

BUILDING EFFECTIVE ETHICS AND COMPLIANCE PROGRAMS GLOBALLY: THE VALUE OF INDEPENDENT ASSESSMENTS AND EVALUATIONS

**SOCIETY FOR CORPORATE COMPLIANCE AND ETHICS
EUROPEAN COMPLIANCE AND ETHICS INSTITUTE - FRANKFURT**

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ERIC R. FELDMAN
Senior Vice President and Managing Director,
Corporate Ethics and Compliance Programs
Affiliated Monitors, Inc.

THOMAS TOPOLSKI
Executive Vice President | Turner and Townsend

ERIC FELDMAN

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Retired from CIA in April 2011 with 32 years of federal service:

- Government Accountability Office
- Department of Defense
- CIA/National Reconnaissance Office IG
- Senior Advisor for Procurement Integrity

Different perspectives on business ethics: senior agency official, law enforcement, corporate consultant, independent monitor

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THOMAS TOPOLSKI

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Executive Vice President, Turner & Townsend

- Tom Topolski is currently Executive Vice President of Turner & Townsend. In this role he is responsible for the company's infrastructure business in the US, Canada and parts of Latin America..
- As the former President of Louis Berger International, Tom led the restructuring and strengthening of the business, most notably internal controls and compliance related policies and procedures. Most importantly, Tom developed a culture of compliance and ethical business throughout the international business.

Perspectives from a former Louis Berger executive regarding the expected and unanticipated benefits of the Monitorship.

More than 34 years of experience in the professional services industry, including more some 21 years of international experience.

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AGENDA

- History of the Monitoring Relationship
- Requirements of the Independent Third Party Assessment
- Key Elements of the Assessment
- Working Principles of the Relationship
- Lessons Learned
 - ✓ The Company perspective
 - ✓ The Monitor's perspective

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HISTORY OF THE MONITORING RELATIONSHIP



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HISTORY OF THE MONITORING RELATIONSHIP

- 2010 - False Claims Act Case/Deferred Prosecution Agreement with Monitor (Domestic)
- 2015 - Foreign Corrupt Practices Act Case/Deferred Prosecution Agreement with Monitor (International)
- Significant Fines and Penalties
- Litigation Costs
- Internal Control Remediation Costs
- Monitoring Costs
- Opportunity Costs

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INDEPENDENT THIRD PARTY ASSESSMENT REQUIREMENTS

- Baseline Assessment
- Follow Up Reviews
- Treatment of Recommendations
- Certification of effectiveness of controls and E&C Program to prevent and detect corruption
- Role of the Department of Justice

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KEY ELEMENTS OF THE ASSESSMENT

- Anti-Corruption Controls
 - Corporate Ethics and Compliance Program
- | | |
|-------------------------------------|-----------------------------------------|
| ✓ High Level Commitment | ✓ Internal Reporting and Investigations |
| ✓ Policies and Procedures | ✓ Enforcement and Discipline |
| ✓ Periodic Risk-Based Review | ✓ Third-Party Relationships |
| ✓ Proper Oversight and Independence | ✓ Mergers and Acquisitions |
| ✓ Training and Guidance | ✓ Monitoring and Testing |

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ASSESSMENT METHODOLOGY

- | | |
|--------------------------|----------------------------------------|
| ▪ Employee Focus Groups | ▪ Surveys |
| ✓ Culture | ▪ Culture |
| ✓ Training and Messaging | ▪ Awareness |
| ✓ Reporting | ▪ Involve Board and other Stakeholders |
| ✓ Trust and Credibility | ▪ Secret Shopper |
| ▪ Individual Interviews | |
| ✓ Process | |
| ✓ Controls | |
| ✓ Authority/Independence | |

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SOME KEY METRICS OF EFFECTIVENESS

- Focus on corporate culture
- Alignment of performance management with Integrity Objectives
- Tone at the top, "mood in the middle", "buzz at the bottom"
- Comfort level in raising concerns
- Employee concerns over retaliation
- Beyond ERM: Fraud Risk Assessment
- Consistency/fairness of disciplinary actions
- Effectiveness of training approaches
- Hiring and on boarding
- Independence, authority and reporting
- Board engagement

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WORKING PRINCIPLES OF THE RELATIONSHIP

- Joint definition of "success"
- Transparency; no hidden agendas
- Company cooperation: "open kimono"
- Quick resolution of any "bumps in the road"
- Help both sides maintain credibility with the government
- Early review of draft reports
 - ✓ Accuracy
 - ✓ Perception
- Practicality of Recommendations

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LESSONS LEARNED: THE MONITOR'S PERSPECTIVE

- Collaboration and independence are NOT mutually exclusive
- Avoid investigating or re-litigating old issues
- Avoid political issues and conclusions
- Benchmark best practices
- Give credit where credit is due
- Assess Board involvement
- Early sharing of observations/recommendations: No "gotcha"
- Appear jointly before the government whenever possible
- Ethical Culture is a foundational internal control without which all other controls are bound to fail

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LESSONS LEARNED: THE COMPANY PERSPECTIVE



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LESSONS LEARNED: THE COMPANY'S PERSPECTIVE

- A rapidly increasing number of countries are implementing and enforcing strong compliance laws and regulations
- Ethical behavior is GOOD business
- The vast majority of people take pride in their work and are focused on winning and delivering work on merit
- The vast majority of clients desire to work in an ethical manner
- Reputational damage is exceedingly difficult to overcome
- The monitorship is making Louis Berger a better company
- Ethical Culture is a foundational internal control without which all other controls are bound to fail

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LESSONS LEARNED: THE COMPANY'S PERSPECTIVE

STATUS OF FIRST 18 MONTHS OF FIVE YEAR PLAN

2015	<p>July</p> <ul style="list-style-type: none"> • Implementation of Matrix Organization • Introduced New and Consolidated Authority Matrix • Enhanced focus on Ethics and Compliance Culture • Code of Business Conduct Training – focus on 700 LBI employees with an “incomplete” status • Performance and culture based compensation, structured PMP and MSP • Introduced International Report and Enhanced Nexus page • Continue review and update existing LBI Policies & Procedures 	2016	<p>October</p> <ul style="list-style-type: none"> • Roll-out and implementation of PCR (tool to measure and inform project profitability) • Eastern Europe employee contract tax compliance review and harmonization for clean bill of health on a go forward basis • Bank Account / Cash Compliance in Africa • 52 Key Internal Controls Implemented • LBI Internal Satisfactory Survey • Completed Review and made LBI Policies & Procedures fit for purpose
	<p>August</p> <ul style="list-style-type: none"> • Ensure culture of tax compliance • Commenced process to address staff contracts <ul style="list-style-type: none"> • Tax • Labor Law • Visa • Harmonization • Roll-out and implementation of Berger Pricing Program across International 		<p>November</p> <ul style="list-style-type: none"> • Expenditure Approvals Forms Introduced in Africa – Dramatic reduction of Field Cash • Roll-out and Implementation of Formula Series <ul style="list-style-type: none"> • Governance Formula – International Authority Matrix, Legal, Contracts, Internal Controls • Winning Formula – Proposals and Marketing • Delivery Formula – Project Management • Quality Formula – Quality Assurance • Target Zero Formula – Health, Safety and Environment • People Formula – Human Resources • Technology Formula – Information Technology • Success Formula – Finance • Launch of LBI Connects
	<p>September</p> <ul style="list-style-type: none"> • Roll-out and implementation of: <ul style="list-style-type: none"> • Revenue Recognition Calls • Weekly Cash Calls • Management Letter for LBI and all Geographies 		

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LESSONS LEARNED: THE COMPANY'S PERSPECTIVE

STATUS OF FIRST 18 MONTHS OF FIVE YEAR PLAN

2018	2019
January <ul style="list-style-type: none">• AMI External Monitoring Kick-off Meeting• Online Application of Authority Matrix and Automated Approval Workflow• Winning Formula and BPP roll-out and training• Appoint Procurement Officer	June & July <ul style="list-style-type: none">• AMI Baseline Assessment and Recommendations
March <ul style="list-style-type: none">• AMI External Monitoring Commenced• Internal Control Champions Introduced	August <ul style="list-style-type: none">• Implement monthly Project Reviews. Major projects are reviewed each quarter, total reviews = 56• Meeting with DoJ in Washington DC• Appoint new General Counsel
April <ul style="list-style-type: none">• AMI Visits - Paris, Doha, UAE, KSA, Madagascar, Senegal, India, Panama, Chile	September <ul style="list-style-type: none">• Introduced Reduced Footprint Increase Presence Initiative• Implementation of Compliance Champion Program
May <ul style="list-style-type: none">• Procurement Champions Introduced	October <ul style="list-style-type: none">• Roll-out on Client Satisfaction Surveys
	December <ul style="list-style-type: none">• LBI move to CostPoint Purchase Order Module

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WHY PROACTIVE THIRD PARTY ASSESSMENT MAKES SENSE

- Required by US Federal Sentencing Guidelines, Spanish Criminal Code, and encouraged by OECD and other guidance
- Demonstrate and document company's commitment to ethics and compliance
 - ✓ Government regulators
 - ✓ Employees
 - ✓ Stakeholders
- Prevent **FRAUD** and mitigate compliance **RISK**
- Competitive advantage with third parties in regulated industries

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QUESTIONS TO ASK WHEN EVALUATING THE EFFECTIVENESS OF YOUR PROGRAM

1. What is the relationship between ethics and other performance metrics in the company?
 - The leading factor in unethical behavior is pressure from management or the board to meet unrealistic business objectives.
 - Alignment of ethics and performance objectives is critical in compensation, bonus, and promotion decisions.
2. Is our required ethics training more than a check-the-box exercise?
 - Cascading training.
 - Scenario-based.

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QUESTIONS TO ASK WHEN TRYING TO STRENGTHEN A CORPORATE ETHICAL CULTURE

- 3. Have we exercised due diligence in our hiring, promotions, and mergers/acquisitions?
 - Due diligence in hiring
 - Promotion screening
 - Performance assessment elements, are we rewarding ethical behavior?
- 4. Have we conducted a risk assessment to identify weaknesses? What is our potential Enron, Wells Fargo or VW?
 - Perverse incentives
 - Unintended consequences of goals and expectations
 - Do WE have a "paper program"?

QUESTIONS TO ASK WHEN EVALUATING THE EFFECTIVENESS OF YOUR PROGRAM

- 5. What is the tone at the top?
 - Communicating the ethics message.
 - Proactive engagement.
 - CECO independence, authority, resources.
 - Taking visible and decisive actions against violations of the code of conduct.
- 6. What is the mood in the middle and the buzz at the bottom?
 - Immediate supervisors have greatest impact.
 - Leadership skill represents a key asset/vulnerability.
 - Leadership accountability or "executive protection program"?

QUESTIONS TO ASK WHEN EVALUATING THE EFFECTIVENESS OF YOUR PROGRAM

- 7. Who is responsible for paying attention to the ethical culture?
 - Senior leadership intentions don't always reflect reality.
 - How are ethics incorporated into day-to-day business decisions?
 - Active ethics messaging is a must.
- 8. Is our Code of Conduct more than shelfware?
 - Is it referenced beyond new-employee orientation?
 - Is it customized to our business?
 - Has it been updated?

QUESTIONS TO ASK WHEN EVALUATING THE EFFECTIVENESS OF YOUR PROGRAM

9. Are our employees familiar with and comfortable using reporting mechanisms?
- Is there a fear of retaliation?
 - Is the Hotline or Helpline used regularly?
 - Are reporting trends analyzed and used to strengthen the program?
10. Are we paying adequate attention to the ethical posture of third-parties?
- Third-party risks are high; due diligence is necessary.
 - This is often the weakest area in ethics assessments.

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OTHER ASSESSMENT ISSUES

- How often is "periodic" assessment?
- Who should conduct the assessment?
- In-house versus outside consultant
 - Experience and credibility with government regulators
 - Value of benchmarking and industry best practices
- Privacy and confidentiality issues
- Attorney-client privilege
 - Reporting and dissemination of results

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QUESTIONS

ERIC R. FELDMAN
Senior Vice President and Managing Director,
Corporate Ethics and Compliance Programs
Affiliated Monitors, Inc.
866-201-0903
efeldman@affiliatedmonitors.com



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