

Preet Bharara on the Principles of Ethics, Integrity and Corporate Culture

At the recent Compliance Week 2011 Conference one of the Key Note Speakers was Preet Bharara, United States Attorney for the Southern District of New York. His topic was the general principles of ethics, integrity and corporate culture. I found his remarks very appropriate for the compliance professional in evaluating a company's overall compliance program.

He began his talk by discussing corporate culture. Some of the most egregious conduct, which violated the Foreign Corrupt Practices Act (FCPA), has come from companies with robust compliance programs. Many of these companies have had criminal conduct at all levels of the corporate hierarchy. He pointed to recent Deferred Prosecution Agreements (DPA's) entered into by Alcatel-Lucent and Johnson & Johnson. This signaled to him that corporate culture did not meet the goals stated in the compliance programs.

He stated that corporate culture is not, in and of itself, dispositive, but one thing he has observed is that if a company has a culture of what he termed "minimalism"; it may well put itself in a very negative position. Preet urged that companies stop to see how close they could come to getting up to the very line separating ethical from non-ethical behavior. Rather they should aspire to "more than the minimum" because aspiring to the minimum is a recipe for disaster.

He said the return from a such an overall program, of doing more than simply the minimum, would return dividends if a company finds itself in a FCPA investigation because a prosecutor can recognize the difference is such a company attitude. Additionally if you are close to the ethical dividing line, it may be very easy to step over this line so a company should consider that it might step over the line without intending to do so, if it always does business right at the line between ethical and non-ethical corporate behavior.

Preet said that an ethical component should guide a company's business actions. Not only will this return dividends with prosecutors if a company is caught up in a FCPA charge, it will also help a company in the market place. This is because there need not be a specific charge brought against a company. Entire industries can be caught up in a FCPA investigation. Moreover, if your company is so fragile that one subpoena directed to it will destroy the business; your company needs to be well back from the ethical line. In other words, your company should be even more careful about staying away from the ethical line.

Preet views integrity as the most important characteristic of a leader. He emphasized that a leader must be ready to do more than simply talk about it, he must be willing to emphasize it. He used the phrase that each company leader must "daily put on the drumbeat for integrity." But after this most important characteristic, the true test of a leader is whether he or she adds value. This is equally true in the ethics arena. Preet argued that ethically run companies are more profitable.

Preet had some interesting comments regarding the role of Human Resources in general and a company's hiring process in general. He said that specific questions about ethics and integrity be

incorporated into a company's interview process. He did not mean the simple asking of questions where a right or wrong answer was patently clear. He suggested that a company delve into a candidate's decision making process for complex ethical scenarios. In addition to the interview process, a similar rigorousness should be incorporated into internal evaluations of employees. He pointed out that the enablers in a company are really people that are ticking ethical time bombs and that at some point they will make a misstep that could cost the company sorely.

In what I found to be very pointed remarks to my legal profession, Preet said that there is a material difference between being a good lawyer and a great lawyer. He said that a good lawyer can learn, even memorize the rules; however, a great lawyer can help a client understand that in the compliance and ethics arena. It makes better ethics and legal sense not to step as close as you can to the rules. A company can be more profitable and much better run if it steps back and operates ethically.

Preet's talk was very informative. It certainly gave this compliance practitioner some very concrete ideas on how to advise clients to stay out of FCPA trouble and if they do find themselves in such hot water, to present a very persuasive case to a prosecutor.

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