Volume 66
Issue 5 *Symposia*

Article 7

2-7-2022

Panel 3: How Behavioral Ethics Manifests in the Corporate "Real World": The Practitioner Perspective

Brian H. Benjet

Precious Murchison Gittens

Lawrence Oliver II

Nancy Peterson

TRANSCRIPTION OF THE 2021 *VILLANOVA LAW REVIEW* NORMAN J. SHACHOY SYMPOSIUM: *PRACTICAL ETHICS IN CORPORATE LAW: THE SCIENCE, INSTRUCTION AND "REAL-WORLD" APPLICATION*

PANEL 3: HOW BEHAVIORAL ETHICS MANIFESTS IN THE CORPORATE "REAL WORLD": THE PRACTITIONER PERSPECTIVE*

MODERATOR: DORIS DELTOSTO BROGAN**

PANELISTS: BRIAN H. BENJET***
PRECIOUS MURCHISON GITTENS****
LAWRENCE OLIVER II*****
NANCY PETERSON******

PROFESSOR DORIS DELTOSTO BROGAN, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: Well, good morning. I was going to say good afternoon because it's Zoom world and nobody knows what time it is or what day it is, but it's today and the time is now. We have a lot of folks that have a lot to talk about in preparation for this. We could have spent the whole symposium talking to these four folks and have had much to say, but I'd like to sort of bring to the forefront this morning's discussions focused on how people behave in terms of ethics in the workplace and explore some empirical research done by scholars on this.

What I'd like to do is kick this panel off by exploring a little bit about what compliance structure looks like in the real world in your own organizations. I propose to start with Nancy Peterson and Precious Murchison Gittens to sort of kick us off and then move to Brian Benjet and Lawrence Oliver to kind of give the view—from Lawrence's place, we're doing the investigation, so this is what it looks like on the other end, and Brian from the outside, general counsel who comes in sometimes with, I guess, your

* The 2021 Norman J. Shachoy Symposium took place virtually on February 19, 2021 at Villanova University Charles Widger School of Law. This transcript has been edited and excerpted.

** Harold Reuschlein Leadership Chair & Professor of Law, Villanova University Charles Widger School of Law.

*** Partner, DLA Piper, Adjunct Professor of Corporate Compliance, Villanova Charles Widger School of Law.

**** Senior Director of Compliance Investigations, Fresenius Medical Care North America.

***** Chief Counsel, Investigations, The Boeing Company.

****** Senior Vice President, Deputy General Counsel, and Chief Compliance Officer, Allied Universal Security Services.

hands over your ears or over your eyes like, "Oh my gosh, what do we do with this?" So Nancy, why don't you kick us off?

NANCY PETERSON, ALLIED UNIVERSAL SECURITY SERVICES: Hi everybody, Nancy Peterson. Thanks for the technology help there. I work at Allied Universal—we have 265,000 employees, about a $9.5 billion company with about 50,000 client locations across the globe, so we've got a large organization. So, one of the things I would say when we talk about compliance and ethics is, "What is your structure and what works on the front end?" And then, I think Lawrence and Brian are going to talk about that, you know, kind of some of the things on the back end.

Where I come in, my perspective from my experience of the organization which I've been at since 2005, is that we've been in a growth mode as an organization and purchased probably about sixty companies or so and continue to grow. And so, one of the things I think about in terms of the structure is making sure that when we are bringing new organizations on, new leaders on, new lines of business through those acquisitions, that compliance and ethics and value-based behavior and decisions are part of the front end of those discussions, right as people are coming in the door. So again, there's lots of other components to how we set up our compliance program, but that is one of the key areas because, you know, that's your opportunity to help set those folks, those organizations, into the way that we do business at Allied Universal.

PRECIOUS MURCHISON GITTENS, FRESENIUS MEDICAL CARE NORTH AMERICA: So Doris, I work in the healthcare industry. I work for a really large, complex, vertically-integrated company. We help people who are living with kidney disease. From my perspective, compliance really drives innovation. So you get to see all sorts of things—especially when you're growing like we are and we have everything from dialysis clinics to pharmaceuticals. I work in the company's compliance department. I report to the Chief Compliance Officer who reports to our CEO. And the corporate governance of our company, the executive management, is responsible for establishing our compliance program and is ultimately responsible for oversight of the compliance program. The Chief Compliance Officer and her team, which includes me, the compliance function, really has day-to-day management, implementation, and oversight of our program.

PROFESSOR BROGAN: Lawrence, what does it look like? When you come in and the mess happened?

LAWRENCE OLIVER, THE BOEING COMPANY: Well, I'll start.

PROFESSOR BROGAN: Or not, that never happens at Boeing, right?

LAWRENCE OLIVER: Yeah, I'll start with this. So my job, my role, was created out of a mess about eighteen years ago. Boeing had a few lapses that made national news. Some involved inappropriate employment discussions with an Air Force official still overseeing Boeing contracts. That's a criminal act. There was also evidence that we were in inappropriate possession of third-party information. So all those things led to the creation of my job, which is to oversee legal investigations.

When I came in, a big emphasis was placed on lessons learned and making sure that we were not in possession of a third-party's proprietary information or trade secret information without authorization. So that lesson became a backdrop to a lot of what my job was focused on in the first couple of years because Boeing is a big defense contractor as well as a commercial airplane manufacturer. We're in possession of all types of third-party information, most of which is authorized and properly negotiated. And we deal with subcontractors, but these same people could also be competitors. So, on the one hand, you might have information that you can properly have. On the other hand, you might have information from the same person or entity that you shouldn't have. So those things all flow back into lessons learned.

We make them part of our code of conduct. You know, I heard the prior discussion. Doctor Treviño talked about codes of conduct and whether it can be just like wallpaper. Well it can, if that's the way it's treated, but our lessons have been dwindled down to about half a page. So, it's a half a page of the entire code of conduct that everybody needs to adhere to, and it talks a lot about not misusing third-party company information, operating with business integrity in all your relationships with customers, suppliers, and other employees. And it's really kind of like the black and white that Dr. Gentile was just talking about focusing on—what's clear, which you can really affect easily, as opposed to the nuanced gray areas and trying to get lost in the weeds where you might have good-faith differences of interpretation.

If you've been following the news, you know last year was a big year for Boeing. You know we had the 737 Max crashes, which lead to a lot of investigations. Without going into any real detail, you can certainly be assured that there are a lot of lessons that are coming out of all of that that are, you know, in real time, being folded back into our ethics and compliance program. So it's a constant evolution. There's nothing like a lesson learned when it's *your* lesson. It's more sobering than if it's your neighbor's lessons, your competitor's lesson. When it's your lesson, it's real, right? To you, this is not a hypothetical. This happened. We're in the soup. How do we stay out of it? And so those moments, as awkward and as uncomfortable as they are, those are the best opportunities to actually get folks' attention and try to affect change internally throughout the organization.

PROFESSOR BROGAN: So Brian, coming in what? What does it look like from sort of the wide lens?

BRIAN H. BENJET, DLA PIPER: Yeah, so you know, kind of thinking about this from two perspectives. One, having obviously been at the firm now for almost ten years and coming in and, whether it's investigations or after issues there, and then being in-house for about seventeen years prior to that, including at Worldcom, where we had a couple of issues in the first corporate monitor, so seeing it from a couple perspectives. Yes, but you know, normally when a problem has arisen, Lawrence has actually gone in and started the investigation or is in the process of that. One of the first things that we're starting to see is what you're trying to do is look at remediation efforts and figure out where the failures are so that as you go back and try to resolve whatever the issues are—whether it's is with a government agency and otherwise—you can establish that you've understood what the failures were in the first place, or whether the person was a lone wolf, which you kind of hope they are, and where you're going to go from there.

And I would say, I think there are three points where we tend to see a commonality when we come back into compliance programs. In most cases, people have tried to do something—they've written some policies, there's been some effort to put in a compliance program. It's a pretty rare case where it's truly the wild west, and no one's done anything, but the issues where you tend to see the first pieces of where you're going to remediate. It is first just lack of investment and prioritization. I think, as Lawrence said, you learn from your mistakes. If you have entities that don't have mistakes, it's very hard to get that initial investment and that prioritization for the compliance program because you don't have that shock therapy yet in some things. So that tends to be one of the first things you tend to see when we look at remediations. The second one is tone at the top, tone at the middle—however you want to call it these days and culture. Many times it's counter to the compliance program and that tends to be a causal effect. And then the third is kind of contrite at this point, but the paper versus real, which the Department of Justice ("DOJ") emphasizes. I would kind of drill down on that and say really where this comes into is that it's a program that's not adapted to the company's risks. So it's just out there, and it's not meaningful to employees. Or two, it's not really owned by the business, it's a program that's being implemented by legal and compliance and really has not been adopted or owned by the business.

Nine times out of ten when we see an issue when we're starting the remediation, almost invariably the first thing that we focus on is training and communications. We go out there, you get to the employees, you get to the people, you communicate with them, you make sure that there's a common understanding of the expectations and what the company is there. It also provides that feedback loop because once you start to do that, you hear back from your employees on what are other issues and what are other concerns. So that nine times out of ten we're remediating in that place, that's where we're going. You know, ultimately, and I'm going to quote my former boss, Stasia Kelly, who was the general counsel at MCI, the general counsel at AIG, and then ultimately the COO, Managing Partner at DLA Piper. You know her favorite quote is, "You never let a good crisis go to waste." And when you talk about remediation, that's really the place where you use that crisis to then elevate and make sure that you get where you need to be to prevent the future issues.

PROFESSOR BROGAN: So I'm going to pull a couple of pieces together that I've heard all four of you speak about and also tie it to this morning. So, structure seems to matter and Precious, I heard you say that your Compliance Officer reports directly to the seat, the CEO or the CFO, but reports directly up. And Lawrence, you talked about an issue we all faced, you know, both when you came in the door and then this last year. Nancy, you're talking about bringing in so many different people. One of the things that came up this morning in talking about how people behave and the idea of Lawrence mentioned, well, you can have a code of conduct—it can be just wallpaper or it can mean something. So the structural piece of how you respond to a problem.

One of the scholars this morning said, you know Wells Fargo, which is the poster child for trying to figure out efforts to fix it, and not fix it, and ongoing scandals. Wells Fargo fired more than five thousand people as a result of the first round of scandals, but wrongdoing continued and one of the things that one of the scholars said this morning was sometimes firing is not the way to go. Sometimes, discipline and she said, let's not call it punishment because that sounds too punitive, but discipline and action within the entity that then people can see that there are consequences. So, and this kind of goes to Brian's quoting of Stasia—who's certainly a lot of our heroes, you know, she's just a hero—but never let a good crisis go to waste. So, how can you use sort of the structure piece to really make a difference? Whether that's where you put compliance, whether compliance is top down, and all of you kind of talked about that. Is it something like do the right thing, but do what I say and not what I do? So how does the structural piece come into advancing compliance? And Nancy, obviously big challenge when you're merging structures.

MS. PETERSON: Yeah, so thank you, I agree, so there's several things you can do. First of all, I always say, you know, go where the employees are, right? I mean, don't create a paper program—the thing that sits on the shelf and the shrink wrap, i.e., Enron, right? So, you know, go where the employees are. And sometimes that can be a little tricky as a compliance officer. We use a program called DOMO, which is basically, you know, a business intelligence gathering tool. And so, you know, I had to learn how to work with it and put what we call a "DOMO card" together to share certain data points. But if I had created some excel or something else over here, no one is looking at that, right? So you want to go where your employees are and understand what's going to help them move their levers.

And then, you know, related to that, make it part of the SOP, you know, "standard operating procedures," so that there's certainly value in having a compliance week, or focus on getting certain trainings updated, but if you're in a training on contracts, maybe you start mentioning confidential information and how that's our duty to protect that, and prevent a third-party. So, weave it into conversations so it's not seen as separate but as seen as the behaviors of the organization in what they're doing as a business unit.

MS. GITTENS: I think one fundamental question to ask when evaluating the effectiveness of a compliance program is, "How well-designed is the program?" That's really going to help you figure out whether or not the business is going to own it, whether it's going to work as a practical matter, and in determining the design of the program, you really want to look at the company's risk profile and the company needs to do an underlying risk assessment. That is, to identify the risks of misconduct that are likely to occur in that particular business, based on the business lines, based on the complex regulatory scheme, based on lessons learned, based on data, and so doing that underlying risk assessment is going to help the company design and tailor a compliance program to those risks. The methodology of coming up with that risk profile is risk management, and so having a risk-based compliance program that's designed to address those risks is going to really help make the program more effective.

MS. PETERSON: Right, and not one-and-done, right? You have to keep doing it. So, I think somebody said earlier in the day this is a garden, you have to keep tending to it. And yeah, I mean, you have to have that mentality as well.

MS. GITTENS: It's living, so you're doing periodic risk assessments and the compliance program is evolving over time.

MR. OLIVER: Yeah, and I would add to, you know, we hear a lot about tone at the top, but it certainly has to be at the top, but other than that, I think it's from the bottom as well. And I appreciate Linda Treviño mentioning our commitment at Boeing, so we're not a one-piece-of-paper code of conduct. I mean, we use real-world examples. Things that happened in the workplace. We put those ethics moments in program and everybody gets to see them.

But I think the point is, particularly at the lower levels, that they have to be persuaded that we mean what we say, right? And it can't be a double, triple standard. Depending on who's in the spotlight or the hot seat right—folks are paying attention, right? And if somebody at a higher level gets, you know, a slap on the wrist or a pass for doing that which should result in more severe punishment, the employees, they're paying attention. So you do have to demonstrate your sincerity and your commitment to the process and when it lands on somebody at a higher, more visible level, you have to let the chips fall as they would with anyone else. And folks, they take note of that and they will feel better about their environment. They'll feel better about raising concerns, making complaints. Obviously, you know, we allow anonymous complaints—we would love for people to identify so that we can engage them. And that's a real measure of the health of an organization—how many people are willing to go through this knowing that there will be retaliation concerns, right? I think it's the ultimate kind of litmus tests of the health of compliance to come forward and identify themselves knowing that they will be supported throughout and not retaliate.

MR. BENJET: I would add I'm a really big believer in shared ownership and not creating a silo of compliance and legal in one vertical and everybody else over there. You know, we advise Avon and after redesigning their compliance program—after their Foreign Corrupt Practices Act (FCPA) issues—one of the things we really worked hard on with them was how to integrate the business. Not only just, "Here's the compliance program," but in designing and building and testing the compliance program. And that was partially through creating governance committees, creating processes, where before a new gifted entertainment approval system was rolled out, there was buy-in and there was testing from the business. And so from a structure perspective you can create it through governance structures that shared ownership. But it's also some of the day-to-day. And I really do think giving the business a voice so it's not, you know, the folks on the panel have been in-house and I was in-house hearing, "Oh, legal is making us do it and it makes no sense." So I'm just a huge believer from a structure perspective, creating the specific governance structures where there's shared ownership with the business.

PROFESSOR BROGAN: Well, that gets us to where I wanted to go next because all of you have had experience with this and there's, you know, a quote from some of the behavioral ethics research, "People cheat." And what was interesting but apparent is that people cheat. Good people cheat. Bad people cheat a lot. They probably cheat more than they should, but less than they can. That was the quote, you know. People tend to cheat and they tend to cheat more than they could, but less than they can. So, good people behave unethically and we're sort of getting to this. Like why do people cheat? Why do people in organizations cheat? And by cheat, it can be anything from using proprietary information that's not theirs to use, to embezzling, to taking home legal pads. Back when we used to write to, you know, violating policies about whether or not you let a vendor buy you lunch. What makes people cheat and how can that help us figure out how to how to address cheating? So what's your experience? Lawrence, probably you came in and have to deal with what's happened and why people did what they did. Why you did they do what they did?

MR. OLIVER: Well, I mean, it's obviously a lot of different reasons. I'll try to consolidate. Obviously, there has to be an opportunity to cheat, and usually a belief that you won't get caught—which goes to compliance programs, right? Because if they're well designed, as Precious said, they should be able to prevent and detect wrongdoing, so the more that people think that they can get away with something and they have the opportunity, then you have a fertile environment for wrongdoing.

But let's not kid ourselves—certain wrongdoing that people engage in, you could have the best ethics compliance program ever designed and you will not deter those folks from engaging in that conduct. So, these programs aren't for those people, right? They're not for people who are bent on doing wrongdoing, and particularly, wrongdoing where they are the sole beneficiary. So, like a kickback or like a lavish business courtesy that they receive for arranging a contract with the company, right? I benefit, I get to go to the Super Bowl for free, right? That's over the top. So, folks that are really motivated by that you might not be able to reach them, but then you have others where the motivation is not for them, but it's for the company. So in other words, let's take the business courtesy example and flip it and say, "Okay, not me getting a business courtesy, but what can I extend to this customer to keep them happy and there for us?" And so I'm doing this really for the company's benefit, not mine, but I want to go as far as I can go to make sure this customer is happy.

At Boeing, we have several levels of review that you have to go through before you extend a courtesy over a certain dollar amount, right? It's like you have to get all these approvals. Well, if people are trying to, you know, get around that approval, then that's an issue, right? In order to do something to help the company. So I do think that a well-designed and well-developed ethics and compliance program can reach that individual. They're not motivated by self-interest when they're motivated to cut the corners, or maybe do some things to help the company. And I do think when you see that you can usually reach those people because they just need to understand the risk that they are creating. When you engage in that kind of thing, you are opening up risks for the company as well as yourself and burdening future employees. So, you know, I think the goal is to reach those that are reachable and make it real to them. But again, knowing that those who are just bent on doing things for a lot of different reasons, usually for their self-gain, when we identify them, we have to get rid of them.

PROFESSOR BROGAN: Yeah, I think that's right. I think we're talking about those people that are in the middle and we're trying to provide the garden, right. The place where we help create the ability, the capacity, the incentive to make the right choice.

MS. PETERSON: Yeah, Lawrence, your example in terms of the gift giving is an interesting one. You can also turn it—and I always try to tell people—you're going to put your customer's contact in a bad position, right? And then that totally changes it, because it's suddenly, "Oh, wait a minute. I don't want to." Because I say, "Companies like Boeing, they have these compliance programs, so this is not only our rule, but to the extent you do this, you could damage that relationship and get that person in trouble." Then you're going to make a whole new customer contact and build that relationship back up again. Hopefully, right? If that's even an option.

MR. OLIVER: So true, Nancy.

MS. GITTENS: One of the things is, we're dealing with human behavior, right? And you know, compliance programs don't have to be perfect, and you're never going to get rid of all misconduct or have a perfect program. You need to reach out to who you can and deal with misconduct when you find it. One of the things that always sticks out to me is that different people are motivated and driven for different reasons and by different things. So, sometimes you see good people will do bad things. Sometimes bad people will do good things. And one of the things that I've seen over time is that when people are motivated by ego—right, their own sense of importance, their own sense of self-esteem—a lot of people in that situation, it's hard for them to deal with the prospect of failure or not being successful. And fear of failure or not being successful, particularly for people who are ego-driven and have been successful for so long and are not used to failing and don't know how to fail fast, can really make you do things that you wouldn't think you would do.

MR. BENJET: You know, I think that's right. Building off with what Precious said, when you think about motivations, I also kind of divide it a little bit between leaders and workforce. When you think about the ego greed component you think about like, I show my Villanova class every year, the HBO documentary on Theranos and Elizabeth Holmes. You think about the black turtleneck and everything, you think about the drive and the ego that's there. And all of that craters down into how you create almost a fake product, but you're able to sell it out into the marketplace. That's at the leader level, but then you think about crimes of opportunity—which I think Lawrence was really talking about—where you have, you know, maybe a car country manager in a far flung region with a non-integrated business who thinks he's not getting paid enough and has control over bank accounts, has control over vendors. But then if you think about like a workforce perspective, I think about like we talked about

Wells Fargo and I think about some of the General Motors issues where you have this sort of what I'll call "a wink and a nod" where you say the leadership is putting what people perceive to be unreasonable expectations either on performance metrics or on compensation metrics, so the messaging that comes down to the workforce is, "Cut the corners to make it happen because this is what leadership expects." So there's, I think, a dichotomy there. When you, when you actually think about workforce versus leadership.

And then one last example, which is that actually I've seen at Worldcom that Scott Sullivan, who was the CFO, and we committed a little bit of fraud. When we discovered the fraud and we went to Scott Sullivan, the CFO, his reaction wasn't, "Oh gosh, you found it," or, "Oh my." His reaction was to write a white paper saying how he thought he was smarter than the entire accounting industry, so the motivations are really different in that sense. But ultimately, I think the basic control which people were talking about is to have that communication into the employee-base, to speak that to them in the real terms. And look, you're not going to stop bad actors. There's no question intentionality in that sense. But are you making people aware of the guardrails? And are you giving them the opportunity to understand what is wrongful so they can raise their hands? And in that piece? But I think the motivations are across the board in that sense.

PROFESSOR BROGAN: Well, and I think that's clear from what all of you said and what, again, went on this morning and at the heart of Dr. Gentile's work. I jotted down some notes, "re-framing," and I think this speaks to what Nancy and Lawrence were talking about with the benefits, you know, let me take my client, my contractor, to the Super Bowl, right? Come to reframe that and say, "Okay, you're looking at this as advancing the interests of the company." Or, "Hey, it could hurt the company." Reframe it. "It hurts a company in a different way." Or, "It could hurt, you know, the customer or the person you're trying to help."

I always think of it—and I may be dated in this because you know, I teach Conflict of Laws and Torts—but the FCPA. I look at that and I see that it's just right for why did so many people cheat because they rationalize it, right? And you mentioned it, I think it was Lawrence who said, "I'm not getting paid enough, so I cheat because I'm not getting paid enough. It's not fair, so all I'm doing is leveling the playing field."

Somebody raised, "What do you do about academics and cheating on exams?" I was the Academic Dean for nineteen years and so many times the students would say, "You have to cheat because everybody cheats." And the answer is actually our students don't cheat. I think they're really very honorable. It's occasional, but there's this notion of rationalizing, and I guess to go back to what you all are saying is making it clear that yes, we want to make a lot of money and we want to operate in this foreign country. But if we have to pay officials off to get our stuff unloaded from the ships, well, we're not going to do that because the ultimate harm is greater. And making the structure, making it clear from the top down and from the sides out that this is a greater good. And how you empower, you're right, the person who's going to cheat is going to probably be pretty good at it, but you you're trying to reach those people in the middle, the people that are making the decision to go one way or another. And I think that's what I hear all of you saying that your structure needs to empower them. And as I read the Wells Fargo report. It's what I mean, Brian. I think you talked about it and I think Precious, Lawrence, and Nancy alluded to that. You say one thing, "Oh, we want to be ethical, truth matters," except we then put these unrealistic performance goals in place and we reward people who are cheating even when we know the numbers don't add up. So it seems the structure and addressing why people make the choices they make the people in the middle—like not the bad guys, the people in the middle.

MS. PETERSON: So you do have to be careful on how you incentivize people, which I think is what you're talking about with the Wells Fargo because that's where, you know, there's the behavioral component. But then there's also the structural component—which is separate if you think about it from, you know, your compliance steps that you want to take because if you have things shooting off in one direction because in some way the compensation or the commission structure was set up in a way, and even perhaps even unintended, you know, that starts creating the behavior you need to be there to say, wait a minute this is what's quote unquote, causing it. If you're lucky, hopefully that's what you'll do because you're again, back to Precious' point, we're constantly reassessing and looking at the risk again. It keeps going around. You're never done at this job. Trust me, you wake up every day and trying to think like what is it that we can make better, right?

PROFESSOR BROGAN: Well, it gets to what she said to Nancy about being with the employees. The only way you're going to know what's going on is at that level. I do want to turn a little bit to the challenges of the future, and we talked a little bit of that about this in our prep session. What are the challenges of the future that are going to manifest because of changes? Technology consistently, and has since the printing press, outpaced our ability to manage it or even sometimes to even imagine where it's going. It provides new and dangerous opportunities for wrongdoing by employees and specific dangers within each of our businesses—and I think, Precious, especially in your business and in biotech is especially an issue. It also presents some new methods for employer surveillance and I'm a privacy person so new ways for me to be horrified by what maybe compliance people want to do to enforce the compliance strategies.

Also, you know, changes in individual ethics and how people feel about. They say students—our youngsters, not us, but the youngsters of today's students—are just so used to there being cameras everywhere in the hallways and the classrooms, they're just kind of used to it. They assume their role is on camera.

So how did these challenges of futures play out? I'm going to add in one additional point that Precious brought up in our prep session and that is, you know, the idea of the employer now being deputized by the government in the context of some larger enforcement issues and now you've got this information. So, that's a very broad net that I'm throwing out and I'd like to begin with Precious and Nancy to talk about what they see and then throw it to Lawrence and Brian to talk about what does the future hold.

MS. GITTENS: Yes, I think this is really a question about how employers use technology to surveil their employees. And what they can and can't do. Generally speaking, I think the privacy laws, and I know things differ state to state, but generally speaking, companies are perfectly capable and can lawfully monitor their employees' activities on company computers, on company spaces, using company digital resources. And so I think there's a real question that arises then for people who are concerned about the privacy of the employee. And about these sorts of civil liberties, constitutional rights of the employee because the fact is that a company can do a lot more by way of surveilling an individual employee than the government can. And all I mean by that is that a company can search its computers that the employee is using, and some of these lines are blurred now, right? Because people are working remotely, and when you're working remotely and you're working at home, that means the employees is using—a lot of times—the company computers, you know on the evenings and on the weekends and at, you know, for all sorts of different reasons, and so there are new questions that arise in that context. And so where the employer is able to look at, you know, even just the key logger software technology. I know people are talking about now where the employer can record the actual keystrokes that, you know, on the keyboard and a message will go to the manager and say what the employee is looking at and a company can require an employee to answer questions or else face discharge for failure to cooperate in the company's internal investigation. These are things that, if the federal government was acting, it might need a search warrant. The government might need to, you know, Mirandize the employee that it wants to question.

And so I think this issue arises because yes, I think individuals are looking more closely and asking is the government really effectively outsourcing some of its criminal investigations to companies when they say to companies, "Alright, the information that you already obtained from your employees, we want you to go ahead and send it to us and we use it the way that we want to." So I think these privacy and civil liberties issues are arising right now and people are looking very closely at them.

PROFESSOR BROGAN: And just to tie it to what we've been talking about in terms of compliance and making compliance effective, you know, all morning, and certainly in the first part of this conversation, we've been talking about making everybody part of compliance.

MR. BENJET: How am I going to have my employees use the ADP system to clock in where they use their fingerprint as they come in? Does that really matter to an Illinois fingerprinting law that was passed in 1933? And so, trying to match technology to antiquated laws I think is a real challenge when you think about that.

Just to hit on the government piece, just real quick. You know, the DOJ guidance is pretty clear. If you have any kind of investigation from a corporate perspective—and this goes like, you know, you get the *Upjohn* warnings and things like that—you are incentivized to cooperate with the government. If you're in the FCPA, I'm saying you're going to read out your privileged interview memos to them whether it's a waiver or not. That is embedded in the Justice Department culture at this point in time, and it's articulated, frankly, in some of the leniency in the statues because they want to go after individuals, at least purportedly. So I think when you think about that government piece, it's not only happening, but I think it's codified in the Justice Department guidance that's out there. And so I think that's one thing too on the government side that I think is worth it. There's that piece of it, but then there's also the general cooperation. I go back to MCI, and that's the public reporter that we may or may not have allowed after the Patriot Act. The federal government did directly tap into the trunks of phone lines, which is certainly an interesting may or may not. I—you know, on that piece—I kind of think about it today and you think about Apple on the iPhone, where they won't give the code. And so I think there's an ebb and flow there, in that piece, and you will see that ebb and flow continue. But it's an interesting dynamic—where the government, private, and public intersect in that same piece of time.

Can I close with one opportunity from tech? Because we've kind of talked about all the bad things. I do think, from a compliance program perspective, tech and data is a huge opportunity for programs. When you think about now, the ability to look at T&E spend and analyze it and see trends or vendor spending, or things like that. I think compliance programs do have an opportunity—with the right resourcing, with the right piece of that—to actually capitalize on the availability of tech and data to better perform the monitoring element of a compliance program. I don't want to lose sight that tech does provide opportunities to compliance programs as well.

MS. PETERSON: I agree, taking advantage of the new tools out there is really important, and learning what your company has available to help you do that, I think, is really important.

PROFESSOR BROGAN: Great, thank you to the panel. You guys were terrific sharing your experience, your companies, and the experience of the places that you've worked. It's been truly informative. I'm going to throw it to my colleague, J.S. Nelson, to close out the day's proceedings.