

Career Path: How In-house Counsel Reinforce the Rule of Law

Compliance and Ethics

Career Development



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In-house counsel are quick to agree to the principle that all people and institutions should be subject to laws that are fairly administered. We are vital links in defending the rule of law because it falls to us to adopt policies and enforce them fairly.

In practice, this means that we must apply the rules equally to everyone, regardless of their performance or position in the company. It means we respect employees' fundamental rights, including the right to privacy, freedom of expression, and due process.

Throughout history individuals worried most about intrusion by governments because they held asymmetrical power over citizens. Today, corporations play a much greater role in enhancing, or weakening, the rule of law.

Consider the following examples. As a condition to selling their product in a local market, a company may be asked to:

- Provide a version of their product that gives a government back-door access rights to private communications in their country.
- Allow governments to prevent certain groups from using the platform at all, or from discussing certain topics on the platform.

- Comply with government requests to censor disfavored individuals and limit the spread of their ideas.

A company’s own employees may also create pressure on management and in-house counsel. For example, employees may demand the company cease doing legal business with disfavored customers. Employees may expect the CEO to make a public statement on controversial topics, which is guaranteed to alienate potential customers either way.

What’s our fiduciary duty as in-house counsel when our companies come under government pressure or employee pressure?

Censorship and cancellation requests

Today, I’ll focus on just one particularly harmful practice: requests to suppress disfavored speech and to promote only consensus narratives. Whether on controversial topics or from controversial actors, how should in-house counsel respond to censorship or cancellation requests?

Giving in to these requests can seem like the path of least resistance. When we consider the effect our actions have on the rule of law, however, our choice becomes clearer: We must support freedom of expression, which includes dissenting opinions.

Here is a pledge you can commit to in defending freedom of expression within your company. If you follow these steps, you will be leading by example.

From this point forward, we will:

- Only say things in public and in private that we believe to be true, and will resist speech being forced upon us by protestors, employees, or the government;
- Not support isolated examples of someone's speech or thoughts can be used as an excuse to silence a person whose ideas challenge the orthodoxy; and
- Not participate in any training, lecture, or speech where the speaker promotes policies that divide us on the basis of immutable characteristics like skin color.

This is just a partial list of ways for you to reinforce freedom of expression. If you start to follow these habits, you will no doubt apply them well in additional settings.

Your resistance will be met with resistance, and some will fall prey to the ravages of the mob and be canceled. **There is no exception to upholding the rule of law.**

Hold fast to the rule of law

No matter your position, no matter your political leaning, no matter your past support, you will be confronted with the choice to give in to cancellation requests. Your decision shapes your character

each time and helps set your company's fate.

Even this simple step of holding fast to the rule of law is hard if you have become used to going along to get along. But holding fast is not as hard as the alternative that awaits if we give in too often.

Holding fast to the rule of law is not an easy path, but it is the least difficult of all other alternatives. Already today there are those demonstrating what it means to stick to their principles. Join your voices to theirs and neither of you stands alone!

The more people that embrace the evenhanded application of the rule of law, the quicker we will put an end to the tyranny of the cancellers. If we are not one or two, but hundreds or thousands, their power will evaporate.

Be well.

Question, comment? Contact Career Path columnist James Bellerjeau.

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