

CORPORATE COUNSEL

The Compliance Strategist

Why GCs Don't Prevent Corporate Crime

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Roy Snell, executive director of the Society for Corporate Compliance and Ethics, is a great thought leader for the profession, blessed with a talent for expressing pretty complex concepts in a stripped down, evocative, and simple way that makes the point powerfully and simply. And with so many [bloviators](#) attempting to define the compliance profession in their own terms, the world needs that. Roy has often said many times that the compliance profession arose because ["those who came before failed to detect, prevent and remediate the problems."](#) The premise is perfectly sound: If the general counsel and Legal profession had been successful gatekeepers in preventing corporate crime, then why would a separate profession of "corporate compliance" be needed?

But it was needed.

An important new white paper examines why Legal, originally posed as the gatekeeper for "legal compliance" under Sarbanes-Oxley, did not then continue to encompass the entire corporate compliance profession—which has become ["the hottest trade on Wall Street."](#) In their white paper—["Why Don't General Counsels Stop Corporate Crime?"](#)—two authors from the University of Michigan Business School explore why GCs, who are positioned as "gatekeepers," do not routinely bring corporate crime to the senior management levels for resolution. This white paper gives good context for the rise of Compliance 2.0—today's modern compliance profession that has a separate and different mandate from in-house legal, and as we have discussed, different skill sets, best practices and core competencies than the in-house Legal bar. We refer to this as Compliance subject matter expertise (SME) for the purposes of defining [Compliance 2.0](#).

It is not surprising that one profession (Legal), having already attained a leadership role and a seat at the table in most C-suites would want to claim dominion over a new profession rising in the same corporate space, since by doing so it could seek to prevent the recognition of a rival profession and thus avoid any dilution of its hard-earned

influence and stature in the corporate landscape. But corporate regulators, boards and other gatekeepers have rapidly recognized that the need for strong and effective compliance programs must take precedence over questions of turf battles, titles, and reporting lines.

Indeed, corporate compliance and culture are a "bet the company" kind of issue—and thus we have many notorious examples of Compliance 1.0 programs (where compliance was structured as a captive subset of Legal) where the Legal-driven compliance program failed to detect, prevent and remediate problems that had been well known to employees and some management for years, thus "embedded" in the culture of the company:

- General Motors, where the Legal-driven compliance program failed to detect the deadly ignition switch defect linked to at least 200 deaths, and this resulted in a long delayed recall during a period where Legal took action to train employees in the "69 Naughty Words"—such as "rolling sarcophagus" and preached a policy of no note-taking in certain meetings—while Legal was "[quietly settling cases](#)" with plaintiffs.
- VW, where the labor law partner-turned-CCO managed a compliance program that failed to surface warnings from two employees and a vendor to bring the enormous [emission cheating scandal](#) to senior management for resolution.
- And now, most recently, the Wells Fargo [cross-selling fiasco](#), where the long-embedded cross-selling misconduct by managers and employees was obscured by a pattern of retaliation against employees who tried to report the misconduct.

Boards, the Department of Justice, the Securities and Exchanges Commission, and all other government gatekeepers must hasten to recognize Compliance as the independent subject matter expert needed as a partner to management and business to find, fix and prevent misconduct while supporting a culture of accountability within companies serious about compliance. For this, we have [Compliance 2.0](#).

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