



TEXAS WOMAN'S
UNIVERSITY

Yin and Yang—Leveraging the Strengths of Legal and Compliance

SCCE 17th Annual Compliance and Ethics Institute | October 24, 2018 | Caesars Palace | Las Vegas

Speakers



Destinee Waiters
General Counsel & AVP Compliance
Texas Woman's University



Deena King
Director of Compliance
Texas Woman's University

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Speakers

- Destinee

- NACUA Board of Directors (2015-2018)
 - Over 10 years experience in the areas of Higher Ed Law and management
 - student life and academic matters,
 - human resources management, wage and hour issues, discrimination and harassment, contract disputes, operations, risk management, compliance.

- Deena

- Author of *Compliance in One Page*
- Over 30 years experience in IT, audit, and compliance
 - 7 years with the CIA
 - 5 years at Brigham Young University
- Specialty is designing, implementing, and directing university compliance programs

3

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About TWU

The nation's largest university primarily for women

Founded in 1901

Faculty/Staff:

Part- and Full-time 1,322

Adding GA, Adjunct, Students: 2,432 (as of 8-1-18)



"Redbud Lane" - Denton

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About TWU

Located in Denton, Texas

Denton 12,868

Dallas 1,426

Houston 1,361

Total: 15,655



Houston



Dallas



Denton

Undergraduate/Graduate: 66.6%/33.4%

Women/Men (1972/1994): 87.7%/12.3%

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Agenda

- Different Roles of Legal and Compliance
- How These Work Together
 - Compliance Activities and Strengths
 - Legal Activities and Strengths
- Real World Case Studies

6

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Different Roles

How Legal and Compliance are Different

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Converting Legalese to Plain English



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8

Different But Aligned

Legal

- Advise and protect the University from legal problems
- Defend the actions of the University

Compliance

- Preventing & detecting legal misconduct
- Constant vigilance on the integrity of the compliance program and protecting internal systems
- Supporting a culture of accountability (especially at levels of management)

9

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Compliance Activities

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The Federal Sentencing Guidelines

§8B2.1. Effective Compliance and Ethics Program

(b)(1) The organization shall establish standards and procedures to prevent and detect criminal conduct.

“Written standards, policies, and procedures”

11

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The Federal Sentencing Guidelines

§8B2.1. Effective Compliance and Ethics Program

(b)(5)(A) The organization shall take reasonable steps—to ensure that the organization’s compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct...

“Monitoring and auditing”

12

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The 17 “Shalls”

§8B2.1. Effective Compliance and Ethics Program

- (a) To have an effective compliance and ethics program, for purposes of subsection (f) of §8C2.5 (Culpability Score) and subsection (b)(1) of §8D1.4 (Recommended Conditions of Probation — Organizations), an organization shall—
 - (1) exercise due diligence to prevent and detect criminal conduct; and
 - (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

Such compliance and ethics program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting criminal conduct. The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct.

Guidelines Manual (November 1, 2016) || 533

13

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The “Seven Elements”

1. Written standards, policies, and procedures.
2. Compliance “administration” (i.e. a compliance officer, etc.).
3. Communications, training, and education.
4. Monitoring and auditing.
5. Reporting and investigation.
6. Enforcement and discipline.
7. Response and prevention.

14

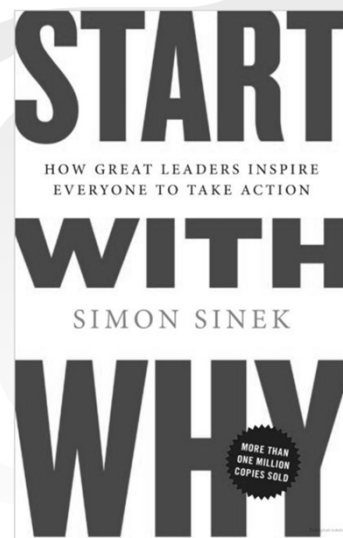
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Beyond the Seven Elements

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Start With Why

The Biggest Why



16

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Four Characteristics of Accountability

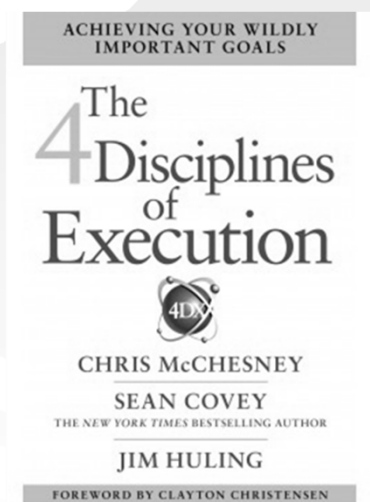
- Clear Expectations
- Responsibility/Authority Assigned
- Progress Monitored
- Results Reported
- *What*
- *Who*
- *"Executing the project"*
- *When*

17

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Lag Measures Versus Lead Measures

- Lag measures
- Lead measures



18

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Legal Activities

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Legal Activities: *Model Rules of Professional Conduct: Preamble & Scope*

- As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.
- As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.
- As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others.
- As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

20

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Legal Activities

Rule 1.2: Scope of Representation

- A lawyer **shall** abide by a client's decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued...
- A lawyer **shall not** counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent...
- *may* discuss the legal consequences of any proposed course of conduct

Rule 1.13 Organization As Client Client-Lawyer Relationship

- If a lawyer for an organization knows that an officer* associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation **of a legal obligation to the organization**, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

21

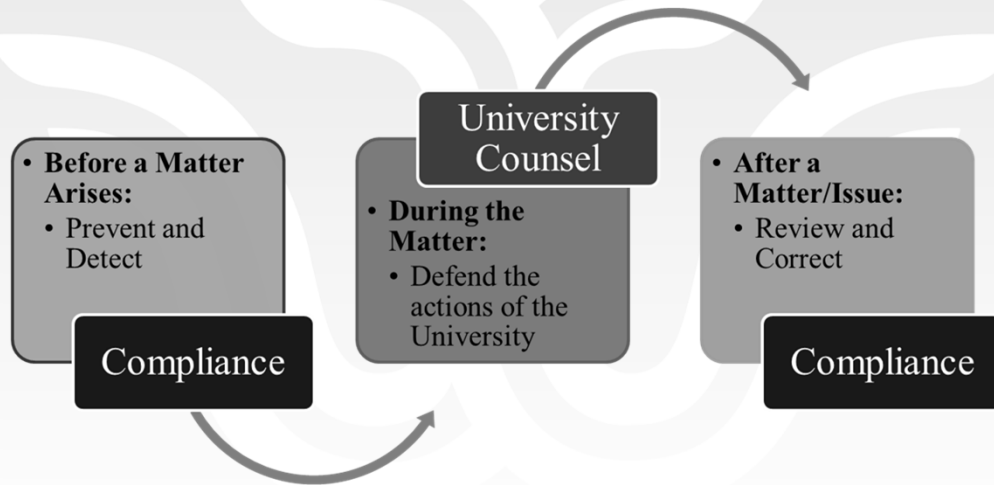
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How These Roles Work Together

Yin and Yang In Action

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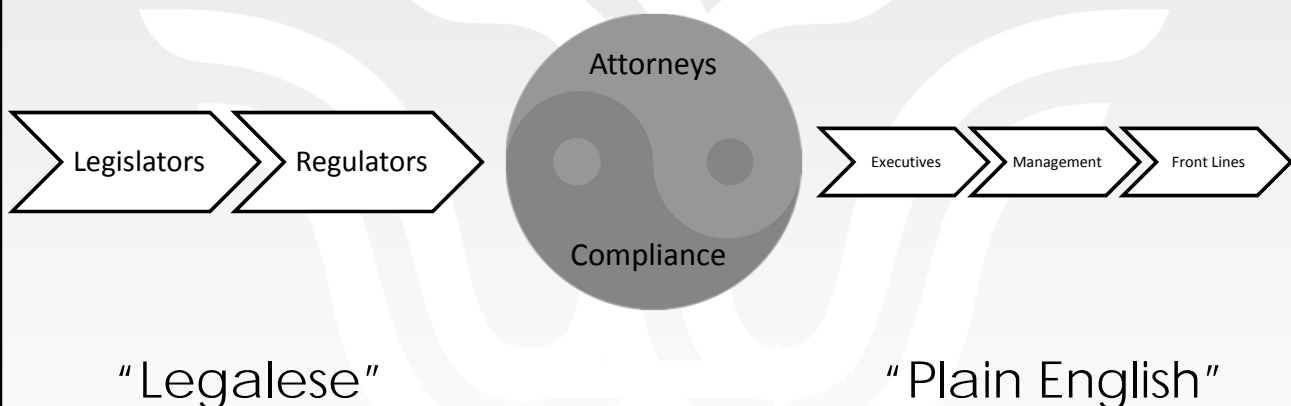
Aligned Priorities and Actions



23

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Converting Legalese – The Partnership



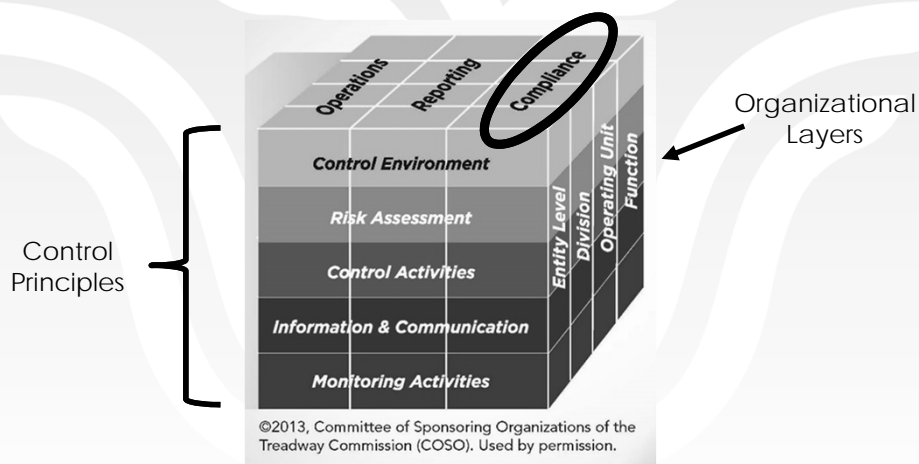
24

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Compliance at TWU

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The COSO Internal Control - Integrated Framework (1992/2013)



26

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The Eight Elements at TWU

1. Identify Requirements/Assess Risk
2. Establish/ Modify Compliance Organization
3. Document Standards, Policies, and Procedures
4. Communicate Standards, Policies, and Procedures
5. Implement, Promote, and Enforce
6. Monitor, Audit, and Report
7. Continuous Improvement
8. Leadership/Corporate Culture

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27

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TWU Compliance Process



Disclaimer: This model is provided as guidance only and can be modified to meet your needs. This document does not guarantee prevention of lawsuits, judgments, or fines and is not a substitute for the advice of an attorney. All information is provided without warranty, express, implied, or otherwise, including as to their legal effect and completeness.

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Before a Matter Arises

Compliance Activities, Strengths, and Competencies

Legal Activities, Strengths, and Competencies

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Prevention & Detection

1. Identify Requirements/Assess Risk
2. Establish/ Modify Compliance Organization
3. Document Standards, Policies, and Procedures
4. Communicate Standards, Policies, and Procedures
5. Implement, Promote, and Enforce
6. Monitor, Audit, and Report
7. [Not used in this phase.]
8. Leadership/Corporate Culture

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30

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Compliance Skills and Competencies

1. Compliance Research/Facilitate a Risk Assessment
2. Design or make recommendations for the organizational structure; form committees and task forces
3. Write Standards, Policies, and Procedures
4. Design and execute communication plans and training plans
5. Design and execute action plans
6. Design and implement monitoring plans and audit plans and/or collaborate with internal audit/management
7. [Not used in this phase.]
8. Lead and influence

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31

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Legal Support

- Identify Legal Mandates
- Provide Legal Interpretation
- Counsel and Advise on Implementation of Policies

32

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During the Matter

Compliance Activities, Strengths, and Competencies

Legal Activities, Strengths, and Competencies

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Legal Skills and Competencies

- Provide legal representation/defense at hearings and other judicial and administrative proceedings
 - Gather factual evidence
 - Report and provide updates
 - Negotiate on behalf of the client

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34

Compliance Support

- Assists with “Gather factual evidence”
 - Documentation of...
 - Compliance program design
 - Compliance program implementation

35

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After a Matter/Issue

Compliance Activities, Strengths, and Competencies

Legal Activities, Strengths, and Competencies

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Detection & Correction

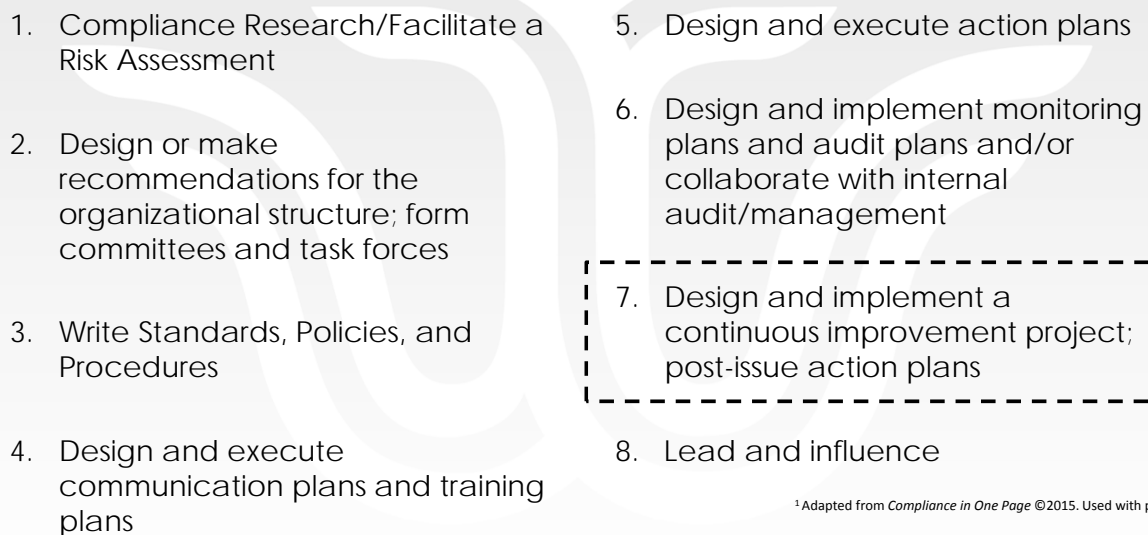


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37

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Compliance Skills and Competencies



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Legal Support

- *Controlling for more damage!*
 - *Evaluates the current practices that lead to the “matter”*
 - *Counsels and advises on development and updating policies and procedures*
 - *Facilitates the updating of policies and procedures with unit and divisional leadership*
 - *Supports business case for appropriate changes*
 - *Advising the Leadership of the Consequences of action or inaction*

39

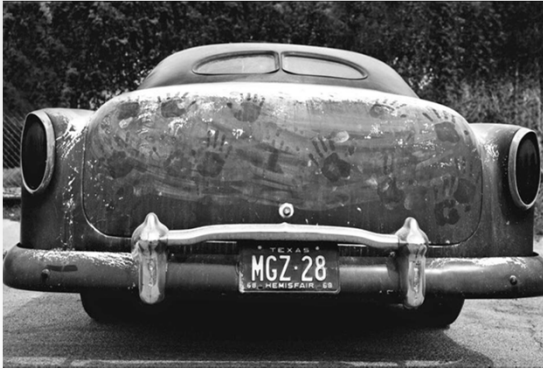
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How These Roles Work Together

Real World Case Studies

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"Ghost Tracks"



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41

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**Employees Must
Wash Hands
Before Returning
to Work**



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Grassy Incorporated - The Corporate Campus



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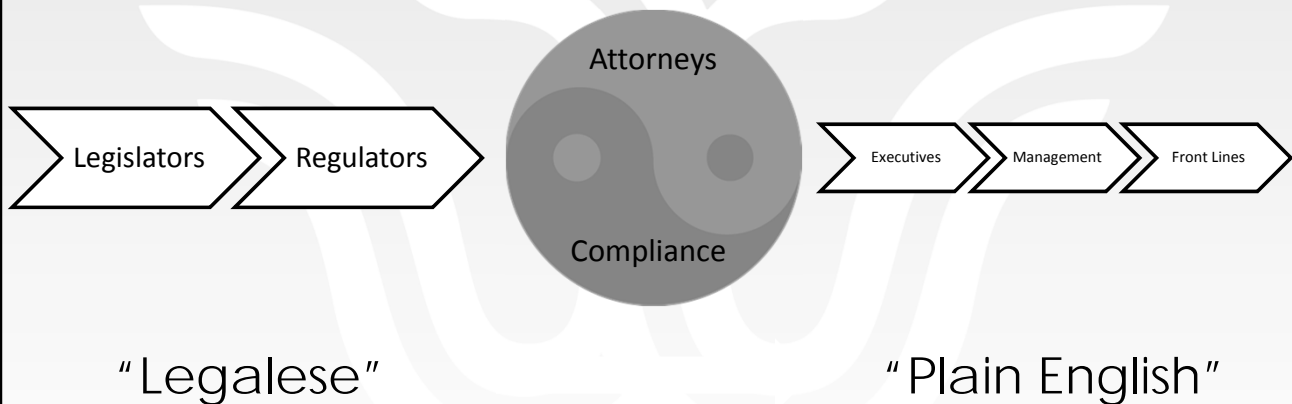
43

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Summary

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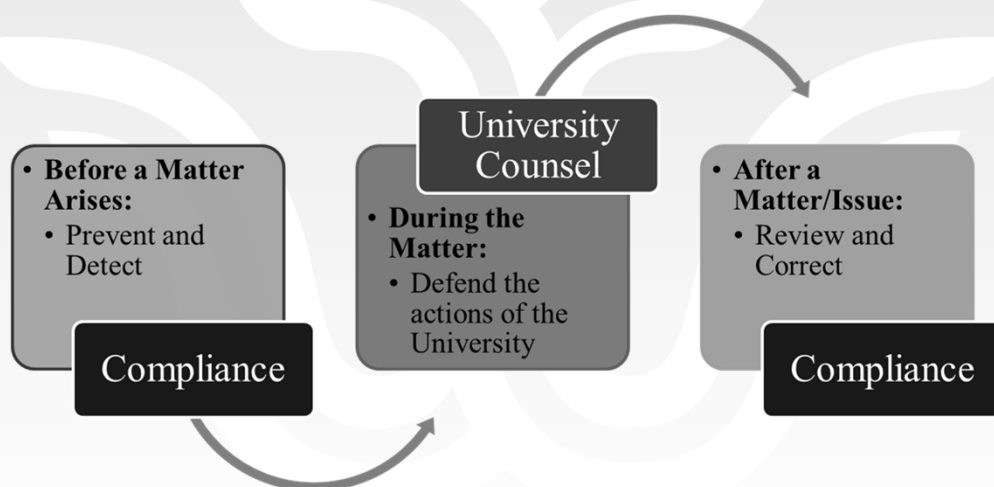
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45

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Aligned Priorities and Actions



46

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Questions?

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Thank you!

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