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Measuring Program Effectiveness: What Works and What Doesn't

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**SOCIETY OF CORPORATE
COMPLIANCE AND ETHICS**



Ethical Leadership Group

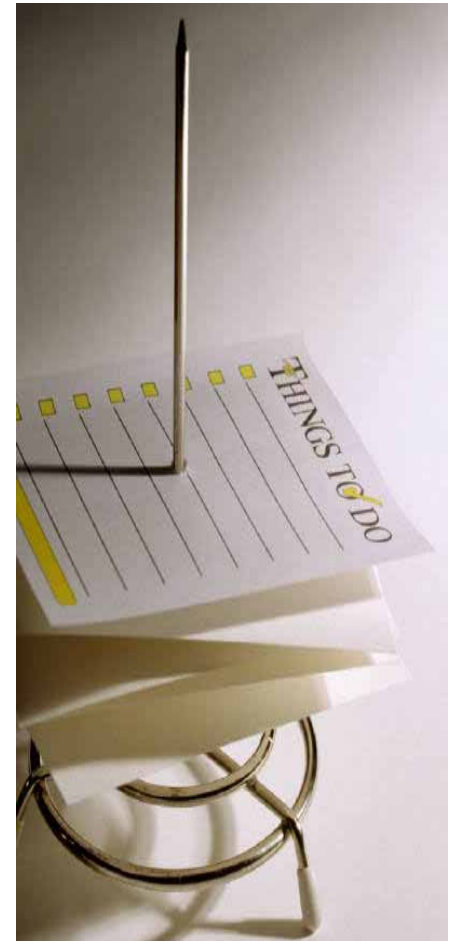
- Founded in 1993
- Consulting in ethics, compliance, values and corporate responsibility is all we do
 - Assessment
 - Communications
 - Training
 - Strategy
- Worked with over 25% of Fortune 200
- Worked in 40 countries on every continent
- Obsessed with quality, thoroughness, creativity, and service

Ethical Leadership Group

- Ed Petry, Ph.D.
 - Vice President, Ethical Leadership Group
 - Program Director, Conference Board
 - Executive Director of ECOA, 1995-2004
 - Member, Advisory Panel, US Sentencing Commission, 2001-2003
 - Member, Ethics Oversight Committee, US Olympics, 1999-2002

Reasons for conducting assessments

- Improve the program
- Ensure compliance with policies and law
- Determine and document resource needs
- Demonstrate progress
- Identify training needs
- Provide feedback
- Set priorities



US Sentencing Guidelines

- (5) *The organization shall take reasonable steps—*
 - (B) *to evaluate periodically the effectiveness of the organization's compliance and ethics program*

- (2) (A) The organization's governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall *exercise reasonable oversight* with respect to the implementation and *effectiveness* of the compliance and ethics program.
- (B) High-level personnel of the organization shall *ensure* that the organization has an *effective compliance and ethics program*, as described in this guideline.

US Sentencing Guidelines

2. Factors to Consider in Meeting Requirements of this Guideline.—

(A) In General.—Each of the requirements set forth in this guideline shall be met by an organization; however, in determining what specific actions are necessary to meet those requirements, *factors that shall be considered include: (i) applicable industry practice or the standards called for by any applicable governmental regulation; (ii) the size of the organization; and (iii) similar misconduct.*

Some assessment techniques used:

- Employee surveys
- Employee focus groups
- Internal audits
- Third party evaluations
- Third party audits
- Helpline call tracking



When assessing, don't neglect...

- Intuition and gut reaction
- “Flavor” of the calls
- Management response to issues raised or audit findings
- Off-hand remarks
- Management willingness to allow the Ethics Office to present at department meetings
- Trends of advice questions and investigation results

Hurdles to getting started

- Lack of time or resources
- Program is too new (“not yet”)
- Program is established, integrated (“no need”)
- Uncertainty about what the standards are (what is “effective”?)
- Normal silos and turf battles
- Uncertainty about how best to conduct the assessment
- Concern that data would be used adversely in litigation
- Concern about negative results (reflecting on you, others)
- Lack of commitment from the organization to respond to results
- Skepticism about ability to “measure ethics”

Clearing the hurdles

- Make the business case
- Refer to industry best practices (and “common” practice)
- Refer to help in mitigation, charging decisions
- Get support from other ethics officers
- Commit to involve others in the development of the assessment
- Ensure leadership and management attention in setting the right tone
- Prioritize assessments and goals (risk assessment first?)
- React “well” to problems found
- Solicit and provide feedback throughout the process

Steps for effective assessments

Determine what needs to be measured

Use results from your risk assessments

Examine available tools and data already available to you

Gather objective, measurable findings and subjective opinions

Interviews; focus groups; surveys; document reviews; direct observation

Make practical, prioritized recommendations

What is “effective?”

Different perspectives:

- Ethics officer
- Employees
- Senior management
- Board of Directors
- Customers/suppliers
- Shareholders
- US Attorneys
- Federal Sentencing Guidelines



Assess the following elements

1. Risk assessment (USSG # “8”)
2. Structure and leadership (#2)
3. Communications and training (#1,4)
4. Reporting and response (#5,6,7)
5. Integration into HR practices (#3,6)
6. Monitoring and assessment (#6)

...and culture

What works

Assessments step by step

- *Sample objectives for each step*
- *Sample requirements to assess*

1. Risk assessment

- Objective
Design and implement the ethics and compliance program so that it appropriately addresses legal and reputational risks faced by the company
- Requires
 - Periodic assessment of legal and reputational risks by informed personnel
 - Remediation plan based on risk assessment

2. Structure and leadership

- Objective
To ensure that efforts toward achieving the ethics and compliance goal are managed effectively and efficiently throughout the company.
- Requires
 - Board oversight and engagement
 - Senior management and line leadership
 - In individual roles and often as a leadership committee
 - Designated E&C officer(s) with adequate resources and appropriate reporting relationships
 - Resources include time, and appropriate people support
 - Business units and corporate
 - Coordination of “ethics” issues with “compliance”
 - Appropriate documentation

3. Communications and training

- Objective
To clearly communicate the standards necessary for employees to do their jobs the right way
- Requires
 - Communications and training based in Company business and values
 - Clear, understandable Code of Conduct, Policies and Procedures
 - Distribution that reaches employees as appropriate
 - Creative, periodic delivery of E&C messages (articles, posters, etc.)
 - Engaging training on issues relevant to employee roles and responsibilities
 - All levels, including Board

4. Reporting and response

- Objective
Provide multiple, trusted means for employees to ask questions and report concerns of misconduct, and respond appropriately to those questions and reports
- Requires
 - Ability to contact credible resource anonymously via phone email/internet
 - Managers who understand and perform role as resource
 - Ironclad processes for reporting accounting matters and major issues to Board
 - Prompt, discreet, professional investigations of allegations
 - Use of reports to identify trends, issues, remediation needs
 - Mechanism for ensuring relative consistency of discipline (see #5)

5. Integration into HR practices

- Objective
To continuously align human resources policies and Hr/management practices with ethics and compliance
- Requires
 - Incorporating ethics/compliance/integrity in the hiring process
 - Including ethics/compliance/integrity as key components of the performance appraisal and promotions processes
 - Asking for knowledge of incidents of wrong doing in the exit interview process
 - Disciplining individuals appropriately for conduct inconsistent with the Code of Conduct

6. Monitoring and assessment

- Objectives

To effectively audit and monitor for indications of conduct inconsistent with the Company's standards, and to periodically assess the effectiveness of the Company's ethics and compliance efforts.

- Requires

- Auditing/monitoring in key risk areas
- Periodic auditing of compliance program processes
- Monitoring affiliates, agents and acquisition candidates for appropriate behavior
- Periodically assessing for program effectiveness

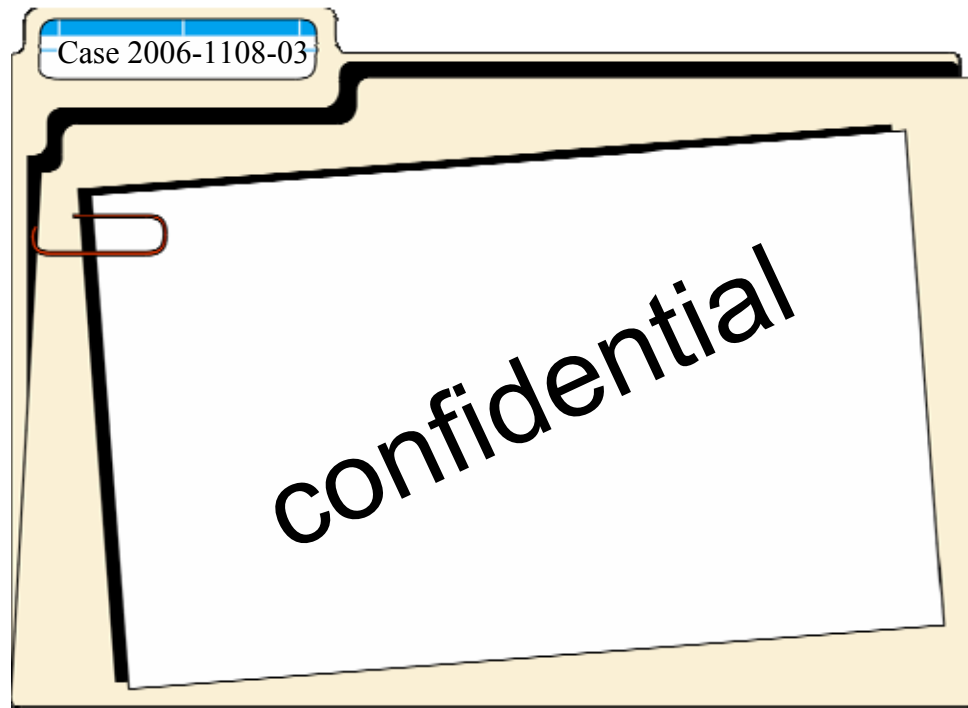
Optional: deep dives

- Based on your risk assessment, which of these areas is most important to “test”?
 1. Anti-corruption/FCPA
 2. Antitrust
 3. Privacy
 4. Export controls
 5. Conflicts of interest
 6. Other?

What works, and what doesn't - Surveys

- Why is there is so much emphasis on surveys?
- Why surveys don't always deliver:
 - Bad questions, bad design
 - Inadequate benchmarking
 - Employee mistrust
 - Pressure to provide the “right” answers
- Fixing the problems

Case Study:



Case Study I

Your company is proud of its best practice E&C program and its culture and leadership that supports it. Recently you've built E&C goals into management performance reviews and they are now key factors in bonus awards. Employee opinion survey results are used as part of the reviews.

You have also launched an ambitious, on-going risk assessment program and are using surveys as a tool to locate problem areas.

Case Study II

Three years ago you had a major breakthrough with your Board. You now have 30 minutes every year to present on E&C initiatives, metrics, trends and major investigations.

Your GC would like you to consolidate your metrics into a single “ethics score” which can be benchmarked against others and tracked over time. He has also encouraged you to increase your data-mining efforts to get the most from your metrics.

Case Study III

Your in-house employee opinion surveys, administered by HR, have consistently had excellent participation rates and in recent years very high scores with upward trends. But last month a third party conducted confidential employee focus groups as part of a culture assessment.

Many of the same questions from the survey were asked. The scores were 20% to as much as 40% lower.

Why so much emphasis on surveys?

- The Sentencing Guidelines and best practices call for periodic program assessment and on-going risk assessments.
- Boards and executives want to see empirical evidence of successes, failures, and trends.
- Charts and graphs help everyone understand the program. They are now the norm.
- Measuring your own program is a prerequisite to benchmarking with others.

Why so much emphasis on surveys?

- Already in place and are well accepted. Databases, infrastructure and intranet tools already exist. HR has done the hard work to solicit support from managers.
- Consultants, associations and vendors all have survey tools and have heavily marketed their use.
- Survey results have become a staple at every industry conference (and beyond).
- Surveys are relatively inexpensive.
- There's truth to the maxim "you only get what you measure."

Bad questions

Bad design

- Leading questions are a common culprit:
“Do you know that you can call our Helpline anonymously - Yes or No?”
- “Social desirability”
“I am more, or less aware, or about the same (choose one) of the importance of ethics than I was a year ago?”

Fixing the problem

- Momentum can be an obstacle - “don’t fix what isn’t broken” attitude.
- Fear that if questions changed it will be impossible to benchmark and track trends.
- Remember: survey writing is a specialized craft. It’s not as easy as it looks. Don’t go it alone.
- The right expertise is probably in-house. May need to look to those you don’t often work with, such as the Marketing Department.

Benchmark wisely

- Apples and Oranges
 - Peer data from comparable companies is best – if you can get it.
 - Best benchmarking not always industry-based.
 - National opinion polls interesting, but not particularly helpful for benchmarking.
 - Fixing the problem – Choose benchmarks carefully, then add context, experience. (Subjective opinions – including yours - crucial for context)

Maintaining trust

- “Why are they asking so many demographic questions? Won’t they be able to identify me?”
- Fixing the problem
 - Push back.
 - Keep the demographics to a minimum.

Maintaining trust

- Fixing the problem
 - The manner in which the survey is administered and collected can also contribute to mistrust.
 - Phone, email or internet surveys—especially those conducted or hosted by the company itself—are viewed with suspicion.
 - Unexplained bar coding, requiring hand-written responses.

Pressure

- Beware of Pressure to Ensure the Right Answers
 - Managers prepping employees under the guise of training.
 - Outright cheating, manipulating the employee selection process.
 - Don't believe "it can't happen here."

Pressure

- Are performance reviews or bonuses tied to survey results?
 - If yes, then is there pressure to manipulate the findings?
- Do employees and managers know that “wrong” answers can lead to unwanted attention from Corporate?
 - If yes, how do they handle the underlying motivation to deliver “right” answers?

Additional concerns

- What are the consequences when inaccurate survey data is used as a principal element in risk assessments and result in the misallocation of limited resources?
- Has the penchant for surveys, coupled with other recent trends, altered the way your ethics office works?

Additional concerns

- Has control of the ethics and compliance office shifted and are you inadvertently helping to make the case that ethics can be folded into Human Resources or perhaps outsourced?
- Do you now spend too much time at 30,000 feet and less time in the trenches?
- If we benchmark against each other and, at least some of the data is inaccurate, do we have a reliable standard to measure our effectiveness?

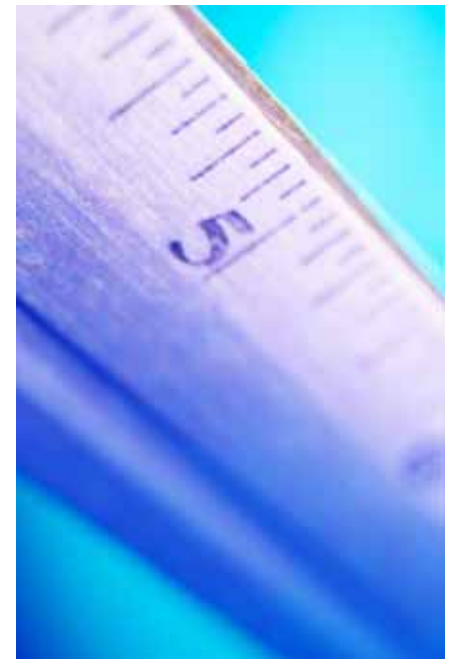
Additional concerns

- How can we successfully incorporate metrics into our work while maintaining an emphasis not only on compliance but also on behaviors, relationships and values?
- Is there understanding that – at best - surveys measure employee perceptions, but not actual misconduct? “You can get a great “ethics score” and still have a felony-level price-fixing conspiracy that has been going on for years.” – Joe Murphy

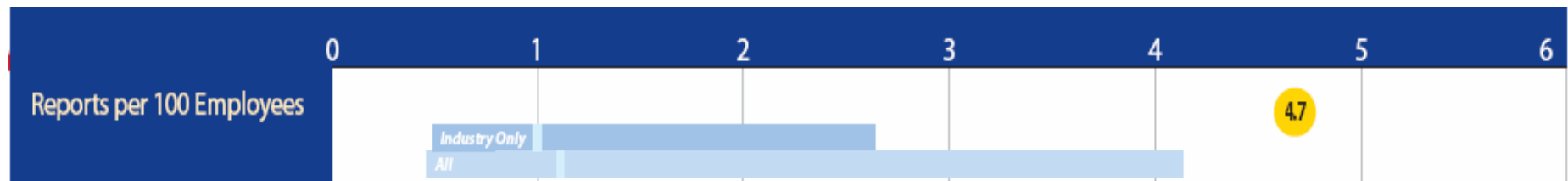
Beyond surveys

most reliable program metrics

- Helpline trending and tracking – by far
- Any metric or combination which helps spot trends
- Employee feedback from helpline usage and post-training audits and evaluations
- Employee direct feedback
- Audits
- No single metric - a combination of all



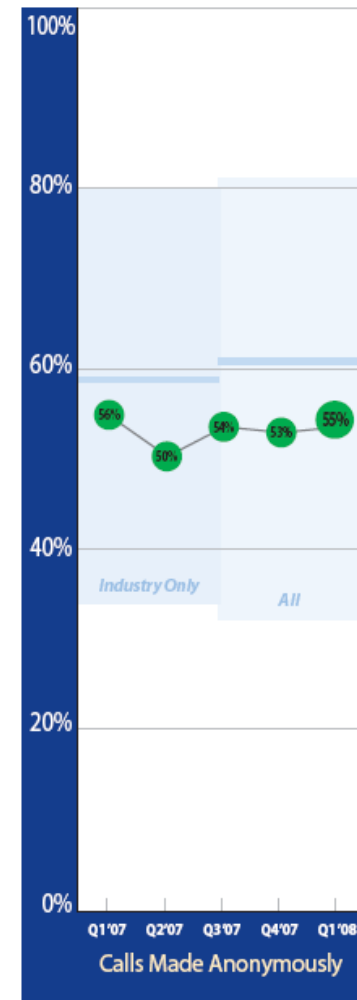
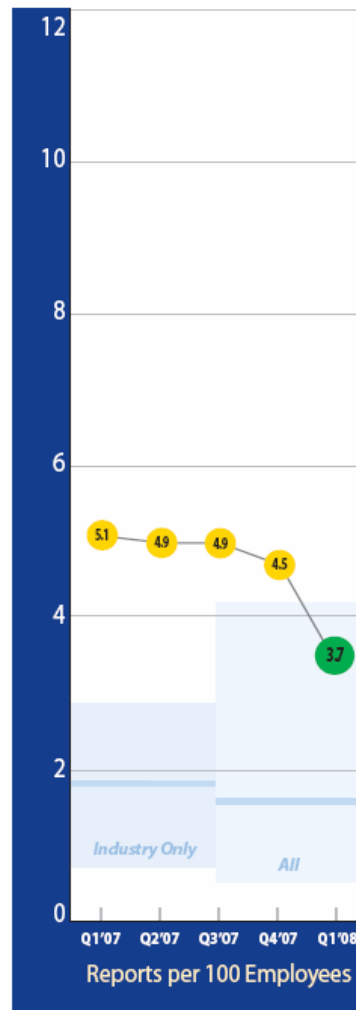
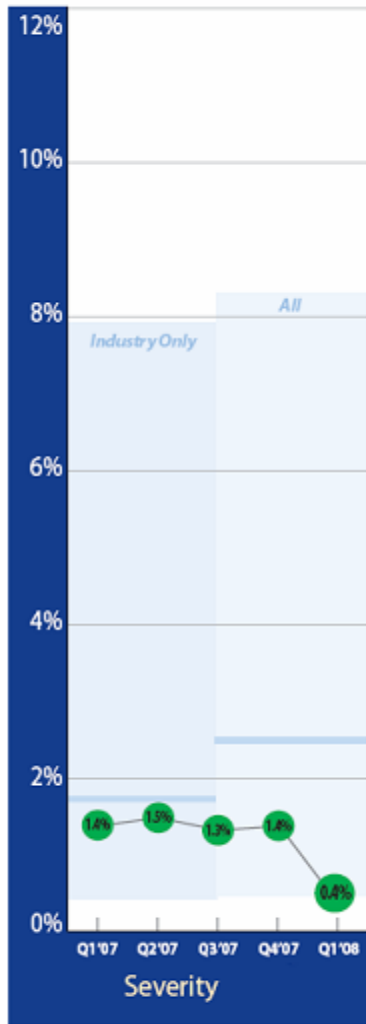
New analysis tool we are using



Recommended actions for Acme based on data outlier:

- ▶ If training or an awareness campaign related to hotline/helpline reporting has recently been conducted, the level of reports should be monitored for the next 3 quarters
- ▶ If neither is the case, Acme should conduct an employee survey or focus groups to determine the root cause of the outlier

Trends over time



No easy answers but a recommended approach...

- Determine what information is needed and how that data will be used
- Evaluate the organization's culture and what can reasonably be accomplished
- Integrate measurements with other organizational measurements
- Prepare yourself and other senior managers to respond quickly to the findings
- Keep in mind that each audience has their own definition of "effective"

Measuring Program Effectiveness: What Works and What Doesn't

"Measure twice, cut once"



Questions?

