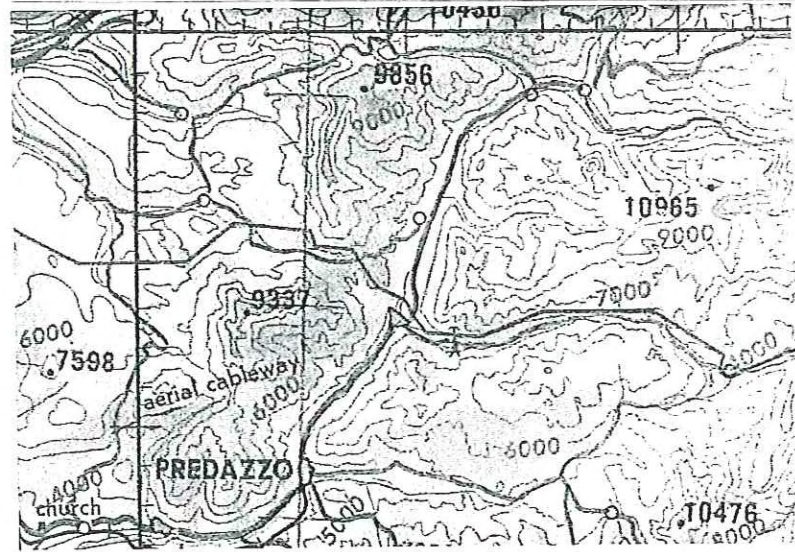
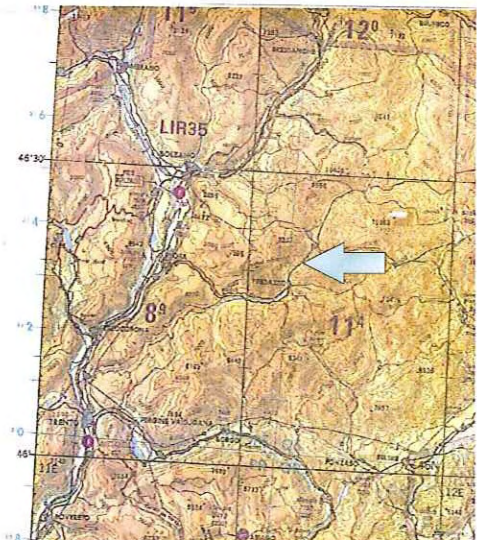
AERODROMES

Major
 Minor
 Major aerodromes portrayed from a hard surface runway length of 2000 feet or more. Other runway surfaces in feet shown. The number following the name indicates length of the longest runway to the nearest hundred feet. Diameter of circle represents 5000 feet.

VERTICAL OBSTRUCTIONS

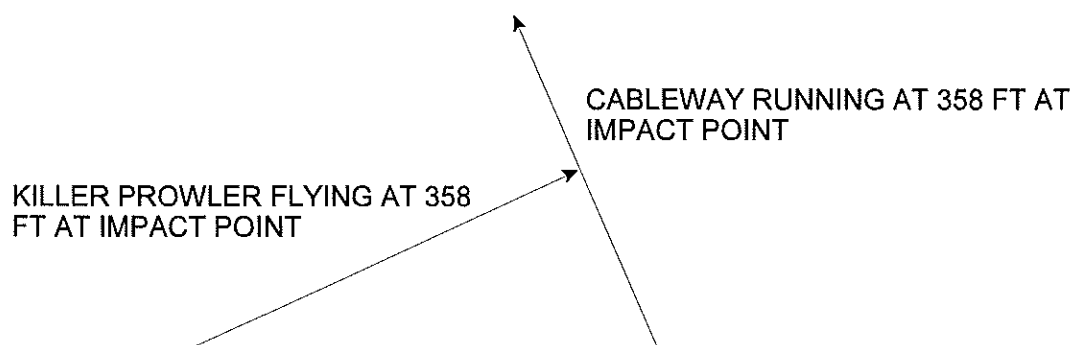
1470
 1475
 1476
 1478
 1479
 1475 - height of top above mean sea level (MSL)
 1476 - height of top above ground level (AGL)

VERTICAL OBSTRUCTIONS SHOWN HAVE BEEN



IMPACT ZONE

VMC



Corporate Crisis: Dealing with the Regulator

CREATING A REGULATORY DEFENSE STRATEGY

Armando J Tirado

General Counsel, LA&C

Tyco International, Ltd.

When the regulators stab you in the back

(extracted from Crisisblogger – posting dated February 10, 2007)

(...) I'm not going to be very specific here but this is a situation faced by a great many companies who are closely regulated by oversight organizations at the state, federal or local level. This could apply to financial regulators, utilities, industry for a variety of things including environmental, even tax issues.

In this situation the **company was bending over backwards to address all the concerns that the regulatory agency was raising**. They knew there was a problem and proactively discussed and brought all the relevant details to the agency representatives attention. **And the agency folks were highly complimentary about the company's cooperativeness, transparency and proactive planning** to address the concerns. But the governor needed to make some hay apparently. Or answer to critics about the toughness of the agency on industry.

So, while the nice talk continued in the conference room, **the agency's communication people went to work crafting a press release designed to make the company look like it wore horns and waved a forked tail**. The word had come down apparently—make us look good by making them look really bad.

There was some cooperative work on the press release, a slight toning down of the hyper aggressive tone and implied name calling, **but by the time it hit the media it was ugly**. What is the company to do? Publicly call out the fact that they have been stabbed in the back by agency folks answering to a higher authority? There is nothing they can do except see all their hard work to be cooperative, to be proactive, to be responsible citizens go for nothing as it relates to their reputation.

Think this can't happen to you? I've seen it over and over and over—with big companies and small companies. And the threat is not you as a company making a mistake—but the politicians who control these agencies looking desperately for any opportunity to make themselves look good at your expense

Stakeholders

<i>Segments</i>	<i>Financial impact</i>	<i>EHS concerns if applicable</i>	<i>Main agenda</i>	<i>Secondary agenda</i>	<i>BCP Action</i>
Public at Large		General agreement with defense of the environment(*)	News item, rage, headlines, scandal	Legacy to future generations	Management of perception – rebuild reputation
Customers	Seek alternative suppliers	Product safety concerns	Loss of trust in our other lines	Continuity of product	Transparency and incentives
Neighbors	Property losses and value	Long-term exposure/stigma	Recurrence	“NIMBY” anymore	Outreach initiatives
Shareholders	Investment value loss		Loss company pride		Reassure markets
Media	Increased sales and additional revenue		Bias of some against big business	Ratings + readers & viewers	Media strategy
Banks	Defaults – risk of foreclosure		Preference for other businesses	Impact on valuation	Reassure analysts
Government	Remediation costs (taxes)	Damage control and cleanup	Nationwide/Intl image	Reelection	Public Affairs strategy
Politicians		Concern if impact on image	Voters vs. job losses	Reelection - local support	Engagement through PAC
Regulators	Amount and nature of fines and penalties	Repair damages and prevent recurrences	State of personal relationships with company	Survival	<u>Regulatory Defense strategy</u>

Before a crisis event

- Before the crisis event, drive the design of a “Regulatory Defense” strategy
- Prepare for the worse
- Accept a future crisis as a certainty
 - Steer your client today towards acting with corporate responsibility
 - Emphasis on compliance with applicable statutory regulations
 - Adopt world class practices and policies, and execute effectively on them
- Document your ongoing compliance efforts
- Always conduct yourself with the utmost integrity and ethics

Before a crisis event (2)

“Know your Regulator”

- Adopt a single point of contact with the regulator and keep a communications log
- Develop a good working relationship with the regulator representatives (all levels)
- Design a Public Affairs plan and make the regulator a part of it
- Educate the regulator about you and your good conduct
- Learn and address the regulator’s concerns
- Participate in the industry association and invite the involvement of the regulator

Before a crisis event (3)

● Welcome “peace time” investigation and enforcement activity

- Don't go as far as inviting audits, but do not resist them
- Negotiate conditions with an amicable approach
- Gather all relevant files and make appropriate resources available to inspectors
- Be careful not to overdo it – be mindful of your company's legal position and interests
- Work with the regulator to address confidentiality issues
- Monitor investigation to predict outcome

The crisis event happens – first steps

- **Execute your BCP (media, public)**
- **BCP must include Regulatory Defense strategy**
 - Types of crisis – different approaches
 - Natural disaster
 - Industrial accident
 - Environment release
 - Media investigation
 - Allegations by customer, employee or competitor
 - Sabotage leading to catastrophic consequences

Regulatory Defense - battlefronts

- **Securities** – press releases and disclosures
- **Criminal charges**
 - Individuals
 - Enforcement Actions by DOJ or equivalent
- **Industry-specific regulatory action**
 - Example: in the event of a environmental discharge in the United States: EPA and state NRC

Best practices in Regulatory Defense

- Before the crisis: prepare a detailed “vulnerability” study
- Include an analysis of your stakeholders – understand their agenda
- Engage your stakeholders before a crisis event takes place
 - Includes not just the regulator, but also the community, consumers, industry, and suppliers
- Practice your response in collaboration with your stakeholders (not in isolation)

Give the regulators and your stakeholders a **sense of confidence** – a crisis event will be handled in a competent, responsible, effective and safe manner **with the interests of the stakeholders in mind.**

Best practices in Regulatory Defense (2)

- **After the crisis event, adopt a “full cooperation” discourse**
 - Gather all pertinent facts for the regulator
 - Prepare an objective analysis of facts and circumstances
 - Provide evidence of compliance to make your mitigation case
 - Do not impair the legal position of the company

Regulatory Defense communications

<p>Public and media</p>	<p>Inform that a crisis event has occurred</p> <p>Provide a brief report on what is known, and what is the company response</p> <p>Anticipate service disruptions / negative impact of the event</p> <p>Provide the different stakeholders with several alternative means to contact the company for further information, and resources for assistance to injured parties</p> <p>Promise an update as soon as additional information is available</p> <p>Follow up</p>
<p>Regulatory authorities</p>	<p>Admit that an event has taken place but do not assume responsibility</p> <p>Express willingness to deal with the event and mitigate damages</p> <p>Warn of significant service disruptions and other negative impact</p> <p>Express desire to negotiate terms of appropriate disclosure with relevant regulators</p> <p>Explain how the authority will be kept informed</p> <p>Explain how the company is communicating with its stakeholders</p> <p>Provide a report of anticipated cost to deal with event</p> <p>Invite the regulator for follow up meetings and a collaborative effort</p> <p>Follow up</p>

Regulatory Defense – role of legal

● **Prior to (and during the crisis),
monitor the environments in which
your company does business**

- Industry environment
- Regulatory environment
- Stockholder issues in your annual meeting
- Edgy business practices (remember Enron?)
- NGOs
- Product issues
- Internal issues

Regulatory Defense – role of legal (2)

- **After the crisis event, assume an active role**
 - Be a part or even coordinate the investigation
 - As a lawyer, you know what matters in making the case for the Regulatory Defense and other fronts
- **Preserve your ability to assert attorney-client privilege regarding all evidence**
- **Be the sole channel of communication with government attorneys**

Regulatory Defense – role of legal (3)

- **Take the lead in preservation of evidence**
- **Witnesses**
- **Ensure key documents are preserved and record retention policies – scheduled destruction is suspended**
- **Split samples or copies for independent testing**
- **Training of employees – legal impact of their activity and statements (e-mail!)**

Regulatory Defense – role of legal (4)

- **Decide on whether to issue a preliminary findings report – careful about disclosing privileged information**
- **Develop litigation strategy**
- **Continue executing regulatory defense strategy**
- **Formulate recommendations for the future – past experience and industry best practices**

Regulatory Defense – Role of Legal (5)

- Prepare the “good compliance record” case
- Compliance as requirement - leniency treatment
- “Unforeseeable – company not to blame”
- We did everything possible to prevent event
- We acted in good faith going above and beyond statutory compliance requirements

Regulatory Defense - resources

- **Crisis expertise (planning and management)**
 - Internal
 - External
- **Consultants (on speed dial)**
 - Seek help – external counsel (but watch the budget)
- **Support functions**
 - Corporate aviation, finance, logistics, etc.

Regulatory Defense – other resources

- **Recruit third party supporters**
 - Independent experts, grass-root networks, think tanks, regulators in other states or countries
- **Counsel with contacts and experience dealing with the regulator**
 - Identify firms with the right expertise prior to the crisis
 - Train them on your company policies regarding integrity and ethical practices

Regulatory Defense - Recommendations

- Better treatment by the regulator if members of RD team have **prior interaction with key individuals within the authority**
- Better approach to the management of the crisis if RD team has **members with cross-disciplinary backgrounds**
- Better analysis and recommendations if RD team has **prior knowledge of subject matter**
- Better response if RD team has **good rapport with third parties**
- Better results if organization has a **prior effective crisis management plan in place**
- Don't let the meetings/calls become a **Gladiator fight**

Regulatory Authority

- **Varying degrees of competency and involvement**
- **Political institution – politics drives their decision-making process**
- **Emotional intelligence issues of the individuals involved**
- **Dealing with the regulator is not a science - its an art**

Regulatory Authority – Policy approach

- Regulatory enforcement policies designed to punish deceit and negligence
- Failure to report is almost as bad as causing the event
- Authority will attribute to the company the intention to circumvent regulations
- Severity of penalty increases

Regulatory Authority – state of mind

- **What the regulator can do vs. what they think they can do**
- **Motivation and incentives**
 - Survival of the bureaucrat
 - Hero of the people
 - Just a technocrat
- **Pressure from all directions**

Regulatory Authority – powers and tactics

- **Statutory power of the regulator**
- **Counsel for the regulator - discovery**
- **Censorship**
- **Meetings / official hearings**
 - Rules
 - Independent representation for employees
 - Physical evidence

Regulatory Authority – media relations

● Regulators may be media savvy

- Examples in the United States: DOJ, SEC, NY State Attorney

● Same considerations when dealing with media apply to dealing with these regulators

- Regulator will use our feedback to craft their own strategy
- Need to manage our media and the regulator's access to media
- Better to cooperate with the regulator and have a joint media strategy

The regulator's POV – an example

- **First response**
- **Receive company incident report**
- **Document the incident**
 - What, when, how (cause)
 - Ongoing
 - Casualties
 - Level of threat to nearby communities
 - Company's BCP and progress of plan
 - Recommendations for future action

The regulator's POV – an example (2)

● Investigation phase

- Review incident details – verify company info
- Determine root causes and conditions
- Produce final incident report with evaluation of company policies, execution and response
- Formulate recommendations to mitigate or repair damages and prevent future occurrences
- Recommend sanctions

The regulator's POV – an example (3)

- **Special incident /violation report**
 - Depends on procedure established by agency
 - Serves as basis for enforcement action
 - Describes facts and is basis of government's case
 - Work closely with regulator to ensure fair and balanced treatment of fact and company conduct in the report

The regulator's POV – an example (4)

● Monitor company response to incident

- Review and approve remediation plan
- Evaluate cleanup targets and monitor compliance levels
- Perform field tests to evaluate nature and extent of damage
- Request periodic reports from the company

Enforcement actions

● Principle of “progressive enforcement”

● Basis:

- Violations are usually product of misinterpretation of regulations
- Unintentional acts should be treated with leniency
- Willful disregard of regulations, recommendations, best practices are serious breaches of trust and deserve swift punishment

Enforcement actions (2)

● Progressive enforcement - sanctions

● Options:

- Notices/citations/administrative orders
- Penalties
- Suspension of activities
 - Suspension of right to do business with government
- Revocation of license to operate or conduct business
- Forfeiture of assets
- Prison

Enforcement actions (3)

● Sanctions – factors taken into account by the regulator:

- Record of compliance
- Disregard to prior warnings
- Deliberate intent to circumvent regulatory requirements
 - Maintenance failures/substandard equipment
 - Unsafe operations/ improper measures to prevent contamination
 - Evidence of previous incidents not reported
- Extent of damages caused by the event