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Chief Compliance and Ethics Officer
University of Central Florida, Orlando
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The question is: Why do corporations, through their learned industry leaders, continue to commit ethical malfeasance? Is it a case of too few laws, too many fines, and limited penal retribution; too sterile an education exposure to ethics to which employees pay lip service; or has the market competition landscape escalated to a level that shareholders’ and analysts’ expectations have become “must impress, must outdo”?

Is the solution increasing oversight or hiring more compliance consultants? Or have we just approached this problem from the wrong end in driving a solution? A compliance regime needs to be consistent and persistently prevailing in any organization based on the six “A’s”: Adaptability, Accuracy, Affordability, Assimilability, Assurance, and Acceptance.

What if we approached this “problem” from first trying to understand what the customer needs and not what we think they need? In doing so, let me introduce the possibility to consider—using Design Thinking as an approach.

A big part of the Design Thinking concept involves empathy for those you are designing for.

**Prologue**
Design Thinking is, simply put, a discipline that “uses the designer’s sensibility and methods to match people’s needs with what is technologically feasible and what a viable business strategy can convert into customer value and market opportunity.”

A big part of the Design Thinking concept involves empathy for those you are designing for. It’s often manifested through a series of activities, which attempt to create an
experience of what or how your idea will ultimately be consumed. Design Thinking helps to evolve solutions around your customer’s needs; extrapolate this in terms of Compliance—it means being able to build a compliance program that is valued by the organization and assimilated into its culture easily.

Why use the Design Thinking paradigm?
Traditionally, compliance programs have always been driven top down in organizations. Compliance relies primarily on controlling employees’ behaviors and decisions through a strict set of rules and laws. One executive recently described this as “a policeman culture.” The analogy is instructive. Would you tell a police officer that you had made a bad or wrong decision? Many probably would not. The same dynamic is at work in excessively controlling company cultures—leading us to believe that too much control can actually backfire and important information can be concealed. One shortcoming of compliance programs is that they assume misconduct comes from bad apples, rather than good people doing bad things.

To move away from this authoritative way of forcing compliance, we need to have the right tools to re-design our programs. We start by making time for a mind shift: changing the paradigm to build a compliance program based on what fits well for its recipients and not a program that aspires only to cover all risks. In short, we need to stop the prescriptive and instructive approach, and move towards a more engaged outside looking in approach. One such tool that can help in this is Design Thinking.

How to build an ethics-based compliance program using Design Thinking
Design Thinking at its core involves the stages in Figure 1.

Understand & Observe – Begin with the people, not the problem
This is an important point we often overlook. We ask what the problem is, and we launch into the solutions mode instantaneously and mechanically.

We do not spend time to study, to ask the right questions at the start to help us arrive at the right destination. In short, begin not with the end solution in mind, but the people who will use your solution.

Second, the method we use in asking into the organization is very important. Data gathering may result in answers being given to conform to the organization’s culture if there is a lack of trust or insecurity. It tends
to reveal the weak points of the recipients, who in turn may adopt a non-transparent façade. Third, our engagement must be done by using a variety of methods, approaching various seniority levels, with anonymity assurance, and done over several short time periods.

To build a compliance program, which is based on ethics, we have to mine for greater insights. We begin by asking:

- What are the impediments to a compliant culture in your organization?
- Do you think the compliance program has failed in your organization?
- Why are there still issues, despite all the training and communications, all the handbooks and checklists?
- What is the landscape we are competing in?
- What values are HR/business considering when recruiting new talent or when promoting?
- Where is the important focus of the citizens of my organization?
- What type of compliance officers and culture have you built to date?
- What is the state of perception towards Compliance? Why?
- Are what they say the same as what they are doing? Why not?
- Has any compliance program promoted good sustained ethical behavior?
- Are people comfortable with the rules or is there a quiet discomfort?
- Why have we failed on certain occasions?
- Are we willing to have instances of non-compliances as part of the “cost of doing business” cost factor?

We keep asking questions from all sides about the current state, and we ask what the future state should look like.

**Formulating the problem statement**

After a great amount of questions, we need to spend time doing observations. Assessing what was said and what was not being said are important. We need to observe the reality, be on the ground to understand the variables, and re-check what was being told to us.

We must take away the correct impressions. Failure here would be pivotally catastrophic. Many would be familiar with this cartoon—what was wanted was not what was received in the end (Figure 2).

![Figure 2: Cartoon](image)

As Design Thinking teaches us, we should not embark on the next phase if we did not fully understand the people in our equation. Our questions and observations can postulate what direction and condition the current program is at.

Let us use a hypothetical case for explanation. For example, based on the questions, we find that there is a level of confusion or uncertainty among...
the people, and what was driving this was incoherent compliance training programs or sessions. The feedback is that the compliance program’s delivery mechanism (i.e., mode of training) was seen as “lethargic or archaic” or did not meet the real expected outcomes. We need to understand why, not to zoom into the root causes, but to understand what described the failing parts.

So using the same example, we can formulate the problem statement in the following method (see Figure 3):

**Figure 3: Example of a Basic Problem Statement**

<table>
<thead>
<tr>
<th>The Identified Problem Areas</th>
<th>My customer says</th>
<th>My Compliance Programs’ requirement is</th>
<th>Risk Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance training programs for the business is not effective.</td>
<td>Compliance training programs are very academic. They do not deal with the realities of the business.</td>
<td>Compliance training programs need to be based on laws and local codes.</td>
<td>Medium risk</td>
</tr>
</tbody>
</table>

**Figure 4: Four steps of brainstorming**

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>State the problem to be solved with enough clarity or specificity.</td>
<td>Identify the objectives of a problem solution.</td>
<td>Individually generate alternative solutions and create a list of alternatives prior to having a group discussion.</td>
<td>Collectively generate alternative solutions</td>
</tr>
</tbody>
</table>

to consider what our options for improvement are. How do we do this?

Building ideas requires the engagement of a variety of experts who have a wide area of skills that cross many subject matters. A cross-function and sector-based participation is necessary. Enjoining the participation of the end users into the process helps greatly build the sense of owning the issue and offering its solution. In this format, the group can begin brainstorming.

Brainstorming has been regularly used by groups in problem solving and issue resolution. In this step, once a focus has been identified, the right methodology for brainstorming is required. However, to be more effective we should use a value-based approach.

**Using value-focused brainstorming**

In his paper “Value-Focused Brainstorming,” published in the journal *Decision Analysis*, Keeney describes a better method for finding a great solution to a problem. He suggests four steps in brainstorming (see Figure 4).

Using the above points and continuing with our example, we now can list the various options for prototyping and testing as listed below under the *Ideas* column (see Figure 5).

**Ideate and Prototype—**

**What options or ideas can we consider?**

Once we have the problem expressed clearly (our example is of ineffective compliance training), we then need
Test, test, prototype, and test again!
The next phase is as important. What do we do once we have this list of ideas? All solutions are feasible, but some work better than others. First, avoid pre-judgment of any options. Next, as explained in Stanford’s tool kit:6

- **Show, don’t tell.** Put your prototype in the user’s hands, or your user within an experience. And don’t explain everything (yet). Let your tester interpret the prototype. Watch how they use (and misuse!) what you have given them, and how they handle and interact with it; then listen to what they say about it and the questions they have.

- **Create experiences.** Create your prototypes and test them in a way that feels like an experience that your user is reacting to, rather than an explanation that your user is evaluating.

- **Iteration.** Iteration is a fundamental of good design. Iterate both by cycling through the process multiple times and also by iterating within a step (e.g., by creating multiple prototypes or trying variations of a brainstorming topics with multiple groups). Generally, as you take multiple cycles through the design process, your scope narrows and you move from working on the broad concept to the nuanced details, but the process still supports this development.

This will finally lead to the narrower resolution which works for the organization.

In our example, we may now have filtered this into the following options for consideration as our Test Model(s) (see Figure 6 on the following page).

The key to success is not having the test models designed for 100% success, but to
have them tested to work. Work according to the needs of the problem. If they do not work, re-visit, re-tweak, and re-think this through again.

At times the success may be partial, or even just a sub-set, but it does open up another cycle of re-design. Critics may assume that this takes away too much organization time and effort, and may even drive less efficiency with people not achieving what they hoped to do the first time. The correct mindset here is to keep improvement continuously moving, which Design Thinking does.

**Epilogue**

Why build an ethics based (or values based) compliance governance model and not a rule-based one using Design Thinking? Arguably, it is the industry within which that organization is involved that drives the determination of this question to a material degree. Were there penal or legal consequences on actions? Would an organization tend to easily adopt and mold its compliance regimes rigidly to a rule-based one? Strict standard operating manuals and procedures, for example, would be the order of the day.

What it does not assure is that the culture of compliance has been embodied in the hearts and minds of the organization. This is why we still find more occurrences of serious compliance failure, like fraud in stringently governed or controlled industries, such as the Finance or Pharmaceutical sector for example.

“**Corruption = Monopoly Power + Discretion – Accountability.**”

This formula is accredited to Robert Klitgaard. In the same text Klitgaard emphatically noted that:

Corruption equals monopoly plus discretion minus accountability. Whether the activity is public, private, or non-profit, whether you are in Washington or Ouagadougou, you will tend to find corruption when someone has monopoly power over a good or service, has the discretion to decide whether you receive it and how much you get, and is not accountable. Second, corruption is a crime of calculation, not passion. True, there are saints who resist all temptations, and honest officials who resist most. But when the size of the bribe is large, the chance of being caught small, and the penalty if caught meager, many officials will succumb. Combating corruption, therefore, begins with better systems. Monopolies must be reduced or carefully regulated. Official discretion must be clarified. Transparency must be enhanced.

Integrity and ethical training are different from routine rules-based compliance training.
and must engage the organization. These are values ingrained into the way business is done. It is followed even when opportunities of “no one seeing” exist.

How to do this effectively would be to apply the Design Thinking steps and to arrive at the solutions that work for the organization. If the values are not inherent to the people of the organization, the compliance program reverts to having to be “the police” to be effective.

Compliance has moved from being a cost center to a value protection center; any program that ensures the organization’s reputation continues to be trusted and revered should be a core requirement for anyone in the C-suite.

All views, ideas, recommendations, concepts, and thoughts are solely of the author’s and do not represent or reflect those of any institution, entity, or affiliated organization.

1. For a greater understanding, visit http://dschool.stanford.edu/use-our-methods/
6. See note 2 above.

Kuldeep Singh (kSingh10@ITS.JNJ.com) is Health Care Compliance Officer at Johnson & Johnson in Petaling Jaya, Malaysia.

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