



Ethics & Compliance Innovations Thinking (Just) Outside the Box

March 18, 2015

P R E S E N T E D B Y

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Ed Petry is vice president of the advisory services division of NAVEX Global.

He joined NAVEX in 2005 after almost fifteen years with the Ethics and Compliance Officer Association (ECO), the last ten as Executive Director. Ed served on the Advisory Panel to the U.S. Sentencing Commission (2001-2004) which was responsible for the 2004 revisions.

Earlier in his career he was a tenured Professor of Ethics, an author and researcher. He was also a member of the Ethics Oversight Committee for the U.S. Olympics.

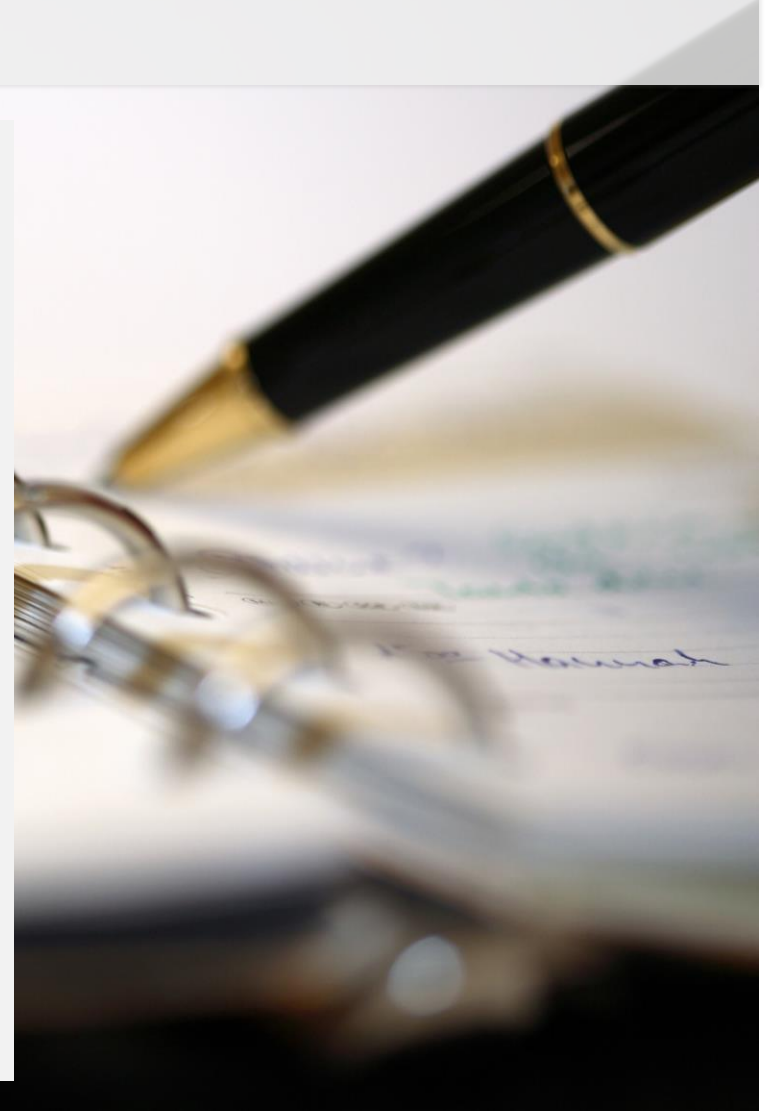
At NAVEX Global, Ed applies his more than 25 years of experience to help companies assess their ethics and compliance programs. He has also worked with over 200 organizations to help them improve their codes of conduct.

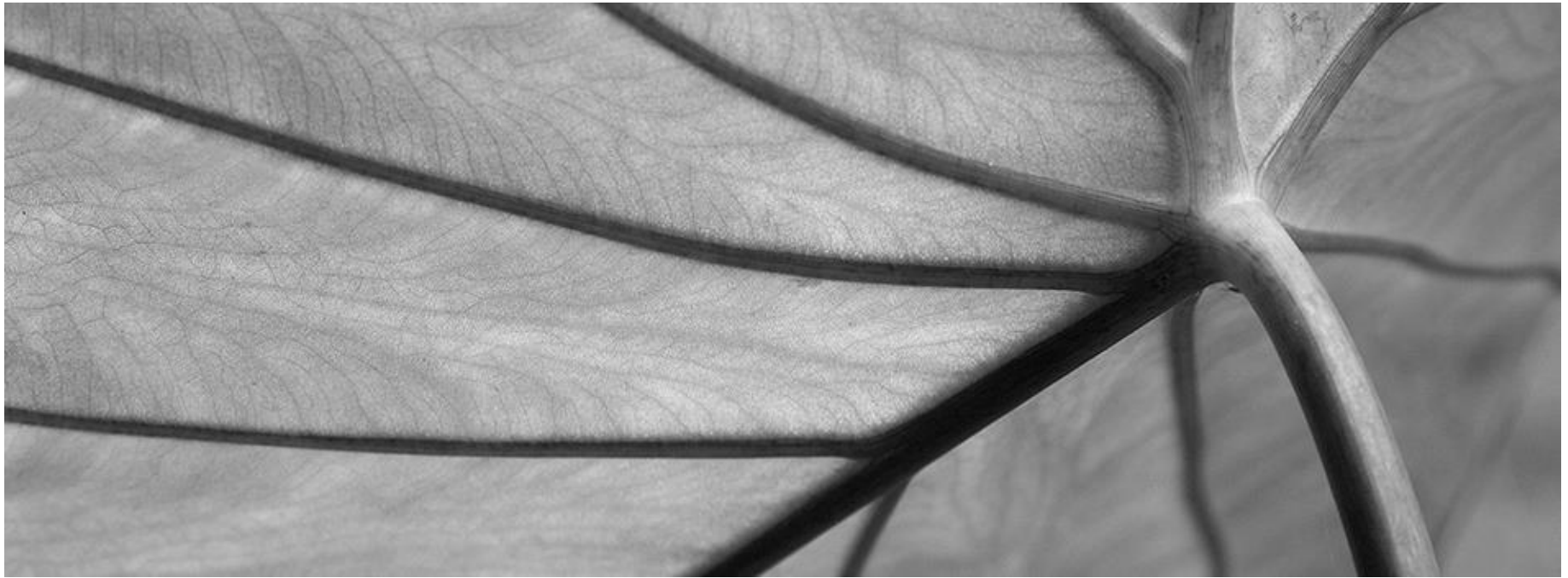


Today's Agenda

Thinking (Just) Outside the Box

- I. Introductions
- II. Box? What Box?
- III. Ethics Oversight
- IV. Standards, Codes & Policies
- V. Training & Communications
- VI. Reporting & Monitoring
- VII. Scope of E&C Programs





Ethics & Compliance Innovations Thinking (Just) Outside the Box

NAVEX GLOBAL OVERVIEW

NAVEX GLOBAL®

72 of the
Fortune 100

...

500+ of the
Fortune 1000

...

96% retention rate

8,000+ Client
Community



Advisory Services: Introduction

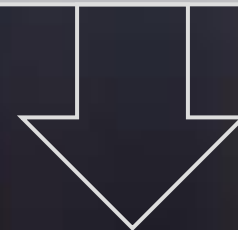
Eight consultants with over 140 years of collective experience



Practical experience in 40+ countries



Former ethics and compliance officers; former prosecutor; member of USSC Advisory panel



**UNMATCHED
PRACTICAL
EXPERIENCE**

Box? What Box?

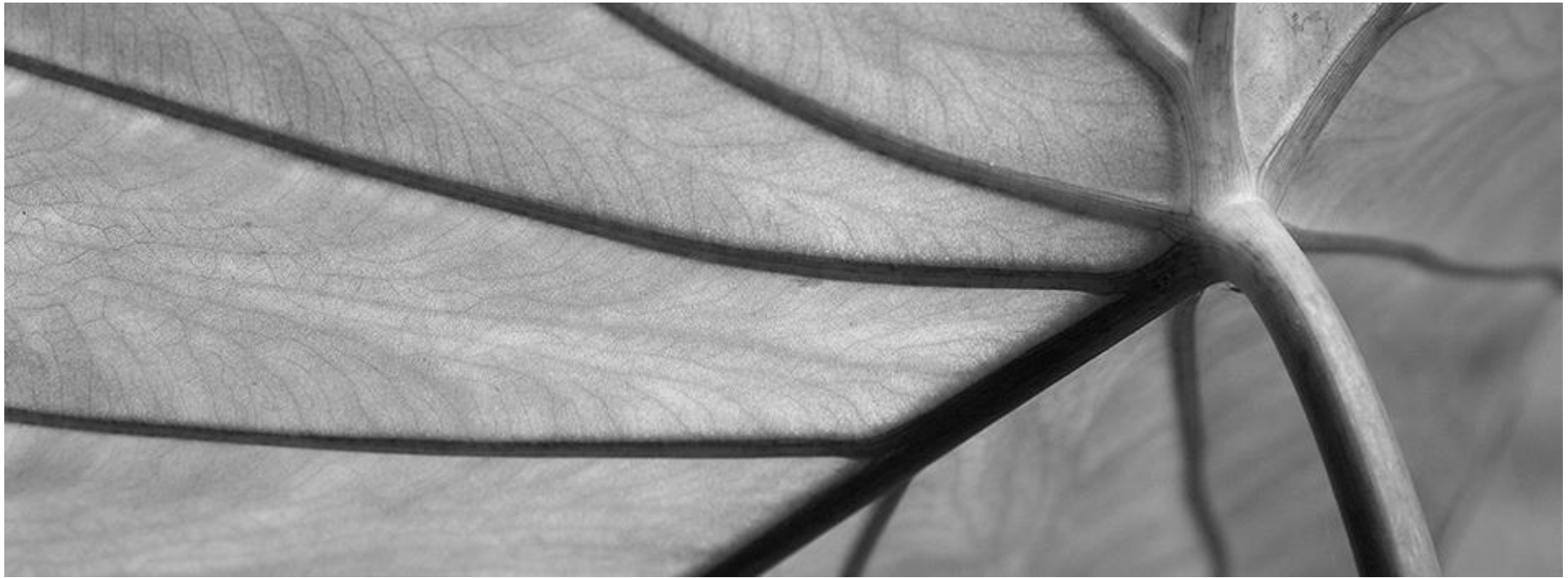
- The creation of “best” practices
 - Regulatory pressure
 - USSG Application Note 2(B)
 - All advice is not created equal
 - Board expectations
 - E&C “industry”—group think
 - “Most ethical” recognitions
 - Risk averse—safest path
- Two examples:
 - Annual code certification
 - Ethics awards



But...Let's be Careful

- In most cases there is sound rationale for common practices
- Innovative solutions not for everyone
- There are risks in being too far outside the box
- Do you have the support and are you in a position to go against the tide?





Ethics & Compliance Innovations Thinking (Just) Outside the Box

ETHICS OVERSIGHT

Ethics Oversight—The Box

- “Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance and ethics program.” —USSG 8B2.1
- “Direct reporting obligations to the [board]...express authority to communicate personally...promptly [when necessary] and no less than annually...” USSG 2010 revisions and commentary
- Other regulatory guidance:
 - Compliance Program Guidance for Pharmaceutical Manufacturers, 2003
 - OECD Good Practice Guidance, 2010
 - 2012 French Competition Authority
 - And negotiated case settlements and DPA
- Senior individual, with autonomy, resources and authority

Ethics Oversight—(Just) Outside the Box

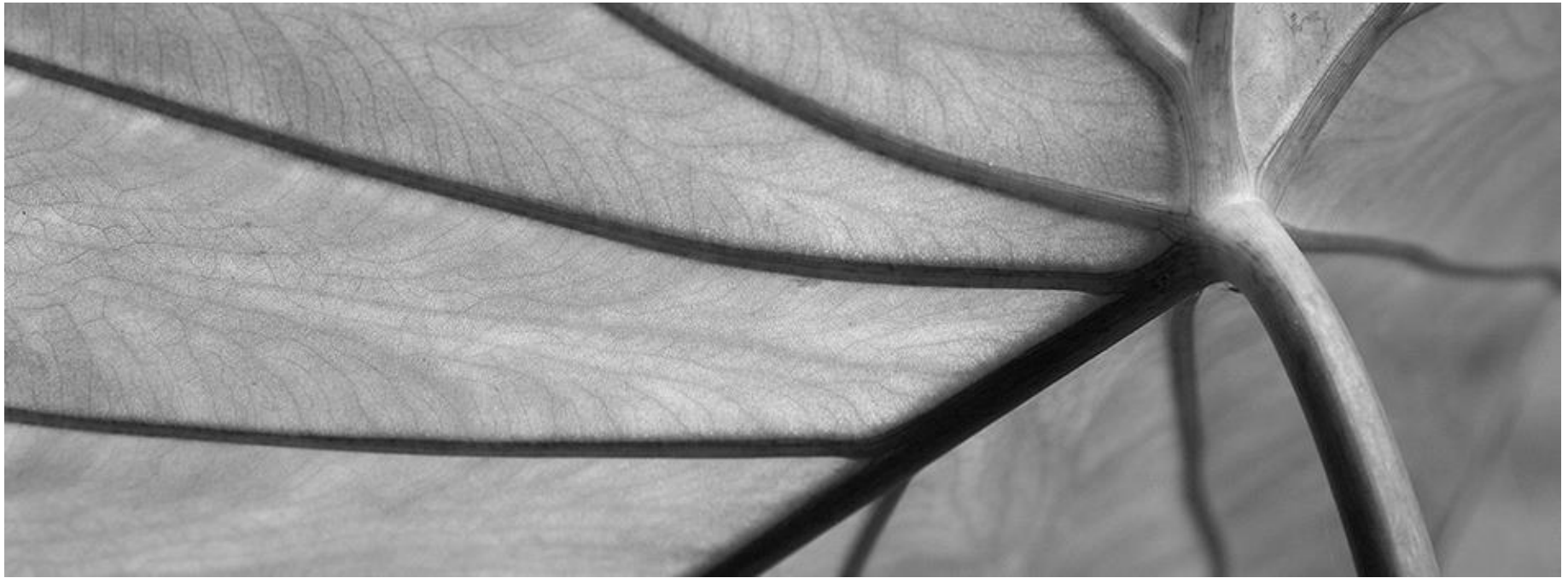
- Can a part-time ethics officer have more clout, autonomy, resources and authority?
- Especially in wide-ranging/diverse organizations, does a matrix of part-time local EOs extend reach, flexibility and better address sub cultures and differing organizational risk profiles?
- Is a JD always best? Consider the original ethics officers—aren't credibility, operational background and practical expertise the most important assets?
- Should more of us reconsider the role of the ombuds?
- Can leadership/management assume greater assigned responsibilities?

Ethics Oversight—(Just) Outside the Box

- What are the long-term advantages of rotating promising executives through the ethics office?
- Can even more of the ethics office functions be outsourced? Is this a viable solution especially for smaller organizations?

Other ideas for discussion:

- Should the position really be thought of as a career/a profession with certification?
- Mike Hoffman: Is there value of positioning the ethics officer outside of the management chain and as a function of the board?
- And—the big question—has the ethics officer experiment been a success? Is it time to reconsider the initial objections.



Ethics & Compliance Innovations Thinking (Just) Outside the Box

STANDARDS, CODES & POLICIES

Standards, Codes & Policies—The Box

- *“The organization shall establish standards and procedures to prevent and detect criminal conduct” –USSG 8B2.1(b)(1)*
- *The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures” – USSG 8B2.1(b)(4)*
- Common practice:
 - Codes of conduct 30-60 pages (or more)
 - Additional documentation, websites, communications
 - Employee handbook
 - Policy and procedures

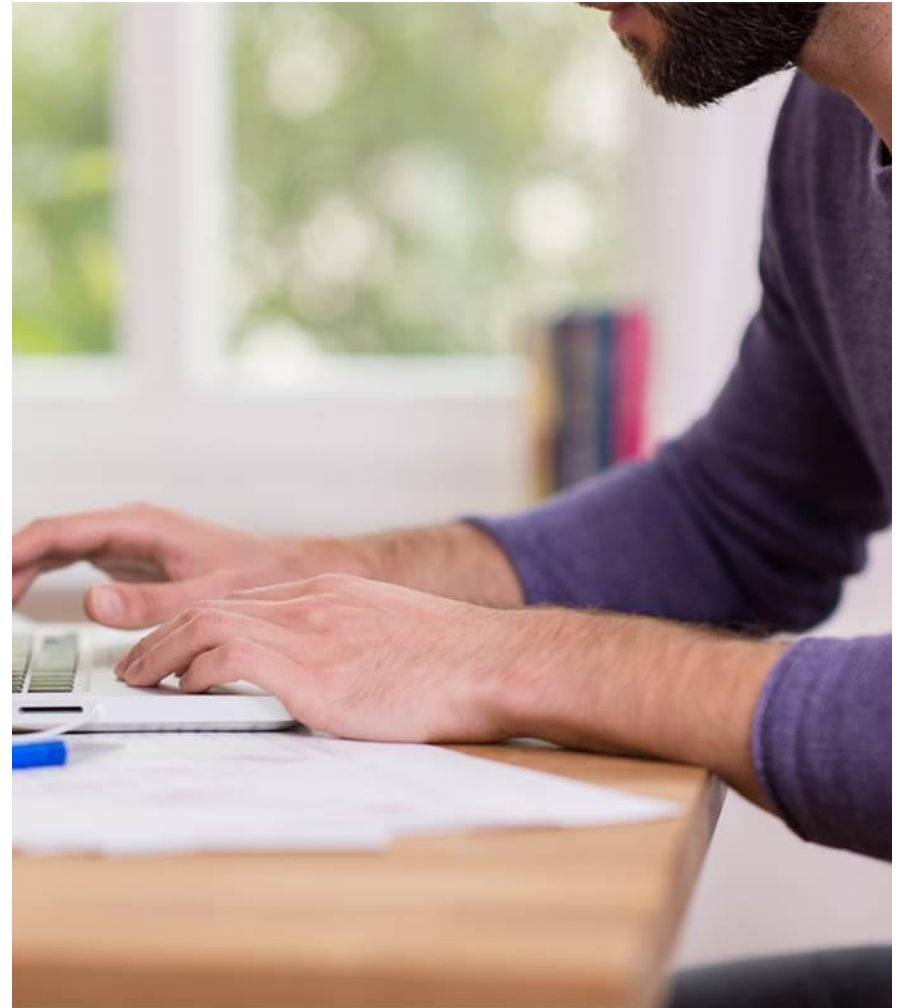
Common Elements of a “Best Practice” Code

- Your company’s values or guiding principles
- Opening letter from leadership
- Table of contents, index, appendices
- Guidelines for decision-making (sometimes referred to as the “Ethics Test” or “Making Good Decisions”)
- Statement of how to report ethics and compliance issues
- Information about your internal reporting system/helpline/hotline
- Statement of company’s opposition to retaliation
- Summary of employee’s ethics and compliance responsibilities
- Summary of additional ethics and compliance responsibilities of leaders
- Statement on the importance of compliance with laws and regulations
- Impressive graphics/design features
- Q&As or scenarios
- Statement on to whom the code applies
- Summary of policies/standards pertaining to selected risk areas
- Annual code certification
- **DON’T FORGET TRANSLATIONS AND THE E-BOOK VERSION(S)**

Employee Opinions About Their Code

Why does your company have a code of conduct?

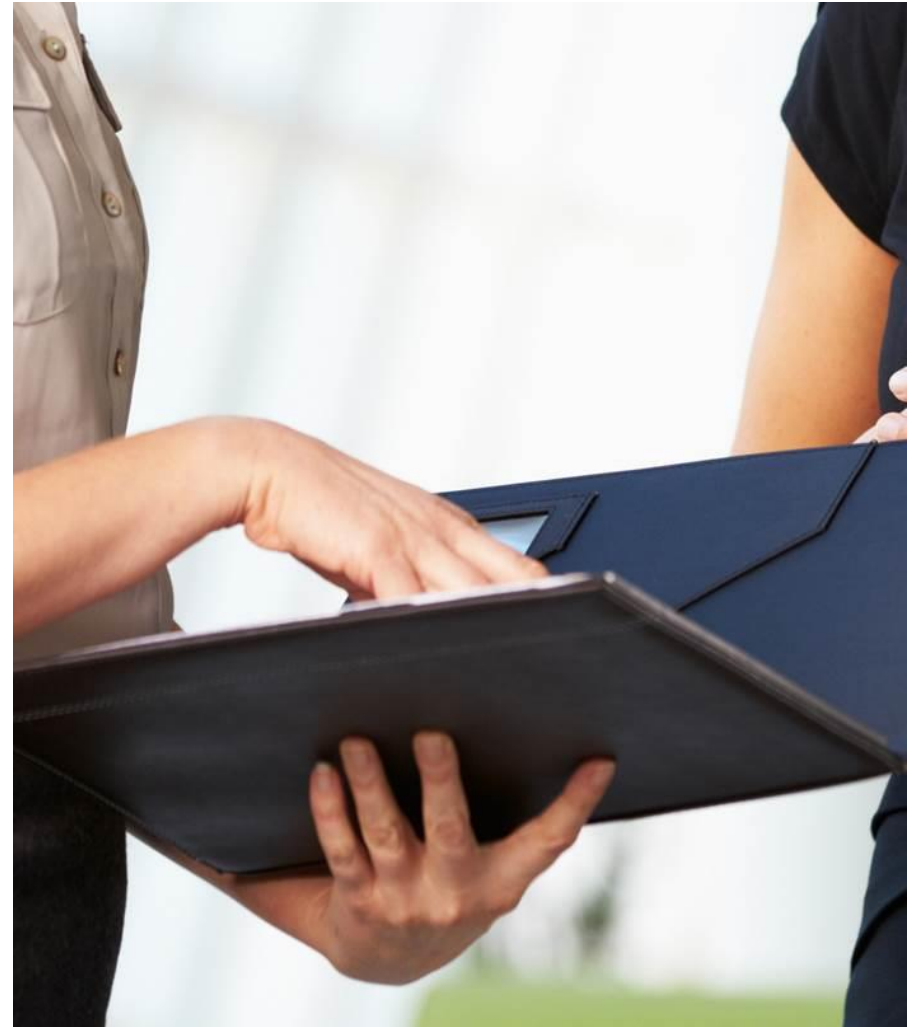
- “I suppose they’re required to, but it’s just CYA.”
- “Our code is from the Compliance Office. You know, they’re the people who ‘say no.’ The code is the lawyers’ list of what I can’t do.”
- “The code is the company’s way of being on the record that they’ve told me all the reasons I can be fired.”
- “Our code? I never give it much thought...except when I have to certify.”



Employee Opinions About Their Code (cont.)

What do employees think of typical codes?

- “I wish they would just tell me what I need to know. Our code isn’t useful or practical...”
- “We take pride in being a leader in the industry, but our code isn’t anything to be proud of.”
- “The information is outdated and hard to find...I never use it.”
- “The topics don’t track with what I see every day as actual issues. It doesn’t apply to me.”



Codes— (Just) Outside the Box—The BP Case Study

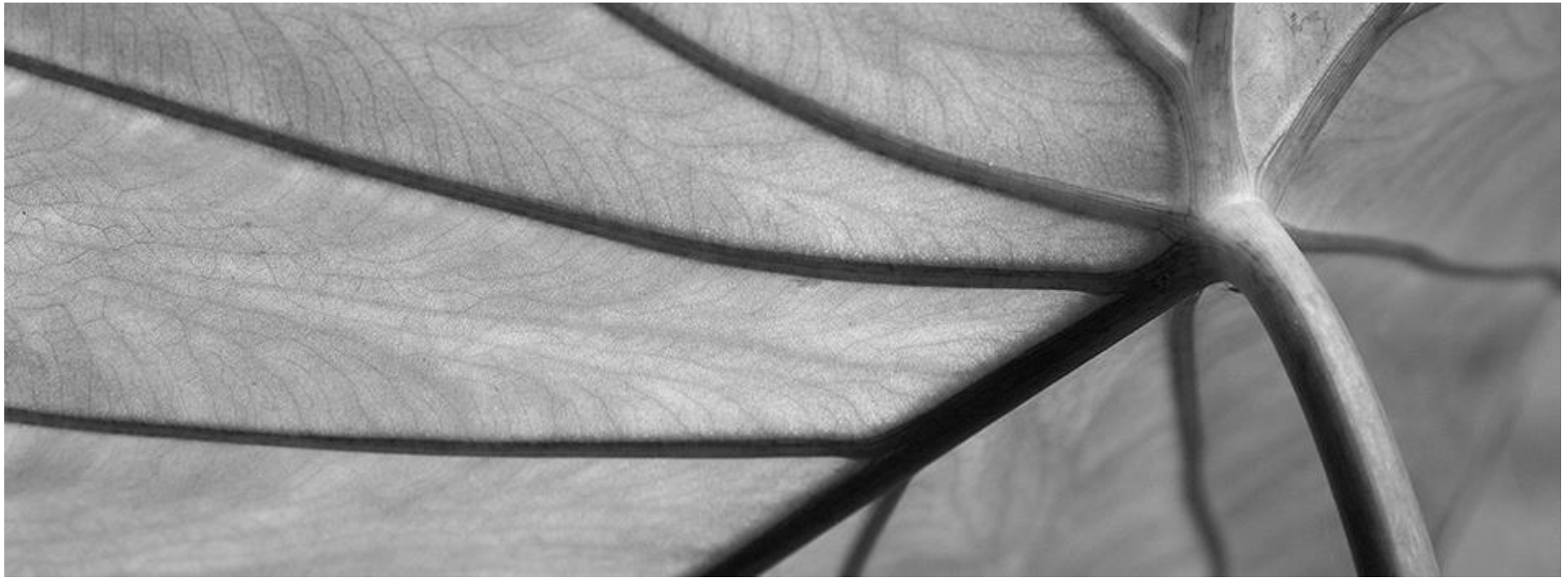
- Text length and complexity greatly reduced
- Aim for 5,000
- Essential content still covered, links emphasized
- Procedural/process information removed from code
- Q&A removed
- Graphics and design elements streamlined but style/color remains
- Re-emphasize values and principles – “the why”



Codes—(Just) Outside the Box

- Careful integration of Technology
 - Integrate “burst” learning into code, policies & procedures
 - Provides “just in time” targeted information
 - OK to blur the line between “training” and “policy distribution”
- Weigh pros and cons and added value of ebook format—PDF may be enough.





Ethics & Compliance Innovations Thinking (Just) Outside the Box

TRAINING AND COMMUNICATIONS

Training and Communications—The Box

Common practice:

- E&C training introduction for new hires
- Annual code of conduct training
- Risk/topic specific training—usual on-line
- Some live training including board “training”
- Periodic communications—usually via emails
- Posters, in-house video

“The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures...by conducting effective training programs and otherwise disseminating information appropriate to such individuals’ respective roles and responsibilities”

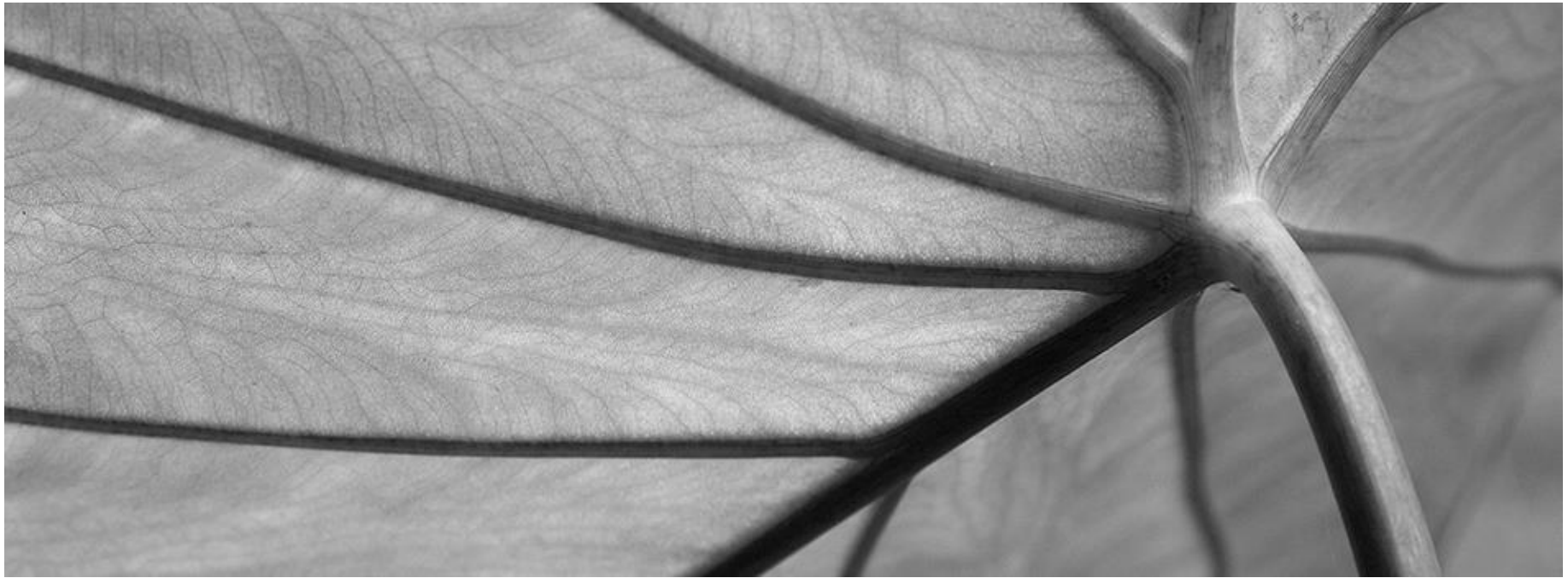
USSG 8B2.1(b)(4)

Training and Communications—(Just) Outside the Box

- Curriculum mapping and development of training and communication plan
- Board, executive and manager training—targeted to their different risks, roles and responsibilities
- Manager training on “having difficult discussions,” “creating an environment that encourages questions,” “addressing retaliation”
- Training for local ethics officers, especially when organization is diverse or global, to get them all on same page regarding the E&C program
- Training for E&C support functions—investigators, HR, legal, audit, security—specifically on their E&C roles

Training and Communications—(Just) Outside the Box

- Create “meeting in a box” tools quarterly for all management to use in a 15-30 minute segment of staff meetings. Consists of no more than 8 PPT slides and a one-page handout with the key points and tips.
- Join managers as requested to co-present at staff meeting presentations (especially for Q&A)
- Top Priority—demystify the Helpline, share call experience/audio as part of training
- Reconsider annual code of conduct training
- Assess effectiveness of training and communications and be on the lookout for signs of cynicism, instances of hypocrisy and the growth of a “silent majority” (or the “suddenly quiet elevator”)



Ethics & Compliance Innovations Thinking (Just) Outside the Box

REPORTING AND MONITORING

Reporting and Monitoring—The Box

“The organization shall take reasonable steps ... to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.”

–USSG 2004 revisions 8B2.1(5)

Common practice:

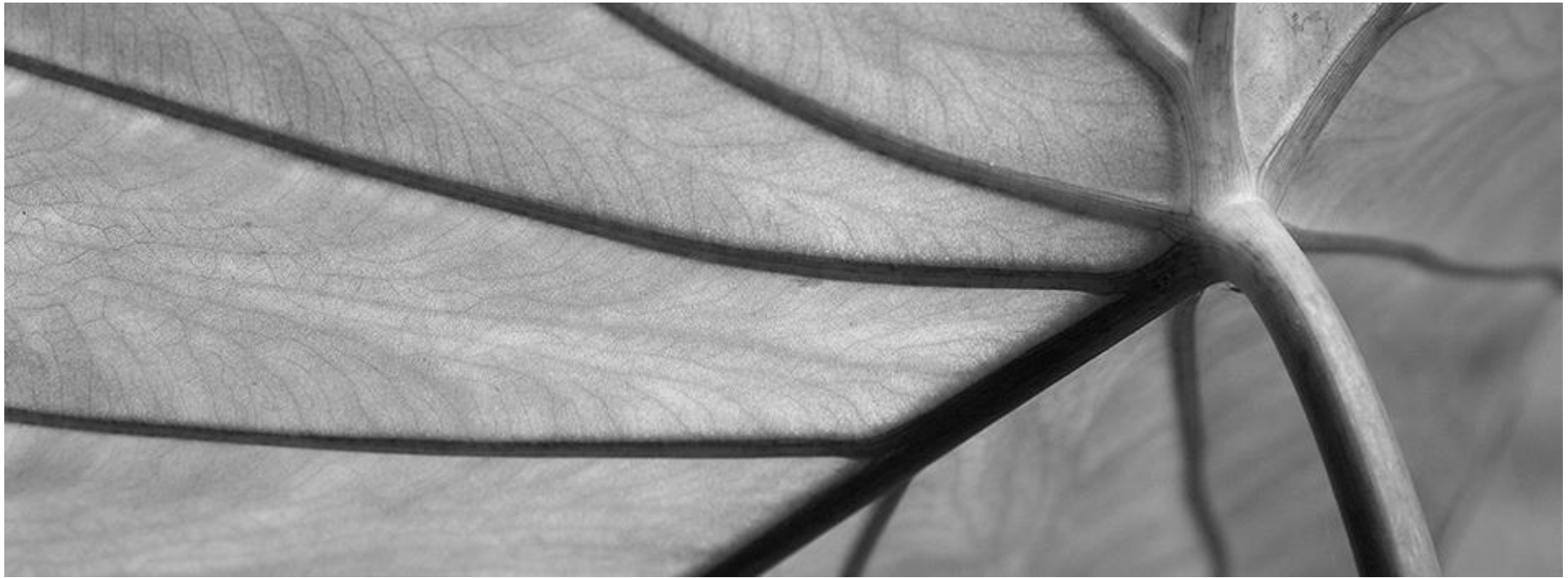
- Helpline
- Additional published avenues for asking questions and reporting violations
- Policies against retaliation

Reporting— (Just) Outside the Box

- Consider helpline hybrid solutions
- Maintain a clear mechanism for employees to contact you directly
- Don't neglect personal, informal channels for information
- Remember:
 - 1.4% is a mean not a “best practice”
 - Helpline contacts represent a fraction of your overall reports and an even smaller fraction of your employees—keep it in perspective, seek other means of gathering vital input

Monitoring—(Just) Outside the Box

- Scale back reliance on surveys
- Take your audit staff to lunch



Ethics & Compliance Innovations Thinking (Just) Outside the Box

RISK ASSESSMENT

Risk Assessment—The Box

- *“In implementing [the elements of an E&C program], the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement or modify each requirement to reduce the risk of criminal conduct identified through this process.”*

–USSG 2004 revisions 8A1.2

- Also commonly required in government mandates and a high priority for DOJ and SEC when assessing program effectiveness (especially re FCPA)
- **Common practice:**
 - Extended beyond “criminal conduct” to regulatory and reputational risk
 - Inclusion of E&C risk questions into existing Enterprise Risk Management System
 - Surveys, formal systems to gather input from SMEs
 - Tracking industry trends

Risk Assessment—(Just) Outside the Box

- It's fairly easy to point to known risks and to gather information/track progress against identified risk areas.
- The harder task is to identify what has been missed or ignored to-date as well as what is likely to be an issue down the road. A forward-looking effort.
- Using interviews—SMEs, leadership.
- Encourage interviewees to “blue sky” ... “what keeps them up at night.”
- Move them beyond their preconceived notion of “ethics and compliance issues.” Open up the conversation

Risk Assessment—(Just) Outside the Box

“What keeps you up at night?”
(They Say...)

Possible Ethics-Related Risks
(Makes You Think ...)

Managing growth – adding new business partners, acquisitions

Supplier Selection, Fair Treatment of Suppliers, Gifts and Entertainment, Conflicts of Interest, Confidential Information, Business Intelligence, Pressure on Employees, Fair Competition, Insider Trading

Managing growth – new employees

Hiring Practices, Recruiting, the Orientation/Discovery Process, Diversity, Favoritism, Conflicts of Interest, Manager’s Role in Conveying and Building an Ethical Culture

Making the numbers/financial pressures

Accuracy in Financial and Business Records, Employee Work/life Balance, Use of Company Resources, Protecting Company Assets (when employees take work home), Internal Controls, Pressure on employees

Product development or new product launch

Intellectual property, Product Safety and Quality, Confidentiality, Advertising and Marketing, Insider Trading

International/global business development

Cultural and Legal Differences, Managing Diversity, Maintaining Company Identity and Corporate Culture, Bribery and Facilitation Payments, Import/Export Controls, Sexual Harassment, Political Activities

Risk Assessment—What We May be Missing

- Cybersecurity
- Marketing and advertising
- Customer and business partner experience
- Activists/NGO point of view
- Third party/supply chain
- Privacy and public perceptions
- Social media image—company and leadership
- Risk matrix—guns, drugs and marriage



Cybersecurity

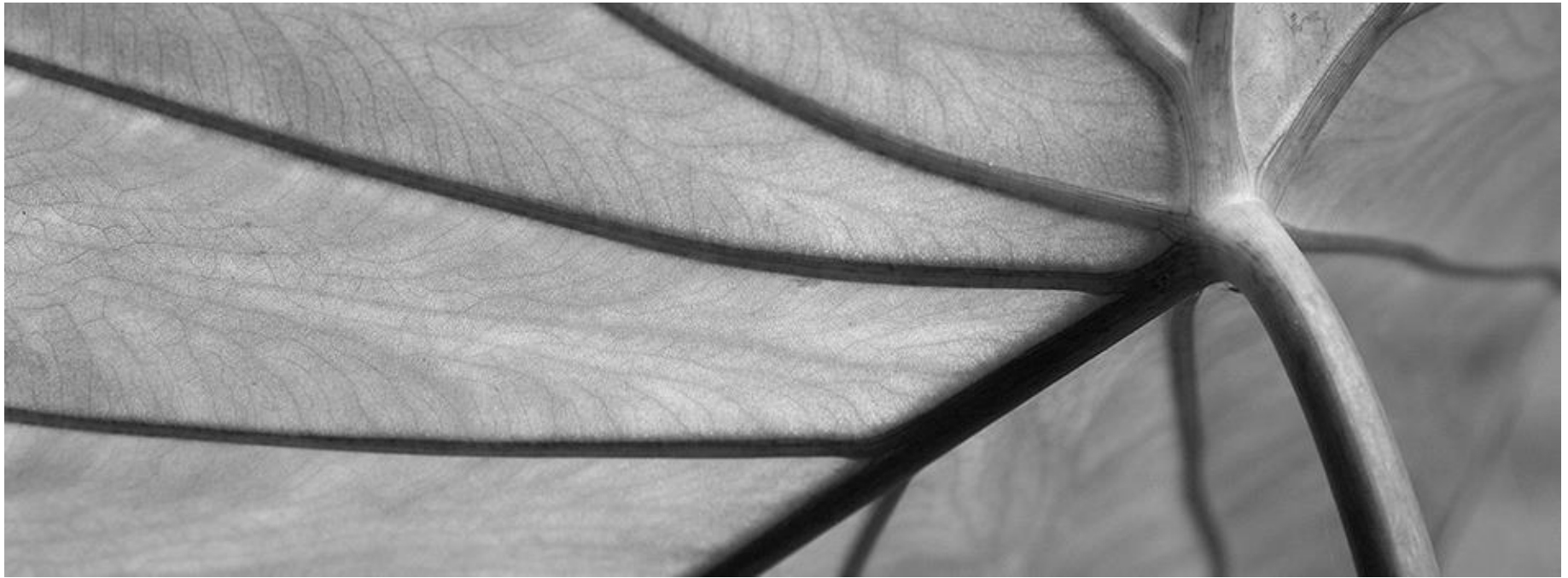
- The risk is real and it is growing every day. The “connectedness” of our digital world makes reaching across the globe a lot easier—for those with good and bad intentions.
- But, many compliance officers still see cybersecurity as solely an IT concern.

“There are two types of companies when it comes to cybersecurity. Those that have been hacked and those that do not know they’ve been hacked.”

**James Comey, Director,
U.S. Federal Bureau of Investigation**

Risk Assessment – What We May be Missing

- **Gun laws** vary by state. An increasing number of states have passed laws limiting property owners' ability to ban firearms. Under such laws, companies can ban firearms in the office or factory floor, but they can't always ban guns that are stored in vehicles in the parking lot.
- Under U.S. federal law, the **use, distribution and manufacturing of marijuana** is illegal. But some states now permit recreational use, and many more allow medical use.
- Federal law, and laws in 35 states and D.C., recognize **marriage equality** for same-sex spouses.



Ethics & Compliance Innovations Thinking (Just) Outside the Box

THE SCOPE OF OUR E&C PROGRAMS

Scope of E&C Programs—The Box

- Is the scope of your program too limited?
- Is there any requirement/standard that dictates the scope of E&C programs—“the list”?
- Does the goal of our program determine the scope?
 - Prevent and detect criminal conduct?
 - Address key risk areas?
 - Protect the organization’s reputation?
 - Align behaviors with organization’s values?
- How did we settle on “the list”? Is “the list” sufficient to meet any of the above goals?

Scope of Programs— What We May be Missing

Two case studies:

- The Super Bowl ad—no seat at the table
- A less than successful guest lecture presentation at the local university



Scope of Programs—What We May be Missing

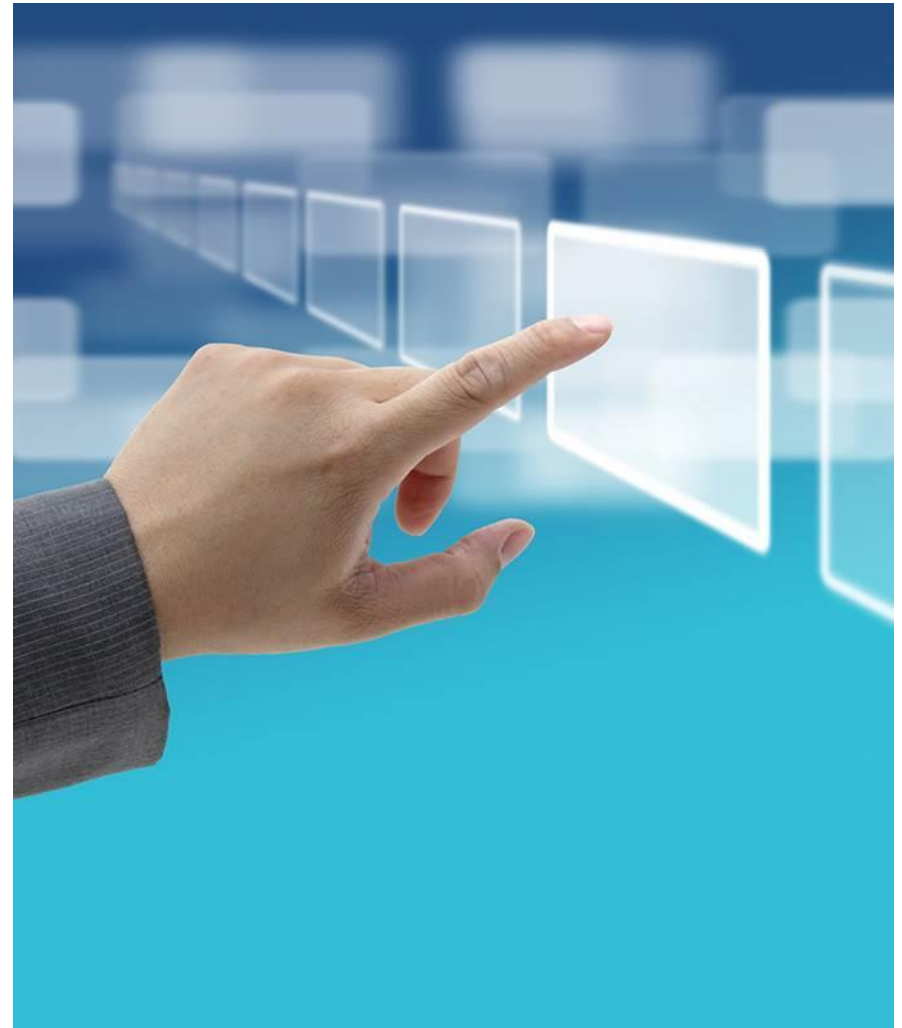
- It was only a few years ago that it was common to remark on the two very different approaches to business ethics:
 1. Common in the U.S. and based on **the eight-part compliance model and an “agreed” list of compliance topics.**
 2. Common in Europe and based on the principles of **Corporate Social Responsibility (CSR) and a broader application to values and societal issues.**
- While CSR is still an enormously important force, the compliance model is now the dominate approach within corporations and with some variation defines corporate E&C programs worldwide.

Scope of Programs—Recent ‘Tipping Point’

- The crucial event triggering this realignment was the OECD’s efforts to create standards for addressing bribery and corruption, in particular its **2010 Good Practice Guidance**.
- The Guidance, and subsequent national standards, included a defense similar to **eight part compliance model**:
 1. Proactive risk assessment
 2. Published standards (code and policies)
 3. Informed and engaged oversight and leadership
 4. Human resource practices that are aligned with E&C goals (hiring, discipline and performance reviews)
 5. Communications and training designed to address specific roles and responsibilities
 6. Trusted internal reporting system
 7. On-going monitoring and assessment
 8. A culture that supports E&C activities

A Unified Model—Consequences

- Broader acceptance of compliance model leads to broader acceptance of “the list.”
- Values and focus of CSR dynamic shifts to external groups: NGOs, academia.
- **Schism deepens between scope of our programs and public concerns about business ethics.**
- **Heads up:** the new ISO Compliance Management System Standard (ISO 19600) may be another example of the consequences of this movement toward uniformity.



Challenges of a Unified Model

Take advantage of the opportunity.

- Senior executives—no matter where they're located—are much more likely to understand the details and importance of an E&C program.
- Training, communications, auditing, documentation and reporting systems can be streamlined and better coordinated.

But—appreciate that important differences still remain.

- Strong differences of opinion continue, especially between the U.S. and the E.U. on issues of privacy and information sharing.
- Even where laws and the compliance models are in sync, communications and training still must take into consideration cultural differences and norms and are growing distance from public interests.

Questions?



questions?

References/Additional Resources

Ethics Oversight

- Blog Article: [Chief Compliance Officer, General Counsel or Independent Executive: Asking the Right Questions](#)

Standards, Codes & Policies

- eBook: [Definitive Guide to Policy Management](#)
- Whitepaper: [Updating Your Code of Conduct – A Step-by-Step Approach](#)

Training & Communications

- Blog Article: [Making the Case for Compliance Training for Third Parties](#)

Reporting & Monitoring

- Research Report: [2014 Hotline Benchmarking Report](#) (2015 report available in March 2015)

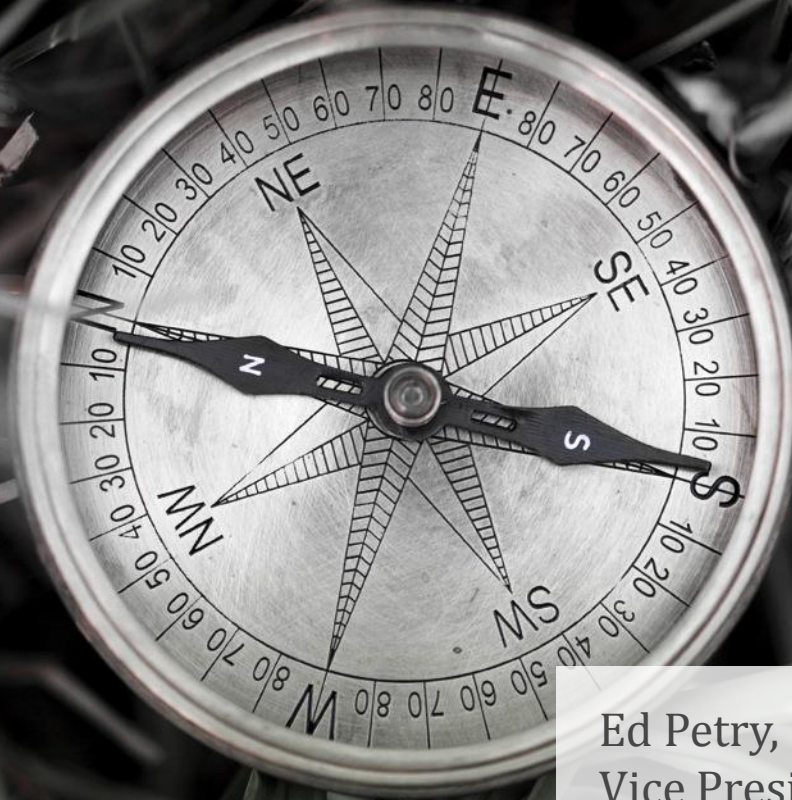
Risk Assessment

- Video: [Risk Assessment: A Critical Compliance Program Investment](#)

Scope of E&C Programs

- Whitepaper: [Top Ten Ethics & Compliance Predictions and Recommendations for 2015](#)

Thank You!



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