



## **Episode 16: Compliance Part 2—Areas of Gray and Growth**

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Part two of our conversation about regulatory compliance focuses on the gray areas of compliance. We discuss the challenges of sharing data, navigating compliance pitfalls when doing business internationally, and how new regulations can have unexpected outcomes for small businesses. We wrap up with a discussion of the rapidly growing job market for compliance professionals.

Andrew Kaufman joined the [University of Maine School of Law](#) faculty in 2016, after more than 40 years in private practice as a corporate and transactional attorney. At Maine Law, Andy teaches advanced courses in corporate law and business associations, commercial law, and transactional practice, as well as the law school's course in risk management and compliance. In addition, he is the Director of the [Compliance Certificate Program](#) that the law school offers to compliance professionals in the business community. Andy received his bachelor's degree from Yale in 1971 and his law degree from Vanderbilt University Law School in 1974.

Ross Hickey is the Assistant Provost for Research Integrity at the [University of Southern Maine](#) and the Director of MeRTEC ("MER-tech"), the [Maine Regulatory Training and Ethics Center](#) at USM. Ross has built a nationally-recognized research compliance office that serves not only USM, but institutions throughout the State of Maine. Ross is contacted on a regular basis to provide technical assistance to other institutions on regulatory compliance matters. Ross is a graduate of the [University of Maine School of Law](#).

This transcript has been lightly edited for clarity.

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## **The Greater Good: Episode 16**

Carrie: Welcome to the Greater Good: a podcast devoted to exploring complex and emerging issues in law, business and policy. I'm your host Carrie Wilshusen, Associate Dean for Admissions at the University of Maine School of Law.

Carrie: Join us as we continue our conversation about the importance of regulatory compliance with University of Maine School of Law professor Andrew Kaufman and Ross Hickey, the assistant provost for research integrity at the University of Southern Maine. So the role of a compliance officer is a pretty tricky role.

Andy: It's a very tricky role and one of the things that we try to teach in both the JD program as well as in the certificate program and the undergraduate as well undergraduate program are the breadth of skills that a successful compliance professional needs to adapt in order to do his or her job effectively.

Ross: What tends not to work well in someone that is a compliance professional is to take the risk adverse approach, meaning we say no to anything that has any potential risk. And so this is the challenge is the world we live in is risky. There is always potentially something that could go wrong. There could be some sort of harm that could occur. You have to be able to take every day circumstances and look at them and say, we know what we're aspiring to do, but how do we live in the real world and not only what could go wrong, but how likely is that and where is our risk tolerance that where we as an organization can comfortably live that does the right thing but also is in that gray where we know that there is still going to be things that we're going to do that when those regulations, as we talked about with technology were promulgated, they hadn't even thought of because things are moving that quickly. So that's the challenge.

Carrie: Do you have an example of this?

Ross: Sure. I think that, let's look at, we'll pick on Facebook since we talked about that. Facebook has decided as it's got a wealth of data that's coming in that could lead to a lot of great innovation and new research that they want to start to share that and they want to share that information not only in their market research, which helps them to sell more product, but to actually help society to share that innovation with researchers at universities that might be doing social behavioral research that could be value the data that they have. That's not a bad thing. Um, but because they came from the background of the private sector, when they started to share that they didn't necessarily understand or

appreciate that if the folks that are utilizing the platform you have for Facebook, that they are now going to be considered a human subject for research purposes.

An example from a few years ago, Facebook changed the algorithm for folks without telling them of how their newsfeed appeared on their screen. They gave certain people more negative news than they would normally have seen and tried to fight. Figure out what happened when you saw a bunch of negative information. What was your reaction? Well, surprise, surprise, people who saw a lot more of negative information or news than they normally would have seen started to post and comment in a more negative way. Again, that's not necessarily something that it has never been done before, but when that is done in an academic setting with the federal rules in place, there is a debriefing or an explanation to folks after the fact of the process that just occurred. There is a review by an independent board called an institutional review board to make sure that that research was done in an ethical way. Well, when Facebook did this again, because they didn't come from that background, they had no knowledge or understanding that that all of those ethical safeguards needed to be done and what you saw in real time was their response changed from absolutely, we follow all of the regulations and rules around human subject research to, well, we work with people who understand them too. Well, we're Facebook. We didn't have to do them because they had to catch up to the fact that they were in a very different environment than what they thought they were operating in. But the manner they that they went about trying to produce and generalize that information broke a lot of the safeguards in place that have been there for many years.

Carrie: And now we were also talking earlier about this idea of cultural competencies around compliance as well. So if you've got an international company doing business and the rules might shift culturally, you want to talk about that a little bit?

Andy: Absolutely. You have to look at and take into account the culture of the community, the culture of the country, the region in which you are undertaking your activity. In the international business context we have in the United States a law called the Foreign Corrupt Practices Act. It's a U.S. law, it applies to us companies and says it is illegal, including opportunity to go to jail if you offer anything of value to a foreign government official or an agent of a foreign governmental official in order to get or maintain business. And I'm summarizing what the statute says, but it's basically an anti bribery statute. And so one of the challenges for example, is understanding how does it really work overseas. I mean there, there are, there are many countries where it is absolutely the cultural norm, uh, to

exchange a bottle of scotch at a closing. But you know, that bottle of scotch is something of value. The policy behind the, the FCPA had to take into account the fact that there are cultural norms that don't really rise to the level of bribery, the intended intent. So there has developed in the area of the foreign corrupt practices act, a number of principles that people understand that can be taken into account in deciding whether giving something of value in the circumstances is a violation or is not a violation.

Carrie: So those areas of gray. So one of the things that I'm noticing is, is that, you know, we're talking about large corporations for the most part. And, and we don't just have big companies, right? We have these individuals that in order for them to do their work are faced with compliance issues. Can we talk about that a little bit more?

Andy: The compliance role can impact not just big companies, but tiny companies.

Ross: It's certainly in the thing, to your point, that is part of, I think the challenge, the unintended consequences of say, a new regulation being promulgated is that it can sometimes create a reality where the only organizations that can maintain compliance are the larger ones because there's a cost involved with switching over. You look at the lobstermen if you can only now fish and trawls and they're of a certain size. We've got a lot of traps that are going to be on now a couple buoys. That's going to be very hard for folks that are in those smaller skiffs of the smaller boats to physically even get those lobster traps now back onto their boat. There's a cost to that. These breakaway lines are expensive. Some of the things that they're proposing, it would be cost prohibitive for only but the largest lobstermen to try to get into compliance.

Ross: So you take what right now is a sole proprietorship business by and large. And you've almost, through these regulations, turned it into something where only large organizations or corporations could actually be able to maintain compliance. Look, you may not have intended to, but if you promulgate this regulation the way you're saying you're going to have this impact. And so there's an important part to a lot of these regulations where there has to be a mechanism for people to come back to and circle back to what the original intent was and say, how's that working? Is it actually doing it or are there things unintended as they may be are actually causing harm in ways we hadn't anticipated?

Carrie: Wonderful. So what's the job market like and compliance?

Andy: I think the job market in compliance is really hot right now.

Ross: Right. So the larger organizations in Maine that we work with clearly understand we need to have your help in helping to develop and create the right skill sets within our

organizations. We clearly have seen that. I think what we're starting to see is that the mid level sized organizations are starting to also see they need to have someone have the skills that we develop and help to train in our, in our program. And I think that small business also has an important role in understanding compliance. They may be as they're starting to develop, don't have the luxury at the, in the immediate creation. But I think very quickly there needs to be someone who starts to think about these things. Even in a smaller operation in a place like Maine. And we talked about lobstering, but in a lot of the new businesses and organizations that are growing and are developing in Maine, many of them have very strong regulatory aspects to them. And so having someone that they have some understanding and appreciation of compliance will help them as well.

Carrie: Maybe some of the small business organizations could help them see that.

Andy: Yeah, we see that businesses but also trade groups. And one of the things we're exploring is the opportunity for the trade groups to right support compliance, uh, at the small business.

Carrie: Well on the concept of some of these aspirational goals could be incredibly powerful. I mean the whole buy local movement and all of those things are, are so critical for me.

So we're calling this podcast the greater good with the goal of sharing the work that's being done on behalf of our communities, local, national and global, and our ideas that many people are working diligently to protect or enrich their communities in ways that we don't generally think of as serving the greater good or in ways that some people might not see as serving the greater good. So can you talk about the work that you do in that context?

Ross: Well, two things in there. The first is that again, much of what a compliance operation is doing is not just to create more rules and make more barriers and to make people's lives more difficult. Much of the everyday interactions that are occurring with your compliance operation are really to help people do things that we all at the deep down think we ought to do, or at least most of us. And there's a huge ethical component to many of the regulations that people are trying to follow. That there are things that society says it's important that we do that it's important that we have the ability to drink our water or to breathe the air or to just interact in a way where there isn't additional, uh, peril or danger that isn't necessary. I think that's certainly a piece of it.

Another aspect though that I'd like to bring up is the fact that this is a career path for folks that I think gives opportunities to folks, professional positions that can really have an

enormous impact on an organization that don't necessarily come with an advanced degree to start in this field. It's a professional position that through a credential, like a certificate you can enter into and have a significant impact on your organization. And I think one of the most, to me at least one of the most gratifying pieces is to see that for New Mainers coming in, particularly folks that come with a law degree or background from another country, but can't necessarily sit and become a practicing lawyer, that this is a career path that they can take advantage of. In this last cohort for this year, we had an example of someone who came from another country with a law degree but is not eligible to sit for the bar. This gives her a career path that I think she sees and it empowers her to really have that professional position that's meaningful, that has a direct impact and she can do now.

Andy: And it's really been, I think, a tremendous opportunity for us. And the point I would also offer is compliance is good for business. Developing positive and successful business activities helps society. It gives people jobs. It creates our commerce that we depend on. It also for reasons we've already alluded to, gives us the opportunity to advocate and influence the development of better processes, better regulation, better standards of behavior. And I think, from all that we feel that this is, this is a good thing.

Ross: Absolutely. You are a teacher, particularly having skills where you understand how adult learning works. You are an advisor, you are someone that is often giving information to folks that are making significant decisions for your organization. You are someone that also is a safe space to have conversations and hypotheticals that people are not going to have other places to have that in an operation. In all of these things come in on a daily basis.

Carrie: You're a builder of culture in your organization.

Ross: Absolutely. Yeah. Absolutely.

Carrie: Well, thank you so much, both of you for joining us here.

Ross & Andy: Thank you.

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