THE FUTUREPROOFING ISSUE

WHAT'S NEW AND WHAT'S NEXT FOR 2023

FEATURING TVA, METROHEALTH, NORTHROP GRUMMAN, & MORE

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FALL **2022**

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BELA members are the current and future leaders of our field. We share insights and solve problems at Ethisphere roundtables, events, and working groups. We contribute best practices, unique perspectives, and field-tested program elements for our community to help each other do better.

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6991 E Camelback Road, Suite B-210, Scottsdale, Arizona 85251

info@ethisphere.com | magazine.ethisphere.com

OUR MISSION STATEMENT

Ethisphere® is the global leader in defining and advancing the standards of ethical business practices that fuel corporate character,marketplace trust and business success. We have a deep expertise in measuring and defining core ethics standards using data-driven insights that help companies enhance corporate character. Ethisphere believes integrity and transparency impact the public trust and the bottom line of any organization. Ethisphere honors superior achievements in these areas with its annual recognition of The World's Most Ethical Companies®, and facilitates the Business Ethics Leadership Alliance (BELA),an international community of industry professionals committed to influencing business leaders and advancing business ethics as an essential element of company performance. Ethisphere publishes Ethisphere Magazine and hosts ethics summits worldwide.

The opinions expressed in this magazine are those of the authors, not the printer, sponsoring organizations, or Ethisphere.

THE SPHERE

DATA. INSIGHTS. ACTION.

The Sphere is *the* source for ethics and compliance benchmark data and insights. It gives your team an on-demand, low-cost way to benchmark your practices against peers and the World's Most Ethical Companies©

- Citations directly to DOJ guidance and other regulators to answer "why this matters" questions from stakeholders
- Analysis of trends and best practices, and resources from the BELA Hub, all to enable improvement
- Benchmarks that can be changed and updated on the fly, and a platform available on-demand, 24/7

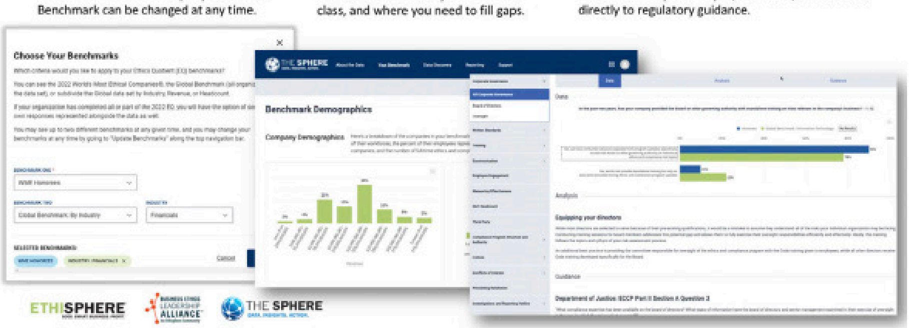
The Sphere

Custom benchmark selection and reporting

Choose your benchmark
Select desired peer group or compare with World's Most Ethical Company Honorees. Benchmark can be changed at any time.

See how you stack up
Compare your program to benchmarks and determine where you are best-in-class, and where you need to fill gaps.

Why does this matter?
Put data about your program and benchmarks in context with expert analysis, resources, and citations directly to regulatory guidance.



The Sphere

Build a custom report or export individual graphs

Easily Pull Charts
Charts can be downloaded in multiple formats, including exporting raw data so that you can modify presentation to meet your brand guidelines

Build a Report
Add charts to a report and export it as a single PDF for sharing internally

Knowledge at Your Fingertips
Return whenever needs arise to access on-demand data, with presentation-ready reporting perfect for sharing with internal stakeholders, key leaders, or even your board

Access The Sphere *today*!

Speaking Up

A New Chapter Begins with Ethisphere 3.0

I am excited to announce a milestone that has been in the making for the past 16 years and sets the stage for times ahead. Ethisphere is partnering with Alpine Investors and together, we are creating Ethisphere 3.0. With the added support and assistance of the experienced Alpine team, Ethisphere will expand greatly as we continue to advance ESG, help define what good looks like, and build communities and networks that foster companies' journey to better. That's why I am thrilled to have such a like-minded partner in Alpine, which shares our people- and purpose-driven culture, and our vision that strong ethics is good business.

Simply put, the interest in our work has never been higher, and our opportunity for impact has never been greater. Ethisphere began in 2006 with the thesis was that you could correlate the financial and overall performance of business with high integrity. It wasn't that far from Ben Franklin's notion that one can do well by doing good. Since then, that mission has borne a lot of fruit.

Through the World's Most Ethical Company Program, we have proven the correlation of ethical business practice with financial success—last year, our honorees outperformed similar large cap companies by a record-setting 24.6 percent.

Our Business Ethics Leadership Alliance (BELA) has grown to a global community of nearly 400 multinationals that include Dell, Accenture, 3M, GE, Parsons, Tata, Microsoft, Bayer, JLL, LMVH, and Sony, just to name a few—all united by their desire to advance the best practices of business integrity together.

And we have developed an unparalleled dataset that features the programs practices of the World's Most Ethical Companies data, along with insights, guidance and resources, can now be accessed in our new platform, The Sphere. Along with these insights, we have the top dataset in the industry for measuring ethical culture - drawn from millions of responses from thousands of benchmarking projects with companies around the globe.

Doing good has taken hold. And we're only just getting started.

As for me, I'm honored to be moving to a Board and Senior Advisor role at Ethisphere. The bulk of my time will be spent on advocating for the profession and engaging directly with executives in our communities around the globe.

My colleague and the person who continually astounds me with her intelligence and humanity, Erica Salmon Byrne is our new CEO of Ethisphere and Andrew Neblett, who many know from his leadership at informed360 and as our COO, is our new President. They will partner with another lifelong friend and colleague, Jean-Marc Levy of Alpine/predictis. They are brilliant, kind, and high-character people for sure. Ethisphere is in great hands.

I treasure many amazing moments, such as Secretary Madeline Albright inspiring the World's Most Ethical Companies community and then performing onstage improv with Second City, learning about the importance of a meaningful life from Sen Bill Bradley, discovering the value in every person in with the courageous Ernie and Cheryl Johnson, and learning from Matthew McConaughey about an "owner's mentality" in the communities in which you operate.

As Yogi Berra said, "if you don't know where you are going you might not get there." We know where we are going. It's on the Journey to Better. And I can't wait to take the next step with all of you.

TIM ERBLICH
Senior Advisor, Ethisphere

BELA of the Ball

Business Ethics Leadership Alliance (BELA) Adds 28 Members

The **BELA Community** Continues to Add Members Interested in Collaborating to Improve Long-Term Performance Through Business Integrity.

Ethisphere is proud to announce the addition of 28 member organizations to the Business Ethics Leadership Alliance™ (BELA), a global community of governance, ethics, and compliance leaders collaborating to drive best practices. The BELA community now includes more than 390 member organizations.

"The continued growth of the BELA community is a true reflection of the vibrancy, diversity, and engagement of our members. These leaders are dedicated to integrity and addressing some of the toughest – and rewarding – challenges faced by ethics, compliance, and governance teams," said **Kevin McCormack**, Executive Vice President, and Executive Director, BELA. "The generosity of the BELA community in its knowledge and practice-sharing across multiple disciplines is second to none, and the growth has only accelerated actionable data now available through The Sphere, premium resources, peer-led roundtables and working groups, and some of the most forward-thinking Summits and forums in our category. We are delighted to welcome these new members to the BELA community and look forward to the role each has in shaping the dialogue and pursing integrity excellence through the collective works of this community."

"Integrating initiatives such as BELA is a reflection of the commitment we have to strengthening the ethical culture that we have promoted since the first day of GeoPark, twenty years ago," said **Andres Ocampo**, CEO, GeoPark. "With the guidance we will get from this Alliance, we will further strengthen our ethical business conduct and Compliance Program to continue creating real and lasting value for all our stakeholders.

"Our membership in BELA is a testament to our commitment to building on our legacy of integrity," said **Cari Gallman**, Senior Vice President, Chief Compliance and Ethics Officer, Bristol Myers Squibb. "We are looking forward to collaborating with and learning from our peers who are also setting a high bar for corporate ethics." ■

To request guest access to the BELA Member Hub, visit https://bela.ethisphere.com/request-access/

BELA welcomes its 28 new member companies, which represent a dozen different industries from the United States, Canada, Japan, Saudi Arabia, Mexico, and more.

Aleatica
Astellas
Bain Capital
Baylor Scott & White Health
Bio-Rad Laboratories, Inc.
Bristol Myers Squibb
Ceridian
DXC Technology
FactSet Research Systems
GeoPark
Grupo Coppel
Health Carousel
Hormel Foods
Indivior
JBS USA
Juniper Networks
Komatsu America Corp.
McKesson Corporation
NEOM, Inc.
Premera Blue Cross
PricewaterhouseCoopers (PwC)
Puget Sound Energy
SACHEM, Inc.
Securian Financial
Sims Group USA
Stanley Black & Decker
The Timken Company
TransCanada Pipelines

Roundtable Recap

Leveraging and Building a Champion Network & The Speak-Up Journey

On September 14, BELA members came together for a series of virtual presentations on what their companies are doing to promote speak-up culture, how their Ethics Champion network play a crucial role in that, and what policies and procedures they followed to grow, support, and empower their Ethics Champions.

(Note: This virtual roundtable was hosted by BELA members **Bombardier**, **TIAA**, and **Prudential Financial**. Presenters for this included **Joanna Glinska**, Director, Global Business Ethics & Integrity, Prudential; **Sherry Smith**, Director, Ethics Program and **Maria Wothe**, Compliance Associate, Ethics Program, TIAA; and **Rana Issa**, Global Compliance Officer and **Sara Jason**, Ethics & Compliance Ambassador, Bombardier. This roundtable was held in accordance with Chatham House rules and as sch, was not recorded, nor would any presenter or audience member be directly quoted from it. As with all BELA Roundtable events, this was an open sharing of best practices, and no competitive information or intelligence was shared among those in attendance.)

Champion Networks go by various names, but the key concept that unites them is for the ethics and compliance team to have a cohort of employees who are essentially deputized to act as semi-formal liaisons between ethics and compliance and the rest of the work force. Often, these individuals are volunteers, carrying out their duties on top of their formal roles and responsibilities.

At many organizations, the ideal Ethics Champion is someone who is considered to be familiar with the organization (but not too senior; no higher than middle management), trustworthy, and truly committed to the cause of business integrity. One of the more interesting details to emerge was that Ethics Champions need not be ethics and compliance experts. In fact, some organizations prefer their Champions to come to the role from their non-E&C professional background in order to bring fresh perspective to their duties—which typically include helping to communicate E&C messaging to the rest of the company and facilitating reports of misconduct on behalf of employees who wish to remain anonymous.

To keep Ethics Champions from feeling overwhelmed, they often will have some kind of formal check-in with their E&C counterparts, such as monthly 1:1 conversations. Most Ethics Champions are not directly compensated financially for their work, although organizations with Champion Networks typically make an effort to recognize and incentivize their champions. This can range from public recognition and prestige within the organization to Champion work factoring into annual reviews. Given the high bar organizations tend to set for recruiting Champions, the idea is to make sure they do not burn out, and remain committed to their role long-term. Many of the Champion Programs discussed did not impose formal terms on their Champions, and many Champions had been in their roles for a number of years.

Another compelling point was the size of Champion programs. It was not uncommon for larger organizations to limit how many employees could be served by any single Ethics Champion. Over the course of the roundtable, attendees shared the relative size of their ethics departments, Champion rosters, and total employee counts, painting a picture of small, but dedicated and effective teams jointly serving much larger communities of colleagues. ■

To attend future BELA Virtual Roundtables, as well for additional roundtable recaps as they are published to the BELA Member Hub, be sure to watch the Ethisphere Events page.

New Community Resources

BELA members receive enterprise-wide access to the BELA Member Hub—a premier repository of key resources featuring examples of work, presentations, and research provided by BELA companies, exclusive data from Ethisphere's unparalleled data set, program benchmarking, and expert reports, event sessions and other insights.

Be sure to check on the resource hub regularly to see the latest content that addresses some of the most important issues facing the ethics and compliance field today. And if you are interested in showcasing your organization and sharing a resource with the BELA Community, reach out to Ethisphere Content Manager, **Samantha Johnson** (samantha.johnson@ethisphere.com) to learn more.

CareFirst – Speak Up Annual Report, 2022

CareFirst BlueCross BlueShield shares their new Speak Up Annual Report for 2022. The detailed report includes data and statistics on a range of investigations points, two case studies, and information on how and where to ask for help and report concerns. This report covers why it's important to speak up, the investigation process, information on their helpline and hotline, how to speak up, and reports and outcomes.

Download this report in the BELA Member Hub. **Need access? Email** bela@ethisphere.com.

Best Practices for Training Investigators

This resource highlights the benefits of consistent investigator training and the common elements on which all investigators should be trained. Providing baseline, uniform training to those conducting internal investigations is a best practice found among organizations with advanced ethics and compliance programs. While each functional group is expected to have specific standards and practices related to their function, establishing core investigation procedures and expectations, and corresponding training, that apply to all investigators, is highly recommended.

Download this report in the BELA Member Hub. **Need access? Email** bela@ethisphere.com.

Ethics & Compliance Performance Evaluations Metrics

This slide, shared by SOFEC, illustrates how they incorporate ethics and compliance activities as part of employee performance evaluations. At SOFEC, 10% of an employee's overall performance score is measured against their ethics and compliance related activities. This includes participating in Compliance Week activities, using "Compliance Moments" messaging during team meetings and trainings, completing a Compliance Newsletter activity, and completing assigned E&C training within a certain time frame.

Download this report in the BELA Member Hub. **Need access? Email** bela@ethisphere.com.

Turning 2023 Challenges into Ethics & Compliance Opportunities: Futureproofing Your E&C Program Through Benchmarking

This report from Ethisphere shares the importance of benchmarking for ethics and compliance programs in today's complex, evolving landscape. This changing environment requires more efficient and on-demand access to data to measure the effectiveness of ethics and compliance efforts. In an increasingly data-driven age, compliance teams desire access to benchmarking data directly for both internal and external reviews of how their program performs against others. This report covers upcoming challenges that will increase the need for benchmarking, benchmarking to plan for 2023, understanding the value of benchmarking, and details on Ethisphere's benchmarking platform, The Sphere, and how it works.

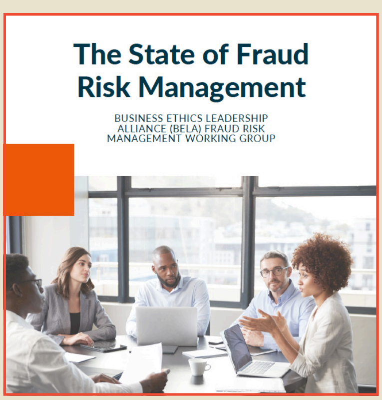
Download this report in the BELA Member Hub. **Need access? Email** bela@ethisphere.com.

Templates for Post-Investigation Surveys

Ethisphere has produced a pair of helpful questions and survey formats for post-investigation interviews of both known reporters and witnesses as part of creating or updating your organization's post-investigation evaluation process.

Download the known reporters template here**, and the witnesses template** here**. Need access? Email** bela@ethisphere.com.

Other Resources



The most recent releases from the BELA community include reports from working groups, such as Understanding Cyber Threat Prevention & Response: A Compliance Leader's Guide and Measuring Real Impact: Benchmarks for "Best in Class" Compliance Training. Several masterclasses were also released, covering how to build an ethical culture, and best practices for disclosures. Additionally, a range of companies provided examples of program materials: Xerox shared their Non-Retaliation Policy, Medtronic shared six resources around supporting employees and Speak Up, Booz Allen Hamilton shared their Ethics & Compliance Journey of Transparency, and Mahindra shared their refreshed Code of Conduct, among other contributions. **For more, resources, roundtables, on-demand webinars and more, please visit the** BELA Member Hub**.**

Events On Demand

It has been a busy time on the BELA Member Hub, with new events regularly showcasing the wide range of webinars, roundtables, and virtual forums available to members. Be sure to check out the events listed below, and also stop by the Member Resources Hub regularly to reserve your spot for upcoming events, as well as to see what new events are on demand.

World's Most Ethical Companies: A Guide to Applying for 2023

Interested in learning more about the **World's Most Ethical Companies®**? In this webcast, our team of experts—featuring **Douglas Allen** (Vice President, Data Strategy), **Neal Thurston** (Director, Data & Services), **Jess Richey** (Vice President, Product), and **Michael Byrne** (Senior Vice President, General Counsel)—explain the World's Most Ethical Companies submission process, provide updates to the 2023 Ethics Quotient assessment, share resources, and offer guidance on how to approach the application. Regardless of how long you have participated in the World's Most Ethical Companies process, we encourage you click here to learn about:

- Who should apply, criteria for applying, what's covered in the evaluation process, and resources for those not ready to apply
- Application process, materials, and timing
- 2023 program and process changes

Hurry! Submissions deadline is **November 18, 2022.**

Investigations: Achieving Excellence in Raising and Resolving Employee Concerns

Learn from the best with Ethisphere's very own **Brian Beeghly** (VP of Insights and Solutions), and Clarke Warren, Global Compliance Director, Investigations, at Clarios, as they share E&C practices from some of the World's Most Ethical Companies. Click here to view this webinar on demand, and learn how to develop a culture that speaks-up and implement effective investigations that work, including:

- Fostering a speak-up culture and establishing effective reporting channels
- Developing a lean process for investigations with tips and strategies for training investigators and implementing frameworks for success
- How to conduct a root cause analysis; assembling and reporting data to take to the audit committee; and effectively communicating results

ESG Virtual Forum 2022

As Environmental, Social, and Governance (ESG) continues to evolve and constitute an increasingly important component of best-in-class ethics and compliance programs, **Ethisphere** and **Parsons Corporation** have co-hosted this two-day virtual session that gathered hundreds of E&C leaders to share their experiences, ESG program roadmaps, and other insights around how companies are approaching this important topic. The panel discussions at the ESG Forum help support the development of an ESG framework companies can use to measure, assess and report on the progress and impact of their ESG activities. Click here for on-demand content around:

- What IS ESG and how does it align with business strategy?
- How to engage relevant stakeholders—ranging from regulators including the SEC, to customers, employees and to the communities in which companies operate
- How are peer organizations defining, measuring and reporting on KPIs?
- How to make the best use of frameworks and standards
- Where is ESG headed and how will this impact E&C programs?

Europe Ethics and Compliance Virtual Forum

On **November 16-17**, Ethisphere brings together compliance leaders across Europe to address the issues impacting corporate integrity today. The Forum will cover hot topics including human rights in the supply chain, whistleblowers, manager preparedness, data analytics, data privacy and ethics, human capital management, and more. And best of all, BELA Members already get three free passes, so be sure to reserve your seat right away. Click here to register!

Annual Planning Masterclass Series

In this masterclass series, join Ethisphere CEO **Erica Salmon Byrne**, EVP, Insights & Solutions **Brian Beeghly**, Director of Data & Services **Tyler Lawrence**, and **Liz Atlee**, SVP, Chief Ethics and Compliance Officer of CBRE as they share best practices and practical strategies for optimizing your 2023 annual planning. Learn how to effectively evolve your program, prioritize your initiatives, secure the budget and resources you need, familiarize yourself with tools and resources that aid the risk assessment and planning process, and present a plan that gets buy-in from senior leaders. Click here to learn more!

What Will the State of the Art Look Like in 2023?

Futureproofing Your Ethics and Compliance Program, Part 1

Interview by Bill Coffin

Economic uncertainty. Unprecedented sanctions. ESG backlash. These are just a few of the clouds that hang over the heads of ethics and compliance professionals as they head into 2023. But as **Erica Salmon Byrne**, President of Ethisphere, notes in this interview, within every challenge lies an opportunity, and the coming year may be a great one for business integrity.


ERICA SALMON BYRNE

How would you say the events of 2022 impacted the predictions we had for the ethics and compliance space time last year?

Some of the biggest trends ended up being geopolitical pieces that happened during the course of the year. Response to the events of January 6th ended up taking up a lot of people's time and energy as they thought about the corporate fallout from that activity. The Russia-Ukraine conflict also took up a lot of people's attention in the first part of 2022. The lingering impact of the pandemic. Return to work, hybrid workforce, virtual workforce—all of those pieces. Many of the things that were happening in 2021, particularly pandemic-related issues that I thought would be more behind us than they were, ended up carrying over into 2022.

One of the things that we learned in 2021 was that you can effectively conduct remote investigations as long as you are well set up to do so from a staffing, structure, and process perspective. That carried us into 2022, and I think quite honestly is going to carry us even further.

How do you feel about 2023, from an ethics and compliance perspective? More headwinds than tailwinds?

There are a couple of interesting things that I will be keeping an eye on as we move into 2023. One is the changing demographics of the workforce, and what that is going to mean for companies as Boomers begin to retire and Gen Z begins to graduate college. That is going to be a generational shift akin to what we experienced when the Millennials entered the workforce. As we think about the way to train an audience, communicate with an employee base, and set the narrative around values and principles, all of those things are going to require more time and energy from teams. Ethics and compliance are going to be a part of that conversation.

If we think about what we have seen companies doing the current hiring environment—whether you call it the Great Resignation, or "quiet quitting," or something else—companies that can legitimately tell the story of their values are succeeding more effectively than other organizations in finding, retaining, and developing the best the best talent.

If you're somebody in the ethics and compliance space, really think about you know you align your work with not only your company's risk profile but also its stated values and mission. Have you deliberately adopted that into the organization's narrative, or are you more focused on talking about regulations?

Also, we are finally, thankfully, starting to see companies internalize research from other disciplines into the ethics and compliance dialogue. Whether it is what we know about how adults learn, or what we know about communication modalities, or some of the work being done on psychological safety, there's so much good research out there for ethics and compliance professionals to deploy, and I am seeing a tremendous appetite for that across the community. That is a wonderful tailwind because at the end of the day we're all dealing with people, and there's no reason why you can't talk to your learning and development team and learn what it is they know about how to design effective training as you are thinking about how to express a new regulatory principle.

"In order for corporations to succeed long term, they need to spend time thinking about their impact on those broader stakeholder groups and how to benefit from that impact."

Headwinds are going to be economic. Nobody knows where we're headed in terms of the economy and a possible recession. Supply chain disruptions continue to be a challenge. So there are definitely some serious headwinds with some longer-term generational tailwinds behind the backs of ethics and compliance.

Did you expect the ESG backlash that we saw this year, especially as politicians began to decry "woke capitalism?" What do you make of all that?

ESG, as a term, I would like to separate from the concept of a well-run sustainable business, because before ESG it was CSR (Corporate Social Responsibility) and before that it was corporate philanthropy, and before that, it was foundational giving. There has always been this idea that a company is bigger than its brand, and that there is a relationship between the corporation and the stakeholders to whom it matters. You can define those stakeholders in a lot of different ways. You can think about the stakeholders in terms of employees, shareholders, the communities in which you're operating, the value chain partners with which you're partnering, the products you're bringing to market, and the IP that you're putting out on the Internet. There are all of these different ways in which a corporation as an entity interacts with various beings.

To me, it's less about which acronym of the moment we happen to be using to describe that concept. It's more about the reality that in order for corporations to succeed long term, they need to spend time thinking about their impact on those broader stakeholder groups and how to benefit from that impact.

That's really the heart of it. It's not really about divesting from fossil fuels. It's about whether the company's stakeholders feel like they are a match with the work that company is doing and with the way that company exists in the world. Or do they feel a dissonance? Because if there's a dissonance, the company's going to stumble.

To borrow language from Larry Fink, who I think is looking at these issues the right way, there's a social license to operate, and when a corporation loses that license, for whatever reason, then at that point it becomes unsustainable. Not in the environmental sense, but in continuing ongoing operations.

So, of course, there was going be a backlash because the way that everybody jumped into ESG, like it was going to solve all of our problems, naturally made it an easy target. But the concept, no matter what acronym describes it, is fundamentally sound. And at the end of the day, the companies that look at ESG criteria and frameworks and express their version of that, and how they are going to engage stakeholders, and preserve that social license to operate…those are the ones that are going to be left standing in the end.

ESG itself, there are pieces of it that are vastly undefined. And when you have a vastly undefined acronym grabbing onto all the concepts of that social license to operate, you're going to find holes in the theory. There are so many different ways for a company to look at that social license to operate and say, how do we preserve this? That's where the analysis really needs to be, because otherwise you can get lost in the noise, and when you get lost in the noise, people come for you.

The Russian invasion of Ukraine created a major ethics & compliance moment as organizations rapidly pulled out of the Russian market. What lasting lessons can be learned from all that?

I think the defining piece of 2022, from an ethics and compliance perspective, is going to be the response to the Russian invasion of Ukraine in terms of the way that companies suddenly had to review their suppliers. It was a rapid response to a geopolitical event that tested a lot of companies' systems: Do we know the extent to which we had exposure to Russia? How up to date is our politically exposed person screening? What sort of disclosure activities are we engaging in? If we have employees in Russia, how should we respond to the needs of those individual people who are living within that jurisdiction? All of those pieces required the teams' skill sets to be brought to bear on how to think about risk, supply chain exposure, making sure disclosure processes are up to date, and how to make the decision whether or not to withdraw from the market.

This is a situation where a company needs to have practiced values-based decision-making, and ask, what are our intrinsic values, and how are we going to think about big challenges within the framework of our values as an organization? How do we communicate those decisions to the rest of the world, and explain why we have chosen this particular nuanced path through a series of challenges?

"You have to figure out your values, think about how they exist within your ecosystem, and then make sure you're practicing them over and over again at all levels of the organization."

And then, what do you do on the back end? I mean, the logo for the entity that took over Starbucks in Russia looks an awful lot like Starbucks, right? You make that decision to leave and suddenly you've got McDowells in Moscow as opposed to McDonalds. If you haven't done that kind of drill as a leadership team and as a Board, it's time to do it now, because the need to rapidly respond to the crisis at the moment is only going to accelerate.

Are there other major developments in the world you're seeing now (e.g., natural disasters, disease, political upheaval) that we might not normally think of as ethics & compliance situations, but could create effects that themselves require the expertise of the ethics & compliance department?

It is exceptionally company dependent. The best ethics and compliance professionals, in my opinion, are the ones who have spent a fair amount of time really understanding the companies they serve. Where are they operating? What are their core audiences? What does their core supply chain infrastructure look like? Because those are the things that are going to tell you that you might need to go beyond posting something on Twitter that you're thinking of the people of a certain country, because you have five critical suppliers operating out of that region, and you need to make sure that the way in which your supply chain is going to be impacted is fully understood and thought through.

Make sure that you are well coordinated with the other control functions so you have a holistic view of how the company is going to make decisions when the next tornado comes through the United States, for example. Is this something you need to respond to? Or is this something that you have less exposure to, and can experience it as a person instead of as a company?

Those are the things that I would encourage people to think about as we move into 2023. As we look at the literal physical landscape, extreme weather events are going to become more common. And so, not only do we think about our responsibility as corporations to address those issues, to the extent it fits your value chain decision-making process and your social license to operate. Those are the things that that people need to make sure that they've really got their arms around in advance. It makes it makes the response easier if you've done the pre-work.

Confidence in public institutions is eroding, and even trust among people is at a lower point in the U.S. than it has been for some time. As we head into 2023, can you speak to the importance of values-based leadership as a way to create value, and as a way to build trust?

There's been some interesting analysis around the Edelman Trust Barometer, and the extent to which people grab onto it as a piece of truth. I would say any data set has its inherent flaws. There is no one magical data set that we should all be using. But the Trust Barometer is interesting in terms of some of the trend lines, and some of the meta-level things that they identify.

Trust erodes when what you see on the surface is not what is happening behind the scenes. Fundamentally speaking, that is the place where people start to lose trust in a person, an institution, or a company. Companies that have taken the time to do a values exercise—to figure out what motivates them to get up in the morning, to find what is their purpose for existence, and then, importantly, lives according to that work—that's how you rebuild trust. When you aren't honest about your motivations, that's where you lose trust. Values-based leadership is absolutely key to reinstituting that trust, but you have to do the work to know the values first, and they have to be values you can live by.

That is the challenge for a lot of organizations. Values-based leadership is not a one and done exercise. You have to figure out your values, think about how they exist within your ecosystem, and then make sure you're practicing them over and over again at all levels of the organization. We see this all the time in our culture data, that the delta between employees who say their leadership walks the walk and talks the talk—leadership is saying all the right things, significant questions exist as to whether they're doing the right thing—is 10 or 12 percentage points for most organizations. Putting the time in to do that is how you rebuild trust.

There are troubling signs of economic turmoil, including potential recession, on the horizon. When times get tough, belts tighten and budgets get cut. How can ethics and compliance programs make their case to maintain funding even against economic headwinds?

There are three things that I would point to on this. The first is looking at the company's stated ESG goals and specifically identifying places where the work the compliance team is living within that framework and supporting the overall goals that the company has set. ESG investing is still the largest category of investing out there and the fact of the matter is corporate behavior tends to follow the money. So, really think about the goals your company has set, and how the work you're doing supports those goals.

Let's say that one of the company's goals is related to preventing human trafficking in the supply chain. You know something that really supports preventing human trafficking in the supply chain? Anti-bribery and anti-corruption programs. They fit together like a glove, so think about how your anti-bribery and anti-corruption controls program support those anti-human trafficking goals. That is a way to make the case against potential cutbacks.

"There are lots of partnerships that you can use across the business that will augment your team's ability to get their jobs done."

The second thing is making the case to those who might be looking at cutting your budget that there are lots of ways in which you are mitigating the risks that the company faces. Use your risk assessment to make that case accordingly and show how much you understand the business.

The third piece is to get creative. There are lots of partnerships that you can use across the business that will augment your team's ability to get their jobs done. For most organizations, the compliance team is not going to be the first place somebody tries to cut, because those teams are pretty small already. Which makes working with other control functions even more important.

How's your relationship with corporate communications? Human resources? Environmental health and safety? Internal audit? IT? Your ESG team? Maximize those connection points and using those teams as extensions of yours so that you're all working together. That's the way that you keep all the boats afloat in spite of the turmoil. ■

ABOUT THE EXPERT

Erica Salmon Byrne *is the CEO of Ethisphere, where she has responsibility for the organization's data and services business and works with Ethisphere's community of clients to assess ethics and compliance programs and promote best practices across industries. Erica also serves as the Chair of the Business Ethics Leadership Alliance and works with the BELA community to advance the dialogue around ethics and governance, and to deliver practical guidance to ethics and compliance practitioners around the globe.*

In 2023, Data Will Make the Difference

Futureproofing Your Ethics and Compliance Program, Part 2

Interview by Bill Coffin

In this interview with **Brian Beeghly**, Executive Vice President of Insights & Solutions of Ethisphere, we learn about how data and analytics continue to shape the future of ethics and compliance, and how in the year to come, programs that aren't using data to make their case might make significant difficulties for themselves.

BRIAN BEEGHLY

This time last year, a lot of people in ethics and compliance were looking to the subject of data and analytics as being one of the big issues for 2022, if not the big issue. How accurate has that prediction turned out to be, and why?

It's turned out to be very accurate. There is still a focus on data and analytics for compliance programs because the maturity level in this area is still low and the expectations of Boards, Regulators, and other key stakeholders continue to increase in this area. In addition, there are still a lot of manual processes out there which don't lend themselves to great data nor great analytics. A lot of new tools are available and we have certainly made progress, but there is more to be done., And I think that when compliance professionals look across their own organizations, they see advances not only in data analytics, but other areas such as finance, accounting, internal audit, diversity and inclusion, ESG, and environmental health and safety. Within organizations as a whole, there continues to be a very big and strong push towards better data and more data driven analytics, more automation, and more use of software. Quite frankly, I think it will continue to be a major theme in 2023 and beyond.

With informed360 becoming a part of Ethisphere this year, what are some of the most important developments you have seen in the area of program automation and workflow management? And what should we expect to see here in 2023?

We saw a lot of growth in our risk assessment tool and we see more and more companies doing risk assessments and looking for tools that not only help automate that process, but also bring an underlying framework methodology like the COSO ERM framework into the tool so that the compliance team doesn't have to figure out what the methodology is. You might do a little bit of configuration, but they don't have to kind of reinvent the wheel.

Surprisingly, we still see a lot of companies that are doing their risk assessments using Excel spreadsheets. I can't think of anything more horrific, especially if you're sending that out to a leadership group. But we still see that pretty frequently.

There has been an explosion in the area of disclosures as well. We have several customers using our disclosure tool which offers tons of workflow capabilities with lots of configurability. We've got a great tool that provides seventy to 80 percent of what a customer needs out of the box, and then gives them the capabilities to configure the other twenty percent, whether it's specific workflows, specific questions, or specific resolutions. That has been a huge advantage for our customers.

We have also seen an explosion in the types of disclosures being tracked by our customers. The two biggest that we've noticed since the beginning of the year involve employees engaging in outside activities and outside businesses. It's not uncommon for employees to get involved in a startup or to be part of a private equity investment group. We also see, as it relates to technology companies in particular, but also other companies that do any kind of software programming, software development engineers participating in open source projects or teaching classes in software development. That's why companies are really focusing in on what kind of outside activities their employees are involved in, as opposed to simply sitting on the board of a nonprofit or something like that.

The other big disclosure area we see gaining a lot of traction is what is known as the politically exposed person disclosure, or the PEP disclosure. There have been some changes. recently, in mostly in Latin America (Colombia in particular), where employees are now required to disclose if they've got political relationships that could potentially be problematic. So we are seeing an uptick in that.

Then from a process standpoint, the other big area we're seeing in disclosures is with pre-employment. Companies like doing background investigations; they don't want to wait until they hire you to find out if you've got a conflict with a customer, supplier, or another employee. More and more companies are doing pre-employment conflict-of-interest disclosures from candidate employees. That's a big area.

These areas just continue to evolve. Part of it is just maturing from manual or non-existent processes to more automated processes and then expanding the use of the tools from there.

When you mentioned how interest in risk assessment is exploding, what would you say is driving demand there? Is it companies looking to shed antiquated practices?

When you've got a manual process, you're really limited in terms of the number of people that can be involved in that process, versus an automated process that allows you to involve many more people. There's huge leverage in that. You're also seeing ethics and compliance teams realizing that if the company is doing like an enterprise risk assessment, it's kind of like an employee engagement survey as it relates to ethical culture. It's not really giving you the granularity that you need.

What's driving this is they're not getting enough out of the enterprise risk assessment, and there is a growing need to do individualized compliance risk assessments, or what we call targeted risk assessments, that go deep into a particular subject area such as anti-competitive behavior.

"Surprisingly, we still see a lot of companies that are doing their risk assessments using Excel spreadsheets. I can't think of anything more horrific."

This kind of assessment asks, What is it about our anti-competitive behavior that's really driving our risk? Is it price fixing? Horizontal or vertical restraints? Collusion? Industry trade associations? Or, they customers may be targeting a risk assessment to a new acquisition or new joint venture, the baseline of which may be different from the parent organization's ethics and compliance risks, especially if you're trying to expand your product line or expand into new territories.

I just think there's a growing awareness of the need to do something, that it's not just an annual, once and done risk assessment, where you kind of prioritize everything and then move on. More and more companies are seeing that it's not the only risk assessment tool you have, but it's a pretty critical piece that allows you continue to do ongoing risk assessments, monitoring, and auditing.

And finally, it's just a great way to get people engaged in the compliance program that wouldn't otherwise be involved. So, it's partly an engagement tool as well.

"You need to recognize that maturity levels are moving, and what constituted a good program five years ago does not necessarily constitute a good program today."

It is no secret that regulators expect organizations to effectively manage programs and use analytics to ensure effectiveness. What changes or developments do you expect to see on this front in the coming year?

I think there will be a continued evolution of analytics to ensure effectiveness. It's easy to say, "We ought to be doing more data and more data analytics." But there is a journey to getting there, especially if you're moving from a non-existent or very manual process to a more automated process. You've got to lay some groundwork to get the basics and fundamentals in place.

Another challenging area that we've seen in this applies not just to manual processes—although it's particularly crucial there—but we also see some of the legacy systems that have been out there for a while. To be honest, performing data analytics within those systems can be difficult or challenging because the data structure is not great. For example, you might see five different ways to spell *U.S.A.* or *United States of America*. It takes time and resources to clean up your data and get it structured so you can get meaningful results from it.

I always talk about it in terms of a maturity model. If you would have asked 10 years ago if companies had a tool for conducting risk assessments, most companies would say no, they did not. If you would have asked if they had an automated solution for employees to make disclosures, the majority of companies would say no, they do not. Those things have actually become fairly standard today. So if you don't have one, or you're still using a PDF form on some Sharepoint site, you're falling behind, from a maturity standpoint.

Also, if you think about how a regulator is evaluating your program, it's not only against their standards, but it's against what they are seeing in the industry as well. So, the less that you put into data analytics, the less you put into automation, the further you're going to fall behind in terms of what is considered an effective program. Then you are going to have a hard time proving to a regulatory body that your program is, in fact, effective.

Tools like informed360 have done a lot to help advance the data literacy of this space. But right now, how would you rank the overall data literacy of ethics?

Well, it's certainly a lot better than it was. One key indicator for me is the number of resources in the compliance team itself that are dedicated to data analytics. Again, I'll use the maturity model: If you would have asked this question five years ago, the answer would have been "virtually none" for almost every company. If you had asked if your company has a data analytics person or somebody dedicated to data analytics and data visualization—not within your company and not within the IT department, but literally sitting within the ethics and compliance team—the answer would have been no. I just got off of a phone call earlier today with a customer, and they've got two people on their compliance team whose role is data visualization, analytics and metrics. That is their sole role, and we are seeing that more and more of that today.

Of course, it's going to differ by size of company and what industry you're in, but generally speaking, for larger companies, I think it is going to get back to that expectation piece and what constitutes an effective program. If you are serious about data analytics and automation, then you really need to be hiring for those skill sets in your ethics and compliance team and not just relying upon the skill set that traditionally has been out there. To me, that has been one kind of key indicator.

It will be interesting to see how that plays out in the 2023 World's Most Ethical Companies application process, because I think we have some questions around that in terms of skill sets on the compliance team. And, I think we will continue to see that area of interest grow. Again, if you're not devoting resources and time to this you are just falling further behind.

There are signs of economic and certainty on the horizon. And whenever that comes around, there is always the risk of the kind of belt-tightening that can slow a program's momentum. From your perspective, what are some of the most important things an ethics and compliance program can do to build value, prove its worth to the organization, and futureproof itself against budget cuts?

As a former chief compliance officer, I have been subject to many budget cuts in my professional career, so they are no stranger to me. At the end of the day, it is not just trying to avoid budget cuts, because in some can instances you just can't. But really, it's about optimizing the budget and the resources that you have, and software is a great way to do that because it provides a lot of productivity enhancements and a lot of cost efficiencies in terms of collecting and analyzing data.

When it comes to showing the value of the program, there are some things you can do. Compliance teams, like many risk-focused areas of the company, always talk about cost avoidance. Or they say, "We avoided fines and penalties," and that will get you to a certain point. Folks kind of intuitively understand that and get it.

But I think it gets back to that maturity model: showing progression in the program and backing that up with showing engagement levels around the program. If you're not staying on top of these trends, if you're not providing better solutions to your customers in terms of tools for automating disclosures and participating in risk assessments, then I think you're going to run into a perception issue that you are not staying ahead of the curve, and that you are not using your resources, assets, and time wisely.

That's probably the worst position to be in because that starts to impact the reputation of the compliance team itself. Now, I'm not suggesting that you need to be on the bleeding edge of trends. But you do need to recognize that the earth is moving, that the maturity levels are moving, and what constituted a good program five years ago does not necessarily constitute a good program today.

So how do you make investments for the long term so that there are long-term enhancements in productivity, data quality, and process? That is another critical area for compliance teams where they can show value: show that you have built sustainable processes that leverage your resources and what the company already does to drive efficiencies across the enterprise.

I don't think any large company is ever immune to budget cuts. But I think to the extent you can show that you know you are wisely allocating resources in the program, using the budget dollars that you do have efficiently, that you're getting a economies of scale, that you're keeping employees engaged, and yes, you're reducing risk and preventing misconduct from happening in the first place, I think all go towards telling that story and showing value to the company.

Looking ahead for 2023, broadly speaking, do ethics and compliance professionals have more challenges to look forward to in the coming year, or more opportunities?

I have a pretty deep background in lean manufacturing and lean principles, and one of the central tenets of lean is that problems are good. Challenges are good. It's through that identification and resolution of problems that we not only become stronger as an organization, we become stronger as a team. Our processes get better and we become more efficient, more productive.

There's always the macro environment that we operate in that will continue to be challenging. Sanctions has never not been a challenge, for example. But at the end of the day we're dealing with human behavior in the workplace, whether that's bribery and corruption or health and safety. That's never going away. It's something that requires constant care and attention.

I am a "risk" guy at heart. Its where I have spent my entire career. To me, challenges are the opportunities. And the key piece, as I think about it from a former compliance standpoint, is making sure that you are advancing your program, doing the risk assessments, and paying particular attention to emerging risks. You know, data privacy would not have been on anybody's top 10 list 10 years ago, and now it's on everybody's top 3 list. Same thing around diversity, equity, and inclusion. Make sure that your program is not only keeping step with industry trends and best practices but keeping step with your own organization, as well. Has your business changed? It might be a situation where you actually have scaled back what you do because your organization has gotten smaller, or you've gotten out of certain countries or products. You need to think about those things.

But make sure that your program is structured in order to gain maximum efficiencies from a process standpoint and also structured in a way to give you flexibility to adjust as needed and address challenges and opportunities wherever they arise. Because we all know they most certainly will. ■

ABOUT THE EXPERT

Brian Beeghly *is Executive Vice President, Insights & Solutions, for Ethisphere. Brian is the Co-Founder of informed360, an innovative software and technology services company that became a part of Ethisphere in early 2022, Brian is the chief architect of a cloud-based platform that supports effective ethics, compliance, and risk management programs. In addition, Brian advises Fortune 500 companies on overall program design and supporting data integrations. Prior to informed360, Brian served as the Vice President of Compliance and Risk Management at Johnson Controls, a Fortune 75 company with over $44 billion in revenue and more than 170,000 employees worldwide.*

Bringing the BELA Perspective to 2023

Futureproofing Your Ethics and Compliance Program, Part 3

Interview by Bill Coffin

Sarah Neumann is the Senior Director of Engagement for the Business Ethics Leadership Alliance (BELA), the premier membership organization for ethics and compliance professionals. Sarah works closely with BELA members to help them get the most out of their memberships, whether it's networking with other members, participating in high-level working groups, or sharing content from their own organizations as an example of practices in action. In this interview, Sarah lends her unique perspective on the trends shaping ethics and compliance and what organizations are doing now to stay ahead.

A lot of companies are trying to solve for what happens after an employee reports a concern. Can you talk about what ethics and compliance teams are doing to create more transparency in the reporting process and promote speak up culture?

This continues to be a real area of focus for ethics and compliance teams on the BELA community. This topic has been a big favorite at some of our roundtable events, and some really innovative ideas have come up during those conversations.

One recent idea that our team liked was shared to the BELA Member Hub by an ethics and compliance team for a health insurance provider. They worked closely with their HR partners to produce an employee-facing speak-up report that provides an annual overview of their organization's compliance and ethics processes. The report highlights trends that they're seeing, reporting and statistics related to investigations and issues, and how they were remediated, and it does a really good job of demystifying what happens after a report is made while emphasizing that organization's standards for ethical behavior.

A lot of companies are finding ways to tell stories of real misconduct reports and the outcomes. They're telling these stories to their employees to address the misconception that every report results in termination. Some storytelling examples of what we're seeing include blog posts and videos to retell what happened. If ethics and compliance teams don't have buy-in from legal to use real anonymized stories, they are opting to use communication tools like short videos that they have purchased or produced that are more generic but still explain what happens when someone reports, how to report, and why it's important to do so.

Companies are coming up with really creative ways to brand their storytelling, and not only do they get a lot of clicks, they humanize the compliance and ethics team and it makes them relatable as real people. That goes a long way to advance the program's culture and get people comfortable with going to them with an issue.

More ethics and compliance teams are creating or refreshing toolkits for their managers and people leaders. Those toolkits are taking them through the whole process step by step on what to do when someone reports a concern to you. We have some good examples of these types of toolkits and trainings on the BELA Member Hub.

Training is under constant pressure to become more targeted, interactive, and concise in the drive to engage people. How are you seeing companies evolve their training programs in this direction?

We held a training evolution roundtable earlier this year, where two global multinational BELA member companies shared overviews of their training programs. Both programs really focused on relevance and impact, and they were doing this by making changes based on employee feedback about what was impactful and relevant to them. Employees consistently were telling them that they liked videos, for example, so they invested in more short videos that featured role- and scenario-based content. That all came from employee feedback.

Also, companies are focusing on relevant and role-based training. But to make it engaging and useful, they are letting employees have some say in what they're completing. Companies might have a two- or three-year rotating library of trainings that they offer. Some of these certainly will be requested every year. But others might be optional, and employees might be asked to select three from a list of topics and have until a certain date to complete them. This gives the employees some control over what they are being trained on.

How are programs responding to the challenge of measuring the effectiveness and/or test the impact of training? In a lot of cases, training programs are mandated to run for three hours, and given short attention spans, that might not be a very impactful way to reach people.

Measuring training effectiveness is so important now, because of the DOJ's updated evaluation of corporate compliance programs guidance. Now we know that just tracking training completion isn't sufficient, so companies are trying to figure out how to measure whether the information that's covered in the training is retained and applied.

Some good ideas around that have come out of a recent BELA working group focused on measuring training effectiveness. Two ideas that group came up with included measuring the value that learners perceive but also measuring how behavior was impacted. That value piece could be as simple as asking if they found the training informative or are getting feedback through post training surveys or interviews, and then using that that feedback to make the training better as time goes on.

For behavioral impact, you could look at things like reporting rates. One idea that also came out of that working group for tracking that metric was to add a question or a field in the reporting form where employees can confirm whether or not training factored into their reporting. That's very simple and straightforward, but what an easy way to gather that metric.

When it comes to mandated training, those sessions can be very long. That's a challenge, particularly since companies are so focused on training fatigue and trying to move to short or targeted trainings. One idea that we've heard of—where it's allowed—would be in those areas where many hours of training on a specific topic are legally required, use that flexibility piece. Maybe companies can spread out longer trainings incrementally over time. In one roundtable, a BELA member shared that they try very hard to never have any one training period exceed 45 minutes, as a way to address training fatigue.

With the recent shift to remote working, side employment has become a major conflict-of-interest issue. What are you seeing on this front?

We've had a couple of roundtables on this, and I think we'll be doing another one. It's certainly not something that we were hearing about very often three years ago. Some companies have policies that prohibit outside or secondary employment, and some require disclosure of potential conflicts of interest. But the line gets pretty fuzzy for employees and employers when the outside activity is something maybe like a hobby blog that has evolved into social media influencing. There, we're seeing more and more companies update their social media policies and their conflicts of interest policies to reference each other, or at least to define what a social media influencer is. They can explain that this could be considered secondary employment or a side business, and that it could be a conflict, and if so, it should be disclosed. But from there it gets even more interesting, because once someone does disclose some kind of activity like that, then the compliance and ethics team has to evaluate whether it really is a conflict, and I think that is where there is a real challenge.

In the roundtable we had on this, there was a lot of discussion around what should they be looking at. Is it the thing that is being promoted? Is it a competing product, directly or indirectly? Is that employee being compensated, and how? And then another interesting question is what if they're promoting your organization's own products and using commission-based links to earn money off of that?

We have a lot of members who are thinking about these issues and what they've been trying to do in our roundtables is to come together, lay out all these challenges and the ideas that they've been using to evaluate them, and try to create some consistencies around what is permissible and what isn't when evaluating these conflicts. But every situation is different, and people need to feel like they're free to pursue what fulfills them. It's nice to know that when you're disclosing something that you think could be a potential conflict, usually all the teams are trying to do is to figure out how to make sure that it's not. It might be as simple as "if you make these changes, then we have no concerns."

What changes do you are you seeing with how companies are conducting risk assessments?

This is coming up as a priority for a lot of BELA members for the next fiscal year. Companies are reviewing and updating how they do risk assessments. They're taking a more holistic approach to their risk assessments and using data to make sure that their program is truly doing what they want it to do. We're seeing more data analysts sitting with ethics and compliance teams to help with that.

A couple of challenges that we're hearing relate to the strategic timing of risk assessments so resources are allocated appropriately, and investing in tools that help eliminate manual processes. Those tools can help improve visibility, data analytics, and other activities so that people are all on the same page.

"Whatever the coming year brings, I know that the BELA team is really looking forward to continuing to support our members."

As we look to 2023, what kind of year should ethics and compliance teams expect?

Based on conversations that our team is having with the BELA community, I think that in addition to everything that we just discussed, there are a few other things that they should expect to address.

I think they'll be spending more time on trade sanctions challenges and making sure that their internal processes are keeping up with all of the changing activity there. I think they are going to be looking at their anti-money laundering programs, since countering money laundering is such a focus in many countries.

I know a lot of our BELA members are looking at policies and controls around data regulation and things like AI fairness and bias. Those issues continue to evolve, as AI does. I think the momentum with ESG will just continue to build and teams will be making sure to stay on top of all of the changing global standards and disclosure requirements. BELA will be kicking off another ESG working group this year, so we'll continue that work.

Whatever the coming year brings, I know that the BELA team is really looking forward to continuing to support our members. A lot of these issues that we're talking about lend themselves to our member hub library and closed roundtable discussions, where you can come and talk about the challenges that you're having, and share ideas.

If any of our members are interested in hosting a roundtable event, either virtually or in person, or if they have a program example or examples that address any of the kind of topics that we talked about here that they want to share with the community, we would love to hear from them. We want to champion their programs and the good work that the teams are doing within the BELA community, and some of the best ways that we can do that is by highlighting a program initiative at an event or doing a piece about it on the member hub. It could be a super-short interview accompanied by a program example, whether it's a communication, a training, or a presentation. We are always open to the community sharing with us what they are particularly proud of, so that we can then share that more widely and inspire others. We get excited about that. ■

ABOUT THE EXPERT

Sarah Neumann *is the Senior Director of BELA Engagement. Prior to joining Ethisphere, Sarah spent 10 years at Thomson Reuters, most recently in the areas of continuing legal education, learning management and professional development. For more information on BELA, email Sarah at sarah.neumann@ethisphere.com.*

TVA Lights the Way

How the Tennessee Valley Authority Draws Strength from Ethics and Compliance

by Bill Coffin

In August, the Tennessee Valley Authority—a self-funding corporate agency of the United States that provides electricity for nearly 10 million people across seven southeastern states—became the first federal agency to earn the Compliance Leader Verification recognition from Ethisphere, validating TVA's government-leading efforts to build a transparent organization with a best-in-class ethics and compliance program. TVA's CEO Jeff Lyash sat down with Ethisphere to discuss why TVA sought this recognition, how ethics and compliance are integral parts of TVA's identity, how TVA stands as "the original ESG company," and more.

JEFF LYASH

Congratulations on being the first federal agency in the United States to earn Ethisphere's Compliance Leader Verification. What prompted you to seek this recognition?

This whole area of ethics and compliance is so important to us. As a technical organization, we want to make sure that we have all the right benchmarking and all the right best practices, and benefit from the lessons of others. That's what really set us down the path with Ethisphere and Compliance Leader Verification.

For me, this is really about three things. One is in gaining the recognition, you are basically having to lay out your progress, look honestly at the effectiveness of your implementation, and have others gauge you on that. It's great feedback as to whether you're hitting the mark or not. You either get the recognition or you don't. If you don't, you understand the gaps. You go close the gaps, so you get the recognition next time. So, it is first about making sure we're doing all the right things and we don't have gaps.

The second is we're an organization that is free with critical and constructive feedback, but positive feedback helps move the effort forward too. Being able to say to the organization, "The effort you've been putting in, the focus on integrity that we've applied is producing results for the organization, and look, you're being recognized for it," furthers the effort. It strengthens the program.

The third reason is because we're public power and because we have this broad set of external stakeholders—local power companies, direct serve customers, environmental groups, local communities, state governments, the federal government—their confidence in our effectiveness, our integrity, and our ethics program is important. Their view of that and their trust puts us in a better position to execute on our mission. So externally, it sends the message to them that we think this is important. We're doing a good job and others agree with us.

As a federal agency, TVA is in a unique position with its stakeholders in relation to its historic mission of service. How does your ethics and compliance program inform the way in which TDA serves its customers and its stakeholders?

Integrity is one of the four core values that we've established. And what we've really been focused on here is: how do you operationalize that core value? Another of our core values is safety. We have decades of practice operationalizing what safety as a core value looks like in execution. We know exactly what that looks like. I think for most corporations, how you operationalize integrity is not quite where safety is. We work hard to get our employees to understand what ethics and compliance looks like in action, what the value of that is to the organization, and then to be able to build off that base to engage and positively influence customers and stakeholders along those same lines.

As an example, we serve 153 local power companies. A big part of the public power model is that at scale, TVA is as big as any power company in the U.S., but it maintains local control through a local power company that understands the needs of the communities. One of the issues you can have with 153 local power companies is 153 different approaches to the business. But as partners in public power, we really want some things to be the same, no matter where you're standing. Safety's one of them. Ethics and compliance are another. If TVA can demonstrate and operationalize that, it stands as an example for those 153 local power companies to think about their own operation and whether they're standing in the same place.

As a matter of fact, we have a public power leadership academy that we're just starting, and it had a cross-section of leaders from across those local power companies yesterday This issue of ethics and compliance was one of my topics to talk about with that class.

During the compliance leadership verification process, TVA was evaluated on six key areas: program resources and structure; perceptions of ethical culture; written standards; training and communications; risk assessment; monitoring and auditing; and enforcement, discipline, and incentives. In which of these areas has TVA advanced the most in over the last few years? And can you walk us through what that process looked like?

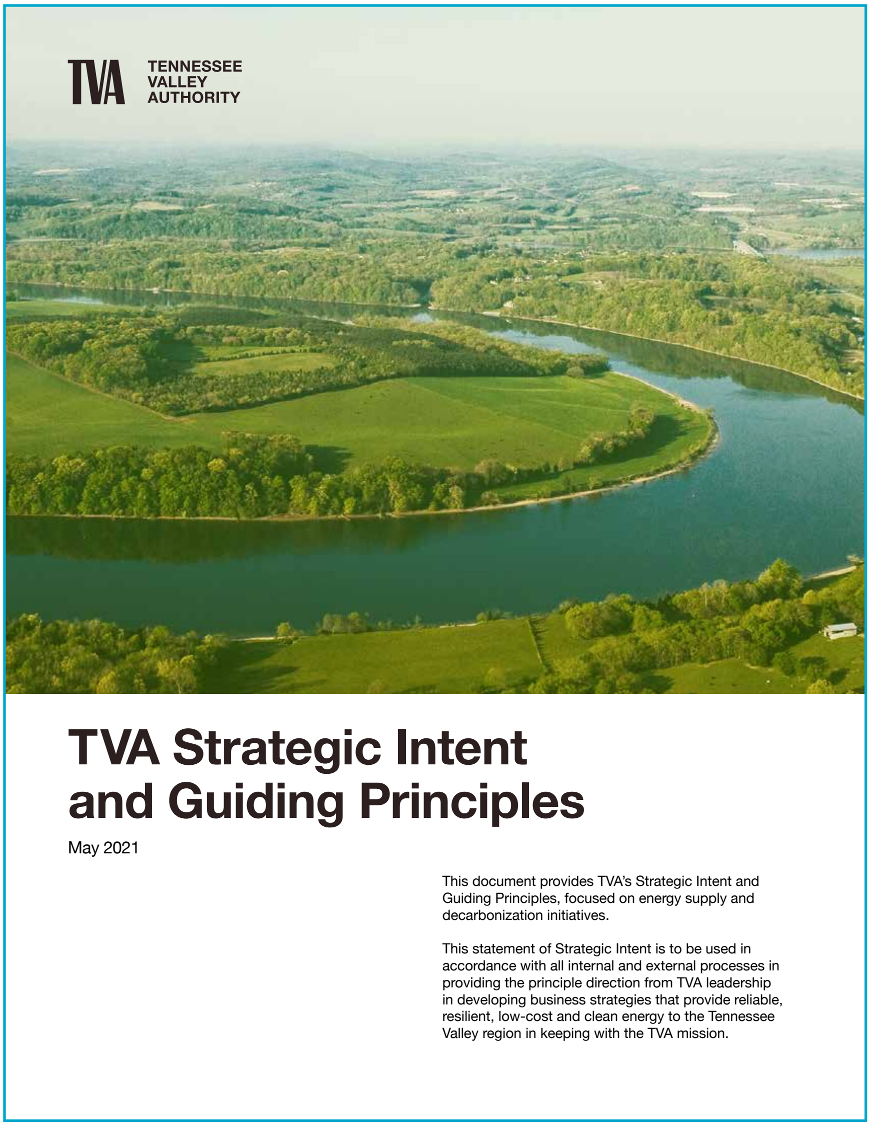
I think where we've made the most progress is taking a holistic approach to this. The elements that you cite individually are each very important, but the key for us is how all of those elements knit together in a holistic approach that is accepted and understood, from the board of directors through the executive management team, mid-level management, first line supervisor, individual contributor, and then outward in our reactions with our stakeholders. The thing I feel we've made the most progress in, as an organization, is moving each one of the component parts forward at the right pace and in the right sequence, to build that holistic framework.

You can see this in the organization. For example, we had the board of directors adopt a definitive benchmark code of conduct for themselves. Part of this was for the directors themselves to exercise as a group. So just developing that code of conduct and having the directors involved in those discussions and agreeing on that code of conduct, just the exercise is invaluable. Now the code of conduct exists, and it's at the forefront of every board meeting. The whole organization sees that. And that has a ripple.

Another example I'd cite would be that we've always had follow-up and investigation processes here in the organization when people raise concerns, whether that's a quality concern, a nuclear safety concern, or a conflict-of-interest concern. But we noticed we had about eight or nine of these things. They're all focused slightly differently, but they should all have the same fundamental approach to following up on a concern that's done. The topic may be different, but the approach shouldn't be. And we should be able to take the output of all that and use it to look at our organization holistically and say, "Is there a trend here? Is there a generic concern? Is there a culture issue? Is there an overarching thing that's driving this, because we see it in multiple processes?" So, we spent the time with a dedicated team to harmonize that whole investigation process and make sure we're mining it for all the right data and that it's sending the right signal.

With sustainability becoming such a prominent issue for the world's corporations, especially when it comes to environmental stewardship, what are your thoughts on environmental, social and governance (ESG), and the role it plays in guiding an organization's strategic behavior?

I'm going to try to say this with the most humility that I can as the TVA CEO: we are the original ESG company. TVA was founded 90 years ago to serve



TVA TENNESSEE VALLEY AUTHORITY

TVA Strategic Intent and Guiding Principles

May 2021

This document provides TVA's Strategic Intent and Guiding Principles, focused on energy supply and decarbonization initiatives.

This statement of Strategic Intent is to be used in accordance with all internal and external processes in providing the principle direction from TVA leadership in developing business strategies that provide reliable, resilient, low-cost and clean energy to the Tennessee Valley region in keeping with the TVA mission.

10 million people in the Tennessee Valley. No other reason. And our mission 90 years ago, was three things. The first was energy: affordable, reliable, and resilient, to support the lives of 10 million people. The second was the environment: harnessing the Tennessee River, stopping the annual destruction of people's homes by flooding, preventing malaria in the valley, reversing deforestation, and promoting sustainable farming. (TVA is one of the earlier developers of, and had most of the patents on, fertilizer.) The third was economic development: attracting and building jobs on a sustainable basis to raise people's standard of living. Energy, the environment, and economic development, and how those go together. That was our mission 90 years ago, and that's actually still the business we're in. Those are still the three missions.

So, the focus here on ESG is 90 years old for us. Now, that changes with the times, exactly what that means shifts with what the population and policymakers think, but this is our roots. As an example, you could take a look at our Strategic and Intent and Guiding Principles document that lays out how TVA pursues these three objectives. Or you could look at our sustainability report and how sustainability factors into that. I think the shift of corporate thinking toward ESG is a very comfortable shift for us.

A lot of corporations talk about giving back to their communities, but few can actually engage on this level. So how do you see TVA's role as a member of the larger community it serves?

TVA is unique in the utility industry in this role, in that those three parts of our mission I mentioned—energy, the environment, and economic development. When it comes to those last two, the environment and economic development, those aren't incidental to TVA's mission. Those are core to our mission, so they give us a little different focus. Most investor-owned utilities have economic development organizations. Their focus really is to attract [energy] load that's accretive to shareholder earnings. Our economic development focus is unrelated to TVA's performance. It's related to raising the standard of living of people in the valley. It's immaterial whether it brings profitable load to TVA. What's material is, does it bring durable capital investment that creates job opportunities for the population? From the outset, that gives us a little different focus.

I think in the last five years, we've recruited more than 350,000 jobs and more than $45 billion worth of capital investment to the valley, at a macro level. But the macro level's not enough. TVA needs to understand the regional and the local needs of communities and make sure that we're aligning our objectives and resources with those needs. Because every community is slightly different. Memphis is not Knoxville, right? Knoxville is not Huntsville. And then if I go rural, Huntsville is not Bessemer. It's not Paris, Tennessee. So, we formed this regional organization in order to put a team on the ground in each of these regions, which has matrix access to the full resources of the enterprise, but has local understanding and engagement, so you can match up the two. That way, you can take TVA's huge capability and link it to the local need. That's the point of the regional organization. And it links to ESG because it gives us the ability to make sure we're not leaving any community behind. We are addressing not just the needs of the many, but making sure that those who could be left behind are not, that they stay front of mind.

People's faith in the large social institutions around them continues to dwindle, yet they consistently look to business to lead with values. TVA straddles all of that as a corporation, but also as a government identity. How do you think organizations can help rebuild people's trust in things that are bigger than themselves?

I think this is one of the big problems of our era. As I think about what we can do about it, I consider it on two levels. First, there is a very personal thing to be done here. And that is, leaders of these organizations—that means me as the CEO and my executive team, right down through the organization—have got to take on a transparent, open, honest, straightforward posture on the opportunities we have and the problems we have to solve. It doesn't help to posture in a way that advantages your organization when you're trying to solve a societal or industry problem. You have to come at it as an individual leader and be very transparent and eager to engage.

Then, as a corporation, we have to do the same. And then as we get constructively involved, we have to lay out clearly what we're going to do and do it. For me, it comes down to something that simple. Do not shy away from the hard problems. Don't go to the talking points when you're trying to solve a problem, go to the solution. Don't be hesitant to commit to do the right thing, and then do it. And I think if people see that pattern in leaders and in companies, their faith is restored.

I can tell you, TVA is in a much different place today there than it was five years ago. Our local power companies and our elected officials have substantially higher confidence in TVA today than they did five years ago. And it is simply because we don't ignore the difficult problems. We don't sugarcoat them. We talk openly about them. We try to get through to constructive steps that we can take. We commit to them and then we deliver on them. And it doesn't always solve the whole problem, but we did what we said.

I'll give you an example of that. It is one of our controversial issues. A decade ago, TVA had a coal ash impoundment fail and inundate some areas around the facility with coal ash in an environmental issue of significant proportion. The company pretty quickly accepted responsibility for that and didn't just clean that spill up, but it put that facility in a better environmental position than it was in the day before the impoundment failure. But beyond that, we established what is now the industry standard for how to manage coal ash, and we are systematically doing it facility by facility, across our entire footprint. And, not without controversy. There are varying views. There are people who are consistently concerned, who express, "How do we know you're doing the right thing?" Maybe they don't think we're doing the right thing. Maybe they have concerns or questions. We don't shy away from that. We engage them. We listen to them. We act on their input if it's valid, but we keep doing what we said we'd do, and we're building public confidence in that.

This is still a journey. We're not where we'd like to be. The level of confidence in our ability to accomplish, is not where we'd like it to be, but it's better every day because of the approach we're taking.

What issues five or ten years down the line are you capturing your attention?

In the next 10 years, we're going to see a generational transition in the workforce. And at the same time, we're seeing a wave of technology that influences how we work, and it's accelerated by the recent COVID pandemic and the move to remote work and hybrid work. Pre COVID, we would've been having this conversation this face-to-face, I'll wager, and today, we're not. So, one of the areas I'm focused on is thinking through how you build culture, inclusion, safety and integrity—as you transition a generation of workforce and as you move to dramatically different ways to work—so that the progress we've made is not slowed, stopped or reversed, but accelerated? I don't think I have the answer to that question yet, but I think I have the question right.

For organizations out there that are considering seeking compliance leader verification themselves, what words of advice you can share with them?

Don't do it for the recognition or the headline. Do it because it helps you take the organization, the workforce and your stakeholders, to the place you want to go. I encourage people who are thinking about this to pursue it, but pursue it for all the right reasons. ■

ABOUT THE EXPERT

Jeff Lyash *is the president and CEO of the Tennessee Valley Authority and leads the nation's largest public utility and one of the top producers of electricity in its mission of serving the people of the Tennessee Valley. Under his vision and leadership, TVA has significantly lowered operating and maintenance costs, improving both productivity and efficiency. These savings are passed on to customers in terms of lower energy costs – 70 percent of the nation pays more for energy than those served by TVA. In 2019, he announced a 10-year financial plan proposing a decade of stable rates – making TVA and the Valley even more competitive. Prior to joining the TVA in 2019, Jeff served as president and CEO of Ontario Power Generation Inc., one of the largest electric generating companies in Canada with a diverse fleet of nuclear, hydroelectric, gas, biomass and renewable generating stations.*

Prognosis for Excellence

A Look Inside MetroHealth's New Code of Conduct

by Sarah Partington

MetroHealth is an integrated healthcare system founded in 1837 and owned by Cuyahoga County, Ohio. The system consists of four hospitals, four emergency departments and more than 20 health centers and 40 additional sites throughout Cuyahoga County, employing more than 600 doctors, 1,700 nurses, and 7,800 employees. **MetroHealth** plays an essential role in the region, caring for all patients, regardless of their ability to pay. Earlier this year, **MetroHealth** published its new Code of Conduct, which aims for new levels of engagement, interactivity, and clarity as it provides employees with a valuable reference for expected policies and standards.

A Code of Conduct can be a showcase piece that represents who you are as an organization – culture, values and mission – to the world. Of course, achieving this is no small feat.

Using technology and getting creative can transform dull standards into a more dynamic and engaging experience. In this article we will discuss how we've been able to make that happen over several years.

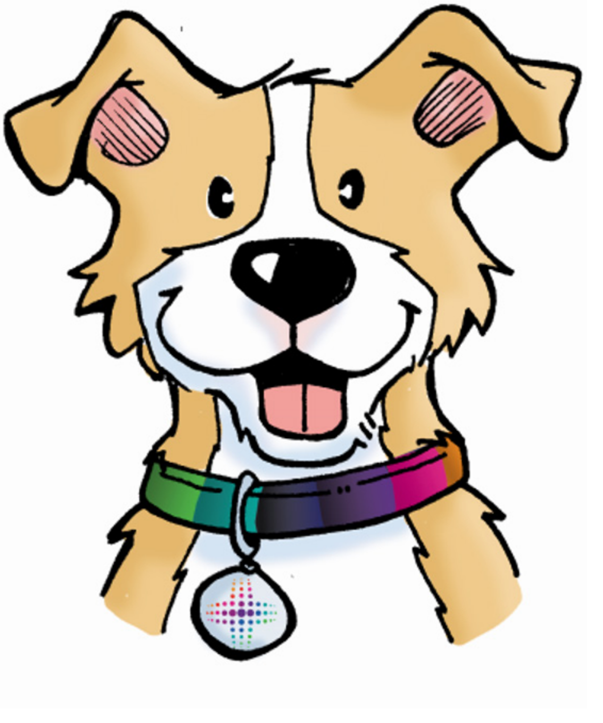
IDENTIFYING THE PURPOSE OF THE CODE

Any effective compliance program requires a comprehensive Code. The Code outlines an organization's principles, policies, and the ethical behavior expected of employees. Codes range in variety. Some list the rules in a policy style while others incorporate a more interactive approach by utilizing decision-making guides that apply concepts to real-life situations. Others use a resource document that provides a summary of the rules together with specific examples.

A Code can be more than a regurgitation of expected behaviors. It can convey an organization's culture and act as an engagement and recruitment tool. We wanted to develop a Code that employees would want to read and act as a reference tool that employees would go to first about policies and standards.

Four years ago, The MetroHealth System (MetroHealth) began to transform our Code. It had been an 8-page, single-spaced, policy-laden document. Wanting more than a list of rules, we researched Codes and found organizations that did more than list expectations. Best Buy and PepsiCo, for example, have Codes that convey ethical behaviors expected of employees while celebrating their values and culture.

With the assistance of these Codes, we envisioned a multi-purpose Code. One that would include decision-making guides and real-life scenarios, while simultaneously conveying an ethical culture that inspires our employees and illustrates to external stakeholders our dedication and commitment to doing the right thing.



DESIGNING THE CODE

Before we could move beyond our existing Code, we had to identify our options and map out a plan. We classified four generations of Codes:

- First-generation Codes: lots of words and rules; written by lawyers, for lawyers.
- Second-generation Codes: still wordy, but use of images and color to divide topics.
- Third-generation Codes: may be a pdf with active links, less words, more images, headlines.
- Fourth-generation: a web-based platform with additional enhancements such as videos, interactive components, interactive frequently asked questions (FAQs).

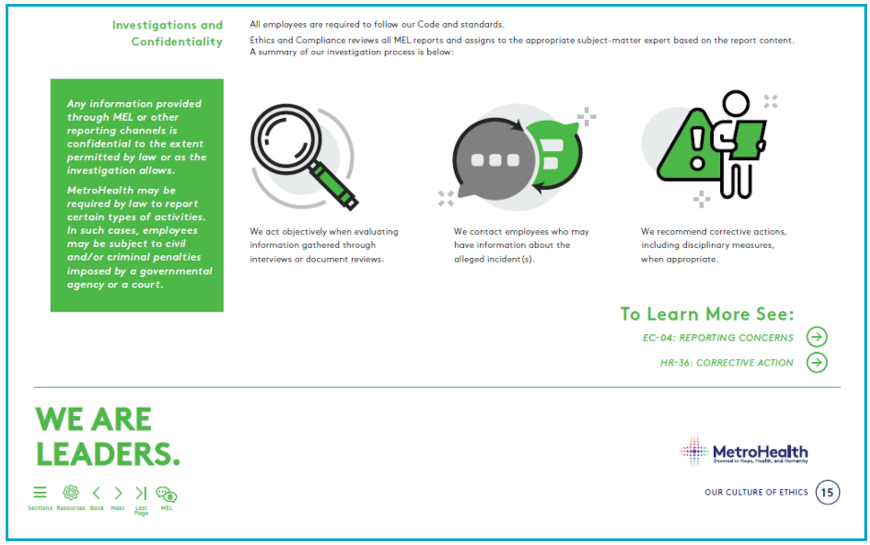
After exploring the options, we chose a two-phase transition that would culminate in a fourth-generation Code (interactive portal). The first phase involved transitioning to a third-generation Code (dynamic pdf). With the assistance of a third-party, we refreshed the Code and introduced the new dynamic pdf to all employees via live training. The 2018 Code consisted of a 64-page spiral bound booklet and a dynamic pdf available on our internal and external webpages.

The new design resulted in a longer Code, but the incorporation of images, icons, headlines, and key points provided the necessary content in a manner that resonated with employees .

In 2020, we initiated the second phase of the transition. The dynamic pdf version of the Code remains the backbone of our Code to this day, but there are limitations to a pdf. We partnered with a vendor to transition into an interactive experience for our employees via a dynamic, web-based platform. The platform included multiple enhancements including embedded videos, knowledge questions, interactive features, a chat bot, layered content, and pages for our Speak Up campaign, blogs and resources .

The interactive portal allowed employees to become active participants rather than passive readers. We utilized flip cards for defined terms and added interactive questions when discussing common scenarios. Additionally, we introduced Mellie – our ethics and compliance mascot and the face of our chatbot. Mellie never sleeps and always provides a friendly face to users who may need assistance navigating the portal.

Designing a Code that would resonate with employees meant designing delivery methods that would both attract and engage. By partnering with external vendors, we have produced two refreshed versions of the Code that 1) highlights the foundation of our ethics and compliance program, reflecting MetroHealth's values and



Investigations and Confidentiality

All employees are required to follow our Code and standards.

Ethics and Compliance reviews all MEL reports and assigns to the appropriate subject-matter expert based on the report content. A summary of our investigation process is below:

Any information provided through MEL or other reporting channels is confidential to the extent permitted by law or as the investigation allows.

MetroHealth may be required by law to report certain types of activities. In such cases, employees may be subject to civil and/or criminal penalties imposed by a governmental agency or a court.

We act objectively when evaluating information gathered through interviews or document reviews.

We contact employees who may have information about the alleged incident(s).

We recommend corrective actions, including disciplinary measures, when appropriate.

To Learn More See:

EC-04: REPORTING CONCERNS

HR-36: CORRECTIVE ACTION

WE ARE LEADERS.

Sections Resources Back Next Last Page MEL

MetroHealth

OUR CULTURE OF ETHICS 15

2) provides an interactive experience that delivered education and resources easily and effectively.

BUILDING THE CODE

Who we are as an organization has shifted. In this post-pandemic era, we have shifted our focus to be more than patient care. To that end, we've launched several campaigns—Equity First, More than Medicine series, and the introduction of a Chief Equity Officer in 2021.

In light of these changes, we shifted our emphasis in the Code to represent who we are. We opted to provide greater emphasis on employees. To celebrate the diversity of our employees we captured their images on the cover of our Code and throughout the document.

To capture images of current employees, we hosted a two-day photo shoot and walked throughout our organization to photograph our employees. By showcasing employees, we hope they will be excited to scroll through the Code in its entirety looking for familiar faces. We hope this generates enthusiasm and eagerness for the release of the final product.

In addition to introducing an employee-focused emphasis, we refreshed the tone and content. Transitioning away from legalese, we embraced a softer tone that would resonate with our employees. We wanted to ensure employees understand the main points of a topic. We did this by adjusting the tone, reducing the legal verbiage, and making content succinct. Revising the content to be less legal can be a delicate undertaking, but we conferred with subject matter experts (SMEs) to ensure that we did not lose the meaning.

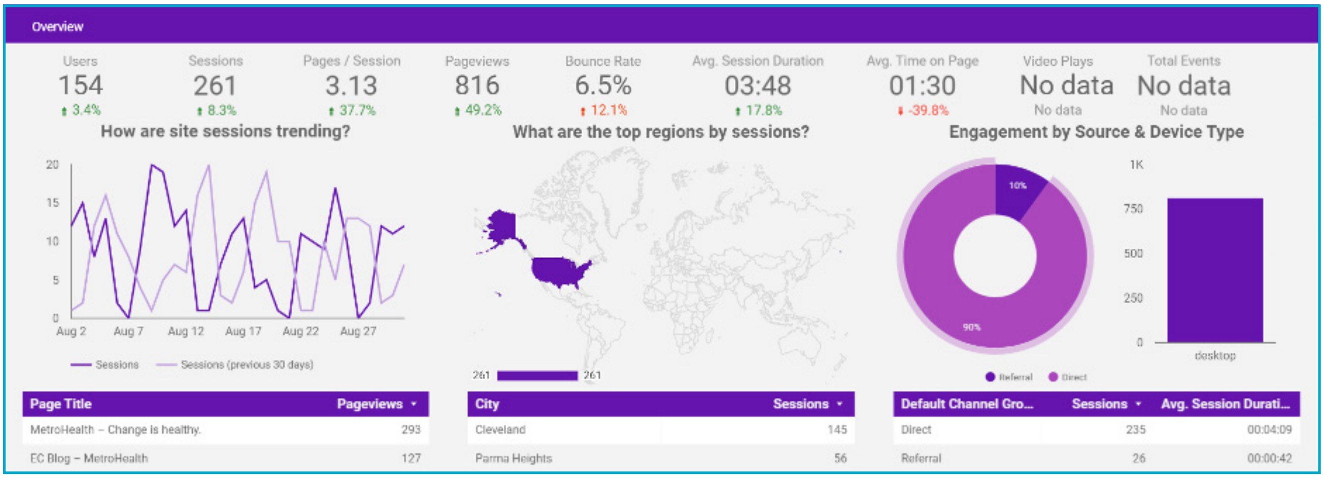
Additionally, we maintained a consistent reading level, shortened sentences, and delivered short and simple content. The new content was more relatable and included videos, charts, and interactive questions to make the content easier to comprehend. For instance, we used a set of three icons to illustrate our three-page policy on compliance investigations. On the interactive portal, our friendly chatbot, Mellie, assists users with locating topics or contacting ethics and compliance. Recently, Mellie has expanded her duties and appears in our communications and training materials. This change allows employees to grasp concepts in the Code without be put off by the legal words and lengthy sentences.

Even though this is a public-facing document, these are standards of expectations for our employees. Our goal is to provide employees with a document that they want to read and reference while making them proud to say they work at MetroHealth.

REVISING THE CODE TAKES A VILLAGE

A major refresh of the Code requires input and involvement from major stakeholders throughout the organization. Ethics and Compliance led the project with collaboration from parties, both internal and external, including:

- Leadership: key to the success of our Code, as they set the tone for the MetroHealth; and we wanted



to ensure that the Code captured MetroHealth's values and beliefs.

- External organizations: a valuable source for ideas and objective assessments. In 2021, Ethisphere assessed our Code (both the dynamic pdf and the interactive portal) and provided feedback that was incorporated into the recent refresh.
- Marketing: a vital role to any Code refresh including providing assistance with colors, fonts, photo selection, and the layout of the Code. Recently, MetroHealth launched new branding, which included a plethora of marketing tools. Marketing was invaluable to the re-designing of the Code.
- SMEs: provide any changes to their content, and any additional features that they would like to showcase such as videos, interactive FAQs, etc.

Through our revisions, we have developed a system to identify who needed to be involved, when, and in what capacity. An inclusive approach ensured that the content was accurate and in line with organizational messaging.

MAINTAINING THE CODE

The transition to an interactive portal allows for self-directed/self-managed updates. By eliminating paper and moving to a digital Code, we can easily revise the content and update the images, including refreshing the images as new faces join the organization. The ability to easily update the Code requires an active communication plan to share new content and resources with employees. Many of our employees do not have regular computer access so we developed a multi-tier approach to ensure that they were aware of the changes.

Selecting content to revise or highlight can be difficult with a printed Code, as there is no way to know if employees look at the Code or what content they've reviewed. Our interactive portal includes a dashboard with tracking of, and analytics on, the content accessed. The reporting features provide us with how many unique users access the Code, the content they view and for how long. This data enables us to plan for future content as well as deliver targeted communications/training.

Maintenance includes assessing the effectiveness of our Code. We utilize two modalities to assess the Code: the interactive portal dashboard and external assessments. The dashboard provides analytics that permit us to target usage data for a specific time period. This permits us to measure the effectiveness of communications and trainings that discuss or highlight the Code. Additionally, we engage outside parties to provide an independent assessment. In 2021, Ethisphere provided an independent assessment of our Code. The assessment evaluated the effectiveness of the content, delivery, structure, and appearance. Overall, the assessment was positive and provided opportunities for improvement which we incorporated into our 2022 revisions.

CONCLUSION

Beginning in 2018, we set out to create an award-winning, memorable document that represents who we are. Over the last four years, we have dedicated time and resources to realizing that goal. We transitioned our Code from a single space policy to a digital experience that engages employees. It tells the MetroHealth story, it tells everyone who we are.

ABOUT THE AUTHOR

Sarah Partington, *JD is Senior Compliance Officer/Director, Compliance Operations, for MetroHealth. In this role, she is responsible for overseeing key enterprise-wide ethics and compliance program functions including: policy management; hotline operations, training activities and the conflict of interest disclosure process.*

PHOTO CREDIT: NORTHROP GRUMMAN

Delivering the Promise of Responsible Artificial Intelligence

by Carl Hahn, Dr. Amanda Muller, Dr. Jordan Gosselin, and Jonathan Dyer

Artificial intelligence is a transformative technology that is widely recognized but poorly understood. As such, AI suffers from an image and reputation problem, especially among the public and regulators who are understandably concerned by a powerful technology they do not understand. At American aerospace, defense and security company Northrop Grumman, efforts are underway to better explain AI to the world, and more importantly, to outline how AI might be used responsibly.

AI is pivotal technology. It is already ubiquitous in our everyday lives, from streaming services to navigation apps, and robotic vacuums to secure banking.

But AI is also playing a larger and larger role in national defense, such as way-finding for unmanned vehicles, enhanced target recognition, and many other applications that cam benefit from speed, scale, and efficiency. Some functions are simply not possible using traditional computation or manual processes, but AI provides the necessary cognitive and computing power to make them a reality.

The real genius of AI is its ability to learn and adapt to changing situations. The battlefield is a dynamic environment and the side that adapts fastest typically gains the advantage. But like with any system, AI is vulnerable to attack and failure.

WHAT IS RESPONSIBLE AI?

AI has an image and reputation problem. The media frequently produce stories of AI gone rogue, bias in algorithms, or the dystopian specter of unaccountable killer robots. The lack of understanding about what AI can do, doesn't do, or shouldn't do has simply increased the confusion amongst the public and policymakers. This confusion will impede the innovation and progress needed to fully capture the potentially transformative benefits of AI unless urgent action is taken to build confidence and trust in AI solutions.

Fortunately, such action is well underway. Governments, think tanks, industry associations and many leading technology and other companies have publicly announced their commitment to the development and implementation of responsible, trustworthy artificial intelligence. The US government, particularly the Department of Defense (DoD), has been at the forefront of these efforts and in February 2020 the DoD formally adopted five principles which require AI to be (1) Responsible; (2) Equitable; (3) Traceable; (4) Reliable; and (5) Governable **[A]**. The US Intelligence Community released similar principles in July 2020, which further emphasized the importance of respecting not only human dignity, rights, and freedoms, but also protecting privacy, civil rights, and civil liberties **[B]**.

In June 2022, the DoD issued its Responsible Artificial Intelligence Strategy and Implementation Pathway which is required reading for companies in the Defense sector because it points the way for embedding Responsible AI into the all-important acquisition and delivery of technology and solutions **[C]**. As stated in the Pathway document, "[i]t is imperative that the DoD adopts responsible behavior, processes, and objectives and implements them in a manner that reflects the Department's commitment to its AI Ethical Principles. Failure to adopt AI responsibly puts our warfighters, the public, and our partnerships at risk."

Leading industry organizations such as the Business Roundtable have announced their own AI ethics principles along with their priorities for AI policy and the United States is not alone. The European Union (EU) AI Act is moving through the legislative process and positions taken by other governments such as the UK's plan to deliver "ambitious, safe, responsible" AI in support of defense **[D]**. The Atlantic Council has done important work in this area as well, recently publishing its *Principles to Practice: Using Ethical Spectrums to Guide Decision-Making* **[E]**.

TURNING PRINCIPLES AND ADJECTIVES INTO ACTION

The common theme of these (and many other) sets of principles and frameworks is that developers of AI need to exercise discipline in their coding process so document and can explain what they've done, how they've done it, and the intent behind the solution design. This includes how data is used, the sources of that data, the limitations or any error rate associated with the data, and how data evolution and drift will be monitored and tested. From greater transparency will flow increased understanding and acceptance of the solution, and with that, heightened trust amongst users, policymakers, and ultimately the public.

Northrop Grumman is taking a system engineering approach to AI development and is a conduit for pulling in cutting-edge university research, commercial best practices, and government expertise and oversight. We have partnered with Credo AI, a leading Responsible AI Governance platform, to help Northrop Grumman create AI in accordance with the highest ethical standards. With Credo AI's governance tools, we are using comprehensive and contextual AI policies to guide Responsible AI development, deployment, and use. We are also working with top universities to develop new, secure and ethical AI and data governance best practices, and technology companies to leverage commercial best practices.

The company is also extending its DevSecOps process to automate and document best practices in the development, testing, deployment, and monitoring of AI software systems. These practices enable effective and agile governance as well as real-time management of AI-related risks and opportunities. Critical to success is Northrop Grumman's AI workforce – because knowing how to develop AI technology is just one piece of the complex mosaic. Our AI engineers must also understand the mission implications of the technology they develop to ensure operational effectiveness of AI systems in its intended mission space. That is why we are investing in a mission-focused AI workforce through formal training, mentoring, and apprenticeship programs.

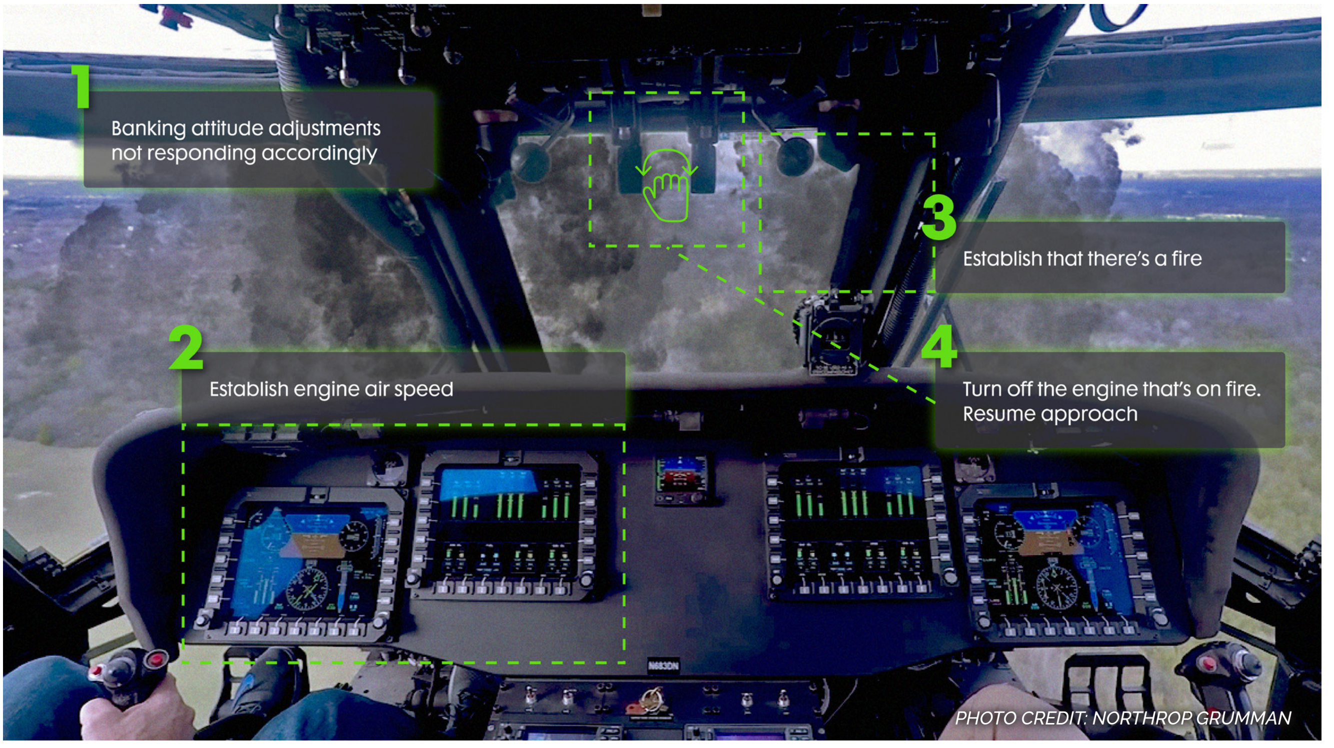
Our use of Responsible AI principles and processes is not limited to our customer-facing endeavors. Northrop Grumman is also leveraging the power of AI for internal operations. Applications include AI chatbots for employee IT services, predictive modeling for software code review, natural language understanding for compliance risk, and numerous others. By embedding Responsible AI into internal information infrastructure, our timely and effective business operations and develop capabilities can be further leveraged for our customers' benefit.

TACKLING THE DATA SET CHALLENGE

A key component of any AI-enabled system is the data used to train and operate it. Critical to the success of responsible AI-enabled systems is limiting data bias. Datasets are a representation of the real world, and like any representation, an individual dataset can't represent the world exactly as it is. So, every dataset is both susceptible and prone to bias. High profile cases of bias have been demonstrated in commercial cases ranging from a chatbot making inflammatory and offensive tweets to more serious cases such as prejudice in models built for criminal sentencing. If ignored, data bias can have serious implications in the national security space. Understanding the nature of the bias and the risk associated with that bias is key to providing equitable technology solutions. By working to recognize potential sources of bias, and testing for bias, we actively working to mitigate bias in our data sets and AI systems.

As an additional complication, the events of interest in a dynamic battlefield environment are likely to be rare events as the adversary purposefully works to obscure their actions and surprise the United States and its allies. So, it may be necessary to complement data collections with augmented, simulated, and synthetic data to provide sufficient coverage of a domain. Adversaries may also seek to fill datasets with misinformation to spoof or subvert AI capabilities. To develop AI responsibly in the face of these challenges, it is critical to maintain records of data provenance, data lineage, and the impact of changing data sets on AI model performance.

Northrop Grumman established a Chief Data Office (CDO) to unify its customer-facing data management efforts and to address these challenges for its internal operations. The CDO sets and executes an enterprise data strategy and maintains a corporate data architecture to enable data-driven decision-making. Key tenets of the data strategy include securing and protecting the data, ensuring the



Northrop Grumman's prototype AI assistant will help rotary pilots perform expected and unexpected tasks such as augmenting the crew's response to an engine fire in this example.

usefulness and quality of the data, and accountable data access to information systems and stakeholders. This deliberate and comprehensive focus on data quality and access is a key enabling function to the responsible development of AI systems, both for internal operations and for customer-focused development.

CONCLUSION

AI enables revolutionary changes in the way national security operations are conducted. With the incredible power this technology enables, it is incumbent upon its developers and operators to be responsible and transparent in its design and use. Northrop Grumman and its industry partners are committed to the responsible development and use of AI and continuing to contribute to research and development regarding public policy and ethical use guidelines for AI in national security applications. Transparency, equitability, reliability, and governance are, and should continue to be, requirements for the responsible use of AI-enabled systems.

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ABOUT THE AUTHOR

Carl Hahn *is VP & Chief Compliance Officer for Northrop Grumman, a global aerospace, defense, and security company headquartered in Falls Church, VA. The majority of Northrop Grumman's business is with the U.S. government, principally the Department of Defense and the intelligence community. In addition, the company delivers solutions to global and commercial customers.*

Dr. Amanda Muller *is Chief, Responsible Technology for Northrop Grumman.*

Dr. Jordan Gosselin *is AI Campaign Chief Engineer & Technical Fellow for Northrop Grumman.*

Jonathan Dyer *is Principal AI Engineer Systems Architect for Northrop Grumman.*

Why the Metrics of Corporate Success Aren’t What You Think They Are

by Paul Hunter

Sustainability has become a major watchword in the world of ethics and compliance. But as ESG broadly comes under fire for vague definitions and goals, measuring sustainability impact will become the key to making sure that claims of corporate progress stick.

Financial achievement has long stood at the heart of corporate success. The last decade or so, however, have seen a gradual shift in priorities and drastically changing public perceptions, with people on the street becoming increasingly knowledgeable about the social and environmental impacts of industry. Businesses today are facing the heat that comes from being under an ethical and sustainable spotlight, and this trend is only going to become more pronounced in the coming years. Those who don’t get to grips with the new paradigm are going to be facing an uphill challenge.

Corporations want to know what will attract investors and talent; previously, a booming balance sheet and expansion were enough. Today, organizations must rethink long-held beliefs over the definition of success. Greater awareness of the climate crisis, coupled with growing social consciousness, means that responsibility has become a key watchword, covering everything from the environment and philanthropy to diversity-in-hiring and fair business practices.

> *"The old, surface-level metrics of the past just aren't going to cut it for businesses in the future. There are a wealth of sustainability metrics to focus on – and businesses will have to adopt as many as they can."*

Being ethically responsible means ensuring a business engages in fair business practices across the board. This means taking a deeper dive into the socio-environmental costs of doing business; which in turn means new measurement tools. The old, surface-level metrics of the past just aren't going to cut it for businesses in the future. There are a wealth of sustainability metrics to focus on–and businesses will have to adopt as many as they can.

FROM CSR TO DE&I

While measuring external impacts is important, a company's Corporate Social Responsibility (CSR) must begin at home. Increasingly, observers want to see organizations expanding their Internal CSR initiatives, and that means you need to be showing how effective they are as well.

To measure the impact of employee-focused CSR, track internal support structures, such as volunteer days and charity partnerships. Measure your organization's economic responsibility, which entails making financial decisions that prioritize doing good, not just making more money. It also means measuring jobs added, local hiring practices, and promotion structures.

This is particularly relevant when cross-referenced against Diversity, Equity, and Inclusion metrics. It might seem that measurement is straightforward when it comes to DE&I – how many women or people of color are you hiring and promoting? But responsible businesses are digging deeper – tracking those figures by seniority and by department, and analyzing pay gaps and pay ratios for women and minority employees. They're also ensuring supplier diversity and expanding measurement to members of their supply chain. Employee satisfaction is another key metric when broken down on diversity lines, to ensure equity in the employee experience.

For example, measuring the percentage of employees who feel that they can be their full selves at work can illuminate gaps in the experience that may be fueled by systemic or cultural biases present. To illustrate, if your data indicates that white males are more comfortable being themselves at work compared to black females, then one could draw the conclusion that resources should be dedicated to creating a more accepting environment for women of color. And this is against the contextual backdrop that employees are increasingly finding it more important to be able to bring their full selves to work (especially younger members of the workforce).

Measuring equity can be nebulous, so analyze where capital is applied to create equal outcomes. For example, accelerator programs hire people out of college and provide robust, paid training in order to lower the educational/training barriers to entry for professional sectors that have historically been disproportionately difficult for minorities to enter (e.g., technology). Again, pay equity is essential to measure, as is the provision of benefits to under-represented groups – for example, a transitioning policy for transgender employees. Investing in diversity, equity, and inclusion of teams is another metric companies will have to measure to monitor success. It is also vital that companies periodically re-evaluate their equity practices. Policies that seem on target today may not be tomorrow. Situations change.

GOING GREEN? GO FURTHER.

When it comes to Environmental responsibility, it's important to remember that it's not just about being green.

Environmental responsibility means reporting on energy consumption and reduction, units of output vs. input, and the extent to which renewable sources comprise part of the company's energy mix. It's relatively easy to measure Scope 1 and 2 emissions as they're about tracking corporate assets, but Scope 3 reporting means tracking everything the company touches indirectly as well. In addition to tracking Greenhouse Gas Emissions, there's your energy consumption mix, water consumption/pollution and intensity, land use, and waste disposal (just to name a few).

Importantly, this is not just about putting your own house in order. Just as they must with DE&I, companies will have to measure the extent to which their partners up and down the value chain are meeting these criteria as well. Consider auditing your existing partners, see where they are falling down or doing well, and make decisions accordingly. If you want to go even further, devote resources to greening up your value chain through contractual pressure, periodic audits, or incentive structures that encourage members of your supply chain to reduce their impact.

Often used as a barometer for "good CSR," Philanthropic Responsibility must be not just about measuring dollars donated, but rather how they're split by cause and geography to see if there is community-focused activity in the local area. What level of transparency is there over the company's political contributions? To what extent are shareholders engaged and do they have a say in ESG practices? All these metrics need to be tracked. Organizations will also need to measure employee donations and how they're being matched, as well as the time involved as well as the money.

Sustainability is often seen as a form of risk mitigation, both physical and reputational. Investors appreciate businesses that are aware of this and act—and invest—accordingly. The goal is to, whenever possible, use investment dollars to make and promote positive societal impact, corporate responsibility, and long-term financial return.

Sustainable investing also doesn't necessarily mean that businesses forfeit financial returns. While it's impossible to guarantee returns, ESG funds and investments can perform just as well, or better, as non-ESG funds. Barron's reports that seven of the 10 largest ETFs with a focus on ESG factors beat the S&P 500 index in 2021. Tracking and measuring both an organization's own ESG investments, as well as other ESG funds and investments, can help keep your finger on the sustainability pulse.

EVOLVING PREFERENCES

U.S. consumers are becoming increasingly conscious of the sustainability cost of industry. Research by Nielsen found that 48 percent would change their consumption habits to lessen their impact on the environment. This translates to billions of dollars in sales of sustainable, fast-moving consumer goods. In addition to tracking evolving U.S. consumer preferences, it's essential that companies also measure how corporate practices are shifting to match.

Certifications like B Corp are already driving the right corporate behaviors. Kin + Carta, as a certified B Corp consulting firm, has adopted a number of measurable methodologies to reduce risk. These include KPIs for the level of revenue from 'positive impact work' that benefits the world around us, and a strict risk review process that can even mean disqualifying some clients if their business is perceived as a reputational risk to the firm or a risk to the world at large. The highest measurable standards of social and environmental performance have to be matched with transparency and accountability.

At the same time, rigid structures are failing. Climate change and forms of social injustice make the call for agility and adaptation even more pressing than before. Our lives, planet and communities depend on it. Measurement has become a key tool in ensuring businesses are able not just to be responsible, but to demonstrate that responsibility to the outside world, whether talent or investors. Those metrics have become as much a measurement of success as the bottom line—and it's likely that they will become even more important as global and governmental priorities continue to shift. ■

ABOUT THE AUTHOR

Paul Hunter *is Global Sustainability Manager at global digital innovation firm Kin + Carta.*

Compliance Data Analytics: What does the DOJ Expect?

An interview with Hui Chen, Compliance Counsel Expert at the U.S. Department of Justice (2015-2017)

In this interview, conducted by Lextegrity, former Department of Justice Compliance Counsel Expert and renowned ethics and compliance expert, speaker, and consultant Hui Chen shares her wealth of experience and insights on how compliance data analytics should be used to meet the Department of Justice's expectations.

(Editor's Note: Within this interview, Hui is speaking on behalf of herself, and not on behalf of any current or past employer.)

As an overview, can you discuss what the Department of Justice expects when evaluating a company's compliance program?

The Department of Justice asks three key questions when evaluating corporate compliance programs. First, the department wants to know if a company's compliance program is well designed. Second, the department considers whether the program is adequately resourced and capable of functioning effectively. Third, the department questions whether a company's compliance program is working in practice. There's no single solution for companies seeking to meet these expectations, but integrating data analytics into your compliance program is a good place to start. Prosecutors want to see evidence to back up claims, and data—rather than presumptions and opinions—offer the most objective and verifiable evidence.

What are your general observations on where most compliance organizations are today with respect to understanding their company's data?

Although there is growing interest in using data, most compliance departments have remained at the very rudimentary level in terms of data analytics. Most importantly, most compliance departments are not in the habit of monitoring their company's business data, such as their enterprise financial data, for compliance risks. I recall a discussion I had with a Fortune 100 high-tech client whose compliance officer insisted that her company didn't have data on the marketing money being spent on distributors and data about the revenue those distributors were bringing in. The fact that she believed that was astonishing to me: these are basic kinds of data that every company needs to run its business. Understanding business data is the first step in understanding business, and understanding business is a fundamental necessity in order to be effective in driving compliance.

When people hear the word "data," they often assume you're talking about numbers. But what does data analytics mean to you?

Data simply means information, and data analytics is about making sense of information: It's about trends, patterns, and outliers. For example, compliance organizations often rely on basic data like the number of investigations that are open or substantiated and the distribution of those cases in each country. Just looking at such raw numbers doesn't tell you very much. For example, you wouldn't immediately know whether having a low number of open or substantiated cases is good or bad because the number itself doesn't tell you that. A low number of open or substantiated cases might be due to people being scared to report matters or poor investigative capacities.

You have to put that data in context with other risk data, such as results from monitoring and auditing transactions in that same market. So, if you are finding a lot of non-compliance in your monitoring efforts in that same country, then you know your investigation numbers are not a reliable barometer of reporting. Even if you have substantiated investigations, more widespread monitoring and testing of transactions might even show you that your problems are more serious or widespread than the issues uncovered in those matters, or that your investigations have not been sufficiently thorough.

With all of this in mind, does the Department of Justice actively expect companies to use data analytics in their compliance programs?

Absolutely. Regulators and law enforcement have seen compliance programs with data analytics like the ones I mentioned above and have gone to academic conferences to see the latest research on compliance data analytics. They're also doing data analytics themselves. The fundamental question that I have advised prosecutors to think about when evaluating a company's compliance program is whether the compliance program is using data analytics like the rest of the company. I can hardly think of any major companies that don't use data analytics in some way. If a company is using data analytics to make money, such as tracking and predicting customer behaviors, but isn't using data analytics to prevent wrongdoing, that seems like a deliberate choice to blindfold compliance. Companies can't say that they don't know how to use data analytics because it's already being used in departments other than compliance.

"If a company is using data analytics to make money, such as tracking and predicting customer behaviors, but isn't using data analytics to prevent wrongdoing, that seems like a deliberate choice to blindfold compliance."

How does the department know if a corporation's compliance program is well designed?

The department has singled out risk management processes and risk-tailored resource allocation, among other factors, as key things to consider when evaluating a compliance program. When judging a program's risk management process, prosecutors are considering what information and metrics—in other words, data—companies are using to help detect forms of misconduct. As mentioned, basic top 20 lists and other raw data points are insufficient tools to actively detect misconduct. However, data analytics using multiple data sets can provide genuinely impactful insights that can uncover patterns and trends that might have otherwise gone unnoticed.

As for risk-tailored resource allocation, one indicator is when a company devotes a disproportionate amount of time to monitoring low-risk areas instead of high-risk areas. For example, many compliance departments love to focus on travel and entertainment expenses which average maybe $100 per transaction, while they fail to pay attention to third party payments that are tens of thousands per transaction. Another example is a client who told me that 80 percent of their third-parties are designated as high-risk through their due diligence process, which causes that designation to lose all meaning. They got to this point because the company's different departments were risk rating third-parties differently in their manual and subjective diligence process. This could've been avoided if the company relied more heavily on objective data from their financial systems, rather than solely the subjective data from their due diligence processes, to ensure it was monitoring the targeted third parties for different types of risks.

Does the Department of Justice emphasize the importance of effective third-party management when evaluating a company's compliance program?

We need to remember that the Department of Justice evaluates compliance program in the specific context of their prosecutions. Given the frequency with which third parties have played a role in corporate criminal activities, that is one area that constantly comes under scrutiny. Traditionally, companies emphasize due diligence in managing third-party risks. Due diligence, however, is only the first step in that risk management. The risk doesn't just come from who they were when they were onboarded: they come from what the third parties do with your company on a continuing basis. An adequate compliance program needs to follow robust onboarding processes with active ongoing transaction monitoring.

How important is it to the Department of Justice for companies' compliance programs to be based on objective, data-driven information, rather than subjective decision-making?

It's extremely important. The Department of Justice is a prosecuting agency, and prosecutors want evidence. As I mentioned, a major limitation of traditional third-party risk management is that it relies on subjective decisions about what is high-risk or not. People think, "Well, for this type of risk we think that marketing vendors must be high risk, so let's categorize all marketing vendors as high risk." What is the evidence that all marketing vendors present the same level of risk? Broad categorizations based on nothing other than people's gut feelings is not a responsible way of conducting compliance.

On the other hand, data can provide a compliance team with objective evidence and assessments about their company's risks, including third-party risks. This shows prosecutors that your company is committed to evidence-based risk detection and proactively detecting wrongdoing, which is what prosecutors are used to.

As for the Department of Justice's second expectation, how do prosecutors determine if a compliance program is adequately resourced and empowered to function effectively?

The Department of Justice has specifically cited data resources—and access to that data - as a key component of this question. Prosecutors expect companies to use data to demonstrate that compliance resourcing is proportionate to the risks presented by the company's business profile. This means the evidence about resourcing and effectiveness must be built on data relating to the company's business model and operations.

Data analytics is about putting the pieces of the puzzle together. It's the big picture, not the raw data. All of the interesting data, when it comes to compliance, comes from the business data, aside from investigations data. The team that puts it together and tells a story that impacts business decisions will be valued in the company. If I were a compliance person, I'd want to be the one to paint this narrative and inform the business about what issues the company should prioritize from a risk mitigation perspective. That data is sitting in companies' financial systems and business systems. It's already there.

Though the Department of Justice expects companies to leverage their data in their compliance programs, companies remain hesitant about investing in compliance data analytics. How would you convince companies to take the plunge?

Using data in compliance isn't just about satisfying the prosecutors if and when you get in trouble. It is about compliance demonstrating value to the rest of the company every single day. Yes, using data analytics is in line with Department of Justice expectations and can help companies avoid expensive and reputation-damaging legal cases. More importantly, compliance teams that make use of business data can uncover everything from fraud to waste and inefficiencies in the company's use of resources. When compliance data analytics identifies issues such as duplicate vendors or invoices or paying vendors too quickly, compliance can literally quantify its contribution to the company's bottom line.

Once compliance data analytics are implemented, functions beyond Compliance across the enterprise can benefit. Internal Audit teams can reorganize their efforts to focus less on labor and cost-intensive periodic sample-based audits, where they fly a team of auditors across the world for two weeks to review a small sample of transactions, to leverage more comprehensive data analytics and doing deeper forensic reviews and third-party audits based on the findings of the data analytics. The Investigations team can access real-time data—risk-scored transactions for vendors and employees—without having to reach out to IT and Finance, and can then scope and resolve their investigations far more quickly and satisfy the ever-present demands of the business leadership for faster close-out of investigations.

The Finance and Procurement organization can use the same data analytics to review existing and new third-party engagements and rationalize the vendor base to reduce risk for the organization. And finally, business leadership can have real data that shows them their spend and their risk and can feel more empowered to decide whether the money they are spending is justified by the risk posed. Compliance teams often talk about shifting accountability for compliance to the business—for them to "own their compliance." What better way to do that than to give the business the tools to do just that—actual risk data for their teams' financial transactions. ■

ABOUT THE EXPERT

Hui Chen *served as the first-ever Compliance Counsel Expert at the U.S. Department of Justice, where she was the exclusive consultant to federal prosecutors in the Fraud Section on evaluating corporate ethics & compliance programs. She is the author of the Fraud Section's "Evaluation of Corporate Compliance" – predecessor to the Criminal Division's Guidance on the same, which has served as an essential resource for compliance practitioners around the world. Prior to being retained by the Department of Justice, Hui served as a senior compliance leader in technology (Microsoft), biopharmaceuticals (Pfizer), and financial services (Standard Chartered Bank). Hui is also a contributing author to the recent Cambridge University Press book on Measuring Compliance, where she specifically addresses how legal and regulatory regimes measure compliance effectiveness.*

This interview has been abridged for space considerations. To read the full version, please visit https://www.lextegrity.com/doj-expectations-compliance-data-analytics.

Data Privacy Predictions and Protections

Q&A with Miriam Wugmeister

Interview by Bill Coffin

The law around data privacy is entering extremely interesting territory, thanks to recent Supreme Court decisions, ongoing cybersecurity trends, and more. Increasingly, ethics and compliance professionals find themselves having to navigate these issues in ways they never expected. Data privacy expert **Miriam Wugmeister** of Morrison Foerster discusses what she sees coming, and how to prepare for it.

MIRIAM WUGMEISTER

October is Cybersecurity Awareness Month, and data privacy is a huge element of this. From your perspective, what is the most notable challenge or opportunity you are counseling clients to take action on when it comes to data privacy readiness as we head into 2023?

From a privacy perspective—by that I mean what personal information you collect, the purposes for which you use it, and how you share it—the major opportunity for organizations is to think globally. We have 150 countries that have privacy laws of some kind. In the U.S., we have five states with omnibus privacy laws and we're going to have more, as well as Federal laws, so it's really easy to lose the forest for the trees.

The good news is that just as about every single privacy law is based on the same core set of privacy principles: notice, choice, access and correction, supervision of service providers, data security. The way organizations often find a way to deal with this is to base a privacy compliance program on those core privacy principles. Focus on the forest, not the trees.

From a cyber security perspective, that's a little bit different. The bad guys are only getting more active. The amount of money to be made, particularly by cybercriminals, is continuing to increase. So there, the opportunity organizations is to make it harder for the bad guys to get into your system. You know the phrase, an ounce of prevention is worth a pound of cure? In cyber, an ounce of prevention is worth many pounds of cure. If you can make yourself an unattractive target—multi-factor authentication, good firewalls, good monitoring, none-easily guesses passwords—that's the opportunity. It's prevention.

As the business world settles into remote work as a permanent or semi-permanent condition, what data privacy issues do you see that companies have yet to really adapt to?

I think the issue that companies are still grappling with is how much monitoring of employees makes sense, and how much do employees want?

On the one hand, organizations need to monitor certain activities to make sure that the information that's entrusted to them is protected. You need to know, for example, if Miriam logged in at 8:00 am from Connecticut, and then also logged in at 8:02 am from China. That's an impossible login. You need a certain amount of monitoring that has to happen in order to keep the system secure. But do you need to capture every keystroke I make just because I'm working at home? Do you need to tell me that I have to have my camera on so that you can make sure that I'm actually at my desk and working all the time? I think a lot of organizations are still struggling to find out what that right balance is.

Over-monitoring will make people not want to work for an organization. Employee trust is really important to the culture for many organizations. Obviously, the more sensitive the information you have, the more complicated it is, and there's a whole concept of insider threat and monitoring the monitors.

I think a good test is if you're trying to decide what monitoring to do on, let's say, a line worker, ask how your C-suite would respond if you applied it to them. How would our CEO feel about having this applied to her. How would our CISO feel this being applied to everybody on their team? If your C-suite says that it feels invasive to them, maybe that's how the line workers feel too.

The New York Department of Financial Services recently released new draft amendments to its controversial cybersecurity rule that would include significant changes such as a mandatory 24-hour notification for cyber ransom payments, heightened cyber expertise requirements for board members, and new access restrictions to privileged accounts. Can you walk us through what companies can expect from this rule, and others like it?

The New York DFS rule is part of a larger trend. We have 72-hour notice requirements for cybersecurity incidents in a lot of jurisdictions, so that is not new. India just passed a rule that requires notice of a breach, in certain circumstances, in six hours. This is part of a continuum where we are seeing the period within which regulated and non-regulated entities need to give notice regarding cyber security incidents getting shorter.

The part about giving notice of a ransom or extortion payment is new. The New York DFS has it. Some of the new rules that are being proposed at the U.S. Federal level also have a requirement. Part of that is really that law enforcement and regulators believe that they can't figure out what the right rules should be if they don't know how often people pay, or how much. They don't know the factors that organizations consider when deciding whether or not to make a payment. Is it risk to life and safety? Is it existential risk to the business? There is this new desire on the part of law enforcement and regulators to gather more information quickly.

The 24 hours, I think, is pretty hard, because if you're if you're in the middle of a ransomware attack, there is a lot of stuff going on. Companies will have to make sure that they report any extortion payment, assuming that the New York DFS and federal rules go into effect.

Another trend we are seeing at both the NY DFS and Federal levels (the SEC in particular) is a heightened desire to have the Board of Directors, as opposed to management, engaged in the evaluation and mitigation of cyber risk. In the draft SEC and NY DFS rules, companies are going to have to publish whether or not the Board has cyber expertise. But if the New York DFS goes into effect, the CISO is going to have specific reporting obligations to the Board of Directors, and you will also need to have a Board-approved cybersecurity policy. Which is interesting, because normally, organizations determine what are their highest risks and then share that with the Board. But it's not by statute that the Board has to think about specific issues.

The other thing that we are starting to see is the way in which the laws evolve. First, we had laws that said a company should have reasonable organizational and technical measures to protect data. Then we had the breach notification laws say that if an organization does not protect the information, they are required to publicly disclose that fact to individuals and regulators, which was designed to encourage organizations to have reasonable organizational and technical measures to protect personal data. Now, we're seeing the third phase, which is, the legislators are not going to wait until a company has a breach, rather they are going to tell organizations the technical and organizational measures that have to put in place to protect data in a way the legislators and regulators think is reasonable.

Again, this is not unique to NY DFS. We're seeing it on the Federal U.S. level. We're seeing it in other countries as well. This is the evolution of the cybersecurity statutory landscape. NY DFS is just part of it, and a lot of what they are mandating are currently best practices, such as having an asset inventory. There's nothing in the rule that's shocking. But it's going to be a big lift for certain organizations.

What might a fourth phase of cyber regulation look like?

I don't have a good answer as to what comes next. One of the problems when legislation dictates particular technical control is that those controls become outmoded. A good current example of that is encryption. We have lots of laws that say organizations must use encryption, but we know with quantum computing that encryption is going to become antiquated. So, you're going to have laws on the books that say you have to have encryption when we know it doesn't work. What are you going to do then? Will we advise companies, don't encrypt because it no longer provides protection? Or will we say, encrypt because you have to until the legislatures get around to updating the laws? That's going to be an interesting question. But that's what I'm worried about in the next phase, that you're going to have laws and regulations that are just becoming antiquated.

California is currently opposing federal data privacy protection under the American Data Privacy and Protection Act. What's going on here?

The latest thing is that California is the roadblock, but the truth is, it's exactly the same roadblock we've had for the last 10 years whenever we try to put in place any kind of Federal privacy or reach notification law: should there be a private right of action, and should there be preemption? Those two issues are not new. They're most recently expressed by the California delegation, but they're not new.

Many companies would rather have one privacy law that applies across the country, even if it's not the best law possible, just because it becomes very onerous for organizations to comply with 50 different state laws. I believe we should have one federal law that preempts all the State laws here. Because if it's the floor, not the ceiling, then we're going to be in exactly the same situation we're in right now, with 50 different iterations and a Federal law. That makes it very challenging to get it right.

Morrison Foerster has published a terrific set of guidance documents regarding privacy best practices for individuals, health care, providers, and technology companies when it comes to the U.S. Supreme Court's reversal of Roe v. Wade. Can you talk about this project?

There has been a lot of attention about the reversal of Roe v. Wade, and one of the things which has not gotten enough attention are the privacy issues associated with the information about reproductive healthcare. Individuals and organizations create and share lots of information about reproductive health. Once the information is in a system or on the internet, it has a way of replicating and spreading. It is really important to think about how individuals and organizations can potentially minimize their digital footprints, so that information doesn't proliferate and can't be misused. We created the MoFo Privacy Tips for Protecting Reproductive Rights to help individuals and organizations better protect personal information associated with reproductive healthcare

I think if the average consumer would be shocked if they understood the amount of information that's collected about them, particularly in the context of reproductive rights. This becomes such a more important issue in those states that have now banned abortion and are limiting access to reproductive rights.

Some employers, for example, that have said they will provide employees who live in a state where abortion is limited, the money to travel to another state to acquire those reproductive rights. But think about what information is generated and where it goes. The HR department is going to know because they have to be able to make sure the employee is eligible for the benefit. Because it's likely a taxable benefit, it means the tax preparer of the company is going to receive the information. If the benefit is provided through an insurance policy, now the insurance company needs to have the information. Those are absolutely legitimate reasons for a company to collect information relating to reproductive health and to share it. However, that's three different organizations that all may receive a subpoena from law enforcement in a state that restricts reproductive health care. I don't think that there's been enough attention paid to how to minimize the information at the front end. If the information doesn't get created, it can't be turned over.

We created the Privacy Tips to help individuals and organizations take steps to help protect themselves, because there are so many ways for data to be proliferated and it's unclear how states may use data to prosecute individuals seeking reproductive healthcare and those who helped them.

ABOUT THE EXPERT

Miriam Wugmeister *is a Partner with Morrison Foerster in New York. She is a leading expert in privacy and data security laws, obligations, and practices. As Co-chair of Morrison Foerster's preeminent Global Privacy and Data Security Group, and ranked among the top in the profession by all major directories, Miriam is regularly called upon by some of the world's largest and most complex multinational organizations to confront their most difficult U.S. and international privacy challenges.*

Do You Really Want to Hurt Me?

The Supreme Court reaffirms specific intent *mens rea* requirement for certain health care cases

by Steve Holtshouser, Christina Moore and Kate Ledden

The presence of a "guilty mind", commonly known as *mens rea*, is a significant consideration in criminal law. A recent Supreme Court decision on the *mens rea* requirements for a particular heath care offense may have long-ranging impacts for those in health care law, and to corporate compliance programs.

The Latin phrase, *actus non facit reum nisi mens sit rea* means "an act does not render a man guilty of a crime unless his mind is equally guilty." This phrase sums up the foundation of criminal law—almost every crime requires a mental intent element. This element is commonly known as *mens rea*, meaning a "guilty mind." While it seems like a very simple concept (enough so to constitute famous pop lyrics), analyzing the *mens rea* requirements for a particular crime can be extremely complex. Courts routinely review these issues in determining whether a particular criminal statute requires a specific mental state. This article provides an overview of various mental-state requirements with a focus on federal health care offenses. We also address the impact of a recent Supreme Court case that decided the *mens rea* required for a particular federal health care offense and the breadth of its reach. Finally, we provide some "lessons learned" from that Supreme Court case and general observations regarding the importance of *mens rea* to a corporate compliance program.

REQUISITE *MENS REA* (GUILTY MIND)

The Supreme Court has "long recognized that determining the mental state required for commission of a federal crime requires construction of the statute and inference of the intent of Congress."[1] Three questions are generally considered in determining the requisite mental state for a particular

1 *Staples v. United States*, 511 U.S. 600, 605, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994)

federal crime: (1) whether the terms of the statute prescribe a mental state; (2) if so, which elements of the offense must meet which requirements; and (3) what the mental-state requirements mean.[2]

If the statute includes a *mens rea* term, such as "knowledge," "willfulness," or "intent," the courts presume Congress' intent to require a culpable mental state. Far too often, however, drafters fail to include a specific *mens rea* term, and in those cases the courts presume that the criminal statute requires the "degree of knowledge sufficient to make a person legally responsible for the consequences of his or her act or omission."[3] Omitting such a requirement would "impose criminal sanctions on a class of persons whose mental state…makes their actions entirely innocent."[4] Such a result runs counter to traditional concepts of criminality.

The relevance of the *mens rea* standard cannot be understated. It is directly linked to the extent and nature of culpability. Congress has shown interest for decades in establishing more systematized *mens rea* standards and application rules, and on June 30, 2021, the Congressional Research Service (CRS) published a comprehensive report entitled, *Mens Rea*: An Overview of State-of-Mind Requirements.[5] The CRS identified the Model Penal Code (MPC) as one source of *mens rea* principles, including the development of five levels of mental culpability attached to a prohibited act: (1) purposely; (2) knowingly; (3) recklessly; (4) negligently; and (5) none (strict liability). These are reflected in the following chart published in the CRS Report:

TABLE 1. MPC CULPABILITY LEVELS

Culpability Level	Conduct	Circumstance	Result
Purposely	Conscious object to engage in conduct of that nature	Aware of the existence of such circumstances or believes or hopes that they exist	Conscious object to cause such a result
Knowingly	Aware that conduct is of that nature	Aware of at least a high probability that such circumstances exist, unless actor actually believes they do not exist	Aware that it is practically certain that conduct will cause such a result
Recklessly	None	Consciously disregards a substantial and unjustifiable risk that the material element exists	Consciously disregards a substantial and unjustifiable risk that the material element will result from conduct
Negligently	None	Should be aware of a substantial and unjustifiable risk that the material element exists	Should be aware of a substantial and unjustifiable risk that the material element will result from conduct
Strict Liability	None	None	None

2 Michael Foster, Cong. Rsch. Serv., R46836, Mens Rea: An Overview of State-of-Mind Requirements for Federal Criminal Offenses (2021) ("CSR Report").

3 Rehaif v. United States, 139 S. Ct. 2191, 2195, 204 L. Ed. 2d 594 (2019)

4 Staples, 511 U.S. at 605

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5 CRS Report, supra note 3.

The table reflects culpability levels in a descending order of intentionality ranging from "purposely," which generally requires the individual's "conscious object" to engage in the criminal conduct, to "negligently" which requires that the individual, objectively, "should be aware" of a substantial risk. A small number of crimes, such as adulterated food crimes, require no *mens rea* and thus impose "strict liability" to conduct.

In the health care context, the *mens rea* standard of "knowingly" is often required. As the chart indicates, just below "purposefully," "knowingly" requires an awareness that the conduct is "of that nature." Importantly, the statutory "knowledge" element can be satisfied, even in the absence of actual knowledge, by "deliberate avoidance of knowledge," also known as the "willful blindness" or "deliberate ignorance" standard. To prove "deliberate ignorance," the Government must establish that (1) the defendant was subjectively aware of a high probability of the existence of the illegal nature of the conduct; and (2) thereafter purposely contrived to avoid learning of the illegal conduct.[6] The Government traditionally looks to circumstantial evidence to establish these elements. "An oft-repeated rationale for the doctrine is that one who acts like that is 'just as culpable' as one who has 'actual knowledge'— in other words, 'persons who know enough to blind themselves to direct proof of critical facts in effect have actual knowledge of those facts.'"[7]

Both business organizations and individuals can be found criminally liable.[8] Under federal law, the actions of corporate officers, employees, or agents, if acting within the scope of their employment or for the benefit for the entity, can be imputed to the entity.[9] So can their *mens rea*. Similar to the "deliberate ignorance" standard for individuals, an entity may nonetheless be found criminally liable in instances where "no single employee possesses the requisite *mens rea* necessary for the offense but a number of employees have, together, committed the unlawful act."[10] Thus, *mens rea* requirements warrant caution in assessing both corporate and individual criminal risk.

> *"Ruan is an important victory for medical practitioners of all types facing not only CSA allegations, but also health care fraud in general."*

RECENT SUPREME COURT ANALYZING *MENS REA* REGARDING THE CONTROLLED SUBSTANCES ACT

Just this summer, the United States Supreme Court ruled on the requisite *mens rea* relating to the Controlled Substances Act (CSA). In Ruan v. United States,[11] the Supreme Court was asked to determine whether a physician could be convicted of unlawful distribution of controlled substances without regard to whether, in good faith, the physician "reasonably believed" or "subjectively intended" that his or her prescriptions fall within that course of professional practice. The CSA makes it unlawful for "any person knowingly or intentionally ... to manufacture, distribute, or dispense" a controlled substance, "except as authorized." A prescription is authorized when it is "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice."[12] The "vague and highly general regulatory language" left open the question of what conduct would fall under the statute's exception and thus be considered legal.

Dr. Xiulu Ruan and Dr. Shakeel Kahn were physicians specializing in pain management. Both physicians were convicted, after jury trials, of violations of the CSA. Prosecutors argued that the physicians were prescribing medicine outside the standard of care, arguing that scienter should be defined as either an "objectively reasonable good-faith effort" or an "objective honest-effort standard." The physicians denied the allegations, arguing they always acted in "good faith," believing that the medications they prescribed were for legitimate medical purposes. While both physicians admitted they could have been more careful, they argued that there was a difference between criminal activity and malpractice. They argued the Government needed to prove absence of subjective good faith and that establishing only failure to meet an objective standard of care was insufficient.

The Supreme Court sided with the physicians, finding that once a defendant met the burden of producing some evidence that his or her conduct was "authorized," the Government had the burden to prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner. The Court noted that the

6 *United States v. Delgado, 668 F.3d 219, 227 (5th Cir. 2012).*

7 *United States v. Parker, 872 F.3d 1 (1st Cir. 2017) (quoting Glob.-Tech Appliances, Inc. v. SEB S.A., 563 U.S. 754, 766, 131 S. Ct. 2060, 179 L. Ed. 2d 1167 (2011)).*

8 *See, e.g., 18 U.S.C. § 1347 (Health care fraud).*

9 *United States v. Grayson Enterprises, Inc., 950 F.3d 386, 407 (7th Cir. 2020)*

10 *Erin L. Sheley, Tort Answers to the Problem of Corporate Criminal Mens Rea, 97 N.C. L. Rev. 773, 782 (2019).*

11 *142 S. Ct. 2370, 213 L. Ed. 2d 706 (2022).*

12 *21 C.F.R. § 1306.04(a).*

statute uses the words "knowingly or intentionally," rather than "good faith," "objectively," "reasonable," or "honest effort." Such a standard, the Court said, "would turn a defendant's criminal liability on the mental state of a hypothetical 'reasonable' doctor, not the mental state of the defendant himself or herself" which is necessary in the criminal context. Thus, the Court rejected an objective standard in favor of a subjective standard. The Supreme Court invited the Government to prove knowledge of a lack of authorization through circumstantial evidence but reiterated it was still the Government's burden to carry and it had to prove a defendant actually and subjectively knew or intended that his or her conduct was unauthorized.

Ruan is an important victory for medical practitioners of all types facing not only CSA allegations, but also health care fraud in general. In line with the long-standing proviso that "the act is not culpable unless the mind is guilty," courts should apply this same principle to similar statutes in other complicated, highly regulated industries.

LESSONS LEARNED

As the Supreme Court noted, "the Government, of course, can prove knowledge of a lack of authorization through circumstantial evidence" to establish a defendant's subjective intent. The more "unreasonable" a defendant's "asserted beliefs or misunderstandings are," especially as measured against objective criteria, "the more likely the jury…will find that the Government has carried its burden of proving knowledge."

In business and individual liability contexts, a strong compliance program can limit the ability of the Government to carry its burden of proof with regard to any *mens rea* standard. According to the US Sentencing Guidelines, an effective compliance program requires an organization to "(1) exercise due diligence to prevent and detect criminal conduct; and (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law."[13] Such efforts go a long way to protect an organization from the consequences of intentional wrong-doing of employees, officers and other agents. A key aspect of an effective compliance program is actively searching for and detecting issues and not ignoring issues when red flags are identified. Once a red flag is raised internally, then the compliance team must document any effort to remedy the situation, the department's understanding of the appropriate reporting agency, and all correspondence regarding the matter both internally and with the reporting agency.

"A strong compliance program can limit the ability of the Government to carry its burden of proof with regard to any mens rea *standard.."*

An organization could be vulnerable to a claim of willful blindness if a strong compliance program is not fully embraced throughout the organization. Willful blindness requires a subjective belief in a high probability a fact existed followed by deliberate inaction to avoid confirming the fact. It is the legal version of "hear no evil, see no evil." Even in the event of an incident or some act that is problematic, the absence of criminal *mens rea* will arm the organization with good arguments for a civil resolution. In highly regulated industries, such as health care, the existence of "red flags" without relevant inquiries can establish willful blindness. Failure to "clear" a known red flag may be used as circumstantial evidence of the requisite *mens rea*. When in doubt, seeking legal or other professional advice can demonstrate that the organization was not willfully blind.

13 *See U.S.S.G. §8B2.1(a).*

CONCLUSION

Strong compliance programs will not always eliminate the risk of criminal liability, but reasonable responses to known situations can serve as a barrier to the Government's ability to establish *mens rea* especially in light of the Supreme Court's decision in Ruan. In the past, the Government had successfully convinced lower courts that defendants bear the burden of proving good faith allowing defendants to be convicted of crimes merely because they "should have known" better. Mere negligence is not sufficient. The Supreme Court has made it clear—the Government must now meet the exacting *mens rea* requirements of a traditional criminal offences and truly show that a defendant's "mind is equally guilty." ■

ABOUT THE AUTHORS

Steve Holtshouser *is a Partner with Husch Blackwell. He practices both intellectual property litigation and white collar defense/internal investigations.*

Christina Moore *is a Partner with Husch Blackwell. She is healthcare litigator with special expertise in the area of healthcare finance and operations.*

Kate Ledden *is an Associate with Husch Blackwell. She represents healthcare clients in complex litigation.*

How Will Brazil's New Anti-Corruption Law Impact Business?

by Heloisa Uelze and Felipe Ferenzini

New rules are risk based, should give more autonomy and resources to the compliance area and encourage ESG practices in companies.

On July 12, 2022, the Presidency of the Republic published Brazil's Decree No. 11,129/2022 with changes in the regulation of the Anti-Corruption Law (Law No. 12,846/2013), which provides for the administrative and civil liability of legal entities for acts against the national or foreign public administration.

The updates of the Brazilian legal framework mainly derive from the United States Department of Justice (DOJ)'s Guidelines on Evaluation of Corporate Compliance Programs from 2020 and lessons learned from practical application of the Brazilian Anti-Corruption Law since 2014.

These developments indicate a maturation of compliance programs in Brazil, as the new regulation grants more autonomy to the compliance department, reinforces the importance of the support of the senior management, the need of ensuring adequate resources to compliance department, and a risk-based approach in the structuring of the compliance program and controls.

Below are the main developments in the compliance programs that companies doing business in Brazil should be mindful of in view of the new Decree:

SENIOR MANAGEMENT MUST ENSURE ADEQUATE RESOURCES FOR COMPLIANCE

The importance of leadership in fostering a company's culture cannot be understated. Thus, the weight given to the performance of senior management in supporting the measures to be implemented by the compliance area is natural and welcomed in the legal update.

A relevant innovation of the new Decree is the inclusion—within the compliance program's evaluation parameter related to the commitment of senior management—of the following requirement: allocation of adequate resources.

As "adequate resources" is a broad concept, until a new manual by CGU is issued, we can consider, based on the current CGU manual, that the budget allocated to the compliance area will be one of the elements. Taking into account the recent DOJ guidelines for evaluating these programs, top management must also guarantee seniority to the person in charge of the compliance department, as well as sufficient resources, control and autonomy systems.

The company's senior management shall also be responsible for supporting internal and external communication measures that reinforce the culture of compliance and the companies engagement with compliance. This can be done through activities such as participation in external events with speakers, dissemination of related topics on social networks, and others.

HIGHER FINES IN CASE OF AWARENESS OF SENIOR MANAGEMENT

Senior management is not treated as only responsible for supporting the allocation of resources and funds for the compliance department. It is also responsible for providing effective and continuous support to the department's activities, incorporating it into the company's day-to-day activities and into the decisions taken, because. According to the new decree, the knowledge and tolerance of top management regarding illegal acts will cause an increase on the value of fines as opposed to the previous decree.

RISK-BASED ALLOCATION OF RESOURCES AND EFFORTS

A crucial point for the compliance program is the risk assessment. In the new regulation, it is now treated as risk management, reinforcing its organic and continuous periodicity.

The structuring of the program and the allocation of resources destined by the top management must be based on a corresponding mapping of risk. Thus, it is up to the person responsible for the compliance function, with the support of the company's management, to define the controls and activity levels with greater risk allocation.

In turn, the role of top management should be to monitor and ensure that compliance is efficiently applying resources. Therefore, it is important that there is a close relationship between compliance and the other departments of the company.

GREATER CARE BEFORE HIRING THIRD PARTIES

The prior assessment of third parties hired by the company was already established in the previous regulation and was a growing trend in Brazil. In the new regulation, there is a determination that the assessment must be risk-based, meaning it gives the companies flexibility to define the level of risk for certain transactions with third parties, and to determine variable levels of due diligence. Therefore, as a first step, categorizing third parties by risk level is recommended to serve as a basis for defining different levels of due diligence.

Also, in relation to third parties, the new decree innovates by requiring that due diligence must be performed prior to the establishment of relationships in three areas that expose companies to corruption risk: dealings with politically exposed persons; sponsorships; and donations.

MECHANISMS FOR HANDLING COMPLAINTS

The whistleblower channel, another essential pillar of compliance programs, has its importance reinforced, as the new regulation requires that companies maintain a procedure for handling complaints. This means that the compliance areas must have a team capable of conducting investigations, in addition to creating policies with rules of conduct of these activities (e.g., allocating complaints based on risk and nature of the allegations, establishing rules and committees for investigation and taking of decisions, as well as possible disciplinary measures and rules for monitoring remediation).

Due care in handling complaints is extremely important, as they are the main sources of information about the risks to which the company is exposed. This procedure also builds more confidence among employees and third parties in the effectiveness and independence of the compliance program.

IMPROVEMENTS CREATED BY THE NEW DECREE AND THE INTERSECTION WITH ESG

The new decree also enhances the intersection between Environmental, Social and Governance (ESG) with the compliance area. The area's vocation to fulfill the objectives and requirements of the regulation accredits it as a relevant actor for the expansion of such activities and thus incorporate ESG related topics, such as third-party monitoring, but broader risks such as environmental and social violations.

For all these reasons, the new regulation is very welcome. In addition to the new decree providing for several points of improvement for compliance programs, it also ends up ensuring tools that make it easier for companies to follow the journey, without turning back, of applying ESG principles, especially with the support of top management in defining objectives and securing resources for its implementation. ■

ABOUT THE AUTHORS

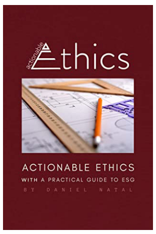
Heloisa Uelze *and* **Felipe Ferenzini** *are partners at Trench Rossi Watanabe.*

Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law.

In the Queue

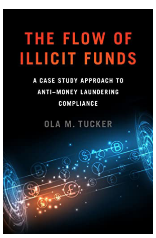
There have been a number of interesting new books published in recent months that speak to the ongoing challenges, opportunities, and evolutions occurring within the ethics and compliance space, as well as in the general business integrity ecosystem. Here are just a few that have crossed our desk.

ACTIONABLE ETHICS **With a Practical Guide to ESG** *by Daniel Natal*



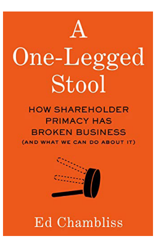
Business can be a powerful force for good if it embraces its responsibility to positively impact its many stakeholders, not just in terms of delivering prosperity, but more importantly, by being an exemplar of moral behavior. Such is the thesis of this book, which uses it to create a blueprint for how businesses can do more than pay lip service to the tenets of Environmental, Social, and Governance (ESG). Natal isn't just suggesting how to make ESG programs that get results and change behavior, but something that can change civilization itself for the better. It's an ambitious premise and the text delivers an academic read, but Natal's conviction is hard to argue with. | Amazon | YouTube

THE FLOW OF ILLICIT FUNDS **A Case Study Approach to Anti-Money Laundering Compliance** *by Ola M. Tucker*



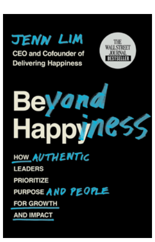
Everybody knows about money laundering, even if they don't really know what it is, or what can be done about it. This book aims to correct that with a detailed yet accessible treatment of money laundering's historical context, and what can really be done to detect and deter this illegal activity. Written for the seasoned compliance professional and the general reader alike, this book will provide more detail than the casual reader is likely to seek out. For those looking to provide a great professional introduction to a tentpole of the modern ethics and compliance practice—or even an interested passerby looking to understand an esoteric yet intriguing element of the global underworld—this book will deliver. Tucker's master of the subject matter is clear, and this belongs on every compliance bookshelf, whether in the company's library or one's own. | Amazon | Georgetown University Press

A ONE-LEGGED STOOL **How Shareholder Primacy Has Broken Business (And What We Can Do About It)** *by Ed Chambliss*



The utter domination of shareholder primacy over the past 50 years is not just hurting big business, but it is creating big businesses that hurt everything around them. To make the point, this book evokes the image of shareholder-driven business as a stool with only one leg: something that cannot stand, let alone deliver on its true potential to make the world a better place. After all, it's hard to craft a vision for 10 years down the road when shareholders are waiting to whipsaw senior management every three months. Chambliss's solution of a applying a societal impact label on companies, like a nutritional label on food, is novel food for thought. Something's got to change if business is to become the best version of itself. Because the current model isn't it. | Amazon

BEYOND HAPPINESS **How Authentic Leaders Prioritize Purpose and People for Growth and Impact** *by Jenn Lim*



Successful companies don't train great people, they grow them. With that simple concept, Jenn Lim lays out how leaders can transform their organizations into a kind of greenhouse for talent-growing culture that slowly transforms all within it from focusing on the self, to others, and then to the community. It is the kind of vision that doesn't just suggest a people-centric way of leading, but of building companies that are likely to acknowledge, understand, and strengthen their social license to operate. Feels a little bit like a self-help book in parts, but Lim vision is a genuine one, filled with helpful detail on how to take it from aspiration to reality. Amazon | Audible

Do you have a book, podcast, or video to share with the ethics and compliance community? Let us know at magazine@ethisphere.com. Ethisphere does not receive any compensation for showcasing external media.

By the Numbers

IMPROVE YOUR INVESTIGATIONS

The September Spotlight in The Sphere—Ethisphere's portal for data, analytics, and benchmarking your ethics and compliance program—showcased helpful resources around how to make sure your reporting and investigations processes are more employee-centric. Below are some interesting data points taken from the wide range of guidance documents, templates, and survey findings to consider as you improve our own reporting, investigations, and anti-retaliation policies.

67%

Of all World's Most Ethical Companies honorees train all investigators using the same protocol. Consistency is key!

31%

Of all organizations in The Sphere dataset conduct root cause analysis on all misconduct investigations

73%

Of all organizations include "viewing reported info as positive opportunity to address issue" in manager anti-retaliation training

1%

Of all organizations do not give an option for reporters to remain anonymous. (But…why?)

The Final Word

Patagonia Goes All In

On September 14, the clothing brand Patagonia made headlines when it announced that it had changed ownership and would now, essentially, become a non-profit organization dedicated to supporting environmental causes, especially addressing climate change.

In a press release entitled, "Earth is now our only shareholder," Patagonia explained that effective immediately, the Chouinard family (which had founded and run the company for the last 50 years) had transferred all ownership of the company to two new entities: Patagonia Purpose Trust and the Holdfast Collective. This places all voting stock in the hands of the trust, which will direct all revenue not reinvested back into Patagonia's own operations over to Holdfast. At present, that will be about $100 million a year.

Patagonia's change of ownership has been met with a range of responses. A number of folks within the business media space have hailed Patagonia's news as a game-changer—a blueprint for how business can lead the way in decisive action to address climate change. Patagonia already has a history of having moved the goal-posts when it comes to what a company should expect from its supply chain. But this is something altogether different and potentially much more impactful. And it raises a critical question for the years ahead: if Patagonia managed to this and preserve its business, why aren't other organizations doing likewise? That is a call to action if ever there was one.

Or is it? Elsewhere, Patagonia's news didn't generate as much enthusiasm because it looked awfully familiar. In Scandinavia, a number of large and profitable companies—Carlsberg, Ikea, and Rolex to name a few—are owned by foundations that ensure the businesses keep succeeding, and that their annual earnings are channeled to where they are intended to go. Denmark has an unusually high concentration of such companies. So many, in fact, that were a similar percentage of U.S. businesses to operate in this way, it would generate many billions of dollars for non-profit purposes.

And still elsewhere, the news prompted eyebrow-raising and cynicism. What if all of this was really just an elaborate ploy to avoid paying taxes? Or what if this is all just a well-meaning but harmful distraction from pressuring governments to do something meaningful about climate change before it's too late?

How one takes this news likely depends on their point of view. But the fact remains that this is a big deal. After all, it's not every day that a $3 billion company becomes an environmentally-driven non-profit overnight. Then again, Patagonia founder Yvon Chouinard is your typical chief executive. He built a leading global brand and has never been shy about his values, and how they inform the organization. We talk about the importance of values-driven leadership a lot; here we see it in action. Yvon Chouinard led with values in the most meaningful way possible here. The point of all this isn't so much whether Patagonia's new structure will help the world as much as it needs helping. It is that those who lead at the highest levels of business and industry have an opportunity, and the precedent, to shape their enterprise in a way that truly reflects their values. We have seen it with Patagonia. Let's hope this is just one of many to follow. ■

BILL COFFIN
Editor in Chief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