

# Compliance & Ethics Professional

June  
2014



A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

[www.corporatecompliance.org](http://www.corporatecompliance.org)

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# Toldya. (Reason #119 why Compliance is not a subset of Legal)

The other day I ran across a column from a compliance “expert” with an impressive legal background, including a stint at DOJ. The topic: Important things to remember in an internal compliance investigation. Hot cup of java in hand, I settled in for a good read on

what a fellow compliance practitioner regarded as “must do” in an internal probe. Here is my disappointed face. :-|

Instead of a pithy reminder on confidentiality and non-retaliation, two (out of seven) pillars of a good internal investigation guideline aimed at ensuring the integrity of the compliance program, the author had expounded on

attorney-client privilege, attorney work product, voluntary disclosure, and other items cribbed directly from the in-house lawyer’s playbook. Certainly all those items should be managed correctly in close coordination with Legal. But, meh. What a missed opportunity!

Some in the in-house legal community complain loudly that Legal should own and control Compliance. They have a number of reasons for this, most formed from an imperfect understanding of what Compliance actually does, and none of which I have found persuasive. But one thing is clear—the two functions have very different mindsets, mandates, and priorities.

Legal has one client, the company, and its mandate is to advise and protect that client. Compliance, on the other hand, is tasked with detecting and preventing misconduct.

The compliance mandate includes constant vigilance on the integrity of the compliance program, protecting internal whistleblowers (in part to demonstrate to others that it is safe to come forward), and supporting a culture of accountability, especially at all levels of management.

And why are there two separate mandates? Because, to quote SCCE CEO Roy Snell, those with the first mandate failed to fix the problems, so another mandate was needed. But I digress.

Most of the time, the respective mandates of Legal and Compliance are complementary, but sometimes they conflict. That is the point when, as noted by the government in the record-setting \$2.3 billion Pfizer settlement, management should hear both views.

A well-run compliance program requires hundreds of judgments, big and small, to be made on a weekly basis. The company with the political will to elevate their chief compliance officer to a “separate but equal” status in the C-suite will benefit from those judgments being made with an independent compliance mindset, and not through an “Always Legal but Occasionally Compliance” prism.

Collaboration, not subordination, when it comes to Compliance—that can make all the difference between a bad headline and a good bottom line. \*

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