

# Corporate compliance training, Part I

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By Cary J. Griffith

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Corporate America is at a crossroads. Revenue is increasing. Profits are up. The world economy is creating potentially huge new markets. And according to some analysts, the future appears bright. But few times in American history have we witnessed a larger spate of high-profile cases of corporate misconduct. Corporations like Enron, WorldCom, Cendant, Tyco, HealthSouth, and plenty of other companies-and the executives who run them-have been accused (and sometimes convicted) of numerous misdeeds.

In partial response to this misconduct, the public's perception of the ethics driving American business appears to be at an all time low. Congress reacted by passing the Sarbanes-Oxley Act of 2002 (Sarbox) and strengthening the Federal Sentencing Guidelines. The New York Stock Exchange (NYSE) and NASDAQ have both revamped their governance rules.

While the passage of new laws, regulations and rules have done much to shore up the ethics of doing business, they have also created an increasingly complex business environment. Managing and understanding that environment, its possibilities and pitfalls, has never been more difficult. Perhaps top on the list is ensuring that companies, their executives, and employees are all aware of and tread carefully through the new regulatory landscape.

While the new regulatory environment has been a bane to many, it has signaled a boon to others. What some view as unnecessary meddling in the wheels of

corporate America, others consider profitable business opportunities. At no time in the history of business has the confluence of a positive business climate, complex regulatory environment, and new technology come together to provide training companies with more fertile ground for growth. The technology has become so sophisticated, it can be generic but customized to particular companies. It can track employee participation rates, competency, and understanding and a variety of other individual and company-wide metrics. And those metrics can provide companies with the ability to ensure their employees are at least knowledgeable about the new regulatory world in which they work. And in instances when maverick employees step over the line, these same metrics can provide prosecutors and regulatory agencies with potential proof of their company's good will and understanding.

Some consider the new regulatory environment far too draconian and adverse, setting up unnecessary and costly impediments to doing business. But three years after the passage of tough new legislation, it appears the new laws, regulations and rules, and the new efforts to get the word out are having an effect on the public's perception—at least among company employees.

### **Controversial Legislation**

Largely, though not exclusively, as a reaction to the Enron debacle, Congress passed the Sarbanes-Oxley Act of 2002, and strengthened the Federal Sentencing Guidelines. Admittedly Sarbox has been controversial. In a 2004 LawCrossing interview, Jack Levin, Senior Partner, Kirkland & Ellis commented that "If you read Sarbanes Oxley carefully you would conclude the CEO of the company, rather than focusing on the company's big picture goals, business problems or solutions, should be spending the vast majority of his or her time reading voluminous monthly, quarterly or annual SEC reports, and double

checking every number and every issue discussed in those reports.

Levin and other business and legal leaders consider Sarbox to be overstepping the bounds of prudent corporate governance. While they recognize corporate governance is essential, particularly in today's environment, they also believe legislation like Sarbox illustrates Congress' sometimes penchant for pile-on, or knee-jerk reactions to public perceptions and contemporary moods.

According to Luis Aguilar, partner, Alston & Bird, "Sarbanes-Oxley was a political response to serious breaches in honesty and fiduciary responsibility. As a political response I think it was quickly and hastily done to address public confidence issues. Although there's some good stuff in there, there's also some additional burdensome cost imposed on corporate America I'm not sure the cost benefit analysis has balanced out."

Others disagree. A recent USA Today article-"Greenspan lauds Sarbanes-Oxley," (05/16/05)-quotes Federal Reserve Chairman Alan Greenspan as saying, "I am surprised that the Sarbanes-Oxley Act, so rapidly developed and enacted, has functioned as well as it has." While Greenspan acknowledges the law may require some fine-tuning, he believes it's operating remarkably close to what its framers intended.

### **The Need for Corporate Compliance Training**

The preceding indicates that at least for the short term the complicated regulatory environment, particularly those parts of it attributable to tough new Sarbox legislation, is probably not going to change. The regulations trickling down into business and industry as a result of Sarbox (and other recent legislation) is new, and in some instances not easy to understand or follow.

Obviously, companies need to understand these new compliance requirements, and their employees need to be knowledgeable about what the Act means—particularly while participating in the day to day needs of their business.

These new needs have resulted in an increase in most corporate compliance training programs. For instance, with regard to Sarbox, new governance rules of the New York Stock Exchange and NASDAQ, and the federal sentencing guidelines, companies need to make employees aware of new whistle blowing legislation, internal controls, criminal penalties, and a wide variety of other corporate governance issues.

And corporate compliance training is not limited to providing employees with badly needed training on the new financial regulatory environment, or the ethics those regulations imply. New web-based technologies and their built-in instructional management capabilities make them ideal platforms for the conveyance of everything from antitrust and automobile laws and regulations to the legal issues regarding oil and gas exploration.

### **Are Compliance Training Programs Working?**

There is no way to know for certain whether the new corporate compliance training programs are having a noticeable effect. Judging from the number of high profile corporate misconduct cases anecdotal evidence might indicate otherwise. However, there are other analysts who point out that any increase in the number of cases may be in part due to increased agency vigilance, funding, and legislative teeth.

According to a 2003 National Business Ethics Survey (Ethics Resource Center, [http://www.ethics.org/nbes2003/2003nbes\\_summary.html](http://www.ethics.org/nbes2003/2003nbes_summary.html)) the tide appears to

be swinging back in a more positive direction—at least with regard to the perception of corporate ethics. That survey questioned employees about their perspectives regarding the ethics within their own organizations. In part, the survey's Executive Summary noted:

"Employee perceptions that top management talks about the importance of ethics, keeps promises and models ethical behavior have all increased since 2000. For example, 82% of employees in 2003 said that top management in their organizations keeps promises and commitments, as compared with 77% in 2000"

The Survey also found that in the period from 2000 to 2003 observations of misconduct diminished from 31 percent to 22 percent, while pressure to compromise employee ethics and standards dropped from 13 percent to 10 percent.

Of course, these numbers indicate there's still plenty of work to do. The same Survey noted that:

- "Nearly a third of respondents say their coworkers condone questionable ethics practices by showing respect for those who achieve success using them.
- The types of misconduct most frequently observed in 2003 include: abusive or intimidating behavior (21%); misreporting of hours worked (20%) lying (19%); and withholding needed information (18%)."

Dramatic changes in legislative and regulatory requirements have significantly altered the way companies do business. In response corporate compliance training companies have leveraged new technologies to give corporate

America a powerful new educational and knowledge tracking tool. While the new regulatory environment is controversial, it appears-at least in part-to be having a noticeable, positive effect.

In part 2 of this article we will examine some of the key compliance training companies in this space and explain in more detail how these new technologies work.