

Is Water Wet or is Jack Webb Still ‘The Man’?

I am often asked where I come up with my ideas for blog postings. I respond that there are innumerable sources and resources in the compliance arena, in some ways perhaps too many. Today I will attempt to integrate three of these resources into one coherent article. The first comes from my ‘This Week in FCPA’ cohort Howard Sklar. It is that well known Sklar maxim “*water is wet*”. This is not simply a plug for Howard (as if he needed a plug) but a useful *entree* into the next source of inspiration which I found in this month’s Business Ethics column in December issue of the ACC Docket, entitled “*Just the Fact, Ma’am*”, by James Nortz. This a reference to the signature line of Jack Webb as Sgt. Joe Friday in the multi-decade running police procedural television standard, *Dragnet*.

So how do Howard Sklar and the Nortz article tie in together? They converge in one of the areas of a minimum *best practices* compliance program as set forth by the Department of Justice (DOJ). This convergence is found in *best practices* No. 9, Ongoing Advice and Guidance, which requires that a Company should establish or maintain an effective system for (c) responding to any reports of violations of a company’s compliance program, i.e. investigations. Nortz says that in responding to such questions, one of the most important things is “understanding the facts”, he goes on to add that it “is so obvious that it is hardly worth making the observation. But, here’s the point, both our business colleagues and our companies often fail to do so.” It is so important (and obvious) that Nortz posits that in any investigation, a compliance professional’s *first* ethical obligation is that it is important to understand the facts before making a decision.

All of the above brings me to my third inspiration for today’s posting, which is an advertisement in the same issue of ACC Docket, where there is a lighthouse, under which is the title “Shine a Light on Compliance Issues”. I am impressed enough with the graphic to identify the advertiser, “WeComply”. I find that Sklar’s maxim, Nortz’s use of the *Dragnet* adage and WeComply’s lighthouse all tie into 9(a) of the DOJ’s minimum *best practices* which says that that a Company should establish or maintain an effective system for “(a) Providing guidance and advice to directors, officers, employees, on complying with the Company’s anti-corruption compliance policies, standards, and procedures...” One of the constant refrains for any compliance officer during the day is responding to employees’ compliance based inquiries. These questions come in all shapes and sizes and from all over the world. So continuing the above themes, the compliance professional must try to ascertain the facts to give an intelligent, coherent and, hopefully correct, response. This does not mean a full blown investigation but as any lawyer who has worked in-house either in a corporate legal department or compliance department will recognize, the clients need an answer.

As we lawyers all believe, many business guys will ‘shoot from the hip’ so while all the other facets of a *best practices* compliance program are important, so is listening, gathering facts and trying to use these facts to provide coherent guidance. This may require you to ask for an email explanation so that an employee can get a comprehensible picture in front of you. However,

listening may help provide the simple guidance, as sometimes that is all it takes. If you need to ask a colleague for some advice do so, if only to bounce your proposed solution off them. Even if a short turnaround time is required, do not let the business guys bully you telling you they need the answer “yesterday”.

So the WeComply lighthouse implies to me that you need to shine a light on the facts. As obvious as this may sound, or as wet as water may be, Nortz reminds us that the first thing to do in responding to inquiries or investigating a compliance issue is to garner the facts *before* responding. So to answer my own question found in the title of this posting, Jack Webb is still ‘The Man’.

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