

## CEP Magazine – February 2021

### Thank you for telling us how ignorant we are

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By Joe Murphy, CCEP

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Every profession benefits from informed criticism. It forces us to examine what we are doing. It sharpens our focus and improves what we do. Our field—compliance and ethics—needs this. We have an extremely important and difficult mission: to prevent and detect crime and wrongdoing in our organizations.

From the beginning, I have been a critic of practices in our field. I believe, for example, that we need to focus more on incentives, do more to evaluate how effective our efforts are, and do more to address the use and abuse of power. But above all, I respect those who do the difficult day-to-day work in our field.

To stay up to date, I try to follow the literature and commentary about our field. Sadly, I find much criticism and commentary that is not helpful, because it misses a key qualifier: being informed. It should not just assume that we are stupid and unobservant.

For decades critics have attacked our standards, particularly the Federal Sentencing Guidelines. Amazingly, almost without exception, they do not read those standards. Instead, they denounce codes of conduct (had anyone noticed that the guidelines nowhere refer to codes?), legalistic lectures, and maybe a few “command and control” elements. Yet these are not what the guidelines are about. The guidelines call for fundamental management steps—exactly the things a good manager would do to achieve any important objective.

To pick just one of many critics, here is a recent example. One critic says we need to “question everything about best-practice compliance.”<sup>[1]</sup> So I expected this piece to have examined what is best practice. It did not. Instead, it called on us to pay attention to matters “beyond their direct remit, such as bonus structures, growth targets, and leadership priorities.” But the Federal Sentencing Guidelines include incentives as a minimum standard (part of our “remit”), telling us to use “appropriate incentives to perform in accordance with the compliance and ethics program.”<sup>[2]</sup>

If a compliance program does not address “bonus structures, growth targets, and leadership priorities,” not only is it not best practice, it does not even meet the *minimum* standards. Call us to account for not doing a good job in trying to achieve best practices or even minimum standards, but first know what they are.

<sup>1</sup> Alison O’Connell, “It’s Time to Question Everything About Best-Practice Compliance,” *Ethical Systems* (blog), May 30, 2020, <https://bit.ly/3qkmj4H>.

<sup>2</sup> USSG § 8B2.1 (U.S. Sentencing Comm’n 2018), <https://bit.ly/2JtYjeS>.

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