A View from the Trenches: Effective Communications and Training

An In-house View, Part II, by Christian Liipfert[1]

Christian Liipfert is President, Christian Liipfert Consulting, LLC, in Houston, Texas. He was formerly Programme Director, Global Information & Records, and then Information Policy Director for BP America Inc., and was responsible for the design and implementation of a global information management program at BP and the integration of information-related policies emanating from diverse corporate functions.

He graduated *summa cum laude* from American University's Washington College of Law in 1979. He was an associate at Dickstein, Shapiro & Morin, Washington, D.C., 1979 – 1984; his practice then moved in-house, first at Schlumberger Limited (General Counsel, Sangamo Weston, Inc., Atlanta, Georgia; Directeur Juridique, Services Conseils Dowell Schlumberger, Paris, France) 1984 –1988; and then at Amoco Corporation/BP in a variety of roles (Chicago, Hong Kong and Houston) 1988 – 2010.

He is a member of the Illinois, District of Columbia (inactive), and Maryland (inactive) Bar Associations, the Association of Corporate Counsel, and the American Bar Association. He has written and spoken extensively, both internally and externally, on Information Governance, Knowledge Management, E-discovery, and Crisis Management issues. He is a contributing editor to Corporate Legal Compliance Handbook, edited by Frederick Z. Banks and Theodore L. Banks (Aspen Publishers 2009) for Chapter 13 – *Using Technology for Compliance and Training*.

Introduction

This article[2] flows from an article prepared for the 2009 Practicing Law Institute Corporate Compliance and Ethics Institute.[3] Last year's article focused on various teaching techniques; this year's article addresses

- key success factors in a Compliance and Ethics training program,
- lessons learned,
- appropriate content for different levels of the organization,
- an overview of the training options,
- recommended steps to be followed after the training has been completed, and
- suggestions for coordination with the overall corporate communication strategy.

What's the Purpose of Compliance and Ethics Education?

There are several different components of the "why" of Compliance and Ethics education. These include:

- reducing the risk of legal non-compliance
- having the employees read the policies and be generally familiar with the contents
- having employees know enough to answer the questions they should be able to answer in their role or position within the organization
- making employees alert to red and yellow flags so that they can ask questions and seek additional guidance before a possible violation occurs
- fulfilling the corporate duty to the shareholders to protect the assets of the corporation

---

[2] This article is to accompany the presentations given at the meeting in Chicago on May 13-14, 2010; it does not attempt to cover all aspects of the topic description in the program materials.

[3] Corporate Compliance and Ethics Institute 2009 (Practicing Law Institute), "A View from the Trenches: Effective Communications and Training, an In-House View," by Christian Liipfert, pages 315-331.

- providing the corporation some insulation against penalties arising from the alleged criminal acts of rogue employees.

Key Success Factors in an Effective Compliance and Ethics Education Program

As has been said many times, many ways, including by the Federal Sentencing Guidelines, the key factors are ownership and the tone at the top of the organization, in establishing a culture of compliance. Establishing those is beyond the scope of this article.

Several additional factors are key to the success of any such program:
- corporate sponsorship
  - Who is your sponsor? Do they carry sufficient "stroke" within the organization to be effective?
  - Are they highly visible?
  - Are they willing to lead by example?
  - Are they willing to speak frequently on this topic?
  - Remember that the messenger is also part of the message; if the messenger is wrong or not viewed as sincere, the message won't be received well.
  - Does your sponsor truly believe in the importance of this activity and have a passion for achieving compliance? Why?
- robust corporate policies covering the areas of compliance
- a well-designed and continuing training and education program to establish and reinforce the key messages over time
- the messages need to be simple
  - Gear the messages and the actual training modules to the needs of the audience, organizing the training around how the employees work rather than according to the legal disciplines (antitrust, labor, export) that establish the requirements
    - secure an agreement on the corporate requirements from all the necessary stakeholders, including Legal, HR,

> > Compliance, Information Security, and Audit
> > - secure an agreement from the corporate stakeholders that they will stick to the agreed messaging strategy and not improvise or introduce their own idiosyncratic approaches to the messages or their delivery
> - each employee's job description should contain the levels of competence that employee is required to have in each element relevant to the employee's job; in some elements, awareness may be enough, or perhaps understanding is required. In other areas of a particular employee's role, mastery of the subject matter may be required.
> - constant repetition of simple messages
> - auditing and enforcement
> - the Compliance and Ethics training program should be integrated into the general training program, and not a separate program handled and coordinated by different people.

Lessons learned

I offer the following Lessons Learned:

1. Recognize reality. Not everyone has read and understood all the policies, and even those who have read them may not have understood them or may not be able to remember the underlying principles when a covered situation arises.
2. Teach the How as well as the What. As difficult as it is to condense and simplify certain of the complex compliance areas, it is often even more of a challenge to provide the employees with practical guidance on how to comply in their everyday jobs. Helpful ways to address this are checklists, Frequently Asked Questions, scenarios and flowcharts.
3. Be clear as to who is in charge of the Program. While every employee needs to comply with the company's policies, it is important that there is a visible C-suite executive with accountability and responsibility for the effectiveness of the program. Otherwise, no one is

assigned overall supervision. This also raises problems under the Federal Sentencing Guidelines.

4. Have a grid for training.   All employees in your organization will require at least some level of training in the Compliance and Ethics topics, but not all employees need to receive the same depth of training in all the different topics. It is therefore helpful to develop a grid, based upon each role's level in the organization and areas of responsibility as to what level of confidence does each employee in that role need to have in each of the elements. Is awareness or understanding enough, or is competence or mastery required?

5. Integrate the training into the overall corporate training agenda. This has already been raised as a key success factor.

6. Get the audience involved before, during and after.   In connection with particular education events, such as lectures, deal with the audience both before and after the session. Contact them before the session, providing them a pre-read and a list of the expectations of what they will be getting out of the session, and why it is important. Then, after the session, follow up on a structured basis. Some of the memory theorists would suggest that you would increase the likelihood of long-term retention of your messages if you followed up (a) the next day, (b) a week later, (c) one month later, and (d) a year later, reinforcing the messages at each step.[4] This may seem like overkill, but is fairly simple to automate. Perhaps you want to conduct a survey after the session, or perhaps several months after the session, to refresh people's recollections. You certainly want to make simple summaries, checklists, and Frequently Asked Questions readily available.

7. Keep audience bandwidth in mind. How many pages will your audience actually read? Two? 15? How long will they listen to a stock presentation? 10 minutes? Seven minutes? 30 minutes? All day? Remember that even the baby boomer generation is used to television presentations with interruptions every six or seven minutes. Gen X may be more attuned to YouTube, where a long clip is one that

---

[4] See, e.g., J. Medina, Brain Rules (Pear Press 2007).

goes two minutes or more. Audiences raised on TV expect more flash than death-by-bullet point presentations in PowerPoint – video, graphics, sound, mixed media.

8. <u>Give examples</u>. A lot of this material is conceptual, so it is beneficial to state the rule and then follow-up with a concrete illustration. Thus, saying that harassment is against company policy only gets you so far; presenting an example of a series of conversations or emails between an employee and a supervisor, or between two employees, makes the lesson more memorable.

9. <u>Be sensitive to system bandwidth limitations in remote locations</u>. What runs well in the corporate office may not run well on an offshore platform or in a foreign location with dial-up access. And not every employee has a laptop, or even daily access to a desktop.

What does Everyone need to Know?

As stated above, not everyone in the organization needs the same level of awareness or competence in all the various compliance topic areas. There are numerous company policies, and everybody should be aware of those.[5] Also, as I have already mentioned, administrative assistants, mailroom attendants, and administrative personnel need to have a different level of awareness of the general principles, and the frequency at which their training needs to be refreshed can be extended; on the other hand, marketing directors, HR personnel, and procurement personnel will require more focused, and more frequent, training and refreshers. Finally, every attorney in the organization should be aware of all the company policies, and who are the company experts on each one of those policies. My belief is that each attorney in the organization should be totally familiar with all company policies, even those outside their areas of expertise, as the

---

[5] Building on Appendix A to last year's article, I have updated my attempt to capture the entire scope of a Code of Conduct in one page. It is not too much to ask your employees to be aware of and generally familiar with a single page. See Appendix A.

attorneys will normally be the first point of contact for an employee with a question in this area.

Every employee in the company needs to be familiar with and adhere to the following principles, which should be included in the general training that everybody receives:

1. Don't lie, cheat, or steal, or act in a way that reflects poorly upon the company, even outside of the workplace and normal working hours
   a. This includes respecting the rights of others, such as copyright, confidentiality, and privacy
   b. This also includes complying with applicable law and company policy
   c. Social media present some new opportunities to do something outside the normal work environment that violates company policy or reflects back on the company
2. Treat people as you would want to be treated
   a. This includes avoiding harassment, discrimination, or intimidation
   b. This also includes a deeper exploration of the privacy obligations when dealing with personal data of employees, customers and other third parties, and its collection, use, disclosure, storage, transfer, and disposal
3. Write properly, and retain appropriately,
   a. All documents (broadly defined to include electronic documents and databases and the like) created or modified in the course of business must be accurate and complete
   b. Those documents, both paper and electronic, that qualify as records and must be kept to comply with local legal requirements or specific business needs need to be appropriately categorized, labeled, retained, indexed and destroyed.

       i. if you receive a legal hold order, or believe that litigation or a governmental investigation is reasonably likely, do not destroy relevant documents without first checking with Legal

4. Operate safely and do not pollute the environment
    a. Use of drugs, alcohol, etc.
    b. Texting while driving
5. Take reasonable steps to protect the company's property and reputation
    a. Use company assets only for company business, subject to the limited personal use exceptions for use of the information technology systems
    b. Protect and keep confidential the company's intellectual property, trade secrets, confidential documents, and proprietary information; this includes disclosures in any discussions or postings on public settings, including social media such as Twitter, Facebook, etc.
    c. Do not discuss company matters with the media without appropriate corporate authorization
6. Avoid conflicts of interest
    a. Follow the rules on the appropriateness of gifts and entertainment
    b. Don't misuse corporate information or use it for your own gain

In addition to the matters listed above, which should be the subject of education and training for all employees, additional education would be required for appropriate personnel, based on their job duties, in the following areas:
- Securities laws (insider trading, Sarbanes Oxley, etc.)
- Environmental, health and safety laws

- Antitrust/competition law
- Protection of confidential and secret information
- Bribes
- Export control/trade sanctions
- Anti-boycott regulations
- Labor law generally, including wage and hour rules
- Government contracts
- Money laundering
- Food & Drug laws
- Transportation laws
- Legal holds
- Restrictions applicable to brokers and dealers
- Advanced business writing and communication

Training methodologies

As a starting point here, I recommend you look at how your company conducts training and communication on other topics important to the company. You should use those same tools and coordinate with those activities.

The training itself

In the actual delivery of training, it is best to start with having the employees read the applicable policies and give them a brief quiz to test their understanding. This also gives you a context in which to explain why this training is important and how it is useful to them in their day-to-day jobs.

There are numerous ways in which you can present the substantive information to your intended audiences, including the following:
- written memos
- videos
- face-to-face meetings
- WebEx or similar presentations, either recorded or not

- posting presentation slides to a website or Sharepoint site, either with or without teaching notes
- Slides with an accompanying audio or video track, easily produced using products such as Articulate®[6] or Camtasia.
- Simulations, such as those created using Second Life
- scenario-based training, with example scenarios, with different branches depending on the employee's initial answers
- YouTube videos
- quizzes after the training itself, with a group discussion of the "right" answers
- providing the attendees with takeaways, including copies and summaries of the policies, the slides, and a link to a website or Sharepoint site where the most up-to-date copy of the information will be maintained
- document what training was provided to and by whom and when, and how you confirmed their understanding and comprehension of the materials

After the training -- follow-up and repetition

After you have completed the training, there are other opportunities for reinforcement. One way would be to send out a survey, such as through SurveyMonkey,[7] a week or a month after the education event, and include questions on some (probably not all) of the materials for the recipients to answer. This could be directed to all attendees, or to just a random sampling of them.

You can also continue to repeat the messages by frequently sending targeted e-mails on developments that would be appropriate for different roles and positions.

---

[6] Tom Kuhlmann's Rapid E-learning community is a must-see. http://www.articulate.com/rapid-elearning/
[7] http://www.surveymonkey.com/; see also footnote 4, *supra.*

11

It is also good to provide a place where employees can go to find answers to simple questions as they come up in the future. This would include Frequently Asked Questions, simple modules on precise points (simple issues, rather than a rehash of an entire topic), and the names of the appropriate contacts in each subject matter area. This makes it easy for your employees to find the experts.

A slightly more involved method for accomplishing the same thing would be to establish some wikis and blogs by subject matter area, or perhaps based on the different employee roles, monitored by designated subject matter experts. If you combine this with RSS feeds, it would be possible to have a focused blog on export control issues to which sales and shipping personnel could subscribe to receive emails with the latest developments.

Coordinated corporate communications strategy

Corporations all have different ways in which they communicate with their employees on matters relating to the business. This can include company newsletters and magazines, and e-mails from the heads of different departments. In larger companies, this can include corporate information blogs, daily website updates, and slick-covered communication materials. These methodologies are used to convey everything from earnings results and changes in the company health plan to the upcoming United Way campaign.

You should coordinate with whoever in your company manages these types of communications so that you can include your messages in these publications, where appropriate. This would also allow you to put snippets in e-mails and speeches from managers to large groups of employees, as well as having an influence on any other major

corporate communications, including those by audio, video, blogs, wiki's, or podcasts. While you should nonetheless maintain a compliance website, with targeted materials and policies, Frequently Asked Questions, examples, checklists and decision trees around different constructed scenarios, it is critical that your messages are seen to be a part of the normal communications within the company.

There is also a benefit to be gained from consistent branding for your compliance materials. This can make them stand out on your posters, on desk-drops, on campaign e-mails, tent cards in the cafeteria, and Compliance and Ethics booths at corporate meetings.

Conclusion

It is critical that you identify and engage the right sponsor, and that you customize the delivery of your Compliance and Ethics training to your employees based upon their roles and their needs, rather than a one-size-fits-all approach. This allows you to vary both the depth and the breadth of the instruction that is given. After you have rolled out the initial training, recognize the need to continue to maintain and update your workforce so that they retain the material and that material remains fresh. Finally, working in coordination with your communications folks, distill simple communication messages, identify the available communications channels, and maximize the repetition of those messages and their delivery to your intended audience.

Christian Liipfert
February 2010

Appendix A

1. **Integrity and Loyalty**. Every employee will comply with this Code of Conduct while on either company business or company facilities, or when appearing to represent the company. These are fundamental limits on how we will and won't make profit for our shareholders.
   a. We will not lie, cheat, steal, operate unsafely, or pollute the environment.
   b. We will treat people with dignity and respect.
   c. We will protect the company's assets and interests.
   d. We will disclose any potential or existing conflicts of interest between us and the company.
   e. We will behave in a business-like manner.
   f. We will respect the Intellectual Property rights of others.

2. **Compliance with Applicable Law**. It is your duty to know what laws apply to your business activities, and to comply with those laws. Supervisors have a higher duty to make sure that those who report to them know what laws apply to their activities and that they comply with them. This includes:

   - Safety laws
   - Environmental laws
   - Non-harassment laws
   - Privacy laws
   - Compliance with legal holds
   - Labor laws, including discrimination prohibitions and Wage and Hour rules
   - Government contracts
   - Bribes
   - Export and trade controls
   - Food & Drug laws
   - Document retention

   - Money laundering
   - Securities law, including rules on insider trading and maintaining the accuracy and completeness of documentation
   - Antitrust, including joint behavior and contacts with competition, and unilateral activity, such as abuse of power and dealing with distributors

3. **Company Policy**. We will comply with company policies, including those concerning dealing with the government, dealing with the media, political activity, gifts and entertainment, drugs and alcohol, information security and the use of corporate assets, including digital systems.

14