

GLOOM TO BOOM

**ANDREA
BONIME-BLANC**

How Leaders Transform Risk
into Resilience and Value



ROUTLEDGE


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Preface

A government prosecutor's perspective on a culture of compliance

There are many reasons organizations need to pay attention to the ethics and compliance function that is the procedural mechanism that an entity puts in place to assure that its employees, agents and business partners are adhering to the internal corporate values and external rules that govern its conduct. Ethics and compliance can serve, as Andrea so cogently notes, multiple purposes that align with a successful company. Being a more profitable company, being a more sought-after company for recruiting desired applicants and being better at the retention of valued employees are just some of the important reasons for having a healthy corporate culture.

But there is another reason, one that I have spent a good part of my career focusing on. Good compliance is good government. And thus in evaluating corporate criminal liability, the company's corporate culture is a critical factor. A company's ethics and compliance function is an important factor in assessing that culture. There are many companies that can be criminally charged, but the key issue for the government is whether a company should be charged, not just can it be charged. There are many alternatives to prosecuting a company, and a company's ethics and compliance culture come into play in assessing those alternatives.

At one extreme a company can be indicted, along with its culpable employees. At the other extreme, the company can receive a declination from prosecution, and only the criminal individuals can face indictment. In between, the government can decide to offer the company a Deferred Prosecution Agreement, a Non-Prosecution Agreement, or a declination but with the disgorgement of profits. In all of the above circumstances the government can insist on a corporate monitor to oversee the company. By US federal policy, compliance is a component of all those decisions and can be the decisive factor. In my experience, for instance, a company that has an excellent compliance program reflective of the corporate culture of the organization will rarely if ever have a monitor put in place. There would be no need for a monitor where the government has faith in the company and its ethics and compliance function to perform the requisite oversight.

Although the role of compliance in assessing these issues has long been a factor in the written Department of Justice policies, in the last few years the government has been increasing its attention on the compliance factor.

Further, it has provided more and more guidance to companies on how the role of compliance will be assessed. No longer is compliance an after-thought for a federal prosecutor or a mitigating factor that a company can think it can obtain credit for with a cursory presentation.

The US Department of Justice has gotten smarter about compliance. It has brought in expertise, first through hiring an experienced compliance officer to provide training and more recently bringing in outside experts to provide more widespread training within the Department. And the Department's focus increasingly looks to objective metrics – the use of data by the company – in assessing programs – that is, hard, objective evidence is required and scrutinized. The Department has also done more to give companies guidance on what the government looks at in assessing compliance programs. Under my leadership of the Fraud Section, the Department of Justice published a set of questions it routinely thinks about in assessing a compliance program. Those issues were published so companies were not kept in the dark about governmental expectations and criteria. That effort has continued more recently with additional guidance being made available to companies to increase transparency. In short, the government has gotten smarter about compliance and has sought to share that new-found knowledge. Thus, even under different leadership at the Department, the increased scrutinizing of compliance has remained constant.

This is just one reason that Andrea's book is so timely. It provides all business leaders with an important perspective and tools to understand how ethics and compliance promote good governance, model leadership and a healthy work environment. It is a welcome addition to the growing commitment of the public and private sector to the salutary effect of ethics and compliance in today's business world and beyond.

Andrew Weissmann
Distinguished Senior Fellow,
NYU Law School

Former Senior Assistant Special Counsel to Robert S. Mueller III,
Special Counsel's Office, US Department of Justice
Former Chief, Fraud Section, US Department of Justice
Former Director, Enron Task Force, US Department of Justice
Former General Counsel, Federal Bureau of Investigation,
US Department of Justice
Former Chief, Criminal Division,
Eastern District of New York, US Department of Justice