

The Battle of Hastings and Diversity - How to Integrate It Into Your Compliance Culture

Sunday, October 14th was the anniversary of the Battle of Hastings, in 1066. In addition to being the last time there was a successful invasion of Britain, several other positive things came from this most historic event for English-speaking people. An article in the Telegraph, entitled “*In everything we say, there is an echo of 1066*”, writer Alan Massie said that “the most enduring legacy is also the richest: our wonderful hybrid language and the golden treasury that is English literature.” He went on to state that “Without the Norman Conquest, Shakespeare would not have been Shakespeare, because his language would have resembled 16th-century German or Dutch. He would never have written a phrase like “the multitudinous seas incarnadine”. Our language often loses vitality if it moves too far from the Anglo-Saxon and is overweighed by Latinate words, but much of its richness and scope derives from its dual inheritance. “Shall I compare thee to a summer’s day? / Thou art more lovely and more temperate.”

I thought about Massie’s article when reading this past Sunday’s New York Times (NYT) Corner Office section in which reporter Adam Bryant interviewed Hilton Worldwide President and Chief Executive Officer (CEO) Christopher Nassetta, in an article entitled “*On a Busy Road, a Company Needs Guardrails*”. For all you compliance practitioners who work at large multi-national companies with employee numbers between 50,000 to 100,000; you should think about the compliance challenge at Hilton, which has over 300,000 employees worldwide.

Nassetta said that one of the things he found when he initially took the position was that “I discovered when I joined the company five years ago is that we had a lot of segments of the company that operated very independently, and we had massive amounts of duplication and fragmentation. We needed alignment. We needed people to understand who we were, what we stood for and the key priorities of the company. And we needed them, once they understood that, to get their oars in the water and head in a common direction.” Nassetta traveled all over the world and met with employees. He believed that Hilton employees had good values but that as many times as he asked what the company values were, he got as many different answers. There were so many different value formulations that he “stopped counting when I got to 30 different value statements at our offices.”

Nassetta viewed his job, as the CEO, was “to create the right culture, set the tone, the high-level strategy.” To accomplish this in the company Nassetta set up teams around the world to look at their value statements and “boil them down.” They then took all of the formulations and derived 6, which they stated as follows:

- H for hospitality
- I for integrity
- L for leadership
- T for teamwork
- O for ownership

- N for now.

He felt by using the Hilton name as the acronym for the company's values, it could be reinforced every time the name was used. In other words, it drove these values down into the company's DNA by continual reinforcement. While acknowledging that repeating can lead to value fatigue, Nassetta felt like he and the company could not say it enough. He stated, "in my case, there are 300,000 people who need to hear it, and I can't say it enough. So what might sound mundane and like old news to me isn't for a lot of other people. That is an important lesson I learned as I worked in bigger organizations."

Nassetta's message drove home to me that a company cannot only integrate a wide variety of compliance values into its culture but more so, that the message needs to be repeated. I thought about the Morgan Stanley declination which was released in May. As a part of the Department of Justice (DOJ) release they noted that Morgan Stanley had done the following for the employee Garth Peterson, who pled guilty to violations of the Foreign Corrupt Practices Act (FCPA):

The Securities and Exchange Commission (SEC) Complaint detailed the compliance program Morgan Stanley had in place and how it directly related to Peterson. The Compliant specified:

- (1) Morgan Stanley trained Peterson on anti-corruption policies and the FCPA at least seven times between 2002 and 2008. In addition to other live and web based training, Peterson participated in a teleconference training conducted by Morgan Stanley's Global Head of Litigation and Global Head of Morgan Stanley's Anti-Corruption Group in June 2006.
- (2) Morgan Stanley distributed to Peterson written training materials specifically addressing the FCPA, which Peterson maintained in his office.
- (3) A Morgan Stanley compliance officer specifically informed Peterson in 2004 that employees of Yongye, a Chinese state-owned entity, were government officials for purposes of the FCPA.
- (4) Peterson received from Morgan Stanley at least thirty five FCPA-compliance reminders. These reminders included FCPA-specific distributions; circulations and reminders of Morgan Stanley's Code of Conduct, which included policies that directly addressed the FCPA; various reminders concerning Morgan Stanley's policies on gift-giving and entertainment; the circulation of Morgan Stanley's Global Anti-Bribery Policy; guidance on the engagement of consultants; and policies addressing specific high-risk events, including the Beijing Olympics.
- (5) Morgan Stanley required Peterson on multiple occasions to certify his compliance with the FCPA. These written certifications were maintained in Peterson's permanent employment record.

(6) Morgan Stanley required each of its employees, including Peterson, annually to certify adherence to Morgan Stanley's Code of Conduct, which included a portion specifically addressing corruption risks and activities that would violate the FCPA.

(7) Morgan Stanley required its employees, including Peterson, annually to disclose their outside business interests.

In other words, Morgan Stanley continued to drive home the message of compliance during the tenure of Peterson's employment with the company. Further, when the DOJ came calling, Morgan Stanley was able to prove to the DOJ's satisfaction that the company had indeed done what it had claimed because the documentation was available to present to the DOJ. So just as Nassetta continues to preach the HILTON values of the company, Morgan Stanley was providing direct information to Peterson on his responsibilities under the FCPA.

Nassetta said one other thing that struck me as important in his interview. He said, "One simple philosophy I have as a leader of a big organization is to have really steady hands on the wheel. In a tumultuous world, with so many things going on around you, you have to know who you are, what you stand for and where you are going, and keep everyone pointed in the same direction and have the discipline to stick with it." From this I understand that if you know your values and have the discipline to stick with them during turbulent times, these values will protect you. I think that Morgan Stanley shows that training on the FCPA, certification by its employees to abide by it, training on their Code of Conduct or Business Ethics, including conflicts of interest and annual certifications; can go a long way towards protecting a company in the event of a FCPA investigation. And please do not forget those email compliance reminders, the DOJ specifically pointed out that Morgan Stanley sent Peterson 35 email reminders about the FCPA over 7 years. Even with my trial lawyer math, that is only 5 per year.

Massie in his article about what the Battle of Hasting meant for Britain wrote, "So, if you were to begin by asking, in Monty Python style, "what have the Normans ever done for us?" you might first reply that the most enduring consequence of the Conquest is the richness of the English language, with its Anglo-Saxon base and Franco-Latin superstructure. This mixture gives us a huge vocabulary, and many words with essentially the same meaning, yet a different shade of emphasis: fatherly and paternal, for example." This richness came from diversity. The values of the Hilton Corporation came from the values of its 300,000 employees. The richness is out there and one of your jobs as a compliance practitioner is to use that diversity to create a compliance program that works for your entire company.

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