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Letter from the CEO

Jury duty, the Rule of Law, and Compliance

I am sitting in the basement of the Minnesota Hennepin County Court House. No, I haven't been arrested, although some would believe I have met with a worse fate. I am on jury duty, for two weeks.

Most people don't want to be here. Most want to get out of it. I was asked to testify this week in front of the US Sentencing Commission. I might have used this as an excuse to try to get out of jury duty this time, but I didn't do it for two reasons. I want to be part of the process, and there are better people than me for the USSC testimony (we asked Joe Murphy). There is a new problem I am facing. I don't think most defense attorneys would want a compliance professional on the jury. I have been told that CEOs are highly undesirable. I have been told by lawyers that I have no hope of being picked. The first group was pulled this morning, and I am still here writing. True to form, I still have never been in the front lines of the legal process.

It's lunch break now. I just got back from Burger King® and saw a line formed at some department with the name Fines and Penalties. There were so many people in line, their lobby was full and the line stretched into the hallway. I thought about those people in that line and had a judgmental moment. They looked like a bunch of ne'er-do-wells to me. They looked like people who couldn't be bothered with rules. Apparently, they found out that our society had a different view of the world. It brings me back to the big picture. We compliance types can, like anyone, get lost in the weeds. Who are compliance professionals? What is our purpose? Why do we exist? I think we are here for the same reason the people behind the desk of the Fines and Penalties department are here. We are part of a system that is here to create a civil society.

Think about, for a moment, countries without the rule of law or enforcement or both; take Somalia, for instance. Let's say you wrote some rules in Somalia. Let's say you caught some people breaking

those rules and sent them a letter fining them. Then, you set up a desk downtown and waited for them to come pay their fines. You better bring a lunch. You better bring about 99 lunches. You will be there a long time. I have no idea what they have for rules, but I know what they have for enforcement and respect for the rules.

That would be zero. And what follows, my friend, is chaos.

On the other hand, you can't say they have too many lawyers. You can't say that they have too many regulations. And, if you don't have regulations, the regulations certainly can't be too vague. They don't have any of the problems with regulations that we have. Man, come to think of it, Somalia must be the place to live right now.

I am sure there is a country that survived without the rule of law. But the fact that it happened once doesn't mean it's a reasonable expectation.

What we have here in this country, as far as the rule of law, is infuriating. In fact, I would go so far as to say that any country with any form of the rule of law and enforcement is infuriating. There is no rule of law system that is not infuriating. It is an infuriating process to maintain a civil society. There are too many lawyers, too many laws, and too little flexibility. There is too much and too little of everything related to our legal system. Our system stinks, of that I have no doubt, but there is no better system to maintain the rule of law than what we have in the United States of America. The fact that the US system is infuriating is irrelevant. What is infuriating is that we *need* a system.

You can blame you for the rule of law. Apparently, left unchecked, we humans are unruly. Just look at Somalia or one of a number of other countries that do not have a rule of law that measures up to ours. History is replete with examples of what happens without the rule of law.

This point is where some people jump in with anecdotal stories. They share one example and make broad sweeping generalizations based on the one example. They add a heavy dose of how things should be or how they want things to be. I am sure there is a country that survived without the rule of law. But the fact that it happened once doesn't mean it's a reasonable expectation.

Then there are the theorists. Theorists believe that we should be able to buy a bucket of carrots and pass them out. Everyone will know how to



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behave and will behave that way all the time. There are also those who say that a rule-based system is not as effective as one guided by principles or values. For the most part they would be correct. The problem is that ethical behavior is on level two of our game of life. You can't even begin to reach level two (ethical behavior) until you follow some simple rules, like don't kill people. We need rules, and we need to enforce them. Take, once again, Somalia. How do you think someone with a bucket of carrots and no rules would do there? Before Somali can behave ethically, they have to stop breaking basic rules, and for that, you (unfortunately) will need a stick.

Some countries have no government and therefore can't implement the rule of law. Some countries have a corrupt government and can't implement a rule of law. Some countries have people who believe humans can be left to their own devices, and don't think they need the rule of law. A majority of those countries are on fire.

I am sorry that humans can't create a civil society without a rule of law. But, given that we will face abject failure without the rule of law, I am glad to be a small part of it as a compliance guy. Since I started this article I have been called to a court room three times. Twice they settled while we stood outside the court room. We were that good. The third case was a woman who was accused of settling a dispute by running over someone with her car; apparently, that is against the law. Alas, I was not picked for that jury. This is like a lottery within a lottery within a lottery. I got picked for jury duty. Then, I had to be picked to be in a jury pool (about 35 people). Then, I would have to be picked to be on a jury. I think I would have better odds creating a civil society without the rule of law. ■