NAVEX GLOBAL™
The Ethics and Compliance Experts

Our Approach to Risk Assessment

WHY CONDUCT AN ASSESSMENT?

Program and culture assessments

Assessments have long been recognized as having a critical impact on the effectiveness of ethics and compliance efforts. Best practice programs have often employed assessments – formal and informal – to identify program weaknesses and in general to help identify areas needing improvement. In recent years the importance of assessments has been increasingly reflected in legal standards. For example, the *US Sentencing Guidelines* include as one of their elements of an effective program "to evaluate periodically the effectiveness of the organization's compliance and ethics program." In addition, the Guidelines note that organizations should incorporate and follow applicable industry practice, a requirement which points toward program assessment as well as benchmarking of program elements.

The Guidelines also call on organizations to "promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law." This emphasis on culture suggests that considering the impact of the ethics and compliance program on the organizational culture is important when attempting to answer whether is program is truly effective.

In a similar vein, the US Department of Justice admonishes that a "paper program" is not sufficient. In the *US Attorneys' Manual*, the DoJ states that Prosecutors should assess corporate programs and "should therefore attempt to determine whether a corporation's compliance program is merely a 'paper program' or whether it was designed, implemented, reviewed, and revised, as appropriate, in an effective manner."

Given this guidance, it is prudent for companies to conduct assessments, before they become subject to such legal scrutiny.

Compliance and reputational risk assessments

In addition to program and culture assessments, compliance risk assessments are a foundational element of the Guidelines: "In implementing subsection (b) [elements of an effective program], the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process."

While the Guidelines only require conducting an assessment of criminal risk, most companies broaden the assessment to include legal and regulatory risks of all types. The line between a criminal and a civil violation can be a fine one. The expenses and reputational damage flowing from a civil violation can be as great as that of a criminal one, while there is little to no added cost in conducting a more comprehensive risk assessment. And the DoJ does not seem to differentiate when it states "Compliance programs should be designed to detect the particular types of misconduct most likely to occur in a particular corporation's line of business."

Many companies also incorporate consideration of ethics and reputation risks along with compliance risks. This is especially important in times of rapid regulatory change. Past prosecutions and enforcement efforts are lagging indicators of legal risk. Prosecutors, regulators and legislators look to practices deemed unethical by customers, media, NGO's and the public as sources of increased enforcement scrutiny. Furthermore, for many firms the costs of a reputational failure may exceed those of a purely legal nature.

The business imperative

Even if there were no legal reasons for conducting assessments, doing so makes sense from a business perspective. Each of these forms of assessment helps leadership and the Board understand and manage organizational risks. Assessments help leadership prioritize scarce resources. Perhaps most importantly, assessments help organizations perform better by shedding light on how ethics and compliance initiatives are perceived by employees and what impact they are having. This in turn can help a company leverage its most important asset – its people.

A significant body of research supports the linkage between employee perceptions of an organization's ethics program, culture and workplace behavior. Employees who believe that their employer is committed to integrity are more engaged, more productive and less likely to act in ways inconsistent with their employer's standards.

Good assessments, then, help reduce risks, reinforce reputations, and improve employee engagement.

OUR DISTINCTIVE APPROACH

Our assessments are tailored to meet each client's objectives. Everyone says this – but it is our hallmark. We work carefully with the client at every step of the assessment to ensure that the process and the deliverables are practical, high quality and suited to their needs.

Standards in the ethics and compliance field are evolving rapidly, and differ from industry to industry. We believe the consulting approach should be different too. Deploying inexperienced consultants—no matter how bright—is not our approach. ELG offers only experienced consultants and former ethics officers who offer actionable, calibrated insights.

Our consultants have:
- Started and managed ethics and compliance programs for major corporations
- Served as U.S. Department of Justice attorneys
- Served on the U.S. Sentencing Commission's Advisory Panel
- Acted as Corporate Monitors on behalf of the U.S. government
- Conducted assessments on behalf of the U.S. Department of Defense
- Led the Ethics and Compliance Officer Association

- Engaged in meetings with European data protection agencies and helped guide whistleblowing scheme opinions

Our experience includes work in every major industry with companies widely perceived as embodying best practices. We have worked with many great companies; a sampling includes:

Abbott Labs	CVS Caremark
Allstate	Edison International
Toyota	Boeing
Hewlett-Packard	Weyerhaeuser
McDonald's	Honda
Accenture	Takeda
KPMG	Goldman Sachs

In addition, our assessment work includes oversight as a corporate monitor on behalf of the United States Government.

Confidentiality and Privilege

If desired, ELG will conduct assessment work under the direction of counsel in order to assert attorney-client privilege. In our experience, there are advantages and disadvantages of invoking attorney-client privilege. We are happy to discuss these with the organization's Legal Department.

ETHICS AND COMPLIANCE ASSESSMENTS: AN OVERVIEW

There is no standard, legally mandated approach for ethics and compliance assessments. As a result, there are a variety of approaches, and a considerable amount of confusion. This white paper attempts to reduce confusion by describing the Ethical Leadership Group approach to assessments, an approach refined since 1993.

In the field of ethics and compliance, there are three main types of assessment: program, culture and risk. While highly interrelated, each of these provides unique outcomes and benefits to the organization being assessed.

An **ethics and compliance program assessment** reviews the elements of an organization's ethics and compliance program in light of standards and best practices. It enables the organization to identify programmatic vulnerabilities, and develop an action plan to address them. It also provides information and assurance for the Board of Directors.

An **ethics and compliance culture assessment** measures and understands employee perceptions of the organization's program and culture. It enables the organization to identify cultural characteristics that support ethical behavior as well as those that undermine it, and it identifies options for addressing these characteristics. Perhaps most importantly, it provides leadership and the Board insights into whether the program is effective, as seen through the eyes of employees.

A **compliance and reputational risk assessment** identifies and evaluates risks that the company faces based on its business structure and operations, competitor practices and countries in which it does business. A good risk assessment periodically analyzes these risks in light of evolving regulatory standards and enforcement patterns as well as public expectations of responsible organizations. In addition, the organization's current mitigation efforts for each risk area are inventoried and evaluated. The risk assessment provides a roadmap for prioritization of resources amongst risk mitigation efforts.

In the pages that follow we provide more information on each of these types of assessments and we also provide information on the four main methodologies we use to conduct quality assessments: **Surveys, Focus Groups, Interviews and Benchmarking**

Although we explain each type of assessment and each type of methodology separately, it is important to note that after analyzing the options, most organizations choose to combine assessment types in order to achieve their desired objectives. For example, many companies conduct program and culture assessments at the same time in order to provide leadership and the Board with an assessment of programmatic elements and effectiveness. And many risk assessments incorporate aspects of a program and culture assessment in order to have a robust and thorough review of their overall risks. We call this integrated approach an **Integrity Risk Assessment™** (IRA).

ETHICS AND COMPLIANCE PROGRAM ASSESSMENTS

Our ethics and compliance program assessments are designed to help you answer these questions:
- How does our program stack up against others in our industry?
- Are we meeting the standards of the Sentencing Guidelines?
- What areas of the program should we prioritize over the next few years?
- How can I get leadership, management and our Board appropriately engaged?

We assess the program using the standards of the U.S. Sentencing Guidelines for Organizations ("USSG"), guidance from government bodies (such as the DOJ and applicable government regulatory authorities), deferred prosecution agreements, corporate integrity agreements and our best practice research developed over the past sixteen years.

Our principle deliverables - program assessment reports - are valuable tools that can help ethics/compliance leadership communicate their strengths as well as their needs to senior leadership and the Board.

We organize our review and report in six main categories that encompass the aforementioned standards and are readily understood by executive leadership and the Board of Directors. These six areas, and the objective that we use to measure performance, are listed below.

1. Structure and Leadership
Ensure that efforts toward achieving ethics and compliance goals are managed effectively and efficiently throughout the Company.

2. Communications and Training
Clearly communicate the standards necessary for employees to perform their jobs the right way.

3. Reporting and Response
Provide trusted ways for employees to report concerns of misconduct, and professional processes to respond to those concerns.

4. Integration with HR
Align Human Resources policies and HR/management practices with compliance and ethics.

5. Monitoring and On-going Assessment
Audit and monitor for indications of conduct inconsistent with the Company's standards, and assess the effectiveness of the Company's ethics and compliance efforts.

6. Risk Assessment Processes[1]
Design and implement a risk assessment process to ensure that the ethics and compliance program appropriately addresses legal and reputational risks faced by the Company.

To conduct a quality program assessment, we review program documents and materials. We also interview subject matter experts from ethics and compliance as well as a small number of leaders from the company. Many companies choose to integrate a culture assessment with the program assessment, and in these cases we also conduct focus groups and/or surveys.

We analyze this information and benchmark the program using our years of experience, proprietary assessment protocols, and the comprehensive NAVEX Global reporting systems database (For more information about NAVEX Global, see Appendix B). We deliver draft reports to provide ample opportunity for clarification of facts found and calibration of action steps that are recommended.

"Your program assessment was extremely helpful.
It became the basis for our three year plan."
--Ethics Officer, F500 Tech Company

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[1] Note that in a stand-alone program assessment, we do not conduct a risk assessment, but evaluate the effectiveness of the organization's current compliance risk assessment processes.

CULTURE ASSESSMENTS

A company should consider conducting an ethics culture assessment in order to answer these questions:

- How do employees perceive our ethics/compliance communications?
  - Training?
  - Reporting systems?
- Do employees[2] believe that we have a culture of integrity?
- What can we do to build trust and credibility with employees?
- Where are the potential pressure points in the organization that could cause good people to make a bad decision?
- How can I get our leaders engaged in fulfilling their ethics and compliance responsibilities?

In order for an ethics and compliance program to be successful, it must be firmly rooted and supported by company values that are reflected in corporate culture. But even in the best companies, subcultures and employee perceptions can at times be obstacles to your efforts. A culture assessment identifies elements of an organization's culture that support business conduct - and others that do not. It provides recommendations on how to further develop the former and mitigate the latter. It is often an eye opener for leadership, and a major catalyst for improving management engagement and support.

We gather information for culture assessments using one or more of the following methods: interviews, surveys, and focus groups. (See Methodologies Section for in depth information about each of these methods). Interviews provide insight on leadership engagement and support. Surveys provide quantitative information about employee perceptions of the program and culture. Focus groups provide both quantitative and qualitative information and they allow us to dig deeper into employee opinions and examine location or job-specific issues. Most importantly, focus groups provide opportunities to understand the underlying reasons for employee perceptions. Why do 62% of employees fear retaliation? Why do employees believe that people who violate the Code of Conduct do not face negative consequences?

Focus groups help us answer these "why" questions. Often, the answers to these questions vary from company to company, and within companies answers may vary between business units and countries. As the following excerpt from a recent assessment report illustrates, knowing the answers to the "why" questions helps management prioritize actions to address vulnerabilities.

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[2] While we concentrate on employee perceptions, in many organizations the perceptions of key suppliers and other business partners are also critical to success. At the client's request we will gather perceptions from these key third parties as well as employees.

Excerpt from Report

The challenge for all companies is how to reduce the number of employees fearing retaliation. During the focus groups, we asked employees if they believed they could report unethical behavior without fear of retaliation. Overall, forty-seven percent (47%) of the employees said that they could report unethical behavior and 53% said that they could not or they didn't know. This is consistent with most companies in our benchmark database (typical scores are in the 50%-60% range); although we know that improvement is possible because we have several best practice companies that score 75%.

While most of our questions in our focus groups yielded little variability based on region, the retaliation issue is different. At Sample, Inc., fear of retaliation is much greater outside the United States. (Seventy-six percent of employees in the U.S. said they could report unethical behavior without fear of retaliation, but only 22% in Asia and 33% in Europe answered the same.) These are dramatic and important differences.

Based on other focus group responses as well as leadership interviews, we conclude that the reasons for the fear of retaliation are different in each location. As we have noted elsewhere in this report, Asia scored very low on questions pertaining to leadership's commitment to Company Values. In particular, employees were surprisingly vocal with complaints about one Regional Vice President and his favoritism, inconsistent discipline, or as one employee described the work environment: *"he's the boss, he tells us that all the time…he makes the decisions as he sees fit. I can't say where policies or ethics fit in."* Unfortunately, it appears that he has set the tone for the entire region. During the recent visit by the CEO, there was anticipation that the VP would be disciplined. When this did not occur – and as you are aware, the reality was quite to the contrary - morale plummeted, cynicism increased and we suspect that is when fear of retaliation became widespread.

The cause in Europe is very different. During the focus groups we asked a series of questions about the Helpline, how it works, how follow up investigations proceed, and how employees had been informed about the Helpline. While there was widespread resistance to the concept of "whistle-blowing" and concerns about privacy, we nevertheless found a direct and strong correlation between those who had received management-delivered briefings on the Helpline and high levels of trust in the Helpline process. And, on the other hand, those who did not receive such briefings were much more likely to fear retaliation.

"Your analysis of our culture got management's attention. The numbers were a wakeup call, but the 'color' provided by the focus group insight made the need to improve our game real. Integrity is now one of our target management objectives."

– Ethics and Compliance Officer, F500 Utility

Risk Assessments

Our compliance and reputation risk assessments[3] help provide answers to these questions:

- What are our major risks, including those that are the most likely to occur based on the Company's history, industry, region and regulatory environment?
- What employees (by function, level, business unit or location) are most likely to expose us to these risks?
- How effective are our mitigation efforts in our primary risk areas?
- How do we prioritize our mitigation efforts given that we have many risks and finite resources?

Our proven approach to risk assessment consists of three sequential steps that produce the most accurate possible picture of both the Company's risks, and the extent to which those risks are mitigated.

Risk Identification and Measurement

The first step involves risk identification and measurement. During this phase of the assessment, we use interviews and benchmarking, often supplemented by focus groups or surveys, to achieve two major goals:

- Create an inventory of the legal, ethics, and reputational risks confronting your Company, industry and regions. This includes not just classic legal risks, but organizational and cultural risk factors as well.
- Assess the likelihood and magnitude of each category of risk, and note where there are significant variations by business unit, regions, country, or employee segment.

This risk identification step allows us to identify risks that may be underappreciated by the Company, and to identify the inherent risks that merit the greatest mitigation efforts.

A note about the importance of interviews – confidential interviews with key business and operations personnel often yield the most valuable data for the risk assessment as some individuals may be reluctant to identify sensitive matters or unaddressed weaknesses without some assurance of confidentiality. In addition, some managers respond best only after certain risks are identified and discussed with them. They can then evaluate the potential causes, likelihood of occurrence, and impact of such risks.

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[3] Our compliance and reputation risk assessment can be conducted on a stand-alone basis, or can be coordinated with broader Enterprise Risk Management (ERM) processes.

Review of risk mitigation processes

The second step focuses on risk mitigation efforts. During this phase of the assessment, we:

- Document and assess company-wide processes and efforts that serve to mitigate organizational, cultural, and legal risks.
- Document mitigation efforts specific to the most important legal risk areas, e.g., the policies, training, and controls that mitigate risk of violating the Foreign Corrupt Practices Act.
- Identify any gaps in risk management

In this phase we review the Company's risk mitigation efforts to determine how well these efforts reduce a given risk. We are then able to provide an assessment of the residual risk – the probability that a given risk will occur given both the inherent risk and factoring in the risk mitigation efforts.

Recommendations

The final phase of our risk assessment involves recommendations for risk mitigation. During this phase, ELG focuses on how the Company can most effectively address the gaps discovered during the risk assessment. This includes possible remediation steps, and implementing the recommendations into a broader, multi-year compliance plan. The goal is to help the Company reduce residual risks to acceptable levels. We also provide tools to enable the Company to conduct ongoing internal risk assessments, so that the risk assessment is integrated and becomes a continuous improvement and monitoring process.

Sample list of risks

While each company confronts different risks, the following list is a sample starting point for our risk assessments.

- Conflicts of Interest--Organizational
- Conflicts of Interest--Individual
- Bribery and Corruption
- Supplier Practices
- Competition Law
- Sales and Marketing
- Confidential Information/IP
- Insider Trading
- Data Privacy
- Government Relations and Contracting
- Product Quality and Safety
- Political Activity
- Export Control
- Employment Law and Policy
- Employee Health and Safety
- Anti-boycott
- Environment
- Licensing
- Misuse of Company Resources
- Money Laundering

> *"Our Board of Directors was impressed and reassured by your Risk Assessment Report."*
> — General Counsel, Fortune500 Global Services Company

SAMPLE CHART SUMMARIZING RISK PROFILE BY CLASSIC RISK AREA

LEGAL RISK AREA	INHERENT	MITIGATION	RESIDUAL
Conflicts of Interest—Organizational	●	T	●
Conflicts of Interest--Individual	●	S	●
Bribery and Corruption	●	T	●
Supplier Practices	●	R	●
Competition Law	●	T	●
Sales and Marketing	●	S	●

KEY			
Highest risk	●	No mitigation in place	Q
High risk	●	Incomplete mitigation	R
Moderate risk	●	Significant	S
Low risk	●	Substantial	T
		Complete	U

Sample chart showing two risk profiles
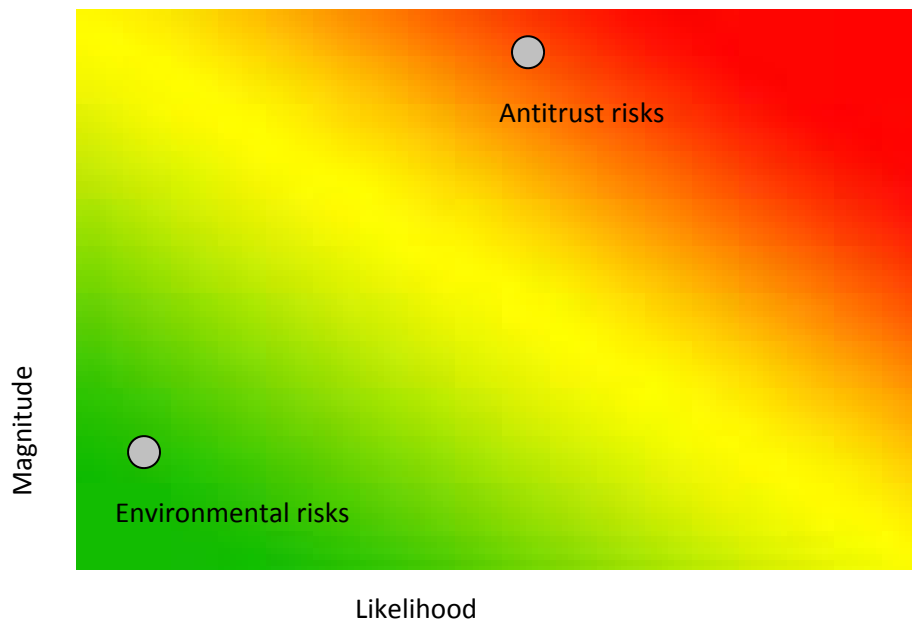
BENCHMARKING

One of the ongoing challenges for ethics and compliance officers is how to effectively benchmark, that is, measure how their program and specific program elements compare against recognized standards and industry best practices. Benchmarking is critically important in order to:

- Demonstrate program effectiveness to various internal and external constituents,
- Enable ethics and compliance officers to report meaningful and actionable data to senior leadership and the Board,
- Track progress and trends over time,
- Pin-point risk areas and weaknesses that require additional attention.

For these reasons, benchmarking is an important part of every assessment we conduct. ELG has been collecting and analyzing business, industry and country specific ethics and compliance data since 1994. This experience and the extensive databases that we have developed are at the core of ELG's benchmarking services.

Our assessments include comparisons of programs and their elements against the U.S. Sentencing Guidelines for Organizations, U.S. Department of Justice Principles of Federal Prosecution, U.S. Federal Acquisition Regulations, and industry specific regulatory standards and guidance. For multinational companies, we also benchmark against relevant non-U.S. standards. Perhaps most importantly, especially in light of USSG guidance to "follow applicable industry practice," we benchmark versus other companies in the client's peer group as well as against best practices in general.

In addition to conducting benchmarking as part of our culture, program and risk assessments, ELG also provides enhanced benchmarking in specific areas. For example, in one instance, a client requested that we benchmark their ethics and compliance reporting structure. To meet this request, we compiled a set of organizational charts and supplemented them with the results of interviews with peer companies. The interviews enabled us to give life to the org chart and reach conclusions about what would be practical and most effective for the client.

In another case, a client in the food service industry was frustrated by the lack of industry benchmarks. Their Board wanted to know where they stood vis-à-vis their peers. National studies did not meet the Board's needs, nor were ad hoc efforts to benchmark with fellow ethics officers in the industry successful. To meet our client's needs, ELG created an industry-wide study group. We contacted peer companies' ethics officers and in collaboration with them, we created an extensive set of questions which provided the framework for in-depth interviews. Based on the interviews, ELG produced an industry benchmarking study complete with comparative data and analysis and with specific recommendations for each company participating in the project.

We have also conducted benchmarks in specific compliance risk areas. For example, we can assist a company to benchmark its FCPA efforts against those of other companies in their industry. Our long history in the field gives companies trust in our ability to keep information confidential, and to redact information when necessary so that sensitive company specific information is never shared.

Two of the more common requests for enhanced benchmarking are in the areas of helpline data and Codes of Conduct. For this reason, we have developed specific processes and deliverables for each. These enhanced benchmarking services can be included as part of an assessment, or they can be provided as stand-alone services.

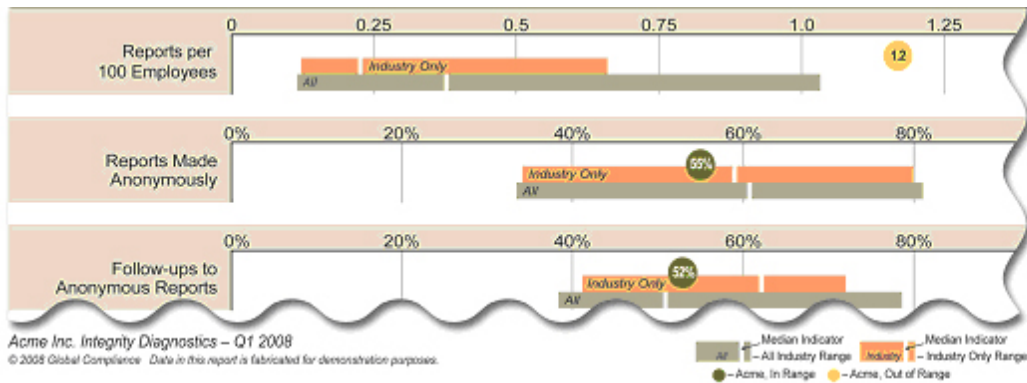## ENHANCED BENCHMARKING – HELPLINE DATA (INTEGRITY DIAGNOSTICS™)

ELG's Integrity Diagnostics™ is a diagnostic tool designed to help you identify helpline trends and deviations from your program's current and historical helpline data. It includes in-depth benchmarking of your organization's data with industry peer group and across industries. Integrity Diagnostics™ enables companies to benchmark and track key metrics including:

- How many reports are you receiving?
- How often do employees "test" your helpline?
- How quickly are you resolving reports?
- Are reporters identifying themselves?
- Are anonymous reporters following up on their initial reports?
- What types of allegations are being reported?
- What is the severity of the allegations being reported?
- How many allegations are being substantiated?
- Are allegations from anonymous reporters substantiated at the same rate as named reporters?
- What intake methods are reporters using to submit allegations?
- How are your reporters learning about your hotline/helpline?

As part of the Integrity Diagnostics™ process, data is collected from all report intake methods and the cumulative data is then measured against our extensive database of more than two million helpline calls from over 2,000 organizations. ELG identifies "normal" ranges and deviations annually for all industries as well as the client's specific industry to provide context for numbers and trends.

In addition to metrics, ELG's experienced consultants offer practical guidance and recommendations to address potential problem areas found in the data analysis. As a standalone service, Integrity Diagnostics™ is delivered as a quarterly report which includes "Management-ready" charts, like the following that clearly communicate critical information that is needed by leadership and Boards.

Acme Summary Report Data

Acme Inc. Integrity Diagnostics – Q1 2008
© 2008 Global Compliance Data in this report is fabricated for demonstration purposes.

Severity A Cases

Acme Historical Trends for the Most Recent 5 Quarters

It's important to monitor changes in report metrics over multiple quarters in order to identify trends and act upon early indicators.

Severity A Cases

Observations: Severity A reports have been rising steadily.

Recommendations: Given this trend, Acme should review the Priority A cases received this quarter along with the most recent two or three quarters to evaluate whether the reports are coming from one or more specific locations or involve a specific issue. Based on findings, deeper audits may be required to determine if a larger issue is "in play" in a particular location or area of the business. Additional training or communications on the specific subject may be required if it is found that most reports relate to a specific issue.

ENHANCED BENCHMARKING – CODES OF CONDUCT

Our Code of Conduct benchmarking typically begins with a review of the client's existing Code or a draft of a proposed new Code. When reviewing the Code, we ask:

- Is the content appropriate and complete given the Company's industry, and risk profile?
- Are content areas typically included in peer company Codes included?
- Are the tone and style appropriate for the Company's employee demographics?
- What new or emerging issues have arisen since the current version was written that should be considered for inclusion?
- How will the Code be perceived by internal and external constituencies?

Our goals are to help ensure that the new Code will meet all required standards, measure up to industry best practices, and meet or surpass the expectations of internal and external stakeholders. We provide specific recommendations for improvements in content, tone, and design. We also review implementation and roll-out plans to ensure that they too are likely to be effective.

Our success in assisting companies with Code benchmarking rests on our experience which includes writing, designing or reviewing many of today's most widely admired Codes. In addition to our Code writing experience, we have also done ethics and compliance work in more than forty countries, including focus groups where we have asked thousands of employees of multinationals their perceptions of their employer's Code. Our benchmarking studies incorporate this experience and our best practices research. We also take into account relevant guidance from governmental and other institutions, e.g. the NYSE listing requirements.

Our findings are summarized in a customized table that benchmarks the Code and a selection of peer company codes on over 50 specific content areas and also in terms of style and format.

In addition to the table, we often include a marked up Word document of the Code with extensive comments along the margins. Our clients have found this "targeted document" to be extremely helpful to pin point areas that benchmarking has indicated need improvement.

An Excerpt from a Code Benchmarking Table

Code Content	Client	Co. A	Co. B	Co. C
Safe and healthy workplace	🟢	🟢	🟢	🟢
Workplace violence	🔴	🟡	🟢	🟡
Alcohol/drug free	🔴	🟢	🟡	🟡
Conflict of interest	🟢	🟢	🟢	🟢
COI Gifts, entertainment	🟢	🟢	🟢	🟢
COI Family members	🟡	🟡	🟢	🟡
COI Outside employment/investments	🟡	🟡	🟢	🔴
COI Corporate opportunities	🟢	🟡	🟡	🟡
Civic, charitable, non-profit participation	🟡	🟢	🟡	🟡
Political involvement, contributions	🟡	🟡	🟢	🔴
Solicitations for charities at work	🔴	🔴	🔴	🟡
Customer relations, selling/marketing practices	🔴	🔴	🔴	🟢
Communicating with the public, media/on-line forums	🟢	🟡	🟢	🟢
Confidential information – company	🟡	🟢	🟢	🟢

INTERVIEWS

Building and sustaining a best practice ethics and compliance program generally requires a strong commitment from leadership at all levels of the organization. This includes:

- Strong oversight of the program by the Board or a designated Board committee,
- Active involvement by high-level executives who understand their important role and are committed to ensuring that the program is effective,
- Involvement in and support of the program by line management,
- Ethics and compliance professionals who are aligned with the Company's values and expectations, as well as the standards of the profession.

These features of a best practice program are reflected in the U.S. Sentencing Guidelines for Organizations which designate specific leadership responsibilities regarding compliance and ethics programs:

- The Board of Directors is required to "be knowledgeable about the content and operation of the compliance and ethics program" and "exercise reasonable oversight with respect to the implementation and effectiveness" of the program. Additionally, the Board, or a committee thereof, must be accessible to individuals with day-to-day responsibility for ethics and compliance.
- "High-level personnel" are required to "ensure that the organization has an effective compliance and ethics program." They shall be "knowledgeable . . . shall perform their assigned duties consistent with the exercise of due diligence, and shall promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law."
- Individual(s) in charge of the program on a day-to-day basis shall "report periodically to high-level personnel" and the Board or Committee thereof, and "shall be given adequate resources, appropriate authority, and direct access to the" Board or Committee thereof.

Because of the importance of the role of leadership in a successful ethics and compliance program, understanding their perceptions using a structured interview process is the cornerstone of our culture, program and risk assessments.

LEADERSHIP INTERVIEWS – OUR PROCESS

We typically include interviews with members of the senior management team with designated ethics and compliance responsibilities, subject matter experts and others who, because of their responsibilities in this area, can provide valuable insights and perspective.

Each interview is scheduled for approximately 45 minutes and is conducted by one of our senior consultants. We work closely with our clients to determine the optimal list of interviewees and to schedule the meetings in a cost effective and timely manner. Telephonic interviews, though not ideal, may supplement in-person interviews if necessary.

We also work with clients to refine the key questions we ask our interviewees. These questions may vary depending on the interviewee's position within the company. And, like skilled musicians playing jazz, our consultants use the questions as a framework to explore the most fruitful areas rather than as a verbatim script.

We have included below several questions we used in a recent assessment. In this case, the questions and the subsequent discussions they stimulated, led to significant insights about the impact on employee morale resulting from recent changes in the company's strategic direction; changes that had not been sufficiently explained and were largely misunderstood by employees.

In addition, the questions helped focus attention on specific business units where pressure to meet performance goals was contributing to a deterioration of morale and an increase in the fear of retaliation.

Sample Questions for Executive Interviews

What are senior management's highest priorities? [Not just limited to ethics and compliance…but strategic/business priorities.] Have priorities changed over the last few years? Are the reasons for the change in direction well understood by employees?

How do employees know what to do when priorities conflict with the Code or policies or the Company's Values? For example, how do employees balance customer satisfaction with cost savings?

What do you personally do to make sure employees understand your commitment to the Company's Values and your ethical priorities?

Every company has problems; the important thing is to identify them early. Is this an environment where people feel free to bring things up? [If not, why not?]

Are risks being adequately addressed? If you worked as the Company's Chief Ethics and Compliance Officer, what would you be most concerned about? What if you were the Chairman of the Audit Committee?

LEADERSHIP INTERVIEWS – DELIVERABLES

We work with clients to be sure we understand how the information we gather in our interviews will be best received by the organization and by the leaders themselves. Typically, we incorporate the interview findings, including quotations when possible, throughout the body of our reports. If requested, in lieu of a report, we can present our findings in person using a PowerPoint presentation, or we can provide a separate, informal briefing for leadership on our interview findings.

The following excerpt from a recent report underscores our belief that in addition to the critical importance of senior leadership, line management must also bear much of the day-to-day responsibility of transmitting and reinforcing an organization's ethics and compliance standards. They can and should be the "culture carriers." For this reason, when feasible, we solicit the opinions of managers at various levels in the organization either through interviews or other means. In our reports we often examine not only the "Tone at the Top," but we also evaluate the "Tone in the Middle."

Excerpt from Report

> The leaders we interviewed—like leaders elsewhere—clearly agreed that a culture of integrity and compliance must be driven by senior leaders, and also by line leaders throughout the organization.
>
> "It needs to start at the top—senior managers have to buy in and have responsibility to make it work."

"Here, nobody is more powerful than the plant manager or the head of a country."

While there was a clear understanding of the importance of "Tone at the Top and Tone in the Middle", based on our interviews and review of the leadership communications made available to us, we believe there is substantial room for improved leadership engagement in compliance and integrity. Several executives made the case more forcefully.

"The leaders of the company must own compliance. We are not there yet."
"The number one priority [of compliance] should be to strengthen management engagement."

Ethical leadership comes from both words and actions. Actions are by far the more effective form of communication.

"Actions are the most important thing we can do. It is about making the right calls, even when it is tough."

An executive with previous experience at other firms notes: *"Here the example at the top is absolutely excellent."* And one of the observations we heard, unprompted, in almost every interview was *"[The CEO and CFO] set the right tone and example at the top. They do the right thing – we see it."*

But we also heard that *"[The CEO] sets a good example, but not so much from others.'"* While pressed to discuss this further, some interviewees were reluctant to speak up, but others directed us to recent cases involving several group leaders who were disciplined for various violations. One comment, repeated in various forms by many, was that *"I'm not sure my colleagues realize the impact on employees of those cases. A lot of people don't understand that everyone in the Company knows what happened – and they don't like it."* [We discuss this topic further in the section of this Report on investigation and discipline procedures.]

While actions matter most, words matter too; and we believe progress must be made on this front. We talked with all four Regional Counsels, and only one could readily cite cases where the Regional President they support talked about ethics, compliance or integrity with employees. When we talked with the Presidents, several could remember an episode or two, but the same Regional President referenced by the Regional GC was the only one who could recall multiple episodes. This is not a criticism of the other three, but it means that leadership is missing a huge opportunity to send reinforcing and clarifying messages.

It is worth considering possible explanations that we heard during our interviews of why there is such a reticence to talk about ethics. One executive referred to *"a kind of humility,"* or "*no one wants to put themselves out there as holier than thou*." Another suggested that it stems from a lack of knowledge of the Compliance Program. For example, all the Regional GCs and Presidents discussed their involvement

with the Compliance Program based on being involved in the investigations or discipline process, but they had little familiarity with other aspects of the program.

Another reason cited for under-communication may be the lack of understanding of the leadership role in terms of compliance and integrity. *"Our leaders would say that they are responsible for integrity and the lawyers drive compliance."* Another was more pointed, and his comments betray a fundamental misunderstanding of the role of ethics [i.e., integrity] at the company: *"I've got enough on my plate without worrying about winning a popularity contest. I've got tough decision to make, not everyone is going to be happy – let someone else put a smiley face on it."*

Clarifying the differences and the overlaps between compliance and integrity will help leaders understand their vital role in walking the talk and talking the talk. But they should also be provided tools to help communicate, as we discuss in the section on communications/training. There is much empirical evidence on the impact of leadership tone, but the following story succinctly illustrates its power. *"Employees in one of our JVs said they needed to make a payment in order to keep business. The Regional President said 'No—here we do it the right way. If we lose business because of this, we will deal with it.' This sent a clear message to the entire organization. We need more stories like that and more leaders who are willing to talk about them."* We agree.

FOCUS GROUPS

Understanding employee perceptions about ethics and compliance is important for sound business and legal reasons. This is where focus groups can play a critical role. Focus groups enable us to learn about employee perceptions qualitatively, and to understand the cultural and attitudinal underpinnings of effective compliance and ethics efforts. They also provide the opportunity to do a "deep dive" into a location, function, risk area or business unit as needed. Focus groups allow us to understand the subcultures, accepted practices, traditions, and unwritten rules that define how business is conducted on a daily basis.

Many companies—including Ethical Leadership Group—use surveys to address these types of questions, and surveys have great value. Management in most organizations is very interested in rigorous quantitative information. Surveys, however, often raise as many questions as they answer. Why do 62% of employees fear retaliation? Why do employees believe that people who violate the Code of Conduct do not face negative consequences?

For this reason, we recommend using focus groups to complement survey processes or to conduct intensive analyses into areas of special concern for the company, when understanding the underlying reasons for employee perceptions is as important as understanding the perceptions themselves.

EMPLOYEE FOCUS GROUPS – OUR PROCESS

We have refined our ethics and compliance focus group protocols over the past sixteen years. To ensure an effective and efficient process we work closely with our clients during every phase of the process, from start to finish, including:

- Messaging to the workforce and drafting invitations to participants,
- Assisting in the participant selection process,
- Planning the group size (8-12 is optimal) and the group's composition,
- Preparing the room layout and hospitality to put the participants at ease,
- Scripting in advance the questions as well as likely avenues for discussion,
- Designing post focus group employee communications.

Each element of the process has been tested to promote a free flowing, candid discussion during the focus group, and to leverage the focus group as a signal of management's commitment to ethical behavior.

We conduct each focus group with a "flat" group of employees and a guided interview question set to promote discussion. All focus groups are facilitated by one of our experienced consultants who are adept at drawing out employee opinion and digging deep into issues.

We are also obsessed with ensuring that potential barriers to discussion are removed from each session. Each session will only have employees from similar job levels. We may also further structure the focus group by function if desired by the client. This helps to concentrate the discussion on issues specific to each group. In addition, we are experienced at recognizing and addressing the interpersonal dynamics of focus groups. We know that if these dynamics are not addressed they can undermine the session. While we customize each set of questions to meet the client's specific needs, in many engagements we address employee perceptions in these areas:

- Ethics and compliance communications and training,
- Leadership alignment with organizational values in general and ethics in particular,
- Ability to report issues through various channels, and consequences of reporting,
- Role of ethical/unethical behavior in career success,
- Key compliance and reputational risks.

Our exploration of these issues is aided by the use of wireless voting technology—a process pioneered by ELG in the ethics and compliance field—to allow participants to express their attitudes anonymously.

For example, we may pose a question on retaliation, and ask participants to vote using keypads. Once they have voted, we would then initiate a conversation about employee perceptions about retaliation. At the right point in this conversation, we would project the voting results from that focus group.
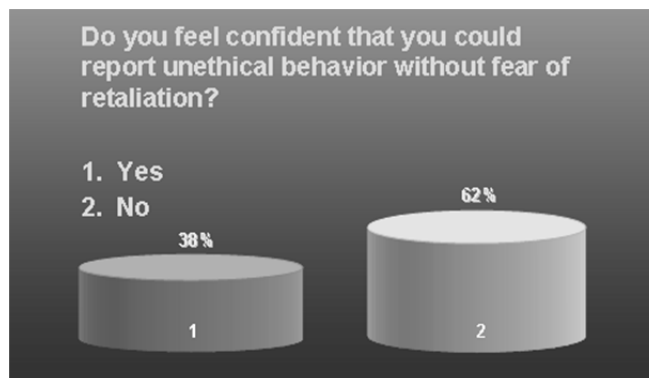
This technique provides ELG facilitators the opportunity to instantly follow-up on the most fruitful areas for discussion. Participants are often surprised to find others have voted the same way and are more likely to provide context and specific examples of the behaviors that drive their opinions.

In this case, for example, we can probe why so many employees fear retaliation. What do they mean by retaliation? Who is most likely to inflict it? What can the company do to reduce the perception?

Success Rate

One of the biggest concerns we hear about focus groups is that employees will be fearful of attending and will not talk. Employees often tell us afterward that they were surprised to find they enjoyed the session and were pleased that the company wanted to hear their opinions. There have been a few rare exceptions (less than 1%) where after ninety minutes of voting and attempted discussions employees still talk only in generalities and platitudes. While disappointing, we leave even these sessions with insight of a different type.

Focus groups - deliverables

We work with clients in advance to be sure we understand how the information we gather will be best received by the organization. Typically we provide written reports and/or PowerPoint presentations summarizing our results. These reports can include charts like the following.

Do you believe you could report unethical behavior without fear of retaliation?
(% answering "yes"; dotted line = ELG benchmark)

Note that this chart breaks down results by job levels, and provides benchmark comparison to the median result from other companies where we have conducted focus groups combined with data from identical questions we have asked in surveys and collected in our International Business Ethics Survey database.

In addition to quantitative information, we also include qualitative information. Our written reports enable the client to understand underlying issues, as the excerpt below indicates.

Example of Findings from Focus Groups

Commitment to Upholding Values:
Collaborate Effectively and Communicate Openly

Of the Values-related questions we presented to employees involving the Company's level of commitment to its five stated Values, Collaborating Effectively and Communicate Openly received the lowest overall scores from participants. Only 45% of Managers and 38% of Non-Managers believe the Company is Committed or Very Committed to "Collaborating Effectively" (42% overall). The numbers were lowest in Country X where less than a quarter of employees felt the Company was Committed or Very Committed to Collaboration.

Only slightly higher were the marks given to "Communicate Openly." Overall less than half of all employees (46%) believed the Company was Committed or Very Committed to open communications (50% for Managers and 43% for Non-Management). Forty-one percent believed the Company "could do better" and 8% thought the Company didn't communicate well at all.

How committed is the Company to upholding its Value: Collaborate Effectively?
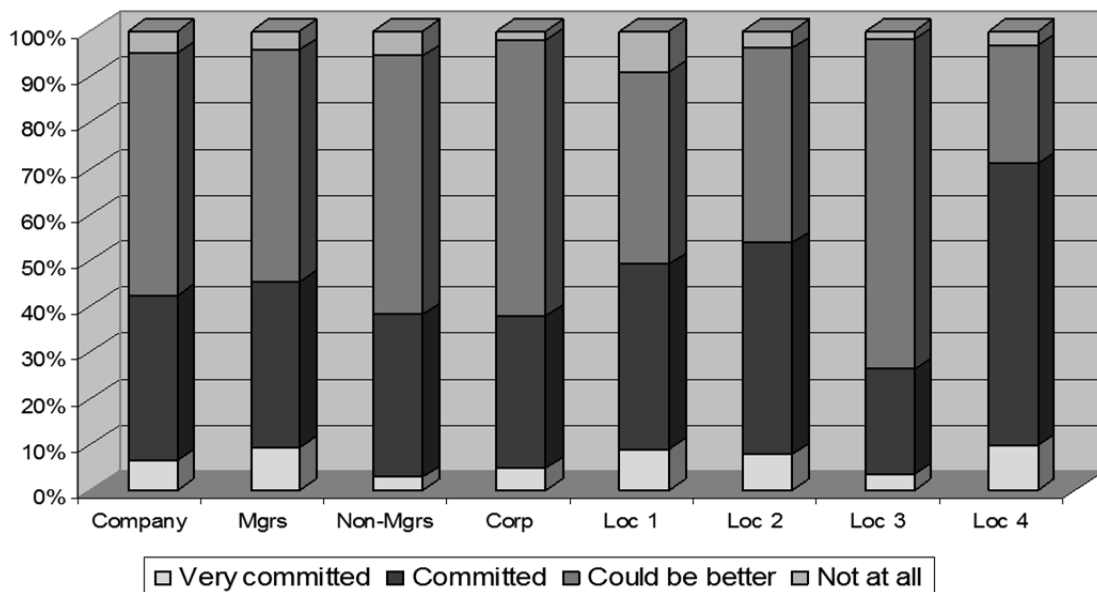
How committed is the Company to upholding its Value: Communicate Openly?
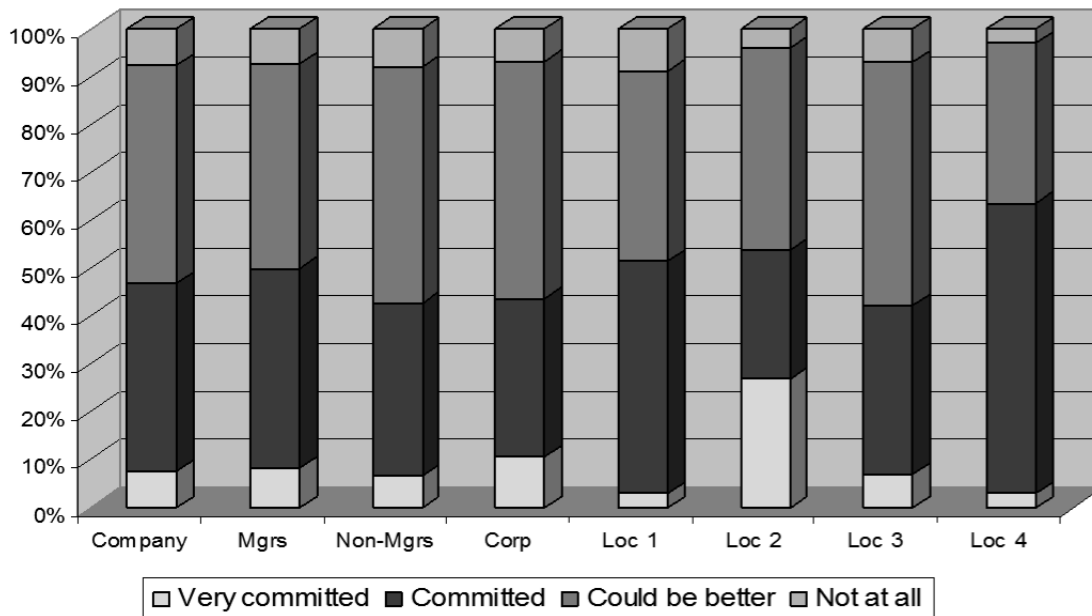
In sum, we believe the low numbers are principally due to five factors:

1. In a "problem-solving culture" like yours, employees have high expectations and demand collaboration and communication. Obstacles to collaboration and communication are viewed as impediments to problem-solving. Employees want to see these impediments removed and they want to see these Values practiced laterally and horizontally throughout the organization – peer-to-peer as well as Manager to their direct reports.

2. Many Managers and Supervisors commented on the "silo structure" of Sample Inc., which, as one noted, "goes all the way up to the Executive Floor."

3. Employees at every level spoke of the wide variety of vehicles for communications but since most of them were "one-way" they did not create opportunities for collaboration.

4. Performance reviews and rewards do not encourage collaboration.

5. And finally, though the "tone-at-the-top" has changed, and a more open environment is experienced by the Senior Management team, managers one-level down have seen little or no change in their interaction with Senior Management.

As part of our focus group process, we ask participants to provide us with messages that they want us to deliver directly to management. As the real-life examples below illustrate, employees open up to us and trust us to convey their opinions often on topics that they would otherwise not share with management.

- The application of the Code of Conduct appears inconsistent, especially around gifts and entertainment.
- Around here the only way you would get fired is if you went at the CEO with a knife—and even then I'm not sure.
- Keep your employees informed. Even if you don't have all of the answers, give us periodic updates – more timely. Rumors cause a lot of concern.
- Continue or improve customer focus. We are very internally focused right now and our customers are noticing.
- Don't back off on accountability emphasis. This is a breath of fresh air.
- Senior leadership should do focus groups like this annually with a 3rd party facilitator.

As the last bullet above suggests, one of the main benefits organizations get out of focus groups is the fact that they are doing them. The messaging before and after the focus groups, and the positive word of mouth that comes from participants, is a major contributor to encouraging open communications - a key part of a culture of ethics and integrity.

Focus groups – ELG's experience makes a difference
In addition to our unique approach to conducting focus groups and the unparalleled breadth and depth of our benchmarking capabilities, our experience places us in a unique position to offer practical and actionable recommendations. As former ethics officers and leaders in the field, and because we have conducted over 1,000 focus groups on ethics, compliance and values, we are able to separate the wheat from the chaff, and highlight the key information management needs to attend to. Additionally, because we have worked with 25% of the Fortune 200, we are able to offer pragmatic recommendations to improve ethics program elements and make specific suggestions to managers to help them meet their responsibilities in this area.

Our unique hands-on experience helps us to know what to ask and what to look for. Because of our experience, ethics and compliance officers have come to rely on us as their extra set of eyes.

Sometimes what's not said during a focus group can be as important as what is, and only a trained professional and experienced listener has the ability to discern both. For example, we have conducted focus groups where safety was the "elephant in the room" - the issue that was on everyone's mind, affected morale, shaped employee perceptions, and had the power to undermine the best planned ethics and compliance efforts; and yet it was the issue that was not discussed. Below is an excerpt from an assessment report for a utility company summarizing some of our focus group findings.

The Advantage of Experience: An Excerpt from an Assessment and Focus Group Summary

What we did not hear

Throughout this report we have talked about what we observed, and how employees responded to our questions during focus groups. We have not discussed, however, what, for us, seemed to be a glaring omission from the sessions. We were generally surprised by the overall lack of attention safety received, especially from those who *did not* work in field operations.

This is a delicate topic and we want to be perfectly clear in expressing our opinions. **We definitely observed and heard several comments indicating that safety is a priority at Sample Inc.** The missing element, however, was the sense that the focus on safety is pervasive both vertically and horizontally; or that it is inviolate and critical to meeting the Company's financial targets. Or, that safety applies to accountants working in the air-conditioned comfort of corporate headquarters as well as for the people who risk severe injury or death while working in the field. In our view, their working environments and skills will understandably differ; but their conscientiousness about the role of safety as a central ethic throughout the Company should be comparable.

Please note that this observation comes straight out of working with other utility and manufacturing companies whose frontline workers routinely face life-and-death circumstances and whose organizational cultures depend on **everyone** adopting the attitude that safety is their individual responsibility. Some companies, for example, are so insistent that their employees value safety that they counsel them about exercising caution and good judgment both at work and when they are on their personal time (away from their offices or field assignments). Such companies believe that being proactive and conscientious about safety improves productivity by reducing the costs associated with employees who are injured or become ill from preventable diseases and accidents (e.g., not wearing seatbelts, or failing to use protective eye wear or earplugs when operating certain kinds of equipment). In addition, we have also found that many employees in such companies – even workers who are cynical about what they called an "overemphasis on safety" – appreciated the lessons they have learned about practicing safety because they have been able to apply some of these lessons in their everyday lives.

Thus, we share these thoughts – our seasoned perspective – for discussion purposes, and as a helpful reminder that a culture of safety tends to be most effective when the responsibility and accountability for its practice are not confined to dangerous, life-threatening situations.

Unfortunately, the validity of our perception was founded a few months later, when tragic safety incidents occurred in two separate facilities.

Obviously most of our work is not as dramatic as this, but our focus groups can serve as the "canary in the coal mine" to detect ethics, compliance and reputational risks before they become ruinous.

SURVEYS

ELG began conducting surveys of employee perceptions of ethics, compliance and culture in 1994 when we surveyed over 100,000 employees at Sears to help them build a values-based ethics program. Since then, we have conducted surveys with employees around the world for many great companies.

Surveys have now become a staple of many assessment processes. The increasing use of surveys is understandable:

- Surveys help assess program effectiveness from the most critical perspective—that of employees. When adversarial parties are looking to judge the effectiveness of a compliance and ethics program, one of their primary sources is employee opinion expressed in depositions, emails, and testimony. It is far better for the company to understand—and address—these perspectives in advance.
- Risk assessments increasingly test employee perceptions of firm policy and controls. Surveys may be the most cost effective way of understanding these perceptions.
- Boards and executives want to see empirical evidence of successes, failures, and trends. They increasingly understand the importance of culture, and surveys are an important method to assess culture.
- Surveys are a primary vehicle for benchmarking.
- There's truth to the maxim "what gets measured gets done."

The value of any survey is largely dependent on the quality of the questions, the methodologies for delivery and response collection, the database against which the responses are compared, and the experience of the survey provider. ELG excels in all of these categories. Our methodology has been quality tested and improved over sixteen years.

Of special note is our database. Our International Business Ethics Survey (IBES) database contains questions and data from organizations of all sizes, from nearly every industry, and it includes responses from employees worldwide. We have tens of thousands of responses—hundreds of thousands in some cases—populating most questions. The IBES contains tested questions that address issues of culture, program effectiveness, employee morale and engagement, and many other topics that organizations have found helpful in improving their ethics and compliance programs.

Employee Surveys – our process

As in all of our work, close client collaboration is our hallmark. We begin by meeting with the client team to define objectives and to determine a cost effective way to conduct the survey that is best suited to the organization. In some cases this may mean licensing of ELG questions to be used by the client in an existing survey process.

We collaborate to develop the final question set to ensure that the survey fully addresses key issues, while also maintaining question set consistency to aid in benchmarking.

Our question set is constructed so as to minimize the amount of time it takes for employees to complete a survey while still providing comprehensive information; this increases the response rate and minimizes the cost and intrusion involved in taking a survey.

Sample from our IBES survey

18. Do you ever feel pressured by your manager(s) to violate the Code of Ethics in order to achieve objectives?

   ○ Yes, fairly often

   ○ Yes, periodically

   ○ Yes, but rarely

   ○ No, never

We help develop the optimal set of demographic questions, balancing the desire for granular information with the reticence survey takers have of being individually identified.

Communications throughout the survey project are critical to its success. We provide field tested communications for project announcements, survey communications and survey reminders in order to elicit the highest degree of support and participation. In developing these communications, we work with the client to ensure that they are consistent with common company style and content expectations. We provide – or if requested we send - these messages, as appropriate, given the message and firewall/security issues.

We conduct surveys using the most cost effective and trusted methods available given the demographics of the client workforce:

- Web based surveys are by far the most cost effective means of reaching employees with access to the internet or company intranet. ELG provides secure hosted solutions, or the survey can be hosted on the client's intranet.
- Telephone surveys using Interactive Voice Recognition (IVR) are an option for employees who do not have ready access to the internet. We have conducted surveys using Interactive Voice Recognition since 1995. An IVR survey can be taken from telephones anywhere, and instructions as well as survey questions provided in multiple languages, if needed.
- "Pen and paper" surveys, while expensive, continue to be used by companies with some employee groups.
- Anonymous live voting technology is a technique we have used for ten years. This technique gathers employees in a room to answer a series of questions live. As with all our methods, this serves both as a data gathering technique and a communications tool. (See additional details in the Focus Group Appendix.)

Data gathered from all processes is combined to provide one comprehensive report.

Employee Surveys – deliverables

Almost as important as the survey questions and process is the delivery of results. We work with clients to be sure we understand how the information we gather will be best received by the organization. Typically we provide initial analyses during briefings which are held on a regular basis while the survey is being administered. At the completion of the data collection, we provide a report including an executive summary; findings presented as tables, charts and narrative; benchmarks, analysis, practical program recommendations and supporting appendices. If requested, in lieu of the report, we can present our findings in person using a PowerPoint presentation. In all cases, raw data is delivered in a convenient formatted Excel file.

Excerpt from a Report

Perception about Ethical Culture

As shown in the chart below, employees who had received live training were more likely to believe the Company's management team would choose the ethical course of action, even if it was less profitable. Employees who had received CBT-only had similar perceptions to those employees who received no training.

If forced to make a choice, the corporate executive management team would chose an ethical course of action over an unethical, but profitable, course of action:

	%
No Training	73%
Received CBT only	72%
Received Live Training	83%
Company Total	80%

0%　　　　　　　　　　100%

■ % answering "Strongly Agree" or "Agree"

One of the most striking differences we found pertaining to the impact of training is in employee perceptions of the company's standards of conduct as compared to other companies in the industry. As shown below, employees who had received live training were much more likely to believe the Company's standards were higher than those in the industry. Further, employees who had received CBT-only were *less likely* to believe the Company's standards were higher than those in the industry compared to employees who did not receive any training*.*

We have higher standards of conduct than other companies in our industry

No Training	49%
Received CBT Only	40%
Received Live Training	66%
Company Total	59%

0% · 100%

■ % answering "Strongly Agree" or "Agree"

If the survey is part of a broader assessment, our report integrates the survey data with other quantitative information gathered during the assessment (such as Helpline call tracking) as well as with qualitative information learned through interviews and focus groups.

In all cases we deliver our findings in a practical, useful format that goes beyond the raw data. Our experience enables us to analyze the data; identify ways to strengthen the ethics compliance programs, and improve the ethical culture.

Employee Surveys: ELG's experience makes a difference
The experience of the ELG team not only enables us to add context and depth in our analysis of survey results, it also helps us to see the "big picture" – how surveys fit into the larger whole of an assessment as well as how they are being received by the organization. And perhaps more importantly, our experience has taught us to recognize the limits of surveys and some problems that can occur if they are misused.

For example, we help our clients resolve problems and address questions others may not even think of:

- Do employees trust the survey process? Do they believe their responses are anonymous? Are they distrustful of demographic questions and fearful that their identity will be determined? Do they have qualms about the method by which the survey is distributed and collected?

- Have supervisors realized what answers are most desirable and are inappropriate efforts made to manage results? Are performance reviews or bonuses tied to survey results? If yes, then is there pressure to manipulate the findings?

ELG will help address trust issues, monitor the process to check for undue pressure, and ensure the success of the survey.

Lastly, we understand that in many organizations, surveys – though not necessarily ethics and compliance surveys – have long been in place and are well accepted. Databases, infrastructure and web-based tools may already exist. In some organizations, Human Resources has already done the hard work to solicit support from managers who are key to implementing any survey process. We work with our clients to ensure that in-house expertise and resources are utilized as appropriate.

APPENDIX A: ASSESSMENT STANDARDS

ELG reviews ethics and compliance programs against the standards of the U.S. Sentencing Guidelines for Organizations ("USSG"), the Principles of Federal Prosecution of Business Organizations issued by the U.S. Department of Justice (DoJ), and the Federal Acquisition Regulations (FAR) - including FAR amendments effective December 12, 2008. For programs with an international scope we also monitor standards in the major economies of the world. In addition, we review deferred prosecution agreements and corporate integrity agreements for relevant developments. Most importantly, we provide significant added value through our best practice research database developed over the past fifteen years.

We organize our review in accordance with six main categories that encompass these standards. These six areas, the objective that we use to review performance and relevant passages from the government standards are summarized below.

1. Risk Assessment. **Design and implement the ethics and compliance program so that it appropriately addresses legal and reputational risks faced by the company.**		
U.S. Sentencing Guidelines	DoJ—Prosecution of Business Organizations	Federal Acquisition Regulations (FAR 52.203-13)
"[T]he organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each [component of the ethics and compliance program]. (USSG §8B2.1(c))	"Compliance programs should be designed to detect the particular types of misconduct most likely to occur in a particular corporation's line of business."	"At a minimum, the Contractor's internal control system shall provide for (3)Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary … ".

2. Structure and Leadership.
Ensure that efforts toward achieving ethics and compliance goals are managed effectively and efficiently throughout the company.

U.S. Sentencing Guidelines	DoJ—Prosecution of Business Organizations	Federal Acquisition Regulations (FAR 52.203-13)
"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 [its] … implementation and effectiveness." "High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program." "Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority… shall be given adequate resources, [and] appropriate authority…" (USSG §8B2.1(b)(2A-C))	"[One of] the critical factors in evaluating any program [is] … whether corporate management is enforcing the program or is tacitly encouraging or pressuring employees to engage in misconduct to achieve business objectives."	"At a minimum, the Contractor's internal control system shall provide for (A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system."

3. Communications and Training
Clearly communicate the standards necessary for employees to perform their jobs the right way.

U.S. Sentencing Guidelines	DoJ—Prosecution of Business Organizations	Federal Acquisition Regulations (FAR 52.203-13)
"The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program to … ["members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents"] …by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities. (USSG §8B2.1(b)(4A-B)	"Prosecutors … should determine whether the corporation's employees are adequately informed about the compliance program and are convinced of the corporation's commitment to it."	"Within 30 days after contract award …the Contractor shall – (i) Have a written code of business ethics and conduct; and (ii) Make a copy of the code available to each employee engaged in performance of the contract." "The Contractor shall establish the following within 90 days after contract award… (1) An ongoing business ethics awareness and compliance program… (ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors."

4. Reporting and Response
Provide trusted ways for employees to report concerns of misconduct, and professional processes to respond to those concerns.

U.S. Sentencing Guidelines	DoJ—Prosecution of Business Organizations	Federal Acquisition Regulations (FAR 52.203-13)
"The organization shall take reasonable steps … to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation." (USSG §8B2.1(b)(5C))	"Prosecutors may consider whether …the directors [have] established an information and reporting system in the organization reasonably designed to provide management and directors with timely and accurate information sufficient to allow them to reach an informed decision regarding the organization's compliance with the law."	"At a minimum, the Contractor's internal control system shall provide for … (D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports."

"[The Contractor shall] timely disclose, in writing, …whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor …has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations …or a violation of the civil False Claims Act." |

5. Integration with HR
Align human resources policies and HR/management practices with compliance and ethics.

U.S. Sentencing Guidelines	DoJ—Prosecution of Business Organizations	Federal Acquisition Regulations (FAR 52.203-13)
"The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known … has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program." (USSG §8B2.1(b)(3)	"The prosecutor should consider … any remedial actions taken by the corporation, including, for example, disciplinary action against past violators." "Prosecutors should be satisfied that the corporation's focus is on the integrity and credibility of its remedial and disciplinary measures rather than on the protection of the wrongdoers."	"At a minimum, the Contractor's internal control system shall provide for …(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct." "At a minimum, the Contractor's internal control system shall provide for … (E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct."
"The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct." (USSG §8B2.1(b)(6A-B))		

6. Monitoring and On-going Assessment		
Audit and monitor for indications of conduct inconsistent with the Company's standards, and assess the effectiveness of the Company's ethics and compliance efforts.		
U.S. Sentencing Guidelines	DoJ—Prosecution of Business Organizations	Federal Acquisition Regulations (FAR 52.203-13)
"The organization shall take reasonable steps (A) to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct; (B) to evaluate periodically the effectiveness of the organization's compliance and ethics program." (USSG §8B2.1(b)(5A-B)	"The prosecutor should consider … any remedial actions taken by the corporation, including, for example … revisions to corporate compliance programs in light of lessons learned…"	"At a minimum, the Contractor's internal control system shall provide for …(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including - (1) Monitoring and auditing to detect criminal conduct; (2) Periodic evaluation of the effectiveness of [the program] … and internal control system, especially if criminal conduct has been detected …".
"After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately …and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program." (USSG §8B2.1(b)(7)	"Prosecutors should determine whether the corporation has provided for a staff sufficient to audit, document, analyze, and utilize the results of the corporation's compliance efforts…."	
	"[A] corporation's quick recognition of the flaws in [its] … program and its efforts to improve the program are also factors to consider as to appropriate disposition of a case."	

7. Culture.

While not strictly speaking a standard to be used in assessing ethics and compliance programs, a culture of integrity is a hallmark of great organizations and an outcome of effective ethics and compliance programs. The importance of culture has been recognized by authorities as noted below.

U.S. Sentencing Guidelines	DoJ—Prosecution of Business Organizations	Federal Acquisition Regulations (FAR 52.203-13)
"To have an effective compliance and ethics program…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." (USSG §8B2.1 (a))	"Prosecutors may consider a corporation's history of similar conduct, including prior criminal, civil, and regulatory enforcement actions against it, in determining whether to bring criminal charges and how best to resolve cases. Comment: A corporation, like a natural person, is expected to learn from its mistakes. A history of similar misconduct may be probative of a corporate culture that encouraged, or at least condoned, such misdeeds, regardless of any compliance programs."	"The Contractor shall - (i) Exercise due diligence to prevent and detect criminal conduct; and (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law."

"Prosecutors should … attempt to determine whether a corporation's compliance program is merely a 'paper program' or whether it was designed, implemented, reviewed, and revised, as appropriate, in an effective manner."

US Department of Justice
Principles of Prosecution of Business Organizations

APPENDIX B: ABOUT ETHICAL LEADERSHIP GROUP AND NAVEX GLOBAL

The Ethical Leadership Group™ (ELG), the advisory services arm of NAVEX Global, was formed in 1993 with a straightforward mission – to help companies develop and promote cultures of integrity. Since then we have served more than 25% of the Fortune 200 to: assess employee perceptions about ethics and compliance programs as well as corporate cultures; assist companies in the development of best practice ethics and compliance programs; train boards, management and front-line employees; assess risk; and provide expert professional consultation for any business conduct need that may arise. We have traveled around the world and worked with companies across dozens of industries, and we have a passion for what we do.

We have created a multi-discipline, multi-dimensional consulting team expressly suited to leveraging employees and other existing company resources into an effective ethics and compliance program. Our consultants have extensive experience in human resources, engineering and management, as well as audit and the law. We have subject matter experts trained in healthcare, organizational behavior, social psychology, statistics, logic, philosophy, theology, finance, law and business operations. Our team encompasses recognized thought leaders as well as individuals who have managed ethics and business conduct functions in large, multi-national organizations including Lockheed Martin, Chiquita, Westinghouse, Caremark, Sara Lee, Marathon Oil, US Foods, and the World Bank. We have served on the U.S. Sentencing Commission's Advisory Group that revised those Guidelines in 2004, led the Ethics and Compliance Officer Association, and we have lead and organized more than fifty ethics and compliance best practice conferences worldwide. This unmatched level of experience helps us offer practical insight and cost effective recommendations for improvement.

ELG earns new clients and business primarily by its business reputation and the recommendations of its client base. Annually, the majority of our business is generated from clients who initiated relationships with us in prior years, and have asked us to do additional work for them. We believe this is the single best indicator of the quality we demonstrate in all of our work and our obsession with client service.

ELG is the advisory services arm of NAVEX Global, the trusted global ethics and compliance expert for more than 8000 clients in over 200 countries. Together, we empower clients to build their business value through informed decisions, elimination of silos and increased visibility to drive revenue. A merger of industry leaders ELT, EthicsPoint, Global Compliance Services and PolicyTech, NAVEX Global now provides the world's most comprehensive suite of solutions to manage governance, risk and compliance.