

Compliance Lessons from Macbeth: Listen to Your Gut

I have always found Macbeth to be one of Shakespeare's most terrifying plays. Every time I see the production and hear Lady Macbeth say that she would "have plucked from my nipple his boneless gums and dashed his brains out" of her baby or see her ghost after her suicide, it sends chills up my spine. But there are other lessons which can be drawn from the play that could be applicable to the compliance practitioner and a Foreign Corrupt Practices (FCPA) or UK Bribery Act compliance program. In an article in the July 16 edition of the Texas Lawyer, entitled "Shakespeare's 'Macbeth' Teaches Lawyers Life Lessons", author Michael Maslanka said that one of the plays lessons for him was to "listen to your gut" when faced with a dubious proposition.

Maslanka cites to the dialogue between two characters, Macduff and Malcolm, when Malcolm is when deciding whether Macduff is a friend or an enemy. Malcolm falsely tells Macduff that he is unfit to succeed his father because of his unbridled sexual appetites. "The cistern of my lust, and my desire all continent impediments would o'erbear that did oppose my will," Malcolm says. After more back and forth, Macduff concludes Malcolm is not fit to be king. Malcolm has found an honest man who will stand up for what is right, not what is expedient. Maslanka goes on to cite these two characters for the suggestion that "When in doubt on a dubious proposition, go with your gut-level reaction." At first, Macduff tries to negotiate his conscience, because he so desperately wants an honest leader for Scotland. He acknowledges Malcolm's weaknesses, telling him, "All these are [bearable] with other graces weighed." But, when Malcolm says there are no other graces, Macduff declares, "Fare thee well, lord." The lesson: ethics are not negotiable.

This type of choice can also play out in the compliance world. The starkest example of which I am aware of is the HP matter involving its German subsidiary and allegation of bribery to receive a contract for the sale of hardware into Russia. At least one witness has said that the transactions in question were internally approved by HP through its, then existing, contract approval process. This employee, Mr. Dieter Brunner, a contract employee who was working as an accountant on the group that approved the transaction, said in an interview in the Wall Street Journal (WSJ) that he was surprised when, as a temporary employee of HP, he first saw an invoice from an agent in 2004. "*It didn't make sense,*" because there was no apparent reason for HP to pay such big sums to accounts controlled by small-businesses, Mr. Brunner said. He then proceeded to say he processed the transactions anyway because he was the most junior employee handling the file, "I assumed the deal was OK, because senior officials also signed off on the paperwork".

In almost every circumstance where a significant compliance matter has arisen, if the issue had been reported, or at least sent up the chain for consideration, there is a good chance that the incident would not have exploded into a full FCPA compliance violation. This is the concept of

escalation and it is a key feature of any successful compliance program; to escalate compliance concerns up the chain for consideration and/or resolution.

This failure to escalate leads to the issue not reaching the right people in the company for review/action/resolution and the issue later becomes more difficult and more expensive to deal with. A company needs to have a culture in place to not only allow elevation but to actively encourage elevation and this requires that both a structure and process exist. The company must then train, train and train, all of its employees. Lastly, while a whistleblower process or hotlines are necessary these should not be viewed as the only systems which allow an employee to escalate a concern.

As Shakespeare might opine, Mr. Brunner did not “listen to his gut” when it told him that the transaction in question did not make sense. Think what position HP might be in today if this temporary employee had been trained by HP that he could escalate his concern if something “didn’t make sense” to a higher level within the company for review. The key is to have the systems in place to allow such escalation and to train all employees, including contract employees, on how to escalate an issue. In FCPA training sessions, one of the things that I try to emphasize is that employees do not have to know the ins and outs of the FCPA, but if something does not feel right, smell right or look right; please raise your hand and say “it doesn’t make sense” to me.

Maslanka then draws to what he believes is the play’s over-arching eternal lesson: “Bet on concrete values like ethics, not ephemeral desires. The witches who predicted that Macbeth would become Cawdor (King) disappear as Macbeth and Banquo are speaking with them. “Banquo remarks they are like “bubbles” in the water and wonders where they have gone. Macbeth’s penetrating insight: “Into the air, and what seemed corporal melted, as breath into the wind.” This insight should compel him to embrace the concrete: the ethical behavior in honor, loyalty, friendship. But his insight fades and instead Macbeth he embraces the ephemeral: title, power, castles.”

So as July has now passed into August and the summer moves towards a close, think about how you might use Shakespeare to illustrate some of the key concepts of your compliance program. It might be time to talk about your hotline or reporting lines with employees to “listen to your gut” or “just raise your hand” if something does not seem right in a transaction. You can also use Shakespeare to show the timeliness and universality of the ethical values that you wish to inculcate into your company’s DNA. For as the author of this most interesting article also observes, “Once an ethical boundary is crossed there is no going back to ethical behavior.” Maslanka again quotes Macbeth who says, “I am in blood stepped in so far that, should I wade no more, returning were as tedious as go o’er.” There always is a window of opportunity to step back from the ethical precipice. Fail to take it and, like Macbeth, the downward spiral is triggered with no incentive to return to an ethical state.”

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