

Compliance and Integrity Programs

An Experiment in Governing

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The National Security Letter Issue – in Brief

- What are they?
 - Letters issued to obtain information from telephone companies, financial institutions, internet service providers and consumer credit agencies.
- The Authority - 5 provisions contained in 4 statutes.

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OIG Findings

- Faulty recordkeeping understated the total number of NSL issued – by about 20%. Those numbers were reported to Congress.
- Failure to self-report non-compliance to the President's Intelligence Oversight Board.
- Use of outdated form letters.
- Letters not being retained in specific investigative files.
- 46 of 77 files contained one or more control errors.

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Reasons

- No clear guidance, leading to:
 - Confusion amongst those administering the program.

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Motivation

- “Moreover it is important to recognize that in most cases the FBI was seeking to obtain information it could have obtained if it had followed applicable statutes, guidelines and internal policies.” (OIG report at p. xlvii)

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- “If a private company reflected the same disregard for technical and legal compliance as did the FBI, the FBI and Justice would be all over them.”

» Washingtonian Magazine, Sept. 2008, p. 119 quoting Alan Raul, Vice Chair of the President's Privacy and Civil Liberties Oversight Board.

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NSL - Aftermath

Video -

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Doing it by the Numbers

- FSG
 - Basic premise – the application of the FSG from industry to industry is the same – except for the risk areas.
 - Not exactly when translating into governmental arena
- Industry best practices –
 - “Compliance is the Business of the Business”

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Initial Decision Points

- Scope of program – mission only or all rules.
- Committee system / membership.
- Senior leadership involvement.
- To whom should the compliance officer report?
- Size and role of the compliance office.
- Incorporating existing structure – Ethics office (yes) / internal audit (no).

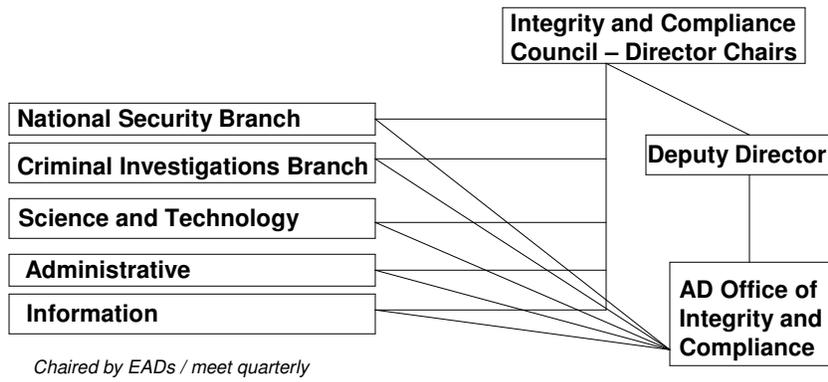
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In the Land of the Blind the One Eyed Man is King

- Moving at warp speed from a governmental standpoint:
 - By Mid July, 2007 holding first round of meetings – Including risk analysis
- Double checking myself –
 - Private sector folks invited in.
 - Compliance officers who were former FBI officials.

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Organizational Structure



Conversion table:
 Director = CEO
 Deputy = COO
 EAD = EVP
 AD = VP

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Differences Between Government and Private Sector

- No Board of Directors
 - Need high level involvement
- Risks much different

Private

- Criminal Liability
- Civil Liability
- Administrative Finding
- Reputational

Government

- Public trust
- Privacy and civil rights
- Constitutional rights
- Reputation
- Abridgment of authority

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Overall Approach

- High level involvement
- Incorporate Gov't Ethics into Program
- Compliance is the Business of the Business
- Risk based
- Risk analysis / Mitigation
- Hotline
- HR issues

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How it works

- Risks baselined once a year.
- Lower level committees meet quarterly to consider new risks / receive reports on the mitigation of previously identified ones.
- Issue specific teams assembled to review risks, plan mitigation, implement mitigation.
- Committee Chairs report to the Director semi-annually.

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Role of the Office of Integrity and Compliance

- 13 people for about 35,000 employees
- Facilitate risk identification
- Keep the risk analysis and mitigation on track
- Set the agendas for all committees
- Review all proposed policies
- Train on the compliance program
- Monitor Help line
- Suggest compliance control solutions

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Initial Objections

- Difference between existing internal audit and external OIG audits / investigations.
- We already have too much on our plates – you tell us where the risks are and we will advise you on the solution.
- We already have an Ethics program.
 - Integrity, Ethics, Compliance, Ethical decision-differentiated
- There is no requirement that we do this.

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- Compliance Programs – In a Government Organization

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Federal Government Motivators

- GAO / OMB Standards
- The Rule of Law
- Public Office is a Public Trust
- Demonstrable results

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GAO Standards for Internal Control in the Federal Government

- **Internal Control**
 - An integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:
 - effectiveness and efficiency of operations,
 - reliability of financial reporting, and
 - compliance with applicable laws and regulations. Citation
- **Compliance Programs** – is a methodology for achieving internal control over compliance with the law.

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The Rule of Law

- **Regulator of government power.**
 - Basic premise: Government is subservient to the law it enforces.
 - Sovereign immunity = heightened responsibility
 - Mission authorized through specific legislation.
 - There are limitations: the Constitution / federal law / agency regulations / internal implementing policy.
- **Duty owed: Carry out the mission in compliance with the law.**

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Public Office is a Public Trust

- Public Trust – one owes a greater duty to others than himself.
- Public good over private interests / conflict of interest:
 - Anti-bribery; Procurement Integrity; Misuse of Position
- Provide equal treatment under the law.
- Conserve the public funds.
- Public perception –
 - Actual ethical behavior
 - Appearance of ethical behavior
- Duty owned: comply with the law.

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Real Benefits

- City of Austin Audit 2002
- Objective: To determine relationship between ethical climate and organizational costs
- “We also found that by strengthening the [ethical] climate overall, the City would experience some financial and administrative benefits, including:
 - A lower number and cost of successful legal claims,
 - Lower turnover and sick leave usage,
 - Fewer lost time injuries,
 - Fewer customer complaints, and
 - Higher quality service delivery.”

(<http://www.ci.austin.tx.us/auditor/downloads/au02302.pdf>)

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Mutual Obligations

- Duty of government:
 - To its citizens: assure that it is carrying out its mission responsibility under the law in compliance with the law.
 - To employees: provide proper guidance, training monitoring, and auditing.
- Duty of Employees:
 - Know the rules
 - Comply with the rules
 - Report non-compliance and shortcomings in the policies, training, and monitoring.

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Benefits of Governmental Compliance Programs

- Demonstrate to agency constituencies – a concrete process by which its commitment to the execution of the law in compliance with the law is carried out in an holistic, structured, disciplined, and transparent way.
- Help employees fulfill their oath in a collaborative, but structured, framework.

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Benefits Governmental Compliance Program (Cont'd)

- Detect internal management control weaknesses.
- Give life to often stated agency values of individual and organizational integrity.
- Agencies forced to solve problems across functional lines and gain effectiveness and efficiency in doing so.
- Cost effective by getting the job done right the first time and avoid costly fixes.
- City of Austin

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Questions



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