

ASSOCIATION OF CORPORATE COUNSEL
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Compliance and Ethics for the Small Law Department
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(Richard Westling): Good afternoon. My name is (Richard Westling), and I'm one of the presenters as well as the moderator today. I'm the General Counsel of People's Health, a company down here in New Orleans, and you're going to be listening to a Web cast this afternoon on compliance and ethics for the small law department.

I have the pleasure of being joined by two very experienced presenters today. (Ken Grosserode) is the Director of e-Learning and Content Development for We Comply, a leading online compliance training company. He's been an attorney

since 1995 and been with We Comply since 2003 and spent his early career in the honor program at the United States Department of Justice.

We also have (Deborah House) who is American, Association of Corporate Counsel's Vice President and Deputy General Counsel for Legal Resources and Strategic Initiatives. And prior to coming to ACC, Miss (House) was the Vice President and Deputy General Counsel for Multi-Family Legal Services and then Vice President and Deputy General Counsel for Compliance at Fannie Mae. So she has a deep well of experience to draw on today.

There's a couple of introductory things I should let you know about. First is that we will do our best to answer your questions during the course of the Web cast, and they should be addressed to us by filling the, typing in the lower left hand corner of your screen in the box, and I'll do my best to ensure that your questions are answered. In addition, it's important to us that you fill out the evaluation form at the conclusion of the Web cast so that we get your feedback and ACC can continue to provide programming in a way and manner that is most useful to its membership.

I guess to get started here today – well the other thing I should do is I guess introduce myself. As I said, my name is (Richard Westling). I'm the General Counsel of People's House, a Medicare HMO in New Orleans, Louisiana. And I spent, most of the 20 years I've spent practicing prior to coming to this job as

both a federal prosecutor and a trial lawyer defending cases of federal enforcement and white collar crime. So I have a lot of experience dealing with what happens when a compliance program is not in place or is not effective.

So where do we start? Well I guess when you look at compliance and ethics for the small law department; the first thing everyone needs to understand is that this is not just about sentencing. Although the United States sentencing guidelines are the starting point in many cases for the implementation of a compliance plan, as many of you probably are aware, it's important to know that there are other utilities besides simply what one might call crime prevention.

There was a decision in the last several years in derivative litigation against the (Care Mark Corporation), which was significant in that the Delaware Chancery Court pointed to the existence of a compliance program as an important task to determining whether or not members of a board of directors should be held liable when there is misconduct within a corporation. And so there are every day greater and greater degrees to which these kinds of programs are important in protecting your company, not just from enforcing type activities, but also from situations which might involve civil liability in the directors and officers liability area.

So I think it's important that we understand that the real focus of any compliance program is obviously to prevent violations of the law and to do that in

a way that is going to be proactive and helpful to corporations in order to avoid the much more difficult legal issues that arise whenever there is a problem with any of the agencies that there might be, such as the Department of Justice, the Treasury, the SEC, et cetera.

And in each case, these agencies, the Department of Justice in particular in the recently amended (McNulty) memorandum, continues to look at compliance standards as a method for determining whether or not prosecution is appropriate in the event of some kind of misconduct.

Generally there are three significant initial considerations when someone is looking to implement a corporate compliance program, and they have to do with obviously the industry one works in. I know (Deborah) was at Fannie Mae, and there are obviously a great deal of regulations in the banking and mortgage banking industry, likewise myself in the healthcare field. There is a tremendous amount of government regulation that we need to stay on top of on a day-to-day basis. And so it's important to get a sense of what kind of industry you are in. If you are in the oil field down here in Louisiana, you might well be concerned about EPA type regulations and looking at compliance and reporting issues. The other thing that's very significant is the size of the company. They, generally there are different standards on some level for compliance programs based on the size of a company, and for small companies like many of us may be involved in, there is a need to demonstrate the same degree of commitment to ethical

conduct, but that doesn't necessarily mean that there is the same kind of formality required in order to do that. And so it's important to recognize that an off the shelf product for a very large corporation may not be the best solution for a much smaller entity.

And then finally, it's obviously important to get a sense of what is the state of prior misconduct, both as a company in particular, are you operating under a corporate (integrity) agreement or some kind of cease and desist settlement agreement with the SEC or, you know, even more broadly the industry. Right now, obviously whether it's stock options, back dating, or previously in the healthcare field whether it's a question of industry wide up coding and things, you can focus in on areas that are relevant to your company and your industry and really use those as a jumping off point for developing an effective plan.

I'm not going to turn the program over to (Deborah House) who is going to address the first of the issues that are important in considering a compliance program.

(Deborah House): Good afternoon everybody.

In determining what organizational structure you should use for your compliance program, you know, at the risk of just reading the slide to you, I think it's really important to emphasize to you that there is no magic structure that it

could be central, it could be de-centralized. It should be tailored for your company. It should involve senior management, and the board must oversee the program.

The guidelines requirement I think that apply the most to this issue, how to create an appropriate organizational structure, include that high level personnel at the organization should ensure that there's an effective compliance and ethics program. And for this purpose, the guidelines, when they say high level personnel, they mean high-level personnel. It's individuals who have substantial control over the organization or who have a substantial role in the making of policy within the organization. It could be a director, an executive officer an individual in charge of a major business or functional unit of the organization, or, you know, for a smaller organization it could be even an individual with a substantial ownership (industry). I'm sorry – own a substantial ownership interest, and also considering creating your organization structure that a specific individual or individuals should be charged with the day-to-day operational responsibility for the program.

Accountability is really the key concept here. The board must oversee and knowledgeable about the program. As I said, there must be high level personnel involved. The compliance structure, the function within your company should not be the ugly stepchild that, you know, somebody is assigned to take care of because they weren't in the meeting that day because if you treat it that way, the

rest of your employees will treat it that way and it won't get the respect that it deserves.

I think that you need to consider any supervisory roles that create conflict. If you have your compliance officer, for example, your head compliance officer reporting to someone whose compliance activities they are also supervising, it can become problematic, and if you get yourself in a situation where somebody is looking at your compliance program, they're going to say, how did you expect that to be effective.

Compliance functions are inside and outside of the General Counsel's office. There has been some trend recently to put it outside of the General Counsel's office. I think in the small company it has a tendency more to be inside the General Counsel's office.

The considerations, again, it should not be one size fits all. It should be tailored for your company. The same considerations that were just mentioned, is your company highly regulated? What's the amount of regulation in your industry? What are industry practices? The more regulation there is, the more compliance there should be. Again, consider the size of your company and any prior misconduct by your organization or in the industry.

And when I say consider prior misconduct, my recommendation to you is to consider, you know, not just situations where your company or a peer company may have been caught at something, but consider the near misses, consider the ones that you know that are, the issues that are problematic in your company and that often these can be identified by, you know, as you set up a compliance program going around and interviewing the business officials as to what keeps them up at night.

The structure should take into consideration the resources that you have for the program, whether compliance should be a stand alone function, which high level personnel will be responsible for supervision of the program, as well as which high level personnel may be involved in the day-to-day operations or as a participant in the overall corporate compliance program.

And consider the role of the business personnel. A lot of your compliance functions the compliance office may lead, let's say they may establish a training responsibility, but the responsibility for making sure that the training is actually done and tracking it may be out in your business units, and so you might have somebody identified as your compliance person in the business unit who reports in to the compliance officer, you know, but it's not their full time job.

And as I said before, whether the company is highly regulated. In terms of doing this in an organizational structure that's small, you know, really conserve

your own resources whether you're the one who has the compliance program or you're overseeing and providing counsel to the program. Use lawyers only where you need lawyers. Use business analysts, program administrators or trainers or even administrative assistants to manage tasks in the compliance program. And when you do learn at the lawyers – when you do use the lawyers, limit what they do to the legal advice. Share the challenges of the compliance program in your organizational structure with, you know, HR trainers, with the techies, with the communicators in the office of public communications or whatever you might call it, and consider the use of outside vendors. It's much easier, as we all know, to get an outside vendor to do something than to get a headcount for it, and that may apply to outside counsel as well, although my recommendation, if you're going to use outside counsel to establish your compliance structure, you try and use outside counsel who has had in house experience or who has been with your company for a long time and so they understand how it operates.

Now in the intro pack on compliance for small law departments, there are some sample organizational structures that you might want to take a look at. There is a sample office, compliance officer position description, both of which might give you ideas about what your organizational structure should look like.

(Richard Westling): (Deborah), if I could, this is (Rich) again. We have a couple of questions just with regard to when it's appropriate for the compliance function to

fall outside the legal department and whether there is a trend to move away from keeping the function within the general counsel's office, and I'm wondering if you could address that.

(Deborah House): Yes. What has happened in some areas is that the general counsel is – if the compliance function is in the legal department, the general counsel is both giving legal advice as to what compliance is as well as implementing compliance. So that means your compliance officer to some extent is evaluating the advice that the general counsel is giving. And the other, the other thing that has caused it to be removed from the general counsel's office that we'll talk about in a minute is to have day-to-day operational responsibility for the program, the person who has the responsibility, to report to the board. And so even if it is in the general counsel's office, there's usually a dotted line maybe to your audit committee or your compliance committee of the board. But we're seeing that in highly regulated industries more than lesser regulated industries.

If you can – I think that's the only question I had on the first part. There is a question about where optimally should it be. Optimally, you know, in the best scenario, I would see the compliance as a stand along function with perhaps a dotted line reporting to the CEO, which is some of the trend, and a dotted line or more of a direct line to the CEO just because everybody has got to be someplace in the corporate structure, and the dotted line or a direct line depending on how you'd want to structure it to the audit committee of the board or the compliance

committee of the board which some boards are now creating specifically for this function so that if there is wrong doing in the company, they're sort of reporting outside of the management of the company so it can be addressed. And so looking at the optimal one would be looking at an independent entity within the organization.

Moving to the second slide, you know, compliance program, you can put it on paper, but it's not worthy anything unless you provide adequate resources, appropriate authority and board access. And the guidelines requires this. They specifically say, to carry out such operational responsibility for your program, the individual operating the program needs to be given appropriate authority, direct access to the board and adequate resources.

Well what does all of this mean? If you take adequate resources, again we go back to one size does not fit all. You have to look at your own company, and there are a number of things that I would consider, the size of the company, and you can determine this a couple of ways. It might be by number of employees or it might be by assets. I come from a company that had very few employees generally speaking. I think there were about 5,000, but it was, in terms of assets it was one of the largest companies in the United States, so there's different ways of measuring. Again, go back to that old saw about whether the company is highly regulated in determining whether your resources are adequate. Obviously the more regulated it is, probably the more resources you need.

Look also, and this was actually suggested to me by a board member when I was giving him compliance training, at the complexity of the company's transactions. If you look at some of the investment bankers who engaged in transactions with the Enrons of the world and they were very complex and in some ways designed to remove things from Enron's balance sheet. Those kinds of complex transactions require more oversight, require more compliance. So the complexity of the company's transactions is important.

Geographic range is it local or is it international? Once you get into the international arena you have a lot more things to comply with. You have a much harder time setting the tone for the company because you're literally all over the world and in different languages and addressing different customs, so that may require more compliance resources. You have to look at the applicable industry practices, the nature of the company's activities. Obviously if you're an HMO or if you're in the medical field, the consumer field like banking or credit or credit cards, you have activities that may carry liabilities with them. Hazardous waste is another good example. And part, in part to determine what your adequate resources are, you should be looking in your risk assessment at what are your areas of significant risk, liability and what is the need to address them.

The purpose of having adequate resources is to ensure that the compliance program is not just a paper program, but rather a substantial management effort with the resources needed to succeed.

Now that said, we've just completed a compliance program and risk assessment benchmarking survey that reports back that the majority of organizations have fewer than five full time employees dedicated to compliance, although, you know, there are many employees, at least it's my experience, that have duties related to compliance even though maybe the majority of their duties are not related to compliance. So I think that figure is larger. And that (30 to seven) percent of organizations with the number of employees between 25,000 and 49,000 are spending between one million and five million annually on their compliance program.

And, you know, those are interesting figures, I think, because you have to define what is compliance, you know? If it's just, if you consider your compliance program training, that's one thing. If you, and you can put a number on that. If you consider compliance program your anti-money laundering program, your protecting credit information of customers program, you know, that number can go much higher.

In terms of the appropriate authority that's required, you don't want to be using a low level employee. And there's a number of reasons for that. First of all, it's

going to undercut the establishment of an appropriate tone at the top and the organization's commitment to compliance if you're using a lower level employee to be responsible for your day-to-day operations.

Now in a smaller company, you know, you could have a lower level employee who, in the scheme of things, is higher level than they might be considered in a big company. So again, tailor that for your company.

Lower level employees may have difficulties securing the assistance and the cooperation and the attention of high-level personnel that they need to accomplish the objectives of the program. Delegation of a level, to a low level employee carries with it a risk that the program might be viewed as a paper tiger. And given the requirement that the person responsible for the operations of the compliance program needs to report to the board, you want somebody at an appropriate level with the appropriate ability to articulate and identify issues and discuss them with the board that will serve the compliance program well.

Now in terms of direct access to the board, the advisory group, for the proposed changes to the sentencing a guideline was pretty out front about why they wanted somebody with direct access to the board. They didn't want potential filtering or censoring by senior organization members. They wanted them to be able to give reports to the board that help the board in meeting their responsibilities to be knowledgeable about program features and operations.

And they wanted, they wanted the person to be able to go to the board and say I have a problem here. You know, there's a problem. There's inappropriate conduct or the appropriate tone at the top is not being set with the management because if that was indeed the case, if it was, if the person did not have direct access to the board and there was a problem in compliance of the organization then, you know, who would they tell. And so they very much laid this out in the advisory report for the changes to the sentencing guidelines, and we're pretty clear about what the requirements would be.

Our recent benchmarking survey reports that, you know, well over 50 percent of the publicly traded companies, the person has access to the board and reports directly to the board and they report that well over a third of people are reporting to the CEO. So even within the company, you're reporting at a very high level in terms of your management if you're the compliance officer.

How am I doing for time here?

(Richard Westling): We probably need to move on.

(Deborah House): OK. Do you want to move on to the next slide then?

(Richard Westling): (Ken), did you want to pick it up from there?

(Ken Grosserode): Yes, hello everyone. This is (Ken Grosserode) and I'll be addressing this next slide. For the guideline requirements that require that the board be knowledgeable about the content and operation of the compliance and ethics programs and that they exercise reasonable oversight with respect to its implementation and effectiveness.

And so as (Deborah) was saying, it's very important to have board involvement because there's a lot of emphasis in the guidelines about just having this tone at the top and making sure that there, that the people at the top create this culture of ethics. And so you want to impress on your board that in order to demonstrate this commitment they need to be knowledgeable about it.

So, and our info pack on the subject has a sample PowerPoint presentation that you can use. There are also top ten things that the board needs to know about effective compliance programs and we'll be covering this also in this Web cast.

And if you do get any resistance from your board, just remind them that this is, this is really what protects the company and the board from liability, and in the event of litigation it is a very important factor in litigation, the damages, showing how effective the program was and certainly board involvement is a very important part of that.

The next thing is providing adequate resources for the program and, again, this is your demonstration; it is not just a paper tiger that is not just a cookie cutter program that was thrown together to kind of satisfy the requirements in a nominal way. You really want to get substance to your program. And a lot of this is just found in the risk assessment, and this is what makes your program kind of tailored to your company. And it's really one of the main factors when considering whether or not it's effective is to have a proper risk assessment. And the program also needs to be independently evaluated periodically and that resources should also be given to that. Another potential is a hotline so that employees will have a confidential and anonymous way to report things without fear of any retribution.

And the next thing is just again establishing the tone at the top, and really at the heart of this is adopting a standard of conducts and having internal controls. The internal controls have really two parts. It's, you want to have both incentives and disincentives. And of course the disincentives are disciplinary measures up to termination. And incentives can be creating, making it really a part of the performance reviews, especially for managers that, you know, how much they've participated in the program, how much they've impressed on their staff members of the importance of the program and to be knowledgeable about it.

And the final thing is the requirement of accountability for senior management. And this is another thing that (Deborah) has addressed already. And it's very

important, again, it kind of gets back to board involvement and so whoever it is, it should be someone who has kind of a direct reporting to the board and has – so that they have the proper authority so that they can actually fulfill their responsibility to implement the program. And, you know, traditionally the chief legal officer is someone who is responsible for overseeing legal matters. If it's not the CLO, it just should be someone who does have some independence and authority and has that direct report to the board or at least a subgroup of the board.

And that's about all I have for this topic.

(Richard Westling): Well to pick up from there, I think the next step, number four, is assessing legal and regulatory risk. And this is probably an area that, you know, has the most overall utility from the point of view of just day in and day out activities in the legal department. It seems to me that in the role of in house counsel or general counsel or chief legal officer, one of the most day-to-day activities that at least I'm called on to deal with is assessing risk in our healthcare business, and I think it's important to sort of realize that this is a component of a compliance effort, but it should be also a component of a much broader effort by most legal departments to be in a position to effectively let senior management and the board know where the risks are for the business. It is also an essential element of a compliance program and the guidelines that have driven this process indicate that an organization shall periodically assess the risk of

misconduct and take appropriate steps to design, implement or modify a compliance program in order to reduce risk.

So risk and its reduction is really a critical part of this process. But then the question becomes sort of how do you get after that, how do you get to the bottom of it, and some of that really is knowing your business. At a starting point I think it's a matter of getting constituents within your company around a table in order to take each department and look at where is there interaction, first with the public, secondarily if you're like we are and you have a government contract, what's the interaction with the government or with the regulators because those things are going to be, tend to be what drive the risk for any given entity.

And then it's important to sort of conduct some kind of triage on what the relative risks are. There may be many things that you deal with, in our case the department of insurance, where we can have little glitches all the time that are not in any way threatening. However, you know, having something go wrong with a patient, some kind of (settle event) in a hospital or a denial of care could be the kind of thing that drives a much larger kind of legal and enforcement risk for our company. So you want to be in a position to sort of evaluate not only what are the risks but then what are the relative degree of those risks in terms of, you know, what are the likelihood it will take place and then what kind of impact it will have if it does, and really focus your resources on those most serious risks.

And I think by doing that, you're more able to sort of get management support. It's much easier for the CEO to understand why you're worrying about those bet the company kinds of issues in a day-to-day setting. And then it should also require you to really think about both internal and external resources in terms of evaluating the best way to stay on top of these risks.

You know, I think the other thing that's important is understanding that a lot of, you know, making this program work and dealing with risk assessment is getting buy in from the folks within your company. And to have them assist you in development of tools that give you a basis to evaluate risk and in also to ensure that there is a reporting mechanism to make sure you understand what's going on that may be generating risk on a day-to-day basis. I mean for me that tends to be handled by a very open door and a very non-judgmental reaction when risk walks in the door, so to speak. And the other thing you should know is that the info pack we've been referring to includes a sample risk assessment tool which can be used kind of as a starting point in the effort to try to deal with that issue.

I think the other area that's important in risk assessment, and it looks like we have a question that goes to this, is you've got the problem of assessing risk and what is the purpose of that. In the day-to-day world that we're in now where you may be in a Sarbanes-Oxley regulated company, or in our case were regulated by the department of insurance, assessing risk can have quote/unquote risks of its own. And I think you have to be very careful about thinking through the audit

and assessment process, the interplay with things like privilege, which obviously the land of attorney/client privilege in regulated industries and post-Sarbanes-Oxley seems to be a shrinking less, but nonetheless, you have to think as you structure these, when should attorneys be involved? When should privilege be protected?

I do think there's a long way between the standard risk assessment we're talking about here and the more classic world of the internal investigation, which is driven at a specific reported event that you're trying to get to the bottom of and whether or not you need outside counsel in both those situations it seems to me is best handled on a case by case basis.

But from my own sense of it, I think the day in and day out risk assessment process is one that's conducted internally by the in house legal folks, the compliance group and/or your internal audit group. And, you know, it may be driven by, you know, the 404 requirements of Sarbanes, and it can be driven by any number of other regulatory schemes that are out there. So, you know, I think that's, it's just important to kind of keep your eye on the idea that for the most part, addressing risk in this context is much less painful than if you have to go at it, you know, when it's already been an issue that is reported to the government or comes in through the hotline.

(Deborah House): And, can I jump in here for a second?

(Richard Westling): Sure.

(Deborah House): You know I've seen, I've heard a lot of arguments about not doing risk assessment because you create a document that's problematic, but I think that to some extent if you adopt the, you know, ostrich approach, what I don't know won't hurt me, then you're really setting your company up for a fall. Better that you should go in and assess and then do a triage, if you will, of how you're going to deal with the risk that you have identified and assessed, and then address those that you need to address. I think the danger is not so much in the risk assessment, it's that if you identify risks and you don't do something to address them or to indicate why they shouldn't be addressed, that you set yourself and the company up.

(Richard Westling): I think that's a great point (Deborah). And from there I'm going to turn over to the next slide.

(Deborah House): And the next slide just happens to be mine, so let me talk – let me talk a little bit about establishing appropriate standards and procedures, which you are required to do under the guidelines. Code of conduct is basic. It's essential. You have to start there.

Past that, I have some suggested lists of what, on this slide, what you might address. There is a much more comprehensive grid of those under policies underlying your code of conduct that you might want to address in the intro pack.

But in determining where you're going to go and what you're going to address, you know, again, so important, tailor them for your company. You may have functions with your own company, within your company that require the application of particularly standards like sales and marketing or a broker operation. You may have regulations that are going to drive your standards like anti-money laundering, and so you need to look at those. Again, risk assessment should drive your standards that you adopt, your policies that you adopt. For example, if you are investing in emerging markets in foreign countries, you know, the foreign practices act is going to be very important to you. If your international activities are very limited, well then it's not and you don't do that one this year, or maybe, you know, for quite awhile. Your risk assessment is going to tell you which one you need to do first and which one you need to train about and focus on.

Your standards must be real but not just on paper. You've got to avoid that paper program. They must be documented, and then they must be applied. And as I say in the slide, they must be applied to the receptionist and the CEO. That's one of the reasons why you have a stand alone, independent compliance department because it helps you meet that requirement.

One of the strongest pieces of advice I would give you here is don't reinvent the wheel. This is important that you tailor it for your company, but it's not rocket science. Codes of conduct are everywhere on the Web. Policies are everywhere on the Web and in resource material that you have access to as ACC members. In this info pack, I've given you some samples of where you can find codes of conduct on the Web and for registered companies, they have to have one, and examples of where you can find policies. And just that good old Google function may help you in finding a policy that's peculiar to your organization. You know, also use the list serves for ACC. Benchmark with your colleagues. You put it out there, I need a policy on X and you'll have a couple of them, you know, by the end of the day. I've seen it happen time and time again.

Again, going back to being tailored, policies, if you're a company with foreign operations you want to have policies that address those issues. You may want to have them in various languages and you may want to consider various customs in terms of drafting them. You want to address policies that are specific to the activities of your company. Again, consumer patient privacy, hazardous materials issues, if you're in the banking business this is product liability, various other legal and regulatory requirements will drive your policies.

And finally, this is sort of the policy on policies if you can believe this. You know, very frequently it comes up, how do these policies get applied? Who has

to sign off on them to make them corporate policy? Who has the authority to waive them? Because that will come up. Who has the authority to approve amendments and what are the remedies for the violations? So if you have a policy on, against retaliation, when somebody reports an employment discrimination complaint, makes a complaint then you should have a remedy for violating that retaliation.

So, and you should also have a review and revision process, you know, how often do you need to look at these policies and update them. So sort of a policy on policies, whether it's internal to your compliance office or whether it's published to the whole company is an important component.

I'm going to turn it back over to my colleague for the next slide.

(Ken Grosserode): Hello everyone, this is (Ken Grosserode) again, and I will be taking on the next slide.

The, establishing an effective training and compliance program should be thought of as two components. One is educating your employees about compliance requirements, and two, motivating the employees to comply. And the advisory group on this says that, you know, the educational prong can be satisfied through dissemination of written materials, but the motivational

component can only really be satisfied through some type of active compliance training.

And one of the essentials ((inaudible)) for compliance training is on your code of conduct because this is all, you know, a part of once you do have a code of conduct that is tailored to your company, you want to have some type of training that is also tailored to the code of conduct.

And it, again, this really, this training will establish the tone at the top. It conveys that ethical culture of your company and serves as the umbrella for all the standards and procedures that everyone needs to follow.

And again, you know, tailoring is best using the risk assessment. I think finding out that – those are the ways that you can find out where training is really needed, and you want to look at the regulatory framework that your company is under.

And when choosing a vendor for training, if you do choose to have an outside vendor, you want to look at how much that vendor can customize the program to your company and look at your risk assessment. And once you do, you want to have your lawyers work with that vendor to make sure that it is tailored to that. And this again, it not only, it not only shows that you're, that it, you don't have just

a cookie cutter program, but also it makes it more meaningful for your employees and they're more likely to be responsive to it.

The guidelines are very flexible as to the type of training. There is no particular type. It can be – you want to look at the size of your workforce, the type of misconduct that you need to address and get the job responsibilities of those who are being trained, and it could very well be that you want to have different types of training depending on who is being trained.

And you also want to make sure, I mean as far as doing more with less, make sure that other people are involved. Get; make sure that HR is involved. You want to coordinate with your HR to get a comprehensive list of current employees to make sure that everyone is being trained.

If you do use outside resources, there are a number of Web base training sources, and it is a cost effective, flexible and efficient way to train your employees and literally thousands of employees can be trained and they can be, take the training from anywhere. And there are lots of different vendors to choose from.

And moving right along to the next slide, if (Richard) if you could just advance this, thank you. You want to reinforce the training with, you know, some postings, but these should not be a substitute for training. Again, that gets back

to kind of the two prongs of motivation and education. So it's fine to use the e-mails and postings for, to educate, but for ongoing motivation, you want to have the training.

You also want to make sure, again, this is a very strong theme throughout the guidelines, is that everyone needs to be involved, including senior executives. And you can remind executives at your company, if you get any resistance, that it's not unusual for an auditor to request documentation showing that every senior executive has taken code of conduct training for example.

And then finally, you want to document when, what, who and how. You want to have a showing of when and how the training was offered and who took it, schedule of training and attendees list. If certain employees never took the training, you need to at least have showing that you gave them numerous opportunities to do so. The substance of the training should also be documented, whether it's a PowerPoint presentation or if you're using a third party vendor, you want to get some documentation of the substance of the program.

And also, again, if you're using a third party vendor on, you, some vendors will offer tracking of attendance and tracking of even performance on training, so those can be very valuable in documenting your program.

And that's about all I had for effective training and communication.

(Richard Westling): All right, thanks (Ken). Moving on to, you know, something that I think we've all heard a great deal about, establishing a reporting mechanism or a hotline, this is obviously an element of a compliance program that, again, the guidelines refer to that there's a publicized system that includes a way for people to make, you know, anonymous and confidential kinds of reports. And I think, you know, the mechanism itself, whether you use an in house system or a third party system is largely one of choice. For smaller entities, I tend to believe that the third party system may be best only because it tend to be more cost effective than staffing your own situation.

The other thing, depending on your number of employees, there may not be a lot of confidence that an internally operated system will be confidential and will not sort of get back to people as to who is calling in.

I think the other thing is that obviously it has to be all the things on the slide. The most important thing, though, that I've always told clients when I was advising them on compliance before I came in house, and the thing I focus on in house, is really what is the follow up? It's great to have a hotline. It's great to publicize the number, but if you are not, not only following up on whatever comes in on the hotline and then documenting the results of your efforts, largely you head into this area that we've referred to now several times of having, you know,

a program that's more form than it is substance. And so I think it's critical that, you know, we put ourselves in a position where we have a documented set of procedures of the best way to handle things. And I guess the thing that makes this most difficult sometimes is some of the things that come in on any given hotline may not be true compliance issues, and yet you still have some obligation to figure out how you're going to, you know, open some kind of matter, track it and bring it to some kind of conclusion that works for your situation.

I am actually going to move on to the next slide, and the next presenter so that we can try to stay on time here. So back to you (Deborah).

(Deborah House): All right, I'm going to cut my presentation on slide eight because I think there's an important question out there I want to ask, and I'm grateful for the opportunity for clarification.

The question was posed, is there an inherent contradiction saying, don't make your ethics program like everyone other's, well everyone else's, and then copy your code of ethics off the Internet?

No. What I'm saying is start with a copy of somebody else's code of conduct. I would start with seven or eight of them, and then tailor it for your company and be smart about how it needs to be tailored and throw out what you don't need.

Again, tailoring is very, very important, but I think, as I said, you don't have to reinvent the wheel. You can start with that.

There are another, and other questions, are there vendors suitable for companies with 500 employees to train via the Web? I think that you can find vendors who will train a smaller number. You may not be able to tailor as well. If you look in the info pack on page 33, I would start with that list, and certainly with our friend here, We Comply, to see what you can arrange, but I do think it's possible.

Now in terms of creating carrots and sticks for compliance, you know, all of you, I'm sure, are very familiar with goals that you have to meet during the year, and I would say there are two kinds of goals. There are qualitative goals, how you do something, and then there are quantitative goals, whether you make the number of widgets that you're supposed to make. And in terms of creating carrots and sticks for performance, work with your human resources department to make sure that compliance is woven into your quantitative and your qualitative goals so that when a person is evaluated at the end of the year, particularly high level officials, they're evaluated about what they know about the compliance program, did they take the training. If they're managers, did they communicate the message to their employees? Did they maintain an open working environment where issues could be raised, and did they serve as an example in their own actions? A report card is a great thing to have for senior level employees. It's

also a good reason to have an independent compliance office if you're the one filling out the report cards as well as surveys, 360s, and other groups of, other group analysis that can be used.

And with respect to the time, I'm going to move on to slide nine.

(Ken Grosserode): Hi, this is (Ken) again. And as far as screening your employees, there is a definition in the guidelines for substantial authority personnel, and these would be people who exercise substantial measure of discretion in acting on behalf of the organization and it includes all high-level personnel.

And it's kind of an open ended definition in it's to be determined on a case by case basis. But what you want to do as far as screening people in these positions is you want to make sure that they, they will perform their assigned duties in a manner that is consistent with the exercise of due diligence for one, and will promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

So, and in doing this screening, you know, it's the usual things, you're going to look at past illegal activity and past misconduct, and the closer it's related to the prospective position or the current position, the more serious, seriously you want to look at that.

HR and security is, are really going to be kind of in the, taking the driver's seat in this, in the screening. And our outside vendors, those are listed in the info pack as well that you can consider. And then I think you also want to get the screening process as to who is being screened, what's the scope of the screening, when the screening occurs and who the screening occurs, get that vetted by the legal department because there are privacy considerations and things like that. So make sure that the process, at least, is vetted by your legal department.

And after that, I guess we can move on to screen 10.

(Richard Westling): OK, just to follow up a little bit on what (Ken) said on this, the other thing I would just highlight, you have to look to some degree in the who as to what industry you're in. If you're in healthcare, like we are in the Medicare area, you have an obligation to screen everybody to make sure there is no one who is excluded from the program. That's sometimes true in the banking context as well. And so you really want to look at what specific requirements there are for your industry in terms of determining who has to be screened.

You know, moving on to number 10, monitoring and auditing, it sort of hearkens back to the risk assessment process, but this is really, I think, critical, what I think more and more the guideline committee is focusing on as well as, you know, federal enforcement personnel for sure, is it's great to have a program on the

shelf. What do you do with it once it's there? Are you following up? Are you continuing to revise and to make sure that it continues to meet the needs of your entity?

A good example would be when you expand from being, you know, a single office to multiple offices. Have you addressed that? Is the chain of command still clear? Are you moving into new markets and new business lines that require an adjustment to what's going on in your compliance situation?

I think all of those things, keeping track of sort of the changing environment is critical. I think the other thing is that monitoring is critical because it's only through this process of sort of watching your own activity that you can be sure that the compliance program is in any way effective. If you're not conducting self-audits and other kinds of processes that are designed to ferret out, you know, violations or other breaches in protocol or policy, you know, then the compliance program, it may be that it, you've got a very pretty binder there and it's all properly trained up on the Web, but it's not affecting behavior.

And as a practical matter, I mean this whole process is really designed to affect corporate behavior to prevent the kinds of things that trigger violations and/or legal risk for the organization. So it's very important, I think, to continually, to monitor and audit your process and probably the thing I would emphasize to all of you in this is that when you do it, whatever you're doing, keep in mind that, you

know, if you don't document it, it didn't happen. And so it's true when you're following up on a hotline complaint. It's true when you're trying to determine what kind of risk assessment or audit to conduct, and it's also true when it's a question of an audit revealing some kind of result and determining whether you need to make a voluntary disclosure. All of that stuff needs to be documented in a way that will allow you to prove that not only did you have a program, but when something was awry, you didn't just sit on your hands and ignore it and say, well I have a compliance program, everything will be fine. The obligation and the need for a compliance plan is really much bigger than having the plan itself. It's actually trying to achieve the goal of the plan in reducing corporate legal risk and potential legal violations.

I think we've tried, through this presentation, to answer most of the questions that have been submitted, you know, by, through the Web system. But, you know, I guess I would just try to determine whether there's anything else we feel like we need to cover in any greater detail from the other panelists.

(Ken Grosserode): Well I didn't have much to add unless it doesn't look like we had anymore questions.

(Deborah House): No, and I think the questions that we did have were good ones that helped us clarify and address additional issues.

(Ken Grosserode): Right.

(Richard Westling): Well that's very good, and, you know, I think from where we are, obviously what typically happens in these situations is that the questions that have been asked will be captured in some way, and then there are also materials associated with the Web cast which are available to you. There are some links as well as the slides themselves. We continue to commend to you this very valuable info pack, some 100 plus pages that the ACC has put together that touches on most of the points made and goes into a number of them with a much great detail. And, you know, I think it's a wonderful resource for somebody who is just starting out in this, and even if you already have a completely functional compliance operation in your shop, it's also useful to kind of go back through it and see what has changed perhaps since that was put into effect.

You know, I think the, kind of going back to this revision issue of slide 10, it's important to remember continually that, you know, none of this is constant. The guidelines change. The demands of things like Sarbanes-Oxley or the litigation environment of cases like (Care Mark) continue to require us to focus our attention on compliance and to stay up with the developments of the law.

You know, an example of something we're facing internally, I know many of you have gone through the difficulty of the problems of Sarbanes-Oxley compliance, and more and more we're seeing an effort to even look at private companies like

our own from the point of view of making sure that compliance with 404 standards and other things reach into the regulated industries whether they're public or not.

Just to remind the group, for easy reference, the info pack we've been referring to is the effective compliance and ethics programs for the small law department, doing more with less. I think it's a 2006 info pack, which (Deborah) was instrumental in developing for the Association of Corporate Counsel, and that's obviously available on the Web site for anybody who would like to download it.

You know, at this point, I'd just like to thank the panel, (Ken), (Deborah) for your input and your help in putting on this presentation. I'd also like to remind those that are listening that it's critically important for ACC to get your feedback to this program, and there is an evaluation form there that's linked to the Web presentation, and we'd appreciate your comments.

I think that's all we have for you today, again, thanks for your time and attention and you should feel free to disconnect from the call at this time.

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