A View from the Trenches: Effective Communications and Training

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

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Introduction

The aim of this article[2] is to provide some practical guidance about things to think about and tools available to help provide effective Compliance and Ethics training to corporate employees.

To be effective, such a program must recognize the differences between Compliance and Ethics training and the other training that gets delivered to corporate employees. Such training must take into account the needs of the Compliance Officer as well as the desires of the target audiences.

Drawing upon some core teaching concepts and using several teaching tools and techniques, such a training program can raise the general awareness of and compliance with the key corporate policies, provide a mechanism for the employees to identify the laws and regulations applicable to their specific activities, and give your employees the tools and support they need to meet their obligations.

What's Different about Compliance and Ethics Education?

In the course of our corporate lives, we get a lot of corporate training, whether in how to handle a performance review or how to fill out an expense report. Will the same techniques used to deliver general corporate training work for Compliance and Ethics programs, or are there adjustments in approach and technique that need to be made because of the nature of the material?

Corporate education is normally focused on teaching an employee a process or procedure for accomplishing a particular task, or perhaps to teach them how to use a piece of equipment or a software product or how to draft a particular type of contract. Compliance and Ethics education is, however, not focused on

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[2] This article is to accompany the presentations given at the meeting on May 20, 2009, and does not attempt to cover all aspects of the topic description in the program materials.

teaching somebody how to do a particular task. Rather, the primary goal of such education is to instruct the employees on what the corporate norms of behavior are, and to remind the employees of the duty to comply with all applicable laws. Unfortunately, some of the norms of corporate behavior may be unwritten, and it is impractical to describe for all employees the laws that are potentially applicable to any one employee anywhere in the enterprise.

As a preliminary point, however, it is important to ask what, exactly, are "Ethics"? For purposes of this article, I assume that the primary goal of a corporation is to provide maximum profit to its shareholders. I define "Ethics" as the rules of conduct that the corporation, through its shareholders, agrees are the limits and constraints on the conduct or behavior that may be followed to achieve the primary corporate goal of profit maximization.[3] The corporate "Ethics" are the behavioral norms expected of all employees of the corporation.

What does that mean in practice? It has been said that "character is what we do when no one is watching."[4] Ethics, then, is the "character" or behavior that the corporation expects of its employees when no one is watching; ethics education is providing the employees guidance on fulfilling these expectations.

Going somewhat beyond ethics, employees also owe a duty of loyalty to the corporation, as an aspect of the master/servant relationship.[5] To the extent that a corporation issues a formal "policy," employees generally have a duty to follow that "policy" within the employment context.

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[3] For a similar definition of "business ethics," *see* http://en.wikipedia.org/wiki/Business_ethics.

[4] http://www.jewishaz.com/jewishnews/040903/torah.shtml

[5] *See* "Anti-Employer Blogging: Employee Beach of the Duty of Loyalty and the Procedure for Allowing Discovery of a Blogger's Identity before Service of Process is Effected," K. Lee, Duke Law & Technology Review, http://www.law.duke.edu/journals/dltr/articles/pdf/2006dltr0002.pdf (2006), ¶¶ 11-15.

Compliance and Ethics education also differs from normal organizational education programs in that one size does not fit all. The scope and depth of the education required for any particular employee are both role-related and highly situational. Thus, the person in the mailroom or the shipping platform needs to be aware of, and comply with, different norms of behavior than the Director of Sales & Marketing or the head of a manufacturing unit or an HR officer, just because their respective job duties are different. Accordingly, their education needs are different. So, too, if the corporation handles both normal commercial business and government contract business, the norms of behavior (and legal rules) in the two different contexts can be wildly different, with an expense in one context being deductible and in another context being a felony.

The content of Compliance and Ethics education is also different from normal corporate educational programs. By its nature, it is general and not specific. At best, it is an introduction, rather than "the answer," with the goal being to put the employee on notice of when he or she needs to seek additional advice, and to give the employees the names of those who can provide that advice.

Finally, the normal corporate educational programs meet a perceived need and instruct an employee in the specific steps to take in a specific circumstance, thus giving an articulable benefit to the employee. It is much harder to identify what's in it for the employee to attend and listen to the Compliance and Ethics education, as the payback to the employee is not immediately obvious, as this does not make his or her job any easier.

These differences need to be taken into account when designing and delivering a Compliance and Ethics training program.

What does the Compliance Officer want from the Compliance and Ethics Education program?

The Compliance Officer is a principal stakeholder for the Compliance and Ethics training program.[6] What does he or she want such a training program to deliver?

Generally, there is a continuum within the organization as to the level of understanding and awareness that employees have about the complete collection of corporate policies and about the laws applicable to their individual activities. The Compliance Officer certainly wants to raise the awareness of all policies by all the employees within the company, and hopefully to ensure that those employees have read all those policies and have locked the basic principles into their long-term memory or consciousness.

Definitionally, though, this raises a problem. What, exactly, is a "policy" for purposes of the Compliance and Ethics training? Is it only Policies issued by the Chief Executive Officer, or does it extend to the policies on business attire or other local and less monumental topics issued elsewhere within the corporation? The employees need to know what the rules are; posting a document labeled "Policy" on a website may be insufficient. Is your policy on driving while talking on a cell phone more or less important than your policy on bribes to foreign government officials? Are all policy violations subject to the ultimate sanction of discharge? How do you distinguish?

Certainly, the Compliance Officer wants all the employees to understand all the policies as well as all the laws applicable to them. Further, the Compliance Officer wants some form of confirmation to establish to third parties that those employees understand those policies and the applicable laws. All this is part of meeting the Federal Sentencing Guidelines for Organizations requirement to establish "an effective compliance and ethics program."[7] By doing this, the Compliance Officer is attempting not only to ensure compliance with applicable law and company policy, but also to reduce risk.

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[6] Other stakeholders include the Board of Directors, the Chief Executive Officer, and the General Counsel, among others.
[7] Federal Sentencing Guidelines Manual and Appendices (2007), United States Sentencing Commission,
http://www.ussc.gov/2007guid/8b2_1.html

In order to achieve this objective, the Compliance Officer wants to make people aware of situations in which they may need to actively seek more knowledge to confirm whether the facts they have observed raise a compliance or ethics issue. Thus, it is not only teaching people to recognize a violation of the Policy, but also to identify situations that may involve compliance risks. For example, an employee does not need to understand all the ramifications of the Anti-Boycott regulations, but needs to know if he or she sees a reference to the Star of David in a shipping certification that he or she needs to seek additional advice.

Another goal of the Compliance and Ethics education program is to make people aware of the additional resources to support compliance. Certainly, one would prefer that an employee with a question contact the appropriate advisor for advice at an early stage, so that a violation can be avoided. Employees also need the 1-800 number and the other anonymous reporting channels so that they can feel comfortable reporting without fear of retaliation. By providing the employees with a usable early warning system and the ability to raise questions in good faith, the Compliance Officer can reduce the risk of noncompliance. Much better to deal with a hundred yellow flags in advance, when you can still avoid a violation, than one red flag in the past, when avoidance is no longer an option.

In the context of training, all this requires some delicate balancing. How much detail to go into in the general training, applicable to all employees? Too much and the program is too long and you can lose the attention of your audience; too little, and you miss what, in retrospect, someone says you should have covered, or your advice and support system is buried under an avalanche of simple questions where general guidance could have helped. How many policies or laws to cover with the general audience, and how many different modules must be prepared to deal with specific topics?

The audience

As complex as the material is, and as urgent as the need to deliver an effective compliance and ethics program is, a Compliance Officer may well be tempted to ignore the audience, or at least

lump them into one amorphous group. Understanding what your target audiences are, and what their specific likes and dislikes are, has a huge impact on your effectiveness.

Who is the Audience?

In my view, there are three groups of employees. The first group is those employees who want to comply with law and company policy and have the tools (awareness, understanding, processes and access to experts) to comply. The second group is those employees who want to comply with law and company policy but don't have the necessary tools and support to achieve that compliance. The third group are those employees who are willing to comply with the applicable law and company policies as long as it does not get in the way of what they think is a higher personal or corporate goal. Whether this third group of employees has or doesn't have the necessary tools may be somewhat academic.

What does the audience want/need?

For those employees who want to comply with law and company policy and have the tools, what they need from the Compliance and Education program is maintenance and upkeep, adjusting the various materials as the policies and laws change. It is also helpful to provide them with periodic reminders. One way to do this is to have short annual refresher training, supplemented by short, focused emails discussing a simple example of a horror story. Merely asking people, even these folks, to reread all the policies once a year may not result in the policies actually being reread and understood.

For those employees who want to comply with law and company policy but who do not yet have the tools, the Compliance Officer wants to make sure they get the necessary training, in a way that's easiest for them, at a convenient time and place. It is also important for many of these employees that they have a safe place to learn, so that they do not feel stigmatized by being in a large group where they feel they are the only person who doesn't understand the material. If they feel this way, it is unlikely they

will ask any questions; in fact, they may totally tune out from the remainder of the session.

For those employees in the third group, those who will comply unless there is a countervailing personal or corporate interest, the issue is not primarily one of education; rather, it is an issue primarily of conversion. Accordingly, for that group, it is probably better to start with a text such as John Kotter's <u>Leading Change</u>[8], dealing with the eight stages necessary to transform an organization:

1. Establish a Sense of Urgency
2. Creating the Guiding Coalition
3. Developing a Vision and Strategy
4. Communicating the Change Vision
5. Empowering Broad-Based Action
6. Generating Short-Term Wins
7. Consolidating Gains and Producing More Change
8. Anchoring New Approaches in the Culture[9]

Applying, as we must, a Pareto analysis, much better to spend your initial effort and capital on the first two groups. Dealing with the third group is highly resource and frustration intensive. Until a substantial portion of your organization is in the first two camps (and you're making progress with the second group), it is a challenge to capture the hearts and minds of the third group.

Primary teaching concepts

The principal underlying assumption behind a Compliance and Ethics education program is that employees either won't read, or won't read, understand and remember, the Code of Conduct. Thus, you want to reinforce their understanding and recall of the Code of Conduct so that they have sufficient understanding and recall to apply it in daily practice, and that this understanding is maintained over time. You will want to reinforce that Code of Conduct in as many ways as practicable. When doing this, it is

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[8] J. Kotter, Leading Change (Harvard Business School Press 1996).
[9] *Id.*, at 21.

important to keep in mind that, given the broad audience, there will be a broad variety of learning styles.

Identify and flood the channels. Much has been written of the different learning styles of the various audiences.[10] Some people prefer to learn visually, others prefer to read the materials, while still others prefer to experience the material by role-playing or otherwise. Some are active learners and some are passive learners. The key point here is to identify the multiple channels for the communication and then flood all those channels so that you reach the largest number of learners in a way that the messages are most likely to stick.

Consistent repetition of simple messages. It is, however, critically important that, when repeating messages, the repetition is done consistently and simply. As a general rule, the employee population has a limited bandwidth, whether expressed in terms of time or pages. The simpler and shorter that you can make the messages, and the more often that those messages are repeated in different delivery vehicles, the higher your chance that your key messages will be locked in to the employee long-term consciousness.[11]

Interactive sessions. In terms of the training itself, many employees will learn better if the training is interactive rather than just dry lectures or web-based click-through modules. Some people use tests and quizzes, with a preliminary test given before the instruction and a subsequent test being given after the instruction, so the employee can see his or her demonstrated progress. Others use role-play, or games (with prizes for the correct answers). There is no one right answer, apart from having

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[10] A Google search on January 4, 2009, using the search term "learning styles," returned over 2 million hits. For a starting point, see http://en.wikipedia.org/wiki/Learning_styles

[11] As a test, I attempted to capture the major concepts in one page; this is a challenge on these margins. See Appendix A. There is also a chart that accomplishes the same objective in Effective Compliance and Ethics Programs for the Small Law Department—Doing More With Less, ACC 2006, Deborah M. House, http://www.acc.com/legalresources/resource.cfm?show=19635, at page 26.

multiple pathways in order to interact with your target audiences. Your aim is, after all, to reach their preferred learning style as well as to confirm their understanding and long-term retention of the material. Games and quizzes both can do this.

Use stories. A common element in locking the message in is the use of stories. That is how cultures learn and, at its core, a Compliance and Ethics education program is about learning and reinforcing the company culture. It is best to draw upon stories that the majority of the employee population is aware of.[12]

This can include company stories, such as an accident that happened in the past or a litigation that was lost. Mistakes are a powerful teaching tool; learning from someone else's mistakes is cheaper and less painful than having everyone learn from their own mistakes. These may need to be sanitized a bit, but if they are part of the general employee knowledge base, you should make what use of them you can. It is also useful to draw upon the incident statistics you compile in the course of your Compliance and Ethics program, providing the employees as a whole some information on the nature of compliance issues that are being raised, and how they are being addressed at a corporate level. This reinforces the Code, provides real stories of the Code at work, and should have the additional benefit of making it more likely that the employees will report an event, if they feel that it will be raised and dealt with appropriately at a corporate level. It may also be useful to include some appropriate enforcement statistics, again suitably anonymized.

While the company's own stories are the best, one can also turn to stories from the same industry, or in business generally. Beyond that, you can go outside business and talk about stories in the world generally, or draw upon cultural icons such as Aesop's Fables[13] or Rudyard Kipling's Just So Stories.[14] But in today's highly visual world, you can also draw a story with a movie clip or TV clip that captures the point that you choose to make. To

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[12] A good text on story-telling is A. Simmons, Whoever Tells the Best Story Wins (American Management Association 2007).

[13] For a collection, see http://aesopfables.com/

[14] http://www.boop.org/jan/justso/

illustrate just-in-time learning, there's nothing like the scene from *The Matrix* when one of the characters needs to learn how to fly a helicopter.

These four simple concepts – identify and flood the channels, consistent repetition of simple messages, interactive sessions, and stories – can help you maximize the impact of your teaching efforts.

Teaching tools

There are three main channels available to you for delivering your teaching: standard written media, visual media, and live presentations. Each channel has multiple variations.

In the standard written media, you can use tri-folds (a single piece of paper with text on front and back, folded into three columns on the 11-inch side of a standard piece of paper, with text or graphics in each column), booklets, manuals, e-mail, posters, the in-house magazine, message tents on lunch tables in the cafeteria, materials on websites, a side banner on the company or department webpage, company blogs, written FAQs (Frequently Asked Questions) or written Q&As (Questions and Answers).

In visual media, you can use computer-based or web-based training, either produced professionally or done in-house to looser standards. There are advantages of using professional actors for delivery if your budget permits; but you can also build connectivity with your audience by using the voices of people they know and do volume production and outreach at minimal cost. You can capture live presentations on video or through LiveMeeting, WebEx or similar, and you can purchase education modules on specific topics off the shelf.

The third teaching channel is live presentations, including the standard live teachers providing a lecture and working session with a small or large group of employees. This can be supplemented by having booths at other employee meetings where you have appropriate representatives there to talk about various compliance issues for people who want to have a no-names encounter. You can

also suggest, and perhaps even prepare, a sample presentation pack for executives to use to raise compliance moments in their normal weekly or quarterly meetings, or other engagements with employees. The key points are to keep the messages fresh, consistent and coming from multiple different directions.

Lessons learned

Based both upon my personal experience and the materials referred to in the section below on Resources, I offer the following Lessons Learned:

1. Keep it consistent. It is difficult to keep the messages consistent, as there are a lot of different stakeholders and multiple subject matter experts, and even more people with opinions as to the right way to express this. It is therefore critical to have one person who has control over the language of the messages themselves. Along these lines, I would recommend that you coordinate with the folks in Human Resources and Legal as to what training is required for each role, and at what frequency, and then look at how you can monitor data on an ongoing basis.
2. Use multiple delivery channels. Once you have focused on the consistent messages, the next most important step is to arrange delivery of those messages in as many different ways as possible. This repetition needs to have a variety in delivery and source, as well as a certain regularity.
3. Coordinate with the Corporate Communication folks. The delivery of the Compliance and Ethics message is not occurring in a vacuum. It is important that you coordinate with your corporate communications folks so that your messages can be sequenced with the other corporate messages being rolled out to the organization. Investing this time up front can save you lots of headache later; this is a powerful and important stakeholder.
4. Have a long-term plan. You need a plan that goes well beyond one year; some recommend a plan period of at least three years, and others five. The key point is to demonstrate that you are a continuing part of the culture,

and to distinguish yourself from other initiatives of the moment.

5. <u>Get the audience involved before, during and after</u>. 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. 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 message 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.[15] This may seem like overkill, but is fairly simple to automate.

6. <u>Keep audience bandwidth in mind</u>. 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 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.

7. <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 live 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.

8. <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.

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

Resources

Members of the Association of Corporate Counsel have access to the InfoPAKs[SM] that are made available to members. There are three recent InfoPAKs around this topic that are quite useful, with extensive supporting materials.[16]

I have also used Articulate and Camtasia, two software packages, to add audio tracks to PowerPoint presentations and then distribute those on the web. Their websites have useful tutorials. Based on those tutorials, a reasonably computer-literate person can learn how to do that in about 45 minutes.[17]

Conclusion

With a clear understanding of the purposes of a Compliance and Ethics training program, and of the expectations and needs of the various intended audiences, one can design a program that identifies the multiple channels that reach those intended audiences, and then flood those channels with crisp, clean messages that support the establishment and maintenance of an effective compliance and ethics program.

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[16] Effective Compliance and Ethics Programs for the Small Law Department—Doing More With Less, ACC 2006, Deborah M. House, http://www.acc.com/legalresources/resource.cfm?show=19635; Compliance Training and E-Learning Programs Leading Practices in Designing, Implementing, and Supporting Risk Assessment and Communication Strategies, ACC August 2007, http://www.acc.com/legalresources/resource.cfm?show=19710; Training Non-Legal Managers, ACC July 2006, http://www.acc.com/legalresources/resource.cfm?show=19658
[17] http://www.articulate.com/support/presenter09/?page_id=402; http://www.techsmith.com/learn/camtasia/default.asp. The Articulate site also has a useful blog on e-learning. http://www.articulate.com/rapid-elearning/

Appendix A

1. **Integrity and Loyalty**. Every employee will comply with this Code of Conduct while on either company business or company facilities. 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
   - Labor laws, including discrimination prohibitions and Wage and Hour rules
   - Government contracts
   - Bribes
   - Export and trade controls
   - 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, and use of corporate assets, including email.