

CORPORATE CRIME REPORTER

INTERVIEW WITH NEIL GETNICK, GETNICK LAW, NEW YORK, NEW YORK

In the early 1970s, Neil Getnick and Andre Balazs were students at Cornell University. They were both involved in a student movement for social responsibility in Cornell's university investment portfolio.

The focus was on U.S. corporations doing business in apartheid South Africa.

Getnick went on to become a famed lawyer representing whistleblowers and pushing corporations to improve their corporate cultures. Balazs went on to own a southern California boutique luxury hotel – the Chateau Marmont – the site of fancy Oscar night parties hosted by Jay Z and Beyonce.

Fast forward to the Covid pandemic when the hotel industry ground to a halt and thousands of workers were laid off. This led to predictable labor strife. The Chateau Marmont was no exception.

Balazs called on Getnick to help him settle the matter.

We interviewed Getnick on July 8, 2024.

CCR: What is your practice?

GETNICK: Our law firm is dedicated to the concept that good conduct is good business. And everything we do relates to that.

A large part of our practice is business integrity counseling. Alongside that, we have a very active fraud and corruption investigation and litigation practice. Then there is a subset of that practice in the area of whistleblower law, where we have been prominent and relatively successful.

We have also been actively involved in practicing in the area of independent monitoring. That's a way to ensure that companies are engaging in good conduct practices.

CCR: You used the term independent monitoring. When the Justice Department appoints a monitor, they follow internal guidance. According to that guidance, the party to be monitored proposes three names to be monitor and the Justice Department selects one of those three to be the corporate monitor.

Boeing just today accepted a plea deal. And the Department said that one condition of the plea is an independent monitor. But it's unclear whether the Department is going to follow its internal guidance on this or just appoint an independent monitor.

Generally speaking, if the defendant company proposes names to be the monitor, how can that be an independent monitor?

GETNICK: You have hit upon a hot button issue. The origins of how the Justice Department goes about its selection process is not a happy one. It goes back into the early 2000s when a United States Attorney appointed a former Attorney General as monitor.

That Attorney General had gone into private practice and was awarded a monitorship. And by all accounts, it was an abusive monitorship that ran up massive bills unnecessarily.

In the embarrassment that followed, the Justice Department changed its selection process, allowing the monitored party to nominate the monitor, with the Justice Department maintaining a veto power if it concluded that the monitor wasn't up to the job.

Technically, that can result in an independent monitor. And many would suggest that it does. I don't agree. I think that process creates a race to the bottom. And the monitored party is looking to reward a potential monitor who is least likely to do the best job.

I am not trying to insult independent monitors who get appointed in that fashion. I'm simply saying that having the government propose the monitors is a far more effective way to proceed.

If the government were to say to the company – here is a list of three monitors, you go ahead and decide which one you can work with best – that could work very well.

And it in fact did work very well in New York City, during the 1990s when the city administration was attempting to clean up organized crime in dominated industries.

CCR: Boeing is actually going to plead to a crime and there is going to be a period of probation. In these kinds of cases, where there is a period of corporate probation, shouldn't the Justice Department hand it over to a corporate probation unit?

Why probation officers for individuals and monitors for corporations?

GETNICK: I don't know whether there needs to be a separate corporate probation department. A well structured monitorship typically will include a direct reporting line from the monitor to the government and often a reporting line to the sentencing judge as well.

That could be a very effective means of keeping the monitorship on the right track.

CCR: You represented Chateau Marmont in a recent case. How did you get involved with that case?

GETNICK: I had a long standing relationship with the owner of the hotel – Andre Balazs. We were university students together.

We first met when we were students at Cornell University. We were fighting together for social responsibility in Cornell's university investment portfolio. The focus was on U.S. corporations doing business in apartheid South Africa.

We continued on that pathway in the 1990s. We successfully fought for the liberation of our Kenyan classmate who had been unjustly imprisoned for his pro democracy and anti-corruption activity. And we were able to do that with the help of the Reverend Jesse Jackson.

Once our classmate was freed, Andre and I worked together supporting a Kenyan high school scholarship program, which we launched with Congressman John Lewis.

And during the last decade, Andre has turned his efforts, as have we at Getnick Law, to the fight against human trafficking.

I mention that because we've had a long history together fighting for social and economic justice.

That's the background. The issue at hand had to do with a bitter and rancorous labor dispute that arose after post-pandemic layoffs.

Ministers associated with the Southern Christian Leadership Conference of southern California joined that protest. And that was meaningful, given the history – Andre and I and the Reverend Jackson, the Honorable John Lewis working together over the years.

At one point, Andre went down to the protest and asked to speak with the pastor who was leading that group – Pastor William Smart. And on Pentecost Sunday in June 2022, Pastor Smart reached out to Andre and invited him to sit down together with the head of the union, Kurt Petersen,

to see if there could be a resolution.

CCR: Your friend Andre has liberal values from back in college. His liberal values apparently haven't changed. How did it get to the point where his workers at the hotel went out on strike? What were the issues?

GETNICK: No one went out on strike. There ended up being a labor protest in the wake of the post-pandemic layoffs. As you might recall, in the spring of 2020, the hotel industry ground to a halt. That resulted in significant layoffs at the hotel and that in turn led to these protests.

CCR: Were the workers saying – we know you have no business because of Covid, but keep us on salary anyway?

GETNICK: There was simply a difference of opinion as to whether a policy could be pursued that was more worker friendly. That turned into a rather bitter and rancorous situation. It proved very helpful when Pastor Smart interceded and had everyone sit down together.

When everyone sat down together, a path of resolution quickly presented itself. And that's what everyone chose to pursue. It was pursued successfully and a lot more came out of it than just simply a collective bargaining agreement.

CCR: Were you in on the meetings?

GETNICK: I was part of the initial meeting in June 2022. When we sat down we believed the most important thing from the outset was to make clear who we were and where we were coming from and the sincerity of our efforts.

I recall very specifically saying at that first meeting – we are not here to tolerate or even to accept the workers and their union supported efforts. We are here to embrace them. Let's work together. Let's make that happen.

That was a surprise to the union president Kurt Petersen and his counsel Jeremy Blasi. And as we continued to talk, we realized that we had among all of us in that room, including Pastor Smart, a shared background, shared values, shared vision and a shared mission.

One of the things that we discovered was that we all early had played a role supporting the United Farm Workers movement led by Cesar Chavez and Delores Huerta.

Once that was established, we were just off in a better direction. Negotiations started very quickly after that. Within two months we had a defined bargaining unit. And four months after that, they

fully resolved the collective bargaining agreement. And as these things go, I'm told, that's a rather speedy resolution.

Interestingly, I do not have a background in labor negotiations. And in an odd way, I think that worked to our advantage.

CCR: Hotel Chateau Marmont is a boutique hotel. How does this labor resolution differ from how other larger hotels resolved their post-pandemic labor troubles?

GETNICK: The Chateau reached a resolution in December 2022. When the rest of the industry in effect went on strike in July 2023, the Chateau was not part of it. Much of that has been resolved, but not all of it. The Chateau Marmont remains a positive model for labor and management relations in the industry.

CCR: Race was central to this dispute. The Chateau was the site of last year's Gold Party, hosted by Jay-Z on Oscar night. Last year, the party was picketed by labor organizers.

The *Hollywood Reporter* ran articles about the labor dispute. In September 2020, employees shared with the *Hollywood Reporter* a variety of systemic workplace concerns, including "racial bias in hiring and promotion, racist treatment of guests, as well as racist comments alleged to have been made by the then-managing director toward staff. There is now a new managing director, and multiple civil lawsuits that were subsequently filed alleging racial discrimination have since been settled."

Were the settlements of these lawsuits part of this labor resolution?

GETNICK: There were significant disagreements about some of those allegations, in particular the *Hollywood Reporter* article. Having said that, I have no desire and I don't think it's productive to attempt to relitigate that.

I will simply say that the two litigations that were associated with the labor protests were resolved. And they were resolved amicably during the course of the negotiations.

Once people began to understand one another and put things in context, everything began to fall into place.

There was a more problematic third lawsuit which was not associated with the union. That one made the type of allegations cited in the *Hollywood Reporter* article which you have referenced. Suffice it say that lawsuit was dismissed for a failure to adduce any proof, with sanctions assessed against

the claimant and counsel for their conduct which the adjudicator characterized as "vexatious."

CCR: You believe that this can be a model to resolve not just labor disputes, but other kinds of corporate disputes.

GETNICK: This comes down to a distinction between law driven compliance and business driven integrity. Companies typically rely on law driven compliance rather than business driven integrity.

Law driven programs seek to avoid punishment by meeting the letter of the law, often without developing a deeply rooted culture of integrity. And in many cases, law driven programs are only grudgingly tolerated by executives and employees and they often fail as a result.

By contrast, a business driven integrity program is much more likely to prove effective because business people from the top down, not just those in the compliance or legal departments, embrace and promote it as essential to the long term success of the company. A business driven integrity program is seen throughout the company as a profit center and as a competitive advantage and not as a cost center or an obstacle.

Let's use that as the starting point.

CCR: Your friend who owns the Chateau Marmont has a mindset and politics amenable to this kind of settlement. But probably the vast majority of CEOs don't have that mindset that is amenable. Is this a model just for a limited number of CEOs who head companies with a culture of integrity?

GETNICK: It can and should be more significant than that. The Chateau Marmont now has an envied position in the hotels operating in Los Angeles, by virtue of the business model that has been able to adapt itself to the presence of unionized employees and still operating a master class luxury boutique hotel.

There are many who have said in the past that luxury boutique hotels and unions are incompatible. We proved the opposite. The rest of the industry looks at the Chateau as having overcome that.

You mentioned the Gold Party hosted by Jay Z and Beyonce. That was not picketed in 2023, but in 2022 when the protests were taking place.

The more meaningful event that took place at the Chateau in 2023 was the annual celebration of SAG AFTRA after resolving its long standing union strike. Where did they choose to celebrate?

They chose to celebrate at the Chateau Marmont because the Chateau was recognized as

friendly ground. That speaks volumes to what was accomplished reputationally by putting good conduct into the business model, making it a competitive advantage.

That's very important. What do we mean by good conduct? Integrity, transparency, good governance and social responsibility. It all sounds very soft. However, that good conduct has to be measured in profitability, productivity, effectiveness and efficiency. Those can be accomplished. And those companies that follow that program of developing such a culture can achieve that.

As you know, last month the Southern Christian Leadership Council bestowed its Martin Luther King Beloved Community award on Andre Balazs, Kurt Petersen, the president of the union, as well as myself. That's a big deal. It makes a strong statement. The beloved community was the culminating vision in Dr. King's vision for a more just society.

It was through the starting action of Pastor Smart that the Chateau Marmont and the union went on to achieve a mutually beneficial collective bargaining agreement. And make no mistake about it, that's a good thing. But Pastor Smart led us to higher ground.

A contract is transactional whereas a covenant is transformational. And we ended up with a covenant embodied by the present alliance of the hotel and the union and the SCLC that allows them to pursue a continuing initiative for social and economic justice.

That goes beyond the four corners of the collective bargaining agreement. That's the greatest statement of what it means to have and to act on a culture of integrity.

CCR: Do you have a sense of what proportion of large corporations have what you call a culture of integrity?

GETNICK: Many times I feel as if we are far more effective in our fight against fraud and corruption than we are in promoting business integrity. But I will say that our victories in promoting good conduct and business integrity bring me the greatest satisfaction.

To answer your question – we are certainly not where we need to be in elevating good ethics and a culture of integrity.

But I do think we are in a better place than we were several decades ago. And the whole key is to continue to demonstrate that good conduct and good

business follow one another.

CCR: It's frustrating because there is no way to measure whether corporations have cultures of integrity or not. If there were a way, we could show which companies had good cultures and which didn't.

GETNICK: Your point is well taken. We go through cycles that very often prove disappointing. The term greenwashing is now well known. It refers to companies that seek to give the appearance of being environmentally compliant when the reality falls short of the advertising.

ESG is something that needs to be looked upon somewhat skeptically and carefully. We see ESG rating systems but those rating systems may fail to tell us everything we need to know.

Once again, a culture of integrity is different from a corporate compliance policy. You can take a look at some of the worst corporate offenders, true recidivists, and they don't have gold standard compliance programs, they have platinum standard compliance programs.

But at the end of the day, those compliance programs are not bringing the company along as a result of a failure to establish a culture of integrity.

CCR: The corporate compliance industry is large and growing fast – teaching corporations how to build platinum standard compliance programs. But as you say, it might not make that much of a difference. Let's say you are looking at a company with a platinum standard compliance program. How do you judge whether it has a culture of integrity, or not?

GETNICK: You are reminding me of a set of Congressional hearings that took place – I believe it was 2016 – in which the Chamber of Commerce was arguing before a House committee that companies that have gold standard compliance programs should be given some type of further consideration if there are False Claims Act violations that follow.

Senator Charles Grassley came in to testify at that House hearing. He made a simple observation. He said that if a company claims to have a gold standard compliance program, it shouldn't be experiencing False Claims Act violations.

His standard is – are you in conformity with the law? Or are you not in conformity with the law? Following his testimony, there was no action taken along the lines that the Chamber was proposing.

CCR: But if you come across a big company with a

culture of integrity, that doesn't mean that these issues are not going to arise. In big companies, they always arise, culture of integrity or not.

GETNICK: The approach makes a real difference when employees confront real life issues such as kickback arrangements, price fixing or insider trading.

Their responses become less a matter of consulting a legal guidance memo than fulfilling a company's basic mission and business model if the company is promoting a culture of integrity. The core principle becomes that good conduct is good business. When the rubber meets the road, the employee has guidance of what to do.

This segues into our whistleblower practice. One of the best tests of a corporation is how the company responds to internal whistleblowers who report misconduct.

If the company is serious about business integrity, it will welcome the report, investigate it vigorously and shield the whistleblower from retaliation. Again, good conduct is good business. When whistleblowers are ignored and penalized, often their next step is a prosecutor's office.

It becomes a carrot and stick approach. The overriding goal should be the reform of corrupt industries and markets, not just individual companies.

That goal can be achieved only by combining powerful business driven integrity programs with effective law enforcement. I would argue that out of enlightened self interest if nothing else, American business should support that combined effort enthusiastically.

You started out our discussion talking about Boeing. Boeing is an unfortunate example of what can result when a company departs from that approach.

CCR: Have you served as a monitor?

GETNICK: Yes. During the 1990s, I was part of a group of lawyers, investigators, forensic accountants – who had come together to draft a code of conduct for independent monitors. At that time it was known as the Independent Private Sector Inspectors General (IPSIG).

We served in many monitorships over the years. The most emblematic and most important is when we served in the post-911 World Trade Center cleanup. We were one of four monitors. After that disaster, the Congress held an investigative hearing.

They found a lot of areas to be critical about. But the one thing that even surprised them was they

found the independent monitoring program to be a massive success. That project came in on time, below budget, and to specification. The Congressional Committee deemed that a best practice to be emulated in future man made and natural disasters.

I was frustrated by what happened next. Katrina followed not too long after that. And it appeared that all of the lessons had been lost. And the response to the Puerto Rican hurricanes Irma and Maria was a more recent example of a post disaster clean up not accomplishing what it should. And the use of integrity monitors could have made a very big difference.

Interestingly in Puerto Rico, it was the electric grid workers – their union – that pushed for the appointment of an independent monitor. I can't say for sure it would have made a difference, but there is little doubt that what happened instead is not what anyone wanted.

CCR: In the Boeing plea deal, the monitor will report to the judge. But there is only a requirement that an executive summary of the monitor's report will be made public once a year.

Is that a best practice?

GETNICK: I can only tell you the model we followed. So this is our best practice. A majority of our reporting found its way into a report to the government and the judge. And those reports were publicly released. There were certain confidential items that were then under investigation. And that portion of the report was sealed. That's a far better approach.

CCR: In interviewing a corporate defense attorney a couple of months ago, he used a term I had never heard of – a voluntary corporate monitor. Have you heard that term before?

GETNICK: Yes. As I understand it, a voluntary corporate monitor is a monitor the company will use to negotiate with the government. Rather than waiting for one to be imposed on it, it will voluntarily offer up a monitor that would be acceptable to the government.

If the monitor is not arising as a result of some problem with the government, then I would describe that not so much as a corporate monitor, but rather as an integrity counsel that the company is voluntarily establishing in order to take on this function.

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