

D I A L O G U E

THE FUTURE OF ENVIRONMENTAL CRIMINAL ENFORCEMENT

SUMMARY

Since its inception in 1982, the U.S. Department of Justice's Environmental Crimes Section (ECS) has prosecuted over 1,000 individuals and 400 corporations, cumulatively resulting in 800 years of incarceration and nearly \$1 billion in criminal fines. Criminal enforcement tends to accelerate restitution of environmental damages more than if civil enforcement were pursued alone, and the money generated by criminal fines can be used to restore environmental damages or as general revenue for the federal government. On June 3, 2021, the Environmental Law Institute hosted a panel of experts that explored how the ECS has shifted its enforcement priorities as the nature and scope of environmental crimes have evolved. Below, we present a transcript of that discussion, which has been edited for style, clarity, and space considerations.

Steven P. Solow (moderator) is a Partner at Baker Botts LLP and former Section Chief of Environmental Crimes at the U.S. Department of Justice (DOJ).

Deborah L. Harris is Section Chief of Environmental Crimes at DOJ.

Nadira Clarke is a Partner at Baker Botts LLP and a former Assistant U.S. Attorney and Trial Attorney with Environmental Crimes at DOJ.

Stacey H. Mitchell is a Partner at Akin Gump Strauss Hauer & Feld LLP and former Section Chief of Environmental Crimes at DOJ.

Steven Solow: We're going to focus on a few key areas: (1) how collaboration with various agencies may be expanding the scope of environmental enforcement; (2) how the whole-of-government approach to environmental justice (EJ) by the new Administration may impact both the investigation and prosecution of criminal cases; (3) the ways in which environmental criminal enforcement has expanded, including to businesses outside of the United States; (4) what might be the impact of Attorney General (AG) Merrick Garland's recent statements regarding victims of environmental crimes; (5) some perspectives on the emergence of private equity in heavily regulated industries; and (6) the potential impacts of aging energy assets on the focus of government investigations.

We'll also touch on the uses of new technologies, such as drones, for investigations. Finally, time permitting, we'll look at whether there may be some return to the use of what are known as community payments in the resolution of environmental matters, as well as expanded use of other remedies, such as monitorships.

We have a great panel today. Deborah Harris has been the chief of the ECS since 2014. Prior to that, she was a prosecutor in the section starting in 1999. Before that,

she served as a trial attorney in the D.C. public defender's office. As an ECS prosecutor, Deborah was involved in the longest-ever environmental criminal trial,¹ which I believe lasted about eight months. She was one of the lead attorneys in that trial that ended in the conviction of both corporate and individual defendants and sentences of nearly six years in prison. She also spearheaded DOJ's efforts to increase worker safety prosecutions, which resulted in the transfer of those statutes to ECS in 2015—a model that may repeat itself perhaps in the future in other areas.

Nadira Clarke is a partner with me at Baker Botts, where she represents both corporate and individual clients in a wide range of white-collar matters, including enforcement actions following major incidents. Nadira spent more than 15 years in DOJ before entering private practice, including serving as counsel to the assistant AG of the Environment and Natural Resources Division, as an assistant U.S. attorney (AUSA) in Maryland, and as a lawyer in the Office of Professional Responsibility.

Also joining us is Stacey Mitchell. Stacey is a partner at Akin Gump, here in D.C., drawing on her more than 25 years of experience as a litigator in and out of government. In addition to having been chief of the ECS, Stacey served as the deputy general counsel of the U.S. Environmental Protection Agency (EPA) during the Barack Obama Administration, and began her legal career as an assistant district attorney (ADA) in the New York County DA's office.

Our discussion today occurs in the context of a new Administration that has made environmental enforcement an early focus. Just six weeks after his confirmation as the

1. United States v. Atlantic States Cast Iron Pipe Co., No. 03-852 (MLC) (D.N.J. filed Dec. 11, 2003).

86th Attorney General of the United States, AG Garland took time to not only speak out in support of the environmental crimes program, but to announce the creation of the first ever federal Environmental Crime Victim Assistance Program.

Associate AG Matthew Colangelo, speaking with AG Garland, noted that the National Crime Victims' Rights Week fell on the same week as Earth Day. Finding that victims of environmental crime had received, in his words, insufficient support for too long, he further described DOJ and EPA's program to help identify victims of environmental crimes.

Deborah, let's start there. What does that mean for the ECS and for your work? What will it mean to have an environmental crime witness coordinator in your office?

Deborah Harris: The issues around victims have long been a focus for us at ECS. We have had some big-time litigation involving victims. For example, the BP Texas City refinery violations led to a decision that was very important in this realm.² It probably led to the amendments that were made to the Crime Victims' Rights Act (CVRA), along with the W.R. Grace case,³ which dealt with victims from the Libby, Montana, asbestos mine.

But on April 21, the rollout of our new victim assistance program was made with the U.S. Attorney and the head of EPA, Michael Regan. The program is actually funded by the Office for Victims of Crime. We now have a dedicated victim witness coordinator, whereas before we had to rely on whatever U.S. Attorneys' offices we were working with. We rely on their actual employees. But because of this, we can now ensure that victims are identified. At the beginning of an investigation, we can make sure that they're notified. We can make sure that they're treated consistently across the nation, as opposed to sort of hit-or-miss and people doing what they think is right at the time.

We also have, as part of this, the funding to do internal training. We've done some of this in areas such as trauma-informed interview techniques and financial investigations to support restitution claims. We are also doing stakeholder outreach. We're a national resource for legal advice on the CVRA, so people can come to us and get information. Now that it's up and running, I'm looking forward to using it.

Steven Solow: When you say stakeholder outreach, what does that entail?

Deborah Harris: It's going to include—because of the emphasis that we're going to have on EJ—reaching out to community groups and the like to educate them on the services that we have and matters along that line.

Steven Solow: Nadira and I were on a panel with Matthew Tejada from EPA. He talked about community outreach

being the core of EJ. It sounds like there's going to be some aspect of that centered in your program as well.

Deborah Harris: Definitely. I think that we have to be proactive going forward with this mandate from this new Administration on EJ. We're not going to sit there and wait for a crime to occur and then go out and investigate it. We're going to try to get ahead of the curve. We're going to do that through both community outreach, where people will inform us of what's going on, and data mining so that we can find the violations in areas where communities are adversely impacted.

Steven Solow: I want to bring Nadira and Stacey in because a lot of what we have been asked to do by clients in recent weeks is to translate what's been happening and to help them understand if it's a change and to understand what is going on.

So, can you comment on how what Deborah is describing has come up in the context of your client work, and—to the extent you can share—what kind of guidance or advice you are giving clients?

Nadira Clarke: It has come up quite a bit. There's a lot of attention by the Administration on EJ. Clients are receiving that message and are very focused on how to respond. I think they have heard the message from Deborah and others, including the announcement by AG Garland, that enforcement in this area could include criminal enforcement. I think that's a significant development from their perspective.

Clients are moving beyond trying to define EJ, and they are starting to think about how the Administration's focus on EJ impacts their risk profile. As they assess risk, they contemplate how factors that they took into consideration previously might now have a bigger significance. For example, how should they define the fenceline community? Who are the victims of a particular incident? Their analysis must evolve in light of EJ. What are the off-site impacts of normal operations? Are there community groups that will now have a seat at the table—a stronger voice? The focus of regulatory agencies will be different, as will the enforcement angle.

Steven Solow: Stacey, I know that an important part of your practice is crisis management and helping people in that first 24 hours and that first week. Does this add to or amend that practice in some ways to consider other issues or other considerations as you're helping clients work through those situations?

Stacey Mitchell: Absolutely. Great question. One thing that is critical to crisis management is to anticipate the crisis. Because, let's face it, there's going to be a crisis. If you're not focused on crisis management today, you're adding to your future crisis. One of the things that I have counseled clients on all along is to get to know their fenceline communities. Have relationships with those communities. Start engaging. Sometimes I get traction on that and sometimes

2. *In re Dean*, 527 F.3d 391 (5th Cir. 2008).

3. *In re Parker*, 2009 WL 5609734 (9th Cir. Feb. 27, 2009).

I don't. This messaging from DOJ and from the Administration across the board is really driving that home.

You need to know your community. You need to know how you're impacting your community. If an incident happens and there's a preexisting trust with your community, you're going to fare much better. But I agree with Nadira—and I guess hinging off of what Deborah said—that those communities are also going to be leveraged to identify bad actors or those that aren't paying enough attention to the externalities of their operations. So, I do anticipate a heightened focus on this.

The other thing I have been saying to clients all along though—and this is a pat on the ECS' back—is that I do think for a long time the section has been a leader in paying attention to victims and a leader in a couple other areas that I think we'll talk about shortly. So, while I think taking care of victims on the back end will not look different, using them to identify bad actors will be new and will lead to more prosecutions.

Steven Solow: Deborah, I remember reading even a decade ago an article by Kris Dighe⁴ on the use of “enforcement sweeps” that would look at an EJ community and then examine the compliance records of the regulated entities that are around that community. Having read that some time ago, is that the kind of thing you're talking about?

Deborah Harris: That's exactly one of the things we're talking about. When I mentioned data mining, that was what I was referring to, where you know that there's a disadvantaged community and there could be multiple sources that are contributing to the environmental pollution that's occurring. We would have to then do a sweep of these different facilities and try to figure out which one, or two, or more are the ones that are causing the problem, and then go after them in whatever way is appropriate to try to remedy that problem.

Steven Solow: Stacey, maybe it's worth coming back to that notion. What Deborah just described isn't an alien concept to the environmental crimes program, right? Can you touch on the fact that this is not going to be something that the section is going to figure out for the first time?

Stacey Mitchell: This is one of the areas I was alluding to when I referred to ways in which the ECS has been a leader. It has been proactive rather than reactive with respect to enforcement and really taking its national perspective to heart when it does its enforcement actions. Certainly, there are U.S. Attorneys' offices in the 94 U.S. federal judicial districts across the country that can handle the day-to-day implementation of an incident or, more basic environmental crime enforcement.

But ECS has a national perspective, and has leveraged that starting back in the 1990s with these coordinated

efforts that are frequently referred to as national prosecution initiatives. There have been focuses on laboratory fraud, smuggling of ozone-depleting chemicals, and then one that I think probably anyone that's done any environmental criminal prosecution has encountered, the Vessel Pollution Initiative. It started in the 1990s, and for reasons that are unclear to many of us, it still feeds the section with new cases with some regularity.

But you're right, this is looking across a set of entities and finding similar violations and then going after them. I think the section is well-suited and well-prepared to do this.

Steven Solow: Nadira, in your experience both as an AUSA and in private practice, you've seen these kinds of cases roll out over time. I noticed, as some of you may have, that there was an EPA inspector general report released fairly recently that noted that the enforcement program was limited by some significant resource constraints.⁵

I had supervised some 30 attorneys, and I don't know how many it is today, Deborah, but it's not twice that. The number of EPA agents sort of infamously approached the statutorily required 200 agents, but never quite got there, and it has declined. So, Nadira, in your experience, what have you seen in terms of force multipliers or things that have been used to expand enforcement in this space?

Nadira Clarke: Before I answer that, I was thinking as I was listening to Stacey, that for a client or for a company, the idea of these initiatives is sort of a foreign concept. I think it's hard for them to conceive of. They're used to thinking about their own operations and things that happen in their own facilities. The idea that there's some enforcement risk associated not only with what they do, but the cumulative impacts of the actions of their neighbors or others in the industry, is really an unsettling one. I'm not saying that's not significant and important from the government's perspective, but I think from the regulated community's view, it's hard to know and understand what to do about that. It requires creative solutions.

But turning to your question, Steve, I think we've seen a number of different things that the government has done to take advantage of other resources. We see partnering with other federal agencies—be it the U.S. Fish and Wildlife Service, the U.S. Coast Guard, the National Oceanic and Atmospheric Association, the Federal Bureau of Investigation (FBI), or the Department of Homeland Security. As I understand, the Administration is rolling out a whole-of-government approach with regard to EJ. In this approach, I could envision where those agencies might contribute to environmental and criminal enforcement or have enforcement actions that spin off of that. It might then include the U.S. Securities and Exchange Commission (SEC) or the Federal Trade Commission (FTC) and other agencies that

4. Kris Dighe & Lana Pettus, *Environmental Justice in the Context of Environmental Crimes*, 59 U.S. ATT'YS. BULL. 3 (2011).

5. OFFICE OF INSPECTOR GENERAL, U.S. EPA, RESOURCE CONSTRAINTS, LEADERSHIP DECISIONS, AND WORKFORCE CULTURE LED TO DECLINE IN FEDERAL ENFORCEMENT (2021) (21-P-0132).

you haven't seen in the environmental arena as much in the past. I think that's quite possible.

From what I saw when I was in ECS and as an AUSA, and from what I witnessed from the outside, it's a section that's very talented and strategic about partnering with those agencies and expanding the resources that can be brought to bear when it comes to environmental criminal enforcement. It's really important for the regulated community, companies, and individuals to understand that.

Also, there are state and local prosecution agencies. There's a rich history there of partnering, and we have seen that. I've seen it on the defense side for sure, where there's been very effective partnership and use of combined resources to bring very effective actions.

Steven Solow: Deborah, as Nadira went through that list, I'm sure you were thinking what I was thinking: there's also the Occupational Safety and Health Administration (OSHA), because maybe that is the model. And you really are the one who created it. I think it'd be worth describing how that developed and how it got to where it is.

For our audience to understand the significance of it, let me put it in these terms: put your sense of politics aside for the moment. Since the initiation of the worker safety initiative—I think Deborah is going to talk about it—during the past administration more than eight or nine times the number of cases that have been brought previously were brought in this space because you had developed the program below the radar, as career programs tend to be. Help us understand whether that might be a guide to what may be coming in the future in other areas.

Deborah Harris: That's a good prototype. This worker safety initiative began in 2003. It coincided with a series of Pulitzer Prize-winning articles in the *New York Times* and some other things that were going on in the section. But what happened was that after 9/11, all the resources were going away from environmental and we were losing our FBI partners and things like that for Homeland Security, so we looked for a new work force of agents to tap into.

We went to OSHA, which had about 2,000 different inspectors in the very worksites that we wanted to police. We started training what they've called compliance officers for OSHA (CSHOs) to recognize environmental crimes. So, when they are out doing their inspections or responding to an accident or fatality, they could, if they think there is something there, hook up with EPA's Criminal Investigation Division and get an investigation started. It was very successful.

We actually trained hundreds if not a couple thousand CSHOs. We trained the solicitors who work for the U.S. Department of Labor. We ultimately negotiated a memorandum of understanding with them so that we were sharing information and resources.⁶ But at the time that we

started this, I believe there were 16 workplace fatalities per day in the United States.⁷ As this program was building, it got down to as low as 12 per day.⁸ Then, over the past four years, it's ticked up again because there's been a rollback.

But in addition to looking for environmental cases, we actually were teaching them about Title 18 crimes. Thus, even if it didn't have an environmental nexus, these field agents were empowered to realize that someone was changing an accident scene or lying to them or doing something that in some way hindered their ability to do their jobs. So, even beyond environmental, they started doing more criminal prosecutions—for example, false statements, conspiracy, or obstruction of justice. And that was the prototype.

We've done this in other areas. We did a sweep in the renewable fuels area that was based on data mining. There are reporting requirements under these programs and we went through it. We looked for anomalies and then went from there. They could be very successful, as worker safety has been.⁹ I believe the year we started there were three criminal referrals in the entire year from the Department of Labor. Now, we have more than 25 worker safety cases in the pipeline, plus the U.S. Attorneys' offices are doing them, even though very often they're only misdemeanors.

Steven Solow: Nadira and Stacey, when you hear this and when you're dealing with this—again getting back to counseling clients—what it seems like is the government is bringing together lots of different pieces that we used to think of as existing in silos. For example, environment and OSHA. Maybe now environment and civil rights. In other words, how can you help clients in this space negotiate this merging of various paths that seems to be happening?

Stacey Mitchell: I think this whole-of-government approach may be mirrored on the business side with the rising trend of environmental social governance that we're seeing. Nadira alluded to this in referencing both potential future prosecutions by the SEC and the FTC. Really, as we are talking to clients and talking about how the whole of government is working collaboratively and that the health and safety factions have come together historically, now we are looking at environmental and civil rights coming together as well as other issues that are raised by environmental and social governance.

When I am counseling clients, it's not only that they need to do a businesswide environmental risk management assessment, it is also becoming more or less incumbent on companies to start thinking about risk beyond basic compliance. That's really what environmental and social governance is about, thinking what can be done more than what is required. If companies are doing that in a holistic

6. Memorandum of Understanding Between the U.S. Departments of Labor and Justice on Criminal Prosecutions of Worker Safety Laws (Dec. 17, 2015), <https://www.justice.gov/enrd/file/800526/download>.

7. News Release, Bureau of Labor Statistics, National Census of Fatal Occupational Injuries in 2004 (Aug. 25, 2005), https://www.bls.gov/news.release/archives/cfoi_08252005.pdf.

8. News Release, Bureau of Labor Statistics, National Census of Fatal Occupational Injuries in 2012 (Preliminary Results) (Aug. 22, 2013), https://www.bls.gov/news.release/archives/cfoi_08222013.pdf.

9. Theo Emery, *Fraud Case Shows Holes in Exchange of Fuel Credits*, N.Y. TIMES, July 5, 2012, at A11.

companywide way, they are going to minimize their risk of worker deaths, or false statements to the SEC, and actually push themselves to a place that's beyond compliance. That, if they are doing it right and carefully, will keep Deborah and her crew away from their doorstep.

But if you are making additional commitments and seeking a benefit to your business from them, you are putting yourself at risk. So, if you are saying you are complying beyond what's required of the Clean Water Act (CWA)¹⁰ or the Clean Air Act (CAA),¹¹ you need to ensure that you are following through. You aren't just saying that there are real commitments, but you're tracking them, and you're ensuring that there is compliance with those commitments. Otherwise, I envision that potential next collaboration is between Deborah and the head of the SEC enforcement shop or Deborah and the head of the FTC enforcement shop for what is referred to as the Green Guides, which entail what claims you can make about how green you are without crossing the line.

There is a lot of drive nowadays to talk about an entity's sustainability and what it is doing not only for the environment, but also for workers. I don't just mean workers' safety, but other rights and benefits. I think there's potential for Deborah to work collaboratively, not only with the SEC, but potentially with the head of the DOJ Civil Rights Division, because of statements that companies are making with respect to how they are treating others, whether it's their own employees or fence-line communities. Unfortunately, with every turn, with every sort of ability to stay forward-looking and to stay compliant, as the government uses this whole-of-government approach, there are additional risks that are created.

Nadira Clarke: I completely agree. Pivoting off of Stacey's comment about the risk of overpromising or purporting to be concerned about the environment or about racial justice, there's opportunity there and, depending on the company, there's risk. One of the surprises I had when I moved over from the government to private practice is the strong relationship that exists between many companies and the communities surrounding their respective facilities. Most companies are trying to do the right thing. They do understand and are trying to not only meet the letter of the law, but, where the opportunity presents itself, to go beyond the regulatory requirement. No, it's not true in every instance, but I think it's largely true, particularly for more established companies.

But part of the challenge is all the information that they don't know and aren't aware of. You can be committed to regulatory compliance and still miss issues of concern to the community because you have limited resources. Under the pressures of business and everything else, you can misunderstand or just simply fail to recognize brewing issues and problems. You can fail to see events that may take place at your facility through the lens that the government

now may be looking at them through. Not because you don't care or because you're hardened to those issues, but because you are focused on all of the other pieces, on the obvious regulatory requirements.

We need to reorient how companies think. There's a lot of work that we've been doing with companies, thinking more broadly about where risk is and deploying resources in a different way. At the same time, we need companies to be circumspect, take stock of the many community-oriented programs they already have, and be careful not to overpromise.

One area where that is rich in opportunity is engaging with employees, employees who live in the community. Their own employees know the people who are impacted. They have a strong sense of areas of vulnerability, and they often have the relationships and legitimacy to open some of the issues. That's certainly one area we've been talking about, enhancing those lines of communication.

Steven Solow: Speaking of communication, I think of the phrase "agency collaboration." To a cynical Washington insider, that would be an oxymoron. And to Stacey's point, I think back to the anti-chlorofluorocarbon smuggling initiative.¹² Really, that began because Tom Watts-Fitzgerald, a prosecutor down in Miami, discovered that there was smuggling happening and brought some cases that people were not paying attention to, at first.¹³

What his cases illuminated was that Customs, EPA, and the Internal Revenue Service each had pieces of this problem, but they were not communicating. The question for you, Deborah, is if agency collaboration is no longer an oxymoron. It sounds like your experience with OSHA was that there actually was collaboration and communication. Maybe that more cynical notion of how things work inside the Beltway has changed somewhat.

Deborah Harris: I would say it's not an oxymoron. It's a necessity. That is demonstrated in some of the recent prosecutions that we have brought. For example, within my own department, the Volkswagen (VW) defeat device case was brought by ECS with the DOJ Criminal Division as well as the U.S. attorney's office.¹⁴ So, we combined forces. It was a good thing because, among other things, the Criminal Division has people who can speak and read German, analyze databases, and things like that.

It also has been happening in the renewable fuels or renewable identification number (RIN) fraud cases that I mentioned earlier. We very often have to partner with the DOJ Tax Division because there is a huge tax portion of these prosecutions, and we need approval to go forward

10. 33 U.S.C. §§1251-1387, ELR STAT. FWPCA §§101-607.

11. 42 U.S.C. §§7401-7671q, ELR STAT. CAA §§101-618.

12. Deborah Smith & Bruce Pasfield, *National Initiatives Developed to Combat Widespread Environmental Crimes*, 47 U.S. ATT'YS. BULL. 11 (1999).

13. Carey Goldberg, *A Chilling Change in the Contraband Being Seized at the Border*, N.Y. TIMES, Nov. 10, 1996 (\$1), at 34.

14. Press Release, Eastern District of Michigan, U.S. Attorney's Office, U.S. Department of Justice, Volkswagen AG Sentenced in Connection With Conspiracy to Cheat U.S. Emissions Tests (Apr. 21, 2017), <https://www.justice.gov/usao-edmi/pr/volkswagen-ag-sentenced-connection-conspiracy-cheat-us-emissions-tests>.

from that division. So, we might as well partner up with them and take their expertise. And we have double the counts that we would normally have because we're doing both environmental and tax charges.

The same thing has been happening in the RIN fraud with the SEC. We've had some prosecutions after partnering with SEC attorneys because of the disclosures that the defendants were making both in their annual reports and in specific certifications.

We're working more and more often with the Money Laundering and Asset Recovery Section (MLARS) because we have money laundering in many of, what I call, our wildlife trafficking cases—things that are coming from, say, fish farms overseas. They're being mislabeled or illegally harvested. They come to us and big money is going around. So, we're partnering with MLARS on some of those cases.

Steven Solow: Nadira and Stacey, like me, you come to environmental crimes from more of a criminal prosecution background than solely an environmental background. I think one of the things we sometimes have to translate for clients is what Deborah just said, which is that these are prosecutors, they're not environmental regulators. In other words, when we look at a case or we're looking at a matter, we look at it the way Deborah just did, which is to say, what is the potential criminal exposure here? It may be different than the regulatory issue.

Nadira Clarke: I was thinking just that, that it's so hard for clients to understand. They understand that there'll be enforcement. They understand that there's a role for criminal enforcement. But when they learn about an environmental criminal investigation, they're just trying to understand what it is that the prosecutor wants. What's bothering the prosecutor and how can they address it? And unfortunately, that kind of mindset is more appropriate for dealing with a regulatory action than a criminal action.

There's this presumption that somehow they can focus in on what the prosecutor cares about. It really is almost impossible for a client to understand this notion that there could be multiple criminal charges in multiple areas, and that there's this idea that the government is approaching it trying to get the most bang for its buck out of the investigation. It's very challenging.

I think it would be useful for companies to understand this distinction before they fall under investigation, because that's an unfortunate time to figure that out. It would be helpful for companies to understand that more, and for DOJ perhaps to be more outspoken about how prosecutions are approached, because it might impact a company's actions.

Steven Solow: Stacey, akin to what Nadira is saying, you said the wrong time to figure out how you are going to respond to an emergency is when you have one. I think, what Nadira is saying, is that the time to figure out the broad unimpeded scope of potential investigation is before

you face one. Then, recognize that you need a whole-of-company approach to address the whole problem.

Stacey Mitchell: Absolutely. One of the things I know you and Nadira do for clients, and I do as well, when helping them build a compliance program, is talking about the broad scope of criminal enforcement. Understanding how little things that can happen within a company can take a situation, where it really feels like it ought to be a civil enforcement, and make it criminal pretty quickly based on a few bad decisions that are made. Those decisions considered individually might not bring Deborah and her crew to a company's doorstep, but when looked at in a whole package, really can spell trouble for a company.

I also talk to clients about the fact that, for the most part, criminal enforcement can be based on "knowing" conduct. And that although there really is an effort to distinguish between the criminal and the civil side, and for the criminal folks to focus on the lying and cheating and stealing conduct, that can be subjective. Really, the advice is to get prepared now, as you say, and also to roll out training throughout companies as early as possible about the broad swath of criminal enforcement generally and the distinction between knowing versus intentional or willful conduct.

Steven Solow: Right. And I think, based on what Deborah's saying, clients often work from sort of risk matrices where they're looking at what areas of risk they face. And those, too, sometimes can get a little siloed. So, this is a really helpful discussion in terms of understanding that, for example, a prosecutor like Deborah is not looking in a silo. She's looking broadly across the conduct to see whether it touches some other issues. As you just said, Deborah, it may touch either a financial reporting issue or a consumer fraud issue. That's what you're referring to in some of these international cases, including VW.

Deborah Harris: That's because there's a focus on the victims, as it should be. Victims can be shareholders or victims can be the consumer who ends up with the VW that has a defeat device. That's why you look at the whole thing.

Nadira Clarke: I was thinking, too, that when you talk about these risk matrices it is important to factor in considerations such as (1) whether or not the industry in which the company is operating is the subject of an enforcement initiative, and (2) whether you may be subject to enhanced scrutiny based on who your neighbors are—all of the other industries impacting the community. Again, it's not that companies don't care. It's just that it doesn't occur to them. Thinking gets siloed.

Steven Solow: The three of you know that I have made this a stock part of my advice, which is that the government has this funny habit of saying what it's going to do and then doing that. Be forewarned because the government is saying these things.

I want to return for a second to the notion of victims of environmental crimes because you said a few things, Deborah, that I think need a little more illumination. Because we're not used to hearing this kind of language in this space, I think it would be helpful to hear a bit more. What are the government's views of who the victims of environmental crimes are and what are the harms that you're trying to address or redress?

Deborah Harris: The harm is obviously physical harm, which in and of itself could be complicated. If you think the physical harm is going to come from exposure to asbestos, it may not manifest itself for 30 or 40 years. Then there's the immediate physical harm for things like exposure to a pesticide or an explosion. So, the physical will include not just restitution for whatever physical injuries occur, it's going to also include in some instances medical screening over the course of a decade or more, so that we can track what happens with someone's exposure to some toxic chemical of some sort.

It's also property damage. Victims whose homes explode because of a high-pressure gas line problem, for example. Remember West, Texas, when a fertilizer plant blew up and destroyed much of the community?¹⁵ I think it would even include illegal spills that enter someone's home.

There is a component, too, of emotional damage, not necessarily with respect to restitution because we are limited to what you can get under the restitution statutes. But with the new victim assistance program, there are some more tools to help people deal with trauma after an environmental incident of some sort. Whether they've lost someone, lost their home, or suffered some other kind of event leading to post-traumatic stress disorder. Those are the types of victims that we're dealing with.

Steven Solow: It raises a question, and it's a tough question. When I first started prosecuting organized crime figures for environmental crimes in New York, it was a guy storing tons of medical waste behind a high school and things like that.¹⁶ When we're talking about what Deborah was just describing, we're not talking about someone disposing of something they didn't want and externalizing the cost of that by passing it on to us—often by passing it on, say, to an EJ community in some way and harming them in some way. We're actually talking about something happening that they don't want to have happened, an accident, an unwanted event that is painful, disruptive, and can be tragic.

When you're representing organizations in those situations, how do you manage the understanding of whether it's actually a criminal case or a tragic incident but not a crime? And just trying to find the line between that. Because I do think it's a different space than the one we started out with in environmental crimes, with people intentionally getting

rid of things they didn't want. But if your pipeline breaks, that is not something you want. You know you're losing product. You're losing business. You're losing opportunity. You hope that's all you lose, because you could also end up hurting people.

Nadira Clarke: That's exactly right. More important than how we draw the lines between defense counsel and the company is how Deborah is going to draw the line with her section of prosecutors, or how the AUSA is going to draw the line. How they draw the line may be very, very different than how we might want them to or think is appropriate. Not because they're doing something wrong, but because there's a lot of room for argument and interpretation in the language of those statutes and implementing regulations.

There's not as much case law as we might want there to be to provide guidance. As you say, Steve, this is an evolving area. I think a lot of what we end up doing is communicating to clients where the government might draw that line and what can be done to influence it. I always say that at the end of the day, whatever they may think, prosecutors are human beings with emotions.

A company's compliance program, time and aggressive corrective actions, and effective emergency response influence to some degree where that line gets drawn. Prosecutors have immense discretion, and it is important that we put events and actions in context.

Deborah Harris: One of the things I've noticed is that after a traumatic event, an explosion or something, there is a public cry for investigation. So very often the political appointees who guide us, whether it's the U.S. attorney or someone in DOJ, are going to push us to do an investigation. Or it's going to be a letter from a senator or congressperson, something like that. It's important to do these investigations because, even if they do not end up with criminal prosecution at the end, we have had instances where we learned what happened and we changed the industry. Now that we know the root cause, it might not have been something that could have been foreseen, but it was helpful and worth it to do the investigation. So yes, we're human, I will say that. And doing an investigation does not always mean you're going to prosecute.

Stacey Mitchell: The way I have the conversation with clients is, the government is going to look at this and ask, was this an accident or was it an accident waiting to happen? And Nadira touched on that with how good your compliance program is and how prepared you are. Sometimes I talk to clients about an incident where clearly they've lost something of value, they've lost not only whatever product is now missing, and they have to not only fix the problem, not only civil lawsuits, but they've lost reputation in the community as well. They really need to look at whether they could have prevented this and whether it's rational, something that could be enforced, or something that nobody could have seen. I will say here what I say to some clients: I think the ECS is currently led by somebody who really is quite rational.

15. Manny Fernandez & John Schwartz, *Plant Explosion Tears at the Heart of a Texas Town*, N.Y. TIMES, Apr. 19, 2013, at A1.

16. Allan R. Gold, *Garbage Company Faces Charges of Illegal Medical-Waste Storage*, N.Y. TIMES, Jan. 13, 1991 (S1), at 23.

I know personally that Deborah has made the difficult decision to decline prosecutions where it's appropriate. So I really feel that's true throughout not only the ECS, that rationality can prevail in U.S. Attorneys' offices if a company has done all the right things.

Is it perfect at all times? I don't think so. But I really do think that there is a lot of attention paid to what measures were taken to avoid this and/or what things were not attended to that directly led to this.

Steven Solow: What your comment underlines is the difficulty of continuous improvement. You referenced the notion of beyond compliance. I think of this as continuous improvement because compliance is something on the horizon that you're moving toward. But we are not only prosecutors, we are humans, too, and we make mistakes.

What you don't want is a system where post facto considerations of "would have, could have, should have" replace one of the bedrocks of criminal law, which is fair notice. The notion that I can get up in the morning and I can figure out where the line is between behavior that would be considered appropriate and behavior that would cross the line into criminal, and then govern myself accordingly. One would hope that you would do it in the way that Justice Louis Brandeis did when describing the criminal provisions of the Antitrust Act, and saying you can walk right near the edge of a cliff and then, if you misstep at all, you're going to fall off. But if you step a little bit away and give yourself some space, then you have some leeway to do that.

We have a question from the audience about how decisions are made and ultimately who makes the decision on whether to go forward. Is it EPA or is it DOJ?

Deborah Harris: It is definitely DOJ. We have relationships with EPA agents who bring us the cases and work on them, but they are well aware that the ultimate exercise of discretion is going to be the prosecutors. So, it's a DOJ decision and it's generally made at the line level. The trial attorney who's investigating the case will decide whether to push it forward to what we call a prosecution review. At that point, it's going to be looked at by a committee of attorneys. They're going to decide if it's something that the group as a whole agrees should go forward. There are levels above that, but the decision usually is made within, I'd say, our section or in the U.S. Attorney's office. You don't often get any higher than the criminal chief in the U.S. Attorney's office unless it's a big notable thing where there's a lot of public attention.

Nadira Clarke: It is important to remember, however, that there are U.S. Attorneys' offices that don't have a relationship with ECS, unfortunately. They don't have a lot of enthusiasm necessarily for bringing an environmental case, but that doesn't mean they're not going to bring charges. Sometimes it really does feel like EPA or the agent is calling most of the shots. I think it is important to recognize when you're in one of those jurisdictions because the rules are very different then.

Deborah Harris: And I would know. I see that happen a lot. The savvy defense counsel, if you really think it's going off the rails, is going to bring it to the attention of the assistant AG (AAG) through the deputy AG's (DAG's) office so that you can maybe get more rational people looking at it. That's something I would suggest you do if that happens to you.

Steven Solow: We've got a great question, one that I hadn't anticipated. I think first and foremost we've been talking about victims. From the view of your section, what about wildlife and what about the environment itself? Do you view that as a victim, in effect, of potential environmental crimes whose interests you're seeking to vindicate?

Deborah Harris: Very much so. With respect to the environment, we used to have a community service payment in every plea agreement that we could rationally fit it in. At least when we had a pre-agreement with a business organization or corporation, so that we could directly remedy the harm that had been caused by the violation. That is essentially the only way that funds are going to go there given that all of the funds that we get from all of the penalties that we get go to the U.S. Treasury's Crime Victims' Fund, which is for victims of violent crimes. It doesn't go to anything environmental.

We do that with wildlife crimes. Let's say, with domestic ones, there would be restitution to the state because they are the owner of the wildlife. We make sure that that happens. With overfishing in the Great Lakes, for example, a lot of money went into the hatcheries to try to replenish the source.

With respect to our animal welfare practice, we actually treat the dogs that have been bred for fighting as victims. That's been litigated, and I was surprised. But we very often have the dog forfeited. We get them the medical attention that they need and then we get them new homes. And other animals, too. We treat everybody as a victim when we can.

Steven Solow: To confirm, based on one of these questions, the section doesn't just do cases with EPA, correct? We talked about the Department of Labor, Coast Guard, and FBI. Basically, you'll work with anybody?

Deborah Harris: We will. We work with the U.S. Department of Defense, U.S. Department of Transportation, and U.S. Department of Agriculture, which gives us our dog-fighting cases, and lots of offices of inspector generals. One of our strongest partners now is Homeland Security Investigations, because they're interested and willing to do the work. I'm very pleased with the way things are going with Homeland Security.

Steven Solow: What kind of case would that be?

Deborah Harris: They are very involved in illegal logging, like materials that are coming into the country that have been taken illegally from Russia or Brazil.

Steven Solow: Just to be clear, were you encouraging defense counsel to sidestep U.S. Attorneys' offices to get a second bite at the apple of ECS?

Deborah Harris: No. You can't really sidestep the U.S. Attorney's office because, when you go to the DAG's office, they're going to inquire if you've been all the way through the U.S. Attorney's office up to the U.S. Attorney. What I'm saying is, if you have a really off-the-rails type of thing going that is just not consistent with prior practice or with the norm set that you would expect, there have been instances when you can appeal to the DAG who will then involve the AAG—who's a political appointee—and you might get a remedy that way.

Steven Solow: I want to move forward to an area that we've talked about amongst ourselves quite a bit. Those of us particularly involved in representing folks in the energy industry have seen the rise of private equity in that industry, in areas that are heavily regulated and sometimes creating surprises for them about some of the issues that can arise when investing in that space. Then the fact that we, as a country, have some aging energy assets, some of which may be impacted by either moves to renewables or other things. Stacey, I'll start with you this time on how you think these issues are playing out, and how they relate to the conversation we're having today.

Stacey Mitchell: As I was listening to Deborah say she'll work with anyone, one of the things that came to mind is that we didn't mention the U.S. Department of the Interior, which I think could be highly relevant and can become a really close partner of the ECS in the coming years, particularly for offshore aging assets. There is certainly already a push to close up some of these retired offshore wells, to ensure that they're properly and safely closed. I think that will obviously pertain to federal lands within onshore areas as well.

But you raise an excellent point. I think these are areas that have been largely overlooked in the enforcement scheme thus far. I know of a handful of enforcements in the aging assets area. By and large, they are administrative, not even civil, much less criminal enforcements. I also anticipate that there will be enhanced regulations that will require enhanced compliance and enhanced focus on how to retire these assets.

One of the things to pay attention to, if you're in this industry now, is the rulemaking process to make sure that you are engaged there. Again, crisis management starts today for a company because there's nobody that better knows how to close one of these assets than the companies that are involved in it, and what it takes and what the realistic expectations can be. So with respect to aging assets, there's the focus there.

The role of private equity in this industry is going to become more and more interesting. Whether there is enforcement if there are incidents may well dovetail to the question earlier, with respect to whether it was just an accident or an accident waiting to happen.

I think there's a really important role for private equity here. But they have to be mindful in how they get involved and to ensure that they, as private equity, are not stripping the operating entity of the funds to do what they need to do to ensure that they can be in compliance. And to ensure they are not only in compliance, but that they can remain so moving forward. As you said, Steve, staying with not only the critical obligations, but ensuring that, as you're looking at the tail end of an asset, the last thing you want to do is put more money into it. Yet, that's maybe what you need to do in order to avoid a real incident.

So, the questions that the private equity will be facing vis-à-vis funding, I think will grow. There will be instances where Deborah's office may be hiring somebody—or maybe they already have—who really understands corporate structure and how the funding lines run. Because there is, if done properly, a positive role for private equity; but enhanced risk if done for the private equity entity and the asset is not managed properly.

Steven Solow: Nadira, I know that you have worked on behalf of private equity clients, particularly in the energy space both offshore and onshore.

Nadira Clarke: I agree with what Stacey just said. In cases involving private equity, there are often third-party entities, who may be listed on the permit, that have control over operations at the site. When misconduct occurs or an incident happens, assigning fault is a complicated exercise. If private equity invests in a project and hires top-tier third parties to run the project, who is responsible when something goes wrong? What is the government's expectation of private equity? Where should the line be drawn? These are questions that are playing out in a number of cases right now.

Steven Solow: We've talked about this before, too, the notion that really fits into what you are saying, which is you don't look at these issues in a siloed manner. You look at what comes to you. As these issues, as Stacey said, proliferate in terms of the management of these assets and the control of them, it seems likely that it's something that may come to your attention, Deborah.

Deborah Harris: Yes, I would agree with that.

Steven Solow: One of the things that we have to turn to is this notion of what we once called "next-generation enforcement." I think you touched on it, Deborah, when you talked about data mining and the more sophisticated use of information. Have you hired someone in such a role? Or do you have that resource to do that kind of analysis when you're dealing with massive amounts of data or information that you're trying to get through to figure out what you're actually looking at?

Deborah Harris: We need more resources, but the point is that global commerce is built upon disclosures. For example, if you're importing wood, you have to make a declara-

tion to Customs. If you are operating a vessel, you have to make entries in an oil record book that's presented to the Coast Guard. Another example would be if you want to sell diesel cars in the United States, then you have to get a certificate of conformity from EPA. You're always making statements and declarations. That's our jurisdictional hook.

One of the ways to look at that is to go through the disclosures that are being made and to find out where the anomalies are. Like I said, data mining. We could use more resources. Those are actually agency resources. For all of EPA, they only have one analyst. I think that they're going to really have to staff up in that area. The most effective I've seen is with Customs. They have quite a lot of resources there and information to go through, but it is very important in moving forward with investigations. It's one of the best ways to be proactive, to be able to find where something looks like it's amiss and then investigate.

Steven Solow: OSHA began using drones to conduct site inspections several years ago. This was done permissively with the consent of the employer prior to using the drones. OSHA has since requested what is called "blanket" authority from the Federal Aviation Administration to operate drones in airspace across the country. Some observers in the industry are saying that they expect OSHA not only to use drones more frequently, but perhaps without employer consent. Can EPA possibly use drones? How is that playing out?

Deborah Harris: EPA does have a policy on drones. The Agency is not authorized by statute or regulation to either own one or to lease one, but they can work in conjunction with other agencies that do have the technology. The thing is they have to have permission from the assistant administrator. The immediate past assistant administrator, Susan Bodine, did not believe in using them, as far as I know. They are looking to update their policy right now. It remains to be seen what happens.

I do know that the Coast Guard has some drones and that's going to be very important. I don't know if they have the right technology yet, but we now have Annex VI of the International Convention for the Prevention of Pollution From Ships (MARPOL), which deals with air emissions from ships, not just the oil and water emissions.¹⁷ And one of the only ways that we're going to be able to detect these violations is if we have a drone with a sniffer on it that can go out and find the violators.

Steven Solow: Didn't you say before that you have a workplace safety initiative with the Department of Labor? If OSHA is using drones, and you've trained people at OSHA to look for environmental violations, might OSHA regulators looking at sites use the training you've provided to capture evidence of what they believe to be environmental violations?

Deborah Harris: Yes, I did say that. It's amazing the use that other countries are making of drone technology, and we're not. For example, in Poland, they're using them to find people who are exceeding air emissions. In Italy, they're using them to find where organized crime groups are dumping hazardous waste. Even Indonesia, Nigeria, and Pakistan are using them to find marine pollution. And Brazil's using them to find illegal logging because it's so remote, or to find illegal mining or illegal fishing, and we're not. So I think if we want to keep up, it's going to be important to change our policies and to get some resources.

Steven Solow: On the issue of data, my friend Bill Laufer, director of the Zicklin Center for Business Ethics Research at the Wharton School, has done a lot of great writing about corporate crime control and issues related to data.¹⁸ But I think Nadira and Stacey had also presented a challenge for clients as to whether they're adequately using their own data to identify risks, and whether that is something where there's an opportunity to better identify potential risk before it ripens into liability.

Nadira Clarke: I agree. I think there is data there to be mined and to be understood. When we were talking about risk matrices, data is certainly a mechanism that can be used to better understand risk. But first, it takes recognizing what data are relevant.

Stacey Mitchell: The thing I'd add that I found interesting over the past 15 months is that, as companies were struggling with how to do their audits, how to continue to do their audits particularly in the early months of the pandemic, I had conversations with clients in which they asked, hey, can we be using our data in any way, as opposed to having to go out and do physical inspections? Initially, I said that if they couldn't get out and do a physical inspection, that's certainly the next best option. Your question really suggests a good answer to that, which is, now that we've done it, let's build on the successes from data mining and incorporate them into more robust compliance programs. It may very well be a great first step in what a compliance audit looks like for a company to do their own data mining.

The one other point I want to make on this is "next generation," which has come up a couple times in my mind. Fenceline communities also have this "next-gen" capability. I think that is something that we have to keep in mind, when we think of where cases can come from. It can be from community groups that are using their cell phones that now have capabilities that are actually potentially forensically sufficient and, if not, are at least adequately sufficient to cause an EPA agent to be interested in a case.

Likewise, neighbors can use drones to videotape and the like. Just a reminder that this next-gen compliance is not necessarily only in the hands of the entity or the agency, but I think it really brings third parties into play here as

17. MARPOL, annex VI, Nov. 2, 1973, 1340 U.N.T.S. 61.

18. WILLIAM S. LAUFER, CORPORATE BODIES AND GUILTY MINDS: THE FAILURE OF CORPORATE CRIMINAL LIABILITY (Univ. of Chicago Press 2006).

well. And, Nadira, I think as you've been saying all along, it makes running a business even more complicated.

Steven Solow: Right. So, what you're saying is that before the emergency planning, consider these issues. Also, one of the ways I like to think about it is you've gone to the expense of actually generating data. If you don't mine it, you're wasting some of that money in some ways.

Stacey Mitchell: Absolutely. Otherwise, what are you doing it for? If it's there and EPA has the capability to look at it and assess it, you ought to. If you don't, it really can't cost that much to do it. Because we all know EPA doesn't have that much money to do it. But as Deborah said, they only have one analyst. So, at this point, a company should be able to stay ahead and do their own analysis. I think really, going back to Nadira's point, there's no ill will about having not done it before. This was never really contemplated and we continue to get better as entities continue to get better at environmental compliance.

I will also say this is something companies talked about in the context of environmental and social governance. They start looking at their water consumption or their air emissions, and if they are fully compliant with their permits. But they realize if they take two steps, they're using less water and they're saving money. But that's also good for the planet and I do see a lot of drive and interest in doing that. I see a lot of possibility to use this data mining not only for the benefit of avoiding criminal enforcement or civil enforcement, but also for the betterment of the bottom line and the environment.

Nadira Clarke: Data can also be used as currency to resolve a matter. There isn't always the appetite to do so. But I have certainly seen recently, with all the attention in the civil context and even potentially in the criminal context, some interest around what data companies accumulate and what they're willing to monitor going forward and what they'd be willing to make available publicly. It's an interesting way to see data as well.

Steven Solow: Years ago, when the section was attempting to undertake certain kinds of work, you would have to go to a government contractor who had the capacity to do the computing. That level of computing, as Stacey said, might be on my phone today. So as the pace of that dynamic data capability increases, it increases the pressure to be ahead of your own data. Which is what Stacey and Nadira have both been saying a lot.

The arc of this discussion started with ways in which the government may initiate new kinds of investigation, either by engaging with EJ communities or using data or information to start cases. Now we're coming to the point of saying, okay, as a conclusion of a case, what kind of things might we be looking at in the future?

There was a lot of communication about the issue of, on the civil side, supplemental environmental projects and the policy in that space and whether they were allowed or not allowed. That is still going through some process. But

again, sort of quietly on the criminal side, there has been a long history—right, Deborah?—of the use of what we're calling community service payments as an add-on to or as a remedy or an additional aspect of the resolution of criminal cases. Where are we on that now on that continuum?

Deborah Harris: Yes, it's been a longtime program at ECS. It's been incredibly popular with both the corporate defendants and with the U.S. attorneys' offices and everyone else. I think it did a lot of good.

In June 2017, the first prohibition came down. It was a memo from then-AG Jeff Sessions that prohibited payments to nongovernmental third parties who are not victims or participants in the litigation.¹⁹ That in itself had three exceptions, one of which was payments that directly remedied the harm that is sought to be redressed and the specified environmental harm. That was codified in the *Justice Manual* and it still exists there. But on December 16, 2020, a midnight regulation came out that we didn't even know was in the works,²⁰ which is the same thing from the *Justice Manual*—the prohibition of the payments to nongovernmental third parties—but it took out that exception for environmental altogether.

One of the things that's going on, with the new Administration coming in, is that all of the memos that dealt with this in the division were withdrawn.²¹ There had been several of them on the propriety of these types of payments. They were all withdrawn. Meaning what's left is that regulation that, as I said, prohibits payments to nongovernmental third parties.

So, one of the thoughts going forward is that before the regulation came out, we were able to treat payments to congressionally chartered organizations, like the National Fish and Wildlife Foundation, as if they're not nongovernmental. They're governmental. They have to report to the U.S. Congress. They're the ones who could directly redress the harm. They had the ability to do it and that seemed to be okay with the AAG at that time.

I think, in reaction to the prohibition, we're getting more and more stringent. Congress in 2020 actually amended the National Fish and Wildlife Foundation Establishment Act and authorized them to receive and administer restitution and community service payments.²² They built that into the statute. That, to me, means they intend on payments like this to be made.

So, I believe that we're waiting to see what happens with that regulation. I don't know if or when it will be withdrawn. And until then, we're going to have to be very cautious going forward. We have not done a community service payment

19. Memorandum from the Attorney General to All Component Heads and United States Attorneys Re: Prohibition on Settlement Payments to Third Parties (June 5, 2017), <https://www.justice.gov/opa/press-release/file/971826/download>.

20. 28 C.F.R. §50.28 (2020).

21. Memorandum from Jean E. Williams, Deputy Assistant Attorney General, to ENRD Section Chiefs and Deputy Section Chiefs Re: Withdrawal of Memoranda and Policy Documents (Feb. 4, 2021), <https://www.justice.gov/enrd/page/file/1364716/download>.

22. See 16 U.S.C. §3703(c)(1)(K).

out of my section and I can't tell you if the U.S. Attorney's office has done one either in more than four years.

Steven Solow: Do you think that will stay that way or change? Or you just don't know?

Deborah Harris: I hope it changes, but I can't predict because I'm not in that circle of trust.

Steven Solow: Well, there are some advantages to that, too. There are other things that we talked about that probably are worth having further discussions on. I think that the June 2020 memo from the Criminal Division about what constitutes an effective corporate compliance program was a really fascinating document.²³ I'm sure it plays a role in your analysis of cases, Deborah, and certainly it plays a role in our assessment.

Looking at resolutions of cases, one of the things that I've had experience with and others have as well is the use

of monitorships. Is that something that you would be looking at more in the future? Is that, as a remedy, something that you are still considering as a viable outcome?

Deborah Harris: It's definitely a remedy that we will continue to consider. I don't think we'll consider it any more than we used to. Nothing's changed with respect to us. The memo that did come out with respect to monitorships in the Criminal Division is not binding on us. We actually do things differently than they do. We always have it as a condition of probation as opposed to part of a deferred prosecution agreement or a nonprosecution agreement; therefore, it's got some judicial approval.

I think that in certain circumstances they are absolutely necessary. We do them almost routinely in vessel pollution cases. One of the reasons is because we're dealing with a vessel that comes in, but they've got a whole fleet of vessels that we want to make sure are doing the right thing all the way through. But we will continue doing them.

23. CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, EVALUATION OF CORPORATE COMPLIANCE PROGRAMS (2020).