

LEGAL PROFESSIONALS AND THE ETHICS OF COMPLIANCE:

IN AN EVOLVING COMPLIANCE ECOSYSTEM, LAWYERS NAVIGATE ETHICAL COMPLEXITIES AND A SKEPTICAL PUBLIC

Legal professionals are at the heart of compliance issues. From the formation of government regulations, to the implementation of corporate policies, to the enforcement efforts that give “teeth” to these measures, lawyers have always played crucial compliance roles. Today, however, the nature of lawyers’ advisory roles is evolving in ways that complicate a host of compliance questions—and may well exacerbate longstanding stakeholder skepticism about lawyers and ethics.

Savvy compliance executives recognize how the negative perceptions of lawyers can impede trust and collaboration in compliance ecosystems. When stakeholders *don't* trust the integrity and motives of those behind compliance rules—or *those who make and enforce these measures*—compliance programs suffer. And when compliance and ethics suffer, damage to corporate reputation and brand values can’t be far behind.

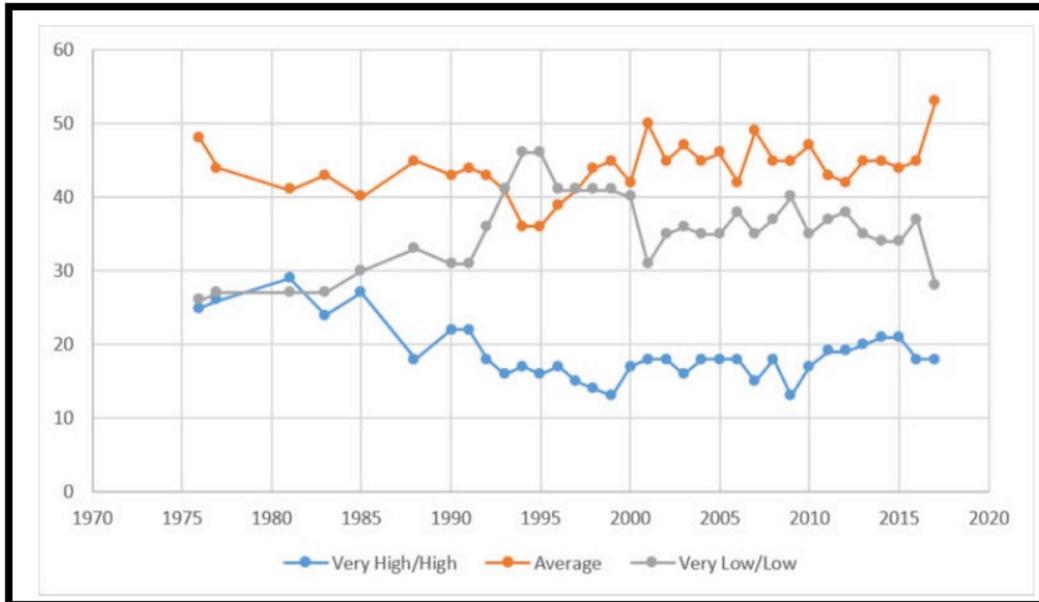
The legal profession itself long has been concerned about ethics matters *and* about the negative public perceptions that result from ethics infractions. As executives and lawyers strive to mitigate mistrust and promote stakeholder confidence, considering the roots of this enduring image problem provides a productive place to begin.

STAKEHOLDER SKEPTICISM OF LAWYERS' ETHICS

Historically, public trust in legal professionals has been fragile and fleeting. In America, public condemnation of unethical lawyers dates back to the late 1700s—when public demands for protection against legal abuses spurred “character and fitness” qualifications as a prerequisite for bar admission. Since then, ethics requirements for lawyers have been continually revisited and amended—but if current polls are a fair measure, the public image of lawyers has not improved much in recent times.

The Gallup polling organization—which has been surveying American public opinion on the “honesty and ethical standards” of different professions for more than 40 years—provides compelling evidence on the enduring lack of trust for lawyers. In polls taken during the first decades of the 21st Century, [Gallup's survey data](#) have never shown significantly more than 20 percent of the U.S. population rating

lawyers' ethical standards as either "high or very high".



Source: Gallup Survey on Legal Ethics, Cited in *A Higher Bar* - Harvard Law School Center on the Legal Profession <https://thepractice.law.harvard.edu/article/a-higher-bar/>

For good lawyers everywhere, past abuses (and the current misdeeds of a few bad attorneys) continue to cast a pall. these enduring negative perceptions have real-world consequences for every aspect of the legal profession—and lawyers' involvement in compliance matters is no exception.

LEGAL ETHICS VS. BUSINESS ETHICS?

Lawyers are bound by a Professional Code of Ethics. These guidelines are part of every law students' education—and a prospective lawyer must pass the professional examination addressing ethical matters. Among the many subjects covered by these legal ethics guidelines are: Client relations; conflicts of interest; honesty; fair dealings; and other issues a typical lawyer might expect to encounter.

But does this training in legal ethics provide adequate preparation for the complex, shades-of-gray world of compliance ethics? Some lawyers think not...

“Lawyers are not necessarily the right people to define, protect and promote a company’s ethical culture,” said Michael Volkov, compliance expert and author of the [Corruption, Crime & Compliance](#) blog. Citing the once-legal practices of slave-holding and discrimination, Volvo said “Our country’s legal history is filled with blemishes on important ethical issues.”

Other commentators, however, contend that lawyers’ ability to weigh and argue many perspectives makes them *exactly* the right professionals to address business compliance ethics. Whatever side one takes in this ongoing debate, any such discussion must consider this: the crucial distinction between *legal* ethics and *business* ethics.

LAWYERS AS BUSINESS ADVISORS

In the wake of its most recent global survey, The Association of Corporate Counsel declared that 2018 ushered in [“The Age of the Chief Legal Officer”](#). Among this survey’s key findings: lawyers are becoming increasingly influential on corporate decisions that are less about *legal* matters and more about *business strategy*.

Why might these dual roles pose a problem? Because wearing the similar-but-not-same hats (legal advisor vs. business strategist) can complicate—and obscure—an attorney’s ethics-related calculations.

Even when an attorney’s professional training allows him/her to make clear distinctions between these legal/non-legal roles, what about those who *receive* this attorney’s advice? Can non-lawyers always be expected to grasp the nuances of these dual perspectives—and the often-dissimilar ethical standards behind them? (One can easily imagine a boardroom conversation of this nature: “Remind me: Did our Chief Legal Officer say Option B was OK from a *legal* perspective but not from an *ethical* standpoint? Or vice versa...”)

THE CHANGING PARADIGM IN LEGAL COMPLIANCE ROLES

“When I’m advising, it’s usually because there are competing interests; where there’s a really strong business case for something and the law on its face seems to present a conflict” said Henry Moniz, global head of legal/regulatory compliance, internal audit, and strategic business practices for Viacom.

In Moniz’ view, the compliance roles for lawyers are evolving: “We changed the paradigm from ‘You can do this but can’t do that’ to ‘How can we do this? How can we solve the problem?’”

With the rise of transparency and the increased public interest in ethics, stakeholders now demand that businesses go *beyond* the minimal standard of merely avoiding illegality; they expect positive contributions to the greater public good.

As these watchful stakeholders monitor ethical compliance matters—and lawyers’ increased involvement in a broader scope of issues—opportunities for misunderstanding are likely to proliferate. What’s more, balancing the complex, competing interests won’t always lead to decisions that are easily grasped or universally accepted. Conse-

quently, progressive compliance programs will include affirmative efforts to help stakeholders understand the implications of this new world order.

For lawyers, compliance executives, and stakeholders alike, the single most important question to ask—again and again—is this:

“How can we solve the problem?”

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