

## Preventing Harassment: *Can Compliance Ever Succeed?*

Society for Corporate Compliance and Ethics • Compliance and Ethics Institute  
Las Vegas, Nevada • Sunday, October 21, 2018 • Session P08

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## **RESOLVED:** **Compliance efforts cannot prevent workplace harassment**



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## *1998: Faragher and Ellerth*

United States Supreme Court  
**BURLINGTON INDUSTRIES, INC. v. ELLERTH, (1998)**  
No. 97-569  
Argued: April 22, 1998 Decided: June 26, 1998

"When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages.... The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise."

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## Reaction: Mandated Employer Activity

Policies

Hotlines

Posters

California AB1825: "two hours every two years"

Connecticut, Maine, New Jersey....

ETC...



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## Reaction: Compliance Amok

**90%** of companies have  
an anti-harassment policy

**82%** of companies have  
mandatory compliance training

**71%** of companies have  
mandatory sexual harassment  
prevention training

**\$600,000+**  
average mandatory  
compliance training spend per  
company (more than for sales  
or management/supervisory)

**43,400,000**  
Google hits for "online  
harassment training"

Sources: ATD; Training Magazine; Google

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## **Result:** The last two years



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## Conclusion...



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Is workplace harassment still a problem **in your company?**

- No
- Somewhat
- Yes
- I plead the Fifth

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Is workplace harassment still a problem **in the USA?**

- No
- Somewhat
- Yes
- Make American Great... Ever?

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<h1 style="font-size: 48px; margin: 0;">?</h1>	<p>Is workplace harassment still a problem <b>in our culture?</b></p>
	<ul style="list-style-type: none"> <li>• No</li> <li>• Somewhat</li> <li>• Yes</li> <li>• Tone at the Top? Hello!</li> <li>• #MeToo #WhyIDidn'tReport (<i>'nuff said</i>)</li> </ul>

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<h1 style="font-size: 48px; margin: 0;">?</h1>	<p>Has "compliance" successfully addressed workplace harassment?</p>
	<ul style="list-style-type: none"> <li>• We have fully succeeded</li> <li>• We have adequately succeeded</li> <li>• We have succeeded only in limited respects</li> <li>• We have failed</li> <li>• We suck</li> </ul>

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<p><b>RESOLVED:</b>  <b>Compliance efforts can do a better job at preventing workplace harassment</b></p> <p><i>... and we need to start TODAY</i></p>	
	
	

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## Introductions



### Susan A. Parkes, JD, CCEP *General Counsel and Vice-President, Alyeska Pipeline*



- General Counsel and Chief Compliance Officer for Alyeska Pipeline Service Company
- Alyeska is the Operator of the 800-mile Trans Alaska Pipeline System (TAPS) transporting North Slope Crude Oil from Prudhoe Bay to Valdez, AK
- Prior to TAPS, 20-year career with the State of Alaska Department of Law, Criminal Division serving as a line prosecutor, Anchorage District Attorney and Deputy Attorney General

Amy McDougal, JD, CCEP  
President, CLEAResources, LLC



- US Air Force veteran - 12 years as JAG officer
- Former federal prosecutor (SAUSA)
- Former General Counsel of firm specializing in defense-sector security issues
- Advises organizations on culture, policies, training, investigations, monitoring and auditing, reporting, remediation, discipline and incentives

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Jason B. Meyer, JD, CCEP  
President, LeadGood, LLC



- Former general counsel, chief compliance officer, business executive
- Decades of experience at the intersection of education and compliance
  - ⇒ EduNeering
  - ⇒ LRN
  - ⇒ LeadGood
- Consulting on engagement, content organization, vendor selection and management, education program assessments, "how to do" compliance and ethics...
- First-of-kind courseware for directors, educators, healthcare, sales, leaders...

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## Agenda... together

### Where did we go wrong?

Training  
Culture  
Other Bugaboos and Peeves  
(Break)

### Avoiding Insanity & Moving The Needle What should we do differently?

Program Elements  
Training  
Case Study: The Open Work Environment  
Culture, and our Action Plan

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## Where Did We Go Wrong?

Why do YOU think we haven't had a better result?

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## Where Did We Go Wrong? Training



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In the compliance  
training revolution,  
who got taken to...



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Compliance Training, circa 2003-20??  
*A Procurement decision*

PowerPoint  
One stream  
All "push"  
"Hours per learner"  
Pick one solution provider every 3  
years  
"Checking the Box"

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Compliance Training, circa 2003-20??  
*The Two-Hour Problem*

Box Checking  
Everyone hates your training  
What message did that send?

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Compliance Training, circa 2003-20??



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## Where Did We Go Wrong? Culture




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### A common problem...

Rampant misconduct that is well known within an organization goes unreported.



MORE THAN 50 SERVICEMEMBERS WERE SEXUALLY ASSAULTED EVERY DAY  
ONLY 3,192 INCIDENTS WERE REPORTED. THAT'S ONLY 17.5%




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## What is Culture?

The shared values, traditions attitudes, standards and beliefs of an organization and its employees (written and unwritten).

Culture defines the character and personality of an organization and drives how people behave and treat each other.

Culture is how work actually gets done in an organization.

*"The way we do things around here..."*

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What you don't know, will hurt you  
We must break the Conspiracy of Silence



our lives begin to **end**  
the day we become  
**silent** about things that  
**matter.**

*Martin Luther King Jr.*

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## How Important is Culture?

*"The only thing of real importance that leaders do is to create and manage culture."*

— Edgar Schein, Management Professor, Author

*"Culture isn't just one aspect of the game – it is the game."*

— Lou Gerstner, Jr. IBM

*"Culture eats strategy for breakfast."*

— Peter Drucker

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## Culture is King (and Queen)

Alyeska Pipeline  
Service Company –  
Lessons Learned (the  
hard way)



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**Headline  
NEWS**

# Alaska Pipeline Operators Chase Down News Leaks

John Enders, Sept. 11, 1991

ANCHORAGE, Alaska (AP) Operators of the Alaska pipeline have been running after leaks in recent months - and not all of them oil leaks.

Alyeska Pipeline Service Co. hired a security firm early last year to spy on an industry critic and find out which employees fed him inside information that got Alyeska in trouble with the Environmental Protection Agency.

The man, retired tanker broker Charles Hamel, obtained information about corrosion in the 800-mile pipeline and in storage tanks at Valdez, as well as benzene emissions and ballast-water disposal problems. Hamel in turn passed the information on to environmental and safety regulators, the press and Congress.

The Los Angeles Times said the security firm, Wackenhut Co. of Miami, also monitored Rep. George Miller, D-Calif., chairman of a subcommittee investigating alleged environmental wrongdoing by Alyeska, a consortium of seven oil companies.

*Headline*  
**NEWS**

# Alyeska Pipeline Service Company: Lessons Learned

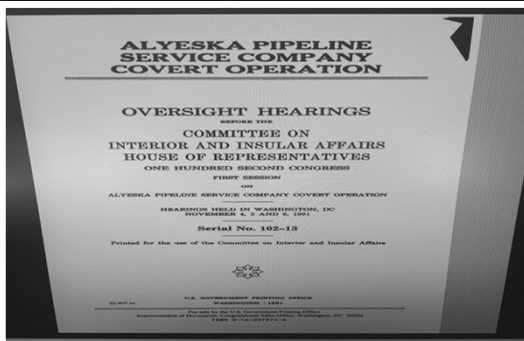
### Probe of Alyeska Conduct Goes Behind Closed Doors: Congress:

*Patrick Lee, Times Staff Writer, Nov. 5, 1991*

The public was ejected as a House panel began hearings into allegations of wrongdoing by the operator of the trans-Alaska pipeline...

**Chief Alyeska Pipeline Investigator Quits** *ENERGY: The secret probe of whistle-blowers causes flap.*

Patrick Lee, *Times Staff Writer*, Nov. 16, 1991



## Alyeska's Cultural Journey (It's not a destination)

Open Work Environment

Employee Concerns Program

"Speak up, Step up" Expectation

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## Your Bugaboos and Peeves *Did we miss anything?*




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### CROWD-SOURCING SOLUTIONS

#### Moving the Needle

- Training & Communications
- Other Program Elements
- Culture




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Break?



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**CROWD-SOURCING  
SOLUTIONS**

**Moving the Needle**

- Training & Communications
- Other Program Elements
- Culture



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*How Can We Do Better*  
**Program Elements**



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Borrowing a Page from DoD Playbook

2017 Annual Report on  
Sexual Assault in the Military

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Borrowing a Page from DoD Playbook

Reporting:  **10%**

2017 Annual Report on  
Sexual Assault in the Military

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Borrowing a Page from DoD Playbook

Reporting: **1 in 3**

2017 Annual Report on  
Sexual Assault in the Military

2006: 1 in 14

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## Borrowing a Page from DoD Playbook

**Of 5,684 Reported:** 4,779 – in DoD jurisdiction  
2,218 – sufficient evidence for  
adverse action  
1,446 – involved discipline  
772 – discipline for other  
misconduct

2017 Annual Report on  
Sexual Assault in the Military

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## Borrowing a Page from DoD Playbook – Oversight/Leadership

- **Leadership** involvement at all levels:
- Setting the example and the tone
- Providing meaningful training
- Enforcing standards
- Setting expectations regarding accountability
- Ensuring new members have a sponsor within the unit

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## Borrowing a Page from DoD Playbook – Peer Mentorship

- Peer to peer mentorship: promoting healthy relationships between peers, partners, family, friends
- Peers can promote:
  - Victim empathy;
  - Bystander intervention against any unacceptable behavior;
  - Healthy relationships;
  - Moderate, responsible alcohol use; and
  - Obtaining consent for sexual activity
- Are companies doing enough to “crowdsource” prevention?

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## Borrowing a Page from DoD Playbook - Training

"Courses should teach bystander intervention, victim empathy, consent, acceptable behavior, and healthy relationships. The curriculum should be evidence-based, adapted to the environment, and responsive to the gender, culture, beliefs, and diverse needs of the targeted audiences. Education and training must be properly designed following adult learning principles and be delivered by well-trained professionals, or it risks being ineffective or having a negative impact."

- <http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Training

- Multiple lessons/sessions to reinforce key messages and provide opportunities to practice new skills;
  - Peer educators to deliver training program;
  - Interactive format (minimize lecture, focus on discussion, role-play, and exercises);
  - Real life scenarios (discuss scenarios and the appropriate responses); and
  - Culture-specific content and messages (**allow each installation, and potentially each command, to customize the training content to their specific culture and participant levels**)
- <http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Accountability

"When all personnel are held appropriately accountable for their behavior, the unit climate of trust and safety is enhanced and personnel may feel safer coming forward with issues or incident reports. At the same time, senior commanders must hold subordinate commanders appropriately accountable for supporting and maintaining a unit command climate that promotes respect, tolerance, and diversity, and not one that tolerates sexual harassment, discrimination or sexual assault."

- <http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Accountability

Examples of practices that promote accountability include:

- Publicizing the punishments for misconduct or criminal offenses consistent with law and Department of Defense regulations;
  - Incorporating SAPR monitoring into readiness assessments (e.g., quarterly training briefings, operational readiness assessments, inspections) to ensure program implementation and compliance;
  - Senior leadership engaging with subordinate commands to review results and progress with command climate assessments; and
  - Ensuring all allegations of sexual assault are referred to Military Criminal Investigative Organizations (MCIOs).
- <http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Resources

The Department of Defense must institutionalize sexual assault prevention programs. The necessary **resources** include:

- Manpower;
- Budget;
- Tools and systems;
- Policies;
- Education and training;
- Standard operating procedures; and
- Continuous evaluation and improvement.

**LOOK FAMILIAR??? If DoD needs the above to succeed, so does your corporate program...**

- <http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Resources

### Community Involvement

Leaders and Sexual Assault Response Coordinators (SARCs) collaborate with community resources to extend and enhance the unit climate for personnel throughout the local community, both on and off-base to the extent authorized by law and Department of Defense regulations. This includes integrating prevention efforts with a variety of resources, including:

- Advocacy groups;
- Healthcare services providers;
- Family and social support service providers; and
- Researchers, university faculty, epidemiologists, and subject matter experts grounded in scientific data.

- <http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Resources

### Deterrence – to what extent does your company treat sexual harassment or assault as a security issue?

"A variety of tactics have been shown to help deter a wide range of negative behaviors. Commanders and their command teams, to include staff judge advocates, should collaborate with military and civilian law enforcement, Safety and Force Protection Officers, to determine the optimum mix of deterrence measures for their environment. Examples of potential tactics to deter criminal activity include:

- To the extent permissible by law and policy, publicizing court-martial results;
  - Articulating lifetime costs of poor decisions;
  - Surveillance measures (e.g., video cameras, patrols, barracks monitors); and
  - Physical security enhancements."
- <http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Resources

### Communication

"Messages promoting appropriate values, attitudes, and behaviors have shown great promise in achieving a healthy command climate and preventing sexual assaults. Commanders and command teams must visibly support and reinforce the standards. Messages must be appropriately tailored for the target audience(s)."

<http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Resources

### Incentives

"Recognition by leaders for establishing effective prevention programs or practices can incentivize units to be innovative and develop effective prevention programs and tactics. Examples of how incentives can be used include:

Individuals recognized by leaders for **safely intervening in incidents**. Commanders must consider the risks and impacts when employing this tactic to determine the best means of delivery (e.g., public or private acknowledging);

**Volunteers awarded** for conducting bystander intervention training; and

**Units awarded for effective, innovative prevention" programs.**

<http://www.sapr.mil/index.php/prevention/prevention-program-elements>

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## Borrowing a Page from DoD Playbook - Resources

### Harm Reduction (aka "monitoring")

"Tactics that seek to reduce the risks of sexual assault show promise to help promote a healthy command climate. Commanders must **review command climate surveys** and **discuss any threats to the welfare** of the unit and individual members with their command team, SARC, and Safety Officer to **identify potential tactics to reduce risks**. These efforts can include a wide variety of **risk mitigation** (safety) programs and tactics that addresses both potential victims and perpetrators, including:

Alcohol policies (e.g., alcohol storage in barracks, pricing, outlet density);

Collaboration with management of establishments Service members are likely to visit on and off base;

Courses that instruct and empower members through awareness, violence intervention, and self-defense techniques;

Unit sponsorship for new members; and

**Ongoing command monitoring of individuals who are demonstrating problem behaviors** (e.g., documented history of sexual violence, sexual harassment, alcohol or drug abuse, hazing)."

<http://www.saapr.mil/index.php/prevention/prevention-program-elements>

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## How Can We Do Better Training and Communication



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## How can we do better: *Training and Communication*

Begin by doing more of what we know we should be doing (but don't)

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### Leading Practices

- Short
- Salient
- Show
- Striking
- Story
- Social



The Efficiency vs. Engagement Balance

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### The Brave New World: Compliance Content Programming

#### PROCUREMENT

- PowerPoint
- One stream
- All "push"
- "Hours per learner"
- Pick one solution provider every 3 years
- "Checking the Box"

#### PROGRAMMING

- Multiple formats and media / blended
- Multiple streams
- "Pull" beats "push"
- Short and repeated
- Multiple providers
- Marketing elevated behavior

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### How can we succeed: Your Training and Communication

Begin by doing more of what we know we should be doing (but don't)

**Focus on how to handle negative reports**

**Show that reporting mattered.**

**Lead with Values (Not Risks. Not Threats. Not law school discourse.)**

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## The Trouble with Rules

Who says I gotta?  
 How do I remember?  
 How do I "skirt"?  
 What about the "Grey"?  
 Sorry, what was that critical thing again?




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What can I remember?  
  
 What applies to multiple situations?  
  
 What "trumps" our desire to bend rules?

## VALUES

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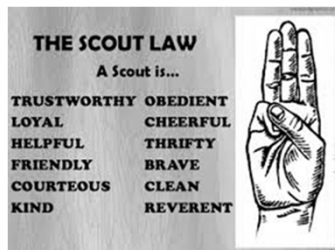
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What can I remember?  
  
 What applies to multiple situations?




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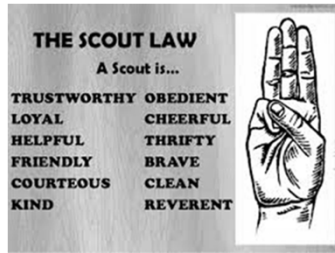
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**TACTIC 1:**

*Integrate values  
into short, regular  
communications*



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**TACTIC 2:**

*Make values the  
centerpoint of  
courseware*



I'm making a commitment . . .

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**TACTIC 3:**

*Build a social  
consensus around  
values and  
language*



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How can we succeed:  
*Your Training and Communication*

Begin by doing more of what we know we should be doing (but don't)

Focus on how to handle negative reports

Show that reporting mattered.

Lead with Values (*Not Risks. Not Threats. Not law school discourse.*)

**Own it. Be honest.**

**Practice what we preach**

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*How Can We Do Better*  
**Culture**



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**Alyeska's Cultural Journey**  
*(It's not a destination)*

Open Work Environment

Employee Concerns Program

"Speak up, Step up" Expectation

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### Creating an Open Work Environment (OWE)

1. Code of Conduct – Foundation for behavioral expectations, clear & direct
2. Tone from the Top – Leadership as a role model, leadership communications

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### Creating an Open Work Environment (OWE)

3. Provide Multiple Reporting Avenues – Supervisor, HR, Employee Concerns Program, Hot Line
4. Periodic Surveys – Feedback opportunity, take pulse of organization, allow for trending

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### Creating an Open Work Environment (OWE)

5. Hire for Culture – Incorporate expectations into interview process, reference checks
6. Hold ALL employees accountable – Performance expectations, consistent discipline

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### Creating an Open Work Environment (OWE)

7. Training – Reinforce expectations, concrete examples, bystander training
8. Recognition – Positive reinforcement of desired behaviors, Award Programs, Compliance & Ethics Week celebrations

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## How Can We Do Better Advocacy




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### CROWD-SOURCING SOLUTIONS

#### Advocating for Action

- Accountability & Discipline
- Encouraging Reporting
- Getting a seat at the table
- Some other solution?




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How can we do better:  
*Your Ideas*

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## How can we succeed: *Your Culture*

Avoid "us versus them"

Encourage dialogue (even non-constructive dialogue to a degree)

Talk openly about making decisions based on shared corporate values

Respect and transparency

**Speak Up Culture**

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## Questions /Discussion




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**Thanks!**

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## Appendix



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