

Cari's Legal Exchange: Regulatory Risks and Enforcement Realities — Part 1

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In part one of Cari's Legal Exchange, Winston's International Trade Practice Chair Cari Stinebower and partner and former U.S. Attorney for the District of Columbia Matt Graves discuss how companies can navigate evolving DOJ voluntary disclosure programs, the importance of compliance, and the growing focus on individual accountability in corporate investigations.

Learn practical strategies for risk management, understanding DOJ incentives, and avoiding common pitfalls in national security cases.

Cari Stinebower

Hi, I'm Cari Stinebower and I'm Chair of the Winston & Strawn International Trade Practice and Co-chair of the Financial Crimes Compliance team here.

I'm joined here today with my partner, Matt Graves, who has just come over from the U.S. Attorney's Office for the District of Columbia.

Before that he was the acting chief of the fraud in the public corruption section and has a lot of experience both in the private sector and in the public sector managing cases, trying cases in the corruption, anti-money laundering healthcare space.

And so given that we're now teaming up together with our other colleagues in the white collar regulatory space, we thought it would be particularly helpful to have a fireside chat for our clients in order to impart some of Matt's experiences and wisdom and figure out what what's coming in the next couple of years.

So with that, we can get started.

Matt, thank you again for your time and a pleasure to have you as a colleague.

Matt Graves

Yeah, thank you for having me and I'm glad to be on the same team.

Cari Stinebower

So here we go.

The first question, the Department of Justice has been pushing aggressively for voluntary self-disclosures and it's published a couple of documents encouraging corporations to come in whenever they have a voluntary self-disclosure with some promises of mitigation.

This seems to be a trend that we had seen before with the Departments of Commerce, State and Treasury, in the national security space, export controls and sanctions space.

But the Department of Justice voluntary self-disclosure criteria seems to be a slightly different flavor.

So what's, what is your take on voluntary self-disclosures before the Department of Justice?

Is it something that's a good thing?

Are there pitfalls?

What should companies know about the VSD process at Justice?

Matt Graves

Yeah.

I think this is recognition that while the Department of Justice and federal law enforcement certainly have ways of detecting illegal activity on their own, whether it be data mining or traditional law enforcement, and a valuable source of corporate wrongdoing continues to be individuals at the companies where the wrongdoing is occurring. And whether that is the company coming forward, where individuals at the company, the government wants to do everything it can to incentivize individuals coming forward and providing them with information of suspected wrongdoing.

I think the number one thing that clients need to be aware of is there are now roughly a half dozen programs, probably more within the Department of Justice that try to incentivize people, to come forward with information.

Those programs have been different.

There are different incentives that are provided to those that provide information.

There are different conditions in terms of who can qualify.

And it's incredibly important to have counsel walk through the specific program so that there's understanding before disclosure is made about what the benefits are of the program and what the requirements are qualifying.

Cari Stinebower

That's super helpful, and it is worth recognizing that there are other options for disclosing conduct with the Department of Justice. You just mentioned that there's a difference in focus now, or has been recently, on corporations versus individual engaged in malfeasance.

Do you see a continuing trend? I guess it goes back maybe to the 2012 MoneyGram case where there was a focus both on the entity but also on the individuals engaged in in the malfeasance.

Do you see a continuing trend focusing on individual actors as well as corporations?

Matt Graves

Absolutely.

You're absolutely correct about that time frame, that 2012 through 2014 time frame, that was an incredibly important period and the Department of Justice and history with respect to corporate enforcement and individual accountability.

We were coming off with Great Recession. I was in the Department at the time doing fraud and public corruption work and ultimately was a supervisor in the D.C. U.S. attorney's office and doing that kind of work. As we had resolutions coming out of the Great Recession that involved corporations, there were growing calls—why aren't individuals being prosecuted?

And the department's first real crack at responding to that was a memorandum put out by then Deputy Attorney General Sally Yates, which became known as the Yates memo, which emphasized the need to think about individual accountability, which makes sense.

Corporations can only act through individuals.

And if you are prepared to charge a corporation, by definition, you're saying there's at least one individual at the corporation that committed a crime.

So that begs the question, why has the individual not been charged?

That idea, that call for individual accountability has done nothing but pick up momentum and we've seen that continue afterwards.

Cari Stinebower

We're seeing that as well across the board with respect to the national security cases that are being brought by some of the other agencies like Commerce and Treasury.

So, I guess it's a consistent pattern across regulatory and the criminal side of things.

The Department of Justice has its national security division, which we've been talking about, with its focus on export control, sanctions, anti-money laundering, corruption.

How does Justice coordinate these cases with the other agencies practically?

And we know that they have meetings and that there's a mechanism, for example, Treasury to refer matters to Justice.

But maybe you got a little bit more insight for our clients on how this process actually works.

Matt Graves

Yeah, I think the best way to think about it is to analogize to the private sector and in general, your prosecutors at U.S. Attorney's offices and even the National Security Division, which focuses exclusively on these national security related statutes, you have to think of them as more the general practitioners, the trial lawyers, the people that know how to prosecute these crimes.

They have expertise in these incredibly nuanced areas, but they don't live them day-to-day in the same way that their colleagues at Treasury or Commerce live their respective regulations.

So, in an ideal world, the way it should work, you have a great team up of the generalists who can speak the language of sanctions enforcement or export control enforcement, and then the people that live it every day and are involved in the congregation of regulations, and they then become the true subject matter experts during the worst of the investigation that you're looking at these incredibly complex transactions and trying to figure out what is lawful and what is unlawful.

Cari Stinebower

That's super helpful and it, it's sort of supports that the flip side of things when I was with a Treasury, we were obviously second chair to the Department of Justice Fed programs whenever the Treasury Department was sued. So it makes sense that on the aggressive side you would see the same collaboration and coordination.

Matt Graves

Absolutely.

Cari Stinebower

After 911, there was this concept that the U.S. attorneys across the country needed to be trained on spotting sanctions evasion matters, export controls cases. And it seems that that trend, at least from the private sector, has continued to grow.

Do you have some insight into what the training program looks like for USAs across the country on bringing these types of export controls, sanctions, evasions, money laundering cases?

Matt Graves

Yeah.

And I mean, it's just been remarkable to watch how the desire to prosecute these very serious national security matters has been institutionalized and how they've made sure that it's not just about who was leading the component at any given time.

So every U.S. attorney's office now as a, for instance, terrorism coordinator that coordinates with the National Security Division. You see the same thing on the export control side as well.

Not every office, but there are, there are regional people responsible for that coordination.

So that's kind of institutionalized among the rank and file.

And then at the U.S. attorney level, all U.S. attorneys when they start go through a basic training under the U.S. attorney school where the National Security Division does a presentation.

And then for us in the Biden Administration, after a critical mass of us have been nominated, there was an actually an all U.S. attorney meeting focused exclusively on national security issues that was conducted at a secure facility where we were able to discuss classified information, kind of going through the work that the department's doing.

And it wasn't just the national security division talking to the U.S. attorneys. It was also U.S. attorneys talking to their fellow U.S. attorneys about the kinds of work they were doing and explaining how interested U.S. attorneys could be doing the same thing in their respective jurisdictions.

Cari Stinebower

Great.

So coordination, collaboration across the various jurisdictions, which would be super helpful.

And I assume there was also a foreign component as well where there's coordination with allies on some of these types of cases.

Matt Graves

Yes.

And they are the U.S. Attorney's offices really do look to the both the National Security Division and the Department of Justice's Office of International Affairs, which maintains relationships with all of our foreign law enforcement power partners who are so critical in these extraterritorial cases for getting the kinds of evidence that we need to be able to prosecute individuals for wrong doing that touches the United States.

Cari Stinebower

Got it, got it.

Yep, that makes sense.

What specific patterns have you seen over your career in these types of national security cases that would arise to the level of, of red flags or something practical, that the good corporate citizens could use in their tool book in order to make sure that they're not inadvertently abused by these bad actors?

Matt Graves

Yeah.

So I think like a common trend line that I've seen across cases and across industries is most multinational companies, the overwhelming majority of multinational companies, do an incredible job of training their core employees and their employees based in the United States.

And it's rarely the case in these big cases that involve alleged sanctions violations or export control violations that the problematic conduct originates in the United States.

What invariably tends to happen is you have subsidiaries that are based abroad.

Often it is at recently fired subsidiary or subsidiary that's in that interacting and relies extensively upon consultants who are outside the company, engaging in conduct, sometimes aware that it violates the U.S. law, but often not appreciating that their transaction, which they view as involving them, who by definition they're not U.S. citizens, and the counterparty might not be a U.S. citizen, and therefore it's not even registering with them that the U.S. may have an interest or the transaction may be subject to U.S. law, which it often is, because it might involve U.S. dollars which transit through the United States.

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Cari Stinebower



Matt Graves

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