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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.


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Dispatches from the Ethics Economy

Who Are You Serving?

by Erica Salmon Byrne

Long-term readers of *Ethisphere Magazine* will know that every year around this time we open the World's Most Ethical Companies® process. Opening the process is always exciting, because it is a culmination of a tremendous amount of work on our side pulling together edits to this year's Ethics Quotient (EQ) questionnaire. As long-time members of the Ethisphere community know, we review the Ethics Quotient every year to ensure that it reflects the most current expectations in ethics and culture best practices. The EQ changes every year; some years the edits are minor, reflecting our desire to clarify a question or an answer option. Some years the edits are major because of developing best practices or regulatory updates. This year is a year of major edits, and the team here at Ethisphere used their expertise to interpret what the regulators are saying, pull the pragmatic out of the theoretical, and update the EQ accordingly.

For example, there's a line in the Evaluation of Corporate Compliance Programs about having compliance expertise on your board. But what does that mean? Is it having somebody on your board who is the chair of an audit committee of another publicly traded company? Somebody who has actually been a chief compliance officer? Somebody who has been a CEO? That's just one example of the ways in which this year's EQ gets very granular with answer options so that we can get a real sense of the ways in which people are trying to position compliance expertise on the board.

Elsewhere in the EQ, you will see changes to questions around incentivizing ethical behavior, training managers to be strong ethical leaders, evaluating ethics and compliance program leaders, and board diversity, just to name a few. We have also substantially edited the questions around conflicts of interest—which have made an awful lot of headlines, recently, from small companies all the way up to the Supreme Court.

The issue with a conflict of interest is on whose behalf you are acting. Are you serving the mission and the people of the organization that you're representing? Or are you serving yourself? Conflicts of interest disclosures matter because they are a question of trust, reliability, and servant leadership. The challenge with conflicts is if you don't disclose them, you lose a little benefit of the doubt. It's one of those topics where people are trying to figure out what the right process and protocol is, which is why we keep editing those questions to get more information on how companies are doing it today so that the broader public has faith in the organizations and institutions that it needs to trust.

I am so proud of the work we do around the World's Most Ethical Companies® because at the core of our process is the firm belief that ethical companies outperform their peers. We don't ask people to make a binary choice between doing the right thing and doing the right thing for the business, because they are the same thing. These practices are not a cost center but a business driver and a value-creator. In the long run, they lead to organizations that are better for themselves, better for their customers and stakeholders… and better for everyone. ■

ERICA SALMON BYRNE
CEO, Ethisphere

In the News

THREE CHEERS

Our inspiration for this issue comes from a new study by **UCLA sociologist Giovanni Rossi** and an international team of collaborators that indicates humans are hardwired for kindness, and that people freely give and receive small acts of help regardless of geography or culture. Doing good wins again.

As co-host of this year's Met Gala, Ghanaian-British actress, filmmaker, singer, and composer **Michaela Coel** required that the astonishing "molten gold" earrings she wore be sourced ethically using Single Mine Origin gold that can be fully traced to the Endeavour Ity mine in Cote d'Ivoire.

The **European Union** recently posted both year-over-year economic growth (+1.5%) and carbon emissions reduction (-4%) in 4Q 2022, proving that the trading bloc's aggressive renewable energy targets do not have to come at the cost of economic performance. This, as **New Zealand** has announced its biggest emissions reduction project in history.

The **European Union** also passed the AI Act, the first effort at comprehensive regulation of artificial intelligence, which specifically bans using AI for government-run social scoring, and for business resume scanning. The Economist saw this coming back in 2021, by the way. More news on this here and here. For more AI news, see the Meanwhile section, below.

Adidas will donate the sale of its nearly $1 billion stockpile of **Yeezy**-branded footwear—developed in partnership with the rapper Ye (Kanye West)—to various anti-racism groups, including the **Anti-Defamation League** and the **Philonise & Keeta Floyd Institute for Social Change**. Adidas ended its relationship with Ye last October over Ye's anti-Semitic and other offensive, public comments.

HOT WATER

On April 6, **ProPublica** published a blockbuster article on **Supreme Court Justice Clarence Thomas's** long-running conflicts of interest with billionaire Republican donor Harlan Crow. ProPublica published three follow-up articles, On April 25, Supreme Court Chief Justice Roberts submitted the court's updated ethics guidelines. Not even a month later, Justice Alito violated them, proving that the problem goes deeper than just Justice Thomas. Meanwhile, an increasingly troubled public asks: why won't the Supreme Court abide by the same ethics requirements as every other layer of the federal judiciary?

On May 30, former Theranos CEO **Elizabeth Holmes** reported to prison to begin serving an 11-year sentence for defrauding the investors of her now-defunct medical technology start up. In April, former Theranos COO **Ramesh "Sunny" Balwani** reported to prison to begin his 12-year sentence for his part in the historic fraud scheme.

Aeroflot, Russia's flagship airline, has instructed aircraft personnel not to record in-flight malfunctions on its aircraft unless specifically ordered to by the captain, an investigation has found. International sanctions against Russia have severely constrained aviation spare parts and maintenance.

Lewis Brisbois, a leading U.S. law firm, released hundreds of emails revealing that two former partners who had departed to form a rival law firm—**John Barber** and **Jeff Ranen**—had a long history of racist, sexist, and homophobic language at the workplace. The email release tanked Barber and Ranen's new firm, but also raised questions about toxic culture within Lewis Brisbois.

Crypto exchange **Binance** faces a long legal gauntlet from the **SEC,** and potentially the **DOJ,** over charges that it sidestepped securities law and crafted a "massive web of deception."

The **SEC** has fined the broker-dealer subsidiary of **JP Morgan Chase** $4 million for accidentally deleting some 47 million emails from early 2018, some of which had been sought by subpoena. The bank's gross profit for the twelve months ending March 31 2023 was $136.3 billion, (a 13.5% increase year-over-year), which makes the fine the financial equivalent of less than the price of a cup of coffee.

Hollywood producer **Arnon Milchan** testified in Israeli Prime Minister **Benjamin Netanyahu's** corruption trial that he routinely delivered expensive gifts to Netanyahu, at request.

Francesca Gino, a Harvard Business School professor who studies honesty, has been accused of falsifying research results in perhaps dozens academic studies since 2012.

Timothy Hontzas, owner and executive chef of Johnny's Restaurant in Homewood, Alabama, has been disqualified from the prestigious James A. Beard Award—for which he was a finalist—for likely ethics violations involving allegations of verbal and physical abuse.

MEANWHILE…

Generative AI is supercharging the concern and interest in developing ethical considerations around ChatGPT and other large-language models. **Timnit Gebru**, the former co-lead of **Google's** ethical AI team, warned that tech companies won't self-regulate on AI because of an ongoing "AI gold rush," and the CEO of **OpenAI** (the startup behind **ChatGPT**) warned the U.S. Senate of the significant concerns around potential AI election meddling. **Baidu**, a Chinese tech company and AI developer, has released its 2022 ESG Report, which includes updates on the company's performance in areas such as enhancing corporate governance, building trust, and contributing to society. And while talk of a potential AI singularity is probably overheated, the ongoing ethical concerns over AI development remain very real.

Merck KGaA has released its updated policy on animal ethics, including a detailed explanation of why the organization continues to use animals in its scientific research. "Our long-term ambition is to phase out animal use in all our work," Merck states on its animal ethics website. "Until then, we are committed to the highest ethics and welfare for all animals used in our activities."

McKinsey makes the case for greater cooperation between business units and compliance in the banking sector. "Banks that build common ground between their compliance functions and business leaders who shape strategy can open paths to better customer experience, greater productivity, and resilient growth," McKinsey writes, echoing the Ethisphere Five-Year Ethics Premium.

The **European Union** is tweaking proposed rules that would expand rights for gig economy workers,. Gig economy companies, such as Uber, Bolt, and Deliveroo, are predictably unhappy with the draft legislation, which still has much ground to cover before it becomes law.

Hark! An oddly compelling new opera about 18th Century medical ethics—namely, whether the pursuit of scientific knowledge should take precedence over an individual's consent—has opened to rave reviews in London. There might not be another ethics opera for a while, so catch this while you can.

On April 18, **Capital Power** *was recognized by* **Nasdaq** *as a 5-year World's Most Ethical Companies® honoree.*

Business Ethics Leadership Alliance (BELA)

Upcoming Events

Webinar – Mental Health in the Workplace: Taking Compliance from Policing to Partnership

August 3, 2023 @ 1:00 pm-2:00 pm EDT

Compliance executives are on a never-ending journey to build and maintain a culture of ethics and compliance. Poor compliance is frequently met with more compliance requirements, but this strategy is like trying to beat a smart virus by layering on more of the same elixir. Successful organizations promote compliance by connecting people to purpose. In doing so, worker mental health is both protected and promoted. In fact, when you build a culture of compliance in tandem with building a culture that protects and promotes the mental health of the workforce, your compliance efforts go from policing to partnership; people and performance benefit.

In this webinar you will learn:

- Why compliance and mental health in the workplace are linked
- How the disconnect between attitude and action creates a work-around culture
- Case study: How 'willingness to report' connects compliance and mental health cultures
- Role of Compliance and HR/Wellness in effective collaboration
- The elements of an effective Mental Health at Work program with aggregated maturity results from over 40 companies

BELA members, click here to register for this exclusive event. *Companies that register will have access to the Mental Health at Work Index to complete a self-assessment of current program maturity and have an Expert Review Call with members of the Mental Health Index Team included as part of their BELA membership until the end of 2023.* **Need access? Email bela@ethisphere.com**.

To learn more about the Mental Health at Work Index, read our feature story on p. 16.

BELA Roundtable: Charlotte, NC – Hosted by TIAA

August 16, 2023 @ 12:30 pm-4:00 pm EDT

Join your Carolinas-based peers in-person for an insightful conversation on how leading organizations are implementing specific components of their ethics and compliance program to make continual improvements, provide better evaluations, and engage employees. Including:

- **Sherry Smith**, Ethics Officer at **TIAA** who will lead a discussion on "Engaging with the Next Generation of Compliance & Ethics Professionals"
- **Brianna Woodsby**, Director of Compliance and Grant Burns, Executive Vice President & General Counsel at **AFL**, who will present some of their best practices on managing conflicts of interest and how to stay compliant

BELA members, click here to register for this member-exclusive event.

Need access? Email bela@ethisphere.com.

BELA Roundtable: Virtual Artificial Intelligence — *September 20, 2023 @ 1:00 pm-2:30 pm EST*

Dylan Owens, Senior US Compliance Officer, **ASML** will lead a discussion surrounding AI issues on the minds of compliance professionals today. Topics will include AI ethical principles guidelines and discussing what is in/out of scope; the types of AI-specific policies/ guidance going out to employees and who is "owning" that material; and discussing which individuals should comprise the committee that is reviewing AI use cases.

BELA members, click here to register for this member-exclusive event. Need access? Email bela@ethisphere.com.

2023 ESG Virtual Forum — *September 26-27, 2023*

Join us for a live, virtual event that will deliver the latest insights and intelligence on the ever-evolving Environmental, Social, and Governance (ESG) space. Learn how ESG aligns with business strategy, how your peer organizations are managing KPIs, how to engage relevant stakeholders, and how to make the best use of ESG frameworks and standards. Agenda items include:

- Understanding & managing business relationships
- How to work with and learn from ESG raters
- Refining your organizational workflow from ESG goals to disclosures
- ...and more!

BELA members, use the access code **BELA2023** to claim up to three free passes. Non-BELA members and academic attendees, use the discount code **SAVE15** at checkout to save 15%. **Click here to register.**

2023 South Asia Ethics Summit — *October 12-13, 2023, 9:00 am-1:30 pm IST*

The virtual 2023 South Asia Ethics Summit, now in its sixth year, will provide the opportunity for leaders across the region to share ideas and provide practical guidance around culture, ethics and compliance, new practices in PoSH compliance, data privacy, the evolving ESG landscape, as well as place a spotlight on companies working together to inspire and elevate business integrity across South Asia. Speakers include:

- **Ruzbeh Irani**, President, Group HR, **Mahindra**
- **Preet Kushalappa Kodira**, Senior Principal, Employee Relations, **Infosys**
- **Vikram Tiwari**, Regional Director of Compliance, India & APAC, **Microsoft**
- **Arpinder Singh**, Global Markets and India leader, Forensic & Integrity Services, **EY**

Register today for the 6th Annual South Asia Ethics Summit and use the discount code **EARLYBIRD** to save 25% until 9/1.

BELA Roundtable: Montreal – Hosted by SNC Lavalin *October 12, 2023 @ 1:00 pm-4:30 pm EDT*

Join your Montreal peers in-person for an interactive conversation with **Paul Smith**, Advisor, Training, Communications & Systems – Integrity Program, **SNC Lavalin** as he shares key lessons learned from the deployment of SNC-Lavalin's highly-successful annual Code of Conduct Certification.

BELA members, click here to register for this member-exclusive event.

Need access? Email bela@ethisphere.com.

Business Ethics Leadership Alliance (BELA)

Member 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. If you are interested in showcasing your organization and sharing a resource with the BELA Community, please reach out to Ethisphere Content Manager **Samantha Johnson** to learn more.

EXPERTISE & INSIGHTS FROM YOUR FELLOW BELA MEMBERS

In recent weeks, we launched the **Community Insights** asset series, showcasing what your colleagues within the BELA community are saying about how to craft winning communications strategies, how to encourage ethical behavior, inclusive storytelling, risk assessments, and manager training:

- Crafting Good Communications: A Focus on the Message
- Crafting Good Communications: A Focus on the Messenger
- Crafting Good Communications: A Focus on the Modality and Measurement
- Encouraging Ethical Behavior with Incentives and Penalties
- Lessons on Inclusive Storytelling
- Scoping Ethics & Compliance Risk Assessments
- Supporting Managers as Models
- Engaging the Board of Directors

Special thanks to our BELA Members who have made this last quarter such an active one for the BELA Member Resource Hub! This content is invaluable to your colleagues in their own quest for excellence, and a fitting spotlight to the terrific work you are doing within your own organizations..

Allianz

2022 Communications Plan

Ethics & Compliance Program Action Plan

Integrity in Action

2022 Ethics & Compliance Program Initiatives for Sept. & Oct.

sodexo

Human Rights at Sodexo

Gifts & Entertainment Posters

Internal Investigations Guidelines

Code of Conduct

Disciplinary Measures Guidelines

Lincoln Financial Group

What Would You Do Communications Examples

2022 Communications Plan Excerpt

Interactive Code of Conduct

Board Training on Ethics & Compliance

Culture Scorecard

Milliken

2022 Ethics & Compliance Communications Plan

Social Media Policy

Commitment to Human Rights and Combatting Modern Slavery

Our Path to Net-Zero

2022 Sustainability Report

VF CORPORATION

Human Rights Commitment

Code of Conduct Training

Training for Managers

BEST BUY

Board Presentation Templates

Excerpt from Best Buy's 2022 ESG Report

Raising Concerns Infographic

Ethical Leadership Self Assessment

Western Digital

Communications on Speak Up

People Leader Training Handout on Handling Employee Concerns

Ethical Choices Infographic

ADDITIONAL RESOURCES

AARP: Ethics & Compliance Posters

Accenture: Ethics Program Overview

AECOM: Code of Conduct

Archer Daniels Midland Company: Improving...Through Cross-Functional Collaboration

BMO: 2022 Sustainability Report

Bridgestone Americas: Manager Conversations on Ethics & Leading with Integrity Awards

Charoen Pokphand: Human Rights & Labor Practices Policy and Guidelines

FedEx: Corporate Integrity & Compliance Communications Plan & Ethical Leadership Guide

Guardian Life Insurance: Compliance & Ethics Week

The Hartford: What Happens When Employees Speak Up Infographic & Code of Conduct

HCSC: Ethics & Compliance Ambassador Program & Communication Example on Speaking Up

John Deere: Compliance & Ethics 2021 Year in Review

MetroHealth: Training Investigators

Rockwell Automation: Global Anti-Corruption Policy & Code of Conduct

Snap, Inc.: Code of Conduct

Sony: Policy on Policies

Unum: Leading with Integrity Discussions Toolkit

Xcel Energy: Reporting Misconduct & 2022 Corporate Compliance & Business Conduct Program Report

Zoetis: Compliance Champions Update & Guide to the Compliance Investigations Proces

For more helpful resources, be sure to visit the **BELA Member Resource Hub**

Not a BELA member? To learn more, email **BELA@Ethisphere.com**.

The Regulatory Risks and Realities of Third Party Messaging

Q&A with James Koukios and Haima Marlier

Interview by Bill Coffin

Third party messaging apps have become an area of particular focus for the U.S. Securities Exchange Commission and the U.S. Department of Justice, both of which have issued their own guidance on the matter. **Morrison Foerster** partners **James Koukios** and **Haima Marlier** tap into their extensive legal and governmental expertise to talk about the risks third party messaging poses, SEC and DOJ expectations, and best practices for this swiftly evolving technology.

Let's start from the top of the mountain: What exactly is third party messaging?

Haima Marlier: Third party messaging, very broadly, refers to messaging applications that are not manufactured by the developer of the device that you are using. Popular third party messaging applications include WhatsApp, WeChat, Telegram, Signal, Slack, Discord, and the chat function of Zoom or Microsoft Teams. Text messaging is also a third party messaging application from the perspective of many organizations, since your text messages are on your smartphone, but your organization is not necessarily the controller of that data.

This topic is really important, given how ubiquitous this type of communication is today. Based on recent research we did, 16 million text messages are sent per minute. For WhatsApp, 100 billion messages are exchanged daily. WeChat has 1.3 billion active users. It's an important topic, and it is affecting every organization.

What are the DOJ and SEC focusing on regarding third party applications?

James Koukios: In 2017, the DOJ criminal division released the first version of the Foreign Corrupt Practices Act (FCPA) corporate enforcement policy. Among the many things in that document—which was geared towards encouraging companies to self-disclose, cooperate, and remediate FCPA issues—one of the things they said was companies should ban their employees from using third party messaging applications.

That didn't go over very well, The DOJ, to their credit, pivoted pretty quickly on that and released a revised version of the corporate enforcement policy that said, essentially, you need to take appropriate steps to govern employees' use of third-party messaging applications. And it kind of sat there for a while with no further guidance.

But in 2021, Lisa Monaco, the Deputy Attorney General, came forward with more guidance, which peaked with the 2022 Monaco memo. Essentially, what DOJ said was, there are three basic elements that you need to put into place for your compliance program. You need to have a policy on third party messaging. You need to train your employees on that policy, and if you detect violations of that policy, you need to discipline your employees who violate the policy.

Other than that, they've given a fairly broad range for companies to try to fill in those gaps, which I think recognizes that this is a very complicated subject. There are a lot of different applications, and different countries have different privacy regimes. There is some flexibility in how companies can approach third party messaging when it comes to their employees.

One other thing that DOJ has emphasized in the Monaco memo is that it's not only a compliance and governance issue. For companies to have an effective compliance program, they need to have these kind of policies in place. What DOJ has also said is that in order to get full cooperation credit, you have to have in place policies and procedures to be able to preserve, access, and produce [to DOJ] third party messages that their employees may be using as well.

Haima Marlier: When the SEC issues a subpoena or an inquiry and asks you for all documents, which include communications about a particular topic, it has been the longstanding practice of the SEC to understand that that can incorporate things like text messages. The clearest guidance in my view, really started to emerge in the fall of 2021. That's when the SEC's Director of the Division of Enforcement, Gurbir Grewal, gave a pretty direct speech where he said that companies that fail to preserve and to produce to the SEC third party messaging application communications "delay and obstruct investigations, and they raise broader accountability, integrity, and spoliation issues." That's very direct. Spoliation is a serious issue, and there can be severe penalties to companies and individuals that spoliate. He went on to say that companies need to actively think about and address compliance issues raised by their employees' use of third party messaging, application, communications, and other off-channel communications. So I think were we land is a practical approach by the SEC. They're not saying, "don't do it." They recognize that it's part of how many companies have to do business. The SEC is just saying, "come up with a framework, come up with policies, and a way to address compliance issues that may arise from this."

Is the focus on third party messaging a new development?

James Koukios: From the DOJ side, I'd say it's more of an evolution. When I became an FCPA prosecutor in 2009, it was during the heyday of Gmail. Employees who wanted to do things wrong had figured out they can't send emails on their corporate email accounts because they knew they were accessible by the company and outside lawyers. So a lot of them shifted over to Gmail or Yahoo or Hotmail or whatever it may be. If you go back to some of the enforcement actions from the 2009-2015 era, you'll see lots of Gmails referenced in those. But it's a cat-and-mouse game. Once people started figuring out that the DOJ could get their Gmails, the technology started shifting away from personal email addresses to third party messaging apps. And I think DOJ started to see that in their cases.

I think part of that 2017 message by DOJ—that companies need to stop their employees from using messaging apps—was in part because they were concerned that these messaging apps were being used for nefarious purposes, but also that DOJ was no longer able to get those messages as easily [as email]. Even WhatsApp, which is U.S.-based, is harder for DOJ to get than Gmail was. And WeChat or Signal or any of the ones that are not U.S.-based might be impossible.

One of the first times I saw this in a DOJ FCPA enforcement action, there was a long complaint affidavit justifying the arrest of a person suspected of an FCPA violation. And there was a footnote in there by the agent that, to paraphrase, said "based on my training and experience criminals love instant messages because that's how they get away with their crimes." I think that was reflective of the viewpoint of DOJ and FBI and law enforcement in 2016 and 2017. That has evolved over the years and led to this engagement with the business community that understands a lot of legitimate business is done over these programs, but there needs to be a control on them for compliance and investigative purposes. That's why even though it's not a new issue, we're hearing more discussion about it.

Haima Marlier: There's a huge uptick in SEC enforcement actions in this space. The SEC and CFTC have gotten a combined $2.2 billion in penalties so far, and the cases still keep coming. There were cases in May against broker-dealers and registered investment advisors for failure to preserve what the SEC says was pervasive off-channel communications including text messaging, WhatsApp, WeChat, et cetera. The SEC's focus was that many of these third party messaging communications, including by very senior executives at some of these institutions, were sent on personal devices.

What has been less known but is actually more important, is that this is not just a compliance issue for SEC registrants. It is a compliance issue for every organization that does any form of business in the United States, public or private. Any organization can be on the receiving end of an SEC or DOJ inquiry or subpoena. And those agencies have now been very clear that they expect a compliance framework to be in place.

Are there any regulatory investigations, matters, or resolutions worth discussing that really highlight regulators concerns about the use of third party messaging?

Haima Marlier: If you go to the SEC's website, they have a listing of all of the companies they have charged thus far. You'll see that the types of applications and how they were used are all different. But the common thread is that there was a failure to preserve.

There have also been some pretty significant sanctions in civil litigation. For example, earlier this year in a multi-district litigation, a large tech company was sanctioned for spoliation of certain chats that were on the company's servers. This isn't a case of a smartphone with an application that's only accessible if you image that phone. What happened was litigation began against this company, the company sent out litigation holds and preserved emails and SharePoint sites and things like that, but for whatever reason chats in things like Zoom, Teams, or Google were kind of an oversight and were not preserved.

We're talking mostly here about the government and what the consequences can be with the SEC and the DOJ, but once public companies see that there is an SEC or a DOJ inquiry, there's often follow-on civil litigation, and now it's clear that this is an issue as well.

James Koukios: If you go to FCPA enforcement actions, you will see in the statement of facts where DOJ specifically calls out when the "bad guys" have used third party messaging applications in furtherance of a bribery scheme. And there's several reasons why they do that. One is just jurisdictional. Oftentimes those give you the jurisdictional hook because they're U.S.-based or they pass through the U.S. or something that you need for an FCPA violation. Second, it's just great evidence. It's always better to have the defendant's own words being used against them in those things. But third, and I think most important, is to send a message to the business community: "We've told you that employees have been using these for nefarious reasons and that you need to get a handle on this. Let us give you some concrete examples of how it's being used." And often they'll name the third party messaging application as well. I think this is a very clear signal that DOJ is trying to send to the business community. This is not empty talk.

"This is not just a compliance issue for SEC registrants. It is a compliance issue for every organization."

What are some risks associated with the company's failure to provide a means to retain and access business communications on personal devices and third party messaging apps?

Haima Marlier: The risks are really enormous. That just can't be understated. Let's say that there's no government inquiry, it's just business in the ordinary course. Why should I care about this? Internally, your organization could lose relevant data. You don't know what you may need it for. You may never need it for a government facing purpose, but it may be that it's important for you to have that data. Also, if you don't have a compliance framework in place for third party messaging applications, you are losing your ability to monitor your employees' conduct and make sure it's consistent with the law, but consistent with the values of your organization.

There is a laundry list of external risks on the civil side, including the loss of cooperation credit if you are facing an SEC inquiry or investigation. The SEC can bring a range of violations related to a failure to preserve relevant communications. There can be books and records violations, failure to supervise internal controls violations. The SEC can seek civil penalties. They can take adverse inferences against the organization. Courts could later preclude you from using certain defenses if, in fact, the defense is based on some kind of evidence that you failed to preserve, even though you had a duty to do so. There can be sanctions for spoliation, the most severe of which would be a default judgment against you in civil litigation. And then finally, there can be a lot of reputational damage to an organization when there's a failure to preserve relevant information.

James Koukios: From a DOJ and government enforcement perspective, whistleblowers will take screenshots of their WeChat or SnapChat conversations and they'll email them to the company—or worse, the enforcement agencies—and say, look, this is what's been going on. If the government has that and you don't, it really puts you at a disadvantage when you're conducting an investigation or you're negotiating with the government about what the evidence might show.

There can also be more direct consequences. In the DOJ guidance, they state that to get full cooperation credit, you need to be able to access, preserve, and ultimately produce to the government third party messaging apps. One question they've been asking a lot lately is, "Have there been times where an investigation has been impacted because you've not been able to obtain third party messages?" If you have an enforcement action, you can lose some of those credits, which will result in a higher penalty and potentially enhanced compliance requirements as well. So there's definitely very tangible risks associated with a company's failure to provide a means to retain and access these types of communications.

What do you generally consider to be best practices to minimize regulatory risks and exposure on third party messaging?

Haima Marlier: The culture of compliance within an organization is so important. At certain organizations, in times past, compliance departments raised these issues but couldn't get traction on some of the compliance frameworks that they wanted to set up. That day is no more. Folks are listening to their compliance professionals. And those people can be a huge value add. The amount of money you'll spend on a compliance framework now is nothing compared to when James or I get involved and there's 70 witness interviews in a million documents, and we're trying to negotiate for the government.

The four best practices are: 1) some kind of risk assessment of where you are now, 2) establishing or enhancing policies and procedures based on that risk assessment, 3) conducting training, and 4) having some kind of monitoring to know what your employees are actually doing.

What a risk assessment would involve is organizations need to determine the nature and the extent of third party messaging application use by their employees. For some organizations, it may not be much, but I think that will be rare in our world today. Once you determine the use, you can conduct a risk assessment and determine things like what apps should and shouldn't employees be allowed to use, and put some parameters around it.

On the policies and procedures point, organizations need to establish or revisit clear policies governing employee use of third party messaging applications for business purposes. Organizations that work closely with their compliance departments often engage external counsel like MoFo or other firms to design policies to fit not only their business, but their risk profile. The risk profile of every organization will be different.

James Koukios: Training is a relatively easy thing that companies can work into their annual training programs, keep a record of it, and to be able to show to enforcement agencies if you need to: "Look, we have 98% compliance with our training. People have to pass this exam. We are very confident that people know about this policy."

Monitoring and discipline is very difficult. We're not necessarily at a point where technology permits that very easily, and privacy laws can really interfere with those efforts. I think companies are really struggling with that right now. Some of the things that I've heard companies doing are, as part of the audit, they'll sit down with employees and just ask them to look at their phone. That, of course, depends highly on whether the employee's willing to do that and what local labor and privacy laws may be. Another thing companies are doing is when they conduct an internal investigation, they'll have a module built into their questions about the use of third party messaging applications and whether the employee was willing to share those with the investigator.

But things are evolving right now and companies are struggling with the technology, data privacy and labor laws around the world. So it's very difficult. However—and I think this is a really important message that DOJ has sent—just because it's difficult doesn't mean you can ignore it. One of the most important things in the Monaco memo and the recent guidance from DOJ is that companies can't just throw their hands in the air and not do anything.

A lot of what DOJ is saying is they understand the difficulty, they are open to different approaches, and they are recognizing the limitations that companies face. The most important thing right now is to have a good faith reason for why you have constructed your compliance program around third party messaging the way you did. It's not going to be perfect. There's too much in development right now.

But if you are able to say, "we did a risk assessment, we came up with what we thought was a reasonable policy, we trained on it, and then we took steps to monitor and discipline on that," DOJ is pretty open to that right now. Putting that investment in now to get a handle on those things can really pay off in the long run if you find yourself before the agency, trying to justify something that happened. ■

This article has been excerpted from an episode of the Ethicast. *For the full version of this interview, please visit the* [Ethicast YouTube page]*, or tune in to the podcast version on Apple, Spotify, Google, or Amazon Music.*

ABOUT THE EXPERTS

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Mental Health in the Workplace: Taking Compliance from Policing to Partnership

by Craig Moss & Kathy Pike

Compliance executives are on a never-ending journey to build and maintain a culture of ethics and compliance. Poor compliance is frequently met with more compliance requirements, but this strategy is like trying to beat a smart virus by layering on more of the same elixir. The problem keeps mutating, and you never get ahead. We have ample evidence that when workers experience compliance as policing, they are increasingly reluctant to cooperate and they get better and better at work-arounds. By linking compliance efforts to shared values and purpose, creating a successful compliance culture becomes less of a battle and more of a team sport where the workforce becomes partners on a shared mission.

Successful organizations promote compliance by connecting people to purpose. In doing so, worker mental health is both protected and promoted. In fact, when you build a culture of compliance in tandem with building a culture that protects and promotes the mental health of the workforce, your compliance efforts go from policing to partnership; people and performance benefit.

Here's why.

LINKING COMPLIANCE AND MENTAL HEALTH

Building a genuine culture of compliance requires that workers feel aligned with the implicit values and stated purpose associated with the organizational compliance priorities. As compliance officers know all too well, numerous specific issues fall under the compliance umbrella. Conflict of interest. Data privacy. Corruption. The list goes on, and it is growing with new regulations emerging on a number of Environmental, Social & Governance (ESG) topics ranging from carbon emissions to labor rights to supply chain due diligence. Regardless of the compliance topic, human behavior is at the crux of compliance breakdowns that are too often caused by a lack of worker buy-in. Conversely, when you commit to protecting and promoting worker mental health and well-being, workers and organizational systems are less stressed and more resilient. Feeling seen, heard, and cared for, workers are more likely to be aligned with the organizational culture, which in turn, increases buy-in for compliance priorities.

Data from over 2,000,000 employees around the world released in the 2023 Ethisphere Ethical Culture Report indicate that of those employees reporting compliance misconduct, the top five behaviors are (ranked in order): 1) harassment or discrimination; 2) bullying; 3) retaliation; 4) fair employment practices; and 5) conflicts of interest. In all cases, these failures of compliance translate into an increased mental health burden on workers, which ensures a negative spiral within the organization from compliance to morale to performance. The performance impact occurs at the individual, team and organizational levels impacting productivity, efficiency and quality of work. We have good data documenting that harassment and bullying, for example, negatively impact mood, concentration, and anxiety,[1] which translates into reduced job performance,[2] and further, corrodes workplace culture and team output.[3] The negative cascade is pernicious and costly at all levels.

Research shows that people, particularly Gen-Z, want to work for companies they can trust and that give them purpose. By 2025, Gen-Z is expected to comprise more than a quarter of the workforce, and a recent McKinsey study[4] documents that purpose and mental health are top priorities for this generation. When workers are aligned with the organization's values, they are more invested in complying with policies and practices to ensure success. Compliance evolves from being seen as a policing action to a purposeful culture-building activity and workers become partners. People become inspired to achieve shared goals, and this leads to higher performance for the individual, their teams, and the organization. The data from Ethisphere's World's Most Ethical Companies® recognition award has demonstrated that there is an Ethics Premium that is associated with a strong ethical culture, with the 2023 World's Most Ethical companies outperforming a similar large cap index by 13.6% over the past five years.

DISCONNECT BETWEEN ATTITUDE AND ACTION: THE WORK-AROUND CULTURE

As every compliance officer knows, the willingness of employees to report concerns or misconduct is crucial to a compliance culture. Ethisphere's 2023 Ethical Culture Report found that there is a big difference between what people say they will do and what they actually do related to ethics and compliance reporting. While 93.1% of employees say they would be willing to report misconduct if they saw it, in point of fact, of the 86.3% who actually observed misconduct, only 48.2% actually reported it. Among Millennials (age 26-41) and Gen-Z (age 25 and under) reporting was even lower at 44.6%.

This finding immediately brings three critical questions to mind. First, why do workers behave in ways that are inconsistent with their professed attitudes? Second, what is the mental health impact on the individuals who saw misconduct but did not report it? Third, what is the collective impact on the culture of the company when almost half the people that see colleagues doing something unethical or illegal don't say anything?

According to the Ethisphere Culture Survey, the two most common root causes for why people do not report is they don't think management will take appropriate action and they fear retaliation. These root causes have lingering implications for the individual and the organization. They reflect a low level of trust and further undermine trust, creating a negative spiral.

The mental health impact on the individual is clear. There is a direct link between employees' willingness to report and their mental health. Fear of reporting, feeling that reporting doesn't make a difference, or turning a blind eye to the misconduct are all associated with chronic psychological distress. Without appropriate interventions and/or outlets, chronic distress negatively impacts worker's health, including mental health. Taking this a step further, the performance of employees with chronic distress related health issues suffers. Chronic distress is associated with fatigue, loss of interest and energy, constant worry, and reduced creativity. These impacts translate into increased tardiness, absenteeism, turnover, and interpersonal conflict among team members and reduced quality of work. All of these effects negatively impact individual people and organizational productivity.[5]

Willingness to report is just one example of the direct link between mental health and compliance. Bullying. Harassment. Lack of equity and inclusion. The list goes on. Each of these issues must be viewed through the compliance lens and the mental health lens. Ultimately, leading companies will realize that they are interconnected and inseparable. As we saw from the willingness-to-report example, trust is an essential element of both. Employees need to trust the organization and feel connected to its values and purpose. The feeling of trust and inclusion fosters openness. It removes the roadblocks that prevent employees from reporting misconduct. The actions of senior leadership resonate through the organization in creating the culture. The Ethisphere Ethical Culture Report found that 92% of employees that believe senior leadership consistently demonstrates integrity in their behavior also trust that the organization will investigate reports of misconduct. Shockingly, this plummets to 27% if employees do not believe senior leadership's behavior consistently demonstrates integrity. The data overwhelmingly show that workers who have a high level of trust in leadership also report high workplace satisfaction, and their companies outperform those where workers report lower trust and satisfaction.[6]

Think about what happens at the organizational level if almost half of the people that see something won't say something. Think about what happens if employees don't believe that leadership acts with integrity and won't do anything about reports of misconduct. It directly spawns the dreaded "work-around culture;" a culture where people become conditioned to believe that the policies are only on paper. There is a disconnect between the paper and the behavior. The work-around culture has a negative impact on the mental health of all employees. Compliance turns into a check-the-box activity, too often seen as a business barrier and an irritant. One of the dangers of the work-around culture is that is spreads like a virus from department to department and from compliance topic to compliance topic. What starts as a data privacy work-around in the HR department will spread to become a gifts and entertainment work-around in the sales department.

Workplaces are facing skyrocketing rates of stress, anxiety, and depression. Left untreated, employee absenteeism and presenteeism increase, burnout sets in, and voluntary turnover rates rise. Employees experiencing mental health problems and burnout are at risk for being less productive in the workplace and less motivated to comply with organizational policies, let alone champion them.

MENTAL HEALTH AND COMPLIANCE: CONNECTING THE DOTS

Today organizations have systems to measure critical compliance program maturity and outcomes. However, this data is woefully lacking related to protecting and promoting mental health in the workplace. In extensive discussions with dozens of multi-national companies, it became clear that they were seeking a way to know what they should be doing beyond providing legally mandated mental health benefits.

The Mental Health at Work Index was developed by marrying the science on mental health with the science on the management systems used to build effective compliance programs. The Index defines what a good workplace mental health program looks like and allows organizations to correlate mental health program maturity to people performance metrics. It allows organizations to measure and benchmark how well they protect, promote, and provide services related to mental health.

ROLE OF THE COMPLIANCE OFFICER

Of course, compliance executives typically do not have responsibility for wellness programs and related HR functions. Cross-functional collaboration between legal, compliance, and HR will be required to make progress on integrating mental health and compliance programs. Cross-functional collaboration is one of the essential elements for creating a culture of compliance. When we analyze the compliance programs of companies around the world, the policies are typically sufficient on paper. However, for a policy to have its intended impact, workers need to follow the policy as specified. Most compliance failures, regardless of the topic, are related to human behavior. Cross-functional collaboration is needed to change human behavior, and linking mental health and compliance programs is a way to accelerate that linkage. Research Ethisphere conducted for Asia-Pacific Economic Cooperation (APEC) in 2021 found that cross-functional collaboration was the single most important indicator of a compliance program that resulted in improved economic performance for the organization.

Beyond cross-functional collaboration, there is a huge overlap between the elements of an effective compliance program and those of an effective mental health program. Just as leading compliance programs seek to embed compliance into how they operate, the same approach is needed for mental health in the workplace. In order to accomplish this, companies need to begin to measure the maturity of their current program and then prioritize areas for improvement.

Compliance and mental health both need to break out of any organizational silos and become part of the organization's broader corporate strategy and enterprise risk management program. To do this, we recommend you systematically track three interrelated metrics and collect and correlate the data:

- Program maturity metrics
- Employee perception metrics
- Related business and people performance metrics

Every organization should identify key people performance metrics and correlate them to changes in mental health program maturity. For example, does the rate of voluntary employee departure decrease as mental health program maturity increases? Important correlations can also be made to support the compliance program. Does the willingness to report increase? These are the type of metrics that will get the attention of the C-suite and begin to build a business case.

The interests of the compliance officer and the HR/wellness officer clearly come together in the role of managers in building a culture. Employees are seven times more likely to report ethical or compliance concerns to their direct manager than to use the hotline. Similarly, managers are critical in spotting early signs of worker stress or burn-out or in reducing the stigma of mental health issues. Employees need to trust their managers, and managers need to be trained so they know how to respond. We advocate the use of Champion programs where certain managers are selected and trained to become the face of the issue in their sphere. Just as we recommend more cross-functional collaboration between senior levels of compliance and HR/wellness, we also recommend the establishment of Compliance and Mental Health Champions to bring the issues together throughout the organization.

The Mental Health Index provides a framework that assesses organizational capacity in addressing mental health across the continuum of the "3Ps"—Protection, Promotion and Provision–of resources and services in 10 critical interrelated categories (see next page).

The results to date from over 40 companies show that companies are strongest in the provision of benefits, with Mental Health Resources and Benefits being the most mature category.. In part, this is because laws require mental health benefits to be equal to those provided for other health conditions.

There is a long way to go for companies to move beyond basic provision of care to integrate mental health protection and promotion into the company culture. The lowest maturity categories in mental health program are also categories that are critical to an effective compliance program that avoids the "work-around" culture.

- Strategy – are compliance and mental health considerations integrated into the core business strategy?
- Leadership – does leadership exhibit consistent behavior aligned with compliance and mental health communications?
- Worker Involvement – is feedback from the workforce considered in developing the strategy and defining the related policies?
- Work design – are compliance and mental health considerations taken into account, so it is practical to comply and do the core job effectively?

Compliance leaders and HR/wellness leaders need to understand that they are in this together and commit to taking action to integrate mental health in the workplace and compliance. To start the journey, you need to measure where you are now because you can't improve what you don't measure. The Mental Health at Work Index allows you to measure your current maturity and prioritize where to focus your efforts to achieve the greatest impact. Bringing mental health to the forefront has tremendous potential for compliance officers to innovate and improve the culture of compliance. ■

FOOTNOTES

1. *Mental Health at Work, World Health Organization*
2. *Making Work Less Stressful and More Engaging for Your Employees, Harvard Business Review*
3. *Workplace Bullying, Anxiety, and Job Performance: Choosing Between "Passive Resistance" or "Swallowing the Insult"?, National Laboratory of Medicine*
4. *'True Gen': Generation Z and its implications for companies, McKinsey & Company*
5. *Stress and Productivity: What the Numbers Say, business.com*
6. *The Best Companies to Work For Are Beating the Market, Forbes*

ABOUT THE EXPERTS

Craig Moss *is the Executive Vice President of Measurement at Ethisphere and a leading expert on using management systems to improve compliance and risk management performance within companies and across supply chains.*

Dr. Kathleen M. Pike *leads the scientific and resource teams for the Mental Health at Work Index. Kathy has worked globally on the development and dissemination of evidence-based programs to address mental health needs in workplace, school, and clinical settings. She oversees The Mental Health at Work Design Lab at Columbia University.*

THE MENTAL HEALTH AT WORK INDEX

An effective program for mental health in the workplace must proactively address the 3Ps.

THE 3Ps FRAMEWORK FOR WORKFORCE MENTAL HEALTH

PROTECTION	PROMOTION	PROVISION
Protect mental health by eliminating psychosocial hazards and minimizing risks that can negatively affect workers' mental health and psychological well-being	Promote mental health by developing the positive aspects of work as well as worker strengths and positive capacities	Provide access to information, resources, and services; take corrective organizational action to address workforce mental health needs regardless of cause

The Mental Health Index assesses across the continuum of the 3Ps framework for each of the functional categories below.

CATEGORIES	DESCRIPTIONS
Mental Health Strategy (MHS)	The organization's overall approach to addressing workforce mental health, including goals, actions, and resources. This includes mechanisms for assessing hazards and risks, prioritizing and coordinating actions, allocating resources, establishing accountability, measuring and reporting results, and continually improving the organization's efforts.
Leadership (LDR)	Leaders' commitment to workforce mental health, including executive leadership support, governing body/board involvement, and the organization's engagement with the broader community and public in promoting mental health. This includes leadership involvement with the organization's mental health strategy, how they advance and support workforce mental health, and their accountability for doing so.
Organizational Culture and Impact (OCI)	How the organization's culture (i.e., norms, values, beliefs, and associated behaviors) affects workforce mental health. This includes how mental health considerations are built into the organization's human capital strategy (e.g., hiring, selection, accommodations practices), how organizational decision making considers the impact on workforce psychological well-being, how aspects of the organization's culture are tied to psychosocial hazards and risks, and the psychological impact of the organization's products, services, and footprint on internal and external stakeholders.
Workforce Involvement and Engagement (WIE)	How the organization facilitates worker participation in efforts for mental health protection, promotion, and provision of programs and services. This includes who is involved in activities such as developing, implementing, evaluating, and improving workforce mental health efforts, how managers and supervisors support worker involvement, and what mechanisms are used to solicit worker input and feedback.
Work Design and Environment (WDE)	The ways in which work is organized and structured to eliminate hazards, minimize risks, and promote worker health, safety, and psychological well-being. This includes how work is designed, how performance is measured and monitored, social/interpersonal aspects of work, and the work environment/workplace conditions.
Communication (COM)	How information sharing about workforce mental health occurs in the organization. This includes content and channels of communication used to demonstrate organizational and leadership commitment, increase awareness, reduce stigma, encourage use of resources, and provide updates.
Training Specific to Mental Health (TMH)	Mental health education and training that increases awareness, improves mental health literacy, promotes supportive behavior to peers, encourages use of available resources, and reduces stigma. This includes training frequency, quality, content, and customization based on role in the organization.
Mental Health Resources and Benefits (MRB)	Organizational capacity to ensure access to appropriate mental health resources/benefits. This includes consideration of quality, affordability, barriers to access, legal or regulatory requirements, and program integration.
Related Employment Practices (REP)	Policies and practices that are not specific to mental health, but can affect workers' psychological well-being. This includes work-life support, reward and recognition, health, safety, and wellness, job training and career development, DEI-related efforts, and change management, as well as how those practices support and are consistent with the organization's mental health strategy.
Measuring, Monitoring, and Reporting (MMR)	The systematic process for assessing the mental health needs of the organization and its workforce. This includes risk assessment, measuring and monitoring activities related to the mental health strategy, addressing performance gaps, identifying opportunities to improve worker mental health, and reporting results to stakeholder groups.

Excellence in Action

How HCA Healthcare Uses the Mental Health at Work Index


KATHI WHALEN


RYAN SLEDGE

Based in Nashville, TN, **HCA Healthcare** is one of the nation's leading provider of heathcare services. That means looking after its employees' health as well, which is why the company is a Mental Health at Work Index user. **Kathi Whalen**, Senior Vice President and Chief Ethics and Compliance Officer, and **Ryan Sledge**, Vice President, Workforce Health and Safety, share how the Index has helped HCA.

How has your company made use of the Mental Health at Work Index?

Sledge: We were part of the Founding Corporate Council of the Index, which is really important to us, both as an employer and as a provider of mental health services. For us, this was an opportunity to continue to invest in the way that we care for our colleagues. The results that we've gotten back from the Index helped us bolster some of the things we do internally already, such as our Mental Health and Wellness Colleague Network, which is the fastest-growing network across the company, and helps colleagues better support each other in this space. A lot has come out of the assessments to help us understand where we are as a company. It has provided us with an opportunity to do more and do better as an employer and as a health care system.

Whalen: We have nine colleague networks that we stood up in the last two and a half hears through our diversity, equity, and inclusion efforts, which is part of my team. This Mental Health and Wellness one has just grown like gangbusters over the last year since it began, because on some level, we all want to be sure that we are taking care of our mental health. We all want to act at our optimum wellness. Participating in the Index has heightened our awareness of how we can better serve our colleagues.

Why would you recommend other organizations to make use of the Mental Health at Work Index?

Sledge: Better health for the individual means better health for the organization. No matter what the business is, by really investing in your employees this way, they are able to bring their best selves to work and ultimately serve the organization better.

Whalen: The opportunity to do some benchmarking is a great way for organizations to see how they stack up relative to other organizations and learn some best practices from them.

Do you see a connection between a strong mental health environment and the strength of an organization's overall culture?

Whalen: Absolutely. The biggest pieces of our culture are our colleagues, patients, and the communities where we provide services. So we look at this mental health piece across all of those.

Sledge: The nature of our work is health care, and there is a high degree of emotional investment in that work. Us being able to focus on our workforce, and fill their cups back up as they're doing this work, allows them to keep giving compassionate care. It gives us an opportunity to take care of them. That's why it's so important for us.

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INVESTIGATIONS, COMPLIANCE & ETHICS

Health Carousel & Slave-Free Alliance: Fighting Modern Slavery Together

Q&A with Andrew Lingo & Rachel Hartley

Interview by Bill Coffin

When **Health Carousel** wanted to eliminate the risk of human trafficking and modern slavery from its healthcare personnel recruiting practice, it partnered with UK-based **Slave-Free Alliance** to develop best-in-class policies and procedures. The result is an ethical recruiting program that isn't just finding talent. It's protecting it.

What is Slave-Free Alliance and how does it help companies like Health Carousel?

Rachel Hartley: We are a social enterprise wholly owned by the global anti-slavery charity Hope for Justice, which has been around in the U.S. and the UK for almost 15 years now, doing brilliant anti-slavery work to rescue victims trapped in quite horrific situations.

We had a turning point as a charity about five years ago, where more and more businesses were contacting the charity about these types of issues. They didn't know what to look for or how to deal with the problems they were coming across. That led us to set up Anti-Slavery Alliance as the business arm of the charity. We offer consultancy services, learning solutions, and a membership program for businesses to partner with us. We donate our business profits straight back into Hope for Justice.

Our sole purpose is to partner with businesses to understand and mitigate their risks of modern slavery and labor exploitation. Should the worst happen, and we find potential victims, we are there to guide our clients through the remediation and what role that they should play in it. We work with more than 100 businesses now across many industries, and we're expanding globally.

Nothing we do is off the shelf. We're very intentional with every business we partner with. We're going to get to know you. We're going to feel like we're part of your team and we're going to do this for the long term together. If that's something that you're up for, we are here to help, no preparation needed.

Healthcare Carousel was our first contract with a business in the U.S., and we were really excited to partner with them. It's been a wonderful partnership so far.

How did Health Carousel partner with Slave-Free Alliance? What problem were you solving for, and how has that effort gone so far?

Andrew Lingo: We started as a company in 2004 and began growing very rapidly after that. A big part of our business is the recruitment of international healthcare professionals for opportunities in the United States. With that comes a great responsibility to work with those individuals and their families responsibly and ethically, because they are picking up their whole life and coming to the United States.

As you grow as a company, the risks that you are exposed to tend to grow as well. We are not manufacturing widgets; we are dealing with people moving around the world in a contract employment relationship. And we are dealing with agents that are representing our company to recruit. This year, we are hoping to have a thousand new starts on assignment in the United States—that means getting everyone here, getting them proper housing, making sure they understand their contracts fully, and on and on. So we felt we needed a partner to help us understand where those risks were, how to do the best we can going forward, and to help us examine some of the issues that we had at the time.

When I was trying to find a company that could provide the support that Slave-Free Alliance provides, I have to admit, there was some selling internally that SFA exists as a partner for improvement and change, and not as a critic. If you invite someone to look behind the scenes and you openly discuss your issues and where you want to go, you don't want them to take that information when you're trying to improve and then throw it in your face. The conversations that we had with Rachel and other SFA team members really gave us certainty that they were a partner towards improvement.

Why is it important for companies like Health Carousel to partner with organizations like Slave-Free Alliance rather than trying to address ethical recruitment issues entirely on their own?

RH: This is a real leadership move from Health Carousel, I feel. The healthcare industry is quite complex and nuanced in its risks, so it's important to get that partner. But it's not just the healthcare industry. Any company in any industry can't do it on their own. We all need specialists and experts in various different fields for the work that we do. And it's important to get that independent perspective as well and to sense check that you are heading in the right direction.

I would love to see more of this in the healthcare industry, where there are so many different kinds of companies playing so many different roles. Recruitment is a really interesting one. We know that recruitment, generally, is high-risk for issues around modern slavery and labor exploitation across many industries. So the more we have businesses involved in recruitment that are stepping up to the plate, the more we can raise the global standard of how this is done.

What does an ethical recruitment program look like? And what are some of the specific challenges and opportunities that come with ethical recruitment within your specific healthcare space?

AL: Bill DeVille, our Board chair and one of the founders of the organization, formed the American Association of International Healthcare Recruitment (AAIHR) around 2008, when Health Carousel was in its infancy. It put in place a code of practice not just for staffing agencies and recruitment companies to follow, but for the healthcare professionals themselves. Even when we were just barely getting off the ground, we were saying we need to work with other organizations like ourselves to set some standards. That was the beginning. We also went through audits from the Alliance for Ethical International Healthcare Recruitment (AEIHR), which is a division of the Commission and Graduates of Foreign Nursing Schools (GCFNS). Bill worked with them and has been a board member to create their ethical standards. And those codes are not one time things. They are revised to reflect what needs to be done in the industry.

When we work with recruiting partners and agents, they have to understand our business. They have to understand the Trafficking Victims Protection Act (TVPA) and other global regulations. We have put into place strong staff training so all of our staff understands every one of those laws. And Bill is the champion of this, because people have to fully understand how critical it is that we do this right. So those are several ways that we were already considering these issues even before we began working with Slave-Free Alliance.

Why is the healthcare sector considered high-risk for modern slavery?

RH: The reality is, there are pockets of risk everywhere. No sector is free from it, and we can't get complacent about it.

The healthcare industry fascinates me because there are very large and different buckets of risk. The first one is the frontline piece. You've got the potential exploitation of healthcare professionals themselves, which is why ethical recruitment is so important. But at the same time, you have the potential of patients as victims. A modern slavery victim is likely to visit a healthcare facility at least once during their exploitation because physical violence is such a big part of how this kind of exploitation works. Or, they are placed in unsafe work without the right protective equipment, and they might suffer an injury.

It is very likely that a healthcare professional will come across at least one victim of modern slavery in their career, so it is important that our frontline staff is safe and knows what to look for. There's a lot of training around that in healthcare because it can be quite similar to victims of domestic abuse. If you think you're faced with a patient who is a victim of domestic abuse, but their controller is with them, how do you try and get them on their own and give them a space to speak up? Modern slavery has a really similar victim profile in some ways. Inevitably, you might find that a victim is there with a controller. So healthcare staff can spot these kinds of problems.

The second big area of risk is in the operations of healthcare itself and healthcare facilities. There is quite a reliance across the industry on migrant workers. This is where Health Carousel comes in. They're recruiting brilliant international healthcare professionals and bringing them to different places. We love having that expertise around the world and different learnings. But ultimately, migrants by default are a vulnerable group when it comes to exploitation. When you do that kind of movement, where you go to a new space where it's perhaps not your first language and you don't understand the employment law, you are vulnerable. So we see that big reliance on migrant workers as a red flag for potential exploitation. There's also a lot of recruitment vendors used in that sense too; we have to make sure they are giving an accurate representation of the job ahead of them, and that they're not doing anything to put that person at a disadvantage, such as charging them recruitment fees that they shouldn't be paying.

But then in the actual space of a healthcare facility, we've got services that are high-risk. We've got retail that's high-risk. If you imagine yourself walking through a hospital, you're going to pass cleaners doing the laundry of the beds, maybe a gift shop, or somewhere selling food. All of these spaces contain risk, and all of these servicepeople are also at risk. Cleaners are at high risk for exploitation because of the nature of the work. We see it so often. Again, it's migrant workers, and a lot of these people might work at night when there's fewer people around.

Then there's the supply chains of all of those things as well, which adds another element. And that includes the construction of a functioning healthcare space. The whole operational risk is a really nuanced field.

And then lastly, there's the procurement of medical goods. Healthcare facilities are getting supplies—consumables, medical equipment, uniforms pharmaceuticals…the works. All of these supply chains are very different, multi-tiered, complex, fragmented, and global. It's hard to really understand where your risk is so that you can address it.

So between the frontline, the operations, and the supply chains themselves, we've got a lot of risk across this industry. We really need everyone who's playing their part in the healthcare industry to stand up and get involved in this agenda.

"It is very likely that a healthcare professional will come across at least one victim of modern slavery in their career, so it is important that our frontline staff is safe and knows what to look for."

Health Carousel is a member of the Business Ethics Leadership Alliance (BELA), and it's one of only two BELA members with a focus on healthcare staffing. What have you learned through your partnership with Slave-Free Alliance that you would want to share with your fellow BELA members?

AL: Acts of modern slavery aren't necessarily limited to non-professional, low-wage earners. If you've got a registered nurse who is earning a good wage, they're still susceptible. There are a number of businesses that are recruiting healthcare professionals from abroad, so they're all open to that risk. We hear stories from nurses and healthcare professionals that have worked in other countries, and they are shocked that we don't do certain things, like hold onto their immigration documents. We have to be cognizant that the people that come to us may have already gone through this. It may not have necessarily resulted in violence or them not getting paid, but it definitely led them to their job in a unethical way. We see that pretty much on a weekly basis, especially when our recruiters are talking to these nurses that have worked overseas.

During COVID-19, the global population of modern slaves increased almost 20 percent, to 50 million people. How do we address a system that allows for such an extraordinary increase in slavery?

RH: That increase is shocking, but it isn't even the full picture of what we're dealing with. Modern slavery is such a dark, hidden practice. It's designed not to be found, even when it operates in plain sight. So any data we manage to get, we treat it as a minimum. I think the figure of 50 million modern slaves is just the tip of the iceberg. We're dealing with something far greater than that.

Without legislation in place globally, we need businesses to step up, act more responsibly, improve their practices, get a handle on their supply chains, and ensure that they are hiring safe workforces that have been recruited legitimately. There are some awful human rights issues around the world, but forced labor is something that we could stamp out with good business practice.

How important is it that Health Carousel reached out to Slave-Free Alliance?

RH: It's so important and it's so commendable. I know a lot of businesses are still quite scared to get involved in this agenda. There's hesitancy around uncovering something that could shatter their reputation. But Health Carousel has shown that we can lean into this in a transparent and open way to accept that we are dealing with risk because of the sector we operate in. We have to accept that. So how do we proactively mitigate these risks? How do we make sure that we're doing the right thing?

Health Carousel is a brilliant example of a company that stepped into that risk space to take control of it so they wouldn't fall victim to these awful practices of criminal gangs or do something that has unintended consequences in the way that they work, and to constantly improve and ensure that they are acting as a responsible business.

We love it when this happens. This is what we need from more companies. You will never be ready and there will never be the right time. But if you start with small and meaningful steps, you quickly end up on a good journey.

Andrew, where has your work with Slave-Free Alliance made the biggest difference so far within Health Carousel?

AL: On many occasions, there have been nurses we have recruited that had previously been charged fees to find a job that didn't live up to expectations, or they've had their important immigration and visa documents withheld. They've just been in bad situations. By being a more responsible staffing agency and employer, we help them overcome that and get them into a better situation in the United States. That happens on a regular basis.

We also support the whole family. It is very common practice for nurses from around the world to accept jobs in other countries and be separated from their families. They might have young children at home that they leave for two years. They might return home for two to four weeks per year, but other than that, they do not see their families. We encourage and assist with the immigration of the whole family, so that nurse will have a support system when they get to the United States. If they are alone and don't know anyone, that makes them more vulnerable than if they've got their spouse and children with them, and are connected to the school system and their church—which are all things we do for them when they arrive. We have a housing department that finds them safe, clean housing for when they come to the United States.

We do their arrivals in person. We know the clients that they're going to, and we do site visits. We know the importance of visiting everyone in your supply chain, so we've been to all of these facilities when people are being placed. We don't work with ones that we don't think are good places to work. I think we're doing a lot of things that combat modern slavery from slipping into our process and our business by being very hands-on and supporting the family and the community that they live in.

RH: I think Andrew's drastically underselling himself here. <Laughs.> He makes a difference every day in Health Carousel. The initiatives that Andrew starts, and the business that he supports, is all about empowering the employees to make responsible decisions, act responsibly, and put the care of people first. He is quite a beacon within the organization for that. So, all this brilliant prevention work can't be overlooked. The more you reduce potential vulnerability, the more stability you offer to someone, the more you reduce the likelihood of something going wrong. That's where the best work is. Prevention is everything.

AL: Being a member of Slave-Free Alliance is something you have to be accepted into. You just don't pay your money and say, "I'm a member." We had to go through an extensive evaluation process to make sure that we were a fit. I've sent Rachel a ton of documents over a six-month process of interviews with internal and external constituents, and healthcare professionals that hadn't yet arrived in the United States but were on their way. It was quite extensive.

After Slave-Free Alliance came back with a list of suggestions and said we could join, Rachel did some in-depth staff training which was really well-received. I think that the staff walked away with the same perception, that we're doing a lot of the right things, but we can improve on some of them. And there are still suggestions from SFA that I am turning into policies and procedures right now so we can capture data better and spot recurring trends. This is all based on the studies that Rachel and her team did and the feedback they provided us.

You have to trust in an organization like Slave-Free Alliance and let them do an audit of your organization and see where you can improve. Because the end result is that you will be a better organization if you actually act upon what they're doing. This is a long-term thing. It's not one and done. It has to be an ongoing commitment. ■

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How Good Governance Can Keep Corporates Clean from Greenwashing

Amid increasing scrutiny, the future success of a business is now more than ever based on embracing and reporting sustainability practices

by Katharina Weghmann

Companies keen to publicize their Environmental, Social, and Governance (ESG) ambitions face increasing scrutiny. Better governance measures can help avoid the pitfalls.

On climate change there is no room for failure, as the latest Intergovernmental Panel on Climate Change report warned[1]. But determining which businesses will successfully reduce their carbon emissions to net-zero is difficult. There are many examples of companies making commitments which are questioned by media and other stakeholders. Claims of greenwashing may ensue.

Corporations face similar challenges across a host of other ESG topics including supply chains, data privacy, packaging, pay, diversity and inclusion, workplace safety and social justice. The lack of global agreement on standards in all areas of ESG leaves corporate leaders and in-house counsel in a challenging position — forced to set targets and make decisions without reliable data and without priorities and guidance from regulators or lawmakers. In the absence of clear metrics and global standards, companies are often left to construct their own reporting mechanisms, which may open them up to censure.

General counsel and in-house litigation leaders are anxious to see loopholes closed: 28% reported their so-called ESG dispute exposure increasing last year, and 24% expect it to deepen over

KATHARINA WEGHMANN

the next 12 months, according to the ESG 2023 annual litigation trends survey by law firm Norton Rose Fulbright.[2]

The weak regulatory environment, combined with stakeholder demands around ethical and environmental performance, leaves organizations under huge pressure, resulting in the rise of so-called "greenhushing." Corporates fearful of being accused of greenwashing instead opt for silence on their environmental and societal (diversity, equity and inclusion) ambitions. Rob Locke, EY Oceania Forensic & Integrity Services Managing Partner, suggests there is a "governance bubble," in which "expectations about 'greenness' are accelerating and the governance layer within businesses is struggling to keep up."

How can companies leverage good governance to put sustainability at the heart of their strategy and report on progress in a transparent and authentic way?

THE PRESSURE COOKER

In the case of sustainability, pressure in the fraud triangle is intensifying as investors, activists, customers, consumers, employees, suppliers and regulators all have heightened expectations of a company's strategy and reporting in this area. Companies are compelled to respond. But how?

Traditionally they'd look to either regulation or the competition, but neither currently offers clear guardrails when it comes to ESG outcomes. Promises are therefore quickly made, and internal practices along with current structures of systems, processes and controls that allow an organization to govern itself often don't seem to be fit for the challenge.

> ***76%** of investors are worried about businesses "cherry picking" on sustainability activity*

Take net-zero targets. The plans of the so-called pioneers – now being picked over by activists, investor groups and non-governmental organizations (NGOs), among others – may well have been set in good faith but not backed by the necessary due diligence, data and processes.

The result? Greenwashing. The Cambridge Dictionary defines greenwashing as "behavior or activities that make people believe that a company is doing more to protect the environment than it really is." Planet Tracker[3], an NGO, has identified six main types of greenwashing that are "increasingly sophisticated" and are spreading far and fast as ESG becomes a defining characteristic of successful, sustainable and socially aware companies.[4]

Scrutiny of the numbers will only intensify as we move towards reasonable assurance, and missing carbon targets can have financial consequences too. Recent research across large global food and beverage companies showed gaps in shareholder return and EBITDA growth between top and bottom performers on ESG goals, and just 4% are confident of delivering the required reductions in their Scope 3 emissions.[5]

Much like climate and social impacts, greenwashing doesn't stop within an organization's four walls. Delivering against ESG targets means lifting the lid on supply chains and digging through the detail. However, accurate data on climate risk, greenhouse gas emissions, biodiversity impacts, employee treatment, human rights, tax transparency, anti-corruption and anti-bribery, board diversity and many more aspects of ESG isn't often readily available and requires companies to collaborate and if necessary, investigate across the entire supply chain to source it.

OPPORTUNITY KNOCKS

"In financial accounting you state your position and make representations, but these can be substantiated by accounting rules," explains EY Canada Forensics & Integrity Services Leader Zain Raheel. Debits must correspond to credits, for example. But when it comes to environmental accounting, there are few such assurances and there could be opportunities for fraud. "You're currently expected to rely on data that may have some significant limitations when placed under testing scrutiny," he adds.

Assets in global sustainable funds hit a high of US$2.97 trillion in 2021, according to Morningstar[6] for example, and yet unsubstantiated or misleading claims continue to exist with green finance.

ESG data may be manipulated, with employees relying on the inherent weaknesses and ambiguity of sustainability reporting. Within a financial reporting system, typically a strong controls framework with management signoffs is in place. However, as ESG programs are cross-functional and less mature, that same controls framework may not be in place. People also matter: how the signoff is enabled illustrates the importance of governance in the avoidance of such greenwashing.

It's no surprise, then, that 76% of investors accuse businesses of "cherry picking" on sustainability activity.[7] The EY global survey of senior finance leaders and institutional investors, published in November 2022, found ESG metrics lacking.[8] A resounding majority (88%) of investors said "unless there is a regulatory requirement to do so, most companies provide us with only limited decision-useful ESG disclosures."[9]

Experts at MIT and the University of Zurich, who recently reported divergence of ESG ratings between major ratings agencies, have joined others in calling for "greater transparency" and harmonization of ESG disclosures.

The regulatory net is also tightening around green claims, including ones made in relation to ESG topics like net-zero, and those made in marketing materials. International authorities coordinated by the UK Competition and Markets Authority found 42% of green claims made online by companies were exaggerated, false or deceptive – and could by turn break consumer law[10]. Mandatory reporting structures are on their way, and these are in the interests of both inadvertent misreporting and fraudulent claims.

> ***42%** of green claims made online by companies are exaggerated, false or deceptive*

THE RATIONALIZATION OF RULE-BREAKING

From top to bottom, The EY Global Integrity Report 2022 found ethical standards to be slipping in the aftermath of the pandemic.[11]

Among a list of fraudulent activities, including falsifying financial records, taking or offering bribes, and misleading regulators or auditors, 43% of board members and 35% of senior managers would do at least one of these for personal gain. Thirty-nine percent of employees would be willing to perform an illegal or unethical activity for their own benefit or at the request of a manager.

***90%** of law departments report challenges in creating policies where there are no specific regulations connected to environmental issues*

Employees will justify their actions in committing ESG fraud the same way they do when committing financial fraud. "No one gets hurt;" "it's not a big deal;" and "it's for the greater good of the company" are common rationales. And with remuneration increasingly linked to ESG performance, personal hardship is a potential fraud risk factor at every level of an organization.

The tone and action from the top are crucial. And yet boards are too often failing to recognize where ESG risks and issues exist, particularly in challenging an organization's ESG communications and reporting. Is lack of experience at the very top an issue for the evolving challenges and standards companies are facing? Research from New York University's Stern Center for Sustainable Business demonstrates some of the gaps: The team dug into the ESG credentials of 1,188 Fortune 100 board directors.[12] Just 6% had relevant experience relating to each of the "E" or "G" in ESG; only three people (0.2%) had specific climate expertise. Is your board equipped to recognize where tough questions need to be targeted in their management teams?

Legal counsel is taking on more responsibility. Corporate social responsibility (CSR) and ESG teams are shifting their reporting to the General Counsel, for example: The 2022 Chief Legal Officers (CLO) survey by the Association of Corporate Counsel found that 24% of organizations' CSR and ESG teams have such reporting lines, compared to only 15% in 2020.[13] The 2023 report showed this had fallen slightly to 23%, but 69% of CLOs believe the focus on ESG will accelerate (versus 66% in 2022).[14]

The role of law departments in ESG is evolving rapidly, but the lack of a controlled regulatory environment makes policy-making problematic.

THE STRONG ARM OF THE LAW

Pressure, opportunity and rationalization, the conditions of the fraud triangle, are all present in the current ESG climate. And the regulatory landscape serves as fertile ground to feed all three, at least currently.

Appropriate regulation establishes a level playing field and ensures that ambition is always matched by action. Indeed, the International Sustainability Standards Board, established by the IFRS in 2021, is also working on standards that should form a global baseline of sustainability disclosures to meet both investor and public policy needs.

The UK now requires large companies to report on their climate-related risks in line with the recommendations of the global Taskforce on Climate-related Financial Disclosures (TCFD). The EU Corporate Sustainability Reporting Directive (CSRD) means that companies will be required to publish detailed information on sustainability performance. And in the US, the Securities and Exchange Commission has proposed rule changes that would require climate-related disclosures.

Global consumers, as demonstrated in the longitudinal data of the EY Future Consumer Index, are increasingly "green." The percentage of those who say purchasing or behaving sustainably is a guiding principle of their everyday lives has increased from 47% in May 2021 to 53% in October 2022. This provides temptation for companies to exaggerate their green credentials. Regulators are gearing up:

The digital markets, competition and consumer bill, set to be introduced in the UK in spring 2023, will give the Competition and Markets Authority (CMA) powers to impose penalties on companies for misleading green claims.

The European Commission meanwhile has just published the draft of its green claims directive, which is designed to offer "common criteria" for businesses looking to make environmental claims.[15]

The EY 2022 General Counsel Sustainability Study, involving interviews with 1,000 General Counsel and Chief Legal Officers from businesses representing 12 industries across 20 countries, showed the challenges presented by lawsuits and increased enforcement were among the risks faced due to sustainability issues or practices.[16]

"Consumer litigation over misleading advertising tied to ESG-related claims is increasing," explains Chandan Sarkar, Principal, Forensic & Integrity Services, Ernst & Young LLP. "Everything from sustainable packaging to carbon-cutting claims are under the microscope, and courts are allowing the claims to progress to 'fact discovery' stage, which is a noteworthy shift."

***92%** of law departments have difficulty creating policies on social issues when there are no specific regulations to follow*

Greenwashing negatively impacts a customer's experience with a company's product or service, according to academics writing for Harvard Business Review on the topic: "[…] when customers believe a company is greenwashing, it directly affects how they experience its products or services."[17] In their published study, the researchers estimated that companies perceived to be greenwashing suffered, on average, a 1.34% drop in their American Customer Satisfaction Index (ACSI) score.[18] Such a small change in a organizations customer satisfaction score, however, can have significant implications for corporate performance.

Damage to the brand, loss of customers, reputation-damaging headlines and a struggle to recruit and retain staff from an increasingly climate-conscious workforce are among the myriad risks emerging from greenwash, so what do companies do about it?

INTEGRATING INTEGRITY

Integrity is important; however, a gap exists between what companies say they have in the way of an ESG policy and their accountability.

A record 97% of respondents to the EY Global Integrity Report 2022 agree that integrity is important.[19] However, senior management is often overconfident in the effectiveness of corporate integrity programs, with a growing "say-do" gap emerging between rhetoric and reality. This has implications for an organization's ESG aspirations and increases the opportunities to greenwash.

Greenwashing in this context can be seen as a disconnect between words (what an organization says) and actions (what it is actually doing).

Senior management and board members should make sure they can back up what they are saying and consider the potential commercial, reputational, legal and financial risk of making statements they cannot support. Otherwise, they can be held accountable for violating a basic principle of stewardship and corporate citizenship, namely corporate integrity.

Consider what has happened with the financial services sector, where there is a swath of regulations sweeping across the globe to ensure organizations are held accountable both for their investments and the products they sell.

"If you're investing in a 'green' fund you now need substantial documentation that those funds are living up to their name," says Sarkar. "You need to look at the metrics you are using, how up to date the information is and whether it is disseminated appropriately and compliantly."

CLIMATE REPORTING AND CRISES

Corporate reputations and the careers of CEOs are quickly destroyed by public disclosures of a say-do gap, and those reputations will be even more closely scrutinized

RECOMMENDATIONS AND ACTIONS

Governance and Oversight

- *Evaluate if General Counsels alone are the most effective function to drive ESG and evolve the organization towards sustainability while having a more integrated approach towards integrity more broadly.*
- *Challenge and re-imagine board structures and functions along with their mandates as part of the sustainability journey, e.g. imagine how Ethics Officers or CFO roles can evolve to drive the sustainability transformation while managing risk and provide assurance on non-financial performance.*
- *Increase board diversity: bring expertise into the board, and while that is underway, use specialist committees to ensure strong sustainability expertise informs the board's work.*
- *Break down siloes, find new ways of working, and establish rigorous systems and processes (including incentive structures) to facilitate effective management and reporting across relevant functions, e.g., operations, ethics officer, HR, internal audit and compliance, etc.*
- *Ensure there is a comprehensive understanding of the ESG reporting framework in place, define what-could-go-wrong scenarios with mitigating actions, and identify potential red flags.*

Data Quality

- *Ensure ESG objectives and progress are supported by reliable and measurable data points to protect companies from potential allegations of greenwashing.*
- *Proactively take a forensic approach to the identification, collection, processing and reporting of data to identify possible weaknesses or potential for data manipulation early and remediate red flags across the organization.*
- *Use a rigorous data strategy and reporting to support a vision of the company's progression towards ambitions such as net-zero and carbon reduction initiatives, which will build confidence and trust internally as well as externally.*

Culture

- *Ensure a transparent and realistic approach to ESG is nurtured across the organization, led from the top.*
- *Embed leading practice governance features to continuously support the ESG journey, such as integration of ESG and integrity into the HR life cycle, no-blame speak-up, pro-sustainability leadership, seriously driving diversity, equity and inclusion, etc.*
- *Develop an organizational approach to ESG that isn't only focused on risk or corporate defense but also seeks and celebrates the opportunities and innovations a strong sustainability agenda can offer forward-looking enterprises.*

as rigorous disclosure obligations on a company's ESG performance come into force. Any companies facing scrutiny on disclosures, deeper analysis between peers and more cross-border enforcement should understand how they can validate (through strategy, data, and reporting) public-facing statements. Without that grounding, the reputational risks may be tantamount to greenwashing, regardless of a statement's intent. "With ESG, it's much harder to see where the threat is going to come from and how to respond," says David Higginson, Partner, Forensic & Integrity Services, Ernst & Young LLP. "The ability to manage a greenwashing issue quickly and effectively needs to be moved further up the Board agenda." He cites EY research showing that 58% of board directors/members and 37% of other employees would be "fairly" or "very concerned" if their decisions came under public scrutiny.[20]

Integrity can be a difficult concept to define, not least because organizations face different ethical dilemmas. It's about making the intangible tangible, about committing to the interdependence of business and society by embedding integrity into the culture and behaviors of the organization. But fewer than half those EY surveyed for the 2022 Global Integrity Report are using the basics of integrity enhancing measures such as providing regular training on regulatory issues (43%) or ethics (38%), applying sanctions to address behaviors (32%) and conducting due diligence on suppliers (30%) or customers (28%).

Suppliers, it should be noted, are exposed to the same pressures, and can be enticed by equally favorable opportunities and will rationalize these decisions in similar ways to their clients and customers. In other words: The very same fraud triangle exists, so the very same risks of greenwashing are present and the impacts can be felt up the supply chain.

Organizations should take a "tell me, now show me" approach to ESG with facts to the fore. Board members need to be on top of this strategy because regulators increasingly are. Some are already employing data science to ensure, for example, that the claims made in glossy CSR reports match official ESG accounts.

Harmonized and mandatory reporting will help reduce ambiguity and provide more confidence in reporting. And make no mistake: Organizations will increasingly need to communicate externally – often with external assurance – on key sustainability matters and metrics applicable to their activities, like greenhouse gas emissions, as pressure from all stakeholders increases. This communication is the foundation of an organization's social contract with all stakeholders. Moreover, putting sustainability at the heart of company strategy pays financial dividends. In a recent survey of more than 500 companies committed to improving their environmental performance, 69% report that they capture higher financial value than expected from their climate initiatives.[21]

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The Science of Cartoon Thinking

Proving That Making People Laugh Can Transform the World

by Pat Byrnes

It may seem funny to consider cartoons as a business tool—until we look at the science behind what they do, not only in the individual mind, but in the collective consciousness.

I speak not only as a cartoonist for *The New Yorker* since 1998, with hundreds of cartoons published in their pages (of the many thousands more that weren't), but also from more than 40 years of applying the cartoonist's mindset to other creative careers, from advertising to comedy performance to working as an aerospace engineer on the design team for the stealth cruise missile.

There's something unique about *New Yorker* cartoons. They tell an entire story in a single image, with or without a caption. Known as "gag cartoons," a preeminent textbook on cartooning defines them as "the instant communication of a funny idea."[1] Notice: no reference to "picture" nor "words," but "communication" and "idea." Specifically, a funny idea.

Funny means more than "making you laugh." Funny also means "difficult to explain or understand" or "strange and not as you expect." **Explaining or understanding the difficult or unexpected lies at the heart of not only a good gag cartoon, but all innovation and culture change, particularly in human-centered areas, such as ethics compliance, Diversity, Equity, and Inclusion (DEI), policy, customer engagement, and team-building.**

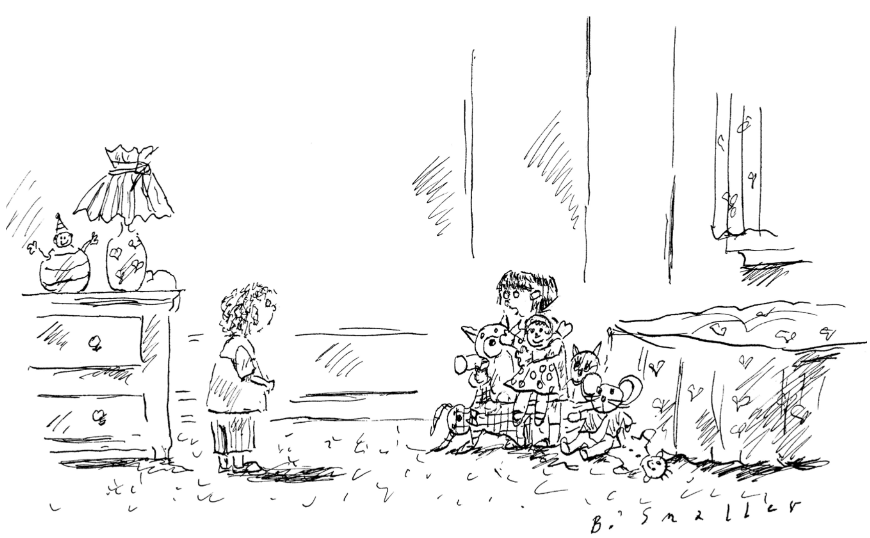
Could the thinking, then, that goes into creating a gag cartoon benefit organizations seeking such transformations? Funny as it may sound, yes! The evidence comes from somewhere funnier still: neuroscience.

Inside our brains, regions associated with different cognitive and emotional functions work together in networks of various size and organization to perform higher-order thought processes. Transformational thought, including creativity, innovation, behavior change, and problem-solving, requires the synergetic, collaborative contributions of all three of the brain's large-scale neural networks: the Executive Network, the Default Network, and the Salience Network.

Let's look briefly at a partial inventory of what each network contributes to this transformational thinking process—and within that, why it is that a gag cartoon's inner workings significantly enhance the creativity surges within these intertwined systems.

- **The Executive Network** controls what its name implies, executive function. It lets us focus on goal-directed tasks and behaviors, such as planning and analysis. It also controls conflict resolution, rules-based problem solving, and decision making, including ethical judgment.
- **The Default Network** is so named because it is our brain's default mode. When the brain has no pressing business to attend to, it defaults to daydreaming. Our minds wander among bits and pieces of memories we have tucked away and recombines them to envision possible futures, pasts, or presents—even impossible ones. It also supports pattern recognition, understanding the thoughts and emotions of others, and moral reasoning rooted in empathy.
- **The Salience Network** senses salient information and directs

> *"Not all creativity is humorous, but all humor is creative."*
> *—Bob Mankoff*



"I would share, but I'm not there developmentally."

our attention internally (Default Network) or externally (Executive Network) for the appropriate processing. But it is much more than a switching mechanism. It monitors our emotional responses, assesses risk versus reward, enables perspective-taking, and figures prominently in personal meaning-making processes, such as moral decisions.

The intended product of this inter-network collaboration[2] is, to distill it to a word, ideas. An idea is a thought that changes how we see. This internal restructuring or reframing of thought, typically sparked by an insight, enables us to adopt a new perception, outlook, or operating understanding.

One challenge we face with finding ideas is that the Default and Executive Networks, known respectively for divergent thinking and convergent thinking, typically do not play well with one another. When one turns on, the other turns off. Typically. But there are ways to work around that.

The tricky bit here is insight. An insight, or "aha" moment, cannot be achieved by step-by-step, rational thinking—precisely the kind of thinking we are most trained in. Insight is "the ability to draw together distantly related information" in "the sudden experience of comprehending something that you didn't understand before." Insights "arrive abruptly and in their entirety."[3] That instantaneity demand does pose a challenge. But what makes it especially tricky is that it "happens when we are precisely not concentrating on it."[4]

Let us stop a moment to reflect on that. Picture yourself as a scientist, mining mountains of data and wracking your brain to find a reliable mechanism for producing insight—only to discover that success requires you to stop thinking about it.

Why, that sounds like a…

A what?

Precisely. A funny idea!

"More important, however, is what I learned about myself."

ACCELERATING THE TRANSFORMATIONAL THOUGHT PROCESS

The misdirection of a gag cartoon's seeming simplicity allows us to "precisely not concentrate" on the larger, more serious issue at its core. Textbooks and presentations have long relied on them for communicating difficult topics, and the gag cartoon has consistently over-performed in generating insights for nearly a century.

Can people then use the underlying science of creativity to reverse engineer practicable mechanisms by which they can generate creative neural network connectivity by "precisely not concentrating on it" and apply that thinking to real-world situations in pursuit of genuine transformational thought and subsequent behavior? Even people without a rapier pen or razor wit?

Let us come upon the answer together by proceeding as a scientist, and dissecting the gag cartoon itself.

At first observation, the most obvious component of a gag cartoon is Drawing; and what characterizes that Drawing is Humor. So we now examine Drawing and Humor.

The Drawing in a cartoon is the visualization of internal thought, or drawing from the mind's eye. It is symbolic representation, like a child's drawing or the X's and O's on a football coach's chalkboard, more caricature than literal. For thinking and communication purposes, we can also "draw" with physical gesture, pantomime, facial expression, or any other form of visual communication used to explain or explore concepts. Drawing directs our attention to our interior thoughts (to *focus* on what we are *daydreaming*).

In so doing, it co-activates the Default and Executive Networks—that thing that the brain does not ordinarily do!

> *"If I can't picture it, I don't understand it."*
> *—Albert Einstein*

Visualizing on a page—Drawing—captures emerging thoughts in fixed form and frees up our brain's working memory, which is essential to problem-solving. It also provide visual feedback to stimulate mental associations.

Then there's Humor. Humor is a term used broadly to describe entire genres of storytelling and other creative art forms (including cartoons) that employ Humor as a signature device. For the purposes of isolating mechanisms that support transformational thought, we will use "Humor" to describe the device, rather than the genre. This narrows our scrutiny to the cognitive and emotional aspects distinct to Humor—the "funny" part of the idea, both the laugh-inducing and the "strange and not as you expect."

"Story reveals meaning without committing the error of defining it." —Hannah Arendt

The Humor of a cartoon works somewhat like a puzzle to be solved. There is a conflict which we must detect (Salience Network) and resolve (Executive Network) almost instantly in order to reap the emotional rewards.

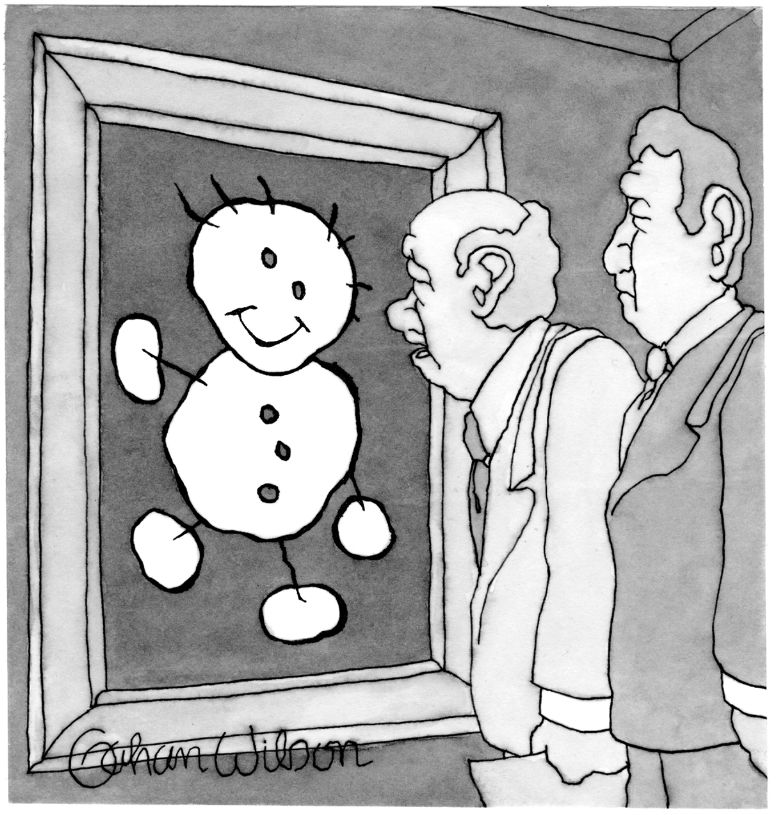
Dissecting our specimen further, however, we find that it contains a third organ, visceral, and therefore less obvious. Gag cartoons are more than funny pictures. They also tell a story, with a beginning, middle, and end, expressed in a single "decisive moment." To get the gag, we must intuit what came before this moment and what is likely to follow. We cross-map all of its informational cues with our personal knowledge, and empathize with each of its characters to discern motive and intent, and then put it all together to reveal what it means. To do that quickly, the story framework has to communicate quickly—instantly—as a trope, or Metaphor. Our connection to that Metaphor—a desert island for loneliness, Noah's Ark for organizational pressures, a board room for any number of human conflicts—produces an understanding of one thing in terms of another.

Logic cannot resolve the meaning of Metaphor. Understanding Metaphor requires a leap of insight, however small. The brain must make a connection between our lived experience and our system of affective values in a way that produces a new meaning. The parts of the brain that light up upon such a connection are situated in the Default and Salience Networks.

Now look at what we have done. Metaphor builds a bridge between the Default Network (the one that daydreams and envisions possibilities for the future) and the Salience Network (the one that restlessly seeks meaning in all that is going around and within us). We connect the Executive Network (the one that lets us focus on getting things done) with the Default Network by the act of Drawing. And the sensemaking process of Humor, which reassesses and verifies the implications of that Drawn Metaphor, links the Salience Network with the Executive Network.

Drawing, Humor, and Metaphor each generate functional connectivity between concatenated pairs of networks: Drawing lets us *focus* on what we are *daydreaming*, Metaphor leads *daydreaming* to *meaning*, and Humor brings *meaning* into *focus*.[5] By doing all three together—under the guise of coming up with a cartoon—we integrate those pairings into a single whole-brain process that is more than the sum of its parts.

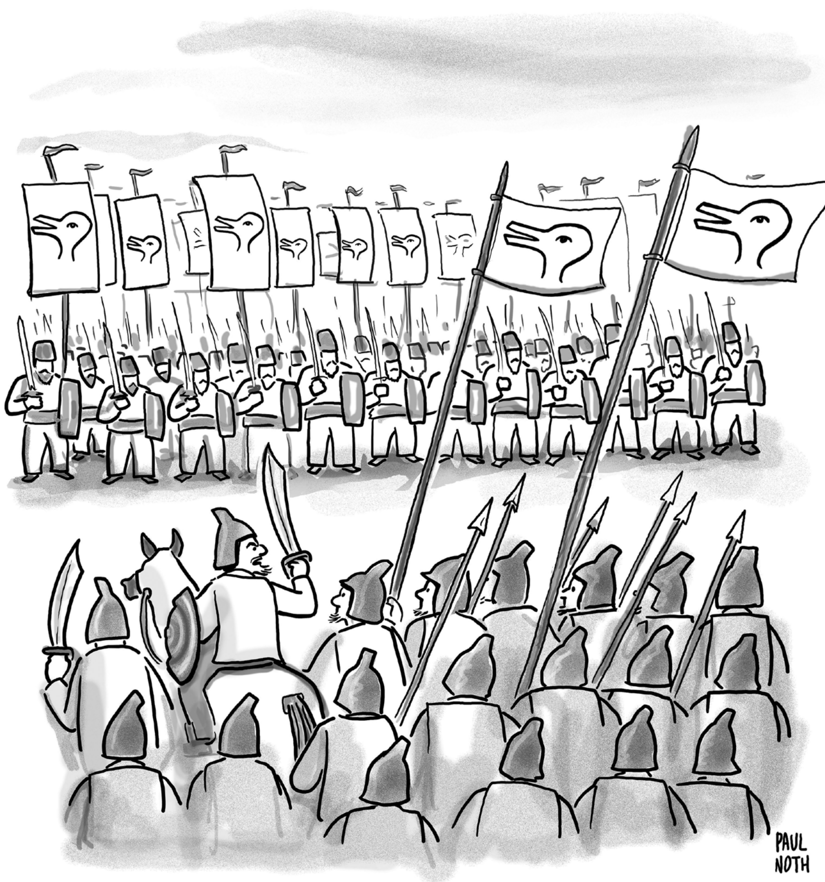
It begins with the simple act of putting our pencil to paper. This immediately unlocks our imagination. A lack of traditional drawing skills is no obstacle. The simple, physical act of imperfectly visualizing what's in our mind's eye[6] prompts evolving associations and interpretations of the marks we leave on the page. This has been the genius



"Of course, it's a very early Rembrandt."

of cartoon drawing since Leonardo da Vinci got his first sketchbook.

Cartoon drawing is thinking.



"There can be no peace until they renounce their Rabbit God and accept our Duck God."

CARTOON THINKING

A blank sheet of paper cues the brain: Possibility! The marks we make spontaneously trigger those "distant connections" in our associative memory, as if we were interpreting clouds or Rorschach ink blots. We also take advantage of our brains' talent for predicting what else is in the picture, particularly out in the periphery. Our eyes can only focus on a tiny part of our field of vision, and how our minds interpret what else we see is powerfully influenced by whatever unconscious preoccupations we hold at the time. This nudges our thoughts toward analogy and Metaphor. That sudden reframing of thought, particularly in a medium already associated with fun, tends to encourage playfulness. And Humor. Humor then primes us to toy further with our expectations, pushing our brains to consider new, more unexpected possibilities in its predictions. And around it goes again, building on itself.

When we visually reframe issues as a source of amusement, we get better at finding what we need to change and how we ourselves need to adapt to that change.

Referring again to the diagram, inter-connecting the three networks of Executive, Default and Salience is not a linear process. One might even call it "loopy." Multiple circuits and multiple simultaneous streams flow—intertwine, intersect, connect, and collide—in whichever serendipitous direction, building in energy, accelerating thought, until it creates a spark. A connection. An insight.

This is what we call cartoon thinking.

The lens of Humor both expands and sharpens our ability to spot hidden risks and rewards. This advantage is magnified by working visually, because Drawing improves problem-solving as well as problem-sensing—for both analytical and creative problems. In addition to its associative powers, it also moderates anxiety, while increasing empathy.

Drawing characters, even symbolic or anthropomorphic ones, intensifies this connection. Metaphor deepens empathic engagement further by opening us to fresh perspectives. Humor supports Metaphor by boosting our sensitivity to potential insights. Humor also tricks our risk detection centers into reframing scary stimuli as instead having positive reward potential, which then makes us likelier to detect useful associations while Drawing. And around we go yet again! Humorous visual metaphor creates a virtuous cycle, a dynamo for transformational thought.

Cartoon thinking makes these benefits accessible to anyone not traditionally regarded as a "creative." It takes only pencil, paper, and a willingness to play. It can be done privately at a desk—while providing the outward appearance of "serious" business.

It can also support teams. The creative thinking potential of any individual or team draws from knowledge and experience, the more diverse the better. Collaboration that is inclusive of those who have been traditionally marginalized can produce richer and more divergent associations, contributing to more not-as-you-expect ideas, which is how innovation happens. Diverse, even competing individual interpretations of the group product, meanwhile, are received as non-threatening to others in the group by the fact that everybody can see that everybody else is literally and figuratively on the same page.

Cartoon thinking doesn't simply expand our awareness of and connection to alternative perspectives and help us to empathize with them, it lets us see how those perspectives make sense in ways that are emotionally less intimidating and easier to accept.

This collaborative cartoon thinking approach to discovery, through a dynamic process unfolding "outside the box" and yet in the fixed medium of paper or a screen, respects each participant's agency and accommodates the absorption of change at a self-regulated rate, even with uncomfortable or aversive topics.

Like business ethics.

HOW CARTOON THINKING FLIPPED THE SCRIPT ON BUSINESS ETHICS TRAINING

Business ethics compliance not only saves companies legal costs and damage to their reputation, it is affirmatively good for business. Ethical cultures lead to higher employee satisfaction and retention, better innovation, and more productive teams. Which happens to be attractive to customers. Companies named among the World's Most Ethical Companies "outperformed a comparable index of large cap companies by 13.6 percentage points from January 2018 to January 2023,"[7] according to Ethisphere's Ethics Index. Ethics and compliance is a good for the bottom line.

So why do compliance officers so often feel like the bad guy around the office? That was the challenge The Drawing Board was recruited to address during the 2022 Global Ethics Summit. Our mission was to help several dozen senior compliance officers from Fortune 100 companies and other large organizations to rethink their messaging around compliance issues like anti-corruption, culture, and conflicts of interest. After some introductory exercises to orient them to playful visual reframing (a.k.a. Humor + Drawing + Metaphor), we turned to their problem. Promoting the rules of right behavior was fostering reactance. So, what if, we asked them, they modeled the opposite approach? Do it wrong. On purpose.

But within the safe confines of a cartoon.

We gave them a manipulable digital template (think paper dolls) to construct cartoon analogs of their Do It Wrong messaging. By reimagining the nature these conflicts in nonliteral environments—a desert island, an enchanted forest, a funeral home—with the presumptive goal of encouraging mishaps, they began to laugh. That immediately lowered the emotional

> *"One of the attractions of drawing is that it lends itself easily to metaphor."*
> *—Quentin Blake*

barrier to speaking candidly about what experiences and feelings were behind that laughter. Insights emerged. They found the "aha" in the "haha."

They saw how much easier it was to understand the consequences of bad compliance choices by having the chance to feel them for themselves. Seeing the way that everybody in the group laughed and opened up together showed them a welcome alternative to the routine resentment that typically meets lectures about rules and policies. They saw how much more effective it would be to let the employees come to their own realizations in the same uplifting spirit. Compliance officers didn't have to be the feared "internal affairs cops" if, instead of hammering rules and policies, they could promote compliance through compassion instead of compulsion.

The insights from this experience didn't just inform their own understanding. Ethisphere, the conference host, tapped several of those insights to inform professionally drawn cartoons, to be included in its growing library of Ethitoons™, a popular feature of manager toolkits they produce for internal compliance training.

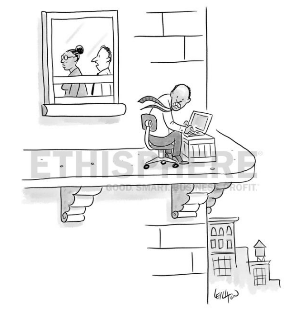
Seeing the relationships, understanding them from a different perspective, and being able to laugh about it: that's what transformative thought is about. And transforming thought— and feeling—is the key to transforming behavior. That is why cartooning is such an effective

"What's our policy on honesty?"

ABOUT ETHITOONS

As part of its work to help companies foster strong ethical cultures within their organizations, Ethisphere develops toolkits and communications focused on specific roles (e.g., managers) and specific topics (e.g., conflicts of interest, non-retaliation, etc.). Included in these kits are cartoons—**EthiToons**—that are designed for managers to use in team meetings to spark conversations about the importance of ethics and to highlight specific ethics and compliance issues.

EthiToons can be used in a number of ways, including:



"I heard that after Steve came forward, they moved him to a desk near a window."

- **Ethics Weeks:** For dedicated ethics initiatives, EthiToons are featured in presentations, team meetings and other forums as a way to get employees thinking about ethics.
- **Manager ethics and compliance discussions:** To keep ethics and compliance top of mind among employees, managers may use an EthiToon to spark discussions about a specific topic.
- **Employee engagement:** General communications modules such as articles, posters, agendas, can use EthiToons to deliver a big message in a very short amount of time.
- **Icebreakers:** Team meetings, CEO townhalls and other gatherings can showcase EthiToons to warm up an audience, or to pique interest in the importance of ethics.

To learn more about EthiToons, please click here.

method for getting people to think differently about ethics, compliance, integrity, and culture. And, how the art and craft of wielding humor as a means to bring people together can work in ways that no other form of outreach can.

Companies know that a better ethical culture is good for profits, as is diversity, equity, and inclusion. Policy makers know the data that support their positions. Leaders of every kind of organization know that a more adaptive, resilient, and innovative culture is critical to its success. But, like insight, those goals cannot be achieved through brute logic or by forcing behaviors. There's no formula. The people within the culture those leaders hope to change must feel the change within themselves, based on their values, their lived experience. Change must be their idea. The realization of the need to change and the mechanisms for how to do it must arise in each individual heart. People have to "get it."

How do you make them get it? Ask a cartoonist. It's what they do. ■

ABOUT THE EXPERT

Pat Byrnes *is a founder and the executive creative director at The Drawing Board, a business consultancy that teaches cartoon thinking for innovation, communication, diversity, and ethics. He has been a cartoonist for* The New Yorker *since 1998 and is a Best Gag Cartoonist winner in the National Cartoonist Society's Reuben Awards. He draws on more than 40 years of professional creative experience, as a syndicated cartoonist, illustrator, inventor, author, voice actor, stage comic, ad copywriter, and aerospace engineer.*

ACKNOWLEDGEMENTS

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***For a selected bibliography for this article, please* click here.**

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1. *Gerber, 1989*
2. *Various other systems in the brain (the limbic system, mesolimbic system, mirror neuron system, and others) feed into or operate within this three-network model and make multiple contributions to its overall function. They act as agents and serve as mechanisms within the integrative model we propose. Discussing them separately adds an unnecessary layer of complexity for our purposes, which is to develop a practical tool for promoting transformative change. The simplified model of the three-large-scale-neural networks provides a workable framework that is head-scratching enough*
3. *Kounios and Beeman (2015)*
4. *McGilchrist (2009*
5. *Humor is complex, and the study of it is often contradictory (fittingly, I would say). In its fuller embodiment, it engages all 5 three large-scale networks, and more. Still, what it contributes most usefully to the cartoon process (without making a book of this) involves the reassessment and reward aspects of "funny." The diagram nevertheless acknowledges the Default Network's involvement in processing Humor's surprise via the open manhole cover of the O in HUMOR.*
6. *This includes the mind's eye of even the visually impaired, due to the haptic, spatial, relational, and emotional aspects, 6 among others, of mental visualization. Kim et al (2021); Sacks (2010); Tversky (2019)*
7. *https://ethisphere.com/what-we-do/worlds-most-ethical-companies/*

ESG in the Boardroom: General Counsel Perspectives

How Today's Legal Minds Can Help Craft Tomorrow's ESG Strategies

By Craig Donaldson and Jeannine Lemker

As the challenges and opportunities posed by ESG become more high-stakes than ever, **Craig Donaldson** and **Jeannine Lemker** of premier legal search firm **Major, Lindsey & Africa** discuss how this shift is already changing the unique value that Chief Legal Officers and General Counsels deliver to Board and executive teams looking to manage risk and build sustainable value for years to come.

Chief Legal Officers (CLOs) and General Counsels (GCs) are routinely asked to scan the global policy and regulatory horizon and serve as a the "center of gravity" for corporate-wide initiatives with impact to both. Environmental, Social, and Governance (ESG) is no exception.

Successful ESG programs require contributions from across an organization, since nearly every function has an important ESG role to play, from safety, energy and natural resources utilization, packaging, and supply chain, to marketing and communications, human resources, finance, product design, and more. Consequently, these teams draw on the GC to be a programmatic and consistent anchor with the company that brings ESG into harmony with larger business and strategic needs while thoughtfully assessing risk and regulations.

Today, ESG regulations are, of course, growing, with new requirements coming from U.S. federal and state governments, the EU, and other countries and global organizations. What was once a series of principles and frameworks is rapidly moving towards much sterner regulatory and legal requirements—the quintessential "one-way ratchet," so to speak. Additionally, there is a rising tide of litigation from all sides of the debate on ESG practices and policy. Likewise, courts are increasingly being used for impact litigation—lawsuits intended to accomplish broad societal objectives.

In such a tumultuous environment, it falls to GCs and CLOs to reassure Boards, management, and auditors as to whether a company's investments are meeting increasingly complicated stakeholder expectations…as well as if it is adequately managing its ESG-related risks while both staying true to the company's ESG strategy itself and protecting the company at large.

STAYING TRUE TO YOURSELF WHILE ASKING: ARE WE DOING ENOUGH?

As with nearly all corporate strategy decisions, investments in ESG reflect a corporate mission—part of the company's *raison d'etre*. As such, every company will make its own unique choices as to which initiatives to advance and how to advance them.

Take, for example, the inherently different ESG choices a B2C consumer products company will make versus a B2B manufacturing company. A consumer products company might adopt a progressive-leaning stance that will also win market share and customer loyalty with products that are environmentally friendly from their production to their packaging, and tout such attributes in their marketing. Alternatively, a B2B manufacturing company whose purpose is to enable other businesses to achieve end products or solutions might focus on supply chain resiliency, renewable energy, safety, greenhouse gases, and water use—all ways it best enables its largest customers to achieve a shared ESG strategy.

In either case, ESG must be embedded in a company's core policies, procedures, and operations—making it even more crucial to select initiatives that are meaningful to a company's mission. Companies that set highly ambitious ESG targets—whatever those targets may be—may invite unwelcome pressure and challenges when it comes to meeting those objectives. What *is not* in your ESG plan can be as important as what *is*.

Despite many necessarily bespoke investments, all enterprises face the same essential questions: Amid the ebb and flow of ESG viewpoints and practices, where should our business be on the spectrum? Is the company doing enough? These questions are increasingly complicated by regulatory changes and shifting cultural attitudes which present more risk than ever before.

The CLO or GC often serves as a wayfinder between the company and Board by holding management to a set of principles that help make the tough decisions on whether to invest in a social cause, particularly aggressive net-zero emissions goal, or progressive governance strategy. In tandem, CLOs and GCs can benchmark ESG policies versus competitors, ensure that ESG goals are measurable (and ideally, tied to executive compensation) and provide regular progress reports to the Board.

CACOPHONY OF VOICES

Of course, ESG strategies are meant to reflect the mission, vision, and values of your Board, management, and employees while also meeting the expectations of regulators, investors, and other stakeholders. As a result, ESG policies often go beyond products and services and carry over into the contentious realm of public opinion.

In recent years, it has become more common for employees to ask employers to take action publicly about world issues in the news or social media. This can raise some difficult questions. Should the company have a stated position on abortion rights? Immigration? Political leadership? With hundreds of thousands of different consumers, customers, and supplier relationships, is it the place of the company to take public positions on such matters?

Weighing the pros and cons of these decisions takes us back to the company mission as the first touchstone—with the added proposition that taking (or not taking) action may drive talent retention and help to solidify the customer base. In such moments, there are two useful questions to keep in mind: Do we really want to say that? Does it sound like us?

EXPANDING ROLE FOR THE GC OR CLO

Ten to fifteen years ago, as compliance was developing into the field it is today, the adage was born that GCs and CLOs "ignore compliance at their own peril." Today, GCs and CLOs again are rising to the forefront, now in ESG leadership. Additionally, as ESG reporting becomes more technical (look no further than Scope 1, 2, 3 emission standards) and regulated, expect an audit function to arise within the CFO's domain, which will work alongside the GC or CLO's team.

To prepare for today—and the future—GCs and CLOs are taking a hard look at the talent in their organizations with an eye towards expanding programmatic and risk management capabilities that can bring cohesion through a process or system and see around regulatory and political corners for emerging risk. Likewise, GCs and CLOs are looking at scaling up corporate legal teams to meet the newest governance expectations and partner more deeply with Investor Relations, Marketing, and Communications on public statements. Finally, regulatory and litigation attorneys are adding a new suite of expertise to their portfolios, as they are at the cutting edge of ESG's move from frameworks to laws and the back end of defensibility of a company's ESG choices and communications.

General Counsel and Chief Legal Officers have long been viewed as trusted advisors that can bring together many parts of a company into one single voice and strategy. Today, ESG is the GC and CLO's next chapter of this story—with much impact ahead and the ability to shape not just a company but our world. ■

ABOUT THE AUTHORS

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Jeannine Lemker *is a Director on the In-House Counsel Recruiting team of Major, Lindsey & Africa. Based in Seattle, WA, Jeannine works with a broad range of global, national, and regional companies, higher education institutions, and non-profits to find and unlock talent to be the next—or first—general counsel, Chief Ethics and Compliance Officer, compliance and ethics professionals, privacy leaders and other high-level, specialized legal professionals.*

Building a Culture of Compliance Creates Long-Term Business Value

by Bob Ridout

Compliance in general, and audit compliance in particular, provides a great competitive advantage to businesses subject to all kinds of global and domestic regulations, as excellent audit compliance adds value by building customer confidence.

Maintaining this level of confidence comes from a commitment to understanding what the customer needs, often before they know themselves. It also requires ironclad processes and no small amount of transparency or accountability. Successful companies understand that this customer confidence is absolutely vital to their long-term success. They also know it can take years to build this level of trust, which can be wiped away in an instant with one mistake.

BUILDING CUSTOMER CONFIDENCE

There are two forces at play here—satisfying customer expectations while ensuring compliance is met across the board. Just think about the supply chain, which may have a different set of regulations, but the ability to show that all of the links in the chain are in good order will boost credibility, show stability, and ultimately lead to more market share. Think of compliance in this instance as the grease that keeps the chain from rusting.

A company may decide to have two manufacturing plants separated by hundreds of miles, for instance, so if one should experience a fire, flood, or some other environmental disaster that disrupts operations, they have another facility to continue production. This not only meets customer expectations, but it also builds customer confidence and trust based on the ability to perform. That gives a leg up on the competition, especially if they don't have a similar strategy or the right technology in place to help them adapt or course correct. Having this second, fully operational facility also bodes well for compliance as business operations will still function properly.

STREAMLINING INTERNAL AUDITS

Without these tools and systems in place, a scenario like this can not only shake customer confidence, but it could also lead to compliance nightmares that impact the bottom line. This is where audits come into play. Generally speaking there are two types—those audits conducted internally as well as those conducted externally, which involve an outside auditor. I'll focus on internal audits, which are typically in the context of a broad framework and as such, can include manual oversight and other inefficiencies that can drain resources. But how we adapt is key.

The point being is that compliance is the end goal but how you conduct internal audits is crucial. They should be inexpensive and effective if they're to provide any advantage. Compiling a master checklist of all of the necessary components—such as regulations and standards to adhere to as well as who owns that checklist—is a necessary precursor to an efficient internal audit. Additionally, IT tools need to be in place to allow for audit standards to be met. Often organizations don't have visibility into remote warehouses but there are mission-critical IT components at these locations that are part of the IT infrastructure. So it's imperative that remote locations be included in whatever checklists are put in place and that the proper tools are available to the IT team to ensure resilience and compliance of all locations.

With a comprehensive, efficient, internal audit system in place, it's less likely for headaches to occur when the outside auditors come in. It's also important to note that, while understanding how these agencies conduct their own audits and leveraging their playbook can be incredibly helpful, it should never be seen as a silver bullet. There's no substitute for internal accountability and strict ethical standards.

ACCOUNTING FOR EVERY ASSET

That brings us to assets—specifically, how they're managed and accounted for. Depending on the industry, assets could be anything from pharma lab equipment and retail POS systems to enterprise servers and, perhaps most importantly, customer data. While accounting for assets is just one part of an audit, it's arguably one of the most important as you also need to know if these assets need to be updated, replaced, or even retired.

These assets can also be costly and usually contain sensitive or mission-critical data. Losing critical assets due to theft, loss, or negligence leads to two scenarios, both equally problematic. First, it forces the company to shell out more in terms of operating expenses. With supplies already committed, the organization will have to reorder and pay to replace the missing items. Second, the quality of service provided by the facility will likely be affected if critical equipment or supplies suddenly become unavailable. By prioritizing visibility of IT assets, organizations can ensure continuous operations at remote locations such as warehouses. This ensures the integrity of customers' supply chain and the bottom lines for all parties.

Efficient tracking processes can take care of varied tasks, such as locating equipment, providing up-to-date data on each item, and offering complete access to maintenance records. With this anytime-anywhere access to critical information, organizations will spend less time searching for equipment and more time focusing on strategic initiatives to grow the business.

PROACTIVELY DEFINING COMPANY STANDARDS

During my nearly decade-long tenure as CIO of DuPont, I spent a lot of time abroad overseeing operations at various remote manufacturing and IT sites. At these locations, we produced various materials, some involving hazardous chemicals. But we were also challenged by weather extremes, unreliable utilities, power, communications, and so on.

There were other global influences that impacted the company's operations, which were outside of anyone's control but forever changed how we conducted business. After 9/11, for instance, the government started working much more closely with businesses and organizations that could be potentially compromised or targeted due to their sensitive nature. They were seen as something that bad actors could potentially exploit and weaponize—either directly or indirectly, as with cyber-attacks—so the Department of Homeland Security partnered with us to create standards that regulated "security at high-risk chemical facilities".

We worked with industry groups to ensure we were putting protocols in place that also included remote locations that likely didn't have IT teams onsite. By creating a system that ranked hazards as high, medium, or low, we then firewalled all of the systems starting with high hazard assets, which only a handful of process engineers had access to. This ensured those specific assets were protected and not accessible to anyone else. These process control systems also led to increased accountability and transparency when managing assets across the board.

SCOPING AN END-TO-END VALUE CHAIN

Technology has made significant strides since those days back at DuPont, but the increasing speed of business processes continues to put an immense amount of stress on the reliability of supply chains. This couldn't be truer of decentralized or remote IT sites that come with inherent vulnerabilities not found in centralized IT environments (i.e., data centers). These edge environments pose greater risks, as they're usually unmanned so security video feeds or monitoring humidity levels and unforeseen weather instances, for example, can be incredibly challenging.

Assets in these edge environments are therefore more likely to be non-compliant, outdated, and much more vulnerable to network attacks. In fact, it was just 10 years ago that one of the biggest consumer retail chains had one of the largest data breaches in history. Why? Because the hack was at a remote IT edge location that was not compliant and didn't have sufficient standards or protocols in place. So whether we're talking about assets in the data center or some remote IT server closet, we had hundreds of these scattered across warehouses globally. The importance of having an end-to-end value chain in place is crucial—not just for the company but also for bolstering customer confidence through transparent, ironclad, ethical practices that ensure the integrity of every link of that chain.

WHERE TO GO FROM HERE—BUILDING A CULTURE OF COMPLIANCE

In some ways compliance is what we make of it. And by that, I mean it's not just what regulations each organization or industry faces, it's how well an organization can establish a proactive, strategic approach. I'd argue hand over fist that it must be part of the company culture, which organizations like DuPont hold in high esteem to this day. To be considered competitive in the slightest, compliance should be regarded as a standard—not in its own right, but as a standard of company excellence. At the end of the day, companies want to work with those partners who prioritize security and visibility, with controls in place for all locations that are part of the IT infrastructure and critical operating systems. Having an IT approach that is built on trust, accountability, and productivity will make you the player that customers return to time and again. ■

ABOUT THE EXPERT

Bob Ridout *has spent nearly 40 years in the IT sector and currently sits on the Board of Directors at RF Code. He was previously CIO of DuPont for nearly a decade and has also served on the customer boards for Microsoft, HP, AT&T, Lotus, and IBM.*

Investing in Integrity

What does it take to have an exceptional ethics and compliance program? The leaders at **SNC-Lavalin**, **Availity**, **Astellas**, **Avangrid**, **WSP**, and **Scottish Power** can tell you.

Congratulations to **SNC-Lavalin**, **Avality**, **Astellas**, **Avangrid**, **WSP**, and **Scottish Power** for recently earning Compliance Leader Verification, a recognition of best-in-class practices.

The Compliance Leader Verification process involves a rigorous review of an ethics and compliance program and corporate culture. How does this play out exactly? Here are a few quotes from the Ethisphere experts that reviewed these recognition-earning programs.

The sustainable energy company **Avangrid** has earned Compliance Leader Verification recognition since 2019. Here's what Ethisphere SVP **Leslie Benton** had to say about their program: "In addition to a robust ethical culture, the review team continues to be impressed by the caliber of the ethics and compliance team and its collaborative relationships with the Board of Directors, business units, and other functional areas."

For **SNC-Lavalin**, this year earning its third recognition, Benton noted, "We continue to be impressed by SNC-Lavalin's exemplary program and approach to embedding integrity across the organization. The company has made significant investments in compliance, and now ESG, and implemented major initiatives that are top notch, from building a culture requiring managers to frequently communicate with their teams on ethics and compliance, to robust third-party risk management procedures."

After reviewing **WSP**'s program, **Neal Thurston**, a Director, Data And Services at Ethisphere stated, "Our review team is impressed and delighted that WSP has clearly demonstrated its continued commitments to a robust ethics and compliance program. WSP has shown that business integrity is a priority by building and maintaining a well-tailored compliance program structure, optimizing its risk management and audit processes, and engaging stakeholders throughout the enterprise to clearly and enthusiastically support its culture of ethics and integrity."

In short, these organizations see an investment in ethics, compliance and governance as a strategic business differentiator that is part of the corporate ethos and embraced by leadership. These organizations take feedback onboard and look for ways to continually improve with new initiatives.

Having external validation of programs not only meets regulatory expectations but also sends a strong message to stakeholders that the organization is dedicated to doing business with integrity.

"This renewed Compliance Leader Verification from Ethisphere is a recognition of our deep commitment to upholding the highest integrity standards in project delivery and across the company. I'm proud of the hard work that has gone into developing and sustaining our world-class ethics and compliance program," said **Ian L. Edwards**, President and CEO, SNC-Lavalin. "We must never be complacent about Integrity matters if we are to continue to earn the trust and confidence of our employees and stakeholders. It's our priority to continuously incorporate Integrity best practices into our processes and provide ongoing training to our employees, ensuring that we maintain the highest standards in everything we do."

ABOUT COMPLIANCE LEADER VERIFICATION

The Compliance Leader Verification is a comprehensive program review process that includes completing the Ethics Quotient® (EQ), a questionnaire covering the elements of an effective program; benchmarking program practices against the World's Most Ethical Companies®; and extensive document review and interviews with executives and stakeholders. Additionally, many organizations will also conduct an Ethical Culture survey to gauge employee perceptions.

Performance is evaluated in six key areas: program resources and structure; perceptions of ethical culture; written standards; training and communication; risk assessment, monitoring and auditing; and enforcement, discipline, and incentives. ■

The Sphere Spotlight

Using Data and Benchmarking to Improve Programs

Ethics and compliance programs are continually evolving—to address ongoing regulatory updates, and to reflect expectations from investors, employees, and other stakeholders. The question for many is: how do you keep up with all of these changes?

In this Spotlight, we talk with **Alan Sauber**, Chief Ethics and Compliance Officer for 16-time World's Most Ethical Companies® Honoree **Premier, Inc.** about his experiences using The Sphere, Ethisphere's platform that helps ethics and compliance teams do three things:

- Benchmark against peers
- Identify gaps to prioritize
- Leverage resources for faster improvement

The Sphere covers 200+ datapoints that make up leading ethics and compliance programs. It also features regulatory references and related expert guidance.

Why were you interested in The Sphere?

We knew we had a strong program in place, but we also recognized that organizations continue to raise the bar when it comes to ethics and compliance. What is sufficient one year may not be a year later, particularly around issues like ESG. We looked into The Sphere to benchmark our program and also to prepare for our application for the World's Most Ethical Companies®.

What was the result of benchmarking your practices?

The Sphere is a game-changer—it offers us the ability to benchmark against peers and leading practices. We were able to quickly identify areas where others were gaining and had evolving programs, and where we were lagging behind. The data and insights informed our priorities, where we needed improvements, and where to focus.

Has The Sphere delivered return on investment (ROI) for your efforts?

The Sphere enables us to identify specific gaps and as a result, spend budget dollars more appropriately to improve our program. In the past, we would make educated guesses about our program gaps, or involve expensive consultants. The Sphere has real value—and it provides the data and context to validate our approach.

Has The Sphere helped you build a business case?

The Sphere provides powerful data for explaining why we do things a certain way. For example, we had a question from the C-Suite about needing employees to do a 2.5 hour training—is it necessary? Using data from The Sphere we were able to show what other companies are doing, including key stakeholders. We were able to make the case that we needed to meet or exceed these best practices.

How does The Sphere inform your ESG approach?

When ESG became an imperative for investors and other stakeholders, we established a more formal approach to ESG. The Board Oversight Committee would ask us, what are other companies doing? Using data in The Sphere, we were able to share how companies are moving directionally on ESG, which has proven to be very helpful—and without the cost of engaging external consultants. ■

The Sphere covers 200+ datapoints that make up leading ethics and compliance programs and practices. It also features regulatory references from the Department of Justice and six other leading agencies, and more than 50,000 words of context and insights from Ethisphere experts. Learn more here.

Photo Gallery

The 14th Annual Global Ethics Summit

On April 17-19, Ethisphere held the **14th Annual Global Ethics Summit** both in-person and virtually at the Grand Hyatt Atlanta at Buckhead in Atlanta, Georgia. This year's hybrid event featured a global audience of 2,000+ participants representing 350+ organizations across 90+ industries. More than 100 speakers took part, presenting the Summit's richest showcase of content yet.

The Summit kicked off with **BELA Day**—a day of programming for members of the Business Ethics Leadership Alliance (BELA) community, featuring a State of the Profession address, a First Look at the 2023 World's Most Ethical Companies Data, and a keynote on inclusive storytelling with Collective Moxie CEO Julie Ann Crommet. BELA Day concluded with the BELA Impact Awards ceremony, celebrating the community's most active members.

Days Two and Three were a nonstop schedule of keynotes and sessions that covered practically every aspect of business integrity, including how to succeed in the **Ethics Economy**, aligning ESG with business strategy, measuring data to optimize ethics and compliance, to the latest updates in culture measurement, training, third party due diligence, enforcement trends, and more.

The 15th Annual Global Ethics Summit will be held on **April 22-24, 2024** at the Signia by Hilton in Atlanta, GA. Keep your eyes peeled for updates as registration goes live in the coming weeks. We can't wait for another incredible event, and of course, to see you all there.


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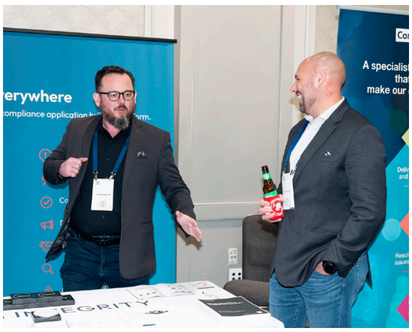


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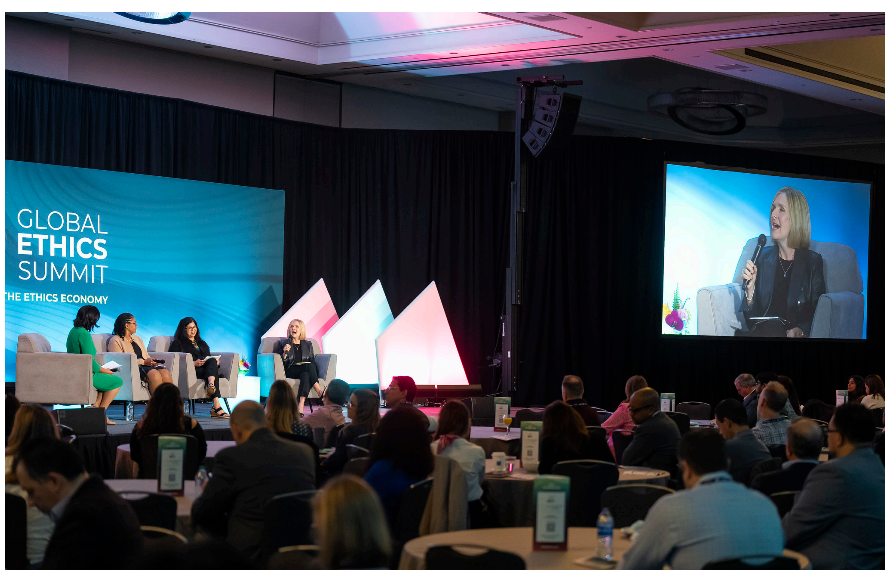
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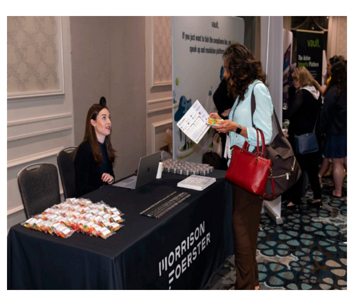


In this age of the "new normal"—where more and more of us are working in remote/home environments—mindful and continuous engagements with our colleagues and peers is critical. Participating in opportunities such as Ethisphere's Global Ethics Summit—where we not only exchange experiences and best practices—reminds us that we still continue to be citizens and stewards of a global community.

Cristina Potter, Vice President, Chief Ethics & Privacy Officer, **SAIC**

Best conference ever. Every session was so topical. When asked which was my favorite, I could not write them down fast enough. Privacy, D&I, ESG...

Mary Elizabeth Reiss, Vice President, Compliance and Ethics Officer, **RTI**

As the demands on Ethics & Compliance departments continue to increase, the Global Ethics Summit provides a valuable vehicle for the exchanging of ideas from practitioners on how to drive measurable change.

H Jordan Weitz, Senior Director, Compliance Risk Intelligence Group, **Carnival Corporation**

Technological developments have led to personal data being more proliferated and globalized than ever. The Summit is a wonderful opportunity to share best practices and help ensure individuals' fundamental privacy rights are managed not only compliantly, but ethically.

Samantha Vaughan, Sr. Managing Director, Global Privacy Counsel Co-Chair, Ethisphere BELA Compliance & Privacy Working Group, **Dell Technologies**

By the Numbers

MANAGE RISK WITH BEST-IN-CLASS ETHICS AND COMPLIANCE PRACTICES

In May, Ethisphere published its latest report, Future-Proofing Your Risk & Compliance Program, in which we highlighted examples of how companies have harmed themselves by not following best practices in five key areas—Ethics and Compliance Program, Culture of Ethics, Environmental and Societal Impact, Governance, and Leadership and Reputation. Practices from this year's **World's Most Ethical Companies®** honorees showcase the best practices that can help to prevent self-made risk. We encourage you to read the full report, but a few of its most salient data points include:

79%

of honorees have a Chief Ethics and Compliance officer as part of a robust ethics and compliance program that itself is part of a wider risk management strategy

59%

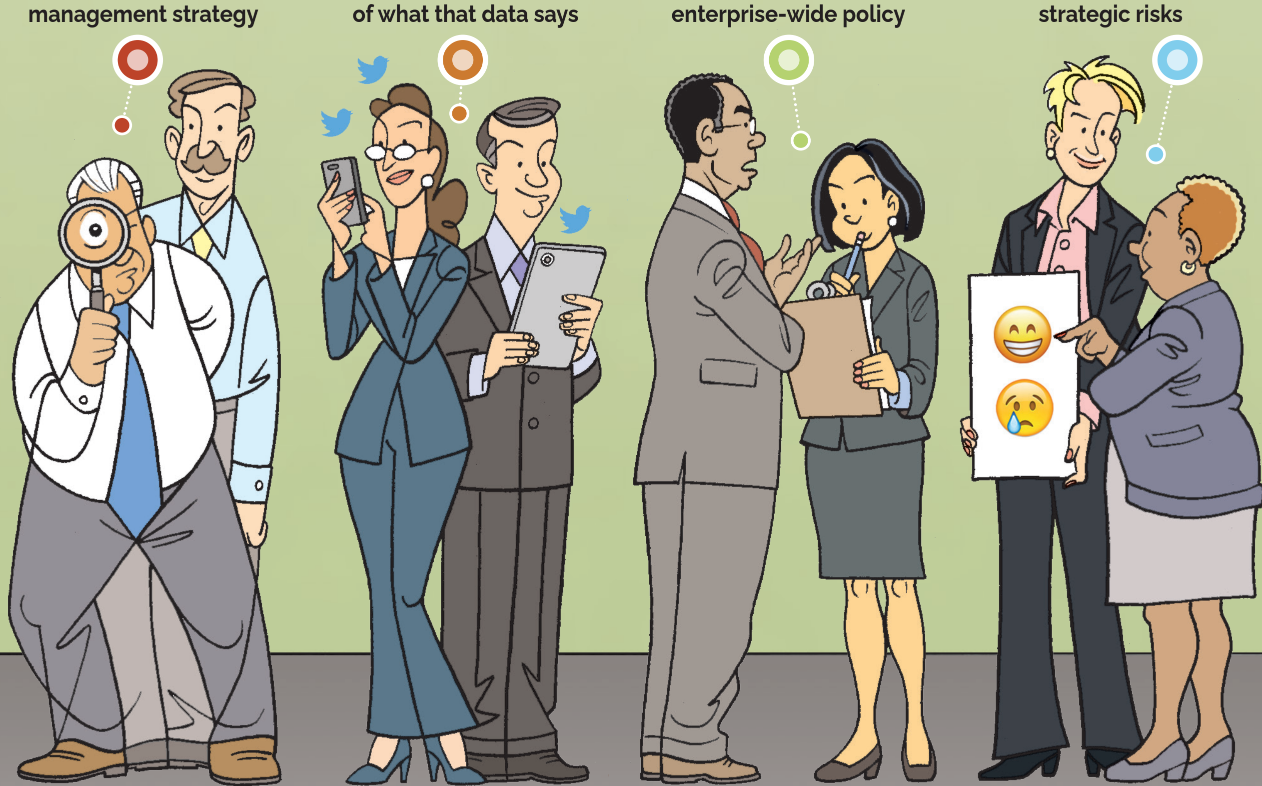
of honorees promote a vibrant and healthy culture of ethics by sharing culture measurement data with all employees, regardless of what that data says

90%

of honorees promote best-in-class ESG practice within their supply chain by formatting their commitment to human rights as an enterprise-wide policy

87%

achieve truly excellent Board oversight by providing the Board with specific training on the organization's strategic risks



The Final Word

Psychological Safety Saves Lives

by Bill Coffin

On Father's Day, the OceanGate deep-sea submersible *Titan* imploded while diving to the wreck of the *Titanic*, with the loss of its pilot, OceanGate CEO Stockton Rush, and four passengers, each of whom had paid $250,000 for a trip to an undersea graveyard mostly populated by poor people. The media interest around the event—first over speculation regarding the *Titan*'s fate and later a postmortem on what actually happened to the craft—was prolonged and intense. And, to be fair, a little misplaced, given that the Messenia migrant boat disaster had occurred just four days before, with the loss of 82 people off the coast of Greece. Sometimes, our priorities skew.

In the various interviews, articles, and primary documents brought to light after the *Titan* disaster, a few things became clear. One is that Stockton Rush had no use for the safety standards of the commercial submersible industry and simply side-stepped them. His craft was extremely experimental, and his passengers signed waivers acknowledging that riding in it could kill them. But that doesn't disqualify the fact that numerous figures within the industry reached out to Rush (and even the U.S. government) to raise an alarm over what they felt was a deeply unsafe vehicle. It was no use: Rush would not listen and even went on the offensive against colleagues who questioned his prioritizing innovation over safety certification.

What is especially heartbreaking are accounts of how former OceanGate employees tried to raise their concerns and were likewise stifled into silence. Behind every disaster is someone who saw it coming. When they can't, won't, or don't sound the alarm, a second kind of tragedy unfolds.

At the 2022 Global Ethics Summit, Dr. Timothy Clark gave a keynote on the four stages of psychological safety, which speaks directly to how a strong culture encourages everyone within it—especially those with the least amount of power—to feel that they won't be punished for saying the truth openly. Even when it might be uncomfortable or contrary to what senior leadership wants.

Earlier this year, Ethisphere published its 2023 Ethical Culture Report, which revealed a shocking increase in workplace bullying reported by Gen Z employees. And more recently, Ethisphere CEO Erica Salmon Byrne revisited the topic in an interview with Authority Magazine, where she noted that the language we use to describe someone who speaks truth to power is deeply in need of an overhaul. *Whistleblower* isn't the kind of complimentary term that *upstander* is, she notes, and "snitches get stitches" is a phrase that should be permanently retired. Indeed.

Here's the thing: When we talk about workplace bullying and harassment, it's easy to dismiss it as some kind of marginal or even ephemeral concern. But it's not. It's as serious as it gets. Virtually everyone in the workplace has either experienced workplace bullying bad enough to damage their career, has seen it happen directly, or knows somebody who qualifies for either. Look at a situation like the *Titan*, and remember that somebody in power was told the truth, they tried to punish the truth-teller for it, and people died as a result. If we don't feel safe, we don't speak up. If we don't speak up, bad things happen. It's as simple as that.

We should all ask ourselves how comfortable we would feel bringing some really, really bad news to our CEO. If the answer isn't "100 percent," then we should ask ourselves what it will take to get it there. And then, how it's going to happen. We owe it to ourselves. And to each other.

BILL COFFIN
Editor in Chief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