

PROSECUTION:
WHY
PREPARE

FOOD
FOR
THOUGHT

DEEP VALUE ADVISORS

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Food for Thought: Pretrial detention; dawn raids; interrogations – why prepare?

Arrest, interrogation, search and seizure inevitably cause a state of shock. Individuals and organizations feel helpless and are likely to make mistakes. Initial mistakes can rarely be cured. Preparation limits the impact on the individual and his family, as well as on the company and its stakeholders. Being prepared is reassuring and helps to cope with an ongoing state of uncertainty. This holds true for supporters who in order to remain loyal need to be convinced that the individual will always act rational under all circumstances even though they cannot actually know. **What, if... is replaced by if-then: If A, routine B kicks in.** *Without preparation, how would you have responded to the following real-life situations?*

- (1) If approached by the police, don't run. If you do, they will do, too. The police wanted to talk to a CEO in connection with a suspected subsidy fraud possibly involving the company. He was not yet accused of anything, and technically not even a suspect. His wife let the officers in. The CEO panicked, locked himself into the toilet and started to flush documents. The police did not have a choice but to break the door and arrest him. He spent six months in pretrial detention and was eventually convicted. **If you look guilty, you are. Once arrested, conviction is likely.** The system will find a suitable offense. Well, not always; nine years later, he was fully acquitted. *Do you look guilty? Do you behave suspiciously in any way?*
- (2) The prosecutor felt that the COO of a waste management company was guilty of mafia-like environmental crimes and could use some serious spanking. Evidence was not sufficient to justify a criminal verdict (or an administrative fine). So he got a judge to arrest the COO on December 21 as a flight risk and for danger of suppression of evidence. He then mentioned to the COO that around that time of the year things could take quite long unfortunately but if the COO was lucky enough to secure a deal, he could be back home for Christmas and nobody would need to learn. The COO **backed down after two days and confessed** as requested, and he was released in time. He paid the pre-agreed fine. Later in January, the competent environmental authority informally demanded a management change because management lacked personal dependability; technically it was right and the COO had to resign. It did not take long for the reason to transpire. *>How much do you like being at home for Christmas?*
- (3) A local government was stuck in a law suit against a company. Out of the blue, two local company representatives were arrested because they had allegedly given false testimony in another, unrelated trial. One was released immediately because of an obvious error. The other was held in arrest by a lower court for the risk of her absconding: In the same multi-party house there lived a foreigner, whom she had admitted to know by sight – he could in the court's view have helped her flee the country, leaving her elderly parents back. Several times she was told that her parents were without care, that the company was making her a scapegoat and that she would never again see daylight without full confession of all allegations against her employer. She was released only upon second appeal after having spent several weeks in hell, where she **almost had tried to commit suicide.** The appeal court stated that there had obviously never been any legal reason for her arrest. *How much can you take? Your supporters?*

- (4) The state prosecutor approached the doorman of a large bank: “You bring me to the CFOs office within three minutes. If it takes me longer or if you alert anyone, I will wait in the lobby for the riot police to arrive. The bank may destroy evidence in the meantime, I don’t care because in one hour there will be **two hundred officers in here, and with them will be twenty journalists**. Now pick your poison.” *How would you have reacted? Your employees?*
- (5) In the CFO’s safe, the prosecutor found a legal opinion issued by a then big five accounting firm according to which the bank’s past practice of assisting clients in tax avoidance constituted a criminal assistance to tax evasion. The proverbial smoking gun, because the bank had not discontinued its practice. Surely a lucky punch, the event was nevertheless the turning point for the famous “Luxembourg” investigations/bank raid cases. State prosecutors **know what they do**; it is their job, they know from experience however unusual the event may be for the individual concerned. An EU DG Competition official once observed that when searching in-house legal departments in competition cases, the most interesting documents were typically found on the window sill. *What do you have in your safe? On your window sills?*
- (6) A company was performing an internal investigation following rumors about unethical practices. A consulting firm was retained to leave no stone unturned. They found numerous breaches of compliance rules and procedures, as well as several severe breaches of law. The state prosecutor waited for the consultants to do their work and then tapped the results, in three consecutive raids. He had managed to install two “**inside men**,” one it turned out he had successfully **intimidated**. The other had actually **volunteered** out of a psychological reflex to obey authority. Based on the consultants’ work, the prosecutor had an excellent picture of who did and who knew what and when and of available evidence. He seized the documents that hurt most. He summoned those employees for questioning who had no right to refuse testimony. Fruits of the poisonous tree were later introduced by way of a detailed, anonymous criminal complaint. *In your company, who knows what; and how is this knowledge protected?*
- (7) Smartphone producers can identify users through the way they walk. Phones can be used for spying unless the battery is turned out. **No communication is safe**. Systems can be hacked. Microphones can listen into rooms, and cameras read from screens from the distance. Electronic signals can be read from vibrations of a window. *Are you aware? Your people?*
- (8) A manager’s private home was subject to a search in connection with alleged insider trading. The police entered the house at six in the morning and woke up his wife and children. They did not know that their suspect did not sleep at home during the week. Police officers were very considerate but when his then pregnant wife **lost her baby** shortly thereafter, she could not help herself but accuse him of being responsible for the tragic loss. She insisted that he quit his job and the family moved to another place. In school, his children had always been envied because the family lived in the biggest house. They had enjoyed being the rich kids, but only until their classmates started to claim that their **father was a thief and their money stolen**. The criminal proceedings were abandoned for lack of suspicion after four years of pending investigations. *You have already thought of your family; what have you done to protect it?*