

The Accidental Compliance Professional Lesson 14. The Possibility of Being Too Ethical

In 2014, former FBI Director James B. Comey gave the keynote speech at our Compliance & Ethics Institute in Chicago. When introducing him, I said that I believed the FBI had one of the best compliance programs of any government agency. Comey thought so too, stating that the FBI was very proud of their compliance program.

Comey went on to speak about cybersecurity, and how to deal with cyber threats. He said that these threats don't always come from outside a company, they often come from inside—contractors, employees, system administrators—people with a grudge or some problem with someone or something in the company. Comey also spoke about the importance of building a culture where people care about one another and the security of the company. If this kind of culture exists, then employees feel safe sharing anything they notice that could harm the business.

That was the second time I had met Comey. On both occasions he was very impressive. However, shortly after this presentation, all heck broke loose at the FBI. Here's a little recap of what happened, and how Comey broke with FBI policy in 2016 in regard to the investigation of Hillary Clinton's use of private servers and email system for government work while secretary of state.

Comey's Decisions

On July 5, 2016, while the investigation was still ongoing, Comey called a press conference to give a public update on the FBI's findings so far. The Department of Justice (DOJ) has a policy that: "Any communication by DOJ personnel with a member of the media relating to a pending investigation or case must be approved in advance by the appropriate United States Attorney or Assistant Attorney General, except in emergency circumstances," and that the "DOJ generally will not confirm the existence of or otherwise comment about ongoing investigations."^[1]

Yet, Comey broke these policies for this particular case. He noted in his press conference that his update was unusual in a few ways, saying: "First, I am going to include more detail about our process than I ordinarily would, because I think the American people deserve those details in a case of intense public interest. And second, I have not coordinated this statement or reviewed it in any way with the Department of Justice or any other part of the government. They do not know what I am about to say."^[2] Comey did not consult with Attorney General Loretta Lynch or Deputy Attorney General Sally Yates about the public announcement. I am not entirely sure of the reason why he did not consult with them, other than some speculation about a conflict of interest created by a meeting between the attorney general and the subject of the investigation's husband, former President Bill Clinton.

During the press conference, Comey stated that the FBI did not find evidence that Clinton intended to violate laws about the handling of classified information, but rather found that she and her colleagues were extremely careless in how they handled the emails.

A few months later, on October 28, Comey sent a letter to Congress stating that more of Clinton's emails had been found while investigating another case. He stated that the FBI was going to investigate these emails. Then on November 6, Comey sent another letter to Congress stating that after reviewing the additional emails, there were no changes to the FBI's conclusions.

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