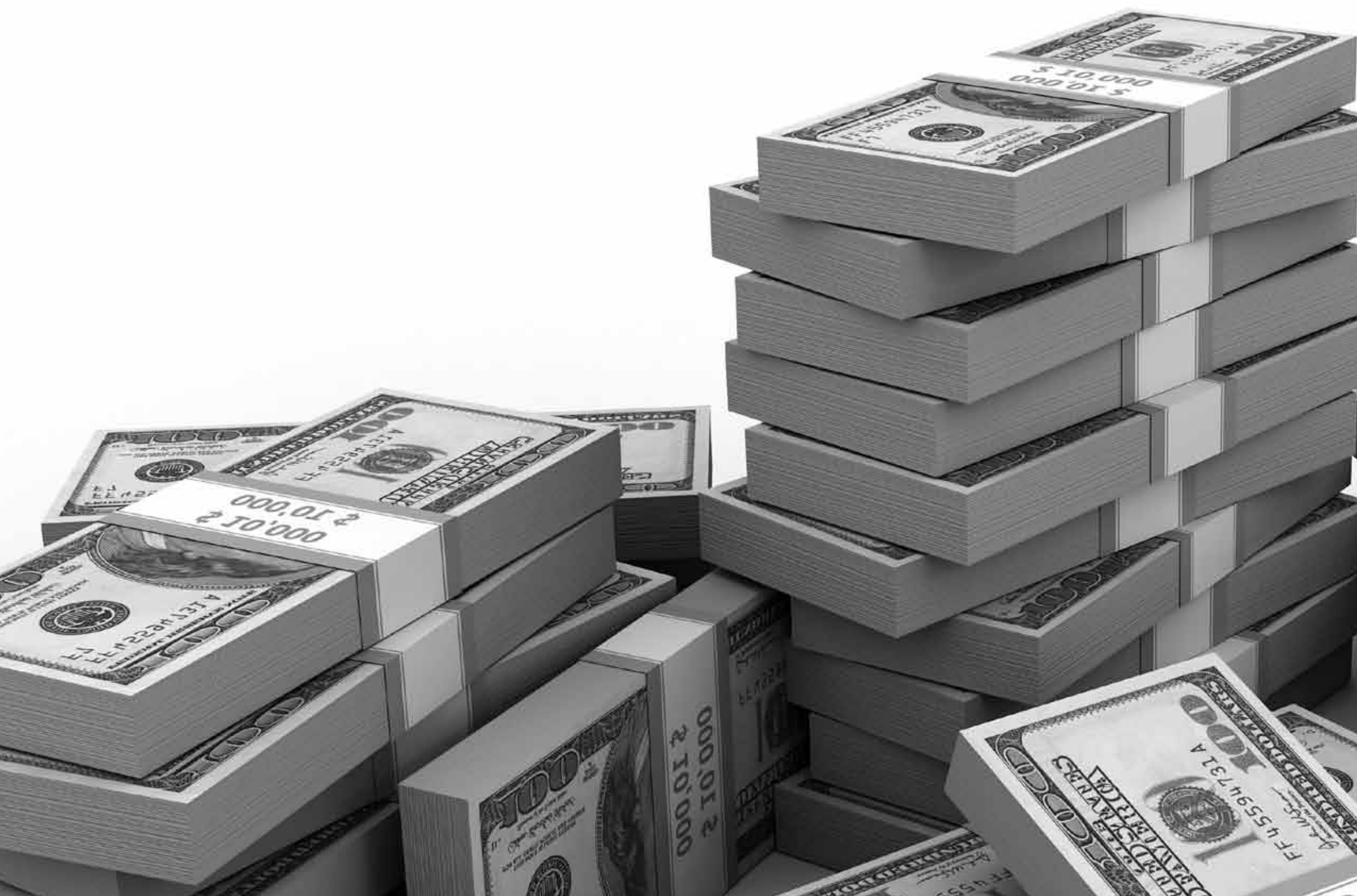
LEVICK
Weekly
MARCH 1, 2013
EDITION 29

THE LIBOR SCANDAL

Prosecutors Have a New Plan



COVER IMAGE: The Libor scandal is a series of fraudulent actions connected to the Libor (London Interbank Offered Rate) and also the resulting investigation and reaction. The Libor is an average interest rate calculated through submissions of interest rates by major banks in London. The scandal arose when it was discovered that banks were falsely inflating or deflating their rates so as to profit from trades, or to give the impression that they were more creditworthy than they were. Libor underpins approximately $350 trillion in derivatives. It is controlled by the British Bankers' Association (BBA)

03 Contents

04 **THE FOOD SAFETY MODERNIZATION ACT**
with Joseph Levitt

06 **THE LIBOR SCANDAL**
Prosecutors Have a New Plan

10 **FOOD SAFETY COMPLIANCE**
A Hogan Lovells Roundtable

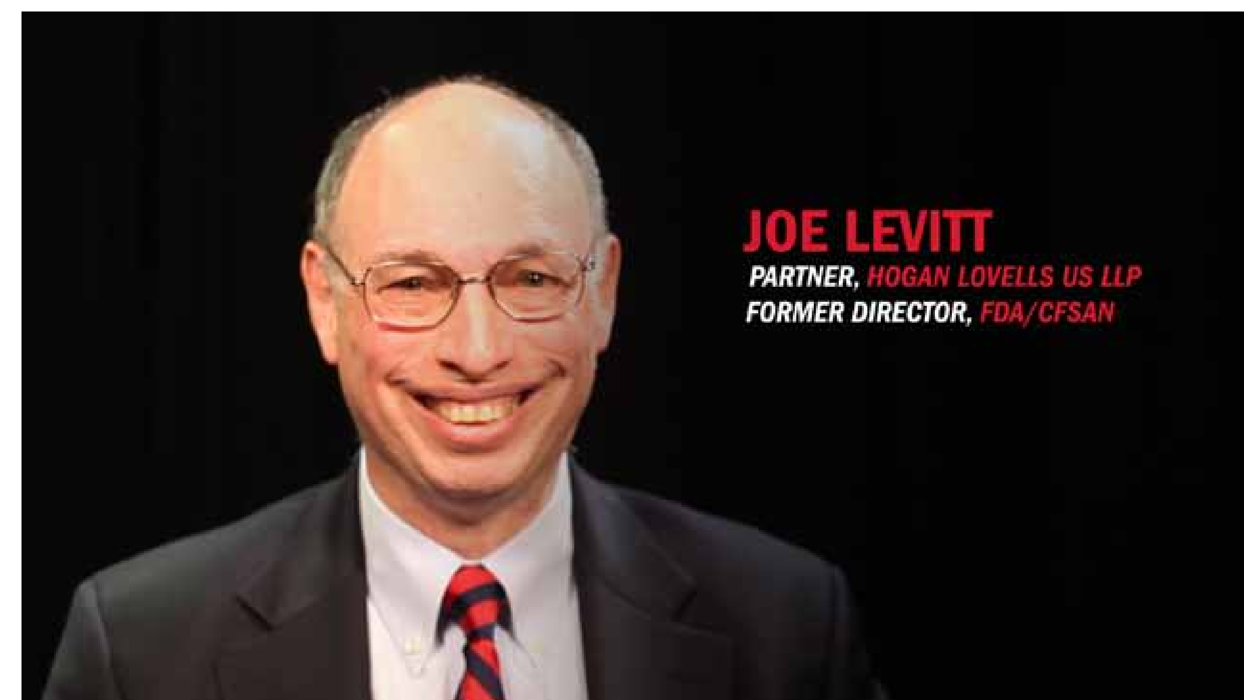
12 **LESSONS**
from the Oldest CEO Succession Plan on Record

15 **BLOGS**
Worth Following

16 **LEVICK**
In the News

THE FOOD SAFETY MODERNIZATION ACT

with Joseph Levitt



In this LEVICK Daily video interview, we discuss implementation of the Food Safety Modernization Act (FSMA) with Joseph Levitt, a Partner at Hogan Lovells US LLP and former director of the U.S. Food and Drug Administration (FDA) Center for Food Safety and Applied Nutrition. Under the new law, FDA inspectors are empowered to probe deeper into food company safety programs to ensure total compliance. It's a level of scrutiny that food companies have never faced before—and one that will require them to think carefully about how they carry out and document their safety efforts.

LEVICK

COMMUNICATING TRUST

The LIBOR Scandal

Prosecutors Have a New Plan

Richard S. Levick

Originally Published on Forbes.com

For prosecutors, the quandary is inescapable. If they do not aggressively enforce laws and regulations governing financial institutions, they endanger the entire system. If they do aggressively enforce those laws, they...well, endanger the entire system.

The Department of Justice has now sought a middle ground, a way to more loudly affirm the rule of law without threatening to put the lawbreakers, on whose survival the economy depends, out of business. On the one hand, it is a more aggressive position because the government wants guilty pleas in interest rate manipulation cases rather than just fines and penalties. The public and the perps themselves may well be inured to those fines, however gargantuan, especially when they're paid out of corporate kitties.

The intent is to create a stronger deterrence mechanism (and feed a few political appetites in the process). But to balance the strategy, and protect those ostensibly too big to fail, the government has targeted only subsidiaries, and thus far only foreign subsidiaries. In the past, guilty pleas were deemed too perilous as parent institutions could face loss of license, endangering the organizational props on which financial stability depends. HSBC in its money-laundering mess is a prime example where prosecutorial discretion was determined the better part of economic valor.

While LIBOR-type cases have been the focus so far, there are expectations that a successful

beta test involving purported rate manipulation by UBS and Royal Bank of Scotland – as well as ongoing inquiries regarding Citigroup and JPMorgan Chase—will lead to broader application in the future. In the UBS and RBS cases, Japanese subsidiaries pleaded guilty to felony wire fraud. Deutsche Bank is expected to settle its own case later this year. The Citigroup and JPMorgan Chase targets are also reportedly Japanese but, you'll note, none of the institutions that have already resolved their manipulation cases are U.S.-based.

If I were Lanny Breuer, the departing head of the DOJ's criminal division, I'd point to reports that several big banks are being urged by their counselors to fire suspect employees as evidence of the initial success and overall wisdom of the strategy.

In fact, as to public perception, the strategy does very much need to be defended against critics on both sides, some of whom think it's overreaching while many others dismiss it as only the latest example of public sector pusillanimity if not impotence. Even a disinterested messenger was greeted skeptically when an essentially balanced New York Times report was described elsewhere in the media as "curiously credulous."

The concern among such scoffers is that guilty pleas without jail terms are meaningless. It's a view carefully echoed by professionals in both the public and private sectors. "I see nothing wrong with recognizing that saddling parent companies with guilty pleas could have potentially disastrous collateral consequences, and that targeting subsidiaries is a reasonable alternative," says Robertson Park, a shareholder at Murphy & McGonigle, P.C., formerly Assistant Chief in the DOJ's Fraud Section Criminal Division and a key member of the supervisory team responsible for securing the global settlement in the Barclays LIBOR investigation.

"However, if at the end of the day, no individual is called to serious account, very little will have been achieved other than a modest ramping up of consequences for the institution," adds Park.

The fact that a Japanese regulator reassured UBS ahead of time that its subsidiary would not lose its license is widely cited as an example of the essential frailty of this new regime. It's also not lost on anyone that the Japanese units that were prosecuted have only limited ties to their U.S. parents. Time will tell if the Citigroup and JPMorgan Chase cases dispel perceptions that, in this purported prosecutorial sea change, the DOJ is stepping somewhat gingerly around the home-grown financial behemoths.

A couple of unsettling considerations arise in any event.

First, what will be the marketplace impact of a guilty plea by a subsidiary of an American bank? Or by the U.S. subsidiary of any financial institution? We assume such a scenario is inevitable unless the government confines itself only to businesses in foreign climes, which would be preposterous, sending the worst possible message to potential miscreants stateside.

Second, once the economy goes into the next boom cycle, the financial institutions could be at greater risk simply because the concern among prosecutors over jobs and financial stability will be proportionately less acute. Nor will pressures on them to spare the rod be so compelling at that point. The guilty plea cudgel might then be used all the more aggressively within the United States itself.

As these and other variables come into play, the financial institutions must naturally evolve their own strategies in response. For starters, the pressures on prosecutors to be overly aggressive are public pressures, vox populi filtered through elected and appointed officials. As such, they can be significantly leavened by unremitted efforts to remind consumers and investors what banks really exist to accomplish and what they do still accomplish: get small businesses off the ground, create opportunities to own homes and cars, finance education. Absent that narrative, it is ever so much harder for the government to be anything else but a natural adversary.

The overriding goal is to give prosecutors cover in the court of public opinion so that, by being fair, they won't look weak. In that context, it's useful to remember that Lanny Breuer is a pioneering foreign bribery case veteran. Many of the same dynamics are transferable. On the one hand, as Robertson Park advises, the targeting of subsidiaries in the LIBOR cases has substantial precedent in prior FCPA matters. Moreover, the same best practices seized on by businesses to survive the harsh FCPA regime are directly applicable here too: voluntary compliance initiatives and new internal training resources at every wholly-owned subsidiary.

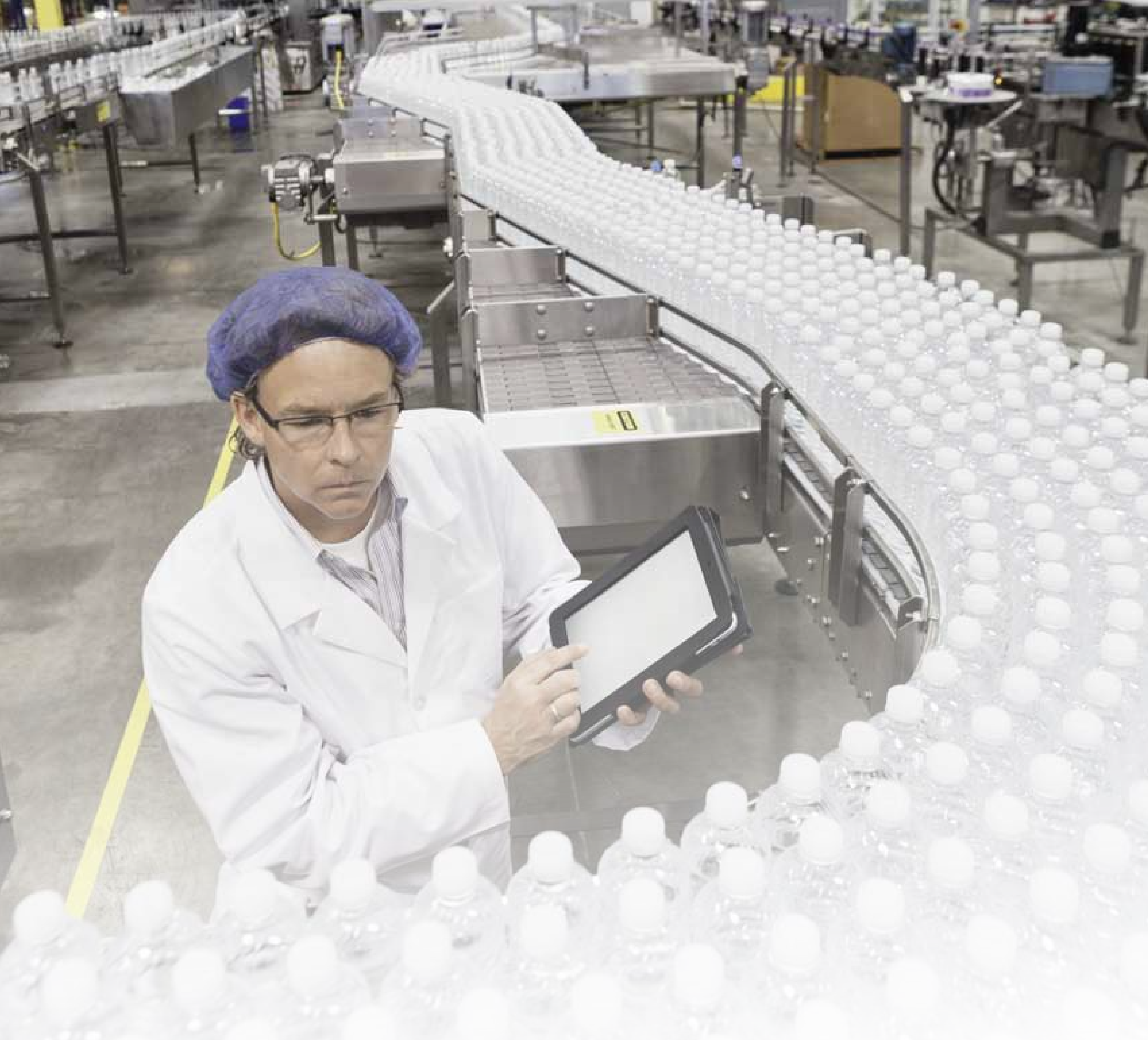
As with FCPA, such voluntarism shows maximum institutional commitment and can thereby serve to soften whatever prosecutorial blows the government may need to deliver. Park, a member of the DOJ's trial team in the groundbreaking FCPA prosecution of Frederic Bourke, sees a very natural transition. "LIBOR marks the current chapter in a narrative that began with the defense industry in the 1980s and continued recently with FCPA and anti-money laundering. It's all about the recognition of compliance as an essential investment in doing business the right way."

To navigate the new prosecutorial shoals, sacrifices must be made. Financial institutions are likely well-advised to err on the side of firing people whose activities are not defensible. Those aforementioned internal programs can be designed to also include fair warning that non-compliance is likelier than ever to result in prison terms.

Jail time for individual offenders, not just guilty pleas, might well serve the best reputational interests of the financial industry as well as the government. "Talk to senior executives throughout the financial industry, and they'll acknowledge just how much they too want to see the cancer isolated and excised," says Park.

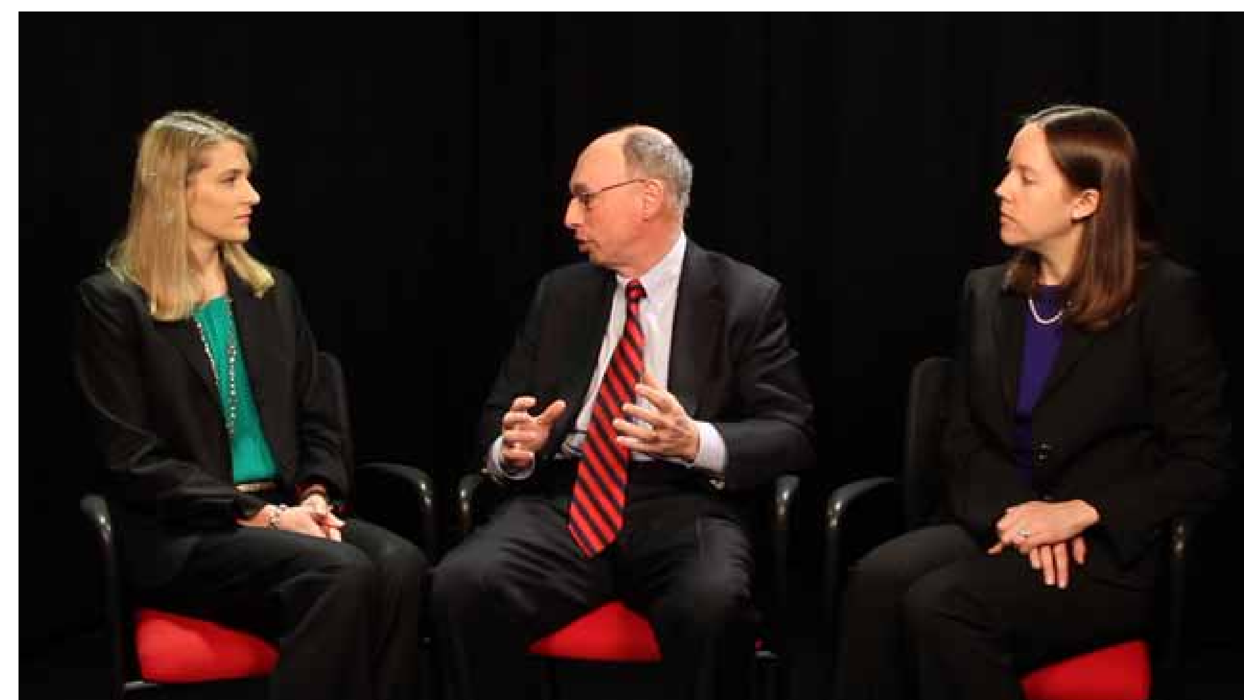
After all, both sides have a common overriding goal here. Lord help us if they don't. L

Richard S. Levick, Esq., President and CEO of LEVICK, represents countries and companies in the highest-stakes global communications matters—from the Wall Street crisis and the Gulf oil spill to Guantanamo Bay and the Catholic Church.



Food Safety Compliance

A Hogan Lovells Roundtable



In this LEVICK Daily video roundtable, we join members of the food law team at Hogan Lovells US LLP for an examination of the ways the Food Safety Modernization Act (FSMA) will erect new compliance hurdles for food manufacturers and retailers. Associate Elizabeth Fawell, Associate Maile Hermida, and Partner Joseph Levitt—a former director of the U.S. Food and Drug Administration (FDA) Center for Food Safety and Applied Nutrition—discuss a number of significant issues including: shifting the safety focus from reaction to prevention; new record-keeping standards; and ratcheted-up FDA enforcement efforts that could include penalties as harsh as registration suspensions that essentially pull a company's license to make food.

Lessons
— from the —
Oldest CEO Succession Plan on Record

Gene Grabowski & Ryan Stanton

Originally Published on LEVICK Daily

No matter what you think of the Catholic Church or Pope Benedict XVI's recent resignation, it's hard to deny the myriad business lessons layered within the papal succession process. No other leadership transition presents as many examples to emulate or missteps to avoid. History, legacy, and tradition may set the Vatican apart in some instances; but the challenges and opportunities it confronts when selecting a new pontiff are no less insightful to corporations, non-profits, and other organizations that must replace departing leaders.

Foremost among the examples to emulate is a succession plan with a clearly defined process. The vast majority of Church stakeholders know precisely what to expect and that level of familiarity breeds faith and confidence in the result. There are no procedural surprises or uncertainty.

The lesson: have a succession plan in place and be willing to share its strictures with the organization's constituencies. When stakeholders trust the succession process, they are all the more likely to trust the successor.

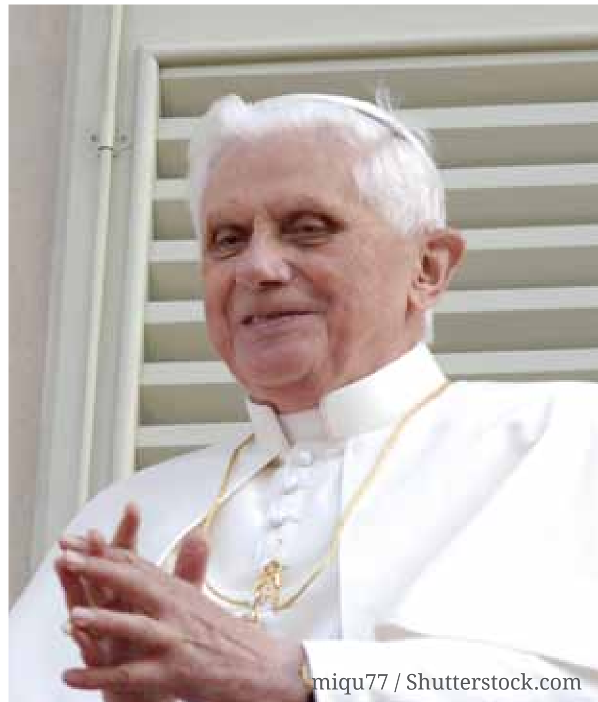
Next, there is the Vatican's understanding that leadership succession is an inherently communicative exercise. It speaks volumes about the future of an organization and its brand—and it does so when stakeholder attention and scrutiny reach an apex. They don't come around often, but when they do, the Church leverages these opportunities to establish compelling narratives about what the world can expect from the new Papal regime.

The lesson: understand what the selection of a new leader needs to say about your organization and articulate that message far and wide. There is no better opportunity to communicate your vision and values to the marketplace.

Leading the list of missteps to avoid is the secrecy with which the College of Cardinals elects a new Pope. Here, the Vatican enjoys such levels of reverence and trust among the faithful that a closed-door process is tolerated. In the age of transparency, few other institutions enjoy the same privilege. Whether the organization in question is a manufacturer of brand name products, a Wall Street bank, or a tech start-up, stakeholders will want to know all factors influencing the succession.

The lesson: be prepared to discuss every element of the selection process—from the candidates' qualifications to how compensation decisions were reached. Especially for publicly traded companies, an open process cements the perception that there is nothing to hide—and that the organization is fully confident that it made the best possible choice.

Finally, there is the question of stakeholder engagement. Here again, the Vatican falls short of best practices as there seems to be little to no input from anyone outside the College of Cardinals. And here again, tradition provides the Church some modicum of cover. What every other organization needs to understand is that stakeholder engagement breeds the perception that succession decisions were made collectively; rather than handed down from those on high.



miqu77 / Shutterstock.com

The lesson: bring as many stakeholders as possible into the fold. When all key parties are involved in the process; they not only share a sense of ownership in the decision; they have a real stake in seeing the successor succeed.

All too often, organizations fail to adequately plan for succession at the top. With the oldest succession plan in recorded history now going into effect, now is the time to ensure that they don't get caught flat-footed with the inevitable occurs.

After all, nothing lasts forever—not even a papal tenure. L

Gene Grabowski is an Executive Vice President at LEVICK and a contributing author to LEVICK Daily.

Ryan Stanton is a Director at LEVICK and a contributing author to LEVICK Daily.

BLOGS *worth following*

THOUGHT LEADERS

Amber Naslund
brasstackthinking.com
Amber Naslund is a coauthor of The Now Revolution. The book discusses the impact of the social web and how businesses need to "adapt to the new era of instantaneous business."

Brian Halligan
hubspot.com/company/management/brian-halligan
HubSpot CEO and Founder.

Chris Brogan
chrisbrogan.com
Chris Brogan is an American author, journalist, marketing consultant, and frequent speaker about social media marketing.

David Meerman Scott
davidmeermanscott.com
David Meerman Scott is an American online marketing strategist, and author of several books on marketing, most notably The New Rules of Marketing and PR with over 250,000 copies in print in more than 25 languages.

Guy Kawasaki
guykawasaki.com
Guy Kawasaki is a Silicon Valley venture capitalist, bestselling author, and Apple Fellow. He was one of the Apple employees originally responsible for marketing the Macintosh in 1984.

Jay Baer
jaybaer.com
Jay Baer is coauthor of, "The Now Revolution: 7 Shifts to Make Your Business Faster, Smarter and More Social."

Rachel Botsman
rachelbotsman.com
Rachel Botsman is a social innovator who writes, consults and speaks on the power of collaboration and sharing through network technologies.

Seth Godin
sethgodin.typepad.com
Seth Godin is an American entrepreneur, author and public speaker. Godin popularized the topic of permission marketing.

INDUSTRY BLOGS

Holmes Report
holmesreport.com
A source of news, knowledge, and career information for public relations professionals.

NACD Blog
blog.nacdonline.org
The National Association of Corporate Directors (NACD) blog provides insight on corporate governanceand leading board practices.

PR Week
prweekus.com
PRWeek is a vital part of the PR and communications industries in the US, providing timely news, reviews, profiles, techniques, and ground-breaking research.

PR Daily News
prdaily.com
PR Daily provides public relations professionals, social media specialists and marketing communicators with a daily news feed.

BUSINESS RELATED

FastCompany
fastcompany.com
Fast Company is the world's leading progressive business media brand, with a unique editorial focus on business, design, and technology.

Forbes
forbes.com
Forbes is a leading source for reliable business news and financial information for the Worlds business leaders.

Mashable
mashable.com
Social Media news blog covering cool new websites and social networks.

LEVICK IN THE NEWS

ARTICLES

PR Daily | FEBRUARY 28, 2013
Did The Onion Tarnish its Brand with C-word Tweet?

Chicago Sun-Times | FEBRUARY 28, 2013
Groupon Founder, CEO Andrew Mason says 'I was Fired Today'

ProfNet | FEBRUARY 27, 2013
The Q&A Team: Dealing With Negative Comments on a Company's Social Media Accounts

CNN Money | FEBRUARY 26, 2013
How IKEA can get Back on the Horse After a Meat Scandal

Fast Company | FEBRUARY 25, 2013
What Your Email Says About Your Brand

THE URGENCY
OF NOW.