2021-09-15 Legal Ethics in the Wireless Age - Time for a Change

Doug Wood
Good afternoon, everyone, or good morning or even Good evening, depending on where in the world you are at the moment. Really glad to see so many people from all over the world joining us for this event. One Doug wood, I'm the founder and director of the nonprofit weapons for Responsible technology. It's my pleasure to be here today to moderate this very important discussion regarding emerging technologies and ethics. Americans for Responsible technology is partnering with the broadband international legal action network to bring you these webinars which are ended up in legal professionals and everybody else understand a little bit more about the legal issues, whether the thrust in front of us by emerging technology. So here's the format for our program today.

First, several distinguished lawyers will each make a short presentation giving their thoughts on this complex and developing issue ethics in the face of emerging technology? And the question that they're going to try to address is, where is the inflection point where a legal professionals obligation to do his best to represent his client complex with his own ethical and common sense judgment about the actions and positions that client is taken?

So a deep, deep question. After those presentations, we're going to proceed to a panel discussion between four legal medical ethical professionals who will offer their opinions and points of view and maybe even offer some questions to propose to a close group of lawyers. So we really are hoping this will be a free exchange of ideas of essentially a brainstorming session, if you will, among experts. While this is all going on, we encourage you to raise your questions on the chat, if you have them. Keep in mind, and as always happens, people start asking questions right at the beginning of presentations when those questions get answered. So I would encourage patience and sit back enjoy, listen to the presentations. And then if your questions are not answered, of course, put them in the chat and we will get to them before the end of the program. So we're going to get started. For those of you who have been on previous webinars - and by the way, this is webinar number three of six. So we have these every month. Watch for them in your inbox, make sure you register so that you get the Zoom link. We encourage your friends, family, associates, anybody else to come join. It's free, doesn't cost anything. So our first speaker today is Julian Gresser. Julian is an international attorney, a professional negotiator and inventor, a recognized expert on East Asia, and CEO of Big Heart Technologies, a humanitarian benefit corporation, founded to provide tools and resources to empower collaborative innovation and negotiation training. Ladies and gentlemen, Julian Gresser.

Julian Gresser
Thank you very much, everybody, for attending; Doug, for your kind introduction. And for our panelists and other speakers who have taken the time to address this really seminal subject. I might begin with just a personal note. I had a first taste of this field as a young lawyer when I was given an assignment by my boss to provide a memorandum on how a Japanese bank could discriminate against African Americans. And I found that the first assignment, with all my enthusiasm for being a lawyer, repulsive, and I refused to do it. Then fast forward years later, when I should have known better, I was involved with a Bay Area law firm, and one of the clients wanted us to help them dump toxic waste into the San Francisco Bay. I found that also repulsive, and I refused to do it. So I have a personal stake in this subject.

But I would like to provide a little context in the following way. Because this subject that we're discussing today -- this is not a morality play. The more granular, the more concrete and specific, the

more powerful our dialogue will be. This is a very complex area. It involves science; it involves medicine; it involves technology; it involves law, and it involves public policy. I think it's fair to say -- and the concept of fairness runs through this whole debate and dialogue today -- that many lawyers are overwhelmed by the complexity, the science; they're not physicians, they're not doctors, they're not technologists. The clients themselves are not doctors, or physicians; they don't know about -- to any large extent -- the biological consequences of what these wireless technologies allow the government itself, the principal agency -- the FCC -- that's writing the rules, doesn't by its own admission in court have any medical expertise. And yet they're in charge of writing and enforcing the standards. So the FCC defers to the FDA. Yeas ago the FDA had expertise in this area, but some good part of it has been moved away. So there's nobody in the government that really has deep domain expertise, that's actually writing these standards and enforcing them. And yet, as we'll see, the consequences of this are, at least for some people, devastating.

This whole subject of wireless technology -- the wireless age -- is different than safety belts in cars, asbestos, cigarettes, lead and drinking water, though it shares common features with these past frontier areas. However, it's different in this respect. We're talking about critical infrastructure, massive infrastructure, that is irreversible, that is being installed right before our eyes today. A wireless infrastructure, not only on Earth, but in space. And that what is happening in space, the commercial exploitation of space, is intimately hardwired with Earth -- a funny way of putting it, "hardwired," because it's all increasingly wireless. And it's growing at absolutely stunning speed.

You should understand that if the new OTARD regulations are implemented effectively, your neighbor, without any notice to you, without any hearing, can put a wireless antenna on their roof and have it irradiate you and your family. So the speed by which this massive infrastructure is accelerating, in a way that is both technologically, and, one can argue, potentially legally irreversible, is a subject which very few people in this country and around the world fully appreciate.

Last initial caveat -- I think we all here understand that the purpose of this program is not to be polemical. The purpose of this program is to try to offer some restoration of Balance. Because what is happening before our very eyes, implicitly obvious, is that is profoundly out of balance. And so what we want to do in designing this program is to look at this issue from a number of perspectives, perhaps somewhat more vigorous on the side of the public interest. Others will adopt the corporate position. Joe Sandri will try to offer, from a technological point of view, the Balanced perspective, particularly highlighting how technology and ethics are increasingly tightly aligned.

So I'm going to give you five real cases, again, to provide context to what we're discussing. We have a client in Lake Tahoe. This man is suffering from a very serious cancer. He's gone through three months of chemotherapy, he's come out of it, he's going through a an experimental drug trial which could very well save his life. There are two nearby small cell towers exposing this man to continuous, cumulative and aggregate RF radiation; And a third macro tower is planned nearby. We've asked for the company involved for a reasonable accommodation, and the response was startling from their lawyer, the gist of which was: Look, we're sorry for this person, but if we save his life, we'll have to save many other people's lives.

I found that to be a very important, mind boggling concept. But that was what we received as an explanation for why no reasonable accommodation -- as simple as moving the closest antenna so it doesn't directly assault him -- could be excused.

Transcript has been edited for clarity.

We have a case in Washington state of a fire station. The local fire commissioners have approved a macro tower with up to three levels of antennas, right next to the fire station, as well as a heliport. The wireless company involved try to put a similar tower next to a retirement community, and again next to a school, and they both objected. But the fire commissioners have let this tower be permitted right next to a fire station. Think of the critical capacity and role of firefighters, who put their lives on the line, to be exposed 24/7 to very high levels of radiation from this macro tower. Not to mention the potential for helicopter crashes because of proximity to the heliport. Who's thinking about these matters? What is the role of lawyers that are changing completely the firefighters' work environment, which is a collective bargaining issue?

Children! Children are the most vulnerable of our population, along with people with disabilities. There are, as I speak today, macro towers being located next to school playgrounds, classrooms, etc. Doctor Moench mentioned that he discovered there's a macro tower right on top of his hospital! There's a program being implemented in Palm Beach County, Florida, a massive county-wide WiFi mesh network encompasses 39 cities, 1.5 million people, without any kind of environmental review. And they're using as a first test to introduce it in majority minority schools. Because they are arguing that it's so wonderful to have this wireless technology, right in minority schools.

And the same problem that we see in Tahoe, where the school principal or superintendent refuses to even meet with our client because they're "too busy." Same thing in San Jose, same thing in Virginia. Children are the front line of exposure.

Next, we have a client in Washington DC. There are seven cell towers on top of this lady's top floor unit. She has rented this apartment for 30 years. And there are other tenants in the building who are just beginning to realize the connection -- one tenant has thyroid cancer -- and these seven towers.

And finally, a very disturbing case we have in Albuquerque, right on Kirtland Air Force Base, where we have good reason to believe that there are at least 30 housing units on the base that have smart meters mounted on the wall right next to the bedroom. Our client only found that out after over three months of getting deathly ill. How many other families may have suffered a similar fate and not even known why? Our client has been traumatized; she can no longer live in her unit -- which is a pattern, by the way, we see across the country, of people who become refugees from their own homes -- she's had to flee to another part of the country. And she's suffered potential brain damage and certainly physiological damage, sleep disorders, vertigo, she's even been hospitalized.

But the important point to make here is that I want to suggest this is an order of magnitude different problem, as I mentioned the beginning, than safety belts. Because we have evidence, medical evidence, that if you expose people, particularly their brains, to a smart meter right next to their bed, they can suffer, as this lady has, vertigo, anxiety, loss of sleep. And there is some data suggesting that some people actually have psychotic delusional episodes. Now, if you connect this to the military, here we have a military base with the most important issue being readiness -- readiness of our military personnel, men and women, who put their lives at stake for our country. It just so happens at this base, there are fighter pilots that have to be ready at a moment's notice. We do not want fighter pilots, and those who take care of their planes and weapons, start having delusional events, particularly when these planes are carrying nuclear weapons.

So my point is, this is not just simply a one-off -- one poor person is vulnerable and they're struggling to get some reasonable accommodation. There are national security implications of our subject.

Transcript has been edited for clarity.

I might now take a few minutes to alert you to the Code sections.[1] Because again, this is not an abstract discussion of the morality or the ethics of it. There are codes. Virtually every state of the U.S. has regulations that address professional responsibility. So I'll just mentioned one or two issues here.

The first and most important rule is 1.1 of the California Code of Professional Responsibility, which talks about competence. It says: a lawyer shall not intentionally or recklessly with gross negligence or repeatedly failed to perform legal services with competence. For the purpose of this rule, competence in any legal service shall mean to apply to the learning and skill. And number two, mental, emotional and physical ability reasonably necessary for the performance of such service. But there are two aspects of this. One is, lawyers should understand that they themselves are recipients of RFR. They're holding their cell phones right next to their ears, their offices most likely have WiFi, there could be a cell tower right on their building or across the street. We will look at this issue deeply.

Rule 8.41 talks about prohibited discrimination, harassment, and so forth. As a lawyer, who is assisting a company to irradiate people through a cell tower, and is part of a whole program for a neighborhood, is that creating a discrimination, as opposed to those who are healthy? Is it singleing out one part of the population and exposing them to these kinds of disproportionate risks, particularly when the company understands or should understand the risks?

The issue of false claims, as Jim Turner may elaborate, runs through all of this. The FCC has stated in court that the FDA has an official policy endorsing the FCC's maximum thermal radiation exposure standard. However, as we will argue very shortly in court, the FDA has never, to our knowledge, officially adopted a position on RF radiation safety levels. So the FCC is actually making a false representation to the court. And the FDA, in a way, is complicit.

So here's the question for the lawyers. If a lawyer actually has knowledge that a client is participating in making false claims about safety to the public, does that lawyer have a responsibility to, at the very least, advise their client and try to steer that client to a balanced solution? We know that Rudy Giuliani was disbarred for making false claims in regard to the election. Is that a useful precedent here?

Finally, I want to just pose some questions which are, in a way, "what-ifs". Does it matter? This issue of false claims, is that a game changer? Is it a game changer right now, or would it require a court, as we are going to seek, to issue an order asking the FDA to clarify its position? Is it official when the FDA

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[1] **Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation (Rule Approved by the Supreme Court, Effective November 1, 2018)**

Rule 1.1 Competence (Rule Approved by the Supreme Court, Effective March 22, 2021) (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services **with competence**. (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and **(ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.**

Rule 1.2.1 Advising or Assisting the Violation of Law (Rule Approved by the Supreme Court, Effective November 1, 2018)

COURTROOM CONDUCT Judge Michael D. Marcus (Ret.) — ATTORNEYS SHOULD NOT MAKE MISREPRESENTATIONS TO THE COURT

United Nations Global Compact (UNGC)

Transcript has been edited for clarity.

puts on its website images of people holding a cell phone next to their ear, and implicitly encouraging this behavior, (despite cell phone companies, in their fine print, saying they shouldn't)? The FDA has no disclaimer on their website to physicians and health care providers, unlike for example the Australian Health Ministry which does have a disclaimer, so as not to take their statements as an imprimatur or approval. Does it not raise ethical issues if a court itself says this is improper?

Does it matter that the FCC is not even bothering to enforce any of its RFR standards? What is the obligation to the lawyer in this sort of rapidly changing situation? What if a client is actually violating even the very high FCC maximum standard, as we believe could very well be happening in our Washington DC case? Does it matter that for the lawyer, that their client may be violating the maximum aggregate exposure standard of the FCC? In other words, if the total amount of RFR exceeds the maximum Standard, and any one of the contributors contributes more than 5%, the rule says they're all out of compliance. Does that have a bearing on the ethical responsibilities of the lawyer? What if this activity is considered ultra-hazardous? Does that have a bearing?

One last point, which is a little bit far out, but as Dr. Moench will explain and discuss a little bit, what is the effect of being complicit in an activity which seems to be strongly harmful to the public? Does that have an effect on one's psyche, to be day-in, day-out being paid thousands of dollars to implement this? We know that if a lawyer is a drug addict or an alcoholic, there are certainly affirmative responsibilities in terms of self care that lawyer must have, in order to be giving competent advice to clients, which we've discussed already. Well, what about participating in something that is this perilous? As Melissa Allain will elaborate, when does a lawyer's zeal to support her his client step out of bounds? And what must happen to reach an inflection point for beneficial change?

Thank you very much. This is an overview of our subject today. I hope it begins to stir the pot.

Doug Wood
Stirring the pot indeed, Julian Gresser. Thank you so much for that introduction, for loading up the issue chute. So we'll turn now to Robert Berg to have him respond. Bob Berg is an experienced litigator who has for the past 38 years specialized in complex class action litigation in the federal and state courts across the country. He has been a lead or co-lead counsel for plaintiffs in numerous securities fraud and consumer fraud class actions. And he's achieved hundreds of millions of dollars in recoveries for his clients, Robert Berg, it's a pleasure to have you here.

Bob Berg
Thank you, Doug. Hi, everyone. I'm not a philosopher-king like my good friend, Julian. I'm just a simple country lawyer who likes to go fishing. I've been practicing law for 38 years, I'm a litigator, I received my law degree from University of Chicago Law School and my MBA from the University of Chicago. Also, I've been a plaintiff's lawyer for the past 30 years. And before that, I worked for two very large corporate defense firms. So I've seen it from both sides. And I've known lawyers on the plaintiff side who've gone to jail, and I've known plaintiffs on the defense side who have gone to jail. So there are bad eggs on both sides. And no one has any particular moral high ground here.

The lawyer's duty is solely to represent his or her client zealously and competently. And to represent their legitimate legal interests. It's really not a moral play. The lawyer can go to the synagogue, the client can go to the synagogue tonight on Yom Kippur, to atone for their sins, or go to the confessional on Sundays. But the lawyer really just has to follow the rules of professional conduct, which are very straightforward. Each state or jurisdiction has their own professional rules of conduct. In New York, I'm bound by court rules, which the appellate divisions, the second highest level of the court system, has

applied uniformly across the state. And they set forth in very specific detail, what are my responsibilities as a lawyer. And as long as I follow those rules, I'm clean with the New York State court system, and those are my professional duties. And I can't stray from those duties, whether it's the moral thing or not. I have my choices. And I don't have to represent a client whose position I don't agree with. And I don't have the duty to say to my client: look, I think it's wrong what you're doing, as a moral matter. As long as their conduct is legal, and they're acting within the law, as long as I've undertaken to represent them as a client, I have an obligation under the rules to represent them to the best of my ability.

So really, that's what it boils down to. It's pretty straightforward as I see it, and given how the rules lay out your duties, things are pretty clear. You can't have a client make false statements to a court. You cannot, as a lawyer, make false representations to a court. You can't present false evidence to a court. You can't make false statements of fact or law to a third party in the interest of your client. Things like that will get you into professional trouble. But as long as you act within those confines, there's really nothing wrong.

Now Julian gets off, because he so strongly believes in the medicine on our side here, which is that wireless radiation is very dangerous, which I agree with. And therefore, anyone who takes a contrary position is misleading the court, or misleading a government agency, or what have you. But as long as there's ambiguity out there -- and there is still ambiguity -- I don't see that a lawyer who decides to represent a telecom company can do anything but represent the position that's most favorable to the client. And that's why we have a court system, to allow the fact finder in any particular case to reach the determination that the fact finder sees, after assessing all the evidence in front of them and applying the law, as the law is. So this is a very much changing area. And as the evidence comes in that's more favorable to showing that wireless radiation is a major hazard to people and the environment, we'll do better and better in court. But I don't think it's really a matter of professional conduct. When a lawyer decides to represent AT&T or Verizon in a case, and says: Wait, Judge, here is a large body of science saying that there is no real danger to residents in the area from this tower, because there's this study and that study, and studies for the last 30 or 40 years showing that there really is no danger. And we present evidence saying: Of course there's a danger, it's terrible! Look at all these new studies coming out. And then the Fact Finder makes a determination in a particular case, or a zoning board, or what have you. But there's really no problem under the rules of professional conduct for a lawyer representing a telecom company. Now, they may have to answer to God, ultimately, that they represent the wrong side in this matter. But it's really not a question of professional ethics.

That said, I wouldn't represent a telecom company. I choose my clients carefully at this stage of my life. I've been practicing for so long, I don't need to take a client that I don't want to represent. And most of my clients now are really, what I consider basically public interest clients. I'm representing people around the country fighting cell towers, who are really badly affected by wireless radiation. I would never consider representing Verizon in anything. I think what they're doing is very bad. But there are lawyers on the other side who like representing them, and like the money that they're making from doing so. Do I think they're not the greatest people? Maybe. There are better ways to make a buck, in my view. I would never do that. But what they're doing is certainly within the rules of professional conduct, and in our system, everyone deserves to have a lawyer representing them in court. I mean, you have murderers who are entitled to representation. I would never represent someone who I knew was guilty of murder. But everyone's entitled to have representation. So that's basically how I see it. It's a fairly straightforward, simple thing to me. And I'll let the process go on here.

Doug Wood

Transcript has been edited for clarity.

Thank you, Bob. Really, really interesting. As I said before, we're trying to find the inflection point here. At what point does the balance tip? And certainly, we're getting close to that now, if we're not already on the other side. Our next speaker is Joe Sandri. Joe is the founder and CEO of Thought Delivery Systems and the co-founder of The BALANCE Group. He's on the board and the President of the National Spectrum Managers Association. And he's on the board of the Archangel Ancient Tree Archive. Joe is one of the most fascinating and unusual people I have ever met. Ladies and gentlemen, Joe Sandri.

Joe Sandri
Thank you. I'm going to try to share the screen and show a couple of slides here. Bear with me as I make that happen. I have about three decades experience in building spectrum interference cases in the telecom industry. The industry has what writ large is the telecom networks that everyone's well aware of, big and small wireless companies, fiber optic companies and satellite companies. I've spent many, many decades winning interference cases, those cases are between one type of spectrum interfering into another, as alleged in the fact finder, whether it's the FCC or federal court, or some other body like the International Telecommunications Union, to adjudicate who is interfering into whom in an illegal and impermissive way.

The premise today is that the industry has immense amounts of tools, and calibrated and certified methodologies that are not being applied by human health and environmental health advocates, to the extent they could be. So I'm going to walk through that a little bit. First step though, is to understand the ethos around this whole approach. This is a quote from Francis Bacon: "Read not to contradict and confute, nor to believe and take for granted, nor to find talk and discourse. But to weigh and consider." In spectrum interference cases, that weighing in consideration of actual engineering information about who is projecting energy into who else's network is very, very measurable. What we haven't done is treat most human beings with the amount of intense review that a $39 router gets treated before it gets on the shelf at Best Buy. And that's why I'm alarmed by the the long term implications of not studying impacts into humans and others. Spectrum interference, again, is constantly assessed between technology systems. Here you see a variety of images of people assessing how radars are interfering with mobile systems, how mobile systems are interfering with other mobile systems. And we can go down the list. But daily, down to the femtosecond, interference is being assessed and policed very closely. This is a one page slide that shows a very large, very valuable spectrum band called 3.5 gigahertz. This is one of many dozens and dozens, and hundreds of spectrum bands, all worth multiple billions of dollars in license fees. They're policed quite well, to make sure that they don't interfere. Companies who are licensed in those bands don't interfere with other companies who are licensed in those bands. And it's a constant rugby scrum, it's a constant battle, people are always working to gain advantage for their client, using either new techniques, or stating that their particular network is operating in a manner that is conducive with the FCC rules, etc. I'm just showing you here another look at what type of interference analysis is done on a constant basis to understand why, for example, a particular delivery truck is receiving interference and not operating properly in correlation to a local cell tower.

So these slides are all trying to convey that this is going on, and the human race is incredibly sophisticated in understanding, down to the meter or the centimeter, almost any spot on planet Earth, the amount of radiation that's being caused -- if it's being caused -- into other networks. This slide shows a letter that was filed last month, a radio frequency interference dispute between some of the world's largest telecom companies. In this case, Southern Company, the nation's largest power company, is concerned that Apple and a variety of other large companies have unleashed millions and millions of unlicensed devices in bands that the Southern Company uses to operate the power network,

the power grid, and they claim that there was no proper studies before millions and millions of these devices were released in the last year. And they're concerned that critical power grid operations could be directly impacted. The same frequency band that the Southern Company is worried about is also the same band use by state police departments for their critical communications, and a variety of other critical infrastructure elements, hospital communications, and the like.

Now, what has not happened is that the sophisticated array of spectrum analyzers, certified spectrum management techniques, constantly calibrated equipment, constantly measured RF interference, all haven't been brought before the fact finders, when it comes to the impact on the environment and human health, not nearly to the extent, even a billionth of the extent, that it's done every day in industry. And that's a mistake. We need to start taking human life and environmental health as seriously as that $39 router, let alone the multi-billion-dollar wireless system that may or may not be operating in your area. And again, this is to take a very Balanced approach. Because once something can be measured, then you understand what is the source of the emission. And some people might point to a very large cell tower and say: Well, it's a big tower over there, therefore, that's what's hurting my my client, or whatever. But it could be a very, very tiny device across the street, on a telephone pole that is radiating 20-fold or more energy in terms of radiation exposure than the energy that's coming from a very large cell tower. Size isn't always the issue. Visual acuity is not the issue. The issue is very precise power and frequency measurements, using certified spectrum management techniques.

Julian mentioned at the top of the call that the FDA's own website shows people holding cell phones to their heads. What the FDA doesn't show on their website is that most of our mobile phones come with a disclaimer that says: Don't hold this particular model phone less than seven millimeters from your head. And don't carry it in your pocket while it's on, and don't wear tight-fitting clothes and keep it next to your body. And why is that? Once people can tie the reasoning behind those disclaimers on phones being sold to you, stating that your course of conduct using your mobile device should be to *not* hold the mobile device to your head, or leave it on and keep it next to you while you're wearing tight-fitting exercise clothes. And so what is the reasoning there? And is that reasoning being brought in front of fact finders? That reasoning ultimately needs to always show reasonable traceability of the source of emissions. And then we can leave it to other fact finders in the medical community as to what the impact of those emissions are on human beings and other living things. But it is of prime interest that most of the providers of mobile devices are telling you *not* to hold those mobile devices to your head. That seems to be a key indicator of something amiss.

Another key indicator is that despite repeatedly asking, there doesn't appear to be any one of these large scale networks showing that they are insured against human RF exposure, to the extent that it's revealed in the literature when you buy your phone. When you buy your phone, you don't seem to get a disclaimer that says that the device is very safe, and that, in fact, the phone manufacturer is insured against human RF exposure, and you, the consumer, are covered. That if you have a human health effect caused by this device, you're insured, we're insured, everything's gonna be fine. You *don't* see that type of disclaimer. And one would think that the industry would want to start to compete on that playing field to virtue signal to show that their particular device or network is safe, safer than a competitor's. That seems to be the virtuous path towards a safer RF wireless world.

So just at a high level, I wanted to share those observations. In summary: 1) There are incredibly sophisticated certified products and techniques for measuring RF exposure. 2) They haven't really been used in the human RF and the environmental impact world. And 3) those are the techniques that always win in court, or other ajudicatory bodies when it comes to winning RF interference cases. And

I've been involved in these for three decades or so. And that seems to be the way to take the path forward. Thank you.

Doug Wood
Thank you, Joe. That was really great. I can't wait to win a bet with my grandson about what a femtosecond is; for those of you who don't know, its a second represented as a fraction with a one in the numerator and a one with 15 zeros in the denominator (10^-15). A tiny, tiny, tiny fraction of a second.

Doug Wood
Okay, we're going to turn to our panelists now, each of whom will have about five minutes to comment. So our first panelist is Melissa Allain, a seasoned attorney, a counselor, a strategic planner in governance, organizational ethics, and compliance environment, health and safety. Wow, exactly what we need here. Her experience includes general counsel and advisor to talk to walk ons, publicly traded companies, private and nonprofit organizations. Melissa.

Melissa Allain
Hi everyone, thank you for inviting me. It's a really interesting question that faces us as attorneys. So I'm an attorney, as Doug mentioned. I've been in private practice and went in-house for a long time, and now kind of go back and forth. But this whole question of the duties, the responsibilities, the obligations of an attorney to disclose information that may relate to adverse health effects, for example, as we were discussing today, raises a whole panoply of questions. Bob Berg touched on this already, and I would just echo some of the challenges. I think that in-house attorneys, those are attorneys that are actually employed by an organization, whether it's nonprofit or for profit, publicly or privately held, or as an outside counsel, representing an organization; and it could be for profit, nonprofit, publicly traded, not publicly traded. I think there's some similar constraints that attorneys have, and it stems from our centuries of law going back to Roman law, probably before that, when clients seek legal counsel from an attorney, they do so, at least in the United States, with an express protection of those communications between the attorney and the client. And the reason for that is to allow free discussions of legal risks and obligations to potential violations of law, or ethical standards or company policies. There could be a panoply of different types of standards that an organization obviously operates under. They're constantly changing. And the lawyer's role there is to be able to provide one, obtain information to render informed legal advice. And then secondly, doing so under that umbrella of confidentiality.

So we have model roles from the American Bar Association that many states have adopted or adapted. Here in California, where I'm based, we have our Code of Professional Responsibility. And like many other states, states in the past, before those model rules went into effect, have their own codes. And so they vary state by state. And just on the international front, an attorney-client relationship and privilege of confidentiality that we operate under the U.S. does not always apply to other jurisdictions outside of the U.S. And I say that because so many organizations nowadays, and especially in this telecommunications world that we're talking about today, with the radio frequency emissions from cell phones, these are multinational corporate entities, by and large. And so in-house counsel is usually operating under a number of different regimes. The confidential obligations that we have in the U.S. may not be recognized or apply when we're dealing with situations that are outside of the U.S. But for me, I think that the duty of confidentiality, and our duty to represent our clients zealously and with loyalty, those make it very difficult to now craft… if we're contemplating trying to craft or carve out from that some specific lessening of that duty, or imposing a duty on attorneys to disclose what might be in their view, or in a judge's view, an outside objective standard or subjective standard of the attorney who

comes to have reason to believe that a crime may be committed, or in certain other statutory regimes, for example, under Sarbanes Oxley and the Securities Exchange Commission, if you're an in-house attorney, and you come across information that leads you to believe there is a potential violation of a breach of fiduciary duty of a publicly traded company, that in-house attorney has disclosure obligations up the ladder, as we call it, within the legal organization, to alert the general counsel, for example, that a violation may have occurred or is about to occur. If no action is taken, the attorney has an obligation in a publicly traded company to elevate that to the audit committee, or a member of the board of directors, or a similar governing board, if you're a board of trustees or other organization. Those are very narrow carve outs. And there are other disclosure requirements, but they tend to be carve outs under specific statutory regimes.

The rules that guide our conduct as lawyers for professional responsibility, it's almost an iron clad, or much narrower exceptions requiring disclosure. And the model rules of the ABA are adapted differently. In California, our duty of confidentiality is quite constrained, I think even beyond the ABA model. And so because it's almost more of a subjective standard, under the rules of professional conduct in California, just by way of example, that unless there is some sort of knowledge of an imminent action that the client has provided the attorney, then the the attorney can't disclose any confidential information without the informed consent of the client. And even in a situation where the attorney has concerns about either a crime being committed, or imminent harm… I'm struggling in the context of the radio frequency emissions that we're dealing with here, where that might occur. The attorney has to make efforts, first of all, to try to persuade the client to make a disclosure. And it's a subjective standard. The attorney has these duties, and could be penalized and subject to disciplinary proceedings for divulging confidential information without that informed consent.

So I will wrap it up. Those are the constraints I see. There's lots of others, like conflicts of interest, as well as lots of other tools. But this duty of confidentiality that lawyers face, I think make it very difficult for attorneys both inside an organization, as an employee of the organization, and outside as outside counsel, to divulge that kind of confidential information of a client.

Doug Wood
So interesting. Thank you, Melissa. So much for that. That was really great. Our next panelist is Dr. Brian Moench. Brian is a physician in private practice and former faculty member of Harvard Medical School. His environmental expertise includes a former adjunct faculty position at the University of Utah Honors College teaching public health and the environment. His latest book, which you really should read, is called "Death by Corporation: The killing of humankind in the age of monster corporations". We met Brian on our Green Street radio show, and we're happy to have you here, Dr. Brian Moench.

Brian Moench
Thank you. Now, obviously, I hope you see by by white coat that I'm not an attorney. And that, in fact, makes me the black sheep on this panel. And so my opinion is pretty much worthless on some of these legal questions. I was asked to be on the panel because of a book that I wrote about deadly business models, and shockingly inhumane practices that have become nearly ubiquitous among large international corporations. So I'm going to insert this issue into a larger context, in the hope that I can demonstrate that this problem is hardly isolated to attorneys for telecom companies. And that our current situation is not cast in stone by some immutable force, but can be reshaped and hopefully vastly improved.

From a scientific standpoint, a summary of the situation could be this simple. The studies sponsored and paid for by the telecom industry almost across the board exonerated cell phone radiation. But the

conclusions of studies by independent researchers, on both humans and animals, that were not funded by industry are much different. So anyone who says that all this is safe, including the attorneys that represent the industry, the very best that could be said about them is that they are participating in willful ignorance. This posture is supported by the fact that many of the pathologic changes caused by cell phone radiation don't become manifested until many years after exposure, which by the way is the case for many environmental toxins.

In an effort to more deeply understand the ethical problem this all represents, I'll remind you of the aphorism: "power corrupts, absolute power corrupts absolutely." That could apply to individuals, groups and institutions. Our problem is not that we elevate the wrong people to positions as wealthy powerful corporate attorneys or powerful politicians. Achieving or being granted wealth and power actually changes brain chemistry and function in otherwise normal people. Positions of power over others actually works people into behaving more like psychopaths. In experimental situations, people made temporarily rich, in a game like Monopoly, tend to attribute their success to their own skill and talents, rather than than luck. Upper class people are more likely to break the law while driving, during negotiations, or commit unethical behavior at work, cheat to increase their chance of winning a prize, and even literally take candy from a baby. Brain chemistry is different in powerful politicians leading to risky behavior and thrill seeking. They actually have lower levels of a brain chemical called monoamine oxidase A, which means they have higher highs when they engage in risky behavior, and that they get bored easily.

Now it's not that we placed the wrong people in positions of power. Really, it's more that power and wealth actually changes people, and they become the wrong people. The incidence of actual psychopathy among Wall Street CEOs ranges from anywhere from 4% to as high as 21% which is as high as our prison population, and 20 times higher than the general population. Power actually causes micro anatomic changes we might categorize as brain damage. Research suggests empowered people actually behave as if they have suffered traumatic brain injuries, becoming more impulsive and less risk aware, and less able to see the perspective of others, including subordinates. Brain scans of people in experimental positions of power demonstrate impaired neuronal activity that we call "mirroring," a trait closely related to the ability to feel empathy. Researchers have found that the more empowered a person feels, the more likely they were to assume that others viewed the world as they did. The more they oriented their behavior towards themselves, the less accurate they were in reading the emotions of other people.

Years ago, I read an article in The New York Times Magazine by Roger Rosenblatt that ran in 1994, titled, "How Do Tobacco Executives Live With Themselves?". At that time, tobacco was killing two thirds as many people every year as the pandemic has killed this year. Rosenblatt said: None of these executives think of themselves as morally bankrupt. And I do not think of them individually in that way either. What often happens to people who work for a large, immensely successful company, however, is that they tend to adopt the values of the company, regardless of its product. Loyalty supersedes objectivity." You might as well have added that loyalty supersedes rationality, empathy, integrity, and introspection. He went on to say, "How good, smart, decent individuals managed to contribute to a wicked enterprise, has been a question applied to murderous governments as well as many industries. The best answer, which isn't particularly satisfying, is that people in groups behave differently, and usually worse, than they do singly. In speaking with these Philip Morris executives, I felt the presence of the company within the person. In the end, I felt that I was speaking with more 'company' than 'person,' or perhaps to a person who could no longer distinguish between the two. In this situation in which the company has effectively absorbed its employees in its moral universe." Scientifically, I think we're kind of at the same stage with research on the telecom industry that we were with the tobacco industry in

Transcript has been edited for clarity.

the late 60s and early 70s. Eventually, probably in the mid to late 1980s, the medical research became absolutely irrefutable about the dangers of tobacco. I think we're close to that point with research on the telecom industry [and dangers of wireless radiation]. But being in the situation that we are now, I think the main problem that we face is that the people who are spokespersons for the industry, attorneys for the industry, are participating in what I have called 'willful ignorance.' So broadly, if we address the question of how to enforce or encourage more ethical behavior, we need to find or we need to realize that in fact, we're dealing with a lot of people who may actually have a physiologic stimulus or behavior that most of us would find a threat to the common good.

Doug Wood
Thank you, Brian Moench, that was really fascinating. And again, for those of you who haven't read his book, I encourage you to do so. Our next speaker is Peter Murray. Peter Murray is a visiting professor of law at Harvard Law School, who's an authority in the fields of evidence, comparative law, trial advocacy and comparative civil procedure. He served as secretary to the Maine Judicial Council in 1969 to 1978, and has been a consultant to the Maine Advisory Committee on Rules of Evidence since 1973. Mr. Murray is a member of the American Law Institute and the American Board of Child Advocacy. Ladies and gentlemen, Peter Murray.

Peter Murray
Thank you, Doug. I'd like to address in this conversation a particular problem that's faced by the lawyer, say, for one of these horrible corporations. We're talking about the RFR emissions industry now. But as Dr. Moench suggested, we could have been talking about the lawyer for the tobacco industry a half a generation ago. We could have been talking about the lawyers for the opioid industry very recently. We could indeed have been talking about the lawyers for President Trump, quite recently, with respect to the phenomenon of the 2020 presidential election. And what is the lawyer's obligation to state the truth? Is a lawyer simply the mouthpiece of the client? That is, whatever the client says, the lawyer will amplify without any critical analysis whatsoever? Or does the lawyer have some obligation to screen or to address the actual truth of what the lawyer is lending her voice to, and lending the authority of her person when she makes a statement.

Now in court, the rules do require lawyers at the same time to be zealous advocates of their clients, but the other hand to avoid doing things which the lawyer knows will mislead the court. And indeed, if a lawyer, for instance, puts a witness that the lawyer knows is going to testify falsely on the witness stand, the lawyer can be disciplined for putting a witness on who the lawyer knows will testify falsely. It's a thin and difficult line. And we know that lawyers who present cases in court when their clients are most under pressure, and therefore most needful of the lawyer's loyalty, lawyers sometimes find this a difficult line to deal with it. Of course, the classic is a criminal case. And the problem with a criminal defendant, my own research in this area, and I should add that I've taught legal ethics for many years at Harvard Law School, and have written in the field as well. My own informal research in the area indicates that the problem that we talked about in the books about lawyers misrepresenting in criminal cases, is much less than the problem of lawyers misrepresenting in the civil context, and perhaps for the reasons that Dr. Moench alluded to, that lawyers for civil actions are knowing parties to much more falsehoods then lawyers for criminal defendants.

Let's go back to the the cigarette or the opioid. Certainly there was a time when a lawyer being told a fact by his client, and they asked to represent that fact to the public, that you would tend to be able to believe your client. And indeed in technical things, it's almost necessary to believe the client, because the client's lawyer is not in a position really to reach an independent judgment. It's one thing if your criminal defendant tells you he did, and you know that he didn't. But when you're talking about the

effects of tobacco, or opioids, or wireless emanations, it's pretty hard for the lawyer to reach an independent judgment, at least right off the bat. But again, as Dr. Moench suggested, as evidence in the popular consciousness increases, everybody, including lawyers, begins to know that cigarettes do cause cancer. And for you as a lawyer to lend your voice to a statement that cigarettes don't cause cancer is indeed lending your voice to a falsehood. There does become a point in which a lawyer is getting up and saying, lending the credibility of her voice to a statement that is absolutely contrary to the accepted scientific truth, would cause a problem for that lawyer. Indeed, we saw an example of that in the recent case of Rudy Giuliani making statements about the election. And in that case, the discipline was not quite based upon the falsehood, but was based on the fact that the statements were going to cause a great deal of public disarray. So I think there does come a point.

Now the question is, how about the borderline area, which Dr. Moench said, we're in right now. How about the area where the lawyer is being asked to say something, and the lawyer knows that, yes, there is some question about that. Maybe that goes too far. Based upon what I know, maybe I'm not comfortable with that. What does the lawyer do? What is the lawyer required to do? One thing the lawyer can do is, the lawyer can decline to make a statement which the lawyer believes may be untrue; he can decline to do that. And if the lawyer's client doesn't like it, of course, the lawyer can get fired, or, or leave the employment. But what happens in the situation where the lawyer is, perhaps, drunk with power, wants to make the statement, but has reason to believe that it may not be true. Is the lawyer running the risk of discipline? Or should the lawyer be running the risk of discipline for making statements like that? So far, as was suggested by my colleagues of the bar, the lawyer is protected. In a situation where there is doubt, the standard that's used is that the lawyer *knows*. And it's not 'should have known,' it's *knows*. Now 'knows' doesn't necessarily mean you have to be able to look into the lawyer's brain and see whether or not the lawyer actually does know. But the circumstances have to be so great that anybody would infer that the lawyer did, in fact know the falsity of what she was saying, so as to subject the lawyer to discipline. So I think we are in a kind of a transitional situation. I think it is appropriate to task lawyers with being alert in this situation. And being careful not to overstate things that they know are not true. Even if they are stirred by the the biological feelings of power that Dr. Moench alluded to, and that they do have an obligation, even though it's very much in the shadow of their obligation of loyalty and zeal, to not unduly spread false information.

Doug Wood
Great. Thank you, Peter. It's good to get the sobering truth. We have one more panelist, Jim Turner. Jim is a principal in Swankin & Turner, and represents businesses as well as individuals and consumer groups in a wide variety of regulatory matters concerning food, drugs, health, environmental and product safety matters. He's a co-founder of the BALANCE Group, and also a co-founder of the National Institute for Science And Public Policy. Ladies and gentlemen, Jim Turner.

Jim Turner
Thank you, Doug. I think I will enter this discussion from a little bit of a different angle. In March of 1968, I had my first face to face meeting with Ralph Nader. And we started a discussion which included a great deal of reflection on the question of ethics and the law. We're both lawyers, of course, Nader and I. And we were very interested in this question: What are the legal ethics of a situation in which we have a set of major battles going on about the marketplace in which we live, and in which we felt very strongly that the consumer interest is being systematically denied and pushed aside on many, many issues? Nader and I agreed that I would begin an investigation of the Food and Drug Administration, which I did. And that was published in 1970 as a book called "The Chemical Feast." At the core of the discussion there, aside from all of the battles about toxins and harm and science and so forth, there

was a set of core ethical principles or thoughts that needed to be looked at. I want to give you two quick examples of what they were and then describe a little bit of the opening that we felt that we had started.

First of all, at a certain point, we got interested in ethics. I stayed with Nader until June of 1971, I started my law practice then. And then in June of 1973, I started my law firm Swankin & Turner, and we're in our 48th year of doing law in accordance with the kinds of things I'm going to talk about here. So specifically, I watched the ethics idea be put into the continuing education in the bar here in DC and around the country. And so most of the continuing legal education classes here in DC require a section on ethics. So I go to my course on law in the environment, and the ethics section was two major Washington environmental lawyers, from big law firms representing big polluting interests, got up and said: Here's the ethical point you need to remember. When you get somebody calling you who wants to be a client, be sure that they do not disclose any violation of the laws they intend to engage in until *after* you have signed the retainer agreement. Before the retainer agreement, that communication is not protected. After it's signed, that communication is protected. That was the treating of ethics that was going on. And that gives you a flavor for it.

Jim Turner
Now the unfolding of the consumer interest Nader idea led to a very interesting phenomenon. I suspected it before I started working there, and it came in droves afterwards. And that was people from inside corporations saying: Can you help us figure out how we can be congruent with the consumer interest? I am suggesting to you that an attorney who has asked that question has an ethical responsibility under all of the rules that exist in every state, and nationally, to come forward with all the information, all the evidence, all the arguments, every single thing that can be said, if that's negative about what the industry itself is doing. Let's just figure out that there are 21% pathological people out there, that means there 79% who may not be pathological.

Jim Turner
Interestingly enough, by the way, just on the Lord Acton quote, he does often get misquoted. The actual quote is: "Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority." I think it's important to read the entire quote to get the full feel, because there's a way in which what he's saying is exactly what we just heard about what the science is showing us.

Jim Turner
As I went further, in the 1976 Telecommunications Act, the head of AT&T appeared before a consumer committee in Congress. The bill under examination was called the Consumer Telecommunications Act of 1976. And the chairman of the committee asked the head of AT&T, Mr. deButts, what consumer groups supports that? And he looked to his minions on the right, minions on the left, nobody had a name of any consumer group. He said, 'we don't know.' Okay, the next thing we know, deBuss' special assistant called us at our law firm, Swankin & Turner, and said: Can we come down and talk to you about how you can help us create a program that will lead to some kind of consumer alignment? So we started working with AT&T for about five years on that issue. What was fascinating to me is that they hired us outside their general counsel's office. I figured that their general counsel was the in-house lawyer, and we were the outhouse lawyer. We were the ones that were raising the stink in the company. And we had top management supporting us. Their Washington lobbyist, who was a lawyer, called me for lunch one day and says: I want to understand why are they hiring you and not me, to tell them what to do here? And I said: Well, the consumer movement's really important, and you ignore it. He says to me: Prove to me that it's an important movement. So I laid out all the statistics that existed in 1983. And

the guy looks at me, he says: You've persuaded me; the consumer movement is very powerful; I guess the question for AT&T is whether to crush it or divert it.

Jim Turner
Now that's the mentality that we're dealing with. We've had just about a 50 year run on working with people who are advancing the consumer interests. From inside corporations, outside corporations, from inside of nonprofit groups, from outside nonprofit groups. And I suggest that there is a legal ethic that says: If you are representing somebody who is inside the industry and who is asking for help, it is an ethical responsibility to lay out all the dirty laundry of the entire industry, including your own, including your client's own dirty laundry, and lay it out very clearly and very carefully. And what we found is a fascinating thing. All of a sudden, you start finding nooks and crannies and ebbs and flows inside what we would call a market or an industry.

Jim Turner
One of the places we got involved with was organic wheat. In that period of time, we were instrumental in helping the dietary supplement community get going. That community was very small compared to over-the-counter drugs in 1970. They are now probably two to three times the size of the entire drug market. We started the organic food market and helped lobby that through. We worked on getting acupuncture needles approved by the FDA. All this stuff came from looking at the situation with clients. Every one of the things we did included a consumer industry alliance. Every single one. Lawyers need to learn that the ethics of representing their client as strongly and as positively as they can, requires taking positions that may not be seen as popular. The market's ideas, the industry's ideas, at the time that they're asked to work. That's a strong ethical problem that needs to be addressed. And I think it would be good to have a lot of focus going to that set of ethics.

Jim Turner
I want to make one final point. We thought at the time when I was starting with Nader, that we were dealing with a shift in the society, generally. And there's a whole area of law called Responsive law. Nader's group when I was working with him, and today, there's the Center for the Study of Responsive Law. And we always thought that that center was an experiment in a theory of Responsive law, which says: We are in a social unfolding that goes from repressive law, to autonomous law, to responsive law. Autonomous law is what we would call the Enlightenment law, or liberal law, liberal democracy. And we're moving into a new phase of legal expression, generally as a society, and it's turning up, in our experience -- we ran an experiment on this -- we've worked with many companies, many consumer groups, many health groups, all working on how do we collectively create a new dynamic we call Responsive law? Well, politically, only 30% of the American eligible voters under the Constitution register as either Republicans or Democrats, they divide roughly 50-50. Those two parties control just about 99% of all elected offices. But 70% of the public, by our political system, or structure, is excluded from actually participating in the ability to hold political office because they're not registered as a Democrat or Republican. It's very tough. So I'm just saying, we're in a movement. The ethics of lawyers in that movement is crucial. And you need to understand that being an ethical lawyer for your client might well mean representing them in something that's counter to the interests of the industry within which they operate.

Doug Wood
Thank you, Jim. Jim Turner, ladies and gentlemen. Then can we bring everybody but all of our panelists and speakers back on the screen? I'm going to hand it over to Julian in a second. But I just wanted to answer a housekeeping question. A lot of people have said, Is this video going to be available? And the answer is yes, it will absolutely be available. If you registered for the webinar, you will get a notice that

the webinar is up and you'll have the link. So don't worry about that. If you want to watch part of this or all of this, again, I'm telling you, from my perspective, it's been absolutely fascinating, really, really terrific stuff. Julian, I'm going to toss it back to you for your first follow up comment, and then others should feel free to chime in as they wish.

Julian Gresser
It's great. Thank you, Doug. And thank you, everybody. I think this has exceeded my hope in trying to put it together. I make only one comment that kind of builds on what Jim said. We're seeing with The BALANCE Group, very clear evidence that the "other side" actually has the potential for a shift toward a collaboration of all parties. I don't think any of us in The BALANCE Group see the telecom industry, whether it be cell phones, cell towers, smart meters, automated vehicles, or Internet of Things, as the enemy. We see them, in many ways, at least the ones that are leading and causing all this harm, benighted. But the central point is that what we're dealing with is not a monolith. And I think that's what Jim is saying. It's just not a monolith. Within these companies, there are a lot of people within the companies who are silently sort of ceding this; they don't may not have authority, but they're in despair. We see that in the government, certainly at the professional class within the FCC. And within the FDA, under a lot of very well-meaning, highly skilled, talented people whose voices have been crushed. We see it within the industry, as in the Viasat case that we are working with. And the satellite area, challenging an arbitrary action by the International Division of the FCC, to our world. And the most significant modification of satellite elevation in the planet's history. Many of these companies, particularly even the leadership that Dr. Moench has pointed out are being affected in their brains, understand survival. And it's not sustainable to have a corporate mission that rests on the misery of thousands, if not millions of people. And so as this shift that Jim is talking about proceeds, there'll be strong opportunities and incentives for innovation. And as Joe Sandri points out, it's going to be a competitive advantage to be able to deliver safe products and services. That's the shift that we're trying to affect in The BALANCE Group. And I think that it's an undercurrent of the good spirit of this whole program, for which I'm deeply grateful for Doug for sponsoring. So I hope that gets our internal panel discussion going.

Doug Wood
We had a question about the the Daubert rule, the Frye standard, the Daubert standard, however you refer to it, can somebody just want to give me a very quick answer on what that is and how it's changed?

Peter Murray
Sure, the Daubert standard is the standard by which expert testimony will be received in the federal court. And in the case of Robert vs. Merrell Dow, the Supreme Court has an unstated doctrine that there is a screening function for the trial judge to perform in determining whether expert testimony will be admissible in a federal court case, and that involves the judge making an initial determination that the science that the testimony is based on is minimally reliable, and that the scientific proposition that's advanced fits the question to be decided by the Fact Finder, the Finder of Fact. This sets up a bit of a hurdle, so that it's been found that many, many cases where science which is kind of on the cusp, the Daubert hearing is used as a screen by defendants to try to keep out the necessary scientific support theories, and thus win the cases on summary judgment.

Jim Turner
I can make a comment on that as well. Frye was very restrictive. When Daubert was decided, a lot of people who are in our tent hailed it as a great breakthrough. What subsequently happened, and I was suspicious of this at the time, is it has become a tremendous difficulty to get past. If you have big

interests like Dow, why the people on our side of the framework thought it was a good idea was because it opened up the people who could be passed through the screen that they'd created. Under Frye, there wasn't even the opportunity to make the argument. But nonetheless, the powerful forces that exist on the side of keeping information away from the courts -- basically what it is -- they were able to use Daubert as a very strong screen, such that pretty much anything that we would argue is important will have a tough time getting through.

Julian Gresser
Just another just basic point which runs through all of this. There is, in the lay perspective as well as the courts, a sort of misunderstanding of the nature of science. The notion of somehow that if something is uncertain in science, that the burden would be on the public, is increasingly being challenged. As recently as the August 13 decision of the Appellate DC court, they refer to the idea that if it could be shown by the defendants, or by the agency, that the science is tentative, then the courts would defer to the authority of the agency. But science is inherently uncertain. Good science is uncertain, scientists deal with uncertainty. And what is missing is the recognition that the uncertainty becomes a cudgel in the hands of the powerful, because so long as they could say, well, it's just not proven that RFR is injuring people -- whole communities -- the public ought to bear that cost. But we do have an institution, the insurance industry, that's in the business of assessing risk. And the insurance industry today, which needs to be made clear, will not touch RFR harms. Even Lloyds, the reinsurance industry, you cannot get insurance for these risks. So there is one group that has every incentive to make money on this, it refuses to do it. This is where Joe's contribution is so powerful, because it begins to say: Yes, okay, science is uncertain, but if we can begin to measure exactly the source, individually, aggregately and the path of transmission, as the Japanese courts and other courts have understood in other countries, there comes a tipping point, when a presumption is created of causation, the burden then shifts to those who are in a better position to understand these risks, to mitigate them.

Brian Moench
When we look at science, we need to understand things like, who sponsored and who paid for the science? We could have had almost this exact same conversation and inserted the word Monsanto instead of the telecom industry. Well, Monsanto has bred an atmosphere within the federal regulatory framework, and amongst actually many healthcare professionals, that 'the science exonerates the use of our pesticides.' But then, all of that really unraveled with, among other things, whistleblowing by many EPA employees, the Monsanto papers, they were first published in France. And we find out that, in fact, Monsanto was gaming this research right from the beginning, paying for it, actually writing some of it, and actually taking academics, handing them research papers, and then having them attach their name to it when they didn't even participate in it. The same thing has gone on with the telecom industry, and has gone on with other industries as well. So when we talk about the value of one sort of body of science versus another, we need to look at it very, very carefully, before we come out and say, well, the science exonerates what we're doing. Well, who sponsored it, who funded it? And where was that science published?

Doug Wood
That's a really great point. And are there legal obstacles to introducing that question into a legal case?

Bob Berg
No. You can certainly critique the evidence by saying: Look, he has a bias. The problem is, here you have the regulatory agency, the FCC, which itself is biased, because many of the Commissioners come from the industry, and come from the telecoms. So you have a biased panel establishing the rules and regulations here. So they're much more amenable to the testimony of these bought scientists. And

they're setting the standards. And they're working basically as agents of the telecoms, as opposed to protecting the public with precautionary standards. So it's kind of a rigged game for all of us.

Brian Moench
You can even say the same about the pharmaceutical industry and the medical profession. In fact, I'll give you one of the worst examples ever. About 10 years ago, a famous study was published, saying that everybody in the world needs to be on statins; the threshold was to be lowered for basically an increase of 50% of the population to be on statins, based on their cholesterol. Months later, we found out that eight of the nine cardiologists whose names were on that paper published in circulation, one of the premier medical journals, had financial ties to the pharmaceutical companies that stood to benefit from that result. Nobody knew that… it was on the back page of some New York Times article, but that's extremely relevant to whether or not that original science was legitimate.

Jim Turner
Another example of that problem is how long-standing these conflicts go. When I did The Chemical Feast, published in 1970, one of the big stories there was how viciously the Sackler family had been playing the FDA. The Sackler family had been directly involved in a business deal with the chief of regulation of antibiotics at the FDA. They had their own company, and they made huge amounts of money. At that point, the strategy was that the Sackler's PR firm would write speeches for this guy to give at professional meetings, then the companies would buy up large amounts of the speeches pay, that was how they transferred the money, "laundered" it. And the FDA regulator was getting huge amounts of money in partnership with Sackler, who was pending before him for reviews. And that had been exposed in Congress. It was totally public, and Sackler was still out there operating. His goal was to get heroin made a prescription drug. What he came up with was opioids.

Doug Wood
And how do the lawyers that represent these companies not fall on the wrong side of state ethics regulations?

Melissa Allain
It's just to Jim's point in your question, Doug, in the Sackler opioid case, three of the law firms were recently entered into a settlement agreement for breach of conflicts of interest. They had a joint defense agreement, which is very common, civil or criminal, where you have multiple defendants, for example, who will agree to share information amongst each other, based on limitations in the agreement. And in this case, the bankruptcy court found that that agreement which was used in that particular case, against the Sackler's company, they used the agreement as a shield to the plaintiffs to make disclosures. So it's a good example of facts specific, but they were held accountable, they have to disgorge multi-million dollars of attorneys fees because of that breach of the conflicts of interest.

Brian Moench
I know that this is a little bit off topic, but seeing as how the Sacklers were mentioned, part of the issue with the Sacklers is, after they were exposed, and it became obvious and evident to everybody what they had done, they didn't stop what they were doing. They moved that business model, almost identical, overseas, to literally dozens of other countries, and duplicated it all over, after they knew that they had started the opioid epidemic in the United States. Sorry for the digression. But if we're talking about business ethics, that's absolutely one of the most inhumane and disgusting examples we could bring up.

Melissa Allain

Transcript has been edited for clarity.

We've talked about these really egregious situations. And Julian had invited ethics committee chairs from different states to this webinar as well. There's an educational part of this that I think we are all mindful of, and that's part of what a large part of my work has been in-house, which is trying to create a "speak up" culture. We can all think of examples where part of the toxic culture of a company is that people become either blind or nearly so, to misconduct. But we try to right that, to encourage people to speak up. And it is very, very difficult. A whistleblower in any context faces enormous challenges reporting things. And I just wanted to point that out, because I think it's an ongoing challenge that we all face as attorneys, whether we're outside or in-house, in particular, because we're closer and many of us, if you're operating in that compliance educational domain, are actually trying to encourage people to speak up. And when they do speak up, to make sure that every concern that's reported is addressed. I just wanted to point that out.

Doug Wood
What's the mechanism by which the court can, or a plaintiff can reach back in time to something that happened and said: You know, the lawyers knew about this. I'm thinking, for instance, of the FCC case from Environmental Health Trust where the court basically said: Go back and do this again, because your actions were arbitrary and capricious. It's hard to imagine that the lawyers representing the FCC didn't know that. It was pretty clear what was going on at the agency, a) that it was captured; b) they rendered a decision without a single shred of evidence that they have looked at this health issue. What's the mechanism by which we hold those particular lawyers accountable?

Peter Murray
If I could just address that; there are two routes. When a lawyer is guilty of misconduct that takes place right before the court, in a court proceeding, typically, the court in which the misconduct takes place would have the right to discipline the lawyer and either place them in contempt, or make them pay a fine, or whatever. The more general method, though, is in the situation you have in mind. If you come upon evidence that a lawyer has made a false statement, or something that is forbidden by the rules, then you would file a grievance with the local grievance authority. And that happens all the time. It is a statement, with whatever evidence that you have as to what happened, of what the lawyer did. Typically, the grievance authority would then have their own screening process, whereby they would determine whether or not what you've said potentially charged a grievance. And if they thought it potentially charged a grievance, they would let the lawyer say her or his position, and then open an investigation of the grievance and make a determination. It's an administrative process, where the complainant has a role, where the grievance commission, usually with its own lawyer and own counsel, has a role. And of course the lawyer who's accused has a role.

Doug Wood
And that usually would be the state, for instance, the State Bar Association?

Peter Murray
States which have a unified bar, that would be the case. In other states that don't have a unified bar, there would be an agency usually set up by the court that handles these. And in New York, it's the appellate division of the Supreme Court that has a lawyer discipline arm.

Bob Berg
The federal courts have their own disciplinary committees as well. Now, in this case, Doug, this was a 2-1 decision by the DC circuit. You may say this was a baseless determination, and the lawyers defending that…

Doug Wood
I can say that, but it may not…

Jim Turner
An arbitrary and capricious signing by court is in no way a done deal with lawyers. That's a perfectly legitimate thing to challenge. And if you lose, you lose; but that does not mean you've done something wrong.

Julian Gresser
So there is another dimension of this which we haven't really explicitly addressed. And that is the law. The lawyer in many states is supposed to have a dual role. One dominant role we've been talking about is, to the highest degree of loyalty and care, protect the interests of her or his client. The second role is the lawyer as an officer of the court. What are the obligations that the lawyer has as an officer of the court? And then the corollary question is: If a lawyer really is a quasi-public official who has an obligation to look out for the common good, just as Dr. Moench says, well, does the public have a remedy? Do members of the public who are concerned by some of the subjects that we talked about today have a right to raise these issues to the bar association, which itself is not just a private organization, but which also has a quasi-public role? This is frontier territory. Peter, having been a professor of legal ethics at Harvard Law School, I'd really appreciate your thoughts on that.

Peter Murray
Well, you're absolutely right, Julian, because huge attention is given to the lawyer obligation as faithful exponent of the client. Secondarily, a lawyer as an officer of the court is generally thought that there is a overlapping duty to see that the court functions properly, that the court's processes are not subverted, that the court as an institution, is maintained, and that the court does "justice" on some level. And that's particularly in the context of judicial type of proceedings. But the question which I take up with my students, and which I think goes beyond is: Are we going in this profession solely to represent clients, and make sure that the judicial machinery functions? Or do we have an underlying humanistic obligation, or pressure, or drive, or inducement, to make the world a little bit better, substantively, then when we left it? Now when we talk to someone like Jim Turner, he's doing it right and left by helping consumers and by helping people, and doing so. But do the rest of lawyers? So do we have something like the doctors have - first do no harm - kind of thing that we should be listening to? And, to me, the idea of having a fulfilling career certainly requires some of that. That you can't be representing the bad hats, even if you do so all the time, and do it within the realm of the rules, and have a very satisfying life, in my view. And then when I talk to law students, I say, look, think of the satisfaction that you're going to have in your life when you look back at age 60, or 70, or 78, or whatever it might be, as to what you've accomplished. And is it going to be enough to say that you were a faithful exponent of these people, and you followed all the rules? That's something that I think is not policeable in terms of the agencies that police lawyers, but I do think it's something to where people can be socially, ethically accountable; accountable to themselves, accountable to their friends, accountable the society in which they live, as the value in what they do as lawyers. Does it have something that helps human beings get along? Or is it merely a the cog in the system?

Jim Turner
Julian, I'd like to respond to your question by saying, I think that it's a Balance issue. And my strategy from the beginning has always been to balance the client's interests and my responsibility to the court. And those two things together, it seems to me, that makes the path for me to be able to accomplish stuff that needs to be accomplished. Doesn't do me any good to be seen as some kind of a partisan advocate just for consumers. If I'm arguing for what I'm arguing for, I want to argue with it with a judge

or any Fact Finder in a way that the Fact Finder thinks I'm talking honestly, and with credibility and so forth, which is what I think the court rules require. And when they say you're an officer of the court, that's what you are. And then you have a client. And I think those things have to be integrated. Just the way we talked about balance and everything else that we do.

Doug Wood
Interesting. Joe Sandri, you've been quiet for awhile. Any parting thoughts before we close this out?

Joe Sandri
Yeah, one. It's been a joy to be with all you. But I do challenge everyone to think about the impact of fingerprints when they first became available in court. And when photographs first became available. We do have the tools now to bring in the fingerprints and the photographs for the source of what's happening. And so I challenge people to to let that marinate for a while in your thinking.

Doug Wood
This has been a really a wonderful program. I've learned a lot. Thank you, all speakers, panelists, everybody, on behalf of those who are watching and we've held on to almost all of our audience members. So I guess that was interesting enough for them to hang on. Again, I want to encourage people to to If you didn't get the name, Brian Moench's book is called "Death by Corporation." Stay tuned for future webinars in this series. Thank you all for watching. We'll see you next time.

Transcript has been edited for clarity.