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Behavioral Science Lessons From the Wells Fargo Scandal: Focusing on the "Regular Apples"

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In 2016, Wells Fargo became embroiled in one of the largest compliance scandals in recent history. Despite outside indications of success, the bank's massive retail arm, the "Community Bank," was a breeding ground for widespread compliance failures. The bank's toxic micro-culture combined with systemic compliance gaps resulted in unethical practices that would eventually lead to costly litigation, a loss of corporate reputation and billions of dollars in fines and lost market value.

The Wells Fargo scandal demonstrates the danger of creating false complacency by focusing on "bad apples." It further shows that systemic corporate compliance and ethics failures, such as those exposed by Wells Fargo's mistakes, are largely a result of the conditions of the barrel, not the apples inside. Companies looking to learn from Wells Fargo's mistakes should consider, not just how to prevent the actions of the few bad apples, but how to condition their barrel to properly influence the regular apples throughout an organization. In this final article in a three-part series, I discuss several tools companies can use to make sure that they are creating an environment for their employees that fosters compliance and discourages unethical behavior.

The first article in the series described the scandal and discussed why Wells Fargo's extensive control infrastructure failed to function effectively to prevent such pervasive misconduct. The second article applied principles of behavioral science to the facts of the case to demonstrate how everyday biases can lead to wide-spread misconduct. Here, I look at how the behavioral science concepts of incentives, anchoring, framing and peer pressure can help other companies avoid Wells Fargo's mistakes.

See "Behavioral Science Lessons From the Wells Fargo Scandal: Culture Eats Compliance for Lunch (Part One of Three)" (Nov. 28, 2018); and "Behavioral Science Lessons From the Wells Fargo Scandal: Devil in the Decentralization (Part Two of Three)" (Dec. 12, 2018).

Creating Ethical Incentives

Those with experience managing internal investigations will be familiar with situations in which otherwise reasonable, intelligent employees seem to act irrationally in committing misconduct. In those instances, there is frequently a metric involved. Metrics drive behavior in companies by creating incentives to meet goals and pressure not to miss targets. When metrics and measurements are misaligned with the company's strategy and priorities, it can lead to unintended ethics and compliance problems. In the worst cases, incentivized behaviors may be non-compliant with key internal controls or even illegal, such as certain instances of bribery and fraud.

Creating an effective metrics program is a multi-step process, beginning with identifying the objectives the business needs to achieve. The company must determine how it will measure success as a business be it increased profits, decreased margins, minimized expenses, top-line growth or some other financial performance indicator.

Next, the company must look at how those objectives could be incentivized and measured, and in what ways those metrics might create pressure or imply a license to cheat or act improperly. Identifying distorted incentives requires a critical eye, as a metric is typically not problematic on its face. Rather, it is the intersection of the metric and the employee's perception of the consequences of meeting or missing the measurement that can warp behaviors in harmful ways.

The compliance team should collaborate with business units, the finance department and HR to fully understand how incentives and measurements motivate the workforce and can potentially be manipulated. An example of this can be seen with Wells Fargo's emphasis on cross-selling metrics. Intended to buttress the bank's customer service efforts and engender customer loyalty, the metrics were easily gamed in the context of lax controls and a toxic sales environment. This combination ultimately enabled fraud, and the campaign backfired.

Identifying the relevant compliance behaviors the company is not currently measuring, and evaluating why, can also be a useful exercise. These are essentially the company's ethics-and-compliance blind spots, insofar as the organization won't able to identify and reward people who demonstrate these behaviors, nor can it effectively identify and penalize or re-train those employees who do not.

See "Guide to Creating an Effective Compliance-Based Employee Incentive Program (Part One of Two)" (Jan. 7, 2015); Part Two (Jan. 21, 2015).

Anchoring for Attention

Anchoring is a decision-making bias that causes people to disproportionately rely on the first piece of information they receive when they evaluate a choice. This primary piece of information becomes "anchored" as a de facto reasonable baseline, and people then iteratively adjust away from that baseline until they reach a conclusion that seems comfortable. For example, if an individual walks into a store for a new watch and the first item he or she sees is a $10,000 Rolex, a $400 Apple Watch sitting next to it will seem reasonably priced. However, if the first watch on display is $12 Casio, the $400 Apple Watch may seem excessive. Learning to put this principle into practice can help compliance professionals make the maximum impact when delivering value-driven messaging and training.

Once more, an understanding of the business environment is critical for compliance messaging to be anchored effectively. If the compliance department is aware of key points in the business cycle, such as financial reporting deadlines or key moments in negotiations, it can identify ideal opportunities for just-in-time messaging during windows when compliance risk is heightened and anchor messaging at the most effective time. Potential examples of this type of strategy include providing annual code of conduct trainings to the sales force in Q4 when pressure on sales staff is highest, releasing brief refresher messaging during targeted points in the sales cycle or pushing out anti-trust training reminders just prior to large industry conferences where competitor interaction is likely to occur. Another popular type of anchoring is placement of code of conduct reminders at the beginning of expense reporting processes, as opposed to certifying at the end.

For more senior leadership, the compliance department can provide insight into enforcement activity and highlight key compliance risks during the same window that the business is developing its sales and performance metrics for the upcoming year or quarter. Reinforcing compliance risks and obligations at these points in time can anchor the risk in the leaders minds, therefore prompting them to review the incentives program with a more balanced and value-driven approach.

See "MGM's Approach to Compliance Messaging: An Updated Code, Engaging Training and Unique Messaging" (Nov. 28, 2018).

Framing for Influence

Framing is the psychological connection between language and context which nudges people towards certain conclusions based on how information is presented. Put another way, it is the act of focusing an audience's attention to, or away from, certain aspects of an issue in a way that influences their perception of it.

For example, commercial organizations are very good at framing business opportunities in ways that evoke an emotive response from customers and employees. If the opportunities driving the company's business objectives create an ethical risk for employees, then the ethical obligation associated with those objectives should be framed with an equally effective emotional trigger. For the ethics and compliance professional, this means being as effective with spreading the compliance message as the marketing department is about promoting the business.

Often, a useful tactic can be to frame choices in terms of risk of loss, which is an inherently more powerful motivator than an opportunity to gain. For instance, if a compliance department is trying to get buy-in to invest in a certain area of anti-corruption training, instead of selling the ways that training can benefit an ethical culture, it would likely be more effective to inform senior management of recent enforcement activity in that area and point out the potential implications to the business if misconduct were to occur. A key element of this type of framing is the ability to relate the risk back to the specifics of the company's operating environment to undermine reactions of rationalization, complacency and the all-too-common "it could never happen here" response.

Word choice and presentation of data is also critical. Consider a hypothetical scenario of a company with a 1,000-person sales force, where the number of employees fired for expense-report misconduct increased from 10 in 2017, to 29 in 2018. Two truths are apparent:

- Truth #1: Expense-report compliance remained extremely high in 2018, at over 97%.
- Truth #2: Instances of employees cheating on expense reports nearly tripled in 2018.

Although both statements are accurate, they are framed to elicit opposite reactions from the reader. For the compliance officer, the lesson should be to keep the focus on key enterprise risks when framing compliance messages. Often this requires frank word choice, such as labeling cheating by its proper name – cheating. It's critical to not obscure compliance obligations with elliptical phrasing that minimizes the impact of the conduct. There is a reason marketers do not weigh down their messaging with policy references and legalese, and neither should the compliance team.

To this point, in-house counsel will rightly respond that there are limitations to how transparent and honest an organization should be with its compliance labeling. There could be liability concerns regarding potentially damaging admissions, or labeling an employee a "cheater," particularly when a company's compliance and/or legal organization might not have the infrastructure to align such determinations to legal standards. However, while blunt messaging can present a liability risk, that risk must be weighed against the risk that tedious, policy-centric messaging will water down the company's ethical directives, and ultimately lead to greater, more systemic cultural risk.

As in most cases of ethics and compliance risk, the key is finding the right balance. The compliance department should strive to collaborate with legal, business, HR and other stakeholders to ensure that the company strikes the appropriate balance between legal/HR considerations and honest, candid messaging.

Another critical consideration is timing. Clear and explicit language is most effective when used in a preventative context, or as part of prompt and targeted corrective action. On the other hand, if an organization is in crisis mode and managing potential systemic issues, the legal ramifications of candid messaging could outweigh the benefits.

See "DOJ Steers the Compliance Conversation Toward Culture" (Apr. 18, 2018).

The Power of Peer Pressure

A common dilemma among organizations today is whether to train employees live or virtually using e-platforms. E-platforms certainly have advantages, including cost, scalability and an audit trail. In cases where the training is simply meant to convey information related to a policy or process, these platforms may be the preferred method. However, in instances where the goal of the training is to help create or reinforce culture, live trainings have the significant advantage of being not just a conveyor of information, but also a stage for business leaders to help establish and shape social norms and to engage in real-time dialogue.

The advantage is rooted in physiology and neuroscience. Reviewing a policy online utilizes the part of the brain responsible for higher learning, which creates an academic understanding of the material. Conversely, watching a colleague role-play a training scenario, for example, triggers the part of the brain responsible for social interaction and behavior moderation. As powerful as our academic minds can be, the instinct to observe and comport to peer behavior is a powerful impulse that stretches back over thousands of generations of human development. This is why informal peer groups in large organizations are invaluable in establishing culture across an enterprise and far more influential than policy or strategy. A well-designed training regimen can tap into this resource; a top-notch culture taps into it habitually and across functions.

Compliance and ethics trainings are most effective when they are targeted, behavior-oriented and social. When possible, a company should train in smaller groups and make the training relatable by fitting it into contexts that are familiar to the audience. Abstract or conclusory recitals of corporate values are low impact. Real-world examples of behaviors that demonstrate those values, and are likely to be repeatable for the audience, are much more "sticky." To that end, it can be helpful to enlist subject-matter experts within the business in delivering the trainings. For example, instead of training the company's sales force on anti-trust policy, a compliance department could enlist a sales manager to help train the company's sales force and be available to answer common questions. Delivering the training from within the business can lend credibility to the messaging and help provide a more directly relevant perspective.

Finally, a key aspect of behavior-based trainings is to communicate the importance of managing bias, without expressing judgement of employee's biases themselves. Biases are counter-productive and taboo, but also a natural part of human cognition which can easily impact compliance with a code of conduct and key compliance rules. Training to manage this risk should strive to make a clear distinction between biases, which are subconscious influences we all have, and discrimination or intolerance, which are controllable behaviors. Creating an environment that does not judge people for their biases, but rather encourages an honest evaluation of them, is a key step in any type of training that would help people manage their counter-productive tendencies and improve their decision-making.

See "Training Insights From In-House Experts": Part One (Jun. 1, 2016); and Part Two (Jun. 15, 2016).

Putting It All Together

Bad apples are a problem, but they have nothing to do with systemic corporate compliance and ethics failures. These failures occur because the vast majority of people are regular apples whose honesty and dishonesty is flexible depending on the conditions of the barrel they are in. Ultimately, understanding these conditions is as important for an effective compliance program as the hunt for bad apples.

To start, a compliance department should consider whether it has an awareness of everything the company is measuring, and how those metrics are shaping behavior. Next ask, is the company's messaging anchored in a time and place that will prompt employees to consider whether their choices have an ethical component to them? In the same way that a lack of awareness can lead to honest people behaving dishonestly, drawing employees' attention to the moral aspect of their choices can increase their propensity to behave honestly.

Then, the team should think through how to best frame key compliance risks, policies and controls. What messages do the chosen labels send? Does the company's corporate culture associate compliance messaging and tone at the top with policy, procedure and bureaucracy, or does it associate those messages with the flesh and blood values of the company?

Finally, the department should consider how things appear (or could be made to appear) from the outside. Extensive compliance and finance controls, endless resources, robust monitoring, policies and procedures – these are only useful if they are appropriately utilized by leaders who can accurately interpret risk and are empowered to respond. Ultimately a responsible leader should always consider how a critical outsider such as a regulator, press correspondent or a consumer advocate might shape a different narrative from the same information.

See "Ian Hawkins of NBCUniversal on How Nudge Theory Can Improve a Compliance Program" (Jul. 25, 2018).

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