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Phillips & Cohen, LLP

Sweeping generalities

Roy Snell



From time to time, people imply, or state outright, that lawyers should not be compliance or ethics officers. I have heard it a couple of more times lately, and I am done listening to it without responding. Some comments are passive-aggressive. Some people try to get real cute: rather than state a position, they just ask incendiary questions and make innuendos implying that lawyers should not be compliance or ethics officers. It's the equivalent of lobbing a hand grenade into the room and running away.

They also love to cite an anecdotal story or two to make their point. A professor has questioned outright the ability of lawyers to make ethical decisions. Others focus on the idea that the training lawyers receive, their personality, and the skill set of lawyers precludes them from being compliance or ethics officers. It is a ridiculous argument. As it is in other professions, all lawyers do not have the same personality, skill set, or training. Although I am not generally opposed to generalizations, this is a poor generalization. It is not based on a comprehensive analysis of lawyers who take on the roles of the compliance or ethics officer. It is based on one or two highly selective examples. It is a restrictive and biased generalization.

Some of the best compliance officers in this country are lawyers. I have spent 13 years working with

compliance and ethics professionals; not just occasionally, but every day. I'm going to make my own generalization. People who base their conclusions on one or two anecdotal stories and sweeping generalizations are more likely to be wrong than people who base their conclusion on research, surveys, or extensive experience. I have no problem with generalizations; I have a problem with generalizations made by people with no experience, no data, and no knowledge. And this goes for those who take the passive-aggressive approach with implications and innuendos.

The typical logic invoked by people who make poor generalizations can often be traced back to an incident. They take one anecdotal story (maybe a couple) and base their generalization on it. It's a good thing these people aren't responsible for census taking, the election process, or drafting and passing legislation. If they were in charge of a presidential election, they would check with a couple of people and call the election. In this case, they based much of their argument that lawyers make lousy compliance or ethics officers on the HP case.

HP had an ethics officer who was a lawyer. He allegedly sat by and watched his organization do something unethical. If he did what they said he did, he was either gutless,

unethical, poorly trained, or all of the above. The only thing HP proved was that one company can pick one wrong person to do one job poorly. The HP ethics officer does not represent all lawyers, nor does he represent the compliance and ethics profession.

You don't need a legal background to be a successful compliance or ethics officer, but it doesn't preclude you. The most important skill set that gets lost in this discussion are people skills such as collaboration, communication, negotiation, etc. If the people casting aspersions on lawyers had made any attempt whatsoever to go beyond an anecdotal story or two, they would have known that their statements are incendiary and inaccurate. The job of compliance or ethics officer is very difficult. We need all the good people we can get in this profession.

What we need are people who can collaborate, negotiate, motivate, and teach. We need people who can work with lawyers, auditors, risk managers, and others. We need people with common sense and courage. We need mature people who can stand up to pressure. What we don't need is inexperienced people making academic, theoretical generalizations about groups of people based on anecdotal stories. ✦