The Moral Compass of the American Lawyer

Real problems get idealistic but thought-provoking suggestions for solutions

The Moral Compass of the American Lawyer: Truth, Justice, Power, and Greed
By Richard Zitrin and Carol M. Langford
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Practically everybody will agree that the public view of lawyers is at an all-time low, but just how low have lawyers truly sunk? In The Moral Compass of the American Lawyer, San Francisco attorneys Richard Zitrin and Carol M. Langford conclude that from an ethics point of view, the legal profession really is in pretty bad shape. The good news, according to the authors, is that the moral compass of the American lawyer, though badly broken, is probably still fixable.

Zitrin and Langford, who also teach legal ethics, have written a very readable book that should be understandable and even entertaining for nonlawyers. For example, the authors begin each chapter with a story of a lawyer caught in an illustrative ethical dilemma. The story, which is based on actual events, frames the issues discussed later in the chapter. The chapter concludes with an epilogue in which the reader learns how the lawyer actually dealt with the ethical problem and whether the lawyer did the right thing.

These ethical dilemmas include:

- The criminal defense attorneys who, client, an accused serial rapist and killer, confesses to them about his crimes. The lawyers conceal the information obtained from their client about where he buried the bodies of several victims still reported as missing. The lawyers ignore the pleas of the victims' family members for information about the missing persons. Are the lawyers doing the right thing by keeping their client's incriminating evidence confidential, or do they violate a higher moral duty to protect the public?
- The associate in the large law firm who is asked by her senior partner to write an opinion letter to a client who wants to conceal the existence of toxic waste on real estate he is trying to sell. The associate tells her partner that the property is contaminated with a dangerous substance, but the partner orders her to finesse the opinion letter to obscure the environmental problem so the buyer will close the transaction. Does the associate follow the partner's orders and give the firm's big client what he wants, or does she risk her job by taking a moral stand?
- The in-house counsel for a large automaker who learns of a serious safety defect in one of the company's best-selling cars. The company does not want to pay for an expensive recall to fix the problem. Top management tells the lawyer that he does not need to worry about the problem because someone else is taking care of it. Does the in-house attorney follow his employer's directive, or does he blow the whistle to protect the public, but lose his job and risk his law license in the process?

These and other colorful, true stories bring the complex and often arcane rules of legal ethics down to earth. This book is not a legal ethics treatise. Indeed, if the book has a flaw it is that the authors offer little specific legal support for their broad and often oversimplified conclusions. Thus, the book will be of little use to the practitioner who is prosecuting or defending either an attorney malpractice or a breach of fiduciary duty case. However, it is unlikely that the authors intended to write a legal ethics practice guide. Rather, the book appears to be written to provoke a lively discussion of legal ethics issues in and out of the legal community.

There are plenty of villains and, unfortunately, few heroes in this book. The public is already familiar with the usual suspects: sleazy criminal defense attorneys and ambulance-chasing personal injury lawyers. The authors, however, introduce a new villain: the large law firm.

While many see these venerable institutions as the pillars of the legal community, Zitrin and Langford accuse big law firms of being the breeding ground of unethical, arrogant, and unprofessional practices that do much to threaten to ruin the legal profession. For example, in discussing why certain lawyers think that they can get away with hiding relevant documents in the discovery process, the authors explain: America's largest law firms have increased enormously in both size and strength. The bigger and stronger law firms grow, the more insular and arrogant they become. Discovery abuses are buried deep inside the walls of the firm, with little accountability and even less public scrutiny. Perhaps more important, the more law firms become business conglomerates, the more they distance themselves from the basic precepts of professional ethics that are supposed to govern their conduct.

In offering solutions to address the ethical problems caused by large law firms, the authors suggest a rule that would limit the size of law firms to no more than fifty lawyers. They concede, however, that such a radical concept has no realistic chance of taking place. Instead, the authors...
advocate changing the law in most states so that entire law firms—not just individual lawyers—can be disciplined by the state bar for unethical behavior. They cite New York, where law firms can be fined or put on probation and monitored if they are found to have acted unethically.

The authors also criticize state bar regulators for failing to tackle large and powerful law firms in disciplinary proceedings. They contend:

There is far too great a disparity between the discipline meted out to lawyers in small firms and those in large firms. Despite institutional practices that may involve scores of lawyers in a single firm acting unethically in a single case, bar counsel have found it difficult to punish these lawyers. There are good reasons for this. In a large firm, it is harder to determine exactly who is responsible—for withholding documents, failing to communicate with clients, overbilling, or engaging in conflicts of interest. The firm’s insularity protects its lawyers from prying eyes. Prosecutors face a daunting task of breaking down this protective shield, just as lawyers can be intimidated when litigating against these firms. But this degree of difficulty makes it all the more important that bar counsel devote the time and resources necessary to ferret out these offenders. Only by prosecuting them will it be clear both that discipline is evenhanded and that no unethical lawyer is immune from prosecution.

Zitrin and Langford support their criticism with some specific examples of how some of the nation’s most prominent firms have gotten caught in unethical and highly improper acts. But are all large law firms the engines of corrupt and unethical practices? Surely not. The authors make some good points on this controversial topic, but their persuasiveness is diminished by hyperbole, oversimplification, and sweeping generalities.

The book concludes with a list of suggestions on how the ethics of the legal profession can be fixed. The authors contend that many of the ethical problems of lawyers stem from an unbending adherence to the adversary system, which presumes that if attorneys each zealously represent their clients, then justice will be done. Zitrin and Langford argue that the purported duty of a lawyer to represent the client “zealously” is no longer valid. Although lawyers clearly have a fiduciary duty to represent their clients with undivided loyalty and competence, the authors note that the more recent ethics
rules and codes (including those in California) have eliminated references to zealous representation as one of the required duties.

The authors would also change the lawyers' duty of confidentiality. They argue that the ethics rules should be rewritten to release a lawyer from the duty to keep clients' secrets confidential whenever a client's actions “have a reasonable probability of resulting in substantial physical harm to any individual or the public.” The inevitable result of this suggested change would be what many in the legal profession would call heresy—lawyers becoming whistle-blowers against their own clients.

Zitrin and Langford offer other suggestions on how the legal system can be fixed. Their suggestions include:

- Requiring law schools to improve and expand classes on legal ethics. According to the authors, law schools should not only teach students to think like lawyers, but to think like moral and ethical human beings as well.
- Mandatory pro bono service for all lawyers.
- Removing politics and special interest lobbying from such important legal institutions as the American Bar Association, the American Law Institute, and local bar associations.
- Expanding ethics rules to prohibit lawyers from lying or using any form of deception in the practice of law. The authors would carve out a special exception to this rule “in the inherently deceptive arena of negotiation.”
- Simplifying the ethics rules on what is a reasonable attorney's fee. The authors criticize the current legal standards on fees for being too subjective and giving unscrupulous attorneys too many loopholes.
- Opening the legal institutions and regulatory bodies governing lawyers to public participation. For example, the authors suggest that each state set up a public body similar to a civil grand jury to monitor the legal profession and oversee discipline.
- Returning the practice of law to a profession and not a predominantly profit-driven business. In explaining this elusive aspiration, the authors conclude: “Lawyers should continue to represent their clients loyally and diligently, always looking at matters from the client’s point of view rather than their own. But they must also become officers of society, not merely ‘officers of the court.’”

The Moral Compass of the American Lawyer is a provocative and often disturbing analysis of the legal profession in the United States. It will add to the ongoing debate on how the legal profession can be improved and help skeptical members of the public better understand the complex moral and ethical issues that lawyers face every day.