



Legal professionals and crime; update

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Reports on (alleged) reprehensible conduct of lawyers

- Van de Bunt (1996); Parliamentary enquiry (Van Traa-committee);
- Monitor organised crime (Kleemans et. al, 1998)
- Lankhorst and Nelen (2004)
- Committee-Joldersma (2008)
- Faure et al. (2009) on disciplinary procedures
- Docters van Leeuwen (March 2010)
- NOvA (2010)

Faculty name

Specific features

- Knowledge and Expertise
- Aura of credibility/legitimacy
- Client confidentiality
- Legal professional privilege

- Who are most vulnerable: major firms or individual lawyers?

Faculty name

Developments in society

- Commercialisation
- Internationalisation
- Interdisciplinary partnerships

May put pressure on:

- Level of independency
- Transparency

Faculty name

Extent of the problem

- Number of lawyers prosecuted or convicted low
- Number of lawyers fined, suspended or banned in relation to serious forms of crime low

Possible explanations:

- The problem is exaggerated?
- Reluctance to investigate?
- Lack of quality to investigate?
- Difficult to prove?

Faculty name

Types of reprehensible conduct

- Mailbox or errand boy
- Intimidation/manipulation witnesses
- Give opportunities to abuse law firm facilities;
- Dissemination of confidential information in the media
- Involvement in financial-economic crime (including Money laundering)

Faculty name

Money laundering

- Creation of corporate vehicles or other complex legal arrangements such as trusts;
- Buying or selling of property;
- Performing financial transactions;
- Financial and tax advice;
- Providing introductions to financial institutions.
- Receipt of cash;
- Provision of cash to the client or the client's associates;
- Payment of monies to third parties in "transactions" not connected with the lawyer's underlying retainer;
- Passing money through their own personal or business accounts;
- Assisting criminals to run their laundering activities from prison;

Faculty name

Supervision

- Micro (Firm)
- Meso (Dean; disciplinary procedures)
- Macro (NoVA; BFT; Law Enforcement)

- From compliance to performance
- Call for more external supervision

Faculty name

Self-regulation & compliance

Compliance depends on:

- Morality;
- Clear professional rules
- Organisational structure and culture;
- Financial circumstances
- Risk perceptions
- Detection

Levels of visible enforcement of provisions low

Faculty name

The role of the Dean

- Collector of information (art. 37 Code of Conduct!)
- Advisor
- Mediator
- Judge? (Doctors van Leeuwen, 2010)

Faculty name

Disciplinary boards

- Insufficient access of outsiders to the procedure?
- Insufficient investigation facilities?
- Lack of expertise to investigate dishonesty?
- Insufficient awareness?

Faculty name

Macro

- Limited number of criminal investigations
- Limited access of BFT to files
- Mandatory reporting of unusual transactions on the basis of WWFT; 22 reports of lawyers in 2009 (notaries 389; accountants 617)

Faculty name

Possible explanations for low level of mandatory reporting

- Lawyers take a more critical stance than notaries and accountants to money laundering regulations;
- Unlike notaries public, not all lawyers are involved in WWTF-like situations;
- Distinction between 'traditional' role of the legal profession and 'modern' forms of legal and financial support is too academic and can easily be abused by lawyers in daily practice;

Faculty name

Food for thought

- Need for a professional standard according to which a lawyer can decide whether or not to accept a case?
- Senior lawyers as confidants or trusted representatives?
- Encourage debate on professional ethics? (mandatory training?)
- Strengthen the role of the Dean?
- Create more uniformity amongst Deans?
- Improve communication between judicial authorities and Deans?
- Need for oversight regulator: Legal Services Board (UK)?
- Need for forensic investigation visits (UK; Solicitors Regulation Authority)?
- Redefine the function and tasks of lawyers? (in order to distinguish between 'real' lawyers and consultants)

Faculty name