

Making the Case for Ethical Leadership

In an article published in the June issue of ACC Docket, entitled “*Playing the Cards You’re Dealt*”, James Nortz raised the interesting issue of the lack of company leadership to “create an ethical vision, the moral courage to pursue that vision and the ability to effectively communicate the vision to others.” I think that most of us will recognize ‘Tone at the Top’ as a key component of any successful compliance program. It is certainly recognized by the Department of Justice (DOJ) in its *best practices* for a Foreign Corrupt Practices Act (FCPA) Compliance Program. Nortz propounds that a “root cause” for many compliance failures is that management is not fully committed to a strong ethical culture. He noted that according to the “Ethics Resource Center’s 2009 National Business Ethics Survey, only 18 percent of US corporations have a strong ethical culture.”

He posed the question of what can you do as a Law or Compliance Department member to facilitate the creation, implementation and sustainment of a strong ethical culture, where such initiative is not found in the company leadership, and play with the weak compliance hand you may have been initially dealt. He laid out four steps to think through this process.

1. *Engage in the research and study necessary to develop a clear and realistic vision of what “good” or, better yet, “great” would look like for your firm.* This vision can be developed by tapping into the vast body of literature on compliance and ethics. An additional resource is to reach out to other legal/compliance professionals who are usually very willing to share the experiences of their companies.
2. *Plan your internal marketing efforts carefully.* My colleague Howard Sklar often talks about the internal sales efforts that a compliance officer must make to obtain additional funding for compliance programs. Here your challenge may be greater as you are marketing a new concept or program. According to Nortz, “you must identify, and be able to articulate, concrete benefits your company will realize as a consequence of investing time and money in pursuing your vision.” This should translate into the following business concepts: enhancement of your company’s reputation, a lowering of conduct which may violate anti-corruption proscriptions, improvement of workforce engagement and productivity, lowering of overall enterprise risks, all of which will lead to a measurable return to the bottom line.
3. *Develop a strong game plan.* Nortz suggests using three questions based on Machiavelli’s “The Prince”. They are: (1) Have I done all I can to secure my position and the strength and stability of my organization? By this he means that “if you have no power or influence over others, you have no chance of affecting organizational change. (2) Have I thought creatively and imaginatively about my organization’s role in society and its relationship to its stakeholders? This requires that your vision for a compliance and ethics program must be attuned to your company’s overall mission. (3) Should I play the lion or the fox? Nortz believes that this necessitates fluidity in your approach, strong as lion at times and wily like my four-legged brethren when need be.

4. *Think long term.* This means you must consider something beyond, weeks, months or the next quarter. The transformation of a corporate culture takes time. This may be truer if this change comes from the legal/compliance department rather than the Chief Executive Officer (CEO). Even if you can obtain CEO buy-in and leadership, you may likely be the driving force, do not be discouraged as no one among us has attached perfection in this area.

Nortz ends by noting that taking on the challenge of helping your leaders develop the skills necessary to build and sustain a strong ethical culture is not an easy task. He believes that such “work requires unrelenting determination, extraordinary shrewdness and guts.” However, the results can be well worth it. He has laid out several steps that you can incorporate into your overall compliance strategy, whether or not you are seeking to implement an initial compliance program or enhance an existing program. I would recommend that you consider some or all of the steps that he has proposed and to “play the cards you’ve been dealt as best you can.”

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