



## SHOVELING SMOKE: COMPLIANCE PROGRAMS THAT CONNECT

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*In-house counsel are often called on to deliver compliance programs, or to manage their development and delivery by outside counsel. How you do this speaks volumes about your organization's focus.*

The first step in embedding organizational compliance is to identify your goal. This is the easiest part of the exercise.

Yet it's not as simple as the oft-asserted "we comply with the law, period." As Jim Nortz noted in relation to ethics programs ["Business Ethics: Put Some Life into Your Program," *ACC Docket* 22, no. 2, (Feb. 2004)], the "just do the right thing" approach "dodges the issue, is unworkable in the real world, and breeds cynicism." Even in the best-run organizations, there's always a balance between cost and legal risk, and an understanding that there will always be an error rate.

After re-reading Mr. Nortz's excellent article, you might come up with something like: "We will increase shareholder value and corporate profitability by creating

and strengthening compliance management systems and building a corporate culture that effectively lowers legal risks and increases stakeholder trust."

### POLICY FRAMEWORKS AND STRUCTURES

You might then develop a broader compliance policy or framework, consistent with your chosen goal. You might introduce structural rules, such as adding legal compliance responsibilities into everyone's performance indicators, ultimately resting with the general counsel. Forcefully worded missives might also emanate from senior management.

Yet none of this amounts to a hill of beans if it doesn't connect with people's day-to-day work, at every level of the organization.

### CONNECTING WITH MANAGERS

The next step then is to implement the policy by truly "getting it out there."

This seems pretty straightforward. Yet ask a traditionally minded lawyer to help, and the response may be a weighty tome that even most lawyers find heavy reading. Sure, any competent law firm is capable of listing most legal issues affecting an organization's operations—often in a pretty folder with lots of colored dividers, each copy proudly imprinted with the firm's logo.

Yet if a compliance manual contains an exhaustive cata-

logue of reference to specific legal provisions, it will almost certainly fail to connect with managers, and might be used mostly as an expensive doorstop. "Getting the message out there" must be done in ways directly relevant to the target audience.



### "THE USUAL GARBAGE"

Earlier this year, I was asked to present a nationwide legal compliance program for sales managers of a large corporate. Managing counsel's instructions were clear—she didn't want "the usual garbage." She wanted a program that genuinely connected with sales managers, and she was going to test whether it did so.

By "the usual garbage," she meant presentations methodically outlining a myriad of legal provisions, with success measured by the growing list of staff forced to attend such sessions. Even aside from the risk of inducing group catatonia, exhaustively listing specific legislative provisions

might serve more to demonstrate the presenter's knowledge of the law than deliver any real value to managers.

Worse still, regulatory authorities might use the fact that the law was explained in great detail to countless employees as grounds for imposing higher penalties than if the so-called compliance program had never been implemented.

Direct presentations are a great idea, yet programs will be effective not because someone explains the law, but because the program relates directly to people's own work and life experiences. The goal is not in an hour or two to try and train businesspeople to be lawyers, but to help them better understand the legal issues involved in what they do, how to spot those issues, and when to call on the lawyers.

### POLICIES IMPORTANT, CULTURE VITAL

Even if you have the best policies and a great training program, the last step is the most important to help ensure actual legal compliance. Compliance programs that genuinely and effectively seek to *build from*, rather than simply rest upon the legal framework, and that help develop a *culture* of legal compliance, will be most effective.

Ultimately, legal compliance programs can only succeed if they become ingrained in "the way we do things around here."