SHOVELING SMOKE: COMPLIANCE AND THE EFFECT OF ORGANIZATIONAL CULTURE

This column is the first in a new series of columns by Ron Pol on legal department management issues and professional issues. His aim is to cause in-house counsel to think about various topics that can be as hard to grasp and make sense of as it is to shovel smoke.

The plainspoken report[1] of the investigation of February's *Columbia* space shuttle disaster holds salutary lessons for many organizations. The comprehensive nature of the investigation is remarkable, expressly recognizing that complex systems almost always fail in complex ways. It identified physical failures that led directly to *Columbia's* destruction, yet also investigated underlying organizational and cultural weaknesses that paved the way to catastrophic failure.

Observations on the effect of organizational culture are meaningful to all large organizations, particularly in the risk management context, for which legal departments often hold core responsibility. Post-Enron, organizations called on their lawyers to help review compliance policies. As a result, many boards are confident that their policies measure up against the world's best, with robust policy frameworks on corporate governance, directors' duties, legal compliance, delegated authority—the works. The *Columbia* report reinforces, however, that the answer lies not just in best-practice policies, carefully crafted by teams of in-house specialists and outside experts. Best practice policies are like good quality bricks when building a wall, of obvious and vital importance. By contrast, "organizational culture" is less visible, like mortar. No one really notices the mortar, yet it holds the wall together. It's less visible, but no less important.

So, what is "organizational culture"? The *Columbia* report defined it as "refer[ring] to the basic values, norms, beliefs, and practices that characterize the functioning of a particular institution. At the most basic level, organizational culture defines the assumptions that employees make as they carry out their work; it defines 'the way we do things around here.'"[2] Another definition comes from Australia, following the investigation of that country's largest corporate collapse: of HIH Insurance. The Royal Commissioner described it as "the charisma or personality—sometimes overt but often unstated—that guides the decision-making process at all levels of an organization."[3] He found that, notwithstanding a reasonably sound governance model and despite mechanisms to detect warning signs, the prevailing "attitude" within HIH caused its board and management to fail to see, report, or remedy what should have been obvious. Likewise, it seems, at NASA. Like many organizations—and their legal departments—today, NASA's culture was to accomplish more at less cost. The ethos was "faster, better, cheaper," yet within a culture in which criticism and doubt "reinforced the will to impose the party line . . . not to reconsider it."

So how do you identify an organization's culture? A systematic approach might start with a carefully planned and implemented survey designed to identify any mismatch between policies and the real culture and "attitude" of the organization. In the meantime, look out for many signs, including the following:

- Extent to which policies are readily accessible and regularly accessed.
- Whether there's a privileged group for whom different rules seem to apply.
- Whether your incentive scheme inadvertently discourages compliance.
- Extent to which the organization's media statements are widely regarded as highly spun.
- Whether bad news gets to the CEO as quickly, and in the same size font, as good news, or whether it's filtered and sanitized.
- Whether naysayers are regularly sidelined as not being team players.

Your response to questions like these may help indicate whether you need to examine more closely whether your organization's culture complements or contradicts key elements of its best-practice policies.

Ultimately, the policy framework "bricks" may be sound, yet without compliance programs that genuinely facilitate the development of a complementary organizational culture "mortar," seemingly insignificant events may precipitate rather than provide early detection of catastrophic failure and further corporate collapses.

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NOTES

1. Report of the Columbia Accident Investigation Board, Aug. 26, 2003, at www.caib.us.
2. *Id*. at 101.
3. Report of the HIH Royal Commission, Apr. 16, 2003, at www.hihroyalcom.gov.au.

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