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“When they need urgent advice”

Often even those who are experts read things, and because of their pre-conceptions, ignore what is written there. It happens all the time in the Federal Sentencing Guidelines. And it has happened in another critically important



Murphy

source of compliance advice, the Good Practice Guidance (GPG) provided by the OECD’s Working Group on Bribery.

I understand the desire to simplify and pigeonhole. So when the GPG 12 points on compliance programs included coverage of advice and reporting systems, many read this as being the same as the Sentencing Guidelines provision.

But there is some important wisdom in the language of item 11 of the GPG. There is not just a need to have a means to provide advice. It must also include a system for providing that assistance to your people “when they need urgent advice on difficult situations in foreign jurisdictions.”

For those who have ridden the rough trails of international business travel, this is very heavy language. Sure, it is easy for the folks in headquarters to lecture folks in the field about what they must do and tell them there is “no tolerance” for corruption. All the right words can be there. But are they the ones arriving in the Middle East in the dead of the night, tired, jet-lagged, maybe a little intimidated by everything new around them? And are they then confronted by a hopelessly ambiguous situation that might mean compliance danger, but could also mean physical danger or at least long delays? What about the poor road warrior suddenly in over her depth, pulled aside at

Customs, and held there by intimidating customs officials (perhaps awaiting the “usual” bribe)?

Here is what the OECD is wisely saying. Don’t send your people in harm’s way without the resources they need. If you are sending a business scout to Nigeria or a new government affairs person to Indonesia, it is not enough to preach to them. If you are serious about fighting corruption, put your resources on the line too. Before you let your people enter dangerous terrain, line up the resources you need and make them available on the ground, when they are needed.

Here is what the OECD is wisely saying. Don’t send your people in harm’s way without the resources they need.

When your man in India “need[s] urgent advice on difficult situations in foreign jurisdictions,” make sure that back up is there, ready to support your valiant explorer. Have that senior partner in a reputable law firm in the local environment who has agreed to be on call. If you can’t do that, then maybe you are just not ready for this outreach. Maybe your bold talk about compliance really is just talk and not a serious commitment. But whatever the story, don’t put it on the backs of your people unless you back them up. *

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