



# Program on Corporate Compliance and Enforcement

New York University School of Law

## Achieving Effective Compliance Assessment | Internal Reporting | Technology | Remedial Monitors



Friday, October 12, 2018  
New York University  
School of Law

Lester Pollack Colloquium Room  
245 Sullivan Street  
9th Floor



Program on  
Corporate Compliance  
and Enforcement  
New York University School of Law

**Faculty Director**  
**Jennifer H. Arlen**

**Executive Director**  
**Allison Caffarone**

**Assistant Director**  
**Michelle L. Austin**

# Achieving Effective Compliance

Assessment | Internal Reporting | Technology | Remedial Monitors

Friday, October 12, 2018

## Conference Objective

The goal of the conference is to bring together academics, enforcement officials, general counsels, compliance officers, and white-collar defense lawyers for an off-the-record discussion of how organizations can most effectively deter misconduct. The conference will begin with a discussion of how enforcement officials and corporations determine what compliance function features are in fact effective. The conference will then evaluate three enhancements for compliance: internal reporting, technology, and remedial monitors.

## Continuing Legal Education

*This event has been approved for up to 7.5 New York State CLE credits in the Areas of Professional Practice category for those who attend the entire event. It is appropriate for newly admitted attorneys as well as experienced attorneys.*

## PCCE Conference Rules

To encourage frank, open analysis of policy issues and the sharing of information, our conferences and roundtables are governed by the following rule:

Participants are free to use the information received, but **all content received at this PCCE event is not for attribution, in whole or in part.** Specifically, neither the identity of the person who makes a comment nor his or her affiliation (including whether he or she is a government or private-sector employee) may be revealed.

PCCE does not videotape or otherwise record an event (or any segment of an event) done under this rule, unless otherwise noted in the program.

To promote future communication among participants, PCCE provides a list of conference participants to those who attend the conference. PCCE also publishes conference and roundtable programs, including a list of speakers, on its website. In addition, PCCE takes photographs of speakers and attendees who are included on the PCCE website and in our brochure.

# Conference Agenda

---

**8:30–8:45 A.M.**     **Registration**

---

**8:50–9:00 A.M.**     **Opening Remarks**

---

**9:00–9:35 A.M.**     **Keynote**

**Lisa Osofsky**, Director, Serious Fraud Office, United Kingdom

---

**9:40–10:45 A.M.**     **Assessing Effective Compliance**

**Moderator: Jennifer Arlen '86**, Norma Z. Paige Professor of Law and Faculty Director,  
PCCE, NYU School of Law

**Panelists:**

**Daniel Kahn**, Chief, FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice

**Sharon Cohen Levin**, Partner, Wilmer Cutler Pickering Hale and Dorr

**Geoffrey Miller**, Stuyvesant P. Comfort Professor of Law and Senior Academic Fellow,  
PCCE, NYU School of Law

**Celia Moore**, Associate Professor, Department of Management and Technology,  
Bocconi University, Milan

**Alfred Rosa**, Chief Compliance Director and Senior Executive Counsel,  
General Electric Company

---

**10:45–11:00 A.M.**     **Coffee/Tea Break**

---

**11:00 A.M.–**     **Behavioral and Structural Approaches to Internal and External Reporting**

**12:05 P.M.**     **Moderator: Timothy Lindon '80**, Senior Fellow, PCCE, NYU School of Law

**Panelists:**

**Sean McKessy**, Partner, Phillips & Cohen

**Elizabeth Morrison**, Professor of Management and Organizations and ITT Harold Geneen  
Professor in Creative Management, Stern School of Business, New York University

**Eugene Soltes**, Jakurski Family Associate Professor of Business Administration,  
Harvard Business School

**Ann Tenbrunsel**, David E. Gallo Professor of Business Ethics, Mendoza College of Business  
Administration, University of Notre Dame

---

**12:05–12:40 P.M.**    **Keynote**  
**Brian Benczkowski**, Assistant Attorney General, Criminal Division, U.S. Department of Justice

---

**12:40–1:40 P.M.**    **Networking Lunch**  
Lipton Hall, 110 West 3rd Street (Lower Level)

---

**1:50–3:00 P.M.**    **Technology and Data-Driven Compliance**  
**Moderator: Allison Caffarone '03**, Executive Director, PCCE, NYU School of Law  
**Panelists:**  
**Ifeoma Ajunwa**, Assistant Professor, Cornell University ILR School and Associate Faculty Member, Cornell Law School  
**Patrick Gnazzo**, Principal, Better Business Practices  
**Court Golumbic**, Participating Managing Director, Global Head of Financial Crime Compliance, Goldman Sachs  
**Bonnie Jonas**, Co-Founder and Co-CEO, Pallas Global Group  
**Foster Provost**, Professor of Data Science and Information Systems and Andre Meyer Faculty Fellow, Stern School of Business, New York University

---

**3:00–3:20 P.M.**    **Coffee/Tea Break**

---

**3:20–4:30 P.M.**    **Monitors as Stewards of Effective Compliance**  
**Moderator: Pablo Quiñones**, Founder, Quiñones Law and Senior Fellow, PCCE, NYU School of Law  
**Panelists:**  
**Neil Barofsky**, Partner and Chair of the Monitorships Practice, Jenner & Block  
**John Gleeson**, Partner, Debevoise & Plimpton and former U.S. District Judge, E.D.N.Y.  
**Sandra Moser**, Acting Chief, Fraud Section, Criminal Division, U.S. Department of Justice  
**Bart Schwartz '71**, Chairman, Guidepost Solutions  
**Robert Werner '86**, CEO and Founder, Green River Hollow Consulting

---

**4:30–5:10 P.M.**    **Keynote**  
**Geoffrey Berman**, U.S. Attorney, Southern District of New York, U.S. Department of Justice

---

**5:10–6:00 P.M.**    **Reception**

---

---

## Conference Keynote Speakers



**Brian A. Benczkowski**  
**Assistant Attorney General,**  
**Criminal Division**

**U.S. Department of Justice**

Brian A. Benczkowski serves as the Assistant Attorney General for the Criminal Division. In that capacity, he supervises the Criminal Division's more than 600 federal prosecutors

who conduct investigations and prosecutions involving organized and transnational crime, gang violence, securities fraud, health care fraud, Foreign Corrupt Practices Act violations, public corruption, cybercrime, intellectual property theft, money laundering, Bank Secrecy Act violations, child exploitation, international narcotics trafficking, human rights violations, and other crimes, as well as matters involving international affairs and sensitive law enforcement techniques.

Prior to his confirmation as the Assistant Attorney General for the Criminal Division, Benczkowski served as a partner in the Washington, D.C., office of a large international law firm, where his practice focused on white collar criminal defense as well as government and internal investigations, including in the areas of health care fraud, environmental enforcement, and campaign finance.

Benczkowski received his J.D. from the Washington University School of Law in St. Louis and his B.A. from the University of Virginia.



**Geoffrey S. Berman**  
**U.S. Attorney, Southern**  
**District of New York**

**U.S. Department of Justice**

Geoffrey S. Berman is the U.S. Attorney for the Southern District of New York. As U.S. Attorney, Berman oversees the investigation and litigation of all criminal and civil cases

brought on behalf of the United States in the Southern District of New York (SDNY). He supervises an office of about 220 Assistant U.S. Attorneys, who handle a high volume of important cases, including domestic and international terrorism, white collar crime, securities and commodities fraud, public corruption, cybercrime, narcotics and arms trafficking, gang violence, organized crime, and civil rights violations.

Prior to becoming U.S. Attorney on January 5, 2018, Berman was a partner at a major New York law firm. He served as an Assistant U.S. Attorney from 1990 to 1994, where he handled complex criminal prosecutions, including tax, securities, and computer hacking violations.

Before joining the U.S. Attorney's Office, Berman was an Associate Counsel in the Office of Independent Counsel for the Iran/Contra matter, where he successfully prosecuted a former CIA employee for tax fraud. Berman received his B.A. (magna cum laude) from the University of Pennsylvania and his B.S. (Beta Gamma Sigma) from the Wharton School. Berman received his J.D. from Stanford Law School, where he was Note Editor of the *Stanford Law Review*. After law school, he clerked for Judge Leonard Garth of the United States Court of Appeals for the Third Circuit.

---

## Conference Keynote Speakers



### **Lisa Osofsky**

**Director  
Serious Fraud Office,  
United Kingdom**

Lisa Osofsky became the Director of the Serious Fraud Office (SFO) on August 28, 2018. In this role, she is responsible for all investigations and prosecutions for some of the UK's most

serious and complex fraud and bribery. Before joining the Serious Fraud Office, Osofsky served as EMEA Regional Chair based in Exiger's London office.

Previously she was the regulatory advisor at Control Risks. Prior to that Osofsky was the Executive Director of the Business Intelligence Group and the Money Laundering Reporting Officer at Goldman Sachs International, London. Preceding her time with Goldman Sachs, Osofsky served as the Deputy General Counsel (DGC) and Ethics Officer for the FBI. Osofsky was also a Special Attorney in the Fraud Section of the Criminal Division of the U.S. Department of Justice (DOJ) and stationed at the SFO in London. Osofsky began her career in Chicago as a law clerk to federal judge James B. Moran; she then served as an Assistant U.S. Attorney. Before becoming DGC of the FBI, Osofsky served in DOJ's Office of International Affairs. Osofsky received her B.A., Phi Beta Kappa, magna cum laude, from Amherst College, and her J.D. from Harvard Law School.

## Moderators and Panelists



### **Ifeoma Ajunwa**

**Assistant Professor, Cornell University  
ILR School; Associate Faculty Member,  
Cornell Law School**

Dr. Ajunwa is an Assistant Professor at Cornell University's Industrial and Labor Relations (ILR) School and Associate Faculty Member at Cornell Law School. She is also a Faculty Associate at the Berkman Klein Center at Harvard Law School. Ajunwa's research interests are at the intersection of law and technology, with a particular focus on the workplace and the ethical governance of workplace technologies. Ajunwa's articles have been published in top law review and peer review publications, including *Fordham Law Review*, *California Law Review*, *Northwestern Law Review*, *Harvard Civil Rights-Civil Liberties Law Review*, *Berkeley Journal of Employment and Labor Law*, *Harvard Business Review*, and *Research in the Sociology of Work*, among others. Ajunwa's forthcoming book, *The Quantified Worker*, which examines the role of technology in the workplace as moderated by employment and anti-discrimination laws, will be published by Cambridge University Press in 2019.



### **Jennifer H. Arlen**

**Norma Z. Paige Professor of Law  
Faculty Director, Program on Corporate  
Compliance and Enforcement  
New York University School of Law**

Jennifer Arlen '86 is one of the nation's leading scholars on corporate criminal and civil liability and enforcement policy. She serves as the Associate Reporter on Corporate Enforcement for the American Law Institute's Principles of the Law, Compliance, Enforcement, and Risk Management, and recently published the *Research Handbook on Corporate Crime and Financial Misdealing* (Jennifer Arlen ed. 2018). She also is President of the American Law and Economics

---

Association and Co-Founder and former President of the Society for Empirical Legal Studies. Arlen received her B.A. in economics from Harvard College (magna cum laude) and her J.D. (Order of the Coif) and Ph.D. in economics from NYU. After law school, she clerked for Judge Phyllis Kravitch on the U.S. Court of Appeals for the 11th Circuit. Before coming to NYU, she was the Ivadelle and Theodore Johnson Professor of Law and Business at USC Gould School of Law. She also has been a Visiting Professor at Harvard Law School, Yale Law School, and the California Institute of Technology.



**Neil M. Barofsky**  
**Partner and Chair of the**  
**Monitorships Practice**  
**Jenner & Block**

Neil M. Barofsky is an accomplished trial lawyer and well-known authority on a variety of issues at the intersection of economics, law, business, policy, and politics. Drawing upon his experience as a former federal prosecutor and as the presidentially-appointed first special inspector general of the historic \$700 billion Troubled Asset Relief Program, Barofsky assists companies seeking to improve their corporate culture through compliance counseling and monitorships. He also focuses on white collar investigations and complex commercial litigation, often with a public interest component. He is a prolific author and speaker who has developed a national reputation in the compliance and white collar arenas. In 2015, he was named one of *The National Law Journal*'s "Winning" litigators. He was also recognized by *The National Law Journal* as a regulatory and compliance "Trailblazer." Barofsky is the chair of the Jenner & Block's Monitorships Practice. He also serves on the firm's Management Committee.



**Allison Caffarone**  
**Executive Director, Program on Corporate**  
**Compliance and Enforcement**  
**New York University School of Law**

Allison Caffarone '03 is the Executive Director of the Program on Corporate Compliance and Enforcement. Caffarone joined PCCE after working at Hofstra Law School as an Associate Professor of Legal Writing, where she taught Transnational Crime and Extradition, Contracts, and a number of writing and pretrial-skills courses, and developed and taught the law school's first course dedicated to corporate compliance and anti-corruption law.

Before joining Hofstra, Caffarone practiced for nine years as a litigation associate in Sullivan & Cromwell's Criminal Defense and Investigations Group, where she specialized in white collar criminal defense. She has represented individuals, corporations, and financial institutions in numerous high-profile matters involving allegations of securities fraud, insider trading, money laundering, and the Foreign Corrupt Practices Act (FCPA) and Office of Foreign Assets Control (OFAC) sanctions. She is a contributing author to the white collar crime treatise, *Defending Corporations and Individuals in Government Investigations*.

She has a J.D. from NYU School of Law and a B.A. from Hofstra University.



**John Gleeson**  
**Partner, Debevoise & Plimpton**  
**Former U.S. District Judge, E.D.N.Y**

John Gleeson is a litigation partner at Debevoise & Plimpton. Before joining Debevoise in 2016, he was a U.S. District Judge in the Eastern District of New York for 22 years. Gleeson was a federal prosecutor in that district for 10 years before his appointment to the bench. He served as Chief of Appeals, Chief of Special Prosecutions, Chief of Organized Crime, and Chief of the Criminal Division, and he received the Attorney General's



Distinguished Service Award for his role as lead prosecutor in *United States v. John Gotti*.

Gleeson is an Adjunct Professor of Law at NYU School of Law, a member of the American Law Institute, and a trustee of the Vera Institute of Justice. His publications include *Federal Criminal Practice: A Second Circuit Handbook* (18th Edition) (2018) and numerous articles. Gleeson attended Georgetown University and earned his law degree from the University of Virginia School of Law.



### **Patrick J. Gnazzo**

#### **Principal**

#### **Better Business Practices, LLC**

Patrick J. Gnazzo is currently serving as the federal Ethics Monitor to a Fortune 50 corporation under the terms of the DOJ Deferred Prosecution Agreement and EPA Administrative Agreement. Previously, he was the Senior Vice President and General Manager of Computer Associates' (CA) Public Sector business. Gnazzo also served as the Senior Vice President, Business Practices, and Chief Compliance Officer at CA. Prior to joining CA in 2005, Gnazzo served as Vice President, Business Practices, at United Technologies Corporation (UTC) for ten years, where he managed more than 260 business practices officers worldwide. Gnazzo joined UTC in 1981, from the U.S. Navy's Office of the General Counsel. Gnazzo's last position in the Navy was Associate General Counsel, Chief Trial Attorney, and Director of the U.S. Department of the Navy's litigation division. Gnazzo is an Executive Fellow at Bentley University's Center for Business Ethics and a member of the Procurement Roundtable and the Board of Advisors of the National Contract Management Association.



### **Court E. Golumbic**

#### **Participating Managing Director, Global Head of Financial Crime Compliance Goldman Sachs**

Court Golumbic is the Global Head of Financial Crime Compliance at Goldman Sachs, where he is primarily responsible for administering the firm's anti-money laundering, anti-bribery, and government sanctions compliance programs. Golumbic previously was a Senior Managing Director and the Global Head of Anti-Money Laundering for Bear Stearns from 2002 to 2005. From 1998 to 2002, he served as an Assistant U.S. Attorney in the Southern District of New York, where he specialized in prosecuting securities fraud, money laundering, and other white-collar crimes. From 1993-1997, Golumbic served as Senior Advisor to the Under Secretary for Enforcement at the U.S. Treasury Department. Golumbic received a B.S. from Vanderbilt University in 1986 and a J.D. in 1990 from the University of Virginia School of Law, where he served on the *Virginia Law Review* and the *Virginia Journal of International Law*. He has taught courses on white collar crime as an adjunct professor at the University of Pennsylvania School of Law and currently teaches at NYU School of Law.



### **Bonnie B. Jonas**

#### **Co-Founder and Co-CEO**

#### **Pallas Global Group, LLC**

Bonnie Jonas co-founded Pallas Global Group, LLC, a company that provides governance, ethics, compliance, and independent monitoring services. Prior to that, Jonas served for 18 years as an Assistant United States Attorney in the SDNY. Jonas's positions at SDNY included: Deputy Chief of the Criminal Division, Financial Fraud Coordinator for President Obama's Financial Fraud Enforcement Task Force, and Co-Chief of the General Crimes Unit. While at SDNY, Jonas investigated and prosecuted



individuals at WorldCom, Royal Ahold, Aurora Foods, and Commerzbank and prosecuted and oversaw reforms through corporate monitorships of Deutsche Bank, Toyota, and General Motors. Previously, Jonas was an attorney with Paul, Weiss, Rifkind, Wharton & Garrison, clerked for Judge Reena Raggi of the U.S. District Court in the Eastern District of New York, and worked as a consultant at Peterson Consulting. She graduated from The Wharton School, University of Pennsylvania and Columbia University School of Law.



### **Daniel S. Kahn**

**Chief, FCPA Unit, Fraud Section,  
Criminal Division  
U.S. Department of Justice**

Daniel Kahn has been with the Department of Justice, Criminal Division, Fraud Section since 2010, was an Assistant Chief in the Foreign Corrupt Practices Act (FCPA) Unit from 2013 to March 2016, and has been the Chief of the FCPA Unit since that time. Kahn earned the Assistant Attorney General's Award for Exceptional Service for his work on the Alstom case, and the Assistant Attorney General's Award for Distinguished Service for his part in prosecuting a bribery scheme involving the state-owned and state-controlled telecommunications company in Haiti. Prior to joining the DOJ, Kahn spent six years at Davis Polk & Wardwell. He was twice selected by the New York Police Department Executive Development Division to present on the prevention of wrongful convictions. He also assisted the New York Justice Task Force in investigating wrongful convictions. Kahn graduated summa cum laude from Cornell University and cum laude from Harvard Law School.



### **Sharon Cohen Levin**

**Partner**

**Wilmer Cutler Pickering Hale and Dorr**

Sharon Cohen Levin is a Partner at WilmerHale in New York. Levin is a leading authority on anti-money laundering, the Bank Secrecy Act, economic sanctions, and asset forfeiture. Levin served for 19 years as Chief of the Money Laundering and Asset Forfeiture Unit in the SDNY. During her tenure, Levin prosecuted and supervised many of the Department of Justice's most complex and significant money laundering, sanctions, and asset forfeiture prosecutions, including the investigation and prosecution of BNP Paribas, SAC Capital, Lebanese Canadian Bank, and 650 Fifth Avenue. Levin has worked closely throughout her career with state and federal banking regulators, the U.S. Treasury Department's Office of Foreign Asset Control, FinCEN, and the Department of Justice. As an internationally recognized authority on money laundering and asset forfeiture, she has been a keynote speaker, lecturer, and panelist for practitioners, law enforcement officials, judges, and international prosecutors on topics such as effective AML compliance, enforcement trends in the financial industry, money laundering, terrorist financing, U.S. economic sanctions, and art recovery.



### **Timothy J. Linton**

**Senior Fellow, Program on Corporate  
Compliance and Enforcement  
New York University School of Law**

Timothy J. Linton '80 is a Senior Fellow at PCCE and is active in compliance consulting and coaching. He has broad experience in legal and compliance leadership roles in the U.S., Europe, and Asia, including as Vice President and Chief Compliance Officer of Philip Morris International, based in Switzerland. Previously, Linton held senior corporate and litigation positions for Philip Morris in Hong Kong, New York, and Washington, D.C. He clerked on

the U.S. Court of Appeals for the Fourth Circuit and began his legal career at Arnold & Porter. Lindon received his J.D. from NYU School of Law, where he was a Root Tilden Scholar, and a B.A. from Tufts University



### **Sean X. McKessy**

**Partner**

**Phillips & Cohen**

Sean X. McKessy, a partner at Phillips & Cohen, was the first Chief of the SEC Office of the Whistleblower and helped establish the procedures and policies for handling whistleblower claims. During his five-year tenure, he played a key role in the SEC's efforts to reward and protect whistleblowers. He now represents whistleblowers at Phillips & Cohen, which has the longest-standing and most successful practice devoted exclusively to representing whistleblowers under government reward programs, with more than \$12.3 billion recovered as a result of the firm's cases. McKessy served previously at the SEC in the Enforcement Division. He later held corporate compliance positions as corporate secretary for Altria Group Inc. and AOL Inc. and as securities counsel for Caterpillar Inc. *Compliance Week* named him to its list of the "Top Minds" in corporate governance, risk, and compliance in 2017.



### **Geoffrey Parsons Miller**

**Stuyvesant P. Comfort Professor of Law**

**Senior Academic Fellow, Program on**

**Corporate Compliance and Enforcement**

**New York University School of Law**

Professor Geoffrey Miller is a Co-Founder of PCCE and served as a Faculty Director until May 2017. He now serves as Senior Academic Fellow. Author or editor of a dozen books and more than 200 research papers on topics in business law, compliance and risk management, financial institutions, securities law, the legal profession, ancient law, and legal theory, Miller received his B.A. from Princeton University in 1973 and

his J.D. in 1978 from Columbia Law School, where he was Editor-in-Chief of the *Columbia Law Review*. He clerked for Judge Carl McGowan of the U.S. Court of Appeals for the D.C. Circuit and Justice Byron White of the U.S. Supreme Court. Miller is a Founder of the Society for Empirical Legal Studies, Director of the NYU Law Center for Financial Institutions, and Co-Director of the Center for Civil Justice. He serves on the Board of Directors and chairs the Audit Committee of State Farm Bank. Miller is a 2011 inductee into the American Academy of Arts.



### **Celia Moore**

**Associate Professor, Department of**

**Management and Technology**

**Bocconi University, Milan**

Celia Moore is an Associate Professor in the Department of Management and Technology at Bocconi University in Milan, prior to which she was on the faculty of the London Business School for nine years. She has also been a visiting scholar at Harvard Business School and a Fellow of the Edmond J. Safra Center for Ethics at Harvard University. She is currently an Academic Fellow of the Ethics and Compliance Initiative, is a collaborator at EthicalSystems.Org, and sits on the U.K.'s Banking Standards Board Assessment Steering Committee. Her research, which has been featured in *The Economist*, *The Wall Street Journal*, *Financial Times*, *Forbes*, and *Fast Company*, focuses on how organizations facilitate morally problematic behavior. She has worked with several public- and private-sector organizations in Europe and the U.S. on how to develop ethical leaders and build ethical cultures.



### **Elizabeth Wolfe Morrison**

**Professor of Management and Organizations; ITT Harold Geneen Professor in Creative Management, Stern School of Business, New York University**

Elizabeth Morrison is a Professor of Management and Organizations and the ITT Harold Geneen Professor in Creative Management at the Stern School of Business at NYU. Her research examines ways in which employees behave proactively at work, conditions that motivate and enable such behavior, and how proactive behavior affects career success and organizational effectiveness. She also focuses on employee voice and silence, and the reasons why employees are often reluctant to speak up about problems and concerns. Her work has appeared in academic journals such as *Academy of Management Journal*, *Academy of Management Review*, and *Journal of Applied Psychology*. Morrison has also served in a number of leadership positions, including Vice Dean of Faculty at Stern, Chair of the Organizational Behavior Division of the Academy of Management, and Associate Editor at *Academy of Management Journal*. She teaches courses on leadership, negotiation, and organizational behavior. She earned a Ph.D. in organization behavior from Northwestern University and a B.A. in psychology from Brown University.



### **Sandra L. Moser**

**Acting Chief, Fraud Section, Criminal Division U.S. Department of Justice**

Sandra L. Moser is the Acting Chief of the U.S. Department of Justice, Criminal Division, Fraud Section in Washington, D.C. She joined the Fraud Section in 2012 after seven years with the U.S. Attorney's Office for the District of New Jersey. Moser assumed the Acting Chief role after previously serving the Fraud Section in roles as its Principal Deputy Chief, Acting Senior Deputy Chief, and an Assistant

Chief in the Section's Securities & Financial Fraud Unit. She previously worked at Morgan, Lewis & Bockius and Drinker Biddle & Reath, both in Philadelphia, and clerked for the late Hon. Norma L. Shapiro (Eastern District of Pennsylvania) and the Hon. Marjorie Rendell (U.S. Court of Appeals for the Third Circuit). Moser earned her J.D. cum laude from Northwestern University School of Law and two B.A. degrees from the University of North Carolina at Chapel Hill.



### **Foster Provost**

**Professor of Data Science and Information Systems; Andre Meyer Faculty Fellow, Stern School of Business, New York University**

Professor Foster Provost has published many highly cited data science papers and his research has won many awards, including the INFORMS Design Science Award, IBM Faculty Awards, and Best Paper awards at the top data science conference (ACM SIGKDD) across three decades. He is co-author of the best-selling data science book, *Data Science for Business*, and has three of the top five most-downloaded papers in the broadly read journal *Big Data*. Provost previously was Editor-in-Chief of the journal *Machine Learning*.

For more than 20 years, Provost has studied and built data-driven systems for detecting and deterring bad behavior, including systems for compliance, employee surveillance and investigation, fraud detection, counterterrorism, and posting unsavory web content. He is a Co-Founder of NYC-based Detectica, which supports compliance, surveillance, and supervision efforts within the financial, legal, and intelligence industries. Previously he was a Co-Founder of advertising technology companies Integral Ad Science and Dstillery.



### **Pablo Quiñones**

**Founder, Quiñones Law**

**Senior Fellow, Program on Corporate**

**Compliance and Enforcement**

**New York University School of Law**

Pablo Quiñones is the Founder of Quiñones Law, a white collar boutique law firm, and former Executive Director of PCCE. He previously served as the Chief of Strategy, Policy, and Training and as a Deputy Chief of the Fraud Section at the U.S. Department of Justice. He also previously worked as an Assistant U.S. Attorney in the Southern District of New York, where he investigated and prosecuted insider trading, market manipulation, accounting fraud, investment fraud, corruption, and money laundering crimes. Quiñones has significant experience in private practice as both in-house counsel and outside counsel and has been appointed an Adjunct Professor of Law at both NYU School of Law and Cornell Law School. He received his A.B. from Cornell University and his J.D. from Michigan Law School.



### **Alfred N. Rosa**

**Chief Compliance Director and Senior**

**Executive Counsel**

**General Electric Company**

Alfred N. Rosa is the Chief Compliance Director and Senior Executive Counsel for the General Electric Company. His responsibilities include developing and implementing processes that maintain and strengthen GE's integrity program for all of GE's industries and worldwide operations, as well as overseeing GE's Global Ombuds Organization, a network of 600 full- and part-time leaders. He is a recipient of GE's Chairman's Award, GE's highest managerial award, and has been named seven times to *Ethisphere Magazine's* "Attorneys Who Matter List." Rosa is a Steering Committee member and Co-Founder of the Business Ethics Leadership Alliance, a member of the Board of Advisors of New York University's Program on Corporate

Compliance and Enforcement, and a Board member of the Ethics & Compliance Initiative. Rosa graduated from Connecticut College with a B.A. (cum laude) in political science and a J.D. from the George Washington University National Law Center. Rosa is admitted to the New York Bar.



### **Bart M. Schwartz**

**Chairman**

**Guidepost Solutions LLC**

Described by *The New York Times* as the person "often sought out in...thorny situations" by corporations, Bart Schwartz '71 has wide experience providing advice and support to corporations, governments, and individuals. For more than 30 years, he has managed complex investigations, prosecutions, and security assessments and provided sophisticated investigative services to a wide array of clients. Schwartz has had numerous court and other appointments to monitor the conduct of corporations, including General Motors, Point72 Asset Management, and Deutsche Bank, among others. He has received assignments from, or with the approval of, the Securities and Exchange Commission, the Department of Justice, and the U.S. Attorney's Office for the Southern District of New York. Schwartz served under U.S. Attorney Rudolph Giuliani as the Chief of the Criminal Division in the Southern District of New York, where he had responsibility for overseeing prosecutions related to financial and business fraud and other types of criminal activity.



## Eugene Soltes

**Jakurski Family Associate Professor  
of Business Administration  
Harvard Business School**

Eugene Soltes is the Jakurski Family Associate Professor of Business Administration at Harvard Business School, where his research focuses on corporate misconduct and fraud, and how organizations design cultures and compliance systems to confront these challenges. He is the recipient of the Charles M. Williams Award for outstanding teaching and author of the bestselling book *Why They Do It: Inside the Mind of the White-Collar Criminal*. Soltes' research has been widely cited in the media, including in *The Wall Street Journal*, *Financial Times*, *The New York Times*, *NPR*, and *The Economist*, and he is regularly invited to speak to regulatory bodies, including the Department of Justice, the Securities and Exchange Commission, and the United States Treasury. Prior to joining the faculty of the Harvard Business School, Professor Soltes received his Ph.D. and M.B.A. from the University of Chicago, Booth School of Business, and his M.A. in statistics and B.A. in economics from Harvard University.



## Ann E. Tenbrunsel

**David E. Gallo Professor of Business Ethics  
Mendoza College of Business Administration,  
University of Notre Dame**

Ann E. Tenbrunsel is the David E. Gallo Professor of Business Ethics in the Mendoza College of Business Administration at the University of Notre Dame. She received her Ph.D. and her M.B.A. from Northwestern University and her B.S.I.O.E. from the University of Michigan. Her interests focus on the psychology of ethical decision-making and examining why employees, leaders, and students behave unethically, despite their best intentions to behave to the contrary. Tenbrunsel is the author, co-author, or co-editor of six books on this topic—including *Blind Spots* (with Max Bazerman), *Behavioral Ethics: Shaping an Emerging*

*Field* (with David De Cremer), *Codes of Conduct: Behavioral Research into Business Ethics* (with David Messick)—and numerous research articles and chapters, and her work has been featured in numerous media outlets. Prior to entering academics, Tenbrunsel worked as an engineer for S. C. Johnson & Son and as a sales and marketing consultant for ZS Associates.



## Robert W. Werner

**CEO and Founder  
Green River Hollow Consulting LLC**

Robert Werner '86 is the CEO and Founder of Green River Hollow Consulting. Previously, Werner was Global Head of Financial Crime Compliance and Group General Manager at HSBC Holdings plc. He also served in the U.S. Department of the Treasury, where his positions included Director of the Financial Crimes Enforcement Network; Director of the Office of Foreign Assets Control; Senior Counsel to the Under Secretary of the Treasury, Terrorism and Financial Intelligence; and Assistant General Counsel for Enforcement and Intelligence in the Treasury's Office of the General Counsel. Werner has served in the DOJ and senior government roles in Connecticut and was a partner in an international law firm. He clerked for Judge Edward Weinfeld, U.S. District Court for the Southern District of New York, and Justice Lewis F. Powell Jr. (Retired) and Justice Anthony M. Kennedy of the U.S. Supreme Court. He graduated from Amherst College and has an M.A. from Columbia University's Teachers College and a J.D. from NYU School of Law.

---

## Acknowledgements

We gratefully acknowledge financial support for this conference from the Comfort Family Fund.

### Conference Advisors

PCCE would like to thank the people who provided us with their expert advice to help us prepare for this conference. We are deeply grateful for their help.

#### Members of the PCCE Board of Advisors

**Maria Filipakis**

**Randal Milch '85**

**Bart M. Schwartz '71**

*The Program on Corporate Compliance and Enforcement would also like to thank the following people for their assistance. This conference would not have been possible without them:*

**Dean Trevor W. Morrison**

**Christina Avgerinos**

**Alex Inskeep**

**Stephanie Kaminoff**

**Jerome Miller**

**David Niedenthal**

**PCCE Student Fellows**

**Victoria Strevens**

**Bruce White**

### Join, Contribute, Contact

We invite you to contact PCCE if you wish to join it, contribute to its mission, inquire about one of its events or projects, or bring to its attention a case or public policy issue.

#### Become a Subscriber

To become a subscriber of PCCE, please go to the following address: [www.law.nyu.edu/corporatecompliance/joincontributecontact](http://www.law.nyu.edu/corporatecompliance/joincontributecontact).

You will be entered into our database to receive invitations to events. You can also sign up to receive our blog.

#### Contribute

The Program on Corporate Compliance and Enforcement welcomes tax-deductible donations.

To contribute, please go to [www.law.nyu.edu/giving](http://www.law.nyu.edu/giving), and enter the amount of your contribution in the "Other Designation" box and specify "Program on Corporate Compliance and Enforcement" in the text field below that. Or send us an e-mail directly at [law.pcce@nyu.edu](mailto:law.pcce@nyu.edu).

#### Contact

To find out more about the Program on Corporate Compliance and Enforcement or to comment on our projects, news, or blog posts, visit us on our website at [www.law.nyu.edu/pcce](http://www.law.nyu.edu/pcce) or send us an e-mail at [law.pcce@nyu.edu](mailto:law.pcce@nyu.edu).



---

## PCCE Board of Advisors

**Thomas C. Baxter Jr.**, Of Counsel, Sullivan & Cromwell LLP

**George S. Canellos**, Partner and Global Head, Litigation & Arbitration Group, Milbank, Tweed, Hadley & McCloy LLP

**Hon. Valerie E. Caproni**, United States District Judge, Southern District of New York

**Lawrence Gerschwer**, Partner, Fried, Frank, Harris, Shriver & Jacobson LLP

**John Gleeson**, Partner, Debevoise & Plimpton LLP

**Aitan Goelman**, Partner and Head of Securities and Commodities Litigation Practice Group, Zuckerman Spaeder LLP

**Court E. Golumbic**, Participating Managing Director, Global Head of Financial Crime Compliance, Goldman Sachs

**Diane Gujarati**, Deputy Chief, Criminal Division, U.S. Attorney's Office, Southern District of New York

**Michael Held '95**, General Counsel and Executive Vice President, Federal Reserve Bank of New York

**Mitra Hormozi '95**, Executive Vice President and General Counsel, Revlon Inc.

**Bonnie B. Jonas**, Co-Founder and Co-CEO, Pallas Global Group LLC

**Brad S. Karp**, Chairman, Paul, Weiss, Rifkind, Wharton & Garrison LLP

**Jacquelyn M. Kasulis**, Chief, Business & Securities Fraud Section, U.S. Attorney's Office, Eastern District of New York

**Jeffrey H. Knox**, Partner, Simpson Thacher & Bartlett LLP

**Jules B. Kroll**, Chairman and Co-Founder, K2 Intelligence

**Douglas Lankler**, Executive Vice President and General Counsel, Pfizer Inc.

**Sandra Leung**, Executive Vice President and General Counsel, Bristol-Myers Squibb Company

**Sharon Cohen Levin**, Partner, Wilmer Cutler Pickering Hale and Dorr LLP

**Jane A. Levine**, EVP, Chief Global Compliance Counsel, Head of Government and Regulatory Affairs, Sotheby's

**Hon. Raymond J. Lohier Jr.** '91, Circuit Judge, United States Court of Appeals, Second Circuit

**Denis J. McInerney**, Partner, Davis Polk & Wardwell LLP

**David Meister**, Partner, Skadden, Arps, Slate, Meagher & Flom LLP

**Alun Milford**, General Counsel, Serious Fraud Office, United Kingdom

**Marshall L. Miller**, Of Counsel, Wachtell, Lipton, Rosen & Katz

**Steven Peikin**, Co-Director, Division of Enforcement, U.S. Securities and Exchange Commission

**Hon. Jed S. Rakoff**, United States District Judge, Southern District of New York

**Kathryn S. Reimann '82**, Senior Managing Director, Trelia Risk Advisors

**Alfred N. Rosa**, Chief Compliance Director and Senior Executive Counsel, General Electric Company

**John F. Savarese**, Partner, Wachtell, Lipton, Rosen & Katz

**Charles V. Senatore**, Head of Risk Oversight, Devonshire Investors, Fidelity Investments

**Karen Patton Seymour**, Executive Vice President, General Counsel, Goldman Sachs

**Bruce E. Yannett '85**, Chair of the White Collar & Regulatory Defense Practice Group, Debevoise & Plimpton LLP

**Douglas K. Yatter**, Partner, Latham & Watkins LLP

*The Board of Advisors acts in an advisory capacity and does not directly determine or oversee PCCE's activities. All members of the PCCE Board of Advisors are unpaid and serve in their individual capacity.*





# Program on Corporate Compliance and Enforcement

New York University School of Law

New York University School of Law  
40 Washington Square South, Room 411  
New York, NY 10012  
(212) 992-8821  
[www.law.nyu.edu/pcce](http://www.law.nyu.edu/pcce)

To add your name to our mailing list to be invited to events, send us an e-mail at [law.pcce@nyu.edu](mailto:law.pcce@nyu.edu). Please note if you would like to receive the weekly email of our blog.

**Jennifer H. Arlen**  
Faculty Director  
[jennifer.arlen@nyu.edu](mailto:jennifer.arlen@nyu.edu)

**Allison Caffarone**  
Executive Director  
[allison.caffarone@nyu.edu](mailto:allison.caffarone@nyu.edu)

**Michelle L. Austin**  
Assistant Director  
[michelle.austin@nyu.edu](mailto:michelle.austin@nyu.edu)

**Jerome Miller**  
[jerome.miller@nyu.edu](mailto:jerome.miller@nyu.edu)

## Compliance & Enforcement Blog

*Compliance & Enforcement* presents commentary and analysis on corporate compliance and enforcement written by leading academics, practitioners, and other thought leaders. *Compliance & Enforcement* enables PCCE to bring the conversation to a broader audience and, in turn, have a greater impact.

To become a blog subscriber, suggest a topic, or inquire about submitting a post, contact PCCE at [law.pcce@nyu.edu](mailto:law.pcce@nyu.edu).

Read *Compliance & Enforcement* at  
[https://wp.nyu.edu/compliance\\_enforcement](https://wp.nyu.edu/compliance_enforcement).

### COMPLIANCE & ENFORCEMENT



Program on  
Corporate Compliance  
and Enforcement  
at New York University School of Law

#### Second Circuit Limits Judicial Scrutiny of Deferred Prosecution Agreements

by John F. Savarese, Ralph M. Levins, David B. Anders, Marshall L. Miller, and Christopher R. Deluzio

In an anticipated and important decision, the Second Circuit Court of Appeals overturned a district court's order requiring the unsealing of an independent monitor's report detailing HSBC's compliance with a deferred prosecution agreement. *United States v. HSBC Bank USA, N.A.* (Nos. 14-308, 16-353, 16-1068, 16-1094, July 12, 2017). In so doing, the Second Circuit substantially limited a district court's power to scrutinize DPAs, thereby following a course similarly embraced by the D.C. Circuit (as discussed in our prior [memo](#)).

In the district court, Judge Gleeson granted the joint request by DOJ and HSBC to approve the DPA, subject to the Court's ongoing oversight of the DPA's implementation pursuant to the Court's asserted "supervisory authority"—a decision we discussed in our earlier [memo](#). As part of its oversight, the Court ordered the government to file under seal an independent monitor's report, which eventually led to a member of the public requesting access to the report. Construing that request as a motion to unseal, the Court granted the motion, finding that the monitor's report was a "judicial document" subject to the public's qualified First Amendment right of access. The government and HSBC appealed.

The Second Circuit's reversal was decisive, and grounded in the fundamental constitutional theory of separation of powers: "the district court impermissibly encroached on the Executive's constitutional mandate to Take Care that the Laws be faithfully executed." In rejecting the district court's assertion of its supervisory authority to monitor implementation of the DPA, the Second Circuit found that such an assertion was inconsistent with the "presumption of regularity ... ascribed[ed] to prosecutorial conduct and decisionmaking." The Second Circuit flatly rejected the existence of any "freestanding supervisory power" and observed that "a federal court has no roving commission to monitor prosecutors' out-of-court activities just in case prosecutors might be engaging in misconduct."

The Second Circuit further rejected several other proffered grounds for the district court's authority to supervise the DPA. Citing the D.C. Circuit's decision in *Fokker Services*, the Second Circuit refused to interpret the Speedy Trial Act's "vague approval" requirement as imbuing courts with an ongoing oversight power<sup>1</sup> and instead limited the court's role to determining whether "a DPA is bona fide before granting a speedy trial waiver." The Second Circuit also rejected as unripe and overly speculative the argument that the monitor's report is a judicial document—and, thus, subject to a qualified public right of access—by virtue of the potential future relevance of the report to resolving a motion to dismiss the criminal information or to adjudicating an asserted breach of the DPA.

The decision in *HSBC* should further alleviate concerns that prosecutors and corporate defendants seeking to resolve investigations through DPAs may face unpredictable judicial second-guessing and the specter of public docketing of sensitive reports about DPA compliance. Although the Second Circuit identified certain hypothetical situations that

#### ABOUT THIS BLOG

*Compliance & Enforcement* is a blog sponsored by NYU Law's Program on Corporate Compliance and Enforcement. Contact us: [law.pcce@nyu.edu](mailto:law.pcce@nyu.edu) and [jennifer.arlen@nyu.edu](mailto:jennifer.arlen@nyu.edu).

#### BLOG EDITORS

Jennifer H. Arlen

#### ASSOCIATE EDITORS

Jason Dineen, '18

Ashley Martin, '18

Natalie Noble, '18

#### CONTRIBUTING BLOGGERS

Daniel Alter

Michael Bane

Anthony Barkow

Samuel W. Buel

Adam Calomiris

Julie Cohen

Michael DeLoe

Lee G. Doral

David Dribel

Susan E. Ennenberger

James Galt

Brandon Garrett

Julian Gross

Sean Griffith

Jason Hoptel

Andrew Husak

Michael Klausner

Daniel L. Lumsden

Sharon Cohen Levin

Andrew M. Levine

Timothy Linton

Elizabeth M. Morrison

Greg Morrison

Scott Muller

Frank Partnoy

Walt Pridemore

Phillip Runkle

Daniel Charles Richman

Victoria Reed

John Sweeney

Seth M. Yeich

Bruce A. Yermack

Elizabeth C. Zoller

#### CATEGORIES

Anti-Corruption; Self-Inspection