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# **ACC DOCKET**

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## **Promote Ethical Behavior By Unleashing Your People**

**Compliance and Ethics**

**Law Department Management**



Recently, I told a friend how grateful I was that our dog was so well behaved as compared to others and what a blessing it was to be able to let him run free. In response, my friend explained that the primary reason that dogs on leashes misbehave is because they are on leashes.

I am the proud owner of a border collie named Duke. Duke is a striking animal, with the black and white markings that distinguish the breed. He is smart, quiet, and friendly to people and dogs alike. And he loves to run.

Frequently, I take him with me for my daily run on the Erie Canal towpath near my hometown of Fairport, New York. Regardless of how far I run, he runs twice the distance. In addition to scurrying about, exploring and sniffing as dogs do, he is almost constantly in herding mode. The Scots bred border collies to help them tend their flocks in the Highlands — and they did a good job of it. Whenever anyone in the family runs, rides, walks, or scoots with Duke, he reveals his heritage by excitedly running circles around us.

As you might imagine, Duke would not be able to be himself and exhibit all of these remarkable traits if we kept him on a leash. Fortunately, he can be trusted to run free. He leaves everyone else on the trail alone — unless they call for him to approach — and he never barks or nips at any other dogs. He is mindful of bike riders on the path and responds swiftly to commands to move to the side to make room for those who need to pass.

By contrast, the vast majority of the other dogs we meet on the trail are tightly controlled by their masters — with leashes of various lengths. These dogs often exhibit behaviors that are markedly

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different than Duke's. Many of them snarl, bark wildly, and strain against their leashes, causing me to sometimes wonder who is taking whom for a walk.

Recently, I told a friend how grateful I was that our dog was so well behaved compared to others and what a blessing it was to be able to let him run free. In response, my friend explained that the primary reason that dogs on leashes misbehave is because they are on leashes. My friend conceded that there are some dogs that are nasty on account of their breeding, training, or disposition. But, if permitted to do so, my friend asserted that most dogs would behave very well off leash — just as Duke does.

This theory jives well with my memory of my neighborhood when I was growing up in a small village, where there were no leash laws and people generally let their dogs roam freely without any supervision. I recall there being occasional altercations between these emancipated pets, and some dogs were definitely nicer than others. But, generally speaking, the vast majority of these animals got along with one another and with the neighborhood kids. The primary nuisance they caused was occasionally getting into our garbage and making a mess of things. Otherwise, the dogs that ran wild in our neighborhood learned to self-regulate and were non-disruptive members of our community.

As I reflected on my friend's theory and my personal experience, I began to consider whether we compliance officers and corporate counsel sometimes take the wrong approach when we seek to induce compliant and ethical behavior in our colleagues. As often as not, the primary tool we use to achieve these ends is internal controls designed to ensure everyone in the company walks the straight and narrow path. Of course, internal controls are an essential component of good governance, but if not properly calibrated, I am convinced they may end up causing more harm than good.

To be clear, when I refer to internal controls, I'm not referring to policies aimed at helping employees understand where the lines are drawn. Although companies have far too many of these, they are generally harmless because most employees ignore them. If you doubt this, write and publish another dozen next week and see if anyone in your firm even looks up from their work to notice. Instead, the kind of internal controls I'm referring to are the ones that, if left unconstrained, can grow into a bureaucratic morass that can make scofflaws of even the most conscientious employees and, ultimately, hurt your business.

When we tighten controls to the point that employees are compelled to obtain multiple levels of approval to get anything of consequence done, several things happen — and they're all bad. First, when given a choice of following a bureaucratic rule and completing their work, conscientious employees will choose the latter every time. As a consequence, many will find ways around the rules and, when they do, they won't necessarily distinguish between essential and non-essential controls. Second, they may choose to follow all the controls, but abandon taking responsibility for getting their work done. Another possible response is that your best people will leave your company for one that has a management team that knows how to run a business.

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These are not just theoretical possibilities. I once worked for a multinational company that required country managers who were responsible for thousands of employees and hundreds of millions of US

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dollars in revenue to seek approvals from headquarters for any expenditure over US\$1,000. To a person, these leaders told me that operating under such controls was exhausting, distracted them from focusing on more important tasks, and significantly constrained their ability to run their businesses. In addition to being frustrated, these leaders resented the apparent lack of trust in their judgment and questioned the competence of top management. The best and the brightest simply abandoned ship to work for other firms.

Regardless of how your employees strain against the “leashes” you put on them, the reality is that if they are too short, instead of achieving your desired end you may be creating a frustrated workforce who, over time, may lose their ability or inclination to think for themselves and self-regulate.

Trusting your employees to “run free” may be an unnerving thought to many corporate counsel and compliance officers. But, by taking the leash off where you can, with a genuine expectation that your colleagues will behave themselves, you are as likely as not to strengthen rather than weaken your ethical culture.

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