

Counseling Compliance in Small to Medium Sized Organizations

Society for Corporate Compliance and Ethics • Compliance and Ethics Institute
National Harbor, MD • Wednesday, September 18, 2019 • Workshop W10

Jason B. Meyer, JD, CCEP
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@MeyerJason B



Take a minute to
consider the
S-W-O-T

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Do you know
this woman?



2

Do you know
this woman?



3

Do you know
this woman?


Executive Producer
Charlie Rose
Sep 2001 – Nov 2017 · 16 yrs 3 mos
Greater New York City Area



Yvette Vega · 3rd
Emmy Award winning Executive Producer, Journalist
Greater New York City Area

 **Message** 

Experience

 **Co-creator**
Charlie Rose The Week/PBS
Jul 2006 – Nov 2017 · 11 yrs 5 mos

 **Executive Producer**
Charlie Rose
Sep 2001 – Nov 2017 · 16 yrs 3 mos
Greater New York City Area

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*"That's just
Charlie being
Charlie..."*



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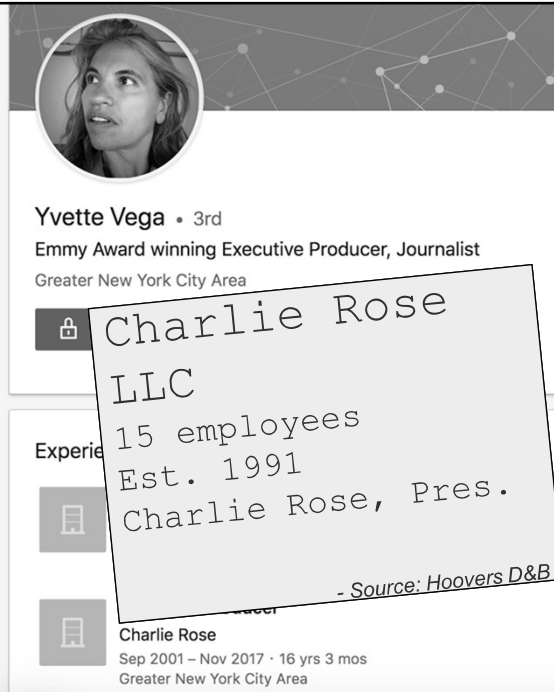
*"I should have
stood up for
them. I failed.
It is crushing.
I deeply regret
not helping
them."*



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An object
lesson...

... in small
business
compliance



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97%

of U.S. Companies have fewer than
100 employees

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Jason B. Meyer, JD, CCEP

President, LeadGood, LLC
Principal Lawyer, Meyer Business Law

- Former SMB general counsel, chief compliance officer, executive
- Decades at the intersection of education, ethical leadership & compliance
 - => LeadGood => LRN => EduNeering
- Consulting on engagement in e-learning, content organization & maximization, learning & EdTech vendor selection and management, education program assessments, “how to talk” compliance and ethics...
- **8x Entrepreneur and current “outside general counsel” for SMBs**

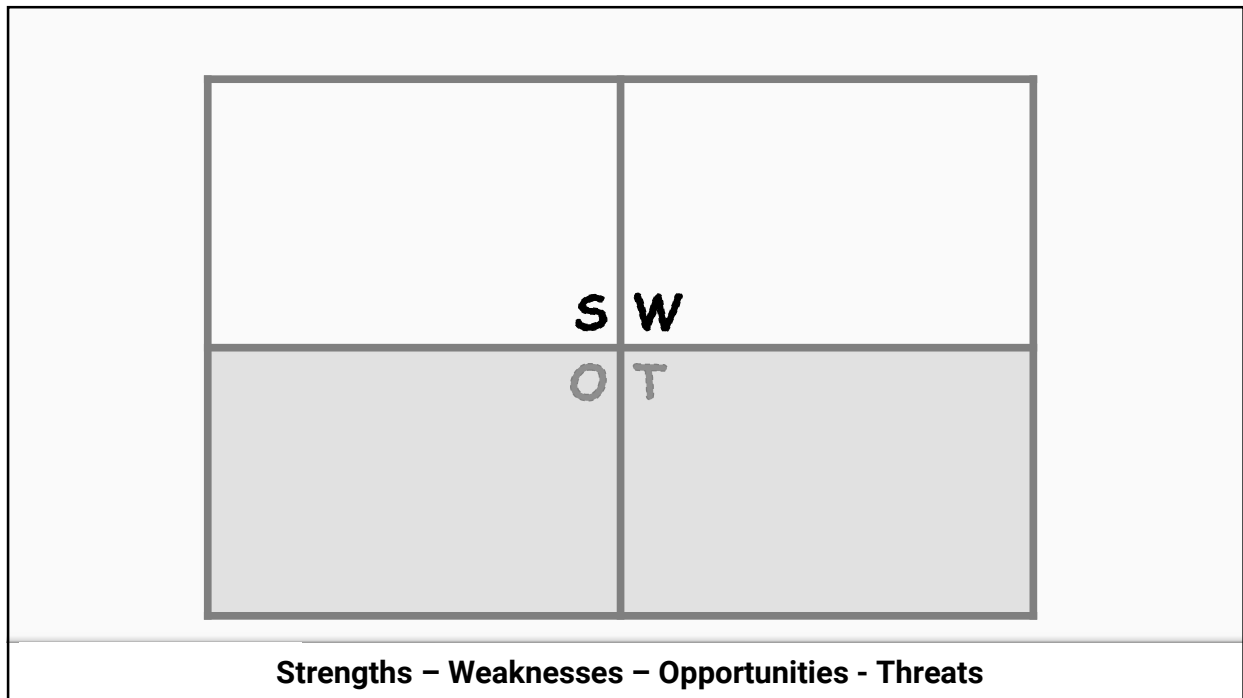
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Topics




- SMBs and the elements of a compliance program
 - Oversight
 - Standards and Procedures
 - Training
 - Monitoring and Auditing
 - Investigations and Reporting
 - Discipline and Incentives
- Cultural leadership: challenge and opportunity
- Can operational excellence drive ethical excellence?

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The elements...



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Oversight

Someone has to do it, and have a title

They might have another job

They might be a lawyer

Get over it

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Oversight: *Back-Up*

The Rose/Nasser/Sandusky Doctrine:

- Always have a second channel
- No single points of failure

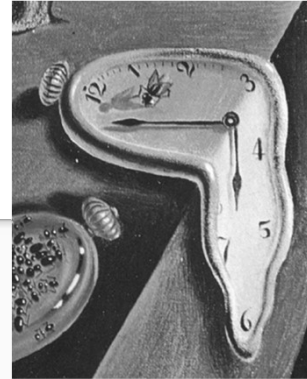
Hot Lines are cheap, or can be replicated

- But who "answers" it?
- Anonymity is hard

Use compliance "champions," "liaisons" or "delegates" to extend reach

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Oversight: *Resources*



Perceived, or actual?

Money, or time?

Idea: "ghost budget" sourced from multiple divisions of the company:

- *Finance or Internal Audit can fund audits*
- *HR or Legal can fund training and/or investigations*
- *Operational business units can also fund investigations*

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Oversight: *Assessment*

"SCARF" for 360 snapshot of CE program

Structure – What does the program look like?

Culture – What is going on with culture: discipline, investigations, reports, trends, successes, management change, turnover, layoffs, etc.

Areas of Risk – How is risk mitigation? What new areas of risk are emerging or shifting? Enforcement trends, new legislation (GDPR, minimum wage changes)

Forecast – What is next for the CE program? Upcoming audits, code of conduct revision, launch of new training programs, technology or initiatives, periodic communications planned, new policies developed or published

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Oversight: *The Board*

Have one!

The special problems with “founder” companies and boards

The special problems with “family” companies and boards

The special problems with VC and PE-funded companies

The independent seat at the table

YOUR seat at the table

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Risk Assessment

This is the true fundamental piece of your program, but you know that because you are here.

Get buy in from the business on the risk assessment process.

Ensure that the risks of not having a CE program make it into the risk assessment

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Standards & Procedures

Follow your risk assessment in developing policies, but...

Just because you can have a policy on something doesn't mean you should...

Idea: Subsume the SOP process:

- Template / Standardize policies
- Include owner, version history, next review/revision date
- Centralize policies for easier management
- **Operational excellence = ethical excellence**

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Standards & Procedures: *Contracting*

Watch out for overly-aggressive clauses and "the deal we gotta have"

- But consider playing "offense" and leveraging third parties

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Training & Education

I ♥ live training

Use your advantages: different groups; on-boarding; role-playing

Engagement: the same rules apply (except...)

Easiest setting for social learning

Lead with values

Subsume / piggy back on training about safety – process – onboarding – benefits

But is it mandatory? (*Does it matter?*)

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Monitoring & Auditing

NO SINGLE POINTS OF FAILURE

Ideas:

- Add the hotline number to employee badges or paychecks
- Ask about unethical conduct during exit interviews
- Do another background check on employees who are being promoted into a substantial authority role
- Monitor enforcement trends of regulatory agencies – who is getting in trouble for what? Read the agency's strategic plan to discover their enforcement priorities.

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Monitoring & Auditing

Your business is never too small for an audit plan; start simple, base audits on the risk assessment

If no internal audit function; look for and use self-checklists (DOL, FCPA); there many available online

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Investigations and Reporting

Have an investigations policy that sets forth the process for receiving, investigating and resolving complaints

Make clear who is informed of different types of complaints

Make a repository of complaints, or mini-case management system to record complaints so that you can see trends (when this gets too unmanageable, then you have a basis to advocate for resources for a case management system)

Ensure your risk assessment includes what types of things are subject to mandatory reporting (environmental spills, on the job accidents, fraud/waste/abuse, etc.)

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Discipline & Incentives

Have a progressive discipline policy in place, even if it is just a simple and short policy

If there is a performance evaluation process, ensure it is fair – i.e., evaluations are completed for everyone in the organization

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Discipline & Incentives

Incentives:

- Easy for sales to rule the roost in SMBs
- Easier for founders/CEO to get greedy
- Watch out for unintended consequences
- Ensure you have oversight of incentive plans (bonus, commissions, sales) and programs (spot awards)
- Ensure upper management is evaluated on at least as high standards of conduct as other employees

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Culture

Tone at the Top / Mood in the Middle

- Employee who agree that their managers talk about the importance of ethics are almost 12X more likely to believe their organization encourages them to speak up
- *ECI GBES 2018*

Once you wrestle in to get your seat at the table, encourage the management to be leadership for the company

- *How? What do you say?*

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Culture: *Persuading the Entrepreneur*

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What does research say?

Research on teacher misconduct

Lessons from Milgram and Stanford

“The Art of Noticing”

A word about “behavioral economics”

Consider “cognitive dissonance”

“Ethical violations are usually not a case of bad people doing bad things for no good reason; it is usually the case of good people doing bad things for good reasons.”

- Marcia Angell, former editor-in-chief of New England Journal of Medicine

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Story Time!

Boys and girls, the moral of our story is:
Entrepreneurs and small business CEOs do go to jail.

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Philadelphia Division

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Info This is archived material from the Federal Bureau of Investigation (FBI) website. It may contain outdated information and links may no longer function.

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Former Nexus Technologies Inc. Employees and Partner Sentenced for Roles in Foreign Bribery Scheme Involving Vietnamese Officials

Company Ordered to Turn Over Assets to Court, Cease All Operations

U.S. Department of Justice
September 16, 2010

Office of Public Affairs
(202) 514-2007/TDD (202) 514-1888

WASHINGTON—Three former employees and a partner of Nexus Technologies Inc. (Nexus), a Philadelphia-based company, were sentenced late yesterday for their roles in a conspiracy to bribe officials of the Vietnamese government in exchange for lucrative contracts to supply equipment and technology to Vietnamese government agencies, in violation of the Foreign Corrupt Practices Act (FCPA), announced Assistant Attorney General Lanny A. Breuer of the Criminal Division and U.S. Attorney Zane David Memeger for the Eastern District of Pennsylvania.

The president and owner of the company, Nam Nguyen, was sentenced to 16 months in prison and ordered to serve two years of supervised release following the prison term. His sibling, An Nguyen, was sentenced to nine months in prison, followed by three years of supervised release. His other sibling, Kim Nguyen, was sentenced to two years of probation and ordered to pay a \$20,000 fine. Joseph Lukas, a former partner

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Story Time!

Too big to fail?
**TOO EASY TO
NAIL!**

THE FBI FEDERAL BUREAU OF INVESTIGATION

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Culture: *Persuading the Entrepreneur*

Work directly on retaliation and reporting: *"Your opportunity to lead"*

Ethical entrepreneurship

Operational Excellence = Ethical Excellence

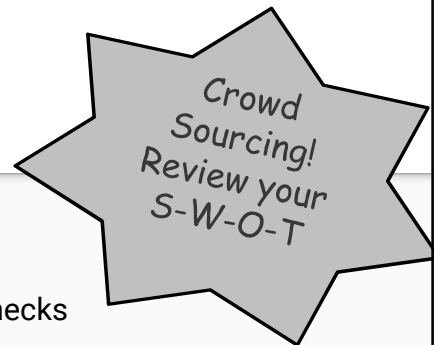
Ethics as a competitive differentiation

Ethics as an end



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FREEsources



Think Marketing!

Add the hotline number to employee badges or paychecks

Ask about unethical conduct during exit interviews

What's your favorite?

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Final Questions /Discussion?



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Thanks!

Please, keep in touch!

Jason B. Meyer, JD, CCEP

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Appendix



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