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Meet
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University Health System, Inc.

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Letter from the CEO

Going beyond compliance

Legal issues can be resolved without the government's legal system. One very common way is to use a mediator. Many contracts now include provisions for using mediation to resolve legal matters. People do this because it's much cheaper. When run correctly, compliance programs are much like a mediation process, but they're used for a much broader range of issues than contract disputes. Mediation replaces the court and legal system.

What is this compliance thing all about really? Why are we being asked to do this? Why did the US Sentencing Commission put compliance programs in the US Sentencing Guidelines? Why did the government mandate compliance programs for government contractors? Why does the OIG put mandatory compliance programs in their settlement agreements? What exactly are they saying?

They are saying they want companies to police themselves. They want us to mediate issues internally. More specifically, they want companies to emulate a legal system (judge, jury, prosecution, and defense) inside their organization, so that the US legal system does not have to do it. They want (we want) less government intervention and they can do that if we police ourselves. The government would rather fight terrorists, murderers, and drug dealers than corporate America.

The trick is: You can't emulate or replace the legal system without all its key components. The government wants us to do what they do, so they don't have to do it. You can't do what they do without doing what they do. People want to replace the legal system with ethics, or they want to replace the legal system without looking like "a cop." Many want to be liked, so they avoid the difficult parts of compliance. If any of that really worked, that's what the enforcement community would do. It doesn't work, so they use the legal system.

We have Finance and Audit departments who have been asked by society to produce accurate financials. We don't ask the government to do that. We have an HR department to help with human resource issues. We don't ask the government to do that. So why wouldn't we take care of enforcement?

You may not want to. It is hard. It takes resources. It is complicated. But so are HR, audit, and finance. Wouldn't you really rather do this yourself than have the government do it? We would get to problems sooner than the government would, which makes the fines and penalties cheaper.



ROY SNELL

If you think about it, the government is a horribly ineffective enforcement system. They don't get to problems right away. They don't discover the problem in real time or prevent it from happening altogether. Great damage is done in the interim (Madoff.) Because they have to use resources and they are frustrated by having to chase us down, they place big fines and penalties to send a strong message. "In-house enforcement" or an "in-house legal system" can be more effective and more civil. So why don't we implement a more civil version of the legal system? We don't, because people want to be nice.

Many people want Compliance to be liked, so we don't want Compliance to be looked upon as enforcement or a legal system. We need to be respected, but not necessarily liked. Some people want us to use the carrot rather than the stick. There is no record of any country in the history of planet Earth that has enforced civil societal behavior without the rule of law and enforcement. The carrot has never worked all by itself. The carrot helps in some cases. It is a theory that has been proven to work in specific cases for specific issues. However, the carrot is a theory that has never been proven to effectively manage any society, in any country, all by itself. Unfortunately, we often need a stick. I applaud those who want to get along, but if you want to be liked and get along, there are better professions. If you want to be respected and accomplish important things, get into Compliance.

The government wants us to set up an internal legal system in our company. They want us to be the judge and the jury and the enforcer. They want us to be the prosecution and the defense. They are saying in the US Sentencing Guidelines, that if you implement a compliance program, then you get a significant break in your penalties if a problem occurs. What is a compliance program but a form of internal enforcement? It is an internal legal system.

We need a defense counsel (the Legal department). We need a prosecutor or someone to take the other side (whistleblower/outside counsel/outside consultant). We need a judge (Compliance Committee chair). We need a jury (Compliance Committee). We need a Supreme Court to monitor

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the legal system and adjudicate the toughest issues (the Board). We really have everything we need to run an effective legal system.

As mentioned before, many contracts now have provisions in them to seek mediation if there is a dispute in the contract. Why? Because it's cheaper. What do mediators do? They gather facts and get the sides together to come to a fair conclusion. When I was a compliance officer, I didn't pretend to know all laws. I simply got experts together in a room and said, "You can't leave this room until we resolve this problem." If a powerful person tried to run over "reason," I called them on it and continued the discussions. We gathered facts, got expert opinion, and investigated until there was a resolution that made sense. I then got people to resolve the question of discipline. The same thing held true there. We didn't just walk away from discipline because some powerful person wanted to run over reason.

Simply put, if you want to get the government

out of your life (from an enforcement perspective), you have to do what they have to do—enforce the rule of law. If you want to enforce the rule of law, you need a legal system. If you want to do it in-house because it's cheaper and more civil, then you need to emulate all of its component parts: prosecution, defense, a judge, a jury, and a Supreme Court. You can not replace the rule of law and the legal system with just ethics. No country in the history of planet Earth has ever successfully managed a civil society with ethics.

Many people want this to be easier. Many people want this to be pain free. Many people want to get along. Many people want to be liked. Many people theorize that we should be able to do this with carrots, incentives, ethics, and good will. No civil society has ever been able to do it. Human nature will not allow it. It would be nice if it were easier. The only way to make it a little easier is to implement a legal system in your organization, so the government doesn't do it for you. ■

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