When the CEO Says No to Compliance:
FCPA Insights from Watergate's Egil "Bud" Krogh

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October 30, 2012

A recent video posted by the Markkula Center of Applied Ethics highlights one of the most difficult ethical issues facing FCPA compliance officers – doing your job when the CEO does not want you to. FCPAméricas previously discussed the issue here.

In the video, the former CFO of RAE Systems, Randall Gausmann, who also oversaw the company's FCPA compliance, discusses how he managed a two-and-a-half year internal investigation into the company's FCPA violations that led to a $2.95 million settlement with U.S. enforcement authorities and over $4 million in professional investigation fees. These were significant amounts for a company with only $85 million in revenue each year.

Of particular note, Mr. Guasmann states that pursuing the investigation led to a falling out with his CEO: "Out of these investigations you often discover and learn unpleasant things and the role that various people in the company had in promulgating these problems." Commenting on this video, the FCPA Professor correctly notes that the falling out "raises a host of questions." One of the most pressing being: How does a compliance officer do his or her job ethically when the boss does not want them to?

To provide some guidance on this question, FCPAméricas asked someone who directly confronted one of the biggest such ethical challenges in our country's history: Egil "Bud" Krogh, Jr. Mr. Krogh was the Deputy Assistant to President Richard Nixon who also headed Nixon's Plumbers. The Plumbers was the group initially set up to "plug" the Nixon Administration's news leaks. As history tells us, its purpose morphed into illegal activities, like the Watergate break-in.

Mr. Krogh is a particularly relevant person to comment on the challenges of the FCPA compliance officer. He is now a gifted teacher of ethics and author of Integrity: Good People, Bad Choices, and Life Lessons from the White House. Through a Bill & Melinda Gates Foundation grant, he recently joined the faculty of The School for Ethics and Global Leadership, a program I co-founded in Washington, DC.

I asked Bud what he would tell a compliance officer whose CEO says no to compliance:

> By saying "no" to compliance, the compliance officer should advise the CEO that he is risking his company, his career, and his compliance officer. If there was one lesson from my Nixon White House experience, it is that lawyers who are aware of wrongdoing have a legal and ethical obligation to take steps to stop those activities. They must explain to senior officials who are

> involved in wrongdoing the nature of the offenses and offer avenues for correction. If there is no receptivity from these senior officials, the lawyer should be willing to step aside and be prepared to report the wrongdoing to appropriate authorities. If this course had been followed by several of the lawyers around President Nixon who observed first-hand his directions for illegal activities, history would have been different.

Even if the chief compliance officer is not a lawyer, and therefore not subject to rules of legal ethics, Mr. Krogh's guidance still serves as an important roadmap for conduct. At the end of the day, the compliance officer's duties are to the company itself, not to the wishes of the CEO.