

Corporate Compliance Lessons Abound From Navy's Report on the USS Theodore Roosevelt

This latest chapter in the Roosevelt saga should prompt some important introspection by the general counsel, the compliance officer and others with responsibility for organizational ethics and legal compliance.

By Michael W. Peregrine

For those who have been following the USS Theodore Roosevelt saga for the past several months, they'll know it as a soap opera full of COVID-19, presidential politics, media fascination and intrigue on the high seas.

But it's also a terrific teaching moment for general counsel, compliance officers and their governing boards on how best to maintain a culture of transparency and openness within the workforce—not just for compliance purposes, but for challenges of all kinds. For what works for the Navy doesn't always work for the private sector.

The facts are fairly well established. In late March the Roosevelt's commanding officer, Capt. Brett Crozier, became concerned with the onboard spread of COVID-19, its impact on the ship's readiness and crew



The aircraft carrier USS Theodore Roosevelt (CVN 71) transits the Pacific Ocean on Jan. 25, 2020. Photo: U.S. Navy/Mass Communication Specialist Seaman Alexander Williams

safety and the Navy's response. He expressed his concern in a written memorandum to senior commanders warning of the COVID-19 risks to the carrier and crew, which was leaked by a third party to the media, to the embarrassment of Navy leadership.

The memo, addressed to "Fellow Naval Aviators," reflected Crozier's dissatisfaction with the response he had received

from his efforts to ask immediate superiors for assistance in moving sailors off the ship. "We are not at war," Crozier wrote. "Sailors do not need to die. If we do not act now, we are failing to properly take care of our most trusted asset—our sailors."

This drew the ire of the Navy Department. After indicating that he would not retaliate against Crozier, the acting secretary of the Navy dismissed

Crozier from his command and delivered a controversial, disparaging speech to the Roosevelt crew. After walking back some of his criticism, the acting secretary ultimately resigned from office and the Navy commenced an internal investigation.

The final investigative report concluded that Crozier's removal was appropriate based upon his performance following the initial outbreak of COVID-19 on board the ship. The report harshly criticized Crozier for (i) failing to effectively carry out Navy guidelines for preventing the spread of the virus; (ii) slowness in removing the crew off the ship once in port; (iii) releasing sailors from on-board quarantine; (iv) failing to inform his immediate superior (who was co-located on the ship and was at odds with Crozier) that he was sending the memo; and (v) not including a higher ranking superior (the Seventh Fleet Commander) on the memo.

A most telling part of the report criticized Crozier for failing to "exercise ingenuity and creativity in crisis," for not acting forcefully and expeditiously, and waiting "for others to act rather than doing what we expect of our commanding officers—to

take immediate and appropriate action." In other words, *don't involve your superiors until you are certain you have done everything you possibly could do to fix the problem yourself, and be very sure your facts are correct before you indeed involve superiors. And oh, by the way, you're fired.*

(Interestingly, the report absolved from blame those officers responsible for arranging the USS Roosevelt's earlier Da Nang, Vietnam, port call, when the COVID-19 outbreak was in its incipency in Southeast Asia, and where the virus was likely introduced on board.)

The investigative report, which effectively ends Crozier's career, reflects an organizational culture that emphasizes the need for leaders to "get the job done, no matter what." It also underscores the significant personal price to be paid for calling attention to organizational problems outside the direct chain of command.

While these may be particularly *appropriate* messages for purposes of Naval order and discipline, they are particularly *inappropriate* messages for purposes of corporate culture and transparency. The Navy may have completely legitimate

interests in propagating a "drive the outcome" culture in its commanders. But in the corporate world, such a culture risks inhibiting employees from promptly reporting problems and failures up the organizational chart.

For those reasons, this latest chapter in the Roosevelt saga should prompt some important introspection by the general counsel, the compliance officer and others with responsibility for organizational ethics and legal compliance. *Do we encourage employees to be open about potential problems, or do we propagate an environment that stifles the reporting of legitimate concerns?*

Traditional themes of corporate responsibility encourage and incentivize employees at all levels to be open and direct with their superiors about risks, concerns and shortfalls—without fear of retaliation. The managers receiving such direct reports must be equally encouraged and incentivized to embrace those reports and act on them.

Employees must also be able to bypass direct reporting relationships in times of urgency when otherwise doing so would be futile.

Certainly compliance officers and in-house counsel have special protections by bar rules and corporate policies that allow them that flexibility. You don't force someone to report straight up the next rung of the corporate ladder with a critical company issue when he or she knows the next couple of rungs are slippery.

And that's consistent with the message sent in the Department of Justice's updated "Evaluation of Compliance Program Effectiveness" guidance. That publication underscores the value of proactive measures intended to create a workplace atmosphere without fear of retaliation, appropriate processes for the submission of complaints, and processes to protect whistleblowers. Notably, the guidance observes that "confidential reporting mechanisms are highly probative of whether a company has 'established corporate governance mechanisms that can effectively detect and prevent misconduct.'"

The Navy's emphasis on bold and appropriate action, early and often, makes sense for its commanders. And indeed, the unique circumstances of a giant, multibillion-dollar aircraft carrier

are hardly the stuff of business school hypotheticals.

But a corporate culture that places too much emphasis on self-reliance in the face of challenge or controversy; requires too many steps to be satisfied before involving superiors; is too quick to criticize for actions taken in response to unique circumstances; and too ready to retaliate for whistleblowing, will likely cause employees to overlook, ignore or even cover up identified problems. Why bother?

All this goes beyond basic matters of hotline reporting to the development of a culture of openness and transparency that is critical to workforce culture, enterprise risk and legal compliance. Openness and transparency are, of course, essential "tone at the top" elements to be demonstrated by executives and the board.

The key corporate responsibility takeaway from the USS Roosevelt saga is the need to reconsider the company's own internal culture of openness and transparency. Do we expect our managers to promptly share concerns regarding critical problems, or do we expect them to first try to fix the problems themselves? Can we rely on our

managers and other employees to speak up, and send messages up the hierarchical ladder?

Those are questions boards are well advised to address—and it could be done in tandem with their review of the new, updated DOJ guidance. The general counsel (in tandem with the chief compliance officer) is well-positioned to guide the board through the analysis.

Peregrine acknowledges reference in the preparation of this post to the article, "Don't Just 'Shut Up and Row,'" by Major Brian Kerg, U.S. Marine Corps, appearing in the April 2020 edition of Proceedings.

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