

What Are Companies Doing?

The Corporate Compliance Center's
2005 Survey

Greater Houston Business Ethics Roundtable
February 7, 2006

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South Texas College of Law



Organizational Sentencing Guidelines

- ▶ Introduced in 1991
- ▶ Credit for an “effective” compliance program
- ▶ Seven steps
- ▶ November 2004 Amendments

Effective Compliance Program

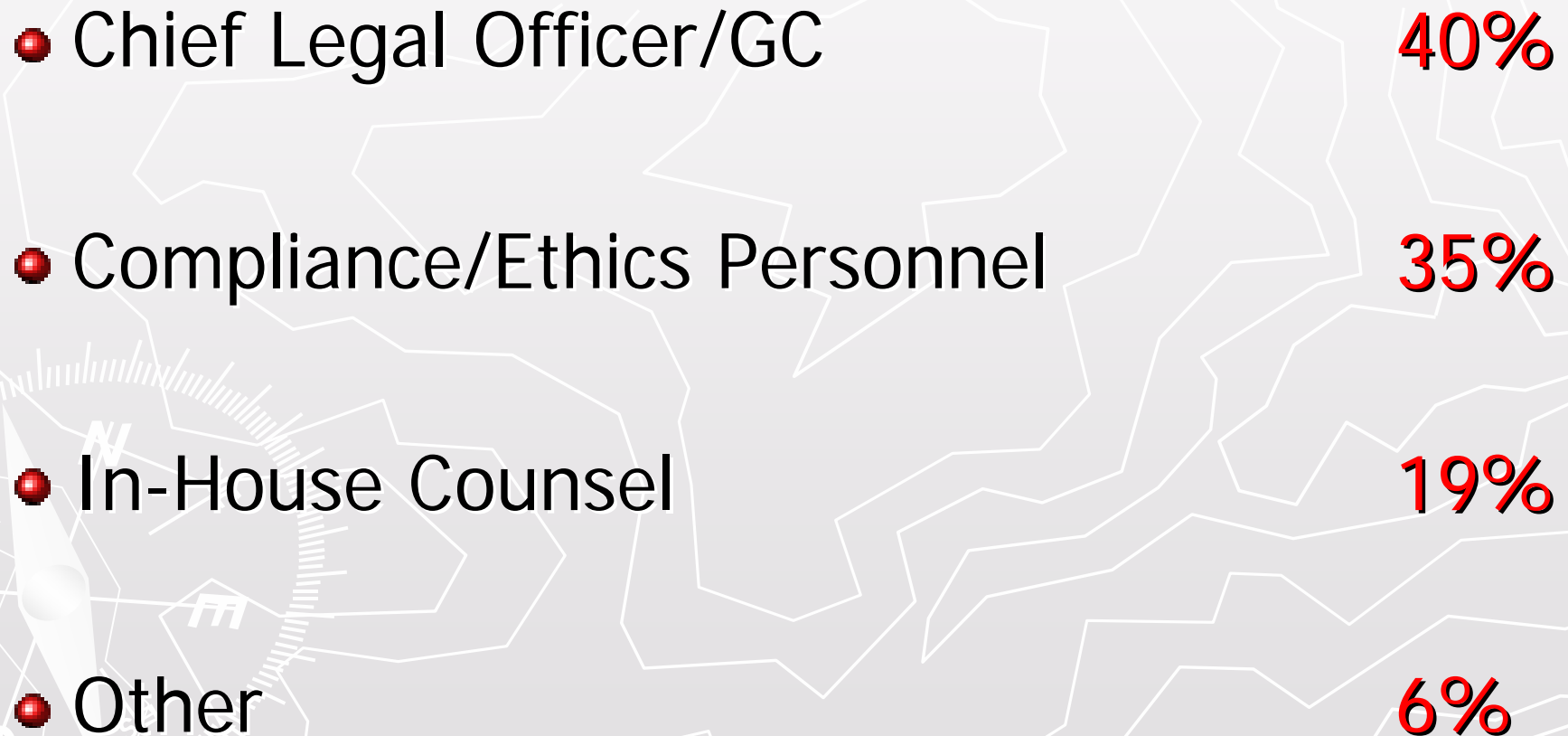
“An organization’s **failure to incorporate** and follow **applicable industry practice** or the standards called for by any applicable governmental regulation **weighs against** a finding of an effective compliance and ethics program.”

USSG § 8B2.1, Note 2(B)

2005 Best Practices Survey

- ▶ The Board's Role
- ▶ Structuring the Compliance Office
- ▶ Evaluating the Program
- ▶ Compliance Training

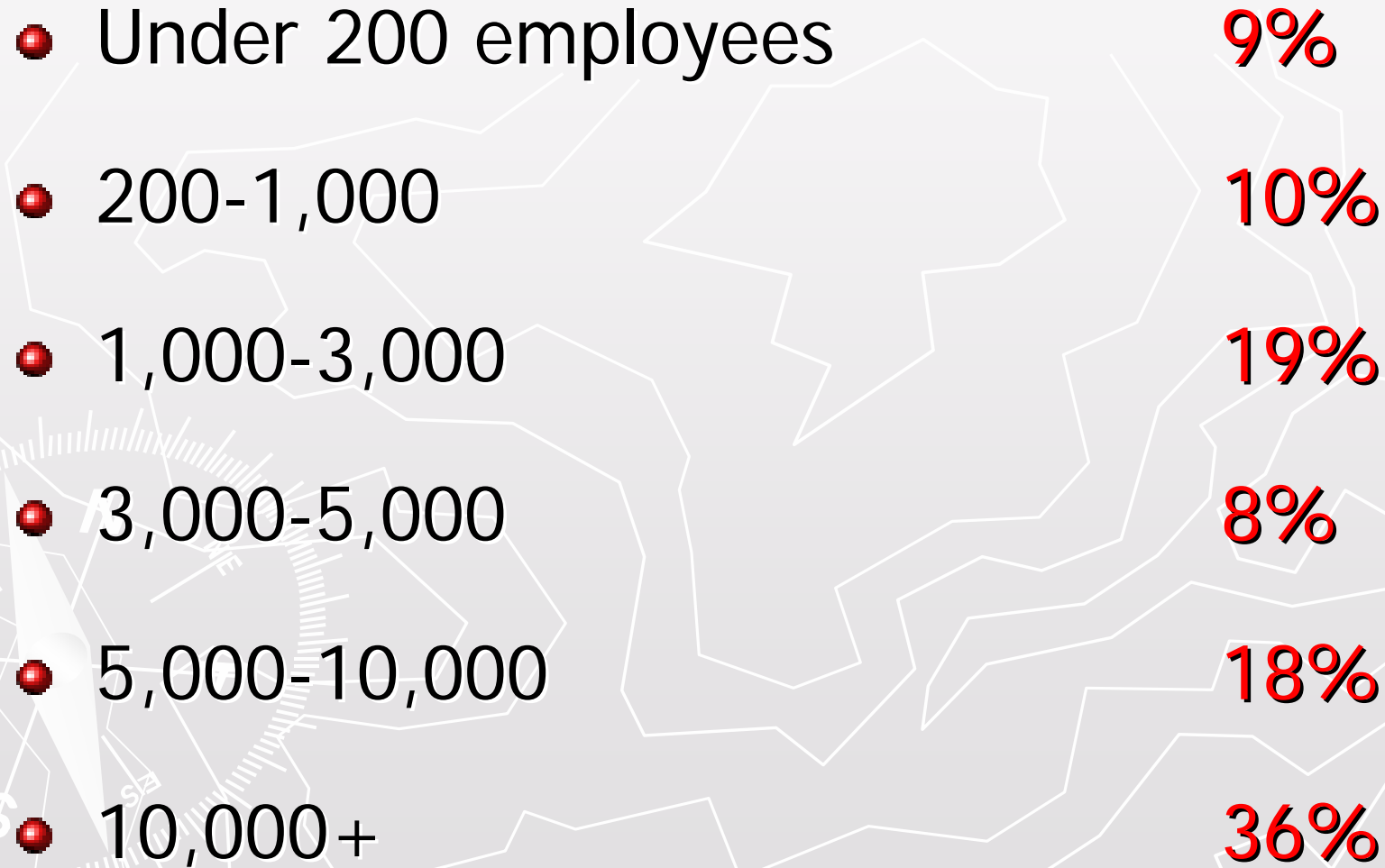
Survey Participants



Industry Participation

- Industrial 35%
- Health Care and Public Services 21%
- Info, Comm'n, and Ent. 16%
- Consumer 15%
- Financial Services 13%

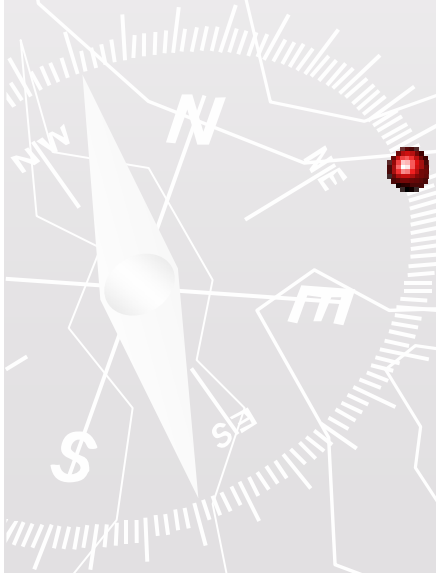
Organization Size



Awareness of 2004 Guidelines Amendments

● Aware 89%

● Not Aware 11%

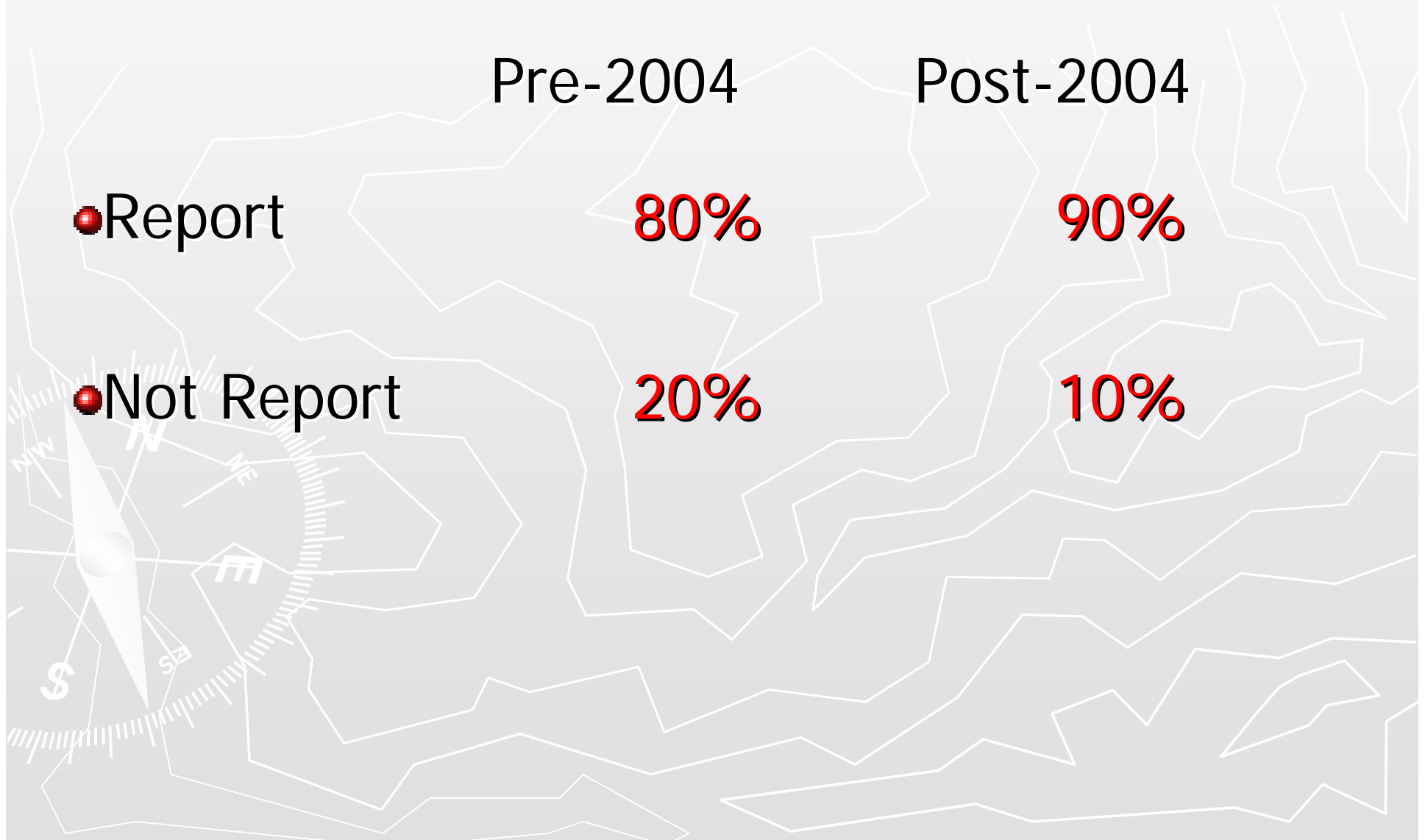


The Board's Role

- ▶ “[S]hall be **knowledgeable about** the **content** and **operation** of the compliance and ethics program”
- ▶ “[S]hall exercise **reasonable oversight** with respect to the implementation and effectiveness of the compliance and ethics program.”

USSG § 8B2.1(b)(2)(A)

Board Reporting

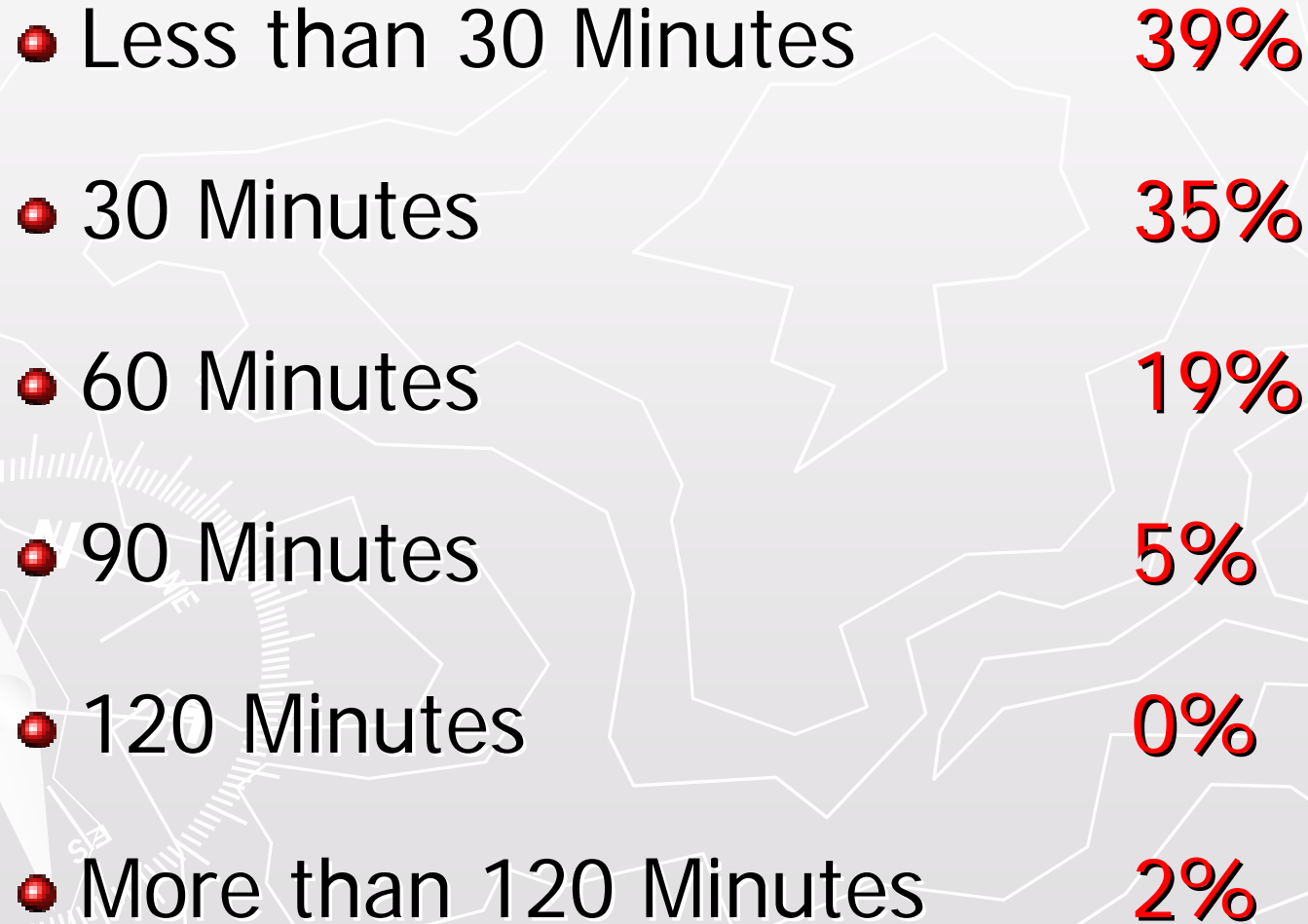


Frequency of Board Report

- Annually 39%
- Semi-Annually 7%
- Quarterly 47%
- More Frequently 7%



Time for the Board Report



• Less than 30 Minutes	39%
• 30 Minutes	35%
• 60 Minutes	19%
• 90 Minutes	5%
• 120 Minutes	0%
• More than 120 Minutes	2%

Who Reports to the Board?

- Chief Compliance Officer 50%
 - Legal Department 45%
 - Internal Auditor 20%
 - Chief Executive Officer 7%
 - Chief Financial Officer 7%
 - Other 12%
- 

Board Training

● Train

61%


● Do Not Train

39%



Topics for Board Training

The Top Four

- 
- Conflicts of interest 71%
 - SOX 62%
 - State corporate law duties 38%
 - Business gifts 36%

Topics for Board Training

The Next Four

- Bribery 31%
- Expense reimbursement 31%
- Political contributions 27%
- Sexual harassment 26%

Who Does Board Training?

- In-house Personnel 79%
 - Outside Trainer 23%
 - Outside Course 17%
 - Other 17%
-

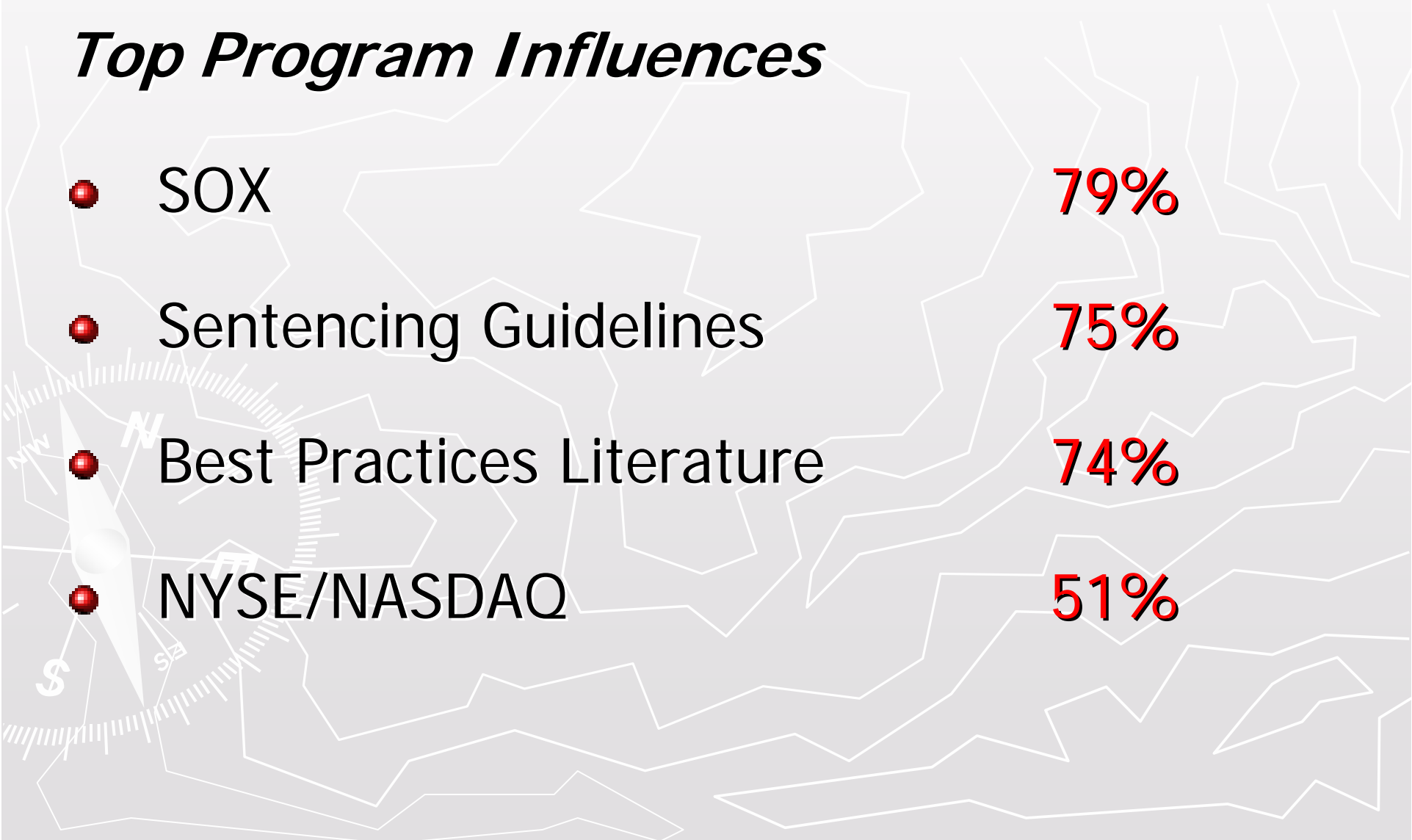
Who Does Board Training?

"Other" Responses

- Web-Based
- Outside Counsel
- Compliance Consultant

Structuring Compliance

Top Program Influences

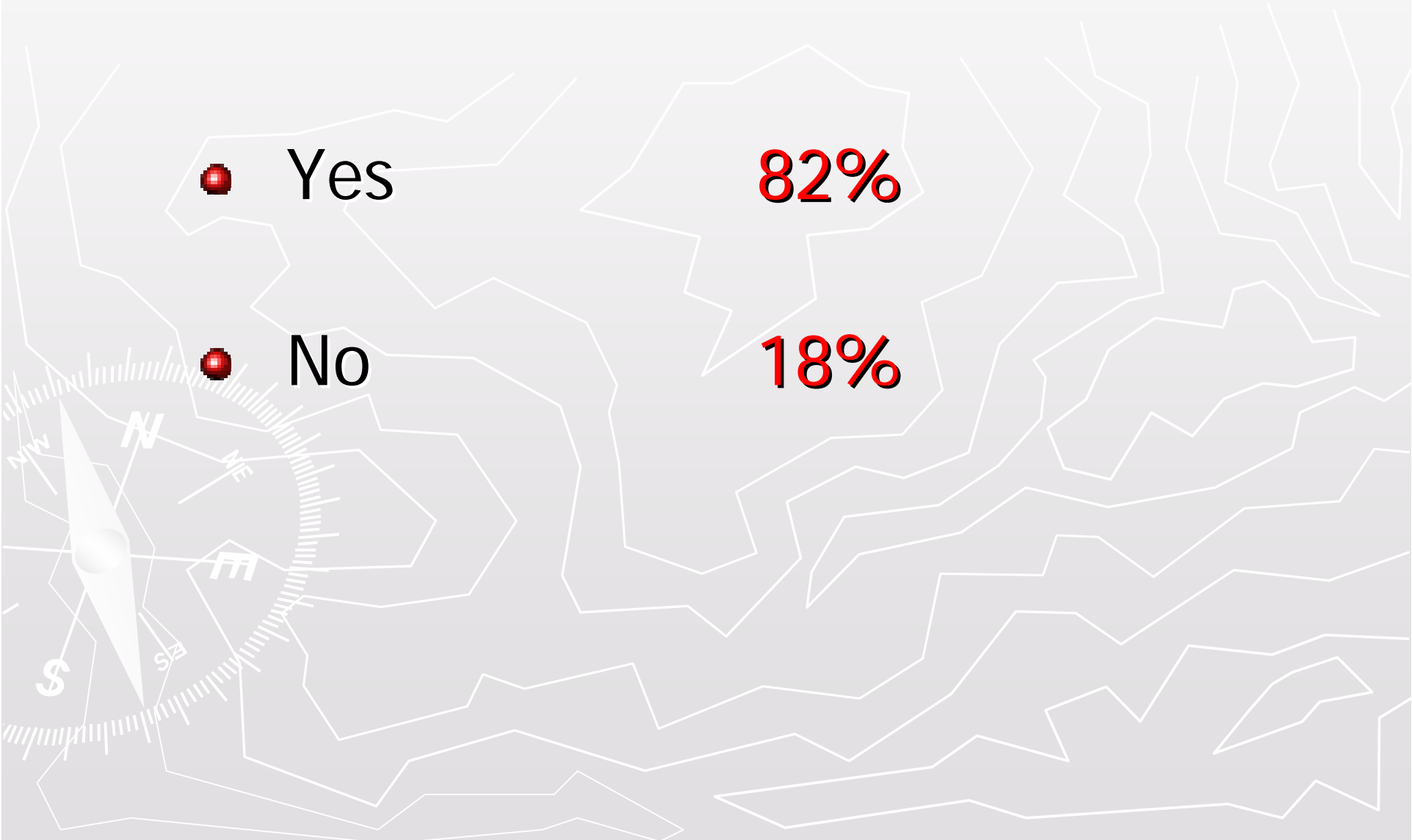
- SOX 79%
 - Sentencing Guidelines 75%
 - Best Practices Literature 74%
 - NYSE/NASDAQ 51%
- 

Structuring Compliance

- ▶ **“Specific individual(s)** within high-level personnel shall be assigned **overall responsibility** for the compliance and ethics program.”

USSG § 8B2.1(b)(2)(B)

Chief Compliance Officer?



Is the CCO in Legal?

● Yes

61%

● No

39%



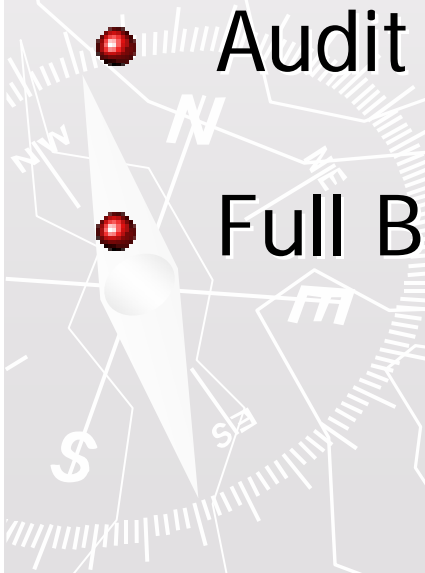
CCO's Other Hats

- Executive/Senior VP 35%
- General Counsel 33%
- Corporate Secretary 19%
- None 19%

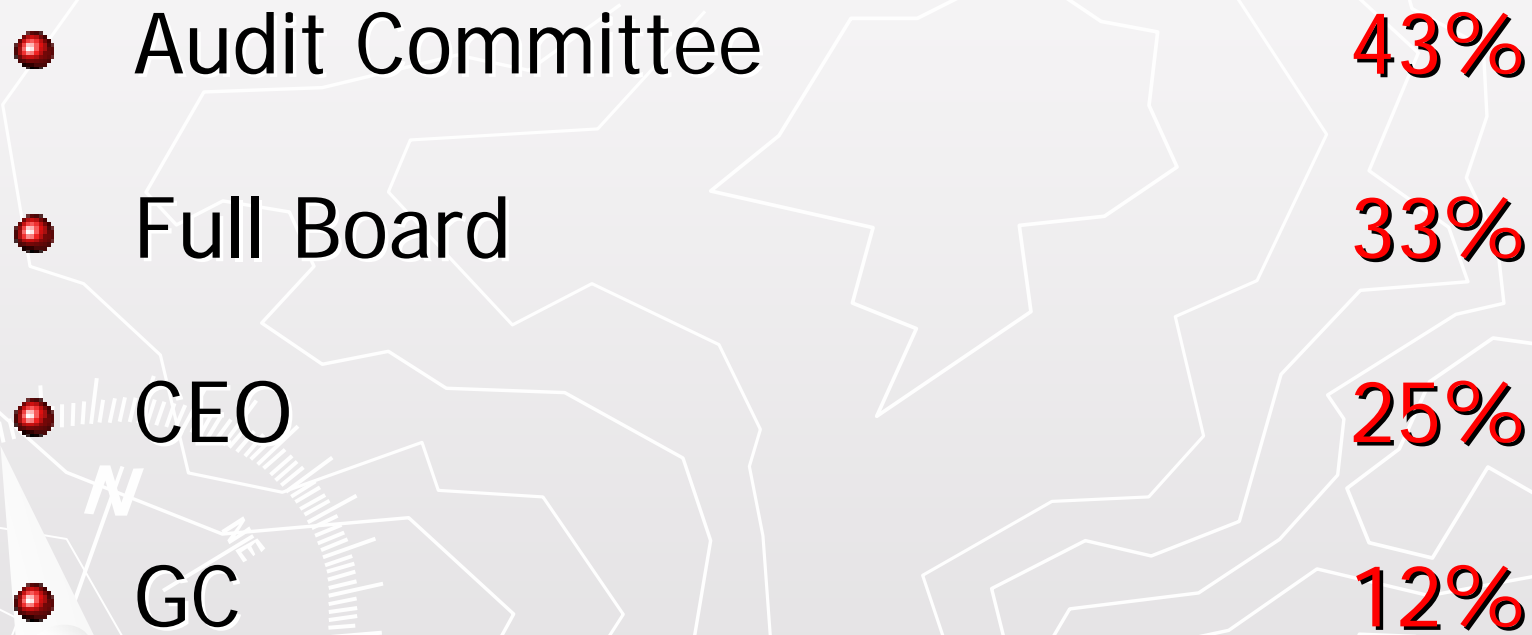


CCO's Direct Reports

- Chief Executive Officer 51%
- General Counsel 32%
- Audit Committee 20%
- Full Board 9%



CCO's Indirect Reports



Risks Overseen Outside CO

- 
- Workplace safety 61%
 - Employment discrimination 56%
 - Environmental 53%
 - Securities law 43%
 - Antitrust 38%
 - Industry specific regulations 21%
 - None 16%

Compliance with Foreign Law

Business or Locations in Other Countries?

● Yes

61%

● No

39%



Compliance with Foreign Law

Stay Current on Foreign Law?

● Yes

88%

● No

12%



Compliance with Foreign Law

Who Updates on Foreign Law?

- In-house Counsel **77%**
- Outside Counsel **77%**
- Industry Trade Association **39%**
- In-house (Non-lawyers) **25%**

Evaluating the Program

- ▶ “The organization shall take reasonable steps . . . to **evaluate periodically the effectiveness** of the organization’s compliance and ethics program”

USSG § 8B2.1(b)(5)



Do You Evaluate?

● Yes

88%

● No

12%



Evaluating the Program

How Do You Evaluate?

- Evaluate handling of reports **83%**
- Audit critical tasks **77%**
- Include in SOX 404 review **66%**
- Compliance walkthroughs **59%**

Evaluating the Program

Who Performs the Evaluation?

- In-house audit staff 77%
- In-house counsel 70%
- In-house compliance 62%



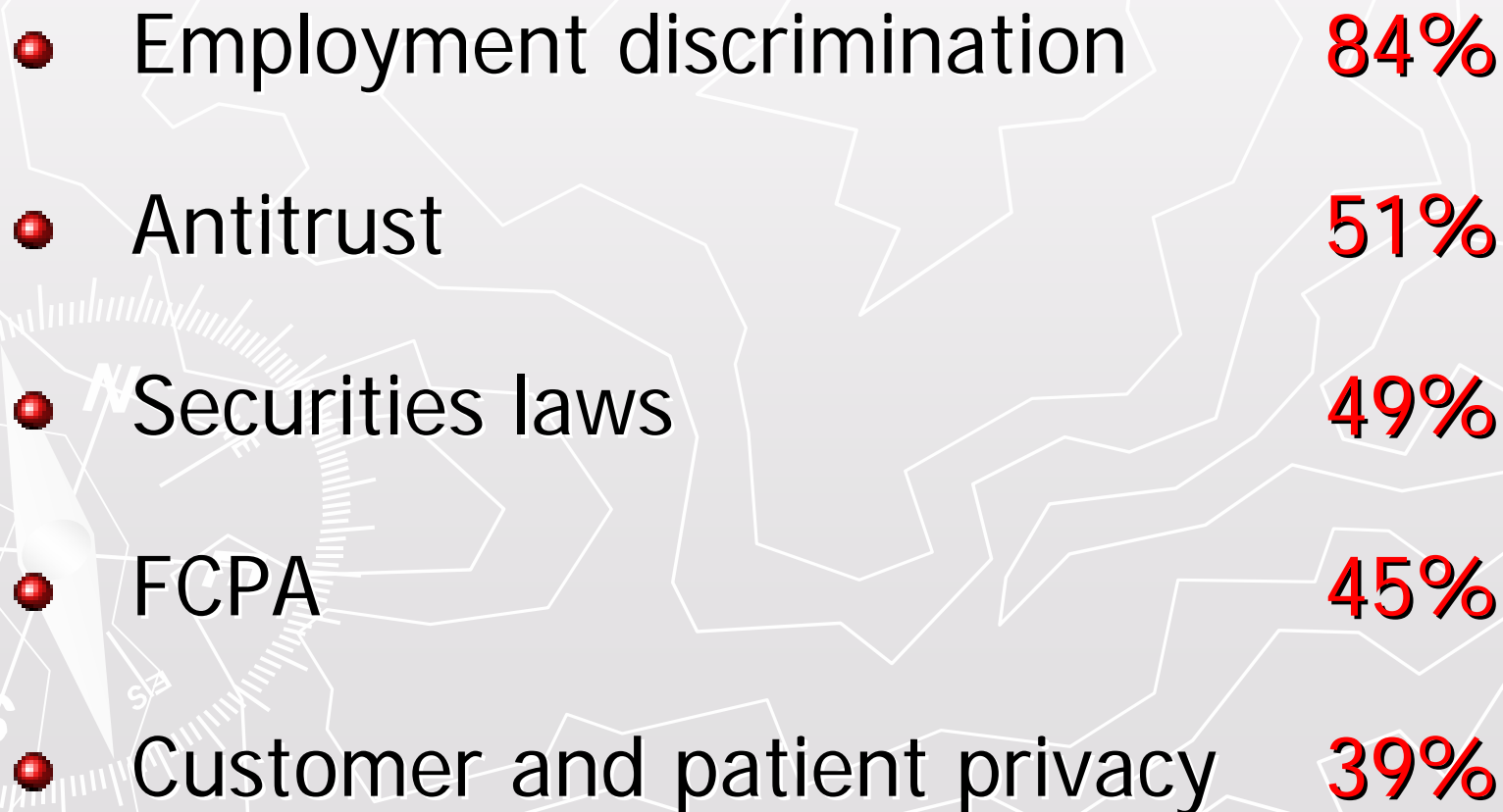
Employee Training

- ▶ “The organization shall . . . conduct[] **effective training programs** and otherwise disseminat[e] information appropriate to such individuals’ respective roles and responsibilities. ”

USSG § 8B2.1(b)(4)(A)

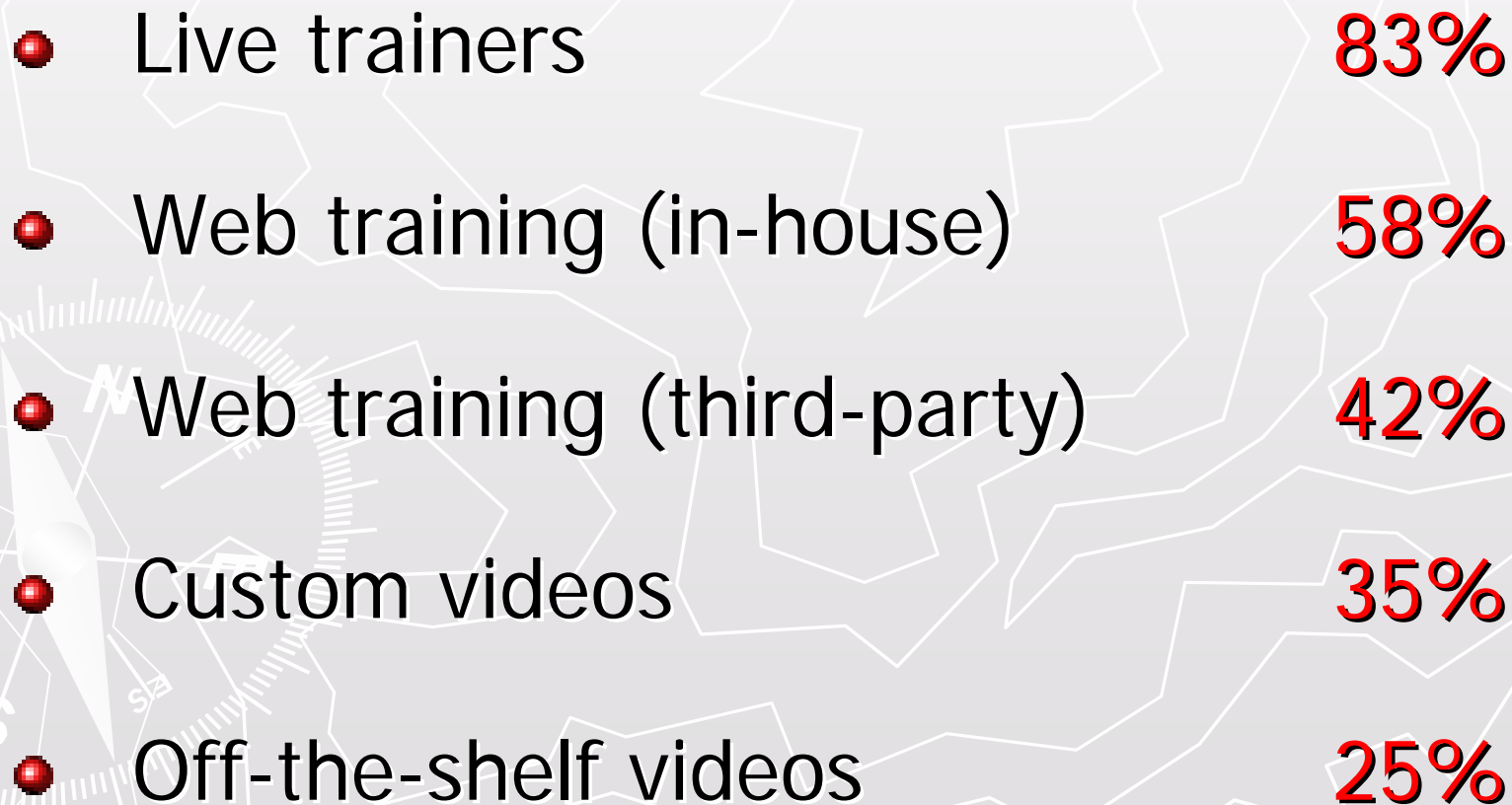
Employee Training

On Which Topics Do You Train?

- Employment discrimination 84%
 - Antitrust 51%
 - Securities laws 49%
 - FCPA 45%
 - Customer and patient privacy 39%
- 

Employee Training

How Do You Train?

- Live trainers 83%
 - Web training (in-house) 58%
 - Web training (third-party) 42%
 - Custom videos 35%
 - Off-the-shelf videos 25%
- 
- The background of the slide features a light gray background with a white line graph that fluctuates across the page. On the left side, there is a white compass rose with a needle pointing towards the top-left. The compass rose has letters 'N', 'S', 'E', and 'W' indicating directions. A dollar sign (\$) is also visible near the bottom of the compass rose.

Employee Training

Do You Test Comprehension?

● Yes

64%

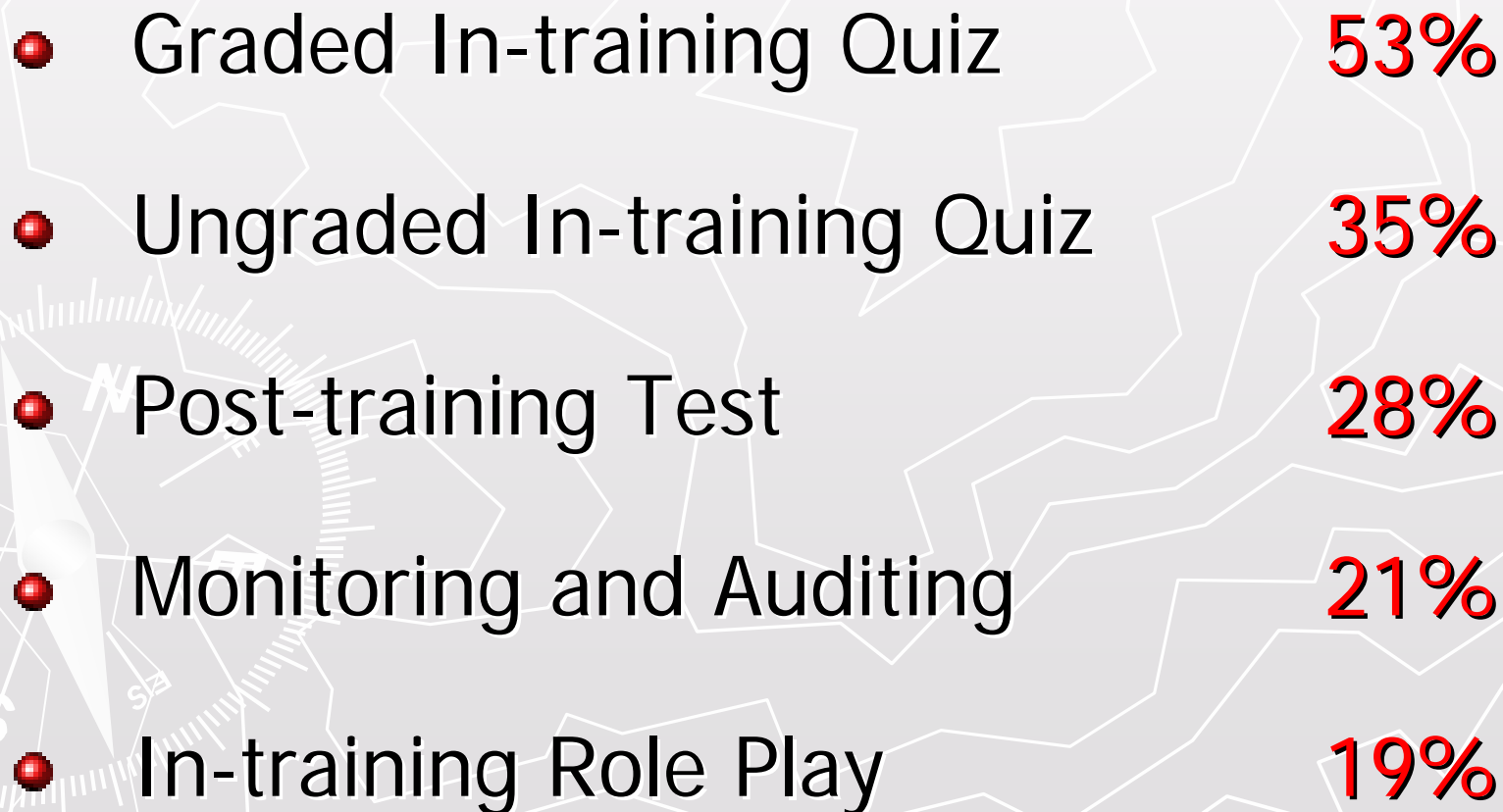
● No

36%



Employee Training

How Do You Test Comprehension?

- Graded In-training Quiz 53%
 - Ungraded In-training Quiz 35%
 - Post-training Test 28%
 - Monitoring and Auditing 21%
 - In-training Role Play 19%
- 
- The background of the slide features a light gray background with a white line graph showing an upward trend. On the left side, there is a white compass rose with a needle pointing towards the top-left. The compass rose has letters 'N', 'S', 'E', and 'W' and a dollar sign '\$' near the needle. The line graph consists of several white lines of varying lengths and directions, creating a complex pattern.

Culture Trumps Compliance

- ▶ “To have an effective compliance and ethics program . . . , an organization shall . . . **promote an organizational culture** that **encourages ethical conduct** and a commitment to compliance with the law.

USSG § 8B2.1(a)(2)

Culture Trumps Compliance



|Code|of Ethics

July, 2000