

Debunking the Myths About Business Crimes

Adding value and reducing risks

By Peter C. Anderson, Esq. and William R. Terpening, Esq.

Today, the news headlines frequently report on criminal indictments. Based upon our experience in defending executives and corporations in business crimes investigations and prosecutions, we have observed a number of common myths that prevent leaders from effectively managing enforcement risks. This article sets the record straight and outlines a cost-effective way to add value and reduce risks.

Myth #1: “No Crimes Take Place in Our Corporation.”

Most of our clients retain us after an investigation has started or after criminal charges have been filed. They often remark, in shock, “I never thought this would happen here. I am a good person, and we are a good company.” The basis for such disbelief is understandable. People still adhere to outdated notions of “traditional” crimes, meaning those that typically depend on certain conduct more than just thought or intent. But in the business setting, the line separating mistakes and crimes is blurry. In our newly-heightened climate of government scrutiny into businesses, if executives rely solely on common-sense, they do so at their peril. Most business leaders engage in wishful thinking and hope that no improper conduct is occurring under their corporate tent. The smarter and safer approach is to take affirmative and cost-effective steps to: 1) assess your corporation and confirm whether there is a problem; 2) create a compliance program; and then 3) regularly check to see whether it is being followed.

Myth #2: “Business Crimes Defense is All Reactive.”

The critical time to anticipate and eliminate or minimize criminal and regulatory issues is now, through implementing smart policies and closely examining your procedures and employees. Once the allegations become known, the need for experienced criminal defense counsel is critical. Typical reactive service and advice should surround: 1) responding to a search warrant or grand jury subpoenas (for both documents and testimony); 2) conducting a parallel internal investigation; and 3) defending against the charges, if brought.

However, at the early stages of an investigation, a federal prosecutor has broad discretion in making charging decisions. What often breaks the tie is whether the company is a good corporate citizen. Every business leader claims to care about compliance after the fact. However, the true test is found in the policies, investments and documentation that were put in place before trouble arose.

Accordingly, the best defense arises from the commitments made when no one was looking. If a company implements a cost-effective compliance program before the whistle blows, it gives defense counsel ammunition to negotiate a more favorable outcome, including one where no criminal charges are ever brought.

Myth #3: “Compliance Planning is Too Expensive.”

Rather than viewing business crimes as purely a reactive field, companies are taking cost-effective steps to implement proactive compliance programs, as well as to plan for reactive measures.

Contrary to popular belief, an effective compliance program does not have to be expensive. Put something in place and implement it properly. The value of avoiding charges is immeasurable, since



ANDERSON TERPENING PLLC ATTORNEYS AT LAW

Anderson Terpening PLLC is a national criminal defense and civil business litigation law firm based in Charlotte. For a description of its attorneys' experience and some of the matters they have handled, visit their Web site at www.houseofdefense.com. To schedule a complimentary in-house compliance seminar, call 704-372-7370 or e-mail pa@houseofdefense.com or wt@houseofdefense.com.

About Peter C. Anderson (left)

Pete is a former federal prosecutor who gives clients the benefit of the “opponent’s playbook.” He graduated from Rutgers University (summa cum laude) and received his J.D. from the University of Virginia. After clerking for a federal judge and serving as a federal prosecutor, Pete also gained valuable experience at two national law firms.

About William R. Terpening (right)

After graduating from Brown (Phi Beta Kappa, magna cum laude), Will received his law degree from Duke. Will then clerked for a federal district court judge before gaining experience in complex business, securities and regulatory litigation at a national law firm.

consequences include loss of business, diminished reputation and employee morale, in addition to active jail time, fines, and restitution. Compliance programs are a form of self-insurance, and like other insurance products, you get what you pay for. Sound compliance planning insures against catastrophic events that may appear to be remote, but which are now common. Just like the benefits of a regular medical check-up, a practical compliance check-up will allow a company to: 1) accurately determine the overall health of their corporate bodies; and 2) demonstrate (and actually achieve) a concrete commitment that is inconsistent with a criminal intent. ■