



On improv and improving communication

an interview with
Alan Alda

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by Roy Snell, CHC, CCEP-F

Fake news: Compliance officer liability

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My first advice about compliance officer liability is to talk to a lawyer with extensive experience in that area of law. I am not that guy. I just want to address one issue related to this



Snell

subject that is being misrepresented. I want to talk about the difference between compliance officers who run compliance programs and do not make legal attestations to the government vs. compliance officers who do not run a compliance program and make legal attestations to the government. There are compliance officers, particularly in banking, who do not run compliance programs and submit legal attestations to the government assuring that something happened that was required by law to happen. Occasionally, they get fined for making a legal attestation that is materially wrong. It is much like the person who signs the tax forms. They make legal attestations to the government that the tax filing is accurate, and their work should be reviewed by a compliance officer. The compliance officer who makes an attestation to the government per a regulation should have their work reviewed by a compliance officer who is running a compliance program, because they are a risk to the company.

Some people are saying that compliance officers who run compliance programs and do not make attestations to the government have the same personal liability as a compliance officer who doesn't run a compliance program and makes legal attestations to the government. These are two totally different jobs with the same name and totally different liability. People write articles to compliance officers who run compliance programs and say, "You have huge personal liability." They then back up their story by giving an example of a person who did something that, by definition, is not and never should be part of the job of a compliance officer who runs a compliance program.

Compliance officers who run compliance programs have personal liability and should be covered by directors and officers liability insurance and should get legal advice. However, the only legal attestation I have ever heard of a compliance officer making is attesting that their company complied with a corporate integrity agreement, and I would wager that 99.9% of all compliance officers have never had to do that. Legal attestations are a part of operations that a compliance officer should be reviewing, *not doing!* It is a risk area that should be covered by an independent compliance officer. If you see anyone telling compliance officers that they have the same personal liability as people who regularly make legal attestations to the government, please comment and tell them what our job is. *