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Former CCO Jack Giraudo on Compliance Work at Major Companies

Jack Giraudo of the Aspen Institute.

Jack Giraudo is a Henry Crown Fellow of the Aspen Institute, a policy studies organization in Washington, D.C. He was previously the chief compliance officer of Tessera Technologies Inc., and The AES Corp. Mr. Giraudo was a senior counsel at Skadden Arps Slate Meagher & Flom in Beijing and the general counsel of a multinational joint venture in Hong Kong. At the beginning of his career he was a special assistant to the U.S. attorney general.

In this interview he discusses compliance failures, how to build a robust corporate culture, how the job of compliance officer has changed and how compliance differs in Asia.

Hardly a day goes by without news of a major corporate compliance failure, such as those at General Motors or BNP Paribas. Is there a common root to these problems?

Mr. Giraudo: While each case is a bit different, I think there is a root cause to these problems–and it is a cultural problem. Take General Motors. From the internal investigations report just published, it seems there was a culture of silence at GM: "See no evil, hear no evil, speak no evil." There was a genuine fear of speaking-up. That is the danger in a large organization. Your people are your early warning system. If you shut them down, and keep them from warning you, bad things are likely to happen. As one commentator put it, GM needs to create an environment where people feel comfortable raising concerns. The BNP Paribas story is much the same. From what I have read, it seems some employees went out of their way to delete references to prohibited transactions in the paperwork. Talk about a culture of silence!

Given the frequency of compliance failures at major corporations, do you think staying compliant is realistic?

Mr. Giraudo: Big corporations with far-flung overseas empires have become not only too big to fail, but also too big to manage. No matter how good are a company's internal systems and controls, it is very difficult to know what everyone is doing in a global company, and whether or not employees in remote places are actually complying with the law.

The only way you can prevent corruption in locations where it is prevalent is to instill in the organization a culture of compliance so that doing the right thing becomes second nature. FIFA [the world soccer organization] is a good example of an organization that has failed to do this in a spectacular way.

But if a company has a really strong ethical culture, from top to bottom (something, for example, General Electric Co. has been able to achieve with more than 300,000 employees in 130 countries and dozens of businesses), then the board and the senior management team can sleep well at night because they know the organization operates on autopilot to ensure compliance. Its own people are its first line of defense against corruption and malfeasance.

We often hear companies crow about their ethical culture, only to see major lapses at the same places. How can you tell from the outside whether a company is ethical?

Mr. Giraudo: It is not easy to tell from the outside. Culture is internal. It relates to how you go about living your day. But you can glean some hints from external observation of a company's management structure how seriously a company takes ethics and compliance.

Most telling, for instance, is whether or not the company has a chief compliance officer. This is as much a matter of good governance as anything else. The U.S. Sentencing Commission guidelines require that a specific "high-level" individual within an organization be assigned overall responsibility for the ethics and compliance program. But many companies don't have such a person or consolidate the job in the chief legal officer or audit officer. This is not the best approach.

If the organization takes its ethical culture seriously, the chief compliance officer is the person with the task of making sure the company is compliant, day-to-day, week-to-week, month-to-month. He or she is the guardian of the company's ethical conscience. It is a full time job and not a job to skimp on.

What are the practical steps companies should take to create an ethical culture?

Mr. Giraudo: It is critical to give people ownership of a company's values. But this is easier said than done. An ethical culture cannot be created overnight. It must be promoted by communication, one-on-one training, examples, role models, historical narratives, and regularly reinforced and rewarded by the company through wide-ranging and innovative "carrots and sticks" to shape the right behavior. How you do something must become at least as important as what you actually do.

An old chief compliance officer once said to me "Beware of the values you incentivize. You get what you ask for."

If you create within your company the nuts-and-bolts structure that undergirds an ethical culture, a culture of compliance, people by and large will do the right thing. However, if you don't create a culture of compliance, then all the rules in the world will not save a senior leadership team under stress. Enron put paid to the notion that codes of conduct and compliance programs are enough.

As a case in point, just recently, in a speech in London, Christine Lagarde, the International Monetary Fund chief, called for a cultural overhaul of the global banking industry because rules governing its behavior, such as those regulating bankers' compensation, are not sufficient. [Yet] people who want to skirt the rules will always find ways of doing so. You need the right culture to make the rules stick.

How has the job of compliance changed since you held your roles at Tessara and AES Corp.?

Mr. Giraudo: It has gotten harder. There are more rules and regulations. Worse, it is growing harder to stay within the law because you don't always know what the law is. Often the law is very ambiguous. Something as simple as the U.S. Foreign Corrupt Practices Act, which outlaws bribery of foreign government officials, is viewed as applying to foreign government controlled "instrumentalities" and their employees. [Thus it may apply,] for example, to bribery of doctors at municipal hospitals, professors at public universities, fund raisers at state sponsored charities, most likely even employees of Catholic relief services since these organizations are indirectly controlled by the Vatican. Are all these people really "government officials"? If so, it is difficult to know where to draw the line. How about phone operators at government telecoms or electricians employed by the state-owned power company?

You lived in Asia for a decade. How does compliance differ from the U.S. and Europe?

Mr. Giraudo: In living in Beijing, I often was reminded of the Chicago politician, an insurance commissioner, convicted of directing city business to his son, who told the judge at his sentencing "it is fine day in America when a father can't help his son!"

In Asia all relationships start and end on a personal basis. In the great Confucian order of things we are all sons and daughters, parents and children. This goes a long way toward explaining banks' problems in hiring the children of senior Chinese ministers who may have helped them obtain lucrative deals in China. It is a cultural thing, and, as I have said, culture matters.

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