



## **Don't Just Scare Them With Scalps: Effective Anticorruption Compliance Programs**

**Compliance and Ethics**



As you may recall, in 1983 ABC aired what was, at the time, a rather controversial made-for-TV movie entitled *The Day After*. Starring Jason Robards and other famous actors, *The Day After* was a dramatization of what it would really be like if there were a nuclear exchange between the United States and the Soviet Union. Following the program, Ted Koppel moderated a 90-minute panel discussion among leading scientists and policy makers of the day. I found the entire panel discussion very informative, but one exchange that made quite an impression on me was between Carl Sagan — the famous physicist from Cornell University — and former Secretary of State Henry Kissinger.

Sagan, who had recently participated in a scientific study regarding a nuclear war's probable impact on the planet, made a rather dramatic statement indicating that even a limited use of nuclear weapons would be worse than what was depicted in the movie. He explained that a nuclear war targeting cities would likely result in a “nuclear winter” that would threaten the extinction of the human race. When prompted by Koppel to respond to this observation, Kissinger said the following:

*I think that this film presents a very simple-minded notion of the nuclear problem. It deals with the most obvious question that a general nuclear war aimed at cities is a disaster and a catastrophe.... The problem we have to grapple with is: How to avoid such a war? How do we preserve freedom while seeking to avoid such a war? How to create a military establishment that reduces the dangers of such a war? What arms-control policies are compatible with this policy? How do we handle crises?*

*These are serious questions. To engage in an orgy of demonstrating how terrible the casualties of a nuclear war are and translating into pictures the statistics that have been known for three decades — and then to have Mr. Sagan say it's even worse than this — I would say, what are we to do about this?*

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*Are we supposed to make policies by scaring ourselves to death, or is somebody going to make some proposals of where we are going to go? **It's how to avoid the problem that must be the question.***

I'm reminded of this exchange every time I hear a Justice Department spokesperson take the podium at a conference to give a speech about anticorruption enforcement. It's always the same fear-based "nuclear Armageddon" mantra in which Justice makes the following three points:

1. We are ramping up enforcement.
2. If we catch you, we will punish you.
3. Here are some recent "scalps" to prove it.

Of course, this is what federal prosecutors do. Their goal is to scare everybody straight by telling them how bad an enforcement action will be. But, like Sagan in the panel discussion, they provide no useful information about how to avoid such a catastrophe. Those of us charged with helping our firms avoid corrupt practices should not make the same mistake. The last thing we should do upon returning from such conferences is to merely parrot the same simple-minded, fear-based litany in discussions with our colleagues. In addition to running the risk of coming across as a Cassandra, taking such an approach does nothing to address challenging issues associated with detecting and preventing corruption in large, complex multinational corporations, such as:

- How do we detect corrupt business activities in a multinational corporation with thousands of employees when those who engage in such activities do their best to cover their tracks?
- How do we incentivize a salesforce to be aggressive in getting business while rewarding them for saying no to lucrative transactions that can only be consummated with corrupt business practices?
- How do we put controls in place that will prevent corrupt practices but at the same time provide our businesses with the commercial flexibility they need to compete successfully?
- How can we participate in the political process to effectively represent our commercial interests without corrupting public officials?

For your anticorruption program to succeed, it is vital that you find practical, commercially reasonable answers to these questions.

Barrels of ink have been spilled about how to accomplish this. But much of the published literature I've read is like Chapter 8 of the US Federal Sentencing Guidelines. It provides a high-level sketch of program design but fails to provide pragmatic modalities to achieve the goal of detecting and preventing corrupt business practices. The following are four ideas to consider to put teeth into your company's anticorruption program:

- Supplement your enterprise's anticorruption training with intensive training of your finance and accounting professionals at the corporate and location levels. The focus of this training should be the detection and reporting of corruption red flags. These professionals have a direct eye on every dollar spent. If they are trained well, they can be on the constant lookout for corrupt payments and report suspicious transactions to your firm's compliance function in real time. In addition, you could request that these compliance professionals perform a systems evaluation characterizing the effectiveness of corruption detection controls in their location.
- Tell every business leader and your sales and marketing team that finance and accounting

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will be actively reviewing transactions for corrupt payments. This is likely to have a deterrent effect on those who might otherwise feel safe in engaging in corrupt practices in far-flung corners of the corporation.

- Supplement anticorruption audits with focus groups and surveys in various geographies around the world to monitor the degree to which individuals feel pressure to make or receive corrupt payments. These can serve as an objective performance metric regarding the strength of the ethical culture and prevalence of corrupt practices in various parts of your organization. But, most importantly, hold leaders accountable for achieving and maintaining acceptable ethical culture metrics in addition to meeting applicable financial goals. People behave rationally. If all your firm does is reward and punish according to the numbers on a balance sheet — regardless of how they are achieved — you will invite corrupt practices. Given the universality of this approach, we should not be surprised at the continuous stream of corporate corruption prosecutions. To break this cycle in your firm, you must give individuals an incentive to conduct business honestly by implementing a reasonable means of measuring and holding them accountable for how they make their numbers.
- Leverage technology to make it relatively easy for business professionals in your firm to perform due diligence on commercial counterparties who pose a corruption risk to your business. Then be sure to help your business professionals learn to evaluate and respond effectively to data gathered during the due-diligence process.

You may or may not find these recommendations useful in answering the difficult questions associated with implementing an effective anticorruption program. But regardless of what steps you take to reduce your firm's corruption risks, resist the temptation to engage in an orgy of demonstrating how terrible an enforcement action might be and, instead, pursue practical strategies to work with your colleagues to reduce your corruption risks.

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