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Continuous Improvement: What the DOJ Demands – What Business Survival Requires

Robert Zafft

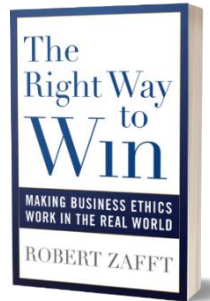
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Robert Zafft



- Adjunct Lecturer, Olin Business School
- Forbes Leadership-Strategy Contributor: Business Ethics, Compliance & Governance
- Former Senior Consultant, McKinsey & Company
- Author, *The Right Way to Win: Making Business Ethics Work in the Real World* (Rowman & Littlefield, 2020)
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- www.TheRightWayToWin.com
- Corporate training and online, self-study programs with certificates in Business Ethics



Today's Presentation

- **Explore the U.S. Department of Justice's demands for continuous improvement**
- **Identify major corporate approaches to continuous improvement**
- **Describe theory and practice of continuous improvement**
- **Examine three real-world cases**
 - **Wells Fargo fake-account scandal**
 - **Bernie Madoff's Ponzi scheme**
 - **Roger Clemens's late-career surge**

The DOJ Guidance incorporates several DOJ normative documents

- **Principles of Federal Prosecution of Business Organizations (Justice Manual 9-28.300)**
- **U.S. Sentencing Guidelines (§§8B2.1, 8C2.5/.8)**
- **Selection of Monitors (Benczkowski Memo)**

DOJ demands for corporate ethics and compliance programs are high...



“High-level [company] personnel...*shall ensure* that the organization has an effective compliance and ethics program”

...including continuous improvement, with root-cause analysis and demonstrable remediation

Continuous improvement, periodic testing and review

- Internal audit
- Control testing
- Evolving updates
- Culture of compliance

Analysis and Remediation of Underlying Misconduct

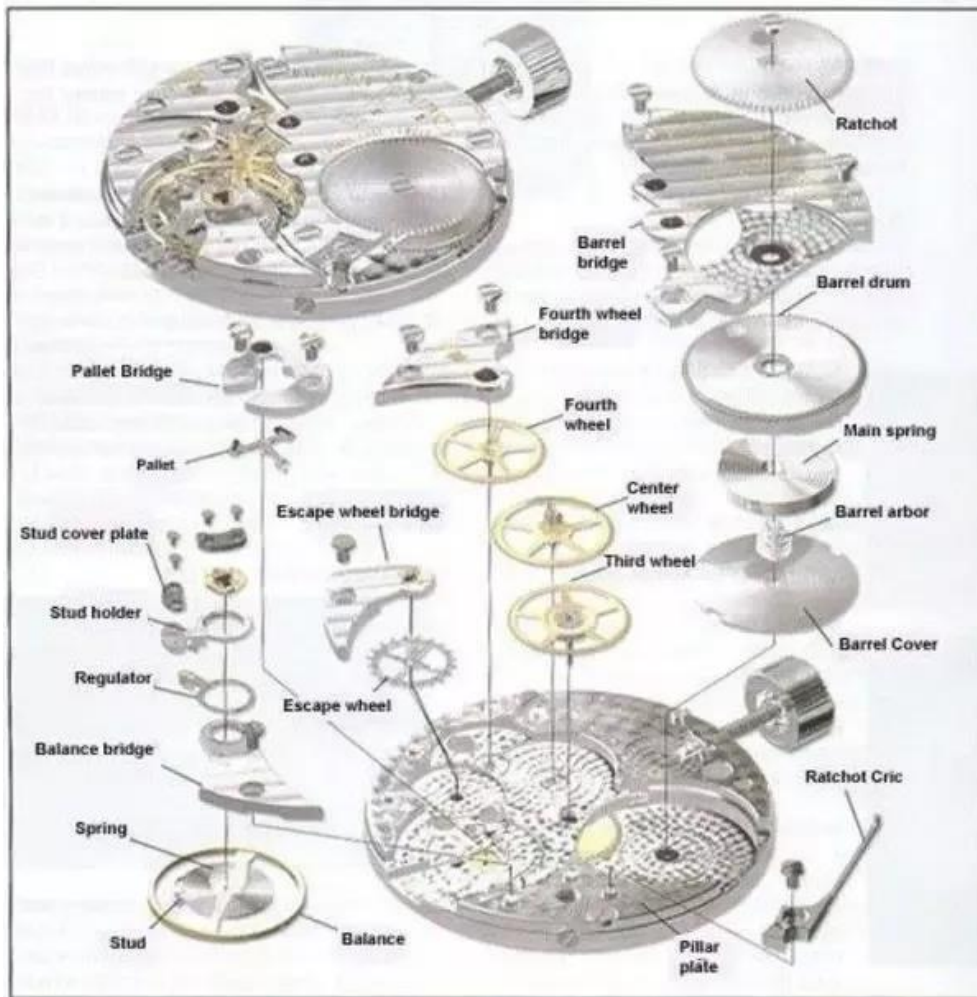
- Root cause analysis
- Prior weakness
- Payment systems
- Vendor management
- Prior Indications
- Remediation
- Accountability

- Guidance call for
 - Evidence of continuous improvement efforts generally
 - Vigorous investigation, analysis, and remediation for specific misconduct
- DOJ will dampen criticism in hindsight where company has voluntarily disclosed wrongdoing
- DOJ may temper assessment at time of resolution based on remedial actions

For decades, continuous improvement has driven corporate performance



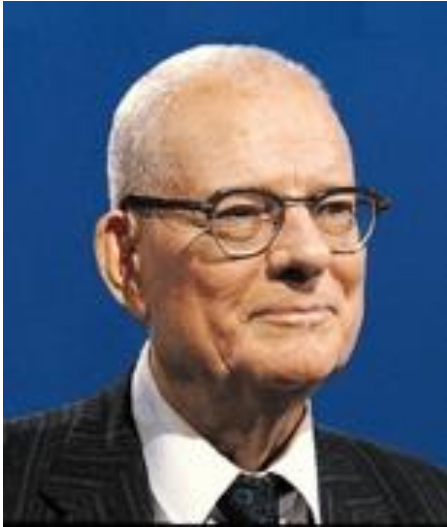
Organizational design determines structure and function: the who & what



Process determines movement of interdependent parts: the how



Accountability through process control



“If you can't describe what you are doing as a process, you don't know what you're doing.”

W. Edwards Deming

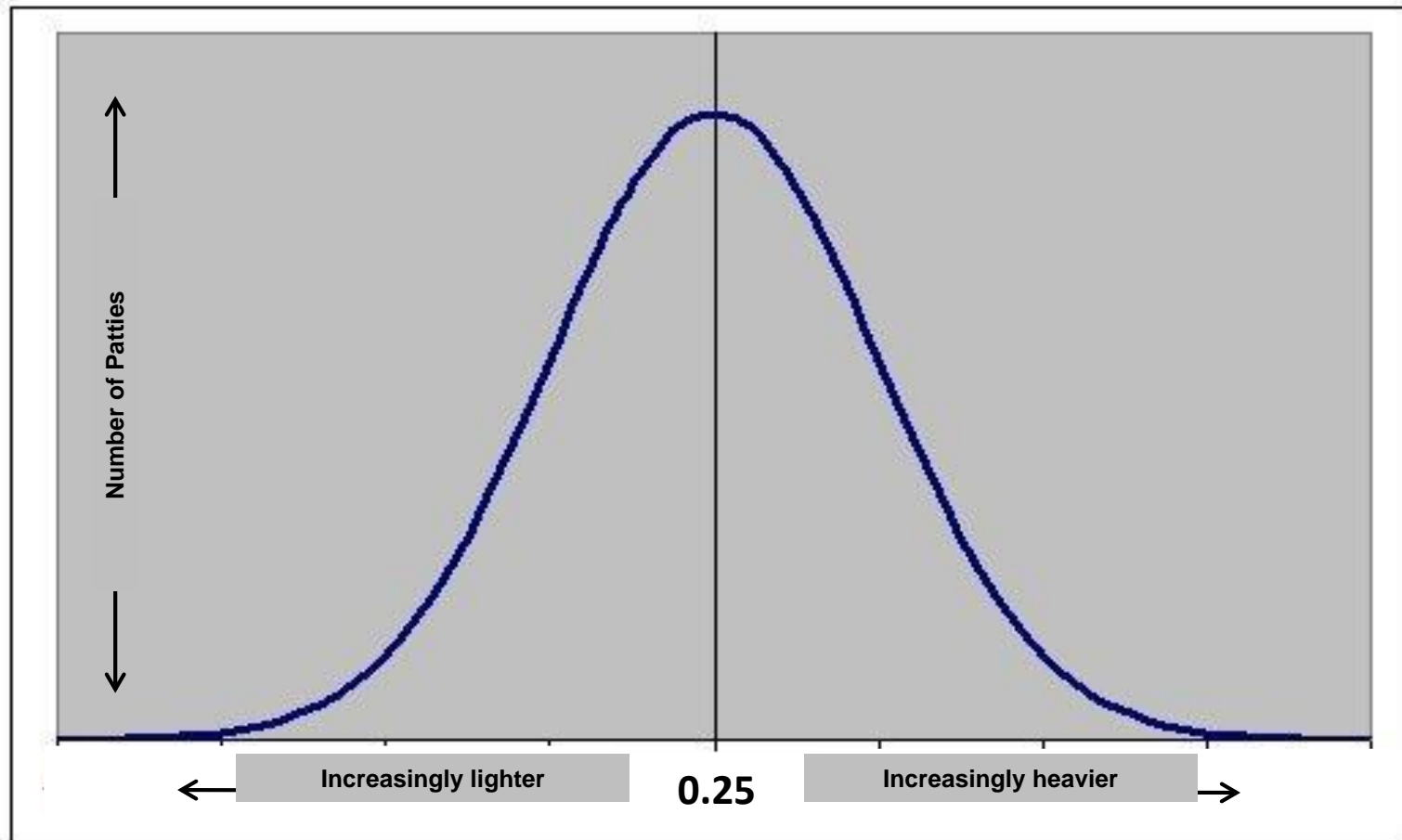
Example: club soccer

Signing up for Club Soccer Tryouts	
Player	
League Office	
Club Office	
Club Coach	

A normal, or bell-curve distribution

QUARTER POUNDER™ PATTIES BY WEIGHT (HYPOTHETICAL)

Pounds



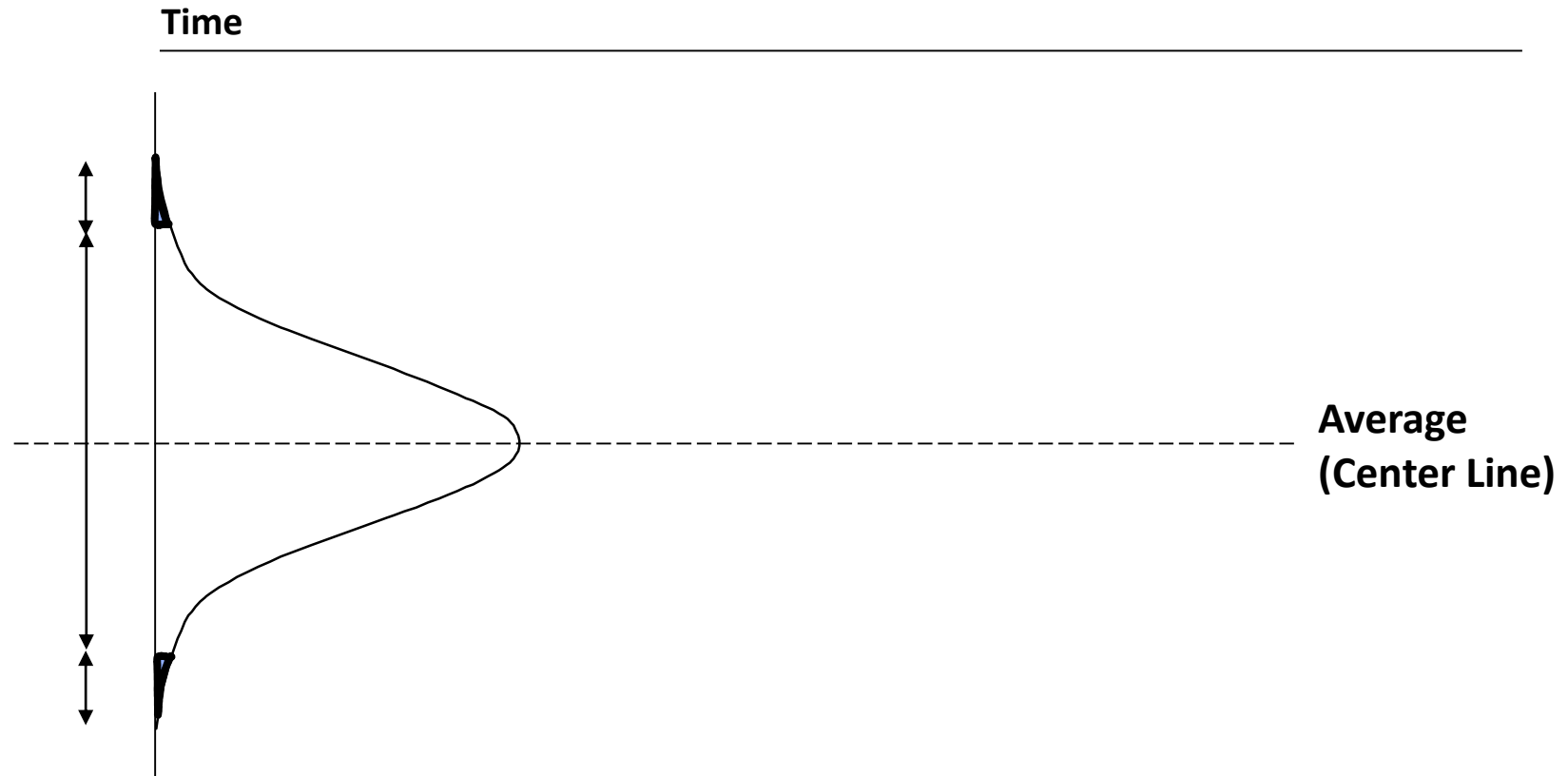
Causes of variability

Type of Cause

Common

**Special /
Assignable**

Sample control-chart center line



Wells Fargo's CEO goes to the woodshed

**WELLS
FARGO**


2015 Net Inc. -- \$23b
Fine -- \$187mm
Mkt Cap. -- \$230b



Spotting cheaters – Bernie Madoff



Spotting cheaters – Roger Clemens



“An infallible way. They won!”



Source: Casino (1995). <https://www.youtube.com/watch?v=JcZHSGyos6g>

The Right Way to Win Training Program, with CPA Academy Certification

Poll
Questions 3 & 4

Benefits

**Uniquely
Aligns with
DOJ Guidance**

**Generates 15
CPE/CLE*
Credits across
Fields of Study**

**Provides
Certification in
Business Ethics**

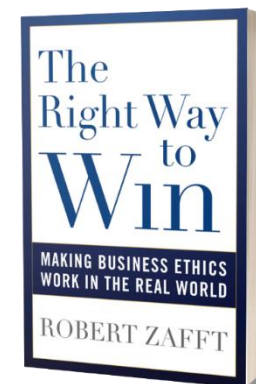
Description

**Addresses meta-compliance issues not covered by
typical compliance programs**

- Organizational design & risk management
- Statistically driven process control
- Continuous improvement
- Culture building & communications

- 3.0 Behavioral ethics
- 2.8 Other non-technical
- 9.2 Technical

- Certificates issued by CPA Academy
 - Basic – 3.5 CPE
 - Intermediate (Business Organizations) – 5.0 CPE
 - Advanced (Managing for Ethical Behavior) – 6.5 CPE
- Evidences commitment to ethics & compliance
- Bolsters individual resumes (academic badges)



https://www.cpaacademy.org/seIf_study_show/a0D2S00000oksEQUAY

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