

Roundtable Series

White Collar Defense

The Trump administration has completed its first 100 days. As the president's agenda and appointments take shape, our panelists explore how white-collar regulatory and enforcement priorities might change, and where they are likely to remain largely the same under the new leadership. They also discuss what's next for the Yates Memo, Foreign Corrupt Practices Act enforcement, and white-collar issues on the horizon.

California Lawyer met for an update with Jeffrey L. Bornstein of Rosen Bien Galvan & Grunfeld; Walter F. Brown of Orrick, Herrington & Sutcliffe; A. Marisa Chun of McDermott Will & Emery; and John F. Libby of Manatt, Phelps & Phillips.

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Moderated by
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DISCUSSION

MODERATOR: What are the Trump administration's white-collar regulatory and enforcement priorities?

JEFFREY L. BORNSTEIN: They will use a fairly simple approach: get the "bad guys." In the first instance, they will likely focus on violent crime and immigration. But, I think that there will be continued interest in going after people they consider to be "fraudsters." Jeff Sessions is about strict law and order. He talks tough about sending people to prison, primarily related to making our cities safer but also in a broader sense, crime free. I expect

there to be a significant return to using prison and not alternatives to fight crime generally. Incoming SEC Chair, Jay Clayton, seems focused on rooting out fraud in our capital markets. The issue is whether the new budget will provide the SEC with the resources it will need to conduct appropriate investigations.

Also, it seems clear that both the DOJ and SEC intend to go after individuals as opposed to corporations. Based on my experience, that usually means so-called "low-hanging fruit" and not necessarily the people in upper management.

WALTER F. BROWN: I agree. We are likely going to see a law and order approach to matters involving fraud. People point to Jay Clayton and express some hope that by virtue of his M&A background in a law firm that represents Goldman Sachs that he's going to bring a kinder, gentler, softer approach to enforcement. I don't think that will necessarily be the case. I am putting aside what might happen on the regulatory front, but in terms of enforcement, I don't think you are going to see much change.

A. MARISA CHUN: The budget that



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the Trump administration has rolled out seems consistent with what Walt [Brown] and Jeff [Bornstein] are saying. They are looking for more funding for immigration enforcement, border security, and for FBI agents for things like cybersecurity and counterterrorism.

Prosecuting fraud and False Claims Act violations have been a successful enforcement priority for the prior administration.

And I see the False Claims Act and health care fraud enforcement continuing. One of the False Claims Act's biggest advocates is the Republican Senate Judiciary Chair, Senator Chuck Grassley. And if anything, I think Attorney General Sessions gave some hints during his confirmation hearing that he would be working even more closely with Congress to provide more transparency with regards to False Claims Act proceedings.

So companies and clients should not be lulled into thinking that that this administration is just going after, say, violent crime. They should remain vigilant.

JOHN F. LIBBY: The Justice Department is like a battleship, it takes a long time to turn it. So there is going to be some inertia at least in the short-term in the areas that have been priorities at the Justice Department for the last few years.

I do think that there will possibly be subtle changes in terms of industry areas. For example, there is a trend in public statements made by the president, maybe to a lesser extent Sessions, that regulatory oversight of the financial industry will be cut back. So we'll see if there are the major bank investigations like we have seen the last few years.

On the other hand, the Department has focused a lot of attention and resources on healthcare fraud. My guess would be that that's going to continue. When the Clinton administration many years ago tried to implement national health insurance and failed, they then

focused on investigating and prosecuting healthcare fraud, and abuse. It's an easy substitute for a lack of policy.

I think we will also see a return to immigration enforcement against large employers for knowingly employing undocumented workers. The Bush administration did a number of these, but this approach waned during the Obama administration. I think it will return once ICE realizes you get more bang for your buck going after employers than picking up individuals on the street.

Since 2008, I have seen a huge increase in the SEC investigating everything that comes across their desk, even if they end up dropping it after a few months. I would expect that to continue. I have not looked at the proposed budget for the SEC, but I would be surprised if the SEC cut back on their activity in areas from which we see the formal orders and subpoenas come out.

BORNSTEIN: I would be surprised if there is not a cutback in white-collar investigatory resources. For example, it seems like Congress and the president can't wait to defang the CFPB. That agency has been very effective in bringing cases against financial institutions on behalf of consumers. There will also likely be budgetary constraints put on the SEC that could impact its broad-based enforcement regime.

BROWN: Even if you did nothing but keep the budget levels the same, if you change priorities, something has got to give. I think we saw this when there was a shift to terrorism post 9/11. We saw fewer white-collar investigations and prosecutions, at least by the federal government, and the void being filled by state attorneys general.

BORNSTEIN: It goes back to whether FBI agents will be available to investigate white-collar cases as opposed to terrorism or violent crime matters. They could be augmented by other agencies, such as the Postal Service and the Department of



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Homeland Security.

CHUN: Also, right now we have a hiring freeze at the department which is impacting the U.S. attorney's offices. Those decisions matter. They make a difference in terms of what each FBI agent and what each assistant U.S. attorney can do, as well as having an impact on the gestation period of how long an investigation might take.

So I think there will be impacts, but it is so case dependent, depending upon, as John [Libby] said, the industry or whether something is in the cross-hairs as an enforcement priority. You may not see that on the immigration front, where clearly the department is asking for more funding. So I think it just depends.

LIBBY: It also depends on what the next crisis is. If the next crisis is a major terrorist attack, then we are looking at a post 9/11 world where basically white-collar investigations and prosecutions came to a halt for a couple years.

But if we have another financial crisis, then despite the administration's apparent desire to ease regulation of the financial industry, there may be a clamor to go back to that post 2008-09 time period and say we have got to look at these banks and individuals, and send people to jail. External events make a difference.

BROWN: If you look at the last 20 years, you see it is really cyclical. You see a buildup, a bubble, and a crisis; then you see massive enforcement and regulation; and then as time goes on, there is a cry that the regulation and enforcement are bad for business and suddenly there is deregulation, followed by a new crisis. We saw this after Enron, after the financial crisis in 2008, and now we are seeing the cry for less regulation, and you wonder whether ultimately it leads to another bubble and another crisis, per John [Libby's] point.

BORNSTEIN: Those are all really good

points. The only disagreement I have is I think the rules are different now. We are used to thinking of people in the federal government working together to find solutions. We don't seem to have that anymore. We have sound bites and extreme politics on both sides.

Not having clear priorities, and not having the right people, training, and focus could lead to a vacuum, and I don't know how we are going to fill it.

It is challenging to think that state attorneys general will be able to fill that void effectively. It can happen on a case-by-case basis. For instance, they were able to get big settlements out of banks following the mortgage crisis.

Usually, however, individual states don't have the investigators or resources needed for more sophisticated white-collar criminal cases.

LIBBY: That's a really interesting point. There certainly is a growing pattern of inconsistency and lack of direction within this administration. If the Justice Department and Sessions are distracted by other issues, and have no clear priorities in place, maybe the U.S. attorney's offices will have more autonomy to do what they want and the Justice Department will do what it wants. It is all restrained by the resource issue, but without clear priorities, different DOJ components may go off and do different things.

CHUN: I would push back on that a little bit. It is all relative. If you compare the Justice Department to other federal agencies—at least, the agencies where people have been appointed as the secretary who do not have the type of experience that some of the Justice Department leadership does—I actually think that the Justice Department may have a stronger sense of direction. Whether one agrees with that direction or not is another issue.

So I am not so sure we are going to see a directionless, rudderless Justice Department. If anything, we will see

intentionality on certain issues that may reflect a departure from some of the prior administration's policies.

BORNSTEIN: We don't know what's going to happen, but we do know what the heartland of white-collar criminal prosecution has always been: mail fraud and wire fraud. "Lying, cheating and stealing." I would tell a business to look out for these issues and get the right compliance program and, the right people, and not skimp on resources, because you could be the company that law enforcement chooses to single out.

BROWN: Right. We don't know what the priorities may be with any certainty. But we do know if you have a strong compliance infrastructure and culture, you're going to be in better shape when you find yourself faced with inquiries or prosecution, whatever those priorities may be.

MODERATOR: On the regulatory front, what is to become of the Dodd-Frank Act and how will that impact the white-collar practice area?

BORNSTEIN: It is likely they are going to want to scale it back significantly, but it is difficult to know what that may mean.

BROWN: It is a 25,000-page set of regulations. Where do they start? The president made a broad pronouncement. But we have seen it has been difficult for this administration so far to get things moving forward, and this is going to be as monumental an undertaking, if not more so, than healthcare. Talk about turning a battleship. This is massive. Do you roll back the whistleblower provisions?

LIBBY: I can't imagine the SEC going to Capitol Hill and supporting a cutback of the whistleblower provisions.

BROWN: Nor do I. You can probably

draw a line between enforcement and regulatory aspects. Much of the resistance to Dodd-Frank is to this massive overhang for companies, making it very difficult and costly for them to do business. So I can envision an effort to pare back those types of provisions while leaving intact the ones that are viewed as enforcement-oriented, such as whistleblower provisions.

CHUN: It will be interesting to see any lessons coming out of their first experience with regards to legislative overhaul. I think you're right in terms of having a more scalpel-like approach.

BROWN: I just don't know what you learn from the healthcare experience. I think the punch line that came out of it is this is really tough. I guess we can take that lesson and apply it to Dodd-Frank.

MODERATOR: What about environmental enforcement?

BORNSTEIN: The bread and butter environmental enforcement laws are the Endangered Species Act, Clean Water Act, and Clean Air Act. I think the core of those laws are going to remain. But I can see them trying to significantly pare back regulations and enforcement resources because they interfere with business. While I don't think anybody is in favor of oil spills polluting our water or smog returning to our cities, there is a strong sense that businesses are over-regulated. It is unclear how they will ultimately balance de-regulation with robust environmental enforcement.

CHUN: Don't you think the state attorneys general's offices would step in to fill the void on the environmental front? Certainly on the civil side of the Justice Department, they accomplished a lot that actually leveraged what California, in particular, had done as a state prior to 2009.

BORNSTEIN: I agree, there are strong



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state environmental enforcement practices in many states including California and Washington. Unless there is federal preemption, I think the core of clean water and clean air enforcement will stay and states will be able to do a lot. Ironically, that could be a bigger burden on businesses because of the need to conform to different standards in each state.

BROWN: Some of the highest level of cooperation between federal and state authorities I have seen is in the enforcement and prosecution of environmental crimes. We see it here in California all the time with joint task forces investigating spills or disasters, and in other states as well. I think that's going to continue.

MODERATOR: How will the Trump administration approach Deferred Prosecution Agreements and Non-Prosecution Agreements?

LIBBY: Jeff Sessions is on record criticizing such agreements. So, to the extent that there are corporate cases, it might be more difficult for companies to get an NPA or DPA as opposed to having to take a plea. You can get the same bang for your buck with a guilty plea with a plea agreement containing all of the compliance features you have as with an NPA or DPA.

BROWN: Maybe what Sessions meant by that is that they are going to prosecute fewer companies.

BORNSTEIN: He said he didn't like the idea of shareholders bearing responsibility for corporate crime. He wanted the people who caused the corporate crime to be held accountable. Part of the public's frustration, is that none of the people who allegedly caused the mortgage crisis in 2007 and 2008 were ever prosecuted.

We don't have a good answer for that because unfortunately the way our system is set up, it is hard to bring those

kinds of cases without effective regulation, and now we are poised to undo many regulations. That means the focus will have to be on straight-up fraud.

CHUN: That's a really good point. In terms of the recent criminalization of certain disasters, a lot of that is premised upon regulatory violations. So if you do have a concerted effort by this administration to roll back some of those regulations, then it would be harder, I think, to criminally prosecute some of these companies or individuals or some of the activities that may be considered in the gray area.

MODERATOR: How is this administration going to look at IP rights enforcement and other areas of interest to California clients and lawyers?

CHUN: The Obama administration and Attorney General Holder took a very forward-thinking approach with regards to IP rights enforcement, by taking something that was traditionally in the private party, civil realm and looking to see how such rights could be enforced criminally and civilly by the department.

For a few reasons, my sense is that that will probably continue under this administration. First, Attorney General Sessions was a co-sponsor of the Federal Defend Trade Secrets Act.

Second, many of the criminal intellectual property rights enforcement prosecutions are largely aimed at foreign companies and executives, for violations of U.S. economic espionage laws. Melinda Haag, as U.S. Attorney for the Northern District of California, was a part of that effort as well.

Given the technology sector here, that should give some comfort to companies about protection of their intellectual property rights. I think this administration's Justice Department and the FBI are still keenly interested in those sorts of cases.

BROWN: I completely agree that pursu-

ing cyber intrusions or alleged theft of trade secrets by foreign individuals, foreign companies, or foreign governments under the Economic Espionage Act is going to be a very high priority for this administration.

BORNSTEIN: I agree. I also think cyber security is another area of interest. But I think there's going to be a change on privacy issues—in particular, the government's ability to access encrypted communications. Companies that are going to resist that are going to find themselves in the cross-hairs of new laws or new enforcement actions.

MODERATOR: **What is the future of the Yates Memo? Will the recent trend in focusing on individual liability for corporate crimes continue?**

CHUN: At the ABA conference in March, Acting Assistant Attorney General Kenneth Blanco essentially reaffirmed the department's commitment to focusing on prosecuting individuals—which is basically what the Yates Memo advances—without referencing the Yates Memo.

BROWN: The memo had been taken down for a while on the Justice Department website. It may have been taken down in the wake of Yates's termination, but I checked recently and it is back up, and it comes up as the Yates Memo still. I don't think there is an incentive to pull back from the policies it articulates. It is consistent with the enforcement priorities we discussed: an increased focus on individual wrongdoers that caused the conduct, and not necessarily the companies that they work for. They may change the title to it, however.

LIBBY: Let's discuss the memo itself for a second. When it came out, law firm commentary on it was really split: some people said this was a major earthshaking change, and others, including myself, felt this focus on individuals was

nothing new.

In the year and a half since it has been out, the truth is somewhere in between. Prosecutors talk about how they are viewing individuals and what you are supposed to turn over in subtly different ways.

I represent some foreign corporations in countries where employee rights are very strong. The Yates Memo has become useful in discussions with these clients. I can point to the memo and tell them, "You are in the cross-hairs with the U.S. Department of Justice now. Whatever your local law or culture is here—be it protecting employees' rights, or not disclosing their names or misconduct—if you want cooperation credit with the Justice Department, you have got to turn such information over."

From that standpoint, it has changed the conversation with both the prosecutors and clients that I didn't expect when it first came out.

CHUN: I don't think the change is subtle. In certain areas, like healthcare fraud, clients are concerned about the focus on individuals because that focus can feel like it is without justification. We have seen individuals have to contribute to False Claims Act resolutions, which was not as common prior to the Yates Memo. So the in-house counsel that I have talked to don't think the change is subtle. They see it as a real change, and one that can be harmful.

BROWN: I had the opposite reaction as John [Libby]: I thought, "This changes things." It didn't change things as much as I thought it would, but it has changed things.

In the resolution of civil False Claims Act cases, for instance, getting a release for individuals when a company is settling, whether they are named in the *qui tam* case or not, is just not something you can do now. That's in pretty stark contrast to two years ago.

Also, when a company is conducting an internal investigation, I have seen a



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shift in the last year and a half regarding the aggressiveness with which counsel advises employees on *Upjohn* issues, and the avenues a company is leaving open with respect to cooperation and employees.

BORNSTEIN: It has emphasized the thoroughness of the internal investigation and focused on the steps a corporation takes to remediate the problems uncovered to include disciplining responsible corporate actors. It places a premium on full and complete disclosure of who did what, when and where. You have to lay it all out.

LIBBY: It has absolutely changed the way you conduct an internal investigation. It has made the interview process more difficult. Has anyone changed their *Upjohn* warnings in light of the Yates Memo?

BORNSTEIN: I tend to err on the side of making these warnings clearer, depending on the circumstances. For instance, I may say more directly that the company is likely going to share information with the Justice Department or the U.S. Attorney's Office so it is important to be accurate.

BROWN: I don't know that I would go quite that far.

LIBBY: Do you find people are forthcoming or clamming up?

BORNSTEIN: It is mixed, but I would say for the most part, people are still going to talk.

MODERATOR: Why is that?

BORNSTEIN: There's a sense of "I didn't do anything wrong" or, "Even if I did, it really wasn't that bad and it is explainable," and they want to convince you that it is right or in some cases, just to unburden themselves.

LIBBY: That's been my experience, too. People tend to think, if you give that, no one is going to talk. And I say you'd be surprised. Most people actually do talk, and they talk for the reasons that Jeff [Bornstein] articulated. I have not tried that stronger warning yet. It would be interesting to see if it changes things.

BROWN: My warning has always included an admonition that we may decide to waive the privilege and share information with other parties, including law enforcement. I feel like that is an adequate warning, even post-Yates.

BORNSTEIN: Even though you know going in that you are going to share the results of the investigation?

BROWN: Perhaps. You have to look at each investigation individually. There may be some investigations where you have made that determination and you have already communicated to law enforcement that you are going waive privilege, but that's not usually the case.

BORNSTEIN: I agree with that.

LIBBY: In bank investigations, I feel you have to tell the employee that this is going to the regulators. But most bank employees understand that anyway, and there is a line between the regulators and other forms of law enforcement that I think they understand. It hasn't been a problem in any of the bank investigations I have done over the last few years.

CHUN: I have seen corporate clients being more mindful and getting individual attorneys for employees who are potentially facing some exposure. The Yates Memo kind of forces the prudence of doing that, whereas previously you might have had companies who were thinking about the potential cost or the fact that there were no laws violated. But I think companies are being more

careful now.

MODERATOR: Let's move on to the FCPA. The president described it as a "horrible law" and Jay Clayton has said it creates an international asymmetry in regulation and enforcement. Should we expect a relaxation of the FCPA under the new administration?

BROWN: Jay Clayton expressed those comments in 2011, but I think that might be an outdated view for a couple of reasons.

First, I don't think that asymmetry between U.S. law and other countries' laws exists to the same degree as it might have six years ago. For instance, we now have the U.K. Bribery Act. China and India also have anticorruption regulations and regimes.

But more importantly, Jay Clayton made comments during his confirmation hearing that suggest he believes FCPA enforcement should *not* be dialed back in any material way.

From the SEC standpoint, I don't think you'll see a dramatic shift on hardcore corruption matters abroad involving U.S. companies. Now, I think it is a separate question for the Justice Department.

CHUN: President Trump has criticized the FCPA, but many people don't realize that the FCPA is very helpful in some ways as an equalizer for U.S. companies. At Main Justice, it certainly seemed like the lion's share of investigations and prosecutions were aimed at foreign companies and individuals.

The exposure or risk that American companies face abroad is when they are working with a foreign third party, a joint venturer, or a subcontractor. So, in some ways, the FCPA helps U.S. companies because I think most American companies have gotten the message and do compliance and aim to abide by the FCPA.

Once people realize how the FCPA gets investigated and prosecuted, I don't

think there will be any sort of philosophical aversion to enforcing it.

LIBBY: I agree with Walt [Brown] and Marisa [Chun]. First of all, the whole international movement is towards greater transparency and less corruption, and the FCPA has obviously contributed to that. So I don't really see a significant philosophical change in that regard.

I also agree with Marisa that companies are going to continue their FCPA compliance programs if they are doing business overseas. It is just the prudent thing to do.

The one area where, for either budgetary or philosophical reasons, you might see less aggressiveness is those cases where the U.S. jurisdictional element is tenuous. For example, a foreign person paying a bribe to a foreign company or official using the U.S. payment system. I don't see the SEC or the Justice Department going after those kinds of cases to the same extent as the prior administration. Other than that, I think it is going to continue in place.

BORNSTEIN: I agree. If it is one of those iffy close calls, the Justice Department is probably going to have some pause, at least about going after the company. But if there's a dirty person and a bright line, they are probably going to try to take their shot.

MODERATOR: The FCPA Pilot Program was set to expire in April, but Kenneth Blanco announced they would keep it in effect until they can fully evaluate it. What does this mean for the program?

BROWN: I don't think they are sure what to do. They weren't prepared to let the program terminate in April. On its face, it is something that they would have no incentive to get rid of. It encourages transparency. It provides standards and guidance on how to disclose. It talks about resources. I suspect with all the things that are going on right now,



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they are in transition. They don't have a confirmed Deputy Attorney General yet. I have the sense it was more of a punt than anything else.

BORNSTEIN: The best way of marshaling resources is to make the companies figure out what happened and who is at fault. If a company has incentives to conduct a thorough investigation and disclose the results to the DOJ that in turn makes it an easier case to prosecute. They want companies to get the benefit, but only if they get to say, "We are going after the bad guys."

Obviously they are not going to use the company's investigation without reviewing and validating it, but it may require less resources than to do the investigation from scratch.

CHUN: Not only did the department say publicly that they were extending the FCPA pilot program, they have also issued more updated guidance on how it evaluates compliance programs. They have a compliance expert in the Fraud Section. So I think that is going to be a continued sustained effort with regard to FCPA enforcement.

LIBBY: Given Sessions's DPA and NPA criticism, what do people think the Justice Department's view is of the pilot program where if you voluntarily disclose, you get a pass if you dot the i's and cross the t's?

I agree with Walt [Brown] that the pilot program extension was kind of a punt. But it will be interesting to see if the program continues in its current form or if they reduce how many companies can get a pass or not make it as easy as they perceive it to be.

BORNSTEIN: I think you bring up a point of trust. If you are representing a company and they are going to take a chance and self-report, unless there's a track record, do you want to be the first one in the door to do that? Obviously it depends on the circumstances, but we

don't know yet how they are going to view things. There's no predictability.

CHUN: I would be a little wary of reading into then-Senator Sessions's 2010 NPA and DPA comments. He is returning to the Justice Department after a significant period of time. What the department has to do to strike that balance between encouraging compliance voluntarily and prosecuting wrongdoers has evolved dramatically.

It will be interesting to see whether he still abides by comments he made years ago, now that he's in the department and facing in real-time the various issues that the department faces in the 21st Century. In a time of constrained resources, I think the department is going to want to use all of the tools in its arsenal.

Which goes back to what we have been singing all along in terms of investing in compliance and training to prevent these issues from coming up in the first place.

It would be foolish to cut back on compliance based on the changing political landscape. These are career people [at DOJ] who work on these matters for years. Also, political situations will likely shift again in four to eight years.

BORNSTEIN: That's a really good point, especially for California businesses. There's this adversarial relationship developing between the federal government and California on issues ranging from sanctuary cities, privacy and encryption, to marijuana enforcement. So companies here have to be more vigilant about handling compliance issues. There's going to be a lot of tension for at least the foreseeable future.

MODERATOR: What are the implications of the U.S. Supreme Court's recent decision in *McDonnell v. United States*, 579 US __ (2016), for the FCPA?

CHUN: It was an interesting decision. The underlying facts that unfolded were

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fascinating. One client called it Shakespearian. Even though the issues in *McDonnell* pertained to the domestic bribery statutes, the Justice Department and the SEC sometimes draw upon those domestic statutes when issuing guidance on FCPA enforcement. What the Court decided about what constitutes an “official act” could be helpful with regards to FCPA defense.

BROWN: We are talking about this in the context of the FCPA, but this is not an FCPA case. There are really very few litigated FCPA cases. So we are talking about whether a case involving the domestic bribery statute will have some bearing on the FCPA.

In terms of prosecutions under that part of the FCPA that relates to a bribe to influence an official act, I believe that *McDonnell* is going to be valuable authority. The FCPA, though, has other provisions. You can violate it by making a payment to a public official, for the purpose of having him influence someone else. And in that sense, I think *McDonnell* wouldn't have much applicability.

I think people are going to make some use of that portion of the statute that lines up with section 201 of Title 18, which is the federal bribery statute.

BORNSTEIN: It is interesting that it was a unanimous decision, considering how bad the facts were.

MODERATOR: **Would it have been unanimous with Justice Gorsuch on the bench?**

CHUN: I think so. Justice Gorsuch will probably look at criminal statutes in a more purist textualist fashion that I think would align with the *McDonnell* decision.

LIBBY: Scalia was often pro-defendant in criminal cases. I think Gorsuch will be more deferential to the government.

BORNSTEIN: I see Justice Gorsuch being very troubling for criminal defendants. His history is not pro-defense rights, from what I can see.

MODERATOR: **What are some of the key**

issues the white-collar practice area will face in 2017 and the next few years?

BORNSTEIN: I think the biggest change is going to be resource driven. Unless they expand the number of prosecutors, the recent suggestion that the Justice Department will be more involved in immigration enforcement, could mean less prosecutors and agents to investigate and prosecute complex white-collar cases.

That doesn't mean that they are not going to be done at all; it just means there will be fewer cases. The question then becomes are your employees or your company going to be the ones they make the example out of? Companies need robust compliance policies and procedures in order to head off problems before they become newsworthy events. Employees need to be very careful in simply agreeing to go along with business practices they believe to be unethical or even worse, illegal. Electronic evidence will continue to be the investigative focus.

BROWN: Briefly I wanted to discuss one area we didn't talk about, which is antitrust. I think there's a lot of speculation with a Republican, pro-business administration that they will abandon antitrust activity. I think that's likely the case with respect to merger control and regulatory antitrust activity. I don't think we'll see a pullback in antitrust enforcement with regard to hardcore horizontal cases and other per se violations of the Sherman Act. That will continue to be a priority within the Justice Department, particularly with respect to foreign companies.

CHUN: For now I think it is business as usual in the sense that people sometimes don't appreciate how

institutional the Justice Department's work and workforce is.

I do think that California districts can expect to see a tick in immigration enforcement, including white-collar visa fraud and other immigration crimes. That's one area where companies and clients should be taking a look at what have they been doing to make sure they are in compliance with all of the immigration laws.

Also, cybercrime is going to be an area of more vigorous enforcement. We saw recently the Northern District unseal an indictment with regard to the Yahoo breach. So I think we can expect to see certain areas with increased enforcement.

LIBBY: As I said earlier, the trends and changes in the Justice Department unfold very slowly. It will be interesting to see how the budget issue plays out. I can't claim any familiarity with the federal budget cycle, but if there's going to be any major change, it probably won't show up until the new fiscal year.

The other interesting timing issue is how long it will take this administration to get presidentially appointed people in place in Main Justice and the U.S. attorney's offices. This administration appears to be behind in that process as compared to other administrations, and that, I think, is going to affect the length of time for some of these changes to take place.

Finally, this is a theme you have heard from all of us today: the message is compliance, compliance, compliance. There is no reason for any client, especially a client in a highly regulated industry like healthcare, financial services, or the environment, to cut back on compliance. It is more than prudent to keep those compliance programs in place, strengthen them, and make sure they are functioning well.