It’s the Floor, Not the Ceiling

Law Department Management

I've always known that I'm terrible at remembering the plots to novels, films, and plays, even those I consider favorites and happily recommend to others. A big plus is that I'm basically incapable of "spoilers" when making recommendations, but that's not always enough to overcome the weakness of my "I don't really recall, but I do know I liked it a lot" endorsement. Just this week, I discovered that I may sometimes be misremembering stories (or at least scenes) that moved me enough to stay lodged in my brain.

There's a scene at the beginning of the movie "Goin' South," a 1978 western starring Jack Nicholson and a ton of other really famous folks that would make you wonder how you never heard of it,* in which I recall outlaw Henry Moon (Nicholson) being pursued on horseback across the South Texas desert by an angry posse, guns blazing. Moon finally reaches what he reasonably believes to be the Rio Grande, crosses it, and then turns to thumb his nose at the posse still on the other side, now that he's escaped their jurisdiction. The posse then crosses the river which, it turns out, is not the Rio Grande, they explain, as he's arrested and taken back to town to be hanged.

*Some say that this is because the movie is really not very good; I pooh-pooh this notion.

Or at least, that's how I think it went. I went online to verify the movie's date and the spelling of the title and saw, in multiple plot synopses, that Moon was captured because his horse either quit or gave out on him; I found no mention of the whole Rio Grande issue. So, I must conclude that either (1) inaccuracies exist on the internet, (2) I've begun retroactively conjuring plot points in my subconscious, or (3) this was the reviewers' attempt to avoid spoiling the big gag in the opening scene (as I may have just done).

As tempted as I am to go back and rewatch the film and see how my memory's held up, I'm not

ready to abandon what I might've made up, because I love the metaphor. Can you see the application to those times when someone seeks your counsel on an issue? Those times are when it becomes clear they're hoping you can find a technicality that will permit them to continue on their dangerous course. Several years back, someone told me they "wanted to make sure we do this 'compliantly.'" If you pictured the speaker making air quotes when she said this, the picture is almost complete; you need only add the complete absence of guile as she did so. I asked, "Why the air quotes?" She explained that she simply didn't know a compliant way to meet the objective but thought perhaps a lawyer could create one.

I couldn't create one, or more accurately, I couldn't find one. The interchange prompted a good discussion about how attorneys work and how some roadblocks are there because they're supposed to be. I was encouraged to see that she wasn't truly looking to get a pass to do something she already understood to be prohibited, but rather to confirm with a specialist that there wasn't some aspect to the issue that she couldn't perceive from her vantage point. That said, I have encountered the occasional technicality-seeker with the iffy motive, and I'll bet most of you have too (and don't just consider the workplace; how about the cocktail-reception conversation that begins with "So, I hear you're a lawyer …").

Many of you may have been thinking about how to promote a culture of compliance in your workplace that is free of the notion that getting out on a technicality is equivalent to being unquestionably in-bounds, particularly in preparation for Compliance Week activities this past November. In one of our team's conversations on this and similar topics, I heard this: "Compliance is the least we can do." Someone else responded that "Compliance is the floor, not the ceiling." Technicalities can and sometimes do change outcomes, but almost never in a way that the beneficiary of the outcome is particularly proud of. What's more, as Henry Moon found out (if perhaps only in my head, and now yours), technicalities can be fragile and subject to error; in such cases, one always wants something more substantial to rely upon. These perspectives may not be new ones to you, but I think they have great potential for helping your teams adopt and support a meaningful compliance culture.

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