



Effective Compliance Training

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- Jeff Kaplan: overview of provisions of the revised Sentencing Guidelines relating – directly and indirectly - to C & E training.
- JC Kinnamon: training from the perspective of adult learning – as part of exploring what in fact makes training effective, as the Guidelines require that training be.



- In thinking about training – or any C & E Program element – it is important to consider not only on the actual words of the Guidelines but also the spirit of the law, which is to:
 - Promote due diligence.
 - Require good faith efforts.
 - Get companies to try to *achieve results*.



- If your company can answer the following question Yes, it probably has an effective C & E program:
 - *Do you attempt to promote law abidance and ethical conduct with the same degree of thoughtfulness and commitment that you do more traditional business activities (e.g., developing/producing/delivering products/services, marketing and sales, etc.)?*



Achieving C & E results

- E.g., Do you use the same types of tools for achieving that you use elsewhere?
- The following are tools used in traditional business areas that are now required of C & E programs:
 - Responsibilities of board (to oversee the C & E program) and top management (to ensure program effectiveness.)
 - Analyzing C & E needs (risk assessments).
 - Use of incentives.
 - Evaluating the efficacy of the C & E program.



The Letter of the Law

- Besides the general spirit – which is relevant not only to training but all C & E program elements – the Guidelines:
 - Speak directly to training requirements.
 - Speak directly to other requirements that bear on training in an indirect but nonetheless substantial way.



- Training is now *mandatory*.
 - Under original Guidelines, training was but one form of compliance communication that a company could use to satisfy the fourth of the seven program elements (on communications).



- Training must be “effective.”
- Advisory Group Report suggests that one should consider the *impact* of the training.
 - No one is asked to commit a crime right after compliance training. Effective training, among other things, is that which will *stay with an employee* long enough to help her resist a moment of temptation of pressure that could arise much later.



A second way in which training should be effective

- Effectiveness requirement dovetails with another important C & E program legal mandate, which is that *employees must be aware of a company's program and convinced of their company's commitment to it.* (2003 US Department of Justice guidance on prosecution of business organizations.)



A word about the DOJ

- In a speech in October 2004, a high ranking Justice Department official said that the DOJ would consider the revised Guidelines articulation of C & E program efficacy in considering whether to indict business organizations.
- So – a lot could be riding on meeting the new Guidelines standards.



- Additionally, training should be part of a larger communications effort, as a company must *take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program...by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.*



- *Members of the governing authority [meaning generally the board], high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents.*



A word about agents

- As a matter of law, an agent acting within the scope of her authority, and intending (at least in part) to benefit a company, can create liability for that company no less than an employee can.
- Numerous cases have shown that agents can be major sources of risk.



What are the subjects of C & E training?

- This is driven by the risk assessment.
 - E.g., for sales agents, the focus would be on sales-related risks (such as antitrust).
 - Some risks are widespread (e.g. conflicts).
 - Executives should be trained based on the risk areas are that they oversee.
 - Special issues for boards.



- Ethics is now clearly part of the Guidelines definition of an effective program.
- It should therefore be the subject of training.
 - To some extent, this should be driven by the risk assessment.
 - Majority of EOA members responding to recent survey say that they assess ethical – as well as legal - risks.



- The Guidelines provide that *The organization shall take reasonable steps to communicate periodically its standards/other aspects of its program.*
 - Commentary to the Guidelines adds that the *communication and training obligation is ongoing, requiring “periodic” updates.*



- Depends partly on the risk analysis, e.g., more frequent training generally based on:
 - Complexity of subject.
 - Degree of potential legal peril.
 - Other risk issues (controls, pressures/temptations, etc.).
- Need to consider any legal mandates (e.g., new California harassment law).



- Top management must ensure the effectiveness of the C & E program.
 - Ensure is a very strong word in this context.
 - Therefore, this is a good way to get the attention of top management who may not be supporting a training (or other compliance) initiative. (This is particularly so because the board may be relying on top management to ensure program effectiveness.)



- The board must reasonably oversee effectiveness and implementation of the C & E program (and be familiar with its contents and operation).
 - Even before the new Guidelines many boards had some oversight role on training (according to Conference Board 2004 benchmarking study.)
 - You may wish to present the board with some of the training. (Many companies do.)



- C & E program must have adequate resources.
 - Training of necessity requires allocation of resources.
 - Adequate resource allocation – for training and other program elements – is part of what top management must ensure.



- A critically important new aspect to Guidelines is that, in addition to policies and procedures, a company must have a culture that promotes law abidance and ethical conduct.
 - Although there are many aspects to achieving this, C & E training can play a key role in promoting an ethically sound organizational culture.



- Sentencing Guidelines 2.0 expands government approved definition of good corporate citizenship in a number of ways.
- Training plays a key role in this definition.
- Good training not only helps you meet the letter of the law – but also the spirit, of achieving C & E results.



Let's see what the group thinks about
creating effective compliance training ...



Raise your hand if you think
the statement is true



True or False?

Empower adult learners with control over their
learning environments.



True or False?

Offer information-rich environments (including side-bars, related stories, background facts) to improve learning.



True or False?

Avoid repetition with adult learners.



True or False?

The color of the paint on the wall of the room where you take a test can affect test performance.



True or False?

Empower adult learners with control over their learning environments.



True or False?

Empower adult learners with control over their learning environments.

FALSE



True or False?

Offer information-rich environments (including side-bars, related stories, background facts) to improve learning.



True or False?

Offer information-rich environments (including side-bars, related stories, background facts) to improve learning.

FALSE



True or False?

Avoid repetition with adult learners.



True or False?

Avoid repetition with adult learners.

FALSE



True or False?

The color of the paint on the wall of the room where you take a test can affect test performance.



True or False?

The color of the paint on the wall of the room where you take a test can affect test performance.

Maybe true.



- There are myths about what works
 - Conventional wisdom
 - Lack of an empirical basis

- Research is showing how people really think and learn



Training must:

- engage learners
- motivate learners
- consider the capabilities and limitations of how people really learn
- prepare learners to apply what they know



- “Engagement” means different things to different people

- What does it mean to
 - Liz Taylor / Britney Spears?
 - KPMG / PWC?
 - A learning specialist?



It's obvious when training is not engaging

Engaging means

- Attending
- Processing, e.g. thinking about it

Enables learning



What is the best way to engage a learner?

- A. Interactivity
- B. Provide relevant subject matter
- C. Use media effectively



- External vs. internal
- Push vs. pull
- The “pull” in a course is usually overlooked
 - Assumption is learner is motivated
- Wise to assume the learner is NOT motivated
 - Make it “hard to put down”



- Tell a good story
 - Make it real, relevant, interesting
- A good novel is hard to put down
- Watching a good movie, you’re not watching the time



- Dynamics are different for in-person training and e-learning
 - Participants will be polite to presenters
 - No social pressures with an e-learning application
- Summary: Consider motivational issues when designing training



- How people “really” learn according to the cognitive theory of learning
 - Look inside the “black box”
 - Consider human information processing
 - Three basic principles



Principle #1

Humans use two “channels”

- One for processing visual information
- One for processing auditory information

➤ I.D. implication: use both channels



Principle #2

- There is a limit to how much information can be processed in each channel at a time

➤ I.D. implication: Consider “human bandwidth”



Principle #3

- Humans are active processors of information, not passive receptors
- I.D. implication: Understand what training is and isn't





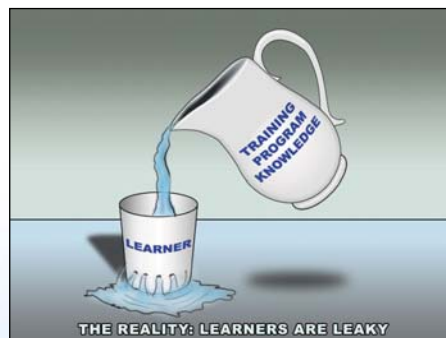
To minimize “forgetting” and maximize “transfer”

- Carefully construct your learning objectives
- Provide practice
- Closely simulate real-world context, including the use of media



More than Learning – Remembering!

- Repetition
- Space learning
- Practice
- Consider context



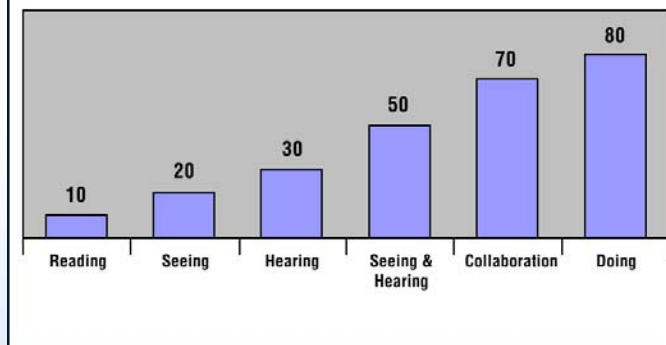


- How people “really” learn according to the cognitive theory of learning
 - Look inside the “black box”
 - Consider human information processing
 - Three basic principles
 - Memory for stories

Mayer, R.E. (2001) "Multimedia Learning." Cambridge, UK: Cambridge University Press.

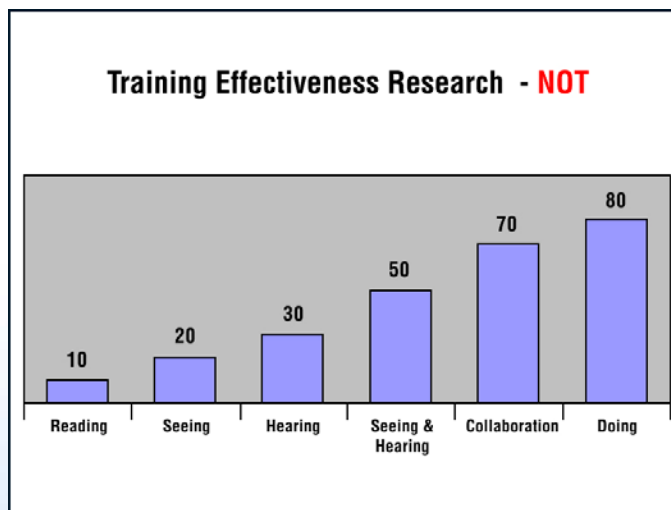
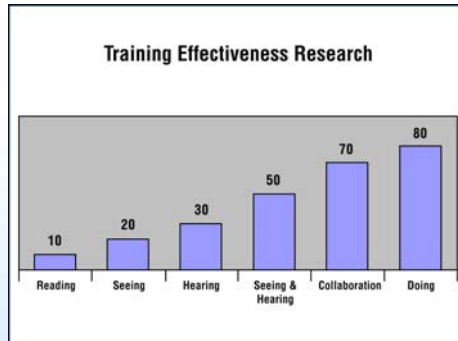


Training Effectiveness Research





Have you seen this chart before or heard someone describe the data depicted?





Effective compliance training

- Engages learners
- Motivates learners
- Helps learners learn, remember & apply what they know to the real world
- Is built on empirically based principles of human learning and instructional design



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