

# CCO 2.0



## Internal Marketer and Soft Skills Required

By Thomas Fox

Published by **COMPLIANCE WEEK**

# **CCO 2.0 - Internal Marketer and Soft Skills Required**

**By  
Thomas Fox**

Copyright © Thomas Fox

All rights reserved. No part of this book may be reproduced or transmitted in any form without the written permission of the author.

Information in this book is intended for public discussion and educational purposes only. It does not constitute legal advice and does not create any attorney-client relationship with the author.

### *Author's Note*

I was struck at the Society of Corporate Compliance and Ethics (SCCE) 2014 Compliance and Ethics Institute just how much the compliance profession has changed since I became familiar with it in 2007. It made me realize that we are now in the age of the Chief Compliance Officer (CCO) 2.0. Not only has there been an explosion in growth in the profession but I believe there has been a dramatic shift in the perception of what anti-corruption/anti-bribery compliance is and how a company benefits from having programs which comply with laws such as the US Foreign Corrupt Practices Act (FCPA) or UK Bribery Act in place. No longer is compliance the province of lawyers or the legal department but it is now seen as a standalone function which requires a set of skills far different than the typical skills used by in-house lawyers in a corporate legal department, which I call *soft skills*. I wanted to put together a short book that provides the compliance practitioner some of the most current ideas on the types of skills that you might need and, equally importantly, how to market your function within the corporate environment. Thanks to Roy Snell, the Chief Executive Officer (CEO) of SCCE, for the idea and my heart of gold wife, Michele, for editing it.

## **Table of Contents**

<i>Author's Note .....</i>	<i>3</i>
<i>PART I - Internally Marketing Compliance</i>	
<i>Chapter I - Five Golden Rules of Internal Marketing Compliance .....</i>	<i>5</i>
<i>Chapter II - Internal Marketing of a Compliance Program .....</i>	<i>8</i>
<i>Chapter III - Getting Employees to Care about a Compliance Program .....</i>	<i>11</i>
<i>Chapter IV - Getting Your Employees to Internally Market Your Compliance Program .....</i>	<i>13</i>
<i>Chapter V - Internal Advertising of Your Compliance Program .....</i>	<i>15</i>
<i>Chapter VI - Internally Funding Your Compliance Program .....</i>	<i>18</i>
<i>PART II - Soft Skills</i>	
<i>Chapter VII - The Use of Influence by a Chief Compliance Officer .....</i>	<i>20</i>
<i>Chapter VIII - Four Keys to Compliance Leadership .....</i>	<i>23</i>
<i>Chapter IX - Chief Compliance Officer as Chief Persuasion Officer .....</i>	<i>25</i>
<i>Chapter X – CCO as Chief Collaboration Officer .....</i>	<i>27</i>
<i>Chapter XI - Communications Tips for the Compliance Professional .....</i>	<i>29</i>
<i>Chapter XII - Putting Compliance at the Center of Strategy .....</i>	<i>31</i>
<i>Chapter XIII - Conclusion - Why Compliance is Different Than Legal .....</i>	<i>33</i>

## ***Chapter I - Five Golden Rules of Internal Marketing Compliance***

At the 2014 ACI Foreign Corrupt Practices Act (FCPA) Boot Camp in Houston, Céline Gearson, Chief Ethics and Compliance Officer at Cameron International, provided an interesting perspective on how she internally markets her compliance function. She termed these as “The Five Golden Rules of What Works”. I like them as the *Five Golden Rules of Internal Marketing of Compliance*.

### ***1. Socialize, Socialize, Socialize***

It is critical for the compliance practitioner to foster strategic relationships with key stakeholders within your company so that you can explain the compliance function on a one-to-one basis to get their buy-in. The importance here is to build those relationships prior to any compliance program implementation. Gearson specifically mentioned the IT and Marketing departments. Another person I would add is the Corporate Secretary; the reason for this is that the Corporate Secretary has several constituencies within the company that he or she may work with and for. This can provide an opportunity to view a company’s ethics and compliance program and to help shape and direct it. The Corporate Secretary, head of IT or Marketing may be excellent resources to the Chief Compliance Officer (CCO), which may be under-utilized. It might be worth a cup of coffee or short meeting to see what they might think about your ethics and compliance program or how they might be able to assist you in your efforts.

### ***2. Communicate metrics and near misses***

It is incumbent that the business units understand not only what you are doing from the compliance perspective but also how your actions are helping them do business more efficiently and, hopefully, more profitably. An example Gearson provided was demonstrating the length of time required to approve sales agents. Using this metric she was able to show how efficient it could be for the business unit if the onboarding of third parties was automated. With this information and the business units’ support, she was able to secure funding for this compliance initiative.

A second component of this rule is to use the investigations, audits and monitoring of compliance to show where the compliance function detected an issue before it became a compliance violation. This could occur in your routine audits or by spot-checking payment requests and invoices from certain third parties, either sales agents or vendors.

### ***3. Create engagement and excitement***

The organization in the middle will make or break your initiative so get them involved. So, for Gearson, it is imperative that you engage the employees in the middle of your organization before you rollout any implementation. She gave the example that for Cameron’s Compliance Week celebration, she calls upon employees to create the message. In this manner you can use your Compliance Week event not only as a

springboard to internally publicize your compliance program but to foster a closer relationship with disparate groups within your company.

I would add that another part of this rule could be your financial incentives for doing business ethically and in compliance, such as a portion of a year's salary in discretionary bonuses. While such financial rewards may be given in private, it is certainly true that those employees who are promoted for doing business ethically and in compliance are very visible and are public displays of an effective compliance program. I think that a company can take this concept even further through a celebration to help create, foster and acknowledge the culture of compliance for its day-to-day operations.

#### ***4. Become a marketing guru and IT expert***

More than getting to know the folks in these departments, you need to know how they work and learn to speak their language. One of the things that you might try is to use social media to assist you. A key component of any effective compliance program is an internal reporting mechanism. The FCPA Guidance states, "An effective compliance program should include a mechanism for an organization's employees and others to report suspected or actual misconduct or violations of the company's policies on a confidential basis and without fear of retaliation." The Guidance further discusses the use of an ombudsman to address employee concerns about compliance and ethics. I do not think that many companies have fully explored the use of an ombudsman but it is certainly one way to help employees with their compliance concerns.

But, more than a reporting tool for compliance, there are other ways a company can help employees do business in a compliant manner. One commercial tool is Navigator, developed by the firm of Stroz Friedberg LLC, which the firm calls "a groundbreaking mobile and desktop application that makes your compliance program come alive! It automates clear answers and approval processes, and even offers data analysis for enhanced decision-making. The Navigator app is custom-tailored to each client and offers an array of benefits to any organization seeking easier ways to drive a positive corporate compliance culture." I have seen this tool and it is way cool.

Yet there are other tools that are available, at no cost, and can be downloaded onto a mobile device such as a smartphone or iPad. These include the O'Melveny & Myers LLP *Foreign Corrupt Practices Act Resource Guide*, which concentrates solely on the FCPA and is primarily a new vehicle to distribute content it already makes available upon request. This content includes O'Melveny's FCPA Handbook and In-House Counsel's Guide to Conducting Internal Investigations. In addition, the app features five resource sections that serve as an interactive, illustrative directory with titles ranging from 'O'Melveny Authored Client Alerts' to 'DOJ Opinion Releases.'

Another approach is found in the Latham & Watkins LLP's AB&C Laws app which takes an international approach to anti-corruption and anti-bribery laws, with the content focused on organizing and easing access to statutes and regulatory guidance according to specific fields of interest, from legislative frameworks to extra-territorial application to enforcement and potential penalties. It also includes official guidance such as steps

(where available) that can be taken to reduce the risk of liability for bribery and corruption.

### **5. *Embed your initiatives into business processes***

Gearson and several other speakers talked about the need to embed compliance into the fabric of the company. Building trust with the business is the most important issue one will face. The building of this trust comes from the demonstration that the compliance function is not *The Land of No, run by Dr. No* but a business function which runs at the speed of business. By such demonstrations you should be able to win the trust of the business units and this allow the embedding of compliance initiatives into the company's business processes.

I would add that this also means demonstrating the cost savings that are derived by having business unit employees participate in the compliance function. An example given was regarding third party representatives. Does your company really need all of the sales agents it currently uses? Is there overlap or duplication in the Supply Chain? The answers to these questions can go a long way towards reducing overall compliance risk and adding points to the bottom line. Further, properly trained, a business unit employee can perform some of the underlying due diligence investigation work for any third party business representative. The self-management of the business unit to fulfill these functions can drive down the overall cost of compliance.

I found Gearson's five rules to be quite useful as starting points for thinking about how the compliance function can interact and work through the business unit to further the company's goals of compliance. You can use each one of these to begin to lay the foundation for your compliance initiatives going forward.



## ***Chapter II - Internal Marketing of a Compliance Program***

Most compliance professionals came to this area of practice from the legal profession, internal audit, or some other discipline, which did not include a marketing background. But in many ways teaching, training and informing employees on compliance is marketing. I thought about the concept of the Chief Compliance Officer (CCO) and compliance marketing when I read an article in the Harvard Business Review (HBR), entitled “*Rethinking the 4 P’s*”, by authors Richard Ettenson, Eduardo Conrado and Jonathan Knowles. In this article, the authors posit that the “4 P’s” of marketing need to be changed for “today’s B2B reality.” I believe that a *best practices* compliance program can use these concepts to help internally market a compliance program.

The old “4 P’s” of marketing are product, place, price and promotion. The authors conducted a five-year study involving over 500 managers and customers across multiple countries and industries. From this study, the authors found that the old 4 P’s of marketing undercut the B2B markets in three key areas. First, the old paradigm asked marketing and sales teams to “stress product technology and quality even though these are no longer differentiators” but are now simply the cost of entry. Second, the old paradigm “underemphasized the need to build a robust case for the superior value of their solutions.” Third, the prior paradigm distracted the sales and marketing teams from “leveraging their advantage as a trusted source of diagnostics, advice and problem solving.” I believe that these three issues also beset the compliance practitioner as well.

The authors developed four new concepts for marketing in the B2B space. They used the acronym **SAVE**, identified as (1) solution, (2) access, (3) value, and (4) education, they are defined as follows:

1. **Solution** - Define offerings by the need they meet, not their features, functions or technological superiority. There are multiple anti-corruption and anti-bribery laws in place across the world. From the FCPA to the UK Bribery Act and beyond. A compliance solution meets the needs of a company to comply with these laws. It can be seen as a market-based solution to a legal requirement and can be defined as such.
2. **Access** - Teams should develop a cross-channel presence that considers customers’ entire purchase journey instead of emphasizing individual purchase locations and channels. Here it is important to bring the business unit folks into the discussion. It not only allows buy-in by the business unit but invests them in the overall compliance solution. There is nothing better than a Regional Vice President (RVP) explaining to a business relationship how seriously the company takes compliance and that they expect that from the business relation as well.
3. **Value** - Here the sales and marketing teams should articulate the benefits to price, rather than stressing how price relates to production cost, profit margins or competitors’ pricing. Compliance may be thought of as simply a cost center but I would advocate that it actually brings business to the table. A compliance solution can be a selling point for any company which does business with a US company internationally. Every contract requires anti-corruption/anti-bribery compliance

terms and conditions. Moreover, a new vendor is often audited regarding its compliance program. This is also true in any mergers and acquisition (M&A) transaction.

4. **Education** - Under this final prong sales and marketing should provide relevant information to customers' specific needs at each point in the purchase cycle rather than relying on advertising, PR and personal selling that covers the waterfront. I started this piece by talking about internal marketing and that is what education is. I would change *Always Be Selling* to *Always Be Marketing*.

These four concepts are coupled with certain requirements to make the switch over, which I believe are also applicable to the compliance practitioner. Initially, management must encourage a solutions mind-set throughout the organization. If your company comes from an engineering or tech background, it may be difficult to shift over from thinking about technological superiority to a customer-centric perspective. But the key is the tone at the top. Is management willing to make this a priority throughout the sales chain? Is management committed? These are questions that not only a compliance practitioner must answer but ones that the Department of Justice (DOJ) will ask.

The next premise that must be in place is that the design of the sales and marketing team must reflect the customer-centric focus. In the sales and market world, this led one company, Motorola, to reorganize the marketing function into complimentary specialties, allowing a clear focus on each element of the SAVE concept. Here this concept was anticipated in the Pfizer Deferred Prosecution Agreement (DPA) in the Enhanced Compliance Obligations where the DOJ spelled out what it expected in the company's compliance department. It listed three separate functions; each designed to deliver a different compliance solution to the compliance department's internal client, the company.

The final premise I found very significant is that management must create collaboration between the sales and marketing teams and the development and delivery teams. This is important because specialist teams in development and delivery need to concentrate their approaches to specific customer needs. By doing so "this ensured that functional boundaries did not determine" a company's solutions.

Here I think that the key for the compliance practitioner is to engage business unit employees. Leonard Shen, CCO of PayPal, used this approach when his compliance team traveled to multiple company locations, across the globe, to meet with as many employees as possible. A large number of these meetings were town hall settings, and key employee leaders, stakeholders and employees identified as high risk, due to interaction with foreign governmental official touch-points, were met with individually or in smaller groups. Shen and his team listened to their compliance concerns and more importantly took their compliance ideas back to the home office. From this engagement, the team received several thousand employee suggestions regarding enhancements to the company's compliance program. After returning to the US, Shen and his team winnowed down this large number to a more manageable number, somewhere in the range of a couple of hundred. These formed the basis of a large core of the enhancements to the existing company compliance program.

This was also part of the approach used by Peter Löscher who was hired as the CEO of Siemens in 2007. Löscher went on a round the world tour of the company's facilities, including meetings with customers, local governmental officials and Siemens employees. He accomplished this final component through meetings with local leadership teams, town hall-style meetings with all employees and dinners with top leadership teams in specific locations. He basically learned that Siemens employees were "shocked and ashamed, because they were very proud to be a part of Siemens." He used these forums as a basis to begin to change the culture of the company, which was then enmeshed in what became the world's largest and most costly bribery and corruption scandal to date.

Many compliance practitioners and lawyers do not think about marketing. The HBR article provides some interest parallels to what compliance practitioners need to communicate.

### ***Chapter III - Getting Employees to Care about a Compliance Program***

Putting a compliance program into practice is not something that most companies do very well. Focusing specifically on policies, how do you get buy-in for a new or amended compliance policy? How do you determine if a new compliance policy contradicts anything that you currently have in your compliance policy portfolio?

When thinking about such questions regarding compliance policies I am reminded of four questions posed by Stephen Page, in his book “*Achieving 100% Compliance Of Policies and Procedures*”, wherein he poses the following questions: (1) What is the nature of the policies owner’s function? As these are compliance policies, they are critical to a company doing business in compliance with relevant anti-corruption/anti-bribery laws such as the FCPA and UK Bribery Act. (2) What is your organization’s overall vision and mission? This question speaks to management’s commitment to doing business ethically and in compliance with legal requirements. (3) What is the content of the policies? This speaks to the connection of the policy goals with other incentives, such as compensation and promotion. (4) What is your company’s receptivity to the policy? This question speaks to training and communication so that employees will understand not only the underlying reason for the policy but drive adherence to the policy.

These and other questions were explored at a Compliance Week 2013 session entitled “*Case Study: Putting Policies into Practice at Dell*” by Kristi Kevern, Director of Operational Compliance, and Page Motes, Director, Strategic Programs Office - Global Ethics & Compliance, from Dell Corporation. They discussed how Dell overhauled its entire compliance policy management program. Motes does not come from a compliance background but came from business development. I found her perspective quite different from the usual compliance perspective. From her position, she recognized the need to internally market a new compliance policy; however this marketing plan must begin at the inception of a compliance policy and not after it has been drafted.

Motes said that it is incumbent to obtain buy-in from the business units before a compliance policy is drafted because, after all, it is the business units, which will implement a compliance policy. This begins with a business unit sponsor who should have ownership of any new compliance policy. After the initial draft is made, it should be circulated to make sure that the compliance policy is workable and that it is translated from legalese (*or accounting-ese*) or other technical jargon into plain English. She said that is one of her key roles.

The next step is the internal market. Here Motes believes that a key is to move away from words such as ‘ethics’ to words that denote behaviors. She said that her group would talk about trust, honesty, respect, judgment and responsibility. After rollout the compliance group must train on the new policy and then monitor to ensure that it is followed. Finally, there must be some consequences to an employee if they are trained but fail after multiple warnings to follow a policy.

I thought about Motes' ideas when I read Fast Company article, entitled "*Starbucks's Leap of Faith*", which discussed the company's rollout and approach to innovation. One of the examples in the article was when Starbucks rolled out its mobile application to allow customers to pay through their smartphones. The company worked with staff on proto-types, then trained and followed up with interviews to determine how the new system was working. Recognizing that there were technical glitches to overcome, the company persevered. Ryan Records, Vice President (VP) of Payments, was quoted as saying "it became seamless and flawless and an elegant way to pay" and that payment method now accounts for roughly 10% of the company's total pay each day.

The Starbucks story drove home to me the key message from Motes. You must work with the business units to operationalize any policy. While it is true that a compliance professional should be the subject matter expert (SME) on the requirements of what should go into a compliance policy, it is equally important on how that information is imparted and getting employees to care about the policy. Records put it in a slightly different light, when he said, "From a systems viewpoint, it is often the organization's infrastructure, and not its people, which is rigid and inflexible, often leading to angry and frustrated employees. If people cannot approach problems, talk openly, or give opinions, then this prevailing attitude can cause withdrawal and people who do not care. The clearer the tie between what an organization is doing and the results, the more energy, commitment, and excitement they will generate during a change process." I think the latter sentence is what you need to strive for in the realm of compliance policies.

## ***Chapter IV - Getting Your Employees to Internally Market Your Compliance Program***

The internal marketing function of compliance is to get employees to not only understand the message of compliance but, even more so, to think about and use compliance in their day-to-day operations. I recently listened to a podcast on social media marketing that had some concepts I thought applicable to the compliance function and its internal marketing role within a company. The podcast, was hosted by Michael Stelzner, was on his Social Media Examiner site, which brands itself as “Your Guide to the Social Media Jungle”. In a podcast entitled “*Social Sharing: How to Inspire Fans to Share Your Stories*”, Stelzner interviewed Simon Mainwaring, author of *We First: How Brands and Consumers Use Social Media to Build a Better World*.

The focus of the podcast was on the use of social media by your employees and customer base to increase market share. However, Mainwaring said some things that struck me as key to building a successful compliance program. He was discussing your employee base as one of your most key marketing resources because they are your first and best line of advertising. He said that to allow them to market successfully there are three key components, (A) Let your employees know what you stand for; (B) Celebrate their efforts; and (C) Give them a tool kit of different ways to participate. I think each of these concepts can play a key role for the compliance practitioner in internally marketing their compliance program.

### ***A. Let Your Employees Know What You Stand For***

In the FCPA Guidance, the DOJ and Securities and Exchange Commission (SEC) said that the basis of any anti-corruption compliance program is the Code of Conduct as it is “often the foundation upon which an effective compliance program is built. As DOJ has repeatedly noted in its charging documents, the most effective codes are clear, concise, and accessible to all employees and to those conducting business on the company’s behalf.” The well-known Code of Conduct maven Catherine Choe has said “Two of the primary goals of any Code are first, to document and clarify minimum expectations of acceptable behavior at a company, and second, to encourage employees to speak up when they have questions or witness misconduct.”

But more than the Code of Conduct, does your company really communicate that it stands for compliance? Obviously formal anti-corruption training under the FCPA is important but I think that more is required to reinforce that your company has a culture of compliance throughout the organization. In other words, are you communicating what you stand for and not simply the rules and regulations of a compliance program?

### ***B. Celebrate Their Efforts***

Once again the FCPA Guidance speaks to the need to incentivize employees in the company realm. The Guidance states, “DOJ and SEC recognize that positive incentives can also drive compliant behavior. These incentives can take many Guiding Principles of

Enforcement forms such as personnel evaluations and promotions, rewards for improving and developing a company's compliance program, and rewards for ethics and compliance leadership. Some organizations, for example, have made adherence to compliance a significant metric for management's bonuses so that compliance becomes an integral part of management's everyday concern." But more than simply incentives, it is important that "[M]ake integrity, ethics and compliance part of the promotion, compensation and evaluation processes as well."

Mainwaring's concept means going beyond incentivizing. To me his word 'celebration' means a more public display of success. Financial rewards may be given in private, such as a portion of an employee's discretionary bonus credited to doing business ethically and in compliance with the FCPA. While it is certainly true those employees who are promoted for doing business ethically and in compliance are very visible and are public displays of an effective compliance program. I think that a company can take this concept even further through a celebration to help create, foster and acknowledge the culture of compliance for its day-to-day operations. Bobby Butler, CCO at Universal Weather and Aviation, Inc., has spoken about how his company celebrated compliance and his company's compliance program through the event of a Compliance Week celebration. He said that he and his team attended this event and used it as a springboard to internally publicize their compliance program. Their efforts included three separate prongs: they were hosting inter-company events to highlight the company's compliance program; providing employees with a Brochure highlighting the company's compliance philosophy and circulating a Booklet which provided information on the company's compliance hotline and Compliance Department personnel.

### ***C. Give Your Employees a Tool Kit For Compliance***

Obviously a key component of any effective compliance program is an internal reporting mechanism. The FCPA Guidance states, "An effective compliance program should include a mechanism for an organization's employees and others to report suspected or actual misconduct or violations of the company's policies on a confidential basis and without fear of retaliation." The Guidance goes on to also discuss the use of an ombudsman to address employee concerns about compliance and ethics. I do not think that many companies have fully explored the use of an ombudsman but it is certainly one way to help employees with their compliance concerns. Interestingly, in an interview in the Wall Street Journal (WSJ) Sean McKessy, Chief of the SEC's Office of the Whistleblower, stated that "What I hear is that companies are generally investing more in internal compliance as a result of our whistleblower program so that if they have an employee who sees something, they'll feel incentivized to report it internally and not necessarily come to us."

There is much to be learned by the compliance practitioner from the disciplines of marketing and social media. These three concepts are useful to aiding companies in getting their sales pitches out and can be of great help to you, the compliance practitioner, in communicating marketing throughout your company as well.

## ***Chapter V - Internal Advertising of Your Compliance Program***

Jeffrey Rayport had an interesting piece in the HBR, entitled “*Advertising’s New Medium: Human Experience*”, where he stated his thesis is “to engage customers, advertisers must focus on where and when they will be receptive” to your message. I think that his ideas can be used by a compliance practitioner to internally market not only a compliance program but also the equally important message of *doing compliance*.

Rayport believes that advertising has traditionally been “ubiquitous but often poorly targeted, intrusive, ignored at best and actively rejected at worst.” Further, in a “media saturated world, advertising strategies built on persuading through interruption, repetition, and brute ubiquity are increasing ineffective.” He believes that advertisers must expand their definition of what advertising really is so that they can craft and place their messages so that they are not only accepted but welcomed by consumers. That sounds to me like a great goal for a compliance practitioner who is trying to sell the message of compliance throughout a worldwide based, international company.

Rayport says that a message should be less about its target and more about what you are doing for the target audience. In other words, how does the idea set out in the message “sustain and reward” affect the audience’s life? It must engage through “relevance and value”. So what does Rayport prescribe? He believes that there are four domains through which you can reach a target audience.

### ***A. The Public Sphere***

This is the area where we move from one place or activity to another, both online and off-line. Rayport suggests that public-sphere ads are effective through the use of one or more of four principles. (1) *They are relevant in context* - the message aligns with the consumer’s experience at the moment they encounter the advertising. (2) *They help people reach personal objectives* - this is advertising conceived as problem solving. (3) *They are brand interventions* - these enter consumers’ lives in targeted and useful ways and when they are needed. (4) *They are engaging, refreshing, or compelling experiences* - these address a specific practical function, but they can also exert influence in the remaining spheres. These four criteria should be a goal of every compliance training session. If you can help your company’s employees achieve their goals through compliance, you will go quite a long way towards selling not only your compliance program but also the message of compliance.

### ***B. The Social Sphere***

Rayport says that the social sphere “emphasizes broad diverse networks.” This is where we interact with and relate to one another. So messages in this sphere should help people, “forge new connections or enrich existing ones.” But it must appear at the right time and the right place to be effective. The message itself should address a specific need or problem but the key is that it facilitates social interactions. The message can both reinforce relationships and reinforce the brand. Think how powerful the compliance



message could be if it met these criteria. One thing the FCPA Guidance makes clear is that gift giving is not prohibited by the FCPA. You can provide gifts as tokens of esteem in parts of the world where this is a long-standing customer and practice. But I think the key is that you can tailor your message for your audience.

### ***C. The Tribal Sphere***

This is the area where you typically affiliate with groups to define or express our identity. It is an area of “more-focused social engagement”. But this sphere provides an opportunity to create a message that identifies with this group. Messages here must suit the “character and values of those involved” and “empower the individual.” While you may need to have some consistency across your company regarding your compliance message, this sphere would also suggest that the message in West Africa could be tailored to that market, rather than simply the same message that you give in the United States. I heard a very good example by Dan Chapman, CCO at Parker Drilling, who, when confronted with a question during overseas FCPA training about why people in his company should not bribe in a country where it was customary, explained how corruption was ruining the fabric of the country in question, and if the person asking the question did not engage in bribery and corruption perhaps he could be one step in bringing his country out of that sordid state.

### ***D. The Psychological Sphere***

This sphere is the “domain of language, cognition and emotion.” Here, Rayport believes that the message you send will serve as “shorthand for complex concepts, inspiring actions or triggering positive feelings.” Somewhat surprisingly, in the psychological realm, messages can provide, “new ways to articulate ideas, engender habit formation, guide reasoning and elicit emotion.” Rayport states that there are four different ways in which messages in this sphere can work. (1) *Messages use language to establish a cognitive beachhead for a concept* - the use of one or just a few more can convey a much longer and thoughtful message. (2) *The message seeks to establish a habit* - this means more than simply a thought of what to do, but how one should do it. (3) *Such messages guide cognition* - this means that messages can and should be both inspiring and practical. (4) *Messages should connect on an emotional level* - messages here should promote a frame of mind, in the psychological sense. Imagine if you could create a compliance message that worked on this level. Clearly this has been done by many large corporations in the area of safety, with such simple messages as ‘Safety First’ or ‘Do Safe Work’. I might suggest that you look at your company’s stated values. On the General Electric (GE) website it states that “The board expects GE directors, as well as officers and employees, to act ethically at all times and to acknowledge their adherence to the policies comprising GE’s code of conduct set forth in the Company’s integrity manual, “The Spirit & The Letter”. What if your message was simply “*The Spirit & The Letter*”? If an employee heard that and they immediately thought of acting ethically and adhering to your company’s compliance program, it could be quite a powerful message.

Rayport’s article provided many different ways for a compliance practitioner to think through how they might internally market a compliance program. For a company with a

large international work force, the traditional FCPA training may not be the only method for a compliance practitioner to reach the employees. As you begin to think of other ways to get out the message of compliance you could try some of Rayport's ideas.

## ***Chapter VI - Internally Funding Your Compliance Program***

In an article in *The Rector Factor* in the Houston Business Journal (HBJ), entitled “*Prepared company perspective for lenders, investors*”, Bruce Rector discussed some ideas that companies might draw upon when looking for financing. I thought it would be helpful for the compliance practitioner to use as a guide when putting together a budget, or other, request for funding a compliance initiative.

Rector wrote about the materials a company should put together and have ready when they are seeking financing from banks, investors or other financial institutions. He set out a list of information that a company should have prepared and be ready to present to such institutions because any entity or person who may provide funding is going to want to know some specific details about your company. He believes that management needs to anticipate such requirements and prepare in advance for it. He cautions not to wait until the last minute to put the information together or when you seek funding as “waiting until you need money is never the best time to go out and get it.” While you can be so mundane as to call this a “loan application” Rector believes that if you lay out the information in a coherent manner, it would allow an outsider to get some “perspective on the company”. Further, he believes that such information is actually “multipurpose and can be used to inspire and sell stakeholders – you, your bankers and investors, and your employees – on the business and its prospects” for your company. I have modified Rector’s recommendations for a ‘good application’ to steer them towards a Compliance Department.

- **Executive Summary.** This should be no more than three (3) pages and it should convey excitement and impact. It must spell out your compliance mission and clearly state the opportunities that are presented for your compliance group to not only further the goals of compliance with the FCPA or UK Bribery Act but how these opportunities will result in increased earnings and profits.
- **The Industry.** Use this as an opportunity for benchmarking within your industry. You should use credible research from recognized authorities or collect the information from your colleagues in other companies directly, if such information is available to you. You should focus on the size, growth and significance of compliance within your industry and the opportunities for growth within your company.
- **The Company.** Here you should walk the reader through how your compliance program has grown; this could include organic growth, detailing areas that you may have engaged in as best practices have evolved, and growth of your compliance regime through acquisitions. You should also share major victories and tie all of these into your company values as set out in your published Code of Conduct.
- **Management and Ownership.** Here is an opportunity for you to recognize the persons in your compliance organization. You should have an organizational chart, biographies of key personnel and anticipated hiring needs.
- **Financial Information/Projections.** Here you should create a three-year forecast using best, probable and worst-case scenarios for each year on a cash basis. In this

section you should include historical return on investment (ROI) figures from prior initiatives, to the extent that you have any and end with a current balance sheet that will indicate and extend top and bottom-line growth for your compliance department.

- **Purpose of the Investment.** Here you need to be short, compelling and to the point. You should spell out precisely what you are asking for and reiterate what you will do with the funding.

I believe that Rector's suggestions in putting together information for financial investment would be a good way for a compliance practitioner to think about internally marketing compliance and internally seeking funding for compliance initiatives.

## ***Chapter VII - The Use of Influence by a Chief Compliance Officer***

One of the challenges for any CCO is how to influence the conduct and actions in a corporate environment, particularly as compliance is viewed as non-revenue generating and usually does not exist simply to protect the company, which is how the legal department is often viewed. Folks like myself who came into compliance from the legal function tend to think of a top-down approach where compliance is centralized at the corporate officer, usually in the United States. But because the role is very different than that of a General Counsel (GC), a CCO needs to bring another skill set to bear to do his or her job. At a session at the SCCE 2014 Compliance and Ethics Institute, SCCE CEO Roy Snell and Jenny O'Brien, CCO at United Health Care, talked about the techniques that a CCO can use to influence decision making in a company in order to do business in compliance and ethically.

Snell began the session with some basic questions about why there are positions such as a CCO and why there is a compliance function within an organization. After all, departments like legal and internal audit have existed in business organizations for up to at least a few hundred years. He posed two questions that I found interesting "Why are we here?" and "What did those who came before us fail to do?" He listed some of the scandals from the late 90s and early 00s such as Enron, WorldCom, HealthSouth, Adelphia and others where he believed that the problems, which led to the disintegration of these organizations, were well known within the companies themselves. So the situation was not that people did not find the problems, the issue was that the people inside these organizations did not fix the problems. Snell believed that the persons who could and would have stood up to raise questions or say this should stop lacked some skill or ability to influence others to make the right decision. He concluded that such business and ethical collapses were a failure of influence.

This led into his presentation with O'Brien about techniques for a CCO to employ to help influence decision-making within an organization. They labeled them as the "*Seven Steps of Influence*" and they are as follows:

1. **Collaboration.** O'Brien emphasized that as a CCO you need to know your company's business. If you are new to an organization she said you must take time to learn the business. You should sit in on sales meetings and, when appropriate, you should go out on sales call. Channeling her inner Atticus Finch, she characterized this as walking in the shoes of the business leaders you are assisting. By doing so, you will not only understand the products and services that your company offers but also the challenges that your business development team will face out in the world.
2. **Listening.** Here O'Brien emphasized that she has to work constantly at active listening, which is listening, thinking and then speaking, and not just jump into the middle of a conversation, talk to people in a manner that will address their concerns. When you do speak you should be prepared to make the case for the compliance proposition that you are trying to get across. She noted that as a CCO or compliance practitioner, you should strive to be relevant in every interaction

- you have with your senior management peers. O'Brien said that sometimes it means speaking up at meetings or other forums but sometimes it means listening. You should try to develop a rapport with your business team and this rapport can lead to trust building.
3. **Relationships.** Snell opened his remarks on this topic by intoning that by relationships he did not mean inter-personal relationships. He believes that it is mainly through relationships with other functions in an organization that a CCO or compliance practitioner can best bring influence to bear. It all begins with building trust with others within your organization. Invest time to find others in your organization that you want to work and with those with whom you desire to build relationships. Snell believes that some of the more key relationships that a CCO or compliance practitioner can develop are with the audit function, the legal department, Human Resources (HR), IT and corporate communications. Snell said that when one of these groups offered to help him move the ball forward in compliance he always viewed it as a positive and wanted to work with these and other corporate groups. He did not view it as a turf war at all. The only thing that he said he requested were the terms of working together. Of those, he said the most important was that if another group in the company took on some project related to compliance, such an internal audit, that the group finish whatever they take on.
  4. **Humility.** O'Brien believes that humility is important because it empowers. Moreover, it can empower others to expand the circle of influence and get others in a corporation to influence an ever-expanding circle on behalf of compliance. The CCO does not need center stage. She reiterated her belief that business units should solve compliance issues, as compliance is really just another business process. Further, through such influence where you can get the business unit resources to solve a compliance problem, you will hold down the costs of the compliance function. She ended by noting that it is not about being right but about moving the compliance ball forward in the right direction.
  5. **Negotiation.** Here Snell said that negotiation should not be about the dichotomy of winning and losing an argument or debate. A CCO should strive to redefine what a win might look like or what a win might consist of for a business unit employee. He said that when faced with such a confrontation, he would try to determine what both sides wanted then give them something else in addition to what they thought they wanted. He provided the example of a CCO quietly listening and when the room is just right and all the participants are worn out, you, as the compliance practitioner, throw out an idea where the apparent loser in the argument receives even more than they thought they were asking for in the requesting. A CCO can be considered a mediator not just simply an enforcer or Dr. No from the Land of No. He ended by saying that as a compliance practitioner you need to learn the art of compromise.
  6. **Triple 'C'.** What do the three C's stand for? *Calm, cool and collected.* O'Brien believes that all company employees, up and down the chain, are watching the CCO. For this reason, she said that as a compliance practitioner you should be *poker faced*. To this end she keeps the sign "Keep Calm and Carry On" in her office. She believes that the Triple C's are important because organizations look

to the CCO to solve complex issues with simple solutions. When faced with a compliance issue or an obstacle you should endeavor to keep everything on an even keel and never let them see you sweat.

7. **Credibility.** The final of the seven pillars was that the CCO role needs to be adequately scoped and that the accountabilities need to be clearly defined. Put another way, what is your job scope as the CCO and what is the function of the compliance department? What is your accountability to decide the resolution to an issue? Snell agreed with O'Brien that there should be business unit ownership for every issue that comes into the compliance department. Yet, as a CCO, you must demonstrate your value as a non-revenue function. This may require you to get out of your office and put on a PR campaign for compliance. Finally, Snell ended by saying that a CCO needs to guard their independence in job function and reporting. You must make clear that you will have independent reporting up to the Board or Audit Committee of the Board.

Snell concluded by reminding us all that influencing is not a one-time activity. It is ongoing. Tying back to his original question of why the compliance function exists in the quantum it does today, he said that he believes a CCO or compliance practitioner exists to help influence a company to build a better business environment by acting more ethically and responsibly. By moving the ball forward in this manner, it may well lead to a country's economy to be trusted which could well lead to greater economic development.

## ***Chapter VIII - Four Keys to Compliance Leadership***

In an article in the Corner Office section of the New York Times (NYT), entitled “*We’re Family Yes, but We’re Still Accountable*”, Adam Bryant reported on his interview with Brooke Denihan Barrett, the co-CEO of the Denihan Hospitality Group, a 50-year old family business which focuses on the hospitality business. This piece spoke about four keys to leadership which I thought were pertinent to a CCO.

### ***A. Training***

One of the things that Barrett has learned is how to train people. She explained, “I thought the way you got things done was by telling people what to do. That’s where I learned what not to do. I spent a good portion of my time telling people what they did wrong instead of really encouraging them about what they did right.” She came to realize that was perhaps not the best way to manage people and “learned to cut people some slack.” She said that she found “that you get a lot more with the carrot routine than the stick routine. I also realized that you really needed to explain the “why” of things. You need to give people a little bit of space to come around, and say, “Yeah, that makes sense,” before you really engage them in what needed to be done.”

I found that her final point might be critical for compliance training. By explaining the *why* of compliance, employees can better understand what the company is trying to accomplish. So if your goal is to do business in an ethical manner, then explain this and how the company’s compliance program will help to accomplish this goal through its policies and procedures.

### ***B. Accountability***

One of the things that Barrett emphasized was the erroneous perception that because her company was a family business there was no accountability. She made clear that “You have to set certain standards that you want people to live up to. And if people need help, then we want to help them along the way.” However, accountability is a two-way street. Just as the employee must be held accountable, so must the company in terms of providing support to allow employees who want to do the right thing and to do their job well. Barrett said, “Sometimes organizations can fall down if they don’t also ask: How do you give people the tools they need to be successful? How do you get that person to understand what change needs to happen, and how do you help them along the way? Because people can’t always figure it out on their own, and nor should you expect them to.”

### ***C. Listening***

Many of the CEOs that Bryant interviews for his Corner Office section speak about the need for listening skills. Barrett was no exception. But as co-CEO she found that employees were sometimes reluctant to speak openly and candidly with her. So she began to meet with employees in small groups of 10 to 12 people. At Denihan they call them ‘Roundtables’. Barrett said that she would say to them ““Tell me something I don’t



know.” And I’ll get comments like: “Oh, but you know everything. You’re the C.E.O.” It’s just a reminder of the perceptions that people have of the head of the company. But every time I ask that question, I learn something new.” Imagine as a compliance officer if you were to ask that question in a roundtable, what do you think you might hear back from your company’s employees?

Barrett also spoke about how to have a ‘difficult conversation’. She said that if there is a mistake made she views it as an opportunity for learning and professional growth. At Denihan, they call them ‘lessons learned conversations’ and they may occur with a group where a problem has arisen. Barrett related, “we might bring people together in a room who were involved in a project and ask: What were the things that worked? What were the things that didn’t? What could we have done differently? And we’ve had some very spirited and cathartic conversations. You have to be able to let people put something on the table without actually pointing the finger. It allows things to come out in more of a non-accusatory manner.”

#### ***D. Hiring and Promotion***

These are two key areas in compliance that are finally beginning to receive the attention that they deserve. Barrett’s thoughts on how she views these in the context of her interviewing are instructive. She acknowledged that by the “time somebody meets me, you can assume that the skills are there. So what I interview for is fit. And I’m always very curious to know, what is it about our company that appeals to that person?” She asks specifically about culture, requesting the candidate define it and how do you think that culture is special. She also asks candidates to talk about a failure and what lessons that they learned from the experience and how they dealt with the experience. I would suggest that both of those lines of inquiries should be used when evaluating a candidate for hire or promotion.

Barrett’s interview provided some interesting insights on leadership. Moreover, her experience in professional growth has shown there are different styles and techniques that you can successfully use in your company’s compliance program. Train people on the reasons *why* your company is doing compliance so that they will understand *how* to do it. Make them accountable but also provide them with the compliance tools and support to do business the right way. If there is a problem or issue, use it as a lesson learned so that employees can profit from the experience. Lastly, make a discussion of culture a cornerstone in your hiring interview or promotion interview process.

## ***Chapter IX - Chief Compliance Officer as Chief Persuasion Officer***

The roles of a CCO can be many and varied but one role of any successful CCO is that of Chief Persuasion Officer (CPO). I say this because it is often the case that the most a CCO has in his or her arsenal is the ability to persuade. While there may be times that the CCO can veto something outright, it may not only be difficult but also risk long-developed corporate political capital that might be best used at another time or in another arena. I thought about this concept of persuasion and how even the smallest gesture can pay great dividends when I read a book review in the New York Review of Books, for a biography of Dale Carnegie by Steven Watts, entitled “*Self-Help Messiah: Dale Carnegie and Success in Modern America*”, penned by Ian Frazier. Carnegie is of course well known for his seminal work “*How to Win Friends and Influence People*” first published in 1936. I was somewhat surprised to learn that the text was largely drawn up as transcripts to lectures Carnegie was giving in New York City in the mid-1903s. Carnegie’s main thesis was to provide concrete steps on how ordinary people could help master the art of persuasion. While it has been some time since I read this book, what I recall is that to influence people, one has to *listen* to them. So for me, the book was about how to become a better listener.

I cannot say enough about this skill for a CCO. If you hear any long-term CCO speak about their job, they will tell you it is largely about listening to people; whether those people are employees, senior management or the CEO and Board members. By listening to others you not only hear, and hopefully will come to understand their concerns, but you allow them to come to decisions themselves and you are not in the position of telling them what to do. It is a skill that has served many CCOs very well for many years.

In an article in the Financial Times (FT) entitled “*Persuasion for the time pressed*” Professor Robert Cialdini, the Regents’ Professor of Psychology and Marketing and Arizona State University, discussed his work around persuasion and influence. Professor Cialdini is one of the leading proponents of ‘persuasion science’, which draws upon various disciplines, including “psychology, neuroscience and behavioural economics”. The Professor has been in this field for over 30 years and has been dubbed “The Godfather of Influence” based upon his work. One of his insights was that corporations should have a “chief persuasion officer” because such a person can help to bring influence upon others and “often it is the smallest changes that can make the biggest differences.”

In his work, entitled “*Influence: The Psychology of Persuasion*”, Professor Cialdini laid out what he believed to be six “universal principals of persuasion” which I have adapted for the compliance practitioner.

1. **Reciprocity** - Cialdini believes that people will feel obligated to return favors performed for them. But for the compliance practitioner, I think this means listening and using skills to help manage risk or even high-risk areas. One of the points of compliance is that unless a transaction involves bags of cash being paid to get a deal done, there usually a way to manage compliance risk. If you, as a

CCO, can help an executive or your company to successfully manage a high compliance risk, this will be remembered.

2. **Authority** - Cialdini believes that people look for experts to show them the way. The DOJ expects a company's compliance experts to have SMEs on FCPA anti-corruption compliance programs and this is made clear in the FCPA Guidance. For the CCO, Cialdini's insight is that you or someone on your staff must be able answer the day-to-day questions that come up on doing business not only in compliance with the FCPA but your company's compliance regime.
3. **Scarcity** - Here Cialdini takes a slightly different tack by noting that the less a resource is available, the more people want it. For the CCO, I think this translates to the scarcity of your time. A good portion of your time must be spent at the corporate office but a large amount must be spent out in the field. Your employee base will respond to you more often and with a deeper symbiosis if you can get out into the field and meet people.
4. **Liking** - Noting the self-obvious Cialdini says that the more people like you, the more they want to say yes to you. However, as noted in point 3 above, for the CCO I think this means getting out into the field, training employees who want to do business the right way on how to do so and simply meeting and talking with them. In my corporate life I put on contract and transaction law training across the world for the company's business units and the universal response was along the line of 'thank you for coming out here to talk to us.'
5. **Consistency** - Here Cialdini intones that people want to act on concert with their values. I believe that most people do want to conduct their business ethically and in compliance with anti-corruption laws such as the FCPA. By providing them a way to do so, you can help them do something they were inclined to do anyway. I once had an employee in the Far East tell me that there was more than enough business for the company to garner in the middle of the road. He did not see the need to even get close to the line of bribery and corruption. With that type of attitude, a CCO can almost be a facilitator.
6. **Social Proof** – This can be a tricky one for a CCO. Cialdini believes that people will look to others on what to do to guide their own behavior. This means that a compliance program must have sufficient incentives to get the message of compliance through middle management and down to the troops. Simply put if employees see a high revenue producer get bonuses and promotions for conduct which may violate your company's Code of Conduct; they will come to believe in short that management is much more concerned about the bottom line than doing business ethically and in compliance.

From these articles and perspectives, I believe that three conclusions can be drawn. First, a little can mean a lot. Second, from Dale Carnegie, one of the primary keys to influencing people is to listen to them. Thirdly, from Professor Cialdini, a CCO can be a CPO and by using the six principals of persuasion, can create a more effective compliance program.

## ***Chapter X – CCO as Chief Collaboration Officer***

In an article in the Corner Office section of the NYT entitled “*Titles Don’t Matter. Teamwork Does*”, Adam Bryant interviewed and profiled Girish Navani, CEO of eClininicalWorks, a provider of clinical information systems. He had some interesting thoughts about corporate support and the skills required to lead a function such as compliance.

I found Navani’s leadership style focusing on collaboration to be a good model for a CCO or compliance practitioner because what the compliance function needs to bring is a partnership to help the business and other units do business in compliance with the relevant legal and regulatory scheme. In the world of anti-bribery and anti-corruption that means compliance with the FCPA, UK Bribery Act and similar laws. Navani said that his leadership style is to be as open as possible. One of the techniques that he uses is to have an oval table for meetings. No doubt channeling his inner King Arthur (or perhaps Richard Harris playing King Arthur), the configuration of the table actually seems to facilitate conversation and learning.

Another interesting insight was that Navani structures his company around teams. I thought this could be something that the compliance function could use in its dealings with business units because compliance is really a partnership with the business units and compliance spans multiple functions within any company. I also found another leadership insight from Navani’s leadership style. Navani said he continues “to learn every day. Leadership to me is many different qualities. Some are very basic. You’ve got to be approachable, humble and hard-working. Then there are ones regarding how you treat people. I listen more now. Before, I’d speak all the time. I will still do a lot of talking in meetings, but I absorb others opinions more. And I’m completely open to being told “no”. Questioning my own decision-making with others in the room is fine.”

I found that last point quite useful to consider. Coming out of the legal department and into compliance, I did not always take kindly to being told ‘no’ by someone from the business unit. I thought every pushback was some type of pressure test looking for weakness or tension. However, Navani’s style brings up the useful reminder that often the business function can assist compliance in learning how to perform the function more quickly or more efficiently. Certainly the business can assist the compliance function in understanding the highest risks that a company should focus on managing. In such a partnership role, compliance and the business unit can compliment each other to stop wasting time on immaterial risks so that resources can be delivered to the company’s highest risks.

Navani also stressed accountability. At his company “You’ve got to be accountable to yourself first, and you’ve got to be accountable to your team.” This certainly has application to the compliance function as well. One of the battles that compliance can fight is to be ‘The Land of No’ and the CCO is the head of it, or ‘Dr. No’. However by stressing accountability and creating transparency in the compliance process, I believe that a CCO can go a long way towards ameliorating that misperception.

I also found Navani's techniques for hiring instructive for compliance. He said, "I look for the heart first. I don't ask for direct experience." He expects a modicum of professional expertise by the questions he asks most often are "Do you want to win? What drives you every day? Why health care IT? Can you spend 10 years of your career here? What do you want to do in those 10 years?" Navani went on to say that if he received satisfactory responses to those queries the technical aspects of a position can be taught. But he strives to see if a candidate's heart is in the right place.

In addition to using these questions to ferret out candidates who will not work with his company, Navani uses these questions to set both a tone and expectation. The message he sends is "We're not going to stifle you. If you can think out of the box, you will." Navani believes that by hiring such employees they have the opportunity to become game changers at his company. Now imagine if you could have your HR function use the hiring process to ask questions around attitudes around business ethics or other compliance issues. It would have the dual effect of allowing your company to have a front line inquiry that might weed out those who might be prone to cutting corners through bribery and corruption. But equally important would be the expectation set on the high value your company has on compliance and business ethics. The message would begin pre-hire, set again during employee orientation training and continued throughout the employment tenure.

Through migrating some of these leadership techniques that Navani espoused into your compliance tool-kit; a CCO or compliance professional can help to shift a company's conversation around compliance. You can move from simply being seen as a safety backstop to one of developing and implementing solutions. Some of the other insights that I drew from Navani include setting out your core function of compliance. A compliance function should be able to offer expertise and insight into solutions. One part of that may be delivering data and other information to the business function to help them make better economic decisions for the company. But another way might be through compliance coaching advocacy.

Navani's leadership once again demonstrates that if your compliance function shows integrity and responsibility, it can lead to greater teamwork between departments. Many business units fear that the compliance function will take away control of the business process from them. However by demonstrating that compliance is really in partnership, this can move a long way to alleviating this concern. And do not forget the Round Table.

## ***Chapter XI - Communications Tips for the Compliance Professional***

Gini Dietrich, the founder and CEO of Arment Dietrich Inc., recently released a book which provides a wealth of information that the compliance professional can also use. It is entitled *Spin Sucks* and as you might guess from the title of the book, Gini believes that if you “Lie or spin the truth you will be found out,” and that folks will “take you to task” for doing so. More than just your reputation will suffer; you will lose the ability to have credibility going forward. Her thesis is that today, “while media strategy is an important part of a communications program, there are many other tactics used in a cohesive strategy: content, email marketing, social media, crisis and reputation management, events, social advertising, investor relations, lobbying, regulatory work, and more.” That sounds like a good prescription for a compliance practitioner to consider in the communication function of a *best practices* compliance program.

For the compliance professional, I believe that *Chapter 7 - Your Customers Control the Brand* is the key tract. Here Dietrich focuses on a company’s customers because they, in many ways, hold or control the brand. And, as a company, your brand is really all you have. I think this is very true for the compliance practitioner and is not something which is discussed or recognized enough of the time. Dietrich provides seven points that she believes can help shape the perception of your brand. I have adapted them for the compliance professional.

1. **Be Vigilant.** Dietrich says this issue warrants “Not just repeating your brand message over and over again, but in monitoring and listening to conversations happening online about you.” While a company may not have as many employees communicating about the compliance function online, the point is nonetheless well taken. You should listen to concerns about your compliance program. Listen through the hotline, at training sessions and any other time you get the chance. I like the way Gini puts it, “Harness that information [and] be vigilant about paying attention”.
2. **Be Honest.** Yes your mother, and Gini’s mother, was right, *Honesty is the Best Policy*. Dietrich says, “Keep people updated. Communicate the ups and downs. When you’re honest about the issues, challenges, or concerns, there isn’t a story to tell. It might be painful at first, but the pain won’t last as long as it would if you lie or attempt to sweep the problem under the rug.” Think about General Motors (GM) and its attempts to hide the ignition switch problems, where would the company be if it had been honest about the problem?
3. **Be Open.** Dietrich nails the issue on this point when she starts off, “This one is so hard. It’s difficult for human beings to keep open minds about many things.” As a lawyer, I would say that can be exponentially true for my *juris docum* brethren. But at the end of the day, the compliance program is not the legal department; it is a function designed to prevent, detect and remediate problems, not just to say NO. Paraphrasing Dietrich, if you show a willingness to talk about issues, and even change your policies based on feedback, you’ll create the most loyal employees.
4. **Be Active.** Here Dietrich focuses not on the busy work of being on all types of social media but using such mechanisms to engage your customer base. For the

compliance professional first and foremost is to get out of the corporate office and into the field. Let people meet you, get to know you and listen to their concerns. Incorporate their ideas and feedback into your compliance program going forward.

5. **Be Consistent.** Gini talks about consistency in messaging because “if you aren’t consistent, how can you expect your customers to know who you are?” For the compliance professional, I would submit that this prong anticipates issues broader than simply communications. I often discuss the Fair Process Doctrine and how that is so important in administering your compliance program. One of the keys to this doctrine is consistency. The consistency of your actions should follow the consistency of your message.
6. **Be Creative.** I often say that lawyers and compliance professionals are only limited by their imaginations. This is certainly true in the field of media relations. Here Dietrich suggests tackling a problem head on. In the compliance arena it might mean using a compliance misstep as a lesson learned. For instance, after the Walmart corruption scandal was broken in the NYT, many companies incorporated the examples that arose of what is and, more importantly, what is not a facilitation payment into their training.
7. **Be Proud.** Dietrich states, “Once you figure out your vision-what you want to achieve, who you want to be when you grow up-post it everywhere.” She suggests several mechanisms to make employees proud of your brand and I would submit that you could also do this in the compliance arena. You can create plaques or recognition awards for employees who shine through in compliance. She ends this section with the following, “Be proud of what you are doing and don’t be afraid to tell the world about it.” This is another message that I do not think gets enough play by compliance professionals. We bring real value to our companies and our work is something to be proud of. It should be celebrated.

Dietrich’s book had some great pointers about communication, which could be very helpful to the compliance practitioner, in addition to the media relation specialist.

## ***Chapter XII - Putting Compliance at the Center of Strategy***

In a HBR article by Frank Cespedes, entitled “*Putting Sales at the Center of Strategy*”, he discussed how to connect up management’s new sales plans with the “field realities your salespeople face.” Referencing the well-known Sam Waltonism that “There ain’t many customers at headquarters”; Cespedes believes that “If you and your team can’t make the crucial connections between strategy and sales, then no matter how much you invest in social media or worry about disruptive innovations, you may end up pressing for better execution when you actually need a better strategy or changing strategic direction when you should be focusing on the basics in the field.”

The problem is usually clear. Senior management and the C-Suite make clear their commitment to doing business ethically and in compliance with anti-corruption laws such as the FCPA. The company even has a *best practices* compliance. But the problem is that the installation or enhancement of a compliance regime is usually perceived as a ‘top-down’ exercise. The reality of the employee base that must execute the compliance strategy is not considered. Even when there are comments, it is derisively characterized as ‘push-back’ and not taken into account in moving the compliance effort forward. I thought Cespedes piece had some great insights for the compliance practitioner so borrowing from his four-point process I will rework it for a compliance professional.

### ***A. Communicate the Strategy***

It can be difficult for an employee base to implement a strategy that they do not understand. Even with a companywide training rollout, followed by “a string of e-mails from headquarters and periodic reports back on results. There are too few communications, and most are one-way; the root causes of underperformance are often hidden from both groups.” Here Cespedes’ insight is that clarification is a leadership responsibility and in the compliance function that means the CCO or other senior compliance practitioner. Moreover, if the problem is that employees do not understand how to function within the parameters of the compliance program, then there is a training problem and that is the fault of the compliance department. I once was subjected to a PowerPoint of 268 slides, which lasted 7.5 hours, about my company’s compliance regime. To say this was worse than useless was accurate. The business guys were all generally asleep one hour into the presentation as we went through the intricacies of the books and records citations to the FCPA. The training was a failure but it was not the fault of the attendees. If your own employees do not understand your compliance program that is your fault.

### ***B. Continually improve your compliance productivity***

I thought this point was insightful. Cespedes talked about incentivizing your sales force. Why not do the same concepts around compliance? You can work with your HR department to come up with appropriate financial incentives. Many companies have ad hoc financial awards, which they present to employees to celebrate and honor outstanding efforts. Why not give out something like that around doing business in compliance? Does



your company have, as a component of its bonus compensation plan, a part dedicated to FCPA compliance and ethics? If so, how is this component measured and then administered? There is very little in the corporate world that an employee notices more than what goes into the calculation of their bonuses. HR can, and should, facilitate this process by setting expectations early in the year and then following through when annual bonuses are released. With the assistance of HR, such a bonus can send a powerful message to employees regarding the seriousness with which compliance is taken at the company. There is nothing like putting your money where your mouth is for people to stand up and take notice.

### ***C. Improve the human element in your compliance program***

This is another area where HR can help the compliance program. More than ongoing assessment of employees for promotion into leadership positions, here HR can assist on the ground floor. HR can take the lead in asking questions around compliance and ethics in the interview process. Studies have suggested that certainly Gen Y & Xers appreciate such inquiries and want to work for companies that make such business ethics a part of the discussion. By having the discussion during the interview process, you can not only set expectations but you can also begin the training process on compliance.

However, this approach should not end when an employee is hired. HR can also assist your compliance efforts by tracking employees through their company career to identify those who perform high in any compliance metric. This can also facilitate the delivery on more focused compliance training to those who may need it because of changes on FCPA risk during their careers.

### ***D. Make your compliance strategy relevant***

Cespedes notes, “Most C-suite executives know these value-creation levers, but too few understand and operationalize the sales factors that affect them.” In the sales world this can translate into a reduction in assets to underperforming activities. This is all well and good but such actions must be coupled with an understanding of why sales might be underperforming in certain areas. In the compliance realm, I think this translates into two concepts, ongoing monitoring and risk assessment. Ongoing monitoring can allow you to move from a simple prevent mode to a more prescriptive mode; where you can uncover violations of your company’s compliance program before they become full blown FCPA violations. By using a risk assessment, you can take the temperature of where and how your company is doing business and determine if new products or service offerings increase your compliance risks.

Above all, you need to get out and tell the compliance story. Louis D’Amrosio was quoted for the following, “You have to repeat something at least 10 times for an organization to fully internalize it.” If there is a disconnect between your compliance strategy and how your employee base is implementing or even interpreting that strategy, get out of the office and go out to the field. But you need to do more than simply talk you also need to listen. By doing so, can help to align your company’s compliance strategy with both the delivery and in the field.

### ***Chapter XIII - Conclusion - Why Compliance is Different Than Legal***

My own in-house journey has taken me from a transactional lawyer in a major energy-services company to a GC position in a company that was under the watchful eye of a corporate monitor for a FCPA enforcement action. While these two legal function experiences helped to inform my view of the work of an in-house practitioner, it is over the past year or so that I have come to more fully appreciate the different set of skills needed by a compliance practitioner. I believe it is largely because the functions of a corporate legal department and compliance group are far different.

When I initially went in-house, it was made clear to me that the role of the in-house department in the company I worked for was to protect the company. When I became a GC, I took that role to heart and felt like I was the company's lawyer (even if the CEO felt like I was *his* lawyer). But as Donna Boehme pointed out in her SCCE article entitled "*Toldya. (Reason #119 why Compliance is not a subset of Legal)*," there are distinct differences in approaches to doing compliance from practicing law. She said, "one thing is clear – the two functions have very different mindsets, mandates and priorities." She notes that the legal department mandate is to "advise and protect the company." However, Boehme believes that the compliance mandate is much broader. She writes, "Compliance, on the other hand, is tasked with detecting and preventing misconduct." The compliance mandate includes constant vigilance on the integrity of the compliance program, protecting internal whistleblowers (in part to demonstrate to others that it is safe to come forward), and supporting a culture of accountability, especially at levels of management. I might say that a corporate legal department's role has traditionally been seen to protect the company from problems, while the role of the compliance function is to remedy problems.

The wide range of skills required to navigate all of these are far broader than those usually found in corporate legal function. However, if you are a lawyer you can learn these skills and broaden not only your horizons but also your perspective. The success of your company's compliance program may depend on it. That is why I think we are at CCO 2.0.