Yin and Yang—Leveraging the Strengths of Legal and Compliance

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Speakers

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Texas Woman’s University

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Texas Woman’s University

• Destinee
  • NACUA Board of Directors (2015-2018)
  • Over 10 years experience in the areas of Higher Ed Law and management
  • Student life and academic matters
  • Human resources management, wage and hour issues, discrimination and harassment, contract disputes, operations, risk management, compliance

• Deena
  • Author of Compliance in One Page
  • Over 30 years experience in IT, audit, and compliance
  • 7 years with the CIA
  • 5 years at Brigham Young University
  • Specialty is designing, implementing, and directing university compliance programs
About TWU

The nation’s largest university primarily for women

Foundation in 1901

Faculty/Staff:
Part- and Full-time 1,322
Adding GA, Adjunct, Students: 2,432 (as of 8-1-18)

Located in Denton, Texas

Denton 12,868
Dallas 1,426
Houston 1,361
Total 15,655

Undergraduate/Graduate: 66.6%/33.4%

Women/Men (1972/1994): 87.7%/12.3%

Agenda

• Different Roles of Legal and Compliance
• How These Work Together
  – Compliance Activities and Strengths
  – Legal Activities and Strengths
• Real World Case Studies
Different Roles
How Legal and Compliance are Different

Converting Legalese to Plain English

Legal
• Advise and protect the University from legal problems
• Defend the actions of the University

Compliance
• Preventing & detecting legal misconduct
• Constant vigilance on the integrity of the compliance program and protecting internal systems
• Supporting a culture of accountability (especially at levels of management)

Different But Aligned
The Federal Sentencing Guidelines
§ 8B2.1. Effective Compliance and Ethics Program
(b)(1) The organization shall establish standards and procedures to prevent and detect criminal conduct.

"Written standards, policies, and procedures"

(b)(5)(A) The organization shall take reasonable steps—to ensure that the organization’s compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct...

“Monitoring and auditing”
The 17 “Shalls”

1. Written standards, policies, and procedures.
2. Compliance “administration” (i.e., a compliance officer, etc.).
3. Communications, training, and education.
4. Monitoring and auditing.
5. Reporting and investigation.
6. Enforcement and discipline.
7. Response and prevention.

Beyond the Seven Elements
Start With Why

The Biggest Why

Four Characteristics of Accountability

- Clear Expectations
- Responsibility/Authority Assigned
- Progress Monitored
- Results Reported

Lag Measures Versus Lead Measures

- Lag measures
- Lead measures
Legal Activities

Model Rules of Professional Conduct: Preamble & Scope

- As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.
- As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.
- As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others.
- As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

Rule 1.2: Scope of Representation

- A lawyer shall abide by a client's decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued...
- A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.

Rule 1.13 Organization As Client

- If a lawyer for an organization knows that an officer associated with the organization is engaged in action, intended to act or related to a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of a duty owed to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.
How These Roles Work Together

Yin and Yang in Action

Aligned Priorities and Actions

- Before a Matter Arises:
  - Prevent and Detect

- University Counsel
  - During the Matter:
    - Defend the actions of the University

- Compliance
  - After a Matter/Issue:
    - Review and Correct

Converting Legalese - The Partnership

"Legalese"  "Plain English"

Legislators  Regulators  Attorneys  Managers  Front line

Compliance
Compliance at TWU

The COSO Internal Control - Integrated Framework (1992/2013)

The Eight Elements at TWU

1. Identify Requirements/Assess Risk
2. Establish/Modify Compliance Organization
4. Communicate Standards, Policies, and Procedures
5. Implement, Promote, and Enforce
6. Monitor, Audit, and Report
7. Continuous Improvement
8. Leadership/Corporate Culture

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TWU Compliance Process

Before a Matter Arises
Compliance Activities, Strengths, and Competencies
Legal Activities, Strengths, and Competencies

Prevention & Detection
1. Identify Requirements/Assess Risk
2. Establish/Modify Compliance Organization
4. Communicate Standards, Policies, and Procedures
5. Implement, Promote, and Enforce
6. Monitor, Audit, and Report
7. [Not used in this phase.]
8. Leadership/Corporate Culture

Disclaimer: This model is provided as guidance only and can be modified to meet your needs. This document does not guarantee prevention of lawsuits, judgments, or fines and is not a substitute for the advice of an attorney. All information is provided without warranty, express, implied, or otherwise, including as to their legal effect and completeness. Adapted from Compliance in One Page ©2015, All Rights Reserved. Used with permission.
**Compliance Skills and Competencies**

1. Compliance Research/Facilitate a Risk Assessment
2. Design or make recommendations for the organizational structure; form committees and task forces
3. Write Standards, Policies, and Procedures
4. Design and execute communication plans and training plans
5. Design and execute action plans
6. Design and implement monitoring plans and audit plans and/or collaborate with internal audit/management
7. [Not used in this phase.]
8. Lead and Influence

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**Legal Support**

- Identify Legal Mandates
- Provide Legal Interpretation
- Counsel and Advise on Implementation of Policies

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**During the Matter**

Compliance Activities, Strengths, and Competencies

*Legal Activities, Strengths, and Competencies*
Legal Skills and Competencies

- Provide legal representation/defense at hearings and other judicial and administrative proceedings
  - Gather factual evidence
  - Report and provide updates
  - Negotiate on behalf of the client

Compliance Support

- Assists with "Gather factual evidence"
  - Documentation of...
    - Compliance program design
    - Compliance program implementation

After a Matter/Issue
**Detection & Correction**

1. Identify Requirements/Assess Risk
2. Establish/Modify Compliance Organization
4. Communicate Standards, Policies, and Procedures
5. Implement, Promote, and Enforce
6. Monitor, Audit, and Report
7. Continuous Improvement
8. Leadership, Corporate Culture

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**Compliance Skills and Competencies**

1. Compliance Research/Facilitate a Risk Assessment
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4. Design and execute communication plans and training plans
5. Design and execute action plans
6. Design and implement monitoring plans and audit plans and/or collaborate with internal audit/management
7. Design and implement a continuous improvement project; post-issue action plans
8. Lead and Influence

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**Legal Support**

- Controlling for more damage!
  - Evaluates the current practices that lead to the "matter"
  - Counsels and advises on development and updating policies and procedures
  - Facilitates the updating of policies and procedures with unit and divisional leadership
  - Supports business case for appropriate changes
  - Advising the Leadership of the Consequences of action or inaction
How These Roles Work Together
Real World Case Studies

“Ghost Tracks”

Employees Must Wash Hands Before Returning to Work

Typhoid Mary

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Summary

Converting Legalese - The Partnership

“Legalese” “Plain English”