

MAKING THE CASE THAT YOUR PROGRAM WORKS

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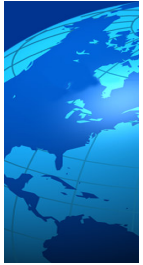
WHO MIGHT YOU NEED TO CONVINCe?

- **US ATTORNEYS**
- **MAIN JUSTICE (ANTITRUST, FCPA)**
- **SEC**
- **EPA**
- **HHS OIG**
- **DEP'T OF STATE (ITAR)**
- **GOVERNMENT PURCHASING OFFICIAL**
- **STATE AG's**
- **ADVISORS TO THE GOVERNMENT**



WHO MIGHT YOU NEED TO CONVINCe?

- **JUDGE**
- **JURY**
- **OFT (UK)**
- **ACCC (AUSTRALIA)**
- **COMPETITION BUREAU (CANADA)**
- **STOCK EXCHANGES**
- **CREDIT RATING AGENCIES**
- **SOCIAL INVESTORS**
- **????????????????????????????????**



IT CAN'T HAPPEN HERE?

THE VALUE OF A MINI-AUDIT TO FIND CLOSE CALLS, E.G.,

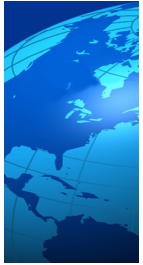
- **“COMPETE . . . BUT NOT ON PRICE”**
- **“WITH OUR MINDS SET ON ELIMINATING OUR COMPETITORS’ PRESENCE IN OUR MARKETS”**
- **“LET’S BE PREDATORY ABOUT IT”**



TWO TESTS OF A COMPLIANCE/ETHICS PROGRAM

- **THE SKEPTICAL PROSECUTOR TEST**

- **THE TWO-MINUTE TEMPTATION TEST**



HOW DO YOU PROVE YOUR CASE?

1. DOCUMENTS

2. WITNESSES



DOCUMENTING YOUR CASE

PROSECUTOR'S PERSPECTIVE:

“If it isn't in writing it didn't happen.” – Jeff Kaplan

IT TAKES A LOT OF PAPER TO PROVE YOUR PROGRAM IS NOT A PAPER PROGRAM

IS THERE AN EXECUTIVE OVERVIEW?

CAN YOU PRODUCE ENOUGH TO TELL A STORY?

CAN YOU DISTINGUISH “BEFORE” FROM “AFTER”?



WHO WILL BE YOUR WITNESSES?

- **CREDIBLE?**
- **PRESENT WELL?**
- **ABLE TO TELL THE WHOLE STORY?**
- **SHOULD LAWYERS DO THIS?**
 - RISK OF WAIVING PRIVILEGES
 - BARRED AS A WITNESS FROM ALSO REPRESENTING YOU



WHO *ELSE* WILL ALSO BE YOUR WITNESSES?

- **WHAT WILL YOUR EMPLOYEES SAY WHEN THE GOVERNMENT ASKS?**
- **THE “JIM SHEEHAN TEST” – A CASUAL WALK TO THE RESTROOM**
- **YOUR PRESENTATION MAY COME AFTER THE GOVERNMENT HAS ALREADY TALKED WITH SOME EMPLOYEES**
- **YOUR PROGRAM NEEDS TO BE MEMORABLE!**



WILL YOUR PROOF COVER *EVERYTHING*?

- **INTERNAL CONTROLS**
- **COMPLIANCE & ETHICS OFFICER: INDEPENDENT, CONNECTED, EMPOWERED, PROFESSIONAL (“ICEP”)**
- **SCREEN PROMOTIONS**
- **TRAIN BOARD & AGENTS**
- **AUDIT FOR CRIMINAL CONDUCT**
- **DISCIPLINE FAILURE TO TAKE STEPS TO PREVENT/DETECT MISCONDUCT**
- **INCENTIVES**
- **STEPS TO PREVENT RECURRENCE AFTER INVESTIGATE**
- **MEET INDUSTRY PRACTICE**



COMPLIANCE PROGRAM BINDER

TABLE OF CONTENTS

- **Description of Compliance Program/Overview**
 - **Current status and history of the program**
- **Risk assessment**
 - Risk inventory/assessment of risks
 - Record of ongoing assessments of risks
- **Standards and Procedures**
 - Values/Mission Statements
 - Code(s) of Conduct
 - Corporate Policies - Business Conduct
 - Description of internal compliance controls
- **Responsibility for the Program**
 - Board Resolutions
 - Audit committee charter
 - Reports to the Board
 - Reports to the Audit Committee
 - Presentations/compliance background for the board
 - Documentation of senior management buy in and support
 - Compliance Officer position description
 - Assistant Compliance Officer position description
 - Compliance Program Management/Working Committee
 - Subject Matter Experts (SMEs)
 - Business Unit Compliance



COMPLIANCE PROGRAM BINDER

TABLE OF CONTENTS

- **Delegation of Authority/Hiring Practices**
 - Screening of New Hires
 - Review of Debarment/Exclusion Lists
 - Other checks and balances for hiring, retention and promotions
- **Training and Written Communications**
 - Letter from Company Chairman
 - Newsletters
 - Other Company Publications
 - Code of Conduct/Ethics Training
 - Coverage of New Employees
 - Board training
 - Web site
 - E-mail/Intranet Compliance Messages
 - Compliance Officer Presentations
 - Guidelines for Consultants
 - Subject Area Training and Written Materials (Including Manuals)
 - Online training and reference materials
 - Assessments of training



COMPLIANCE PROGRAM BINDER

TABLE OF CONTENTS

- **Audits, Monitoring and Other Assessments**
 - Internal Auditing
 - Legal Department
 - Employee surveys/Focus Groups
 - Compliance Monitoring
 - Compliance Audits
 - Compliance deep dives
 - Exit interviews
 - Management questionnaires/self-assessments
- **Reporting Systems**
 - Publicity (referring to Helpline Number)
 - Protection of Callers/whistleblowers
 - Helpline Procedures
 - Case management system
 - Reports
- **Discipline, Rewards and Incentives**
 - Disciplinary Guides
 - Reports to the Board
 - Appraisal/Evaluation Form
 - Commendation Letters/Awards



COMPLIANCE PROGRAM BINDER

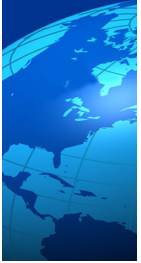
TABLE OF CONTENTS

- **Responses to Violations**
 - Investigations - Standards, Guidelines, Forms, training
 - Voluntary disclosure policy
 - Crisis Response Plan
- **Industry Practice**
 - Industry Compliance Practices Forum
 - Regional Compliance Practices Forum
 - Compliance Symposia
 - Compliance Systems Legal Group as industry practice consultants
- **Relations with Vendors, Agents and Consultants**
 - Contract language
 - Due diligence in retention
 - Training
 - Auditing
 - Vendor letters
 - Encouragement of vendors' compliance programs



RESOURCES

- **SCCE WEB SITE:**
WWW.CORPORATECOMPLIANCE.ORG
- **TABLE OF CONTENTS IN ELECTRONIC FORM:
WILL BE ON SCCE SOCIAL NETWORK,
COMPLIANCE AND ETHICS OFFICERS GROUP**
- **MELLON BANK CASE: SCCE WEB SITE**
- **USSGs**
- **CECO WHITE PAPER: SCCE WEB SITE**



QUESTIONS?
