Meet Maurice Gilbert

Managing Director
Conselium Compliance Executive Search
Dallas, Texas

See page 16

25
Recording the interview: Best practices for compliance professionals, Part 1
Daniel Coney

35
What can we do to improve engagement on our own teams?
Jessica Tjornehoj

39
A look into Europe’s new cybersecurity regimes
Jan Dhont and Delphine Charlot

45
The prosecutor’s evolving playbook: DOJ’s rising expectations for compliance programs
Peter Anderson
LAST CHANCE TO REGISTER

SCCE'S HIGHER EDUCATION COMPLIANCE CONFERENCE

JUNE 4-7, 2019
Baltimore, MD

Register and more info @ corporatecompliance.org/highered
Compliance professionals need to stay in their lane. We have a number of compliance folks trying to expand our universe. They want us in governance, social responsibility, operations, politics, lobbying and a number of other areas in which we do not belong. Right now we have people spending endless hours telling us all to focus on politics. People get distracted by shiny objects and right now, DC is as at about 8 billion lumens.

Those who came before compliance professionals could not stay in their lane. While they were off doing things that had little to do with preventing, finding and fixing ethical and regulatory problems, no one jumped in to fill the void. The reputation of the business community went to heck, and we ended up with thousands of pages of more regulations, as if that was going to solve our problems. If you don’t lobby, 45 other people will eagerly take up the task. If you don’t study the impact of politics on compliance, 45 other people will jump in your seat. However, if the compliance folks don’t look for, find and fix problems, no one else will jump in and investigate, correct a problem, discipline, and tell leadership bad news. NO ONE!

In football every position has its job. Everyone can’t go running around the field doing other people’s jobs. If they do, they fail. It’s visually obvious when people don’t stay in their lane in football. If everyone on a football team decides to go out for a pass and no one blocks for the quarterback, he gets creamed. Everyone looking on sees that it’s wrong and knows exactly what went wrong: people didn’t stay in their lane.

In business, it’s not as obvious when you get out of your lane. But the negative results of getting out of your lane are just as severe. If you wander out of your compliance lane in business, it’s not so obvious that the quarterback will get creamed until the government steps in and says, “Excuse me, you probably didn’t notice but hundreds of your people set up 2,000,000 bogus bank accounts against your customers wishes over a period of years and you missed it.”

Of course you can try to explain it to your leadership, “What was I doing when the press, public, and politicians dragged you out into the street and disgorged millions from your income, got you fired, ruined your career and reputation, and cost the company a fortune in settlements and lost reputation? Well, I was reading about how important politics is to compliance.”*
### FEATURES

16 Meet Maurice Gilbert  
   an interview by Adam Turteltaub

25 [CEU] Recording the interview: Best practices for compliance professionals, Part 1  
   by Daniel Coney  
   Tips for using technology to remove any doubt about what was said and how the information was elicited.

35 What can we do to improve engagement on our own teams?  
   by Jessica Tjornehoj  
   Three ideas to help you attract and retain the best people for your team.

39 A look into Europe’s new cybersecurity regimes  
   by Jan Dhont and Delphine Charlot  
   Companies with operations in the EU should prepare now to be ready when new regulations go into effect in May 2018.

45 The prosecutor’s evolving playbook: DOJ’s rising expectations for compliance programs  
   by Peter Anderson  
   The new guidance will be used by prosecutors to evaluate corporate compliance programs when investigating criminal matters and as a factor in their enforcement discretion.

### COLUMNS

3 Letter from the CEO  
   ROY SNELL

15 A View from Abroad  
   SALLY MARCH

23 EU Compliance and Regulation  
   ROBERT BOND

33 Compliance, Life, and Everything Else  
   THOMAS R. FOX

37 View from the Front Lines  
   MERIC CRAIG BLOCH

43 Byrne on Governance  
   ERICA SALMON BYRNE

61 The Art of Compliance  
   ART WEISS

79 How to Be a Wildly Effective Compliance Officer  
   KRISTY GRANT-HART

80 The Last Word  
   JOE MURPHY

### DEPARTMENTS

6 News

12 People on the move

14 SCCE Blog highlights

20 SCCE welcomes new members

50 SCCE congratulates newly certified designees

81 Takeaways

82 Events calendar
There continues to be no single way to arrive in a compliance position.

See page 17

ARTICLES

53 Why Compliance needs to take a chill pill sometimes by Thomas R. Fox and Scott Lane
Compliance is a process that helps a business run better and more profitably by reducing risks, but should not be the “Land of No.”

57 [CEU] Preventing child sexual abuse: The role of the compliance professional by Candace Collins, Aaron Lundberg, and Jessica Scibona
Five tips to help organizations clearly design and enforce the boundaries for appropriate adult-to-youth interactions.

63 What Compliance can learn from Psychology, Philosophy, and other knowledge domains by Alexandre da Cunha Serpa
The effectiveness and success of your compliance program depends mainly on how well you guide the behavior of human beings.

67 [CEU] Ethical leadership: Mentoring to influence corporate culture by Walter E. Johnson
Mentoring, whether formal or informal, is a way to facilitate informational and often inspirational exchanges among participants.

73 Leadership and trust: An interview with David Humphreys
Spotlight Interview by Art Weiss
The President and CEO of TAMCO Building Products shares his thoughts on what makes a good leader and an ethical culture.
**US News** ranks compliance officer among hottest jobs for MBAs

Newly minted MBAs mulling their career options have new incentive to pursue a career in compliance: *U.S. News & World Report* recently ranked compliance officer among the hottest jobs for MBAs. In its recent feature article, “Explore 5 Hot Jobs for MBA Graduates,” the news weekly singles out positions that “offer robust job growth, generous salaries and low unemployment rates,” based on Bureau of Labor Statistics data. The news story points out that an ever-changing regulatory environment ensures the demand will be high for compliance professionals. It also notes that in an earlier report, “Best Business Jobs for 2017,” compliance officer was ranked in 16th place. For more details, see: [http://bit.ly/MBAhotjobs](http://bit.ly/MBAhotjobs).

Report: More than 1 in 4 people in Asia pay bribes for public services

In a survey of 22,000 people in the Asia Pacific region, the anti-corruption advocacy group Transparency International (TI) found that more than one in four people have admitted to paying a bribe to access public services. As detailed in the report, “People and Corruption: Asia Pacific–Global Corruption Barometer,” the rates of those who paid bribes varies widely among the 16 countries represented in the survey: 69% of respondents in India, 65% of those in Vietnam, and 40% in Pakistan and Myanmar, down to 0.2% in Japan, 2% in Hong Kong, and 3% in South Korea. The government officials who reportedly demand the bribes include police (30%), ID and permit issuers (23%), courts (23%), public schools (22%), utilities (20%), and public hospitals (18%). Further, younger respondents reported more instances of having had to pay a bribe: 34% of respondents under 35, 29% of those 35 to 54, and 19% of those over 55. For more information, download the report: [http://bit.ly/AsiaPacificCorruption](http://bit.ly/AsiaPacificCorruption).

IOC announces plans for more robust Anti-Doping System

As preparations for the 2018 Winter Olympics in Pyeongchang, South Korea gain steam, the International Olympic Committee (IOC) recently released a declaration outlining new measures it will take to ensure that athletes are drug free for all future Olympic competitions. Titled “12 Principles for a More Robust and Independent Global Anti-Doping System To Protect Clean Athletes,” it was developed jointly with the World Anti-Doping Agency (WADA) and details several reforms. Among them are steps needed to strengthen WADA’s independence from both sports organizations and national interests, including the establishment of a board and executive committee that more evenly represent sports entities, governments, athletes, and independent at-large members. It also details steps for establishing an Independent Testing Authority that will determine the number and quality of tests required for athletes and the specific entities permitted to distribute and conduct the tests. Finally, it details new standards needed for the imposition of sanctions. For more information, see the declaration: [http://bit.ly/IOCdeclare](http://bit.ly/IOCdeclare).
Regulatory

EU Commission sets up hotline to encourage antitrust whistleblowers
As the European Union (EU) continues to step up efforts to fight anti-competitive practices, it hopes an anonymous communication system will encourage more whistleblowers to step forward. Until recently, most cartels have been detected through the Commission’s leniency program that allows businesses to earn a reduction in fines if they report their own involvement in a cartel. The EU does not have broad protections for whistleblowers, though efforts are underway to establish them. It is hoped that allowing whistleblowers to remain anonymous will calm any fears of retaliation. The new tool protects whistleblowers’ anonymity through a specifically-designed encrypted messaging system that allows two way communications. For more details and a link to the hotline, visit: http://bit.ly/EUantitrusthotline.

Joint FCC-FTC Stay Order halts enactment of broadband data security provisions
The data security requirements contained in the Federal Communications Commission (FCC) broadband privacy rules were halted in a Stay Order a day before they would have taken effect in March. In a joint statement by FCC Chair Ajit Pai and Federal Trade Commission (FTC) acting Chair Maureen Ohlhausen, the two declared their intention to shift authority over broadband providers back to the FTC, which oversees privacy and security requirements for organizations with an Internet presence. The FCC’s data security rule would have required broadband providers to take “reasonable” steps to protect customers’ private information from theft and data breaches. But as the statement argued, “It does not serve consumers’ interests to create two distinct frameworks—one for Internet service providers and one for all other online companies…. So going forward, we will work together to establish a technology-neutral privacy framework for the online world.” Critics of the plan say that broadband providers need to be held to stricter standards because they have access to a greater amount of consumers’ web browsing data. For more details, see the joint statement: http://bit.ly/FTC-FCCjointstate.

EU developing drone use regulations
European Union (EU) policymakers met earlier this year to establish a game plan for developing EU-wide regulations for the design and operation of drones. The European Commission, the Council of the EU, and the European Parliament met in February to find ways to reconcile the regulations each EU member state now has on the books. Currently, the European Aviation Safety Agency (EASA) has the power to legislate for larger drones weighing more than 150 kg, but has allowed each nation to set its own standards. One goal EU policymakers have is to abolish the 150 kg threshold so that EASA can regulate all types of drones across all member states. EASA has proposed that regulations separate drones into three categories (low, medium, high risk) based on the types and areas of usage. For each category, different levels of stringency would apply. A final draft of regulations is expected to be ready by summer. The end goal is to deliver a fully functional drone service market in 2019.

Read the latest news online► www.corporatecompliance.org/news
The Society of Corporate Compliance and Ethics

Presents the

INTERNAL INVESTIGATIONS COMPLIANCE CONFERENCE

June 15–16, 2017 | Orlando, Florida

Questions? Email lizza.catalano@corporatecompliance.org

Learn the essentials of conducting compliance investigations, from setting your goals to writing the final report

Earn Continuing Education Credits including CLEs

corporatecompliance.org/investigations
Internal Investigations Compliance Conference
June 15 - 16, 2017 | Orlando, FL
www.corporatecompliance.org

Created in response to popular demand, the Internal Investigations Conference will be a comprehensive training course on investigations skills specific to the needs of compliance and ethics professionals. The two-day learning conference is conducted by Al Gagne and Meric Bloch, both seasoned compliance professionals with extensive experience in conducting internal investigations. They will give you practical tips and takeaways to really enhance your expertise. In addition, they will share tools that you can immediately apply to your own program when you return from the conference. Group discussions and audience feedback will help ensure that you’re maximizing your time to make connections with other like-minded professionals. There will be ample time for networking and exchange of best practices and challenges throughout the sessions. The conference will be held at Universal’s Loews Royal Pacific hotel in Orlando, Florida.
SCCE website news

Contact Tracey Page at +1 952 405 7936 or email her at tracey.page@corporatecompliance.org with any questions about SCCE's website.

Top pages last month

Number of website visits last month
84,555

Compliance Dictionary
What does the acronym ERISA mean? What is the definition of Discretionary Authority? If you knew these, congratulations. If not, or if you have other terms you aren’t sure of, try looking them up on SCCE’s Compliance Dictionary. Located under Resources>SCCE Resources>Compliance Dictionary (corporatecompliance.org/Resources/SCCEResources/ComplianceDictionary.aspx), it offers a plethora of definitions of compliance-related terms. Check it out for yourself.

Video of the Month
Is there a surefire sign that someone is lying?


Get Connected

Find the latest SCCE website updates online ➤ www.corporatecompliance.org
SCCE social media news

Contact Doug Stupca at +1 952.567.6212 or email him at doug.stupca@corporatecompliance.org with any questions about social media.

Facebook — www.facebook.com/scce

We’re on Facebook. Like our page for compliance news and networking. Here’s a favorite recent post:

LinkedIn — corporatecompliance.org/Linkedin

Join us on LinkedIn—a business-oriented network with more than 300 million active users. With more than 21,000 members, our LinkedIn group fosters many new discussion posts every week. Here’s a some recent highlights:

Twitter — www.twitter.com/scce

Join 14,500+ others and follow SCCE for breaking news and insights. Here’s a recent tweet:

SlideShare — www.slideshare.net/theSCCE

We love sharing! Find informative and helpful presentations from every one of our conferences and presenters—free! Here’s a recent slide:

Find the latest SCCEnet updates online — www.corporatecompliance.org/sccenet
PEOPLE on the MOVE

► Michele Valeriani has been appointed Head of Compliance Second Level Controls, Risk Assessment and Quality Assurance Processes, for UniCredit Group, headquartered in Milan, Italy.

► Jacqueline M. Thomas has been appointed Group Vice President, Chief Compliance Officer for Toyota Motor North America (TMNA), headquartered in Plano, TX.

► Calton & Associates, Inc. announced the recent hiring of Rebekah Powers, who will join the Calton team as Senior Vice President and Chief Compliance Officer in their home office located in Tampa, FL.

RECEIVED A PROMOTION?
Have a new hire in your department?

If you’ve received a promotion, award, or degree; accepted a new position; or added a new staff member to your Compliance department, please let us know. It’s a great way to keep the Compliance community up-to-date. Send your updates to:

liz.hergert@corporatecompliance.org
GET TO KNOW SCCE STAFF
Stephanie Bauer, Certification

What's your main responsibility at the Association?
Helping individuals learn more about the steps to achieve and maintain certification. I also process the Individual Accreditation Applications that are submitted.

How long have you been working here?
I have been with HCCA/SCCE for about 2 years.

What did you do before joining the Association?
I had recently graduated from college and had been working at Target at store level.

What's the most rewarding part of your position?
Being able to help the individuals who contact the organization. I love when someone calls in very confused about something and I am the one who can clear up their questions and concerns. Another part that is very rewarding is when someone is very nervous about sitting for the exam, and they call back to let me know they have passed.

What was your most memorable moment working with the membership?
The first time I went to the Compliance Institute. I was finally able to see how many people we impact and how excited they were about compliance. I had a blast.

How would you describe people who work in Compliance?
Committed to their organization. The people I speak with are truly dedicated to their profession and growing within it.

What do you find most motivating or inspiring about your work here?
I didn't know a lot about compliance before I got here, and when I get a phone call from someone who is so excited about a new regulation or law, it really makes me feel I am helping a group of individuals who are here to learn about and help shape the Compliance industry. Being around such an exciting, positive group of people is always inspiring.

What else should the members know about you?
I am kind of a “nerd.” I love Harry Potter, board games, video games, and fantasy genre books (magic is my favorite).

Add value for colleagues: Be an SCCEnet Guest Commentator
- Post one discussion topic each day of the week. Each daily topic should have one overarching theme.
- Respond to posts.
- Receive 10 live CCB CEUs for the entire week, or 2.0 per day.

Contact us at helpteam@corporatecompliance.org to learn more and get your guest commentator credentials.
Cultural identity is a key aspect within the workplace, and having a wide variety of identities represented matters to companies. Hiring a diverse workforce enriches the workplace experience for all staff, and allows for a wide variety of perspectives and viewpoints in the workplace.

However, diverse workplaces also create challenges when it comes to creating compliance training that appeals to a variety of diverse cultures and races. When developing and implementing compliance training, it’s important to create training that will appeal to and reach every employee present. Keep these ideas in mind for creating a learning space that’s safe for employees from all backgrounds:

- Use examples that relate to employees from various backgrounds. Good compliance training ensures everyone feels included in the presentation. When relating examples and giving employees written case studies, use employee names that come from a wide variety of nationalities and cultural backgrounds, as well as making sure men and women get represented equally. When using multimedia, choose visual media that incorporates employees from different races and cultures.

- Make an effort to call on employees equally. All of us have good intentions when it comes to treating employees equally, but research shows that unconscious internalized bias comes into play for educators of all backgrounds. Several studies have demonstrated that teachers are more likely to call on white, male students than women or minority students. Make a conscious, deliberate effort to equally involve employees who represent different backgrounds.

- Be aware of, and open to learning about, cultural differences. Cultures often have very different approaches to privacy, which can change how they view compliance. For example, employees from India often live in closer quarters in India, and need less privacy or personal space than American employees. Be open to learning from employees about their cultural traditions, and adapting the compliance material that’s sensitive diverse backgrounds.

For more compliance news and insights, visit The Compliance & Ethics Blog at complianceandethics.org and don’t forget to subscribe to the daily digest at http://bit.ly/SCCEBlogSubscribe
Brits sometimes refer to the United Kingdom as the 51st state. We get a lot of news from the U.S., and during the presidential election campaigns, even the BBC wondered how it could maintain its mandate for fair and impartial reporting. I was in the U.S. for the first three weeks after the inauguration and was reminded of the famous line from *All About Eve*, “Fasten your seatbelts, it’s going to be a bumpy ride.” We’ve become inured to political spin, but “fake news”? “Alternative facts”? We need to recalibrate our vocabulary, as well as our perceptions.

We need to recognize that what we perceive as “the truth” may be a set of values and beliefs rather than hard, objective facts. There is a category of “fact” that has a single, objective answer, such as how many member states comprise the European Union. But we learned in our “Brexit” debate that how much the UK contributes financially to the EU was subject to interpretation. Yes, there are objective answers, but there is no one “right” answer because it depends on analysis of multiple factors—factors which need to be transparent if the analysis is to be accepted. And I think we would all agree that “Are we better off in the EU?” is a value judgment and not a fact.

Which brings us to our roles in ethics and compliance. When do we deal in fact-facts? Probably more rarely than we think. In an investigation, there will be certain objective facts such as who signed the contract. But if the question is who approved a dodgy payment, we need to analyse the facts that were available to the approver and what s/he thought was being approved. It becomes more subjective. I used to think that “compliance” was black and white. But often the question of whether a rule was breached is a matter of analysis and judgment. So can we say absolutely that our conclusion is the “truth”?

We need to recognize that what we perceive as “the truth” may be a set of values and beliefs rather than hard, objective facts.

Many companies now have “corporate values”—statements of human qualities that represent what the organisation stands for and how it expects its members to behave. When we talk about the “values,” we should recognize that rarely is there one right answer to what this means or whether someone is behaving consistently with a particular value. We are talking about beliefs, not facts.

By recognizing when we are dealing with fact-facts and when we are dealing in beliefs and judgments, perhaps we can build our own credibility and strike a blow against “truthiness.”

*Sally March* (sjmarch10@gmail.com) is Director, Drummond March & Co, in London, UK.
Meet Maurice Gilbert
Managing Director
Conselium Compliance Executive Search
Dallas, Texas

Maurice Gilbert (maurice@conselium.com) was interviewed in January 2016 by Adam Turteltaub (adam.turteltaub@corporatecompliance.org) Vice President, Strategic Initiatives and International Programs at SCCE, based in Minneapolis, MN.

AT: Let’s dive right in and talk about your work at Conselium, which is a recruiting company for compliance positions. What led you to start the business?

MG: I was evaluating what I wanted to do after I was laid off from GE. I had always wanted to be an entrepreneur, and I chose executive search because I had a hunch I would enjoy it. It’s very much like putting together a crossword puzzle. I was provided career counseling as part of my severance package, and I realized in discussions with my counselor how much I enjoyed teaching and coaching people earlier in my life. I played competitive tennis and taught tennis during the summers while in school. So when going through the outplacement process, I discovered I could combine my audit experiences with the career coaching element and create an audit executive search firm.

AT: How and when did Conselium become a compliance-focused search firm?

MG: In 2004, we picked up our first request to conduct a compliance search and, within
three months, we picked up our second request. It was at that point that I believed that this new profession would explode. One element to growing an executive search firm is to find a niche where demand is high and supply of talent is low, and this is the case with the field of compliance officers. That is when I made the strategic decision to rebrand Conselium as a compliance search firm.

**AT:** Clearly it worked out well. You’ve been working at filling compliance roles for 13 years now. How have you seen the market for compliance professionals evolve?

**MG:** The demand for compliance officers continues to be strong. The past eight years have seen our international clients wanting to have regional coverage in their program. In the past four years, we have seen coverage requests expanded to placing country-specific compliance professionals within the regional locations.

**AT:** Is the marketplace looking at what they want in compliance officers differently?

**MG:** I just wrote an article on the top eight criteria to evaluate compliance officers. Perhaps the biggest change is the movement away from a policing function to that of a true business partner. Initially, it was common to recruit prosecutor types, who would develop a compliance program that was rules based, into compliance roles. The compliance officer was basically an enforcer with little interaction with the business other than as an enforcer. Today, the compliance officer is expected to partner with the business and add value to the business. This is accomplished by educating and influencing an ethical/compliant culture that is values-based. When the aforementioned is accomplished, employees want to work there and stay there, third parties wish to do business, and investors wish to invest. These dynamics contribute to the bottom line of a company. A few other expectations in reviewing compliance officers are that they be business savvy, bring strong project management skills, understand how to utilize technology to enhance the compliance program, and bring a broader scope to evaluating not just compliance risk, but business risk and geographic risk.

**AT:** One thing we’ve seen is that having a legal background, while an asset, is no longer the requirement it typically once was. What are employers looking for in terms of backgrounds of compliance officers these days? Are they diversifying the pool of talent that they are willing to consider?

**MG:** The more sophisticated clients are either requesting or are open to different backgrounds, based on our recommendation. There continues to be no one single way to arrive in a compliance position. Some come from audit, some from operations, and, of course, some from legal. As mentioned when I addressed your preceding question, the real game changer is to bring attributes and experiences that relate to partnering, understanding business, project management, technology, and broader exposure to risk.

**AT:** Are you seeing that across the board, or are there industry-specific variations to this?
**FEATURE**

**MG:** I am seeing diversification in profiles in all industries.

**AT:** What advice would you give employers when it comes to conducting a search to better ensure that they quickly find a candidate who is going to work out for them?

**MG:** Typically, when a company does a search on its own, it can take more than four months to find anyone worthy of hiring because, these days, in-house recruiting tends to be very passive (i.e., posting the job on multiple job boards). In this scenario, a company can only evaluate the universe that is responding to job board ads.

With an executive firm like ours that specializes in recruiting compliance officers, we typically have a slate of candidates that specifically match the employer profile, because we proactively go out and find the professionals who are not actively looking (around 80% of the population).

That said, if a company does wish to do the search on their own, they can still increase their chances of filling the job quickly by doing the following:

- **Spend at least one hour with key stakeholders to identify what they want the professional to accomplish the first year, and then build the profile around this information.**

The job description would also include challenges of the role and the first-year deliverables. The top professionals would evaluate such things as: They are not looking for a “job”; they are looking for an opportunity to contribute to the success of a company and to grow professionally.

- The interview—the hiring authority needs to prepare for the interview and ask questions that flush out how the candidate’s experiences align with what is expected (i.e., the items defined in the kick-off meeting). The hiring authority will want to ask each candidate the same questions so that he/she can select the professional based on the needs of the role. If you are not prepared and consistent with how you vet the candidate pool, then your selection may be based entirely on likeability and not on objective criteria.

**AT:** What’s your advice to a compliance professional who is looking to move on, either because he/she has to or wants to? How do they make themselves more attractive to employers?

**MG:** We do lots of career counseling with professionals we know, and making oneself more attractive to future employers is a function of continuous learning of your craft. Things professionals should do include volunteering to take on projects that may not be in your stated scope of work, but may be available if you ask your supervisor (volunteering may enable you to expand your skill set); regularly attending professional...
association congresses and workshops like those offered by the SCCE and HCCA; volunteering to speak at congresses, because when you present, it requires you to conduct some research and it usually helps sharpen your verbal presentation skills; and being an ongoing student of compliance by reading articles, white papers, and books (include in your reading and experiences how the business operations of your company and your industry work). As mentioned previously, it is imperative that you understand the business if you are to add value.

**AT:** Looking at the flipside of that same coin, what are some of the common mistakes that candidates make?

**MG:** The biggest mistake I see professionals make is to not continue to grow their expertise. The second biggest mistake I see made is to change jobs every two years. This is usually attributable to the demand/supply imbalance and the ever-increasing pressure on increased compensation. A lack of stability will catch up to a professional and will basically sink their career.

**AT:** What skills do you think compliance officers need to improve upon for their current jobs and for possible future ones to ensure their future employability?

**MG:** I touched on this in earlier and will emphasize it here. The first would be speaking and leadership skills. Entire books are offered on both, but in its most basic form, you have to develop great speaking skills (two thirds of all CEOs acknowledge that speaking skills attributed to their success). You can be a great subject-matter expert, but if you don't possess the ability to sell your ideas, then success will be elusive. Leadership is somewhat entwined with speaking skills, but to me centers on influencing people to embrace the ideas you put forth. The greatest attribute of a leader, in my opinion, is to ask great questions that in turn flush out the issues and challenges that require attention.

**AT:** Finally, anything you see coming down the road for the Compliance and Ethics profession?

**MG:** I don't have a crystal ball, but I can say with confidence that the Compliance profession as we know it today is still in its infancy. Our profession will continue to evolve the more we partner with the business. I am seeing instances in my client environment where compliance officers are asked to sit in on strategy meetings and such so that they are able to counsel the business in real time. This proactive approach is much more efficient than waiting until the business violates a regulation and puts us in reactionary mode. So I would say that we in Compliance can help write a new script that is more participatory by inserting ourselves in the business. When we do so, the business will ask us for other ways we can contribute, and this will help our profession grow in ways we cannot currently predict.

**AT:** Thank you, Maurice for giving us a peek at the recruiter's perspective. ✵
SCCE welcomes NEW MEMBERS

ARIZONA
- Holly Daetwyler, Grant Thornton LLP
- Rob Landers, The Red Flag Group

ARKANSAS
- Laura Asbury, Walmart Stores Inc
- Casey Campbell, Walmart Stores Inc
- Linda England, Walmart Stores Inc
- Kyle Fogarty, Walmart Stores Inc
- Terry Held, Walmart Stores Inc
- Sehar “Sam” Meraj, Walmart Stores Inc
- Keri Ward, Walmart Stores Inc

CALIFORNIA
- Jeffrey Adelson, ATB Law
- Beverly Bashor, TechnipFMC Process Technology
- Monica Baumann, The Scali Law Firm
- Janell Bonilla, CalPERS
- Sam Chari, Experian
- Alejandra Clyde, Health Plan of San Joaquin
- Laila DeBerry, University of California, Berkeley
- Wendi Delmendo, University of California, Davis
- Neha Grover, Visa Inc
- Wendy Hoang, Pacific Gas & Electric Company
- Alisa Hsu, University of California Office of the President
- Mary Kate LeBlanc, CalPERS
- John Lightfoot, Pacific Gas & Electric Company
- Roya Malekian, Applied Materials, Inc
- Aaron Pettit, BD
- Mikhail Reider-Gordon, Navigant Consulting Inc
- Renee Rogers, Cubic Corporation
- Tim Ryan, Gallo
- Mae Tran
- Henry Wang, Herbalife
- Carl Weaver, The Boeing Company
- Kelly Whitlock, Pacific Gas & Electric Company (PG&E)
- Jinping Yang, Lam Research Corporation

COLORADO
- Wilby Caceres Pinedo, Newmont Mining Corporation
- Denitta Ward, University of Colorado

CONNECTICUT
- Christopher Hanson, Yale University

FLORIDA
- Patricia Fitzgerald
- Cheryl Harris, Walmart Stores Inc
- Karyn Keppel, Southeastern Grocers
- Bryan Wilson, Equinix

ILLINOIS
- Stacci Barosso, DePaul University
- Christina Bluver, Grant Thornton
- Ok Ki Cho
- Anne Defraglia, United Airlines
- Linda Flaherty, Friendship Senior Options
- Herman Gonzalez, Scientific Games Corporation
- Toni Hotzel, State Farm Insurance
- Jennifer Newham, Education Management Corporation
- Lisa Seilheimer, The University of Chicago

KENTUCKY
- Julie Purcell, Valvoline

MARYLAND
- Jeanie Greenwell, USRA
- Sandra Nugent, Contractor Integrity & Compliance LLC

MASSACHUSETTS
- Heather Jandreu, Johnson & Johnson
- Stacie Kroll, Five Colleges, Inc
- Joseph Schott

MICHIGAN
- Shunichi Fujioka, NSK Americas Inc

MISSOURI
- Jeff Bonora, Walmart Stores Inc

NEBRASKA
- Veronica Teer, NTT Security

NEW YORK
- Jenny Brito, Con Edison Transmission
- Claire DiChiara, New York Property Insurance Underwriters Association
- Lynne Ford, JetBlue Airways
- Marco Goldberg, EQS Group
- Mitchell Pawlik, Harris Beach PLLC
- Daniel Vaillant, TDK USA Corp
- Jeffrey Williams, TDK USA Corp

NORTH CAROLINA
- Melanie Ahr, Bayer
- Maggy Boone, Wells Fargo & Company
- Richard Harmon, Parker Poe Adams & Bernstein LLP
- Carla Poirier, Family Dollar/Dollar Tree Stores
- Vivian Roper, Arch Mortgage Insurance
- Deanna Sossaman, United Guaranty
- Maureen Schwab, The Christ College of Nursing and Health Sciences

OREGON
- Erika Funk, University of Oregon Foundation
PENNSYLVANIA
- Stephanie Benecchi, Montgomery, McCracken, Walker & Rhoads, LLP
- Steve Dassing, Dorman Products, Inc
- Richard Holsinger, American Eagle Outfitters
- Julie Laine, Comcast Cable
- Melissa Marshall, Westinghouse Electric Company
- Amy Williamson, Crown Castle

SOUTH CAROLINA
- Cynthia DiNino, Agape Senior

TENNESSEE
- Laura Cowan, Tennessee Department of Health
- Kimberly Ouimet, National Health Investors
- Phil Wilson, Tennessee State Department of Health

TEXAS
- Jessica Alley, Austin Industries, Inc
- Jeana Coulier, MOTiV
- Petra Grohol Komerova, Dell
- Trent McKenna, Comfort Systems USA, Inc
- Charmine Pflueger, Phillips 66
- Kaitlyn Phillips, USAA
- Martha Rose, USAA
- Debbie Schmidt, Goodwill of San Antonio
- Toya Walker, Sabre

UTAH
- Emily Johnson, SelectHealth

VIRGINIA
- William Francis, Dewberry
- James Smith, The Boeing Company

WISCONSIN
- Nick Blish, Froedtert Health, Inc
- Jacqueline Flood, Ellsworth Corporation
- Terri Hollen, Franciscan Sisters of Christian Charity Sponsored Ministries, Inc
- Denise LaBudda, University of Wisconsin-Platteville

DISTRICT OF COLUMBIA
- Beverly Allen, Inovalon
- Claudia Dumas, Coalition for Integrity, Inc
- Thomas Flood, HUD OIG
- Pat Fogarty, Biotechnology Innovation Organization
- Katherine Schweit, Federal Bureau of Investigation
- Alyssa Senzel, Blackboard Inc
- Reginald Sessoms, U.S. Department of Housing and Urban Development - Special Investigations Division

BULGARIA
- Hristo Moutafchiyski, Ingram Micro Europe SSC EMEA EOOD

CROATIA
- Valentina Miroslavic, Ravecon
- Robert Ravenscak, Ravecon
- Simone Becker
- Radjani Phinith

GERMANY
- Wolfgang Mueller, Solvay GmbH

GREECE
- Michail Gkioulmpaxiotis, Vian S.A.
- Zafeiria Kasapi, Vianex S.A.

GUINEA
- Moudatou Bah, Emirates Global Aluminium

HONG KONG
- Kareen Smoke
- Emily Tse, Boehringer Ingelheim HK Ltd

INDIA
- Rahul Arora, OLX Group
- Naveen Peswani

MEXICO
- Mavin Dominguez Arroyo, Grupo Bimbo
- Jose Lopez Alonso, Zinser Esponda & Gomez Mont Abogados
- Rene Marquez Arcila, Auditoría Superior del Estado de Yucatán
- Alicia Rendon Contró, Grupo Bimbo
- Randy Rivas, Johnson & Johnson

POLAND
- Kamau Coar, Heidrick & Struggles
- Ashlyn Goh
- Ritchie Ng, UPS Asia Group Pte Ltd
- Ticy Thomas, MODEC
- Helen Walker, Starwood

SPAIN
- Angela Bardenhewer-Rating, Fusion for Energy (F4E), European Joint Undertaking for ITER

SWITZERLAND
- Kyle Lewis, LafargeHolcim

TURKEY
- Banu Ozylcin, SOCAR Turkey Enerji AS

UNITED ARAB EMIRATES
- Cynthia Rayees, National Health Insurance Company Daman PJSC

UNITED KINGDOM
- Paul Weinberg, Skillcast
- Tom Clarkson, Prudential PLC

BRAZIL
- Bruno Bandarovsky, Promon Group
- Fabricio Oliveira, Localiza Rent a Car SA
- Lais Rezende, TozziniFreire Advogados
- Ana Luizza Roque, Promon Engenharia
- Georgia Russowsky Raad, Cabanellos Schuh Advogados Associados
- Fabio Silvestre, Department of Justice in Brazil
BASIC COMPLIANCE & ETHICS ACADEMIES
FROM THE SOCIETY OF CORPORATE COMPLIANCE & ETHICS®

www.corporatecompliance.org/academies

PLAN NOW TO TAKE A CCEP® CERTIFICATION EXAM AFTER YOU COMPLETE THIS INTENSIVE TRAINING.

GET CERTIFIED. ENROLL NOW.

CLE APPROVED CCEP
Certified Compliance & Ethics Professional

NEW YORK, NY
August 7–10

WASHINGTON, DC
August 14–17

PHILADELPHIA, PA
September 11–14

NASHVILLE, TN
October 2–5

ORLANDO, FL
November 13–16

SAN DIEGO, CA
December 4–7

Questions: helpteam@corporatecompliance.org

2017 ACADEMIES | LIMITED TO 75 FOR EACH ACADEMY
The increased reliance upon algorithms and artificial intelligence (AI) to produce outcomes and profiling in big data projects such as humanitarian actions, healthcare plans, financing decisions, connected autonomous vehicle infrastructures, and generally, in marketing and advertising, raise ethical and trust questions around the risks associated with a lack of emotional human intervention.

A recent report (Report) by the Alan Turing Institute in London and the University of Oxford has suggested that there is a need for the creation of an AI watchdog to act as an independent third party that can intervene where automated decisions create discrimination. AI relies on what information is available or inputted, and the old saying of “rubbish in, rubbish out” continues to apply. The technology is not of itself the problem, but it is the parameters of analysis that are applied to the input that can create anomalies and discrimination.

Leaving aside the question of whether or not AI needs the watchdog that the Report above calls for, there is the further question as to whether or not individuals have the right to know how algorithms are working that may impact upon their data protection and human and consumer rights. Well, there are such rights under the current EU laws. However, this right has seldom been used, and historically, there has always been human intervention in profiling activities.

The EU General Data Protection Regulation (GDPR) specifically deals with automated decision-making in Article 22, although it is a limited right in that an individual can only object where the algorithm or AI produces a legal or similar outcome that adversely affects the individual. There is no right to object where the profiling is necessary for the entering into a contract or where the individual has expressly consented to the automated decision-making.

GDPR does, however, place strict obligations on businesses that use AI to put in place security by design and privacy by default to protect the human rights and privacy of individuals, and where AI and profiling uses sensitive data such as biometrics, religious and philosophical beliefs, health data, and criminal records, then in addition to security and privacy, the business must have obtained more express consent to the processing and also complied with Article 9(2) of GDPR.

As individuals begin to understand their enhanced data subject rights under GDPR, such as the right to object to automated decision-making but also the rights of erasure, rectification, and information, then they will also realise they have rights to compensation for not only actual, but also emotional damages where their personal data is abused. So we may see a growth in compensation claims by aggrieved individuals who feel that AI and profiling may have unfairly discriminated against them, and businesses that are not prepared to respond to such claims may find themselves not only embarrassed in court, but also subject to further investigation by the relevant data protection authority. *

Robert Bond (robert.bond@bristows.com) Partner & Notary Public, Bristows LLP in London, UK.
This conference is designed for board members and members of a Board Audit and/or Compliance Committee of organizations. Compliance officers and other senior leaders in the organization are also welcome to attend.

**Join us and learn:**
- The latest on regulatory risk and compliance obligations
- How to fulfill your fiduciary obligations as a board member
- How to help improve your board performance

**Buy one registration for $895 and get one for $595**

[corporatecompliance.org/audit](http://corporatecompliance.org/audit)
by Daniel Coney, CCEP, CFE, CFCS

Recording the interview: Best practices for compliance professionals, Part 1

» Conducting interviews is critical to any investigation, and getting it right impacts on the credibility of your program, the reputation of the organization, and people’s careers.
» Compliance professionals who conduct or participate in investigations have to be beyond reproach in the methods we use.
» Resistance to recording interviews is a long-standing reality in law enforcement and investigative offices.
» Compliance professionals have an obligation to re-evaluate past practices related to recording interviews and use the most currently accepted procedures.
» Our customer must be able to rely on the best evidence we can produce—and recording removes any doubt about what was said and how that information was elicited.

For decades, federal investigators have withstood cross-examinations in criminal trials in which their testimony about what witnesses and suspects said was based on notes furiously scribbled during interviews. In 2014, that practice gave rise to a defense argument for 2013 Boston Marathon bomber Dzhokhar Tsarnaev asking a federal judge to exclude his statements in a pre-trial motion. Fortunately, that motion was denied, but it illustrates the imprecision on which major prosecutions hinge. Truth be told, we can and should do better. The world is changing and it is unlikely that juries, judges, and other decision-makers are going to trust our word for it when there is readily available technology that can incontrovertibly establish those facts. The best evidence rule will undoubtedly require recorded interviews.

It was therefore much to my surprise when I went to a recent compliance training event that the advice given was to not record interviews. Back in the Fall/Winter 2008/2009 edition of the Journal of Public Inquiry, a now defunct professional journal of the Inspector General community, I wrote a white paper championing the need for recorded interviews.1 Since that time, even the monolith that is the FBI has finally relented. Attorney General Eric Holder said of the Department of Justice’s change of heart, “Creating an electronic record will ensure that we have an objective account of key investigations and interactions with people who are held in federal custody.” Equally important, he said, the new policy will be a “backstop” to ensure that federal investigators have “clear and indisputable records of important statements and confessions made by
individuals who have been detained.” It cannot be denied that in 2017, an undisputed best practice is to record interviews.

So why is the Compliance profession lagging behind? That perplexing question is why I have updated my original article for a new and improved version aimed at those in the Compliance field. I hope to open a constructive dialogue that challenges the old school convention with the same logic on which I argued almost 10 years ago to change our practice in federal law enforcement. It is said that truth and time walk hand-in-hand; with over 15 years of experience recording interviews now, the propositions advanced in my original paper now are time-tested truths.

In my original article, I surveyed investigative professionals and investigators, primarily in the federal ranks, but also from local and state entities. This was not a scientific or statistically valid survey, but rather an unofficial seeking of experiences and opinions. The population was drawn from the ranks of the Rocky Mountain Inspectors General Council (RMIGC) and my professional contacts, including prosecutors and judges. I also discoursed with legal staff from the Federal Law Enforcement Training Center (FLETC), and researched professional writings. I can now add the sea change that has occurred in federal law enforcement and the experience of hundreds of recorded interviews to the mix.

The Department of Justice’s policy is that recording interviews is required in some circumstances, and it is generally understood among prosecutors that recording will be the norm for most interviews in the future. Today, the Compliance profession needs to implement a flexible and realistic best practice of recording interviews, primarily those of subjects.

The drivers for change
The changing face of society must result in compliance professionals adapting to technology changes, as well as changes in the political and social climate in which we operate. Positive steps can now be taken to modernize our approach to capturing the results of our interviews. The body of this article (Parts 1 and 2) assesses 14 common concerns about tape recording interviews. The Department of Justice’s policy is that recording interviews is required in some circumstances, and it is generally understood among prosecutors that recording will be the norm for most interviews in the future.
The key driver for change is the fact that investigative professionals are not held in high esteem, and their testimony bears no greater influence or credibility than any other witness, and sometimes less.

The key driver for change is the fact that investigative professionals are not held in high esteem, and their testimony bears no greater influence or credibility than any other witness, and sometimes less. The public and the courts both seem to believe we have a stake in the outcome of the proceedings—a belief perhaps founded, because some law enforcement and Compliance departments rate performance and grant awards based on the outcomes of those proceedings. The respect and presumption of truthfulness once enjoyed by professional investigators simply does not exist in the culture anymore, in part due to the parade of investigative professionals who have been indicted for their own crimes and the rampant corruption of the past (and present) in some departments. Recent in the public’s memory is FBI agent John Connolly, who was convicted of helping the Boston mafia arrange hits. In the OIG community, a SAC for the U.S. Department of Housing and Urban Development was indicted for fraud. From 2002 to early 2012, the Transportation Security Administration reported that Federal Air Marshals were arrested nearly 150 times, many for grievous felonies. The Giglio and Henthorn court decisions reflect the court’s displeasure with law enforcement ethics and their attempt to be sure such ethical concerns are known by defense. Memories of the FBI laboratory failures still linger, and routine news stories about DNA freeing another wrongly convicted person abound.

In this environment, we have seen more and more courts and prosecutors preferring evidence that does not rely on the testimony of investigative professionals. Because of cost restraints, decisions on which cases to pursue are based in part on the level of litigation the prosecutor will face, particularly suppression hearings where witness or defendant statements are at issue. Effective law enforcement, and by extension compliance efforts, is not simply about proving facts; sophisticated professionals actively seek to eliminate or at least mitigate possible defenses before ever bringing the case to prosecution.

When it comes to interviewing, instead of asking the question, “Why should we tape?” the better question is, “Why aren’t we taping?” Are there legitimate grounds for not taping interviews, or only taping in limited circumstances? Why would we not want to be as transparent about our practices as possible? If our interest is conveying facts as truthfully as possible, why would we not resort to the best evidence we could possibly obtain? If our
interest is in protecting people’s rights, why aren’t we bending over backwards to ensure what they say is not taken out of context? I would submit that there was historically no precedent for law enforcement recording, and thus a resistance from some in law enforcement to something “new.” The reason why this was so is two-fold: In the past, (1) the technology was not acceptable, and (2) the costs for an adequate ability to record were infeasible. Because those two questions were answered in the negative, there was never a need to ask further questions. However, today’s technology and cost feasibility is well within any organization’s reach. Furthermore, the culture and accountability of the times we live in mandates we progress to a point where we at least ask the more in-depth questions about why we do not take advantage of the cost-effective technology that now exists.

Essentially, the best argument presented was one of history—an “if it ain’t broke don’t fix it” concept in which the overriding theme is that, over the many years they have done investigations and secured convictions, they had never needed to use recordings. This is an obviously flawed argument—the dinosaurs did not adapt to their environment and perished. Although the past informs the present and is the basis for setting precedent, it should not make us so inflexible that we do not take advantage of new and better ways to accomplish the mission before us. It seems this is an emotional response that appeals to our sense of tradition more than anything else, while holding little logic.

Arguments for and against audio recording interviews
Reasonable evidence needs to exist to support the need for change. In the case of recording interviews, I would submit to you that support is overwhelmingly in favor of change. We’ll spend the balance of this issue’s article, and the next issue, outlining the arguments I’ve encountered over the years.

One argument is that having a recording device in the room puts people on the defensive and may make them more likely to refuse an interview. Restricting the ability to “get the interview” One argument is that having a recording device in the room puts people on the defensive and may make them more likely to refuse an interview. I have found no empirical studies on this topic, but my personal experience has found no resistance at all, particularly when it is explained in the context that the recording is intended to protect them from misquoting their statements. In fact, it is apparent the interviewee forgets entirely about the recorder as the interview progresses. It also allows a more natural “conversation” to take place, with the interviewer not necessarily having to take copious notes to capture everything said in an interview.

An appropriate parallel is the Miranda decision in 1966. In the immediate aftermath, law enforcement as a whole predicted widespread impacts on interview success that

Historical argument
In my survey, of the relatively few in law enforcement who opposed the idea of tape recording interviews, the arguments were remarkably consistent and one-dimensional.

Essentially, the best argument presented was one of history—an “if it ain’t broke don’t fix it” concept in which the overriding theme is that, over the many years they have done investigations and secured convictions, they had never needed to use recordings.
never materialized. Investigative professionals adapted quite well and, today, few would argue that *Miranda* amounts to much more than a slight bump in the road. One SAC commented that his OIG recorded about 65% of their interviews in the previous year (representing 450—500 interviews), and had only one lawyer refuse to consent. My experience of probably 200+ recorded interviews is I have yet to have one person decline, and that included having the interviewees sign a notice form. Other SACs who regularly record interviews reported no problems stemming from refusals to consent; thus, it appears this is not a material problem. On the rare occurrence when someone does not consent to a recording, the interview can still take place, memorializing the fact that a recording opportunity was offered and declined, which still has the effect of protecting the appearance of propriety before a jury or decision maker.

**Integrity and ethics**

By necessity, Compliance as a profession (and compliance professionals individually) must be one in which we are above reproach. Even the appearance of impropriety or underhandedness reflects poorly on all of us. Failure or refusal to record interviews only fuels conspiracy theories and fears.

There is nothing we do in our interviews that should not be open to the utmost public scrutiny. After all, we are usually talking about depriving a person of their livelihood, their liberty, seizing their assets, and other serious intrusions. We are not the KGB, nor the Gestapo—we proudly steward the public trust. Remember the first principle of the Compliance profession is an obligation to contribute to the public good. As such, establishing and following a best practice of routinely recording interviews of suspects and key witnesses puts us under the microscope as much as the person interviewed. It “equals the scales” so to speak, and it disables defense attorneys from being able to make inane arguments that impugn our integrity. At the same time, it instills an element of professionalism and self-policing. The dashboard cameras in patrol cars have been a boon to demonstrate how professionally an officer acted, or in cases when an officer abused his authority, it had the effect of being able to weed out those officers. Although embarrassing, it is much better to remove from service those who cannot handle the position.

**Operational security**

A concern for some involves giving away techniques or strategies employed by a professional investigator. Although important, it is rather the plan for implementing law enforcement tactics in any given situation that is critical, not the elements of the tactics themselves, which are more “like plays in professional football—everyone pretty much has access to the same game plans and plays. It isn’t so much who has the most plays as who can best execute the plays that they all have.”

The real point of public distrust in law enforcement, and therefore jury bias, is that law enforcement is by nature very secretive of
what they do and how they do it. We cannot expect jurors to trust our testimony if they do not understand how we go about obtaining confessions any more than we can expect them to trust physical evidence if they don’t understand how it was collected at a scene.

Some people point to particular tactics the public may see as distasteful, such as excessive use of profanity when dealing with certain segments of society. This perhaps is an issue for certain law enforcement agencies in some contexts, but for the vast majority of law enforcement, and particularly the Inspector General and Compliance community, there is no excuse for the unprofessionalism of profane, abusive, or out-of-control speech. The public can see such speech as intimidating and coercive because it is, and we should not be lowering our standards to allow such conduct.

If we cannot support a practice when exposed to the light of day, then it should not be a practice in our repertoire at all, despite the results we may sometimes achieve. The means and ends must both be pure in our profession. Our customer is really the jury, whether that be an actual jury, a decision-making judge, a tribunal, or an administrative board that makes final decisions. We need to be accountable and transparent to our customer, so they can be comfortable with the facts presented to them. Every reasonable effort should be employed to make the facts speak for themselves—and tape recordings do that in a literal way.

Interviewing is one of the integral components of the job, and enhancing that skill is possible through using mistakes to train others to avoid future mistakes.

Highlighting mistakes
Another issue concerns a myriad of problems that fall generally under a fear that memorializing the encounter on tape captures mistakes that could affect the case. It may be that it captures the flaws of an inexperienced or inept interviewer. It may capture procedural mistakes or a faux pas involving speech that is unbecoming. Of those surveyed, the overwhelming majority cited the fact that an investigative professional’s knowing that an interview was going to be recorded resulted in a more thorough and professional interview. One SAC in my survey population stated it has “made my investigators better interviewers—no one wants to go into an interview unprepared, and then sound foolish on the tape. An agent will only do that once.”

Interviewing is one of the integral components of the job, and enhancing that skill is possible through using mistakes to train others to avoid future mistakes. On the same token, particularly good interviews can be used as training aids for new investigators or those in need of remedial skill building in the area of interviewing. Furthermore, from a supervisory standpoint, supervisors are able to much more effectively monitor individual performance and deal with allegations if they can review the interview.

Yet another issue that is more fundamental to this argument is the ethical basis for why we would not want a mistake exposed in the first place. This is the assumption underlying the argument: We don’t want to have a recording in case there are mistakes. This presupposes first that we will make mistakes, and second that we
don’t want those mistakes exposed. This is fundamentally unethical, and from Watergate to Martha Stewart, is the basis from which worse lapses in judgment occur. Where we make mistakes, we ought to own up to them, regardless of the consequences. We must not also assume that all mistakes are fatal; judges and juries do not expect human beings to be perfect, and minor lapses should not be expected to result in exclusion of the statement. *

Part 2 of this article will appear in the June issue of Compliance and Ethics Professional.

The opinions in this article are the author’s and do not necessarily represent the position of any government agency.

3. Don Rabon: “Should We Record the Interview?” Fraud Magazine, published by The Association of Certified Fraud Examiners, September/October 2006, page 54-55 (Emphasis in original)
9. Ibid, Ref #3, pg. 54

Daniel Coney (Danconey@comcast.net) has been a law enforcement professional for nearly 33 years, with the last 25 years being both an agent and supervisor in four different Office of Inspector General organizations.

Upcoming SCCE Web Conferences

5.10.2017 | Now What? Your First 100 Days as a Compliance Officer
- LISA BETH LENTINI, AGC - Compliance, Deluxe
- KORTNEY NORDRUM, Project Manager, SCCE/HCCA

5.25.2017 | GDPR – Less than 1 year to go – How are you doing?
- JONATHAN ARMSTRONG, Partner, Cordery

6.28.2017 | Effectively Auditing Government Contracts
- GWENDOLYN MCDANIEL, Director, Government Auditing, Empower Audit

- ADAM STONE, Principal Consultant and Chief Privacy Officer, Secure Digital Solutions, LLC

7.27.2017 | Promoting an Ethical Organizational Culture with Mindfulness Practices
- MARLA BERKOW, Corporate Compliance Officer, Gateway Foundation, Inc.
- MICHAEL BELLEAU, Learning and Development Manager, Gateway Foundation Inc.

Learn more and register at corporatecompliance.org/webconferences
SCCE Regional Conferences

Join SCCE to learn and share compliance successes and challenges in your region. Take advantage of this opportunity to learn from your peers, network, and earn CEUs—all in your area.

Questions? katie.burk@corporatecompliance.org

Miami, FL • May 5, 2017
San Francisco, CA • May 19, 2017
Atlanta, GA • June 9, 2017
Anchorage, AK • June 22–23, 2017
São Paulo, Brasil • August 25, 2017
Washington, DC • September 8, 2017
Dallas, TX • November 3, 2017
New York, NY • November 10, 2017
Seattle, WA • November 17, 2017
Philadelphia, PA • December 8, 2017

corporatecompliance.org/regionals
by Thomas R. Fox

Operationalizing your compliance program

In February, the Department of Justice very quietly released a document entitled, “Evaluation of Corporate Compliance Programs.” The document is an 11-part list of questions which encapsulates the DOJ’s most current thinking on what constitutes a best practices compliance program. Within the list are 46 questions that a compliance practitioner can use to benchmark a compliance program. In short, it is an incredibly valuable and most significantly useful resource for every compliance practitioner.

Further, if there is one phrase which sums up the document, it is that it requires operationalizing your compliance program.

The Evaluation follows the seminal “Ten Hallmarks of an Effective Compliance Program,” released in the 2012 FCPA Guidance. If there is one over-riding theme in the Evaluation, it is the emphasis on doing compliance as the questions posed are designed to test how far down your compliance program is incorporated into the fabric of your organization. The Evaluation is not simply a restatement of the Ten Hallmarks, as it clearly incorporates the DOJ’s evolution in what constitutes a best practices compliance program, the Compliance Counsel metrics laid out by former Assistant Attorney General Leslie Caldwell in November 2015, and it most certainly builds upon the information put forward in the DOJ’s FCPA Pilot Program regarding effective compliance programs, most particularly found in Prong 3 Remediation. I detect the strong hand of DOJ Compliance Counsel Hui Chen in not only helping the DOJ to understand what constitutes an effective compliance program, but also in providing solid information to the greater compliance community on this score.

The DOJ makes clear that these questions “form neither a checklist nor a formula. In any particular case, the topics and questions set forth below may not all be relevant, and others may be more salient given the particular facts at issue.” The Evaluation sets out guidance for prosecutors and a window into what the DOJ sees as important in a compliance program. The queries posed are a very sensible list of questions that demonstrate a sensible understanding of compliance programs. Adam Turteltaub observed that, “Also notable is what is not in the list: a focus on legal issues. Instead, the list squarely looks at how the business operates and how the company integrates compliance into its business functions. The word ‘legal’ appears in it once and the word ‘law’ not at all. By contrast ‘training’ appears eight times, ‘board’ seven, ‘management’ eleven, and ‘process’ a whopping twenty-nine times.”

Not only do you no longer have any excuse not to operationalize your compliance program, now you have a road map. *

Thomas R. Fox (tfox@tfoxlaw.com) is the Compliance Evangelist.
www.fcpacompliancereport.com @tfoxlaw
www.tfoxlaw.wordpress.com

* Thomas R. Fox (tfox@tfoxlaw.com) is the Compliance Evangelist.
2017 INTERNATIONAL BASIC COMPLIANCE & ETHICS ACADEMIES
FROM THE SOCIETY OF CORPORATE COMPLIANCE & ETHICS®

AMSTERDAM
15–18 MAY 2017

SÃO PAULO, BRAZIL
21–24 AUGUST 2017

SINGAPORE
10–13 JULY 2017

MADRID, SPAIN
25–28 SEPTEMBER 2017

9,800+ COMPLIANCE PROFESSIONALS
HOLD A COMPLIANCE CERTIFICATION BOARD (CCB)® CREDENTIAL

REGISTER EARLY TO RESERVE YOUR PLACE
LIMITED TO 75 FOR EACH ACADEMY

corporatecompliance.org/academies

Questions: lizza.catalano@corporatecompliance.org
What can we do to improve engagement on our own teams?

» Ethics & Compliance teams are the goody-two-shoes of the company, pointing fingers at the behavioral problems of other parts of the organization.

» In today’s competitive environment, finding and keeping talent is increasingly difficult, especially with new generations entering the workforce.

» Ethics & Compliance teams are not immune to talent recruitment and engagement issues.

» Become a mentor, develop strategies to boost the engagement of existing team members, and partner with other departments to enhance your organization’s culture.

» Ethics & Compliance teams can benefit by using information and relationships already being generated internally to improve engagement.

Ethics & Compliance (E&C) teams are the “goody-two-shoes” of the corporate world. We pore through survey data, hotline trends, and expense reports; then present to our senior leaders, create policies, and invent initiatives on the risk areas we have meticulously determined exist in our companies. If, like me, you are an eldest child, you can likely relate to the tendency to hold ourselves to the highest of standards and detect and fix the problems we see that exist within our sphere of influence. We often point a finger at others, rather than turning the mirror on ourselves.

E&C teams are not immune from engagement issues. So how are you keeping your own people both in check and interested in their roles? It’s time to turn the tables. Although those of us who have been a part of this growing profession may find it thrilling, we need to consider how we attract and retain the talent we need to build our teams. Finding great talent is increasingly hard. In the Minneapolis area, we have 17 Fortune 500 firms, yet we are experiencing a shrinking talent pool and a highly competitive recruiting environment.¹

In the Minneapolis area, we have 17 Fortune 500 firms, yet we are experiencing a shrinking talent pool and a highly competitive recruiting environment.

Difficulty finding talent is just the tip of the iceberg—keeping talent is also a challenge. We feel pressure to keep the...
workplace interesting and purposeful
enough to keep the attention of millennials
while leading change in a way that is
accessible to all ages. We pore over our
onboarding and training processes
and try to embed behavioral norms
in new employees who will likely be
gone after a few years (2/3 of millennial
employees plan to leave their current
company by 2020\(^2\)). We measure culture
and engagement, desperately combating
the statistics: More of the workforce
is disengaged than engaged, costing
companies billions each year.\(^3,4\)

So what can Ethics & Compliance do
about this?

**Become a mentor** – share your
excitement about your role with a student.
There are many law students looking
for a non-traditional path, and Ethics &
Compliance may be the perfect fit. In
fact, according to the *Wall Street Journal*,
the number of recent law graduates
engaging in traditional law practice
is the lowest in many years.\(^5\) To top it
off, the American Bar Association now
requires more experiential learning.\(^6\) At
Medtronic, we developed relationships
with local law schools and have several
student externs each semester. Similarly,
you may be able to provide local students
with a semester-long externship where
they can simultaneously learn from you,
support your team, and earn class credit.
We are in a thrilling profession, and
your enthusiasm for your work can be
contagious when shared.

**Look closely at your own team’s
engagement survey results** – and do
something about it. At Medtronic in
the Office of Ethics & Compliance, we created
a 9-month cohort-based program aimed
to increase the professional knowledge,
business acumen, and engagement needed
to support a mature E&C program.
Feedback about this program by the cohort
has been extremely favorable, and we have
had the opportunity to connect, often in
person, with experts in our field. We believe
that the opportunities for our colleagues
around the world to get to know each other
in this cohort format, and to learn about
best practices in compliance programming,
supports employee development and
commitment to their work within E&C.

**Partner to enhance corporate culture** –
Although the E&C team can have a major
impact on company culture, we cannot
overhaul, shift, or improve culture all alone.
At Medtronic, we have found success in
partnering with human resources and
employee relations, among other functions.
Looking across the company to partner
with other teams that can collectively create
and/or promote a corporate culture that
employees of all ages can plug into to find
purpose is a strategy that has been both
successful and rewarding for our team and
our company.

Looking at data about our own teams
may be time consuming, but the purposeful
action we are able to take to improve
engagement makes the effort well
worth it. *

---

1. Minnesota Employment and Economic Development: Fortune 1000
   Practice Jobs” *Wall Street Journal* blog; August 17, 2016. Available at:
6. American Bar Association: “Managing Director’s Guidance Memo:
   Standards 303(a)(3), 303(b), and 304” ABA; March 2015. Available at:

Jessica Tjornehoj (jessica.a.tjornehoj@medtronic.com) is Senior
Compliance Specialist, Ethics and Culture, Office of Ethics & Compliance
at Medtronic in Minneapolis, MN.  bit.ly/li-JessicaTjornehoj


There are two grades in investigations: A and F. “Good enough” is rarely the standard for people who care about their careers, even when work burdens must be prioritized among limited time and resources.

As an investigator, you have significant power. And I don’t mean your authority to peek at documents and compel your colleagues to sit for an interview.

Your investigations usually change lives. Jobs can be lost, careers impacted, families affected. In the most significant cases, people are prosecuted. It’s hard to congratulate yourself for a job well done when you watch a defendant’s wife tearfully plead with the judge not to send her husband to prison. (I should know. I watched it happen.)

Investigations require you to be as precise as possible. An investigation may preserve a colleague’s reputation, or destroy it. Managers rely on your fact-finding to make decisions about personnel, internal processes, and management accountability. But the legal obligation is satisfied if the company conducts even a cursory inquiry. That minimum threshold should be irrelevant to you. Do you really want someone’s job affected by your desire to get the case wrapped up as quickly as possible? Do you want to live with the fact that you could be wrong? Take the time, and do it right.

The subject of the investigation is entitled to be confronted by the evidence you gathered and respond to it. He is entitled to offer his own evidence, as well as proof of exculpatory and mitigating information. He is entitled to suggest witnesses who may give you information on his behalf.

When the subject offers that information, try your best to get admissions of fault from the subject. Admissions make some of the best proof you can gather. Even the employee who admits taking the money without permission but always intended to pay it back when his financial situation improved is telling you he stole it. The only difference is the characterization, and he doesn’t get to decide which is right. Then whatever happens, you only identified and documented his wrongdoing; you didn’t need to presume it from circumstantial proof.

When all you have is a circumstantial case—the employee denies any wrongdoing, but the developed facts certainly support it—then do your best to assemble as complete a case as you can. Process fairness requires you to identify any conflicting or mitigating information. You want the clearest possible picture of what happened.

Providing procedural fairness and using the subjects own words to facilitate the findings is a just way to complete the investigation. You are just using your own skills to gather the evidence and let the chips fall where they may.

Whether it is a reflection of your professionalism or your desire to avoid a guilty conscience for reaching the wrong conclusion by cutting corners, take the time to do it right. If you are going to fulfill this role in your company, you have a moral obligation to everyone involved to do your best possible work.

Meric Craig Bloch (mbloch@shrinenet.org) is Corporate Director, Investigations for Shriners Hospitals for Children. He has conducted over 400 workplace investigations of fraud and serious workplace misconduct, and is an author and a frequent public speaker on the workplace investigations process. @fraudinvestig8r

VIEW FROM THE FRONT LINES

by Meric Craig Bloch, CCEP-F, CFE, PCI, LPI

You have a moral obligation

Meric Craig Bloch (mbloch@shrinenet.org) is Corporate Director, Investigations for Shriners Hospitals for Children. He has conducted over 400 workplace investigations of fraud and serious workplace misconduct, and is an author and a frequent public speaker on the workplace investigations process. @fraudinvestig8r
CALL FOR AUTHORS

SHARE YOUR EXPERTISE

_Compliance & Ethics Professional_ is published monthly by the Society of Corporate Compliance and Ethics (SCCE). For professionals in the field, SCCE is the ultimate source of compliance and ethics information, providing the most current views on the corporate regulatory environment, internal controls, and overall conduct of business. National and global experts write informative articles, share their knowledge, and provide professional support so that readers can make informed legal and cultural corporate decisions.

TO DO THIS, WE NEED YOUR HELP

We welcome all who wish to propose corporate compliance topics and write articles.

CERTIFICATION is a great means for revealing an individual’s story of professional growth! _Compliance & Ethics Professional_ wants to hear from anyone with a CCEP, CCEP-I, or CCEP-F certification who is willing to contribute an article on the benefits and professional growth derived from certification. The articles submitted should detail what certification has meant to the individual and his/her organization.

EARN CEUs

The CCB awards 2 CEUs to authors of articles published in _Compliance & Ethics Professional_.

If you are interested in submitting an article for publication in _Compliance & Ethics Professional_, email liz.hergert@corporatecompliance.org.

PLEASE NOTE THE FOLLOWING UPCOMING DEADLINES FOR ARTICLE SUBMISSIONS:

- June 1
- August 1
- July 1
- September 1

TOPICS TO CONSIDER INCLUDE:

- Anticipated enforcement trends
- Developments in compliance and ethics and program-related suggestions for risk mitigation
- Fraud, anti-bribery, and anti-corruption
- Securities and corporate governance
- Labor and employment law
- Anti-money laundering
- Government contracting
- Global competition
- Intellectual property
- Records management and business ethics
- Best practices
- Information on new laws, regulations, and rules affecting international compliance and ethics governance
A look into Europe’s new cybersecurity regimes

by Jan Dhont and Delphine Charlot

Cyberattacks continue to escalate in frequency and severity. They also increasingly involve trans-Atlantic data flows, as illustrated by the last year’s Dyn service attack, which crippled Netflix, Twitter, and other websites in the U.S. and Europe,\(^1\) and by the recent claim of a hacker group to have accessed 300 million Apple accounts.\(^2\)

In that context, companies with operations in the European Union (EU) are being pressed by their customers and employees to adopt “state of the art” security standards to protect their personal data. The EU legislative landscape reflects these new risks and imposes a new set of obligations on companies to prevent, prepare for, respond to, and mitigate data security breaches. Non-compliance with those obligations may result in administrative fines up to 10 Million EUR, or 2% of the total worldwide annual turnover, whichever is higher.\(^3\)

This article presents (1) the new data security obligations under the General Data Protection Regulation (GDPR); (2) the new cybersecurity obligations that apply to providers of essential and digital services under the Network Information Security Directive (NIS Directive); and (3) some recommendations for companies as they prepare to meet these new obligations.

The GDPR regime

The GDPR is new legislation that will harmonize the rules of the 28 EU Member States as of May 25, 2018.

New security obligations

The GDPR sets forth new obligations that apply to the protection and security of personal data. More specifically, companies must assess the level of security in light of the risks for individuals—including that of a data breach—for each new processing activity they engage in.\(^4\)

In addition, companies must implement “appropriate technical and organizational

---

\(^1\) Dhont

\(^2\) Charlot

\(^3\) www.corporatecompliance.org

\(^4\) Compliance & Ethics Professional® May 2017

FEATURE
measures” to ensure a level of security appropriate to the risk envisaged, taking into account “state of the art” technologies. Such measures include (1) the pseudonymization and encryption of personal data; (2) the ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing services; (3) the ability to restore data in the event of an incident; and (4) a process for regularly testing the measures.

New breach notification regime
The GDPR sets forth a new breach notification regime which constitutes a major shift for companies with operations in the EU. A data breach is defined broadly as “a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, of personal data transmitted, stored or otherwise processed”.

Companies that act as “data controllers” with respect to personal data (i.e., decide on the purposes and means of the processing) must notify the relevant data protection supervisory authority (SA) of a breach, unless the breach is unlikely to result in a risk to the rights and freedoms of individuals. Examples of such risk include loss of control by data subjects over their personal data, discrimination, identity theft, fraud, financial loss, unauthorized reversal of pseudonymization, damage to reputation, loss of confidentiality of personal data protected by professional secrecy, and other significant economic or social disadvantage. Companies must notify the SA “without undue delay,” and where feasible, not later than 72 hours after becoming aware of the breach.

In addition, companies must notify individuals where the breach is likely to result in high risk to their rights and freedoms. Companies are exempt from notification if (1) the personal data is unintelligible because, for instance, it is encrypted; (2) sufficient measures have been adopted following the breach so that there is no longer a high risk; or (3) individual notification would involve disproportionate efforts—in which case individuals may be informed through other means (e.g., public communication).

Whereas the GDPR applies to all companies, the NIS Directive applies only to “operators of essential services” and “digital service providers.”

The NIS Directive regime
Whereas the GDPR applies to all companies, the NIS Directive applies only to “operators of essential services” and “digital service providers.” Importantly, under the NIS Directive, a security breach may, but need not, involve personal data.

New security obligations
Providers of essential services are entities that provide a service which (1) is essential for the maintenance of critical societal and/or economic activities and (2) depends on network and information systems, (3) where an incident would have significant disruptive effects on the provision of that service. This includes energy suppliers, transport service providers, large financial institutions, utilities, healthcare providers, and providers of digital infrastructure. Digital service providers, on the other hand, are companies that provide a digital service, including online marketplaces, online search engines, and cloud computing services.
The exact list of industries and types of entities covered should be clarified as EU Member States start implementing the NIS Directive. Although the GDPR and the NIS Directive will go live at the same time, EU Member States are given an additional six-month period to implement the NIS Directive.

Providers of essential services are required to adopt “appropriate and proportionate technical and organizational measures” appropriate to the risk posed taking into account “state of the art” technologies. Digital service providers are further required to ensure a level of security appropriate to the risk posed, taking into account (1) the security of systems and facilities; (2) incident management; (3) business continuity management; (4) monitoring, auditing, and testing; and (5) compliance with international standards.

**New breach notification regime**

Companies covered by the NIS Directive are required to notify of any incident having a “significant impact” on the continuity of an essential service or a “substantial impact” on the provision of a digital service. An incident is defined as any event having an actual adverse effect on the security of network and information systems.

Notification should be made “without undue delay” to the national competent authority responsible for network and information security in the sector concerned, or to the national Computer Security Incident Response Team (CSIRT). A CSIRT is a national body established under the Directive to monitor and respond to security incidents and coordinate actions at pan-European level.

A CSIRT is a national body established under the Directive to monitor and respond to security incidents and coordinate actions at pan-European level.

The impact of an incident must be assessed in light of (1) the number of users affected, (2) the duration of the incident, and (3) the geographical spread of the area affected. In addition, digital service providers must assess the extent of the disruption of the service and its economic/societal impact.

**Recommendations for companies**

Given the new cybersecurity and breach notification regimes, companies would be well-advised to engage in the following activities:

- **Invest in information security.** Business, compliance, and IT functions should work together to assess needs, and companies should invest in “state of the art” technologies, because this can help mitigate risks and avoid notification.

- **Be prepared well in advance** of any actual breaches or incidents. A significant security breach is largely crisis driven and not a good time for thoughtful analysis of reporting obligations. Companies must have response plans and breach toolkits in place, which describe incident types and action steps, and include template notification letters, fraud alerts, and other breach-related forms.

- **Put in place processes to regularly test, assess, and evaluate** the effectiveness of companies’ breach response and, more generally, the technical and organizational measures in place.

- **Document the actions taken** once an incident occurs, keeping in mind that this
may be used during interactions with the competent authority. Companies must be in a position to assess whether the breach they are dealing with involves a risk or high risk for individuals. Companies subject to the NIS Directive must be able to assess whether an incident has a significant or substantial impact.

- **Take IT measures to prevent the escalation** of an incident and a risk of harm to individuals.
- **Have the ability to restore the availability of systems** and access to personal data in a timely manner (i.e., a business continuity plan).

3. Article 83(4) of the General Data Protection Regulation
4. Article 32(2) of the GDPR
5. Article 32(1) of the GDPR
6. Article 32(1)(a) to (d) of the GDPR
7. Article 4(12) of the GDPR
8. Article 33(1) of the GDPR
9. Recital 75 of the GDPR
10. Article 33(1) of the GDPR
11. Article 34(1) of the GDPR
12. Article 5(2) of the NIS Directive
13. Article 14(1) of the NIS Directive
14. Article 16(1) of the NIS Directive
15. Article 4(7) of the NIS Directive
16. Article 14(4) of the NIS Directive
17. Article 16(4) of the NIS Directive

Jan Dhont (jan.dhont@alston.com) is Partner and European Data Protection Lead at Alston & Bird in Brussels.
Delphine Charlot (delphine.charlot@alston.com) is Associate in the European Data Protection Team at Alston & Bird in Brussels.
In early February, with very little fanfare, the Department of Justice launched Guidance 2.17 on Evaluation of Corporate Compliance Programs. The guidance introduction itself sets the stage, citing to a number of other sources of DOJ guidance and then indicating that “this document provides some important topics and sample questions that the Fraud Section has frequently found relevant in evaluating a corporate compliance program.” A modest choice of language, for sure; while the Guidance itself does not break new ground on factors considered by prosecutors, its format—probing questions—lends itself well to effective analysis by board members and compliance officers alike.

There are many probing questions in the Guidance that are interesting (the focus on root cause analysis, for example), but for purposes of this column, those in “Oversight” in Section 2 are most relevant. The first question is, “What compliance expertise has been available on the board of directors?” I was struck by that question, because it is very unusual for a board member to possess specific compliance expertise in the form of a compliance background or history serving as a compliance officer. The compliance role is relatively new, low levels of board turnover and long terms limit the opportunities to bring diverse viewpoints on to the board, and when an opening does arise, there are a number of priorities competing with the idea of bringing compliance expertise onto the board.

The first question is, “What compliance expertise has been available on the board of directors?”

Most organizations answer that lack with training for board members, exposure to the company’s compliance program, and regular compliance updates. That last component of potential approaches also appears in the Guidance, which indicates prosecutors might ask, “What types of information have the board of directors and senior management examined in their exercise of oversight…?” This, along with other regulator guidance, could not be clearer that merely reporting on hotline volume is no longer sufficient. In fact, as part of Ethisphere’s World’s Most Ethical Companies® process, companies are asked about their practices around board reporting; the questionnaire gives companies 16 categories of information to choose from, and over 80% of the 2017 honorees report on at least 14 of them. It is clear that from investigation statistics to training program performance, risk assessment results to culture assessments, boards are being given more and more information to make sure they are properly performing their oversight responsibilities. In the absence of actual compliance expertise on the board—which I predict is coming—it’s a solid start.

Erica Salmon Byrne (erica.salmonbyrne@ethisphere.com) is the Executive Vice President of The Ethisphere Institute. @esalmonbyrne
For 27 years, ethics and compliance experts have gathered to share ideas in the pages of Ethikos.

Here’s your chance to see why.

Now available from SCCE.

Visit www.corporatecompliance.org/EthikosBook, or call +1 952 933 4977 or 888 277 4977
As a former federal prosecutor, I frequently counsel corporate clients—in both the proactive and reactive aspects of my practice—to pay close attention to the government’s enforcement playbook. Frequently, clients have a common misconception that the government “hides the ball” about what elements are needed in their compliance programs. In recent years, federal agencies in the United States have continued to remind companies of the importance of effective compliance and have continued to be transparent about their expectations.

On February 8, 2017, the Fraud Section of the United States Department of Justice (DOJ) provided another clear reminder by announcing a new policy entitled, “Evaluation of Corporate Compliance Programs.” Considering that this guidance comes directly from the new Trump Administration, and was announced after the confirmation of the new Attorney General, Jeff Sessions, company leadership should take heed. Formally, the policy will be used by prosecutors to evaluate corporate compliance programs in the aftermath of a scandal—as part of their criminal investigation and as a factor for exercising their broad enforcement discretion.

This policy both incorporates and builds upon earlier foundational standards and elements of corporate compliance programs. Among the old favorites are the elements of: (1) sound policies and procedures, (2) effective training, (3) proportional and consistent
discipline, (4) constant monitoring, and (5) continual improvements. However, this new guidance goes beyond the bare bones by adding a more comprehensive checklist, which includes a total of 119 different questions that companies and boards of directors can use for re-examining and stress testing their programs.

Moving corporate culture from subjective art to objective science
The vast majority of companies and executives consistently claim to care deeply about corporate compliance. (Who wouldn’t, right?) Historically, the meaning of the term “corporate culture” remained elusive and very subjective. Even though it contained both elements, compliance appeared to more closely resemble an art than a science. As a result, culture and compliance were mistakenly viewed as squishy or softer subjects, which were harder to effectively measure. In short, a good corporate culture meant different things to different people. Without the tools to measure and quantify, effective compliance also remained vulnerable to being overlooked or de-emphasized, due to rationalizations from less committed or uninformed leadership.

This new policy is another example of an ongoing and important trend to move away from the subjective standards and into the realm of objective and measureable metrics, which began when the USSC’s Organizational Sentencing Guidelines were first published in 1991. As seen below, rather than speaking in platitudes or lofty generalities, the policy offers a roadmap of issues and questions that can help companies demonstrate and document that commitment.

The functional elements of the new DOJ compliance guidance
After discussing some of the earlier guidance and the context for applying its principles, the new DOJ policy on corporate compliance is organized into the following 11 different topics, each of which also contains various questions:

- Analysis and Remediation of Underlying Conduct
- Senior and Middle Management
- Autonomy and Resources
- Policies and Procedures
- Risk Assessment
- Training and Communications
- Confidential Reporting and Investigation
- Incentives and Disciplinary Measures
- Continuous Improvement, Periodic Testing and Review
- Third-Party Management
- Mergers and Acquisitions

Interestingly, the new policy presents a series of questions, but offers few answers. This approach is consistent with past guidance, since there is no one-size-fits-all approach. The new policy provides far more specifics and takes a deeper dive into critical areas that include processes, systems, authority, and resources. Rather than merely summarize all of the topics and questions, which are fairly self-explanatory, the remainder of this article will present the newer elements of the new policy in the context of the four pillars of self-governance: (a) Prevention, (b) Detection, (c) Response, and (d) Correction/Remediation. For purposes of cross-referencing, each of the eleven topics in the policy is included within the bullets below.

The Prevention elements
The truest measure of a company’s commitment to compliance is what it chooses to prioritize before an investigation begins. Rather than merely point to written policies (i.e., what the company “says”), the proof lies in what the company chooses to “do”
(i.e., what it measures, what it funds, and what it incentivizes). Accordingly, the new compliance policy guidance highlights the importance of the preventive aspects of compliance through the following topics (which include references to the numbered elements of the new policy):

- A positive and authentic compliance “culture,” which includes demonstrable evidence of:
  - A “shared commitment” to compliance throughout the organization [Topic #2].
  - Properly delegated ownership and accountability [Topic #2].
  - Employee empowerment [Topic #3].

- Strong, explicit, and visible support for the program, including:
  - A strong “tone at the top” and consistent conduct displayed by words, actions, and modelled behaviors [Topic #2].
  - Adequate oversight and engagement by executives and the board of directors [Topic #2].
  - Sufficient program budget and resources [Topic #3].

- Written policies and procedures that are properly designed [Topic #4a].

- A highly qualified, experienced, autonomous, and well-resourced compliance team [Topic #3].

- Due diligence and contractual compliance expectations of third-party vendors and/or joint venture partners [Topic #10].

- Strong training, which is understandable, risk-based, relevant, and updated [Topic #6].

- Post-merger integration/absorption of compliance principles within acquired companies/divisions/personnel [Topic #11].

- Sound implementation and operational integration [Topic #4b].

- On-going risk assessments which include methodologies for identifying, analyzing, and managing top risks [Topic #5].

The Detection elements

- Regular monitoring and auditing (both internal self-assessments and external) [Topic #9].

- A visible confidential reporting system (with non-retaliation and consistent and documented follow-through) [Topic #7].

- A proven track record for spotting, responding to, and learning lessons from other “red flags” (e.g. employee concerns, agency investigations, fines, etc.) [Topic #1].

- Open flow of communications in all directions (“laterally” across the company; “upward” to audit committees and the board of directors; and “downward” to middle management and the employees) [Topic #2].

The Response elements

- Timely, thorough and credible internal investigations which include detailed “root cause” analyses [Topic #1].

- Appropriate, proportional and consistent discipline of employees, managers, executives, and third-party vendors who engage in violations [Topic #8].

- A proper incentive system that recognizes, rewards and promotes strong compliance performance of employees and managers [Topic #8].

The Correction/Remediation elements

- On-going improvements to all compliance program elements [Topic #9].

- Post-incident remedial actions [Topic #1], including:
  - Remedy harm/impacts.
  - Increase budget/resources as needed.
  - Modify training to address “gaps”.  
  - Prevent recurrence of non-compliance.
Conclusion

One fundamental (and often frustrating) principle of “effective” corporate compliance is that the process of improvement is never completed. The risk landscape is always changing based upon a wide variety of internal and external factors. This latest DOJ compliance program policy gives clear notice to all companies that the government still cares about these standards of self-governance, and provides concrete examples of the questions that the government will ask.

In light of the government’s transparency about compliance priorities and expectations, every company will be expected to be equally transparent. More specifically, companies need to review the guidance and evaluate their programs in full view of this clear notice and on-going priority placed upon such programs. The two questions they need to be prepared to answer are:

- How does your compliance program score in light of the government’s criteria?
- What did your company do internally to assess its program in light of this new policy?

As every compliance officer knows—the time to act proactively, and to get the maximum protection is now—before any significant trouble hits. As the adage goes, “an ounce of prevention is worth a ton of cure.” As a company’s audit and compliance program grows and matures, the leadership must be ever-vigilant in making sure it remains effective.*

2. See Chapter 8E2.1(b) of the United States Sentencing Guidelines (e.g. - the foundational “Big Seven” effectiveness criteria); “Principles of Federal Prosecution of Business Organizations”—previously referred to as the “Filip Memo,” now contained in the U.S. Attorney’s Manual at Title 9-28.000; and the FCPA Enforcement Pilot Program (announced in April, 2016).

Peter Anderson (panderson@bdlaw.com) is Attorney at Beveridge & Diamond, PC in Charlotte, NC.
Get the latest in compliance news

blog

and trends

complianceandethics.org
Congratulations
Newly certified designees!

Achieving certification required a diligent effort by these individuals. CCEP certification denotes a professional with sufficient knowledge of relevant regulations and expertise in compliance processes to assist corporate industries in understanding and addressing legal obligations. Certified individuals promote organizational integrity through the development and operation of effective compliance programs.

Robert S. Arnold  
Ann Auerbach  
Colleen Bickel  
Andrea Bosse  
Stephanie Bottomley  
Christopher Brennan  
Brian Bridson  
Johna J. Carufel  
Noelle F. Collins  
Nicole Y. Corn  
James Crookston  
Robin Curley  
Michelle Dewarrant  
Nancy Erskine  
Leigh Faugust  
Jarred A. Fishman  
Marcus Freeman  
Anna Grover  
Sheri L. Guthrie  
Lisa Hess  
Taylor M. Hying  
Emily C. Jensik  
Melanie Joo  
Stacey D. Kalberman  
Colette Keilman  
Ronald H. Kind  
Shana Kuhn  
Diane Lam  
Kyle Langdon  
Patricia Lantzy  
Aida Lebbos  
Jeanne Lin  
Michael Morrow  
Patrick Mueller  
Aver E. Oliver  
Megan O’Rourke  
Jennifer R. Paxton  
Yuhok S. Raymaker  
JoAnna M. Rivera  
Robert Ryan  
Katherine Schweit  
Seth Shoemaker  
Edward Skiba  
Kevin Spontak  
Julia L. Tate  
Alyssa Todhunter  
Nathaniel L. Trent  
John Turner  
Lee van Deventer  
Cj Webberley  
Christopher Wilhelm  
Melissa L. Williams

The individual who earns CCEP-I certification is a professional with knowledge of relevant international compliance regulations and has expertise in compliance processes sufficient to assist corporate industries in understanding and addressing legal obligations, and promoting organizational integrity through the operations of an effective compliance program.

Dilek Y. Aksu  
Robin R. Bogdanich  
Erin Leem  
Seosamh O’Murchadha  
Tameka Ramsey  
Warren M. Rosenzweig

The Compliance Certification Board (CCB) offers opportunities to take the CCEP and CCEP-I certification exams. Please contact us at ccb@compliancecertification.org, call +1 952 933 4977 or 888 277 4977, or visit www.compliancecertification.org.
Become a Certified Compliance & Ethics Professional (CCEP)®

• Broaden your professional qualifications
• Increase your value to your employer
• Gain expertise in the fast-evolving Compliance field

There’s never been a tougher or better time to be a part of the Compliance and Ethics profession. Budgets are tight, governments around the world are adding new regulations, public trust in business is low, and employees are tempted to cut corners.

As a Certified Compliance and Ethics Professional (CCEP) you’ll be able to demonstrate your ability to meet the challenges of these times and have the knowledge you need to help move your program and your career forward.

Learn more about what it takes to earn the CCEP at www.compliancecertification.org/ccep

Hear from your peers

Diane Del Re, CCEP
Tech Data
Records and Information Management Manager
Clearwater, FL USA

1) Why did you decide to get certified?

The CCEP is a respected designation that adds credibility to our program. The designation not only illustrated my own personal commitment to ethical conduct, but our departments’ and organizations’ commitment as well.

2) How do you feel having the CCEP certification has or will help you in your career?

My credentials have furthered my career success through promotions and new job offers. The SCCE membership provides access to other professionals and unparalleled networking opportunities and sharing of best practices.

3) Would you recommend that your peers get certified?

Absolutely; we actually require all compliance team members to obtain and maintain their certification. Again, it adds credibility to our program and our commitment to business conduct and ethics. Although I have chosen a career path outside of general compliance, I maintain my certification.
Compliance 101
SECOND EDITION

Newly revised with updated information and more guidance on best practices.

As SCCE moves into its second decade of supporting the compliance and ethics profession, authors Debbie Troklus and Sheryl Vacca have updated this classic text with new insights and more tips on how to build an effective program that meets federal standards. More sample policy and procedure documents are included.

Compliance 101 serves as a great study aid for those preparing to take the CCEP examination.
Why Compliance needs to take a chill pill sometimes

My work in compliance is still informed by a long-ago conversation I had with an oilfield service worker about safety. He told me that if he sat in his office onshore, doing nothing, he would be quite safe, but he would not be able to make any money for the company. However, if he went offshore to oversee drilling operations, while it may be a higher risk from a safety perspective, he could bill his time and the company could make money. The point I took away was that to make a profit, a company had to take some risks. That lesson has stayed with me up to this day and is relevant in the ongoing discussions in the compliance community about risk. It also means that compliance is not only driving the business, but it serves to make a business more efficient and, at the end of the day, more profitable.

Compliance should be recognized as a business process, which enhances the business of an organization, not the other way around. Simply because it is high-risk, without further consideration, serves no rational purpose. Likewise, a decision not to sell through distributors because of corruption risks serves no rational purpose. Sure there is a risk of corruption when selling through distributors, but there is even a greater risk of corruption when you sell direct. Despite how important we all think we are in Compliance, we are nothing without the business, without sales, without a channel, without challenging (and likely corrupt) growth markets, and without business people driving the business forward based on solid business practices. Compliance people need to be careful not to overstate the compliance risks and put their business leaders in an unenviable position of having to say “no” to compliance. Saying “no” to compliance is certainly not the “done thing” these days, but be careful to not overstep the mark with your requests and demands.

The minute that you do, it will become very apparent, the business will react against you personally, and the credibility of the Compliance department will be damaged. A great example of this situation is the way that companies have gotten into hot
water under the Foreign Corrupt Practices Act (FCPA) for their sales goals and compensation structure. Just because your company sells through highly commissioned sales people does not mean that you should try and lobby your business leaders to somehow restrict sales people from doing what they do best. Yet, just as with Wells Fargo, the answer is not to scrap the sales model or modify it in a way that disincentives the sales team, but to try and tie sales and business success to your overall ethical culture and risk management process. There are many ways to incentivize a sales team, and incentives are an absolutely important part of sales. The suggestion that we need to support a removal of incentives is just plain wrong. No compliance person worth their salt should ever suggest such a course of action. There are many ways to make this less risky from a compliance perspective and to achieve the business objectives. It just requires thought and working closely with your business colleagues to get something that is a fit for your business.

There is a way forward for compliance and the business to happily work together, and it all begins with understanding your business and compliance risks. This means performing a comprehensive risk assessment and then designing your compliance program around your company’s risks. The FCPA Guidance was clear in stating “Assessment of risk is fundamental to developing a strong compliance program.” This is because there is no one-size-fits-all compliance program that will work.

Assessing your risk is only the first step. What regulators want to see in management of risk is the same thing businesses require: a well-thought out and reasoned approach. This means managing your highest risks first, in a manner appropriate to the level of the risk, down the chain to your lowest risk. All of this is a process, and it is engaging in the process of compliance that makes a company stronger, better run, and more profitable.

Every business endeavor has its risks. In the anti-corruption world, the risks increase each time there is a government touchpoint. However, simply because these risks exist does not mean they cannot be managed. Many companies derive the majority of their revenue from government customers; this is not going to change in the near future. If anything, it will continue to increase in many sectors. The government touchpoints must remain, and Compliance just needs to make sure they have the right tools and controls in place to manage those points. Removing them is not an option. The key to finding that equilibrium between compliance and business needs is to assess those risks and then manage them going forward with a practical risk managed solution.

We have also seen risks in other areas leading to ethical and cultural failures in areas outside of anti-corruption. Wells Fargo was an example of bank staff fraudulently opening bank accounts to hit sales goals. It was largely driven by three factors, which separate and apart would not normally be associated as high-risk, yet because of the manner in which they were designed or managed, became high risk. The first was a sales goal untethered to reality. The second was that employee compensation was based on this unrealistic sales target. The third was an overall performance evaluation and continued employment based on meeting this sales target that was not tethered to an economic basis.

Many commentators and politicians called on Wells Fargo to immediately end its sales-based compensation structure. These comments are an over-reaction and are certainly not a solution from a legal or compliance perspective. If you consider each one of the prongs separately, it is clear that
while there is risk involved in each prong, it can be managed. One is the sales goal, and the key inquiry is to ask if it is realistic. Are there any economic models that demonstrate why each customer should have eight separate Wells Fargo financial products? Clearly basing it on a rhyme (Eight is Great!) is not a realistic economic model.

What about sales incentives for employees? Did the employees receive the proper incentives for making sales? Here the failure was incentivizing the branch managers with bonuses outsized in comparison to their employees, so the managers were driving their employees without any consequences to their fraudulent or even illegal actions. If the company had shared the incentives more evenly or based sales incentives on something other than simply the number of accounts and financial products opened, there would have been less risk that employees would open such fraudulent accounts.

Finally, when employees are evaluated, if the only criterion is whether they have met their numbers, they will always meet their numbers, because the consequences are too severe for not meeting those metrics. Once again, it is through evaluation and management of risk that a sales system that has led to illegal activity can be led back to an efficient process which will make the company more profitable at the end of the day.

In many ways, Safety is about 20 years ahead of Compliance in terms of culture. In my example about the offshore driller, he can now sit in his office, at an onshore location, and direct drilling operations remotely through advancements in technology that allow offshore drilling. His company’s costs are dramatically reduced, because the work can now be done remotely. Was this technology driven solely by safety issues or efficiency issues? In my mind, it really does not matter, because safety innovation made the drilling company a more efficient, better run, and more profitable company.

Those commentators who continually try to instill that compliance should inform the business have it backwards. Compliance must innovate to make businesses more efficient and more profitable by managing risk going forward. This is even recognized by government regulators. In the public comments of Justice Department Compliance Counsel Hui Chen and in the Department’s FCPA Pilot Program, they both emphasized the operational requirement of compliance. In other words, how much is your compliance program burned into the fabric of your business? As Compliance continues to evolve, it is becoming clearer that it is a business process designed to make businesses run better—not the other way around. Compliance might need to take a chill pill every now again and swallow more business risks.*

* Thomas R. Fox (tfox@tfoxlaw.com) is the Compliance Evangelist at Advanced Compliance Solutions in Houston, TX. www.fcpacompliancereport.com @tfoxlaw tfoxlaw.wordpress.com

Scott Lane (scott.lane@redflaggroup.com) is Executive Chairman at The Red Flag Group in Hong Kong.
Establish a career where you can **MAKE A DIFFERENCE**

“This book is an immensely valuable contribution to the field. It will not only help guide a new generation of compliance and ethics officers through the many professional challenges that await them, but will also provide considerable useful insight and know-how to their experienced counterparts.”

— Jeffrey M. Kaplan
Partner, Kaplan & Walker LLP, a compliance law firm; former program director of the Conference Board’s Business Ethics Conference

An authoritative, step-by-step guide to entering one of the fastest growing fields in the business world

www.corporatecompliance.org • +1 952 933 4977 or 888 277 4977
Preventing child sexual abuse: The role of the compliance professional

» Compliance professionals can influence the ethical growth and development of youth-serving organizations and their child-abuse prevention systems.
» Organizational policies should clearly define appropriate adult-to-youth boundaries.
» A robust screening process includes more than criminal background checks.
» Effective monitoring and supervision minimizes opportunities for privacy.
» Responding procedures that address red-flag behaviors and policy violations can help identify and address problems before they rise to the level of suspected abuse.

The Centers for Disease Control previously estimated that as many as one in four girls and one in six boys will be sexually abused before the age of eighteen. Organizations across industries have learned a lot about sexual abuse over the years, including how it happens, what can be done to prevent it, and how to respond. Now with an increased media spotlight on sexual abuse allegations (historical and present) sweeping the nation, there are internal and external pressures to reevaluate and expand organizational safety initiatives for vulnerable populations.

Caring for people is serious business. Nothing can be more devastating than an incident or allegation of abuse to a child or vulnerable adult in care. Organizations are not powerless to protect their clients or themselves. Effectively preventing this risk must involve every individual within the organization, but compliance professionals play a unique and essential role in prevention.

Tasked with more than traditional industry compliance at the local, state, and federal regulatory level, compliance professionals are also keenly aware of and help shape an organization’s ethical compass. Compliance professionals have the potential to influence the ethical development of a department, organization, institution, and even an industry. A single incident of abuse can harm an individual for life, ruin the reputation of an organization, and deplete its financial resources. Abuse in organizations doesn’t have to happen.

Policies with well-defined standards of interaction and boundaries, robust screening mechanisms, timely and comprehensive training, effective
monitoring and supervision practices, and clear response systems are key to prevention. As a compliance professional, you may not directly oversee youth or community outreach programs in your organization, but you may influence or share oversight of integral internal processes. Evaluate each of the following tips and your ability to create a culture of safety at your organization.

**Implement and standardize policies**

Policies should clearly communicate that the organization has zero tolerance for abuse, define appropriate and inappropriate boundaries between adults and vulnerable individuals (including physical and verbal interactions and whether and under what circumstances electronic communication, outside contact, and one-on-one interactions are permissible), and provide employees and volunteers with clear procedures to manage high-risk situations. Standardized policies define a bandwidth for acceptable behavior and ensure employees and volunteers are not using personal, subjective judgment to guide their interactions with children or vulnerable adults.2,3

Once developed, programs and departments must be held accountable to these standardized policies to ensure they are consistently followed and integrate corrective action for non-compliance. Communicating policies to all employees, volunteers, parents, and youth also helps to ensure everyone is accountable for adherence to the same standards.

**Screen for abuse risk**

The screening process is an organization’s first opportunity to control who has access to the children or vulnerable adults in your care. Have you ever thought about whether your organization is collecting the right information or getting the most out of this information?

Organizations should not solely rely on background checks to screen out candidates. Although background checks are an industry standard for individuals working with vulnerable populations, few offenders have a criminal record. There are additional challenges when screening teens or young adults, who may have limited accessible history.

A standardized application that is reviewed for red flag indicators can help eliminate unsuitable candidates early in the process. Include more than one individual in interviews, and use standardized, behaviorally based questions. Don’t forget to check professional and personal references, using standardized questions. Throughout the screening process, ensure the hiring manager has the benefit of all collected information, which can be challenging if hiring responsibilities are split between individuals or departments.

**Deliver the right training at the right time**

Training can provide employees and volunteers with the necessary tools to identify inappropriate patterns of behavior and high-risk activities or programs. To be effective, training should include more than
reporting mechanisms and the right content for the audience must be easy to access and use, and target the right people in the right way. Training curriculum is often treated as a one-size-fits-all approach. Because everyone has a different learning style, your organization’s abuse prevention training should accommodate these variances. It should also be easy to verify compliance with ongoing training requirements.

**Emphasize monitoring and supervision**

When employees and volunteers are adequately supervised, potential offenders are less likely to gain privacy with clients, because they face detection. When clients are adequately supervised, they, too, are less likely to engage in inappropriate interactions with others. Effective monitoring and supervision requires that employees and volunteers are not only aware of the organization’s policies and procedures, but that they clearly understand why the policies and procedures are important to organizational abuse prevention. Supervisors and administrators should be present in an unscheduled or unpredictable manner and visible within the organization. When observing ongoing programs, ensure supervisors know what to look for and take advantage of teachable moments.

**Respond quickly and effectively**

Many organizations are aware of their legal requirements to report suspected abuse and neglect within each of their individual states. However, does your organization have clear protocols for responding to suspicious or inappropriate behaviors that do not rise to the level of abuse? Suspicious or inappropriate behaviors provide opportunities to respond before an incident occurs. In many cases of abuse, employees will report seeing red flags or policy violations leading up to the incident, but may not report the observations to a supervisor. As a result, the supervisor may miss the opportunity to review a complete picture of the frequency or severity of an individual’s infractions and respond accordingly. Ensure that your internal teams know what to do with information or concerns when they have them, and that supervisors understand their role when reports are made.

**What this means for you**

Creating a culture of safety means creating a work environment where every day, every worker keeps at the forefront the well-being of those in their care. Managing this risk takes a sustained, ongoing commitment to abuse prevention. But it also involves overlaying a compliance framework to everyday tasks like policy development, hiring practices, training, monitoring and supervision methods, and reporting mechanisms to keep an organization on the path to true commitment.

---


*Candace Collins (ccollins@praesidiuminc.com) is Director of Higher Education, Aaron Lundberg (alundberg@praesidiuminc.com) is the CEO, and Jessica Scibona (jscibona@praesidiuminc.com) is a Safety Analyst, all at Praesidium in Arlington, TX.*
Get the latest best practices written by and for the business ethics community

Enjoy special pricing for SCCE members: JUST $125 A YEAR

Not yet a member of SCCE? Subscribe for $135/year

Subscribe online at corporatecompliance.org/ethikos
I’ve been asked a few times what makes a great compliance and ethics officer. I had to stop to think about the great compliance and ethics officers I know. It’s not about who has the most legal knowledge (compliance is not just about the law) or who has the most experience (doing something poorly for many years doesn’t make it the best way to do things).

People who say, “If it ain’t broke, don’t fix it” or “That’s the way we’ve always done it” are likely terrible compliance officers. Compliance officers who think that compliance is their job alone, and those who think it belongs to only a department or two are also probably lousy compliance officers.

So what makes someone a really good compliance and ethics officer? Rather than start with a job description and a resume, start with the person. Who are they? How good are their interpersonal skills? Are they good listeners? Are they credible? Do people respect them? Do they have integrity? Are they team players? Are they tough? All of these are qualities that great compliance and ethics officers might have.

When I think of the person who I think is the best compliance and ethics officer I know, my answer comes very quickly. That person is intensely passionate about compliance as a profession rather than as a job. That person is a leader, a teacher, a role model, and a business partner. That person is hands on, energetic, gets to know how the business units operate, and partners with the business.

That person shares their knowledge, brings out the best in people, is never satisfied with the status quo, strives to incorporate best practices, and can admit when someone has a better way to do things.

When I think of the person who I think is the best compliance and ethics officer I know, my answer comes very quickly. That person is intensely passionate about compliance as a profession rather than as a job.

Someone once told me that if they were the smartest person in the room, the organization was in trouble. I think I’m a pretty fair compliance and ethics officer, but I always want to be in the room with the person I think is the best compliance and ethics officer I know. *

Art Weiss (art_weiss@tamko.com) is Chief Compliance and Ethics Officer at TAMKO Building Products in Joplin, MO.
LEARN THE ART AND SCIENCE OF INVESTIGATIVE INTERVIEWING

By Meric Craig Bloch, Esq, CCEP, PCI, CFE

Investigative interviewing

It’s Not Just What You Ask, But How You Ask It

A Q & A Guide

Meric Craig Bloch

Author Meric Bloch has been training workplace investigators for years—as a faculty member at SCCE’s Basic Compliance and Ethics Academies, as a trainer at countless other conferences, and as coach to his own staff.

In this book, Meric has gathered the most useful questions posed to him and provided his expert answers. He covers seven key areas of investigative interviewing:

1. PRELIMINARY CONSIDERATIONS
2. FINE-TUNING YOUR APPROACH
3. THE INTERVIEW PROCESS
4. INTERVIEWING THE REPORTER
5. INTERVIEWING THE SUBJECT
6. ASSESSING CREDIBILITY AND DETECTING DECEPTION
7. WRITING THE INTERVIEW MEMO

It offers effective strategies and tactics that can help you become a better workplace investigator.

NOW AVAILABLE FROM SCCE

Visit corporatecompliance.org/Interviewing
or call +1 952 933 4977 or 888 277 4977
So you are, or want to become, a compliance professional, and you probably want to be a successful one. You start off by learning about the profession, take a course on compliance programs, study all the pillars or components of an effective compliance program as laid out by the U.S. Sentencing Commission’s Guidelines, read books on compliance programs, and, finally, you get a compliance job. You take your first steps and implement all you learned by studying and reading. Your compliance program is as properly implemented (methodologically speaking) as it can be, but nonetheless the company is not accepting, or adapting, or enjoying it.

Well, let me be the one to break the good news to you (and I am not being sarcastic here, I believe this is indeed good news). Compliance programs, business processes, policies and procedures, internal controls, and hotlines do nothing. They do not talk to clients or customers; they do not manage people; they do not create marketing campaigns; they do not process accounts payables; they do not do anything. Human beings do everything. And human beings are somewhat complex and complicated things.

So, at the end of the day, the effectiveness and success of compliance programs depend mainly on human beings, on persons, for it is a person who decides, multiple times a day, to do the right or wrong thing. Therefore, our job as a compliance professional can only be a successful and satisfying one after we realize that we need to understand (and help) human beings.

To understand human beings is not at all an easy job. Some may say it is an impossible one, and I tend to agree with this view. But even if we, at the end, do not fully understand human beings, we have a duty to at least try and learn as much as possible about them. And what better way to teach us about human beings and their minds—which is the one key aspect

» Human beings are predictable and that predictability has to be taken into account when designing compliance programs.
» The environment in which human beings are immersed is key to driving their behavior.
» Compliance professionals need to understand human behavior to be effective.
» Study more than the pure technical compliance skills to improve the effectiveness of your compliance program.
» Act on the small problems. No big corporate scandal started big.
of human beings that interest compliance professionals—than to study philosophy and psychology?

We do not need to become masters at those two fields of study, but during my professional life, I have come across some articles, ideas, theories, and books from those two fields that do provide really helpful insights. I would like to share some of those with you with a quick explanation of how they relate to compliance programs.

Concept 1 – the sorites paradox
The sorites paradox, simply put, deals with the definition of “limits” or “boundaries” that would cause a definition to become invalid. The usual example is to take a “pile” of rocks that is formed by, let’s say, 12 rocks and go on removing one rock at a time from the pile. If you remove one rock, is it still a pile? What if you remove two? Is it still a pile? The question becomes, when is a pile of rocks not a pile anymore?

How does it relate to compliance? Please let me first introduce the second concept.

Concept 2 – the broken windows theory
The broken windows theory talks about how the prevention of small crimes will ensure that violence levels do not escalate. The analogy used is that of an abandoned building that, at first, has just some broken windows that are not replaced. After a while, more windows are broken, garbage accumulates, and drug users start to roam around the building. Given enough time, the surrounding area will start to experience higher and higher levels of violence.

The broken windows theory talks about how the prevention of small crimes will ensure that violence levels do not escalate.

What do these concepts have to do with compliance?
They help us understand that our response to “petty” non-compliance cases or “minor” misconducts can never be that of acceptance or that we do not sanction those persons who committed the acts. If we allow the minor cases to go unpunished, they will eventually escalate, or the company (and its employees) will always try and push the definition of “minor” or “petty” to their benefit.

Therefore, do always act on those small cases. If someone did not follow a law, regulation, policy, procedure, or rule within your compliance program, the person has to be sanctioned. That is not to say that you shouldn’t take into account all the information you may have on the specific instances of non-compliance and escalate the sanction according to the specific act. But the message is that every single case of non-compliance has to be sanctioned/dealt with. Remember that “sanctions” can be as simple as talking to the employee and reminding him/her of the reasons for such a rule to exist.

Concept 3 – The Stanford Prison Experiment
The Stanford Prison Experiment was a classic study on the psychology of imprisonment led by Philip Zimbardo (author of the book The Lucifer Effect). During the experiment conducted in the basements of Stanford University, some volunteer students played the role of prison guards while others played the role of prison inmates. After just a few days, the behavior of the “guards” and “inmates” was such that the experiment had
to be stopped for it started to resemble the more recent case of the Abu Ghraib prison in Baghdad. In summary, it was verified that the situation or environment in which people find themselves, rather than their individual personality, will cause someone’s behavior to change— sometimes into actions that one never thought possible to come from that person.

Let’s get acquainted with the next concept before we can talk about their relation with compliance programs.

**Concept 4**

*The Milgram Experiment*

The Milgram Experiment was conducted by Stanley Milgram to study how ordinary people would obey an authority figure who instructs them to perform a series of actions that would conflict with the person’s moral or ethical beliefs.7

To put it simply, the experiment had a volunteer who would be in the position of applying electrical shocks to another volunteer (who was in reality an actor) in case the second volunteer (the actor) incorrectly answered some questions asked by the conductor of the experiment (the figure of authority). The electrical shocks ranged from tickling to “risk of death” voltages. Differently from what Milgram’s fellow psychologists predicted, almost 100% of the volunteers ended up applying life-threatening electrical shocks to fellow volunteers (actors) who screamed and begged for them to stop the experiment. The reason for such behavior was that we tend to obey figures of authority, because we rationalize things such as “I am just obeying orders,” and we also tend to distance ourselves from the act, believing that “If it weren’t me, someone else would do it anyway.”

**Why are concepts 3 and 4 relevant to compliance professionals?**

I believe that you have already figured out the answer to this question. Hate it as we may, we, as human beings, are extremely flawed and will behave in shameful, inhuman, and unethical manners if we are immersed in the wrong environment and directed by unscrupulous leaders. Thus, we need to ensure that our company leaders are the right persons and display the right behaviors. If the leaders do not support, believe, live, and require others to do the same regarding your company’s values and compliance program requirements, the compliance program is doomed from its inception.

There is one more topic that I would like to present before we can get to the end of the article.

**Concept 5 – Behavioral Economics**

Dan Ariely is a professor of Psychology and Behavioral Economics at Duke University and his work, among other things, deals with the reasons that lead all of us to “cheat.”8 There are two findings from his work that are very interesting for our day-to-day work on compliance. The first has to do with the fact that invoking a moral code (e.g., The Bible, the code of conduct from a company, a statement of commitment to the truth) will reduce the likelihood of someone cheating and/or will reduce the “size” of the cheating. This may teach us that sometimes—let’s say during
the discussion of a borderline commercial agreement—all we need to do to ensure people are less inclined to do something unlawful is to ask people to remember that our code of conduct requires us to obey all laws.

The second is that if you remove the person from the actual commission of an act of corruption, the person’s inclination to cheat increases. For example, imagine you are given the chance to answer a test of ten questions, for which any correct answer is worth one dollar, and you do not have to show the test results to get the payment, but only state how many questions you got right. In the cases in which the person could grab actual cash from a desk, the level of cheating was lower than for the cases in which the person grabbed a token that was later on exchanged for money. This teaches us that sometimes those huge annual performance bonuses may be too removed from the non-compliant behavior that caused it in the first place.

Conclusion
I hope I was able to get you feeling thirsty for some more non-conventional knowledge about compliance programs that will be an asset for you during your life as a compliance professional. As we know, and as SCCE’s CEO Roy Snell wrote,† we have to know a lot of things to be a good compliance professional—philosophy and psychology may as well be added to the list. *


Alexandre da Cunha Serpa (alexandre.serpa@onofre.com.br) is Director of the Business Compliance Office for Brazilian Operations at CVS Health in São Paulo, Brazil.
Leadership quotes, diagrams, statistics, images/memes, and other resources fill the screens of popular social media sites. An individual doesn’t have to conduct extensive research for leadership perspectives. With leadership resources readily available, there continues to be a consensus that there is an ongoing ethical crisis and a need for leadership.1

Are leaders born or trained? This question has been evaluated extensively by the late “leadership guru” and author Warren Bennis2 and other thought leaders. Lynda S. Hilliard visits the topic in a 2016 issue of Compliance Today.3 If one was to ask whether ethical leaders are born or trained, my guess is that there would be less of a debate and most would vote that ethical leaders are trained.

Globally, organizations are on a continuous quest to deliver quality products and services while being more productive and achieving cost efficiency. Many of these organizations are making a conscious effort to achieve these results ethically. At the foundation, each result is driven by effective workforce engagement. Ethics and compliance officers (ECOs) are continually developing approaches to engage the workforce. The board or governing body has a responsibility to help foster an ethical and compliant culture.4 Because many ECOs are included in the C-suite strategy sessions, one approach worth proposing is to establish a mentoring program to increase workforce engagement. Mentoring programs are commonly known for succession planning, but mentoring can be a tool for influencing corporate culture through leadership development at all levels. According to Salmon Byrne, there is an increasing awareness that succession planning must extend beyond just the CEO role.5

Corporate culture is set by the leadership tone, but there is often an inconsistent subculture within the operational frontline. There are many reasons for this inconsistency, but here are a couple. One reason is middle management and front-line supervisors may misinterpret leadership actions and tone. Another reason is that individual employee philosophies of business practices may differ from
leadership. Training is an approach to resolving inconsistency by engaging employees continually throughout the year. As this one channel remains the go-to solution, many companies are seeking assistance to provide training using multiple approaches such as gamification, videos, and cartoons.

Mentoring requires continual engagement between the mentor and mentee. This approach offers another channel for interaction besides delegation of duties and training. Due to its structure, it provides the opportunity for an informational and often inspirational exchange among participants. This relationship can influence change in behavior.

**Formal mentoring**

Many federal government agencies offer formal mentoring programs. The United States Office of Personnel Management (OPM) has evaluated each of their agencies mentoring programs and recorded their findings in the “Best Practices: Mentoring” publication.

For organizations that decide to develop a formal mentoring program, OPM recommends including these five elements:

- Conduct Needs Assessment
- Develop a Mentoring Program Roadmap
- Gain Top Management Support and Commitment
- Commit a Program Manager
- Create a Steering Committee or Working Group

ECOs should find these elements similar to the guidelines established by the United States Sentencing Commission that highlight the elements of an effective compliance and ethics program.

In comparison, a formal mentoring program requires similar support from senior management to accomplish program objectives.

OPM recommends the following components to implement a mentoring program that is consistent with the best practices of federal agencies.

1. Develop a Recruitment and Marketing Strategy
2. Match Mentors and Protégés
3. Conduct an Orientation Program
4. Develop an Instruction Guide for Mentors and Protégés
5. Develop an Instruction Guides for Supervisors
6. Conduct a Pilot
7. Develop a Mentoring Agreement
8. Develop a Mentoring Action Plan
9. Provide a List of Topics to Discuss
10. Provide Developmental Activities
11. Conduct an Evaluation
12. Conduct an End-of-Program Graduation/Recognition Ceremony

Formal mentoring programs offer many benefits to the mentor and the mentee. According to OPM’s research, there are the benefits to both.

**Benefits of mentoring for the mentor**

- Renews their enthusiasm for the role of expert;
- Obtains a greater understanding of the barriers experienced at lower levels of the organization;
- Enhances skills in coaching, counseling, listening, and modeling;
- Develops and practices a more personal style of leadership;
- Demonstrates expertise and shares knowledge, and;
- Increases generational awareness.
Benefits of mentoring for the protégé

- Makes a smoother transition into the workforce;
- Furthers his/her development as a professional;
- Gains the capacity to translate values and strategies into productive actions;
- Complements ongoing formal study and/or training and development activities;
- Gains some career development opportunities;
- Develops new and/or different perspectives;
- Gets assistance with ideas;
- Demonstrates strengths and explores potential; and
- Increases career networks and receives greater agency exposure.

The benefits from both perspectives have the potential to influence culture. For example, a mentor who has a greater understanding of the barriers experienced at lower levels of the organization can share this information at management meetings. Additionally, the mentor can use this information to identify opportunities to coach, counsel, listen, and model behavior on a broader scale. For the mentee/protégé, they can correct behavior by observing modeled behavior. They can expand their personal development by learning new information to translate values and strategies into productive actions.

Informal mentoring

Many organizations may decide not to establish a formal mentoring program after receiving a presentation that outlines the benefits, costs, and challenges. Some organizations may decide not to establish a formal mentoring program, because they have insufficient resources. Often, organizations support informal mentoring programs by encouraging leaders to have offsite team-building activities with guest speakers, providing resource materials such as personal development books, and designating areas within the facility for mentor-mentee interaction.

Employees may be aware of informal mentoring activities, because they are publicized within the organization. When it is not publicized, the awareness may be generated by the subculture, which can lead to misinterpretation or false messaging.

A couple of principles are used in informal mentoring.

The first is the Paleto Principle, which is commonly referred to as the 80/20 Rule. This principle is named after Vilfredo Pareto, who learned that 80% of the land in Italy was owned by 20% of the population. After conducting further research, he learned that this distribution occurred frequently in other areas. The 80/20 Rule is referenced in sales and leadership presentations, articles, and books. The most common references are 20% of an organization’s customers generate 80% of the revenue, and 20% of the organization’s staff produces 80% of the products and services. Based on this principle, many informal mentoring programs recommend that senior
management focus 80% of their attention, support, and resources to the top 20% of employees.

This strategy has merit, and I believe organizations that apply this principle may have different results. I believe organizations that apply a pyramid method to the 80/20 principle will achieve better results than the organizations that do not cascade the principle throughout the organization. If information and resources remain within the top 20%, organizations can expect a disconnect in the culture and possible ethics violations.

Another principle is the Law of 33%. In 2015, Tai Lopez shared his philosophy of mentoring at TEDx. According to the Law of 33%, individuals should distribute mentoring activities into segments by 33%. The first 33% are being mentored by an individual who has accomplished 10 times the amount the mentees are attempting to accomplish. The next 33% are exchanging ideas and concepts with peers that are on the same level. The final 33% are mentoring individuals who have not achieved the mentor’s level of accomplishment. The application of this law has the potential to influence culture. It is structured so that regardless of status, there is an opportunity to obtain guidance from a mentor. Some organizations assign a senior-level executive and a peer to mentor new employees. This may be short-term for some organizations and long-term for others.

Informal mentoring doesn’t have the level of data that is consistent with formal mentoring programs. The data for informal mentoring is presented in the form of testimonials. In an interview, Kristy Grant-Hart made this statement about her mentor Lisa Beth Lentini, “She taught me brilliantly.” Months ago, I attended the retirement ceremony of Chief Warrant Officer Five David Williams. The ceremony was held at the Pentagon in Washington DC. In his retirement speech, CWO5 Williams says, “Throughout my career, I have had many mentors. Everything that I have learned, I tried to pass down to those that came after me. As I leave today, I hope that mentoring others is the legacy that I leave behind.” Informal mentoring has an ability to influence that is similar to formal mentoring.

According to the Law of 33%, individuals should distribute mentoring activities into segments by 33%. The first 33% are being mentored by an individual who has accomplished 10 times the amount the mentees are attempting to accomplish.

With the level of research that supports the benefits of mentoring, one would think that more organizations would consider having a mentoring program. One must consider that organizational size and resources vary. What’s an incredible incentive for one can be devastation for another. Each organization must determine whether implementation is appropriate and, if so, when is the appropriate timing. Another factor is that individuals have different visions for their own future, so their temperament, desire, ambition, and goal-setting differ.
What am I becoming here?

Many employees want to know what they are obtaining from an organization. Perhaps, the correct question is, “What am I becoming here?” Organizations have positive and negative influences that may impact the ethical culture. Ethical employees recognize that who and where they are remain their responsibility.12 If an organization is not offering the tools or their supervisor is not supporting access to the tools to improve ethical behavior, employees can take action to become better by finding a mentor or becoming a mentor.

There are employees seeking mentors inside and/or outside of the organization. For employees who have identified a potential mentor, John Maxwell recommends addressing these questions before contacting the potential mentor:
1. Does my potential mentor’s life deserve a following?
2. Does my potential mentor’s life have a following?
3. What is the main strength that influences others to follow my potential mentor?
4. Does my potential mentor produce other leaders?
5. Is my potential mentor’s strength reproducible in my life?
6. If my potential mentor’s strength is reproducible in my life, what steps must I take to develop and demonstrate that strength?

ECOs should be aware that employees are seeking to model behavior. The challenge for ECOs, as well as management, is to become the model for behavior before undesirable behavior influences employees in an unethical direction. For ECOs seeking to influence change through one-on-one interactions, John Maxwell recommends this 5-step process:

1. **Model** the behavior by demonstrating the process to the individual.
2. **Mentor** the individual by being available to answer questions as they go through the process.
3. **Monitor** the individual as they complete the process independently.
4. **Motivate** the individual by cheering their success.
5. **Multiply** by sharing this concept with the individual to teach others.

Conclusion

Mentoring programs may offer another approach to influencing an ethical culture. There are formal and informal program structures for organizations to consider. For individuals who are employed by organizations that do not have a mentoring program, there are alternatives for consideration. Through ongoing commitment, developing an ethical culture is possible, either formally or informally, one employee at a time.

---

Walter E. Johnson (walter@wejohnson.org) is a compliance and ethics professional in North Potomac, MD.  
@Walter_Johnson1  
linkedin.com/in/walter16

---

4. Marjorie Doyle: “Yes, a board can positively affect culture: 10 practical actions” Compliance & Ethics Professional, October 2016. p. 29.
Want to engage with your employees for more effective ethics training?

It’s time to try Compliance Is Just the Beginning

No doubt you want to train your employees to make better ethical decisions at work. Compliance is essential, but it’s not enough.

Compliance Is Just the Beginning, a 2-part video training program, presents an easy-to-learn approach that will help employees at all levels make better ethical decisions.

- Program One, “3 Steps to Ethical Decisions” (24 minutes), introduces the three steps to take when faced with a tough ethical choice:
  1) The Compliance Test; 2) The Ripple Effect; and 3) The Gut Check.

- Program Two, “Ethical Situations to Consider” (32 minutes), presents us with eight dramatized scenarios. By discussing these situations and applying the three steps process in each case, employees gain valuable practice and reinforcement.

Produced by Quality Media Resources (QMR), these award-winning programs come with a comprehensive facilitation package with course outlines, training activities, reproducible handouts, and optional PowerPoint slides. To view a free, full-length preview of the program, visit www.corporatecompliance.org/QMRvideopreviews. For more information and to order, visit www.corporatecompliance.org/products.
Leadership and trust: An interview with David Humphreys

David Humphreys is President and CEO of TAMKO Building Products, Inc. in Joplin, MO. He was interviewed in January of 2017 by Art Weiss, Chief Compliance & Ethics Officer at TAMKO.

Organizations of all sizes and types are affected by the United States Sentencing Commission’s Guidelines. The Guidelines, regulators, prosecutors, and journalists frequently throw around phrases like “tone at the top” and “integrity” as they review the culture of an organization that is the subject of either an investigation or an enforcement action. It is the leadership of an organization that is generally scrutinized; often through an assessment of the tone at the top. This follows the thinking that employees look to their leaders as persons after whom they should model their own behavior.

Do good leaders make for a good culture? How do those at the top view themselves as leaders? What do they think makes a good leader? SCCE Board Treasurer and Compliance Academy faculty member Art Weiss asked his CEO, David Humphreys, for his thoughts on leadership.

Art: What does it take to be a good leader?
David: Of course, there are basic skills such as a CFO being able to read a financial statement or an attorney having legal knowledge in areas affecting a client organization, but skills don’t necessarily make someone a good leader.

What makes someone a good leader? I’ve asked this question of TAMKO leaders as well as student groups at a law school and university honors program. Regardless of the audience, their answers uniformly include: being open to different ideas, dedication, charisma, honesty, integrity, a good work ethic, vision, communication skills, and humility.

Charisma is an interesting answer. There have been some very charismatic leaders who have led their organizations into trouble (think, Jim Jones at Jonestown or Ken Lay at Enron). And there have been humble or even shy leaders who have quietly led their organizations to great success. Whether you are leading a business or coaching an athletic team, regardless of the activity, I firmly believe that trust is the key to being a good and effective leader. Employees in any organization need to trust their leaders. Equally important however, leaders must trust their employees. This reciprocal element of...
trust is fundamental to successful leadership. Without trust, it just doesn’t work. Leaders must communicate trust in all they say and do, to their teams; and not just through the leader’s words, but actions and by example. If you say one thing but do another, you will undermine trust at a minimum and maybe lose it forever. Trust often takes a long time to gain, but is lost in the blink of an eye and difficult—if not impossible—to regain.

Art: Have you worked for leaders who have failed in this regard?

David: Sure, many of us have. I remember one fellow who told me, “If this happens with a customer, then do this.” I was instructed how to react in a certain situation. So when the situation took place, I did exactly what my boss told me. The customer was very upset with my response—the very response I had been instructed to make. He called my boss about me. When my boss asked me what I had done, I told him that I had done exactly what he had told me to do. My boss said: “What did you do that for?”

The next time my boss told me what to do, I listened but had no reason to trust him anymore. He had lost my trust by throwing me under the bus to avoid criticism rather than stepping up and taking responsibility himself. Now I had to evaluate how to protect myself in the event he tried to blame me the next time. Going forward, not only had he undermined my trust in him, but also my work ethic.

I had another boss who was a Machiavellian master who enjoyed creating chaos and distrust to benefit himself at the expense of others. He enjoyed watching people scramble more than he enjoyed leading. I came to an understanding of his use of what I call “diplomatic speech.” He would carefully choose his words and tone to communicate in a language that was subject to more than one interpretation. In effect, he always left himself plausible deniability for what he said—leaving the listener (often me) at the risk of relying on his arguably uncertain terms. Soon I learned that I could not trust him unless I came into every conversation on the defensive and with care not to allow ambiguity or any element of miscommunication, particularly when it was possible I was being set up to take the fall for him. If you can’t trust the people you work for, you must work in a defensive posture. You learn how to duck. You have to learn to listen very carefully to try to figure out what the agenda is. When you are in that mode, you can’t act freely. And it takes more time to get things done when you are worrying about avoiding landmines.

A leader who says one thing and does another loses employee trust. People may still work for you, but they will act very cautiously.
They don’t know where they stand. No one knows what the rules are or what to do next.

Trust works in the other direction too. As a good leader, you need to trust the people who work for you. You need to communicate that you trust them and trust their judgment. You need to let them know you trust them to tell you the truth. You can’t sit there all day long asking, “What are you doing? Did you do what I said? Let me check your work.” Leaders should ask themselves what they might be doing that undermines trust. Again, it takes a lifetime to build a reputation of trust and a second to lose it. A leader should be careful not to make people feel that you’re going to say one thing and do another or, just as bad, make them feel that they aren’t worthy of trust.

Art: Trust, I assume, requires honesty. How does honesty affect leadership?

David: Honesty does affect a leader’s ability to lead. And it often takes courage to be honest in a difficult situation, particularly when it involves “owning up” or delivering unpleasant news. Yet, honesty is critical in a leader. If you’re not honest, people will find out pretty quickly. If you aren’t honest, no one will deal with you. If you do something dishonest, you’ll lose trust immediately.

Art: Can you address some of the other traits of a good leader?

David: Integrity is key to creating an atmosphere of trust. Do you do the right thing? If you get too much change at the store cash register or something extra in the bag you didn’t pay for, do you take it back to the cashier and tell them? Our compliance program focuses on integrity. We define integrity as doing the right thing even when no one is looking.

At TAMKO we also use a football metaphor that has become part of our culture. When we talk about how we should behave, we talk about operating “between the hash marks.” In football, the hash marks are in the center of the field where the lights are the brightest. They are significantly inside the boundaries. We like to keep our conduct between the hash marks. Sometimes boundaries aren’t clear. They change when new laws or regulations are passed. We don’t want to step outside those boundaries. In business, like in football, the safest place to be is far from the out-of-bounds lines. But in business, unlike football, sometimes the boundaries change—and sometimes they
change retroactively. They may be interpreted differently by different enforcement agencies, elected officials, and the courts. If you step out of bounds, people will know. If you damage your integrity, you damage trust with employees, customers, and suppliers. Leaders should set the example from the top. Play in the center of the field where it is clear that you are in compliance if a boundary changes or an aggressive official (i.e., a government regulator or enforcement agency) attempts to call you out.

And let’s not forget that humility is also important to developing trust. If, as a leader, you don’t show humility, you will fail. You may be in charge, but no one will follow you very long if they figure out it’s all about you. If you are humble, people may be more likely to trust you if you’re not always trying to show how smart you are.

Humility also teaches you to recognize that a good leader must surround himself/herself with people who are smarter. If you don’t, then your team is weak and filled with people upon whom you cannot really rely.

Humility also includes compassion for others. You are going to encounter situations where people on your team have things go wrong for no apparent reason. They make a mistake at work. They have a problem at home. They’re going to go through some of the same things that you go through. We aren’t talking about being compassionate about a member of your leadership team who gets arrested for shoplifting. No one’s going to trust him again. But maybe someone lost a parent or a child. Maybe their house burned down or was blown away in a tornado. You need to put yourself in their shoes and think what that would mean to you. This holds true at work. Most people are trying to do their best. Mistakes will be made. They happen all the time. Sometimes they are severe, sometimes not. But you have to look at why they happened. Is it the person’s fault, or is the process designed to fail? I’ve seen where the budget was such that a profitable manufacturing plant was pretty much impossible to achieve. It was certain that the manager would fail, because someone else set the budget to create failure in order to swoop in himself and take credit for saving the place.

Art: How can a leader inspire trust?
David: One way is to make non-arbitrary decisions. Your team needs to see you making predictable decisions, so they can understand your rationale and then have a basis to trust you. I make sure our employees understand how we operate. We also use a lot of data. For 35 years, we’ve focused on Deming’s continuous quality improvement and, more recently, on Six Sigma data-driven
decision-making. Everyone knows that. Everyone understands our decisions are based on data. Everyone understands what’s required of them.

From my point of view, the things that inspire trust are honesty, integrity, humility, compassion, and predictable decision-making. These things allow people to understand where you come from and your passion to achieve your mission.

Art: Can you share how you develop future leaders at TAMKO?
David: Part of it is the hiring process. Part is leadership development. We hire on purpose for leadership positions. We’ve had great success hiring ex-military people. They work hard, they’re smart, and they’ve got good solid values. I give presentations on Free Market Principles and what that means to TAMKO. We share books. We have leadership development sessions that include our culture and our commitment to compliance. We have a saying: 100% compliance, 100% of the time, at a minimum. You give people the opportunity, and then give them the chance to succeed or fail. We start with really good people, we train them, and we share our vision with them.

Art: You’ve encouraged TAMKO’s director of Technical Services and the director of Environmental Health and Safety to become heavily involved in industry activities, and encouraged me to become involved in activities related to the Compliance profession. How does that benefit an organization?
David: It is incumbent on any leader to recognize that he/she doesn’t have all the answers and to look outside to see what best practices might exist at other organizations, both within and outside the company’s core industry. In the case of compliance, it is in our company’s interest to be a part of SCCE and to be involved to find those best practices in compliance, as well as to share our views with others.

Part of it is the hiring process. Part is leadership development. We hire on purpose for leadership positions.

Art: If you were asked to give advice to other CEOs and compliance professionals, what would you identify as key attributes of an effective compliance program and an effective compliance officer?
David: The same attributes that I believe make for good leaders also are key to an effective compliance program and compliance officers. In addition, vigilance is required to verify compliance. Trust is key, but in the world of compliance, verification is necessary to validate that what we trust is being done has, in fact, been done correctly.

Art: What are the attributes of an effective relationship between the compliance officer and the CEO?
David: Mutual respect and a shared vision. In our case, a shared vision that people are basically good and trustworthy, rather than a Hobbesian view of nasty and brutish. Yet failure (whether due to innocent mistake or not) is not an option, so oversight, redundant compliance processes, and metrics are a must. We trust, but given the potential costs of failure, we verify.

Art: Thank you for your time and for sharing your thoughts on leadership and trust.
Have you heard our Compliance Podcast?

Listen every week as we gain insights from experts in the compliance and ethics field.

Find us online at complianceandethics.org/category/podcasts

Subscribe to Compliance Perspectives here:

iTunes
http://apple.co/1TCNS24

Email

Android
http://bit.ly/1ZJS2la

SCCE’s Compliance & Ethics Blog
Stitcher
SoundCloud
TuneIn
Pocket Casts
Player.fm
How do you get people to answer your email?

If you’re like most compliance professionals I know, you spend about half your day writing imploring emails trying to get people to respond. Much of our work depends on collaborating with others or getting them to give us information so we can fill out our reports, give good recommendations, and understand how we can best serve them and the business. But before you start your next email with “THIRD NOTICE- PLEASE RESPOND,” consider whether there is a way to increase the likelihood that people will respond the first time.

Boomerang, an email productivity solution, wanted to find out whether the words people use in closing their emails made any difference to the response rate. They analyzed 350,000 emails where users asked for help or advice. What they found may surprise you.

I’ve noticed in England that “Kind Regards” and “Cheers” are popular closings. In America, “Sincerely,” “Thanks,” and “Yours Truly” all seem popular. I had one boss who consistently finished his emails with the flourish, “As always, I remain, Very Truly Yours.” Personally, I’ve always been a “Best” kind of girl. It turns out “Best” is the worst.

The Boomerang study found that the phrase, “Thank you in advance” created the highest response rate.1 Emails that included both (1) an anticipated response and (2) appreciation created the highest likelihood of a positive reply. This makes sense, as two psychological responses are triggered by this approach. Anticipating a response tells the other person that you expect him or her to do what you’ve asked. People tend to live up to the expectation you give them, so they understand you’d be disappointed if they don’t perform as requested. Secondly, appreciation for the anticipated response triggers reciprocity. The person feels as if he or she has already received approval and positivity from you, so he or she is more likely to respond out of a feeling of obligation.

I’ve noticed in England that “Kind Regards” and “Cheers” are popular closings. In America, “Sincerely,” “Thanks,” and “Yours Truly” all seem popular.

Some may complain that the use of “Thank you in advance” can be read as passive aggressive and that it will annoy some readers. Perhaps. But moving the response rate of an email from 51.2% to 62.7%? Thanks in advance—that’s the best! *


Kristy Grant-Hart (KristyGH@SparkCompliance.com) is the Managing Director of Spark Compliance Consulting, and author of the book, How to be a Wildly Effective Compliance Officer. ComplianceKristy.com @KristyGrantHart bit.ly/KristyGrantHart
“Let’s do interactive, effective anti-harassment training!” Or maybe not?

The EEOC recently posted a draft enforcement guidance for comment; among its features was a discussion of “promising practices,” including “interactive” training. I have also seen criticism of harassment training as being not effective, engaging, etc.

We all would like training to be effective, memorable, or at least not boring. Why not use techniques that will really reach people? Isn’t that what everyone wants—preventive efforts that actually cause people not to commit violations?

But there is another story behind this story. When lawyers say to be careful in our training, they are not simply making things up. Compliance efforts, including innovative training methods, are not necessarily encouraged or respected in our legal system, and innovative efforts in any compliance training, including harassment, can come with unfortunate legal risks.

The government should be straightforward about this; it should be a clearly established principle in our legal system that compliance efforts are to be encouraged and protected. Courts should not treat compliance efforts as mere fodder to be used against companies in litigation. It should be a core legal principle that companies engaged in compliance activities are acting in the public interest and that the fruits of these activities are not to be used against companies, absent exceptional circumstances. Nor should government agencies be allowed to undercut compliance efforts to obtain enforcement shortcuts.

Yet this abuse is part of our legal system. One of the most notable examples occurred in a discrimination case (Stender v. Lucky Stores, Inc., 803 F. Supp. 259 (N.D. Cal. 1992)). A company had conducted anti-discrimination training that included employees reciting what discriminatory comments they had heard in the workplace. During the class someone took notes. Certainly such discussion and note-taking would encourage engagement and learning, but that mattered not to the federal judge hearing the case. She not only allowed plaintiffs complete access to the notes, but she cited what was in the notes as a basis for imposing punitive damages on the company.

The lesson? In that same case the judge noted, without comment, that the company’s lawyers shut down the training. It never seemed to occur to her how bad a message this was. So what did the Legal community learn? There is a saying: “Fool me once, shame on you. Fool me twice, shame on me.” So the (terrible but careful) advice has been: Don’t allow note taking and be conservative in your training. If the EEOC, courts, legislatures, and the public want something better in training, then they must face up to the truth. They cannot have it both ways. Either we continue to sacrifice effective compliance work to litigation or we send a consistent message that compliance counts and that effective training will be encouraged, not abused.*

Joe Murphy (joemurphyccep@gmail.com) is a Senior Advisor at Compliance Strategists, SCCE’s Director of Public Policy, and Editor-in-Chief of Compliance & Ethics Professional magazine.
Recording the interview: Best practices for compliance professionals, Part 1
Daniel Coney (page 25)

- Conducting interviews is critical to any investigation, and getting it right impacts on the credibility of your program, the reputation of the organization, and people’s careers.
- Compliance professionals who conduct or participate in investigations have to be beyond reproach in the methods we use.
- Resistance to recording interviews is a long-standing reality in law enforcement and investigative offices.
- Compliance professionals have an obligation to re-evaluate past practices related to recording interviews and use the most currently accepted procedures.
- Our customer must be able to rely on the best evidence we can produce—and recording removes any doubt about what was said and how that information was elicited.

What can we do to improve engagement on our own teams?
Jessica Tjornehoj (page 35)

- Ethics & Compliance teams are the goody two-shoes of the company, pointing fingers at the behavioral problems of other parts of the organization.
- In today’s competitive environment, finding and keeping talent is increasingly difficult, especially with new generations entering the workforce.
- Ethics & Compliance teams are not immune to talent recruitment and engagement issues.
- Become a mentor, develop strategies to boost the engagement of existing team members, and partner with other departments to enhance your organization’s culture.
- Ethics & Compliance teams can benefit by using information and relationships already being generated internally to improve engagement.

A look into Europe’s new cybersecurity regimes
Jan Dhont and Delphine Charlot (page 39)

- Europe is facing two important reforms which will apply in 2018 and impose liabilities for non-compliance with new security requirements.
- Companies are expected to implement “state of the art” technologies, including encryption and anonymization.
- Companies need to put in place sophisticated data breach response plans.
- Companies face a high compliance risk, with heavy fines of up to 10 million EUR, or 2% of total worldwide annual turnover.
- Companies should start preparing for and testing their breach response plans ahead of the new legislative changes.

The prosecutor’s evolving playbook: DOJ’s rising expectations for compliance programs
Peter Anderson (page 45)

- The legal threshold for charging corporations with federal crimes is very low, and prosecutors have broad discretion in deciding whether to prosecute a particular target company.
- The likelihood of an aggressive enforcement response depends upon the key facts from an investigation, and how they fit within the government’s playbook.
- Companies can favorably influence government enforcement by demonstrating self-governance and transparency by building an effective compliance program.
- The most recent policy guidance from DOJ’s Fraud Section outlines a number of specific topics and questions that prosecutors will use in evaluating a compliance program.
- This new page in the government’s playbook is an important one to study and use to carefully assess your company’s program.

Why Compliance needs to take a chill pill sometimes
Thomas R. Fox and Scott Lane (page 53)

- Compliance should enable business opportunities, not the reverse.
- The Compliance department cannot be the “Land of No.”
- Compliance must help to assess and then manage appropriate business risks.
- Compliance must not have a knee-jerk reaction when risks appear.
- Compliance needs to help the business units run more efficiently and more profitably.

Preventing child sexual abuse: The role of the compliance professional
Candace Collins, Aaron Lundberg, and Jessica Scibona (page 57)

- Compliance professionals can influence the ethical growth and development of youth-serving organizations and their child-abuse prevention systems.
- Organizational policies should clearly define appropriate adult-to-youth boundaries.
- A robust screening process includes more than criminal background checks.
- Effective monitoring and supervision minimizes opportunities for privacy.
- Responding procedures that address red-flag behaviors and policy violations can help identify and address problems before they rise to the level of suspected abuse.

What Compliance can learn from Psychology, Philosophy, and other knowledge domains
Alexandre da Cunha Serpa (page 63)

- Human beings are predictable and that predictability has to be taken into account when designing compliance programs.
- The environment in which human beings are immersed is key to driving their behavior.
- Compliance professionals need to understand human behavior to be effective.
- Study more than the pure technical compliance skills to improve the effectiveness of your compliance program.
- Act on the small problems. No big corporate scandal started big.

Ethical leadership: Mentoring to influence corporate culture
Walter E. Johnson (page 67)

- Mentoring programs provide another communication channel for influencing ethics culture.
- Ethics and compliance officers (ECOs) may notice similarities between the elements of a mentoring program and an effective compliance program.
- Formal and informal mentoring programs can influence ethical behavior.
- Individuals can ask themselves several questions before selecting a mentor.
- A five-step process can be useful for influencing ethical behavior.

Tear out this page and keep for reference, or share with a colleague. Visit www.corporatecompliance.org for more information.
## Upcoming Events

### May 2017

<table>
<thead>
<tr>
<th>Sunday</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Basic Compliance &amp; Ethics Academy®</td>
<td>San Francisco, CA</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>15</td>
<td>16</td>
<td>17</td>
<td>18</td>
<td>19</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>22</td>
<td>23</td>
<td>24</td>
<td>25</td>
<td>26</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>29</td>
<td>30</td>
<td>31</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

### June 2017

<table>
<thead>
<tr>
<th>Sunday</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Higher Education Compliance Conference</td>
<td>Baltimore, MD</td>
<td></td>
<td></td>
<td>CCEP Exam</td>
<td>Regional Compliance &amp; Ethics Conference Atlanta, GA</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>12</td>
<td>13</td>
<td>14</td>
<td>15</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>Internal Investigations Compliance Conference</td>
<td>Orlando, FL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>19</td>
<td>20</td>
<td>21</td>
<td>22</td>
<td>23</td>
<td>24</td>
</tr>
<tr>
<td>Regional Compliance &amp; Ethics Conference</td>
<td>Anchorage, AK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>26</td>
<td>27</td>
<td>28</td>
<td>29</td>
<td>30</td>
<td>1</td>
</tr>
<tr>
<td>Basic Compliance &amp; Ethics Academy®</td>
<td>Chicago, IL</td>
<td></td>
<td></td>
<td>CCEP Exam</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### May 2017 Events:
- Higher Education Compliance Conference: June 4–7 | Baltimore, MD
- Internal Investigations Compliance Conference: June 15–16 | Orlando, FL
- Compliance & Ethics Institute: October 15–18 | Las Vegas, NV
- Board Audit Committee Compliance Conference: November 6–7 | Scottsdale, AZ
- Basic Compliance & Ethics Academies:
  - May 1–4 | San Francisco, CA
  - August 7–10 | New York, NY
  - September 11–14 | Philadelphia, PA
  - October 2–5 | Nashville, TN
  - November 13–16 | Orlando, FL

### June 2017 Events:
- International Basic Compliance & Ethics Academies:
  - 15–18 May | Amsterdam, Netherlands
  - 10–13 July | Singapore
  - 21–24 August | São Paulo, Brazil
  - 25–28 September | Madrid, Spain
- Regional Compliance & Ethics Conferences:
  - May 5 | Miami, FL
  - May 19 | San Francisco, CA
  - June 9 | Atlanta, GA
  - June 22–23 | Anchorage, AK
  - August 25 | São Paulo, Brazil
  - September 8 | Washington, DC
  - November 3 | Dallas, TX
  - November 10 | New York, NY
  - November 17 | Seattle, WA
  - December 8 | Philadelphia, PA

Learn more about SCCE events at [www.corporatecompliance.org/events](http://www.corporatecompliance.org/events)
New for 2017:

- Components of an effective Compliance & Ethics program
- Ways the Board of Directors can have a positive influence on culture
- Coordinating with Personnel to reach new employees with the C&E message
- Navigating the legal haze of marijuana laws pertaining to employees
- New data protection laws in the EU
- Data Protection Officers in the EU
- 5 updated topic areas

Learn more at: corporatecompliance.org/CompleteManual
Compliance & Ethics Institute

The Society of Corporate Compliance & Ethics 16th Annual

Early Bird
Register by June 5 to
Save up to
$575

AGENDA NOW AVAILABLE

Join us in Las Vegas!
October 15-18, 2017 • Caesars Palace

150+ SPEAKERS 8 LEARNING TRACKS 1700+ ATTENDEES 100+ SESSIONS

Learn more and register at complianceethicsinstitute.org