

How DOJ Is Rethinking Corporate Crime Prosecution Tactics

By **Ashley Nyquist, Kathryn Irwin Bronstein and Ruth Woldemichael** (March 9, 2026, 3:52 PM EDT)

At the December 2025 American Conference Institute's Conference on Foreign Corrupt Practices Act and Global Anti-Corruption, Deputy U.S. Attorney General Todd Blanche and then-head of the U.S. Department of Justice's Criminal Division Matthew Galeotti provided insight into the DOJ's enforcement priorities.

Both officials emphasized that prosecutors generally should seek a corporate criminal resolution only when they also have enough evidence to charge an individual whose conduct can be fairly imputed to the company.

While Galeotti acknowledged that exceptions may exist, he specifically highlighted the DOJ's desire not to hold companies liable for diffuse knowledge within an organization. These statements echoed Galeotti's June 2025 remarks highlighting that FCPA enforcement should focus on individual misconduct rather than "collective knowledge theories,"^[1] and they also align with the DOJ's long-standing pronouncements about prioritizing the prosecution of individuals alongside corporate criminal enforcement actions.^[2]

Over the course of more than half a century, courts in the criminal context have occasionally opined that such collective knowledge theories allow the aggregation of individual employees' knowledge to establish a corporation's knowledge of a fact.^[3]

While other courts have contemplated whether collective knowledge can be stretched even further to bear on a corporation's intent — a concept sometimes referred to as "collective intent" — they have generally rejected the idea that aggregating innocent scraps of employee knowledge, without more, can establish corporate intent, and thus, liability.^[4]

Though not explicit from the DOJ's recent statements, it appears the department may be de-prioritizing the latter theory, effectively stepping back from arguments that collective knowledge theories can serve as a work-around to the principle of respondeat superior, discussed below.

Any efforts to rein in expansive theories of corporate liability would, of course, be a welcome development for potential corporate defendants. This is particularly true for collective knowledge theories untethered to respondeat superior. At the same time, uncertainties in this area, along with the availability of related theories, counsel against relaxing compliance expectations



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even if the DOJ backs away from collective knowledge.

Doctrinal Underpinnings of Corporate Liability

Tethering corporate liability to individual wrongdoing is consistent with the fundamental principle of respondeat superior. A company acts through its employees and agents and thus can be held liable for the misconduct of those employees and agents acting within the scope of their employment and, at least in part, for the benefit of the company.[5] In the criminal context, this means the government must prove beyond a reasonable doubt that at least one individual employee satisfied each element of a criminal offense, including possessing the requisite mens rea — whether that is willfulness, knowledge, reckless disregard or something less.[6]

But DOJ has occasionally entertained trying to prove corporate mens rea without putting forward evidence that a single individual within the company possessed the requisite mens rea.[7]

Consider the following scenario: Employees A and B work for a company. Employee A certifies to a government agency that no organizational conflict of interest exists between the company and a contractor. Meanwhile, Employee B knows about an organizational conflict of interest between the company and contractor, but does not know about the certification.[8] In this situation, the company has made a false statement to the government — but it may not be criminally liable under respondeat superior because neither employee made a false statement knowingly and willfully (the mens rea required for this federal offense).

Are there circumstances where a company can nonetheless be held legally accountable?

The Original Principle: Collective Knowledge

Faced with diffuse knowledge scenarios like the hypothetical described above, the government and courts have occasionally invoked corporate collective knowledge to assess corporate liability. Appearing sporadically in the case law, the most common articulation of the doctrine asserts that a corporation is deemed to know the sum of what all of its employees know, even if that sum exceeds any single employee's knowledge.[9]

A 1987 decision by the U.S. Court of Appeals for the First Circuit, *U.S. v. Bank of New England NA*,^[10] is widely credited with establishing the collective knowledge doctrine, though courts considered the concept before then.^[11]

In *Bank of New England*, the First Circuit affirmed a bank's conviction for willfully — i.e., knowingly and with specific intent to violate the law — failing to file reports required under the Currency Transaction Reporting Act.^[12] In doing so, the court upheld a jury instruction providing that the government could establish the bank's knowledge of its reporting obligations through "the totality of what all of the employees [knew] within the scope of their employment."^[13]

In other words, as the trial court's judge instructed, "if Employee A knows one facet of the currency reporting requirement, B knows another facet of it, and C a third facet of it, the bank knows them all."^[14] Finding the jury instruction "entirely appropriate in the context of corporate criminal liability," the court even called such an instruction "necessary" when a large corporate defendant has a "compartmentalized structure."^[15]

In the years since the First Circuit's Bank of New England ruling, some courts have similarly endorsed the concept that companies know the aggregate of what their employees know, though acceptance of that concept — particularly in civil contexts where such knowledge bears a much closer relationship to liability — has by no means been universal.[16]

Attempts to Stretch the Doctrine: Collective Intent

From time to time, courts have considered whether the doctrine can also play a role in establishing intent, and whether mere aggregation of knowledge — without more — can fully establish a corporation's liability. These broader theories have generally been rejected.

At bottom, when courts have considered the doctrine — whether formulated as collective intent or even as basic collective knowledge — in contexts where it would bear directly on liability, they have been skeptical.[17] As a result, the doctrine has had limited practical impact overall.

Returning to our hypothetical, collective knowledge would provide that the company knew it filed a certification, and also knew facts showing the certification was false — more than what Employee A or B knew on their own. Collective intent would go a step further, suggesting that because the company knew all of these facts, it possessed a culpable mental state (in the federal false statements context, knowing and willful), even where Employees A and B did not.

If the government could rely on the doctrine in this way — to manifest corporate intent to violate the law, even absent individual intent — the practical result could be to create a lesser mens rea requirement for companies as compared to individuals, thus significantly expanding corporate enforcement potential.

A close reading of the case law, however, suggests that the collective knowledge doctrine has yet to be extended to establish criminal intent in the type of scenario described above.[18]. Take the Bank of New England case, for example. Even this seminal case[19] does not appear to rely on the collective knowledge finding in its ultimate holding.

In assessing the bank's intent to violate the law, the First Circuit focused on the conduct of a specific employee, the head teller, rather than multiple employees.[20] As the opinion clarifies, the head teller both knew about and intended to violate the reporting requirement.[21] Because it found that the head teller acted willfully, the court seemingly relied on respondeat superior to establish a corporate violation, despite its involved discussion about the appropriateness of a collective knowledge jury instruction.

Three decades later, the U.S. District Court for the Northern District of California's 2015 ruling in *U.S. v. Pacific Gas and Electric Co.* sparked commentary about whether a court had endorsed the use of collective intent to establish a willful violation of a criminal statute,[22] but a close examination casts doubt on that conclusion.

There, the court rejected PG&E's motion to dismiss an indictment based on the prosecutor's instruction to the grand jury that it could charge PG&E with knowing and willful violations of the Pipeline Safety Act based on "the actions of all of its employees" rather than any single individual whose liability could be imputed to the company.[23] In response to PG&E's contention that no court had ever "'collect[ed]' intent across employees" to prove that a corporate defendant acted willfully, the court emphasized that the prosecutor had not asked the grand jury to "aggregate innocent pieces of information" to prove

intent.[24]

Relying on an earlier line of cases — and applying a highly deferential standard of review[25] — the court held that the grand jury may consider whether employees' "knowledge and disregarding of" an affirmative duty could collectively demonstrate the company's willful violation of that duty.[26]

Despite rejecting PG&E's challenge to a grand jury instruction based on collective knowledge, however, the trial court's final instructions to the petit jury on willfulness were different. Instead of parroting the prosecutor's instructions, the court told the jury that it could find that PG&E acted willfully only if a particular employee had acted willfully.[27]

To the extent a collective knowledge lesson can be drawn from the ruling in the PG&E case,[28] it is important to recognize that the line of cases the court relied on involved three features that significantly cabin its application in most federal corporate criminal cases: (1) an affirmative regulatory duty; (2) a judicial interpretation of "willfulness" to encompass something less than intent to violate the law, such as reckless disregard or plain indifference; and (3) facts suggesting not just an innocent or negligent mistake, but also a deliberate disregard for the relevant requirement.[29]

And while the courts in these cases didn't consider alternative arguments, the facts as outlined at least raise the question of whether the government could instead have pointed to employee mens rea to support a theory based on respondeat superior, as the Bank of New England court did in its finding of corporate willfulness.

This consideration of the case law suggests the collective knowledge doctrine has a limited role, if any, especially in crimes predicated on intent to violate the law.[30]

What's Left? Collective Knowledge in Today's Enforcement Environment

As a practical matter, then, there may be limited daylight between a DOJ policy position to not pursue collective intent theories and the law, at least in the kinds of cases most likely to occupy the Criminal Division's attention, as the doctrine is already narrow in scope. And, as the Bank of New England ruling illustrates, even if the DOJ continues to pursue collective knowledge theories, this principle on its own — without a role in establishing intent — rarely plays a dispositive role in these kinds of criminal cases, which require some level of intent beyond mere knowledge.[31]

The recent pronouncements could, however, signal an incremental shift away from the DOJ's willingness to raise collective intent-style theories in settlement discussions or in court, and from exploring the bounds of a body of case law that has not been a model of clarity.

Of course, the DOJ has left the door open to exceptions, policy positions can change and limitations periods can extend past the current administration.[32] What's more, it remains to be seen how the DOJ will address situations involving perceived corporate wrongs, diffuse knowledge and a "plus factor" of sorts that suggests culpable behavior. After all, while courts have expressed skepticism about a theory that would impose liability on a company for innocent bits of knowledge held by various employees,[33] they are also reluctant to allow companies to shield against liability by, for example, intentionally compartmentalizing knowledge within the organization.[34]

For example, courts in the civil False Claims Act context have recognized that a plaintiff could theoretically establish that a company acted with deliberate indifference as to the truth of its claims

when a corporate structure prevented it from learning relevant facts.[35]

The DOJ may try to frame legal theories based not on collective intent, but on an argument that the corporation directly possessed a culpable mental state as demonstrated through its corporate policies — in other words, a different alternative to respondeat superior. Or, it may try to make out a respondeat superior argument by pointing to an individually culpable employee, assuming, of course, the government could meet evidentiary thresholds.[36]

Regardless, an ultimate decision by the DOJ not to press collective knowledge theories as a basis for corporate criminal liability will not necessarily stave off an investigation to look for evidentiary support for other theories of liability.

Companies, then, should be wary of interpreting the DOJ's comments as a signal to relax compliance expectations. They should be particularly attuned to avoiding any appearance of taking advantage of corporate siloing, which the DOJ may view as intentional conduct as opposed to an innocent side effect of corporate bureaucracy that only the collective knowledge doctrine could transform into a crime.

At the same time, an understanding of the doctrine, alongside the DOJ's comments, serves as a reminder — and an invitation — to advocates to be rigorous in developing facts and analyzing the basis for allegations of corporate misconduct, including their grounding in tangible individual employee conduct.

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[1] Matthew Galeotti, Acting Assistant Att'y Gen., Dep't of Just., Remarks at American Conference Institute Conference (June 10, 2025); see also U.S. Dep't of Just., Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (June 9, 2025) (directing that "prosecutors shall focus on cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures").

[2] See generally U.S. Dep't of Just., Just. Manual § 9-28.210 (2023) and U.S. Dep't of Just., Memorandum on Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015) (the "Yates Memo") (emphasizing importance of identifying culpable individuals in corporate prosecutions).

[3] See, e.g., *United States v. Bank of New England*, 821 F.2d 844, 855–56 (1st Cir. 1987). As discussed below, courts in the civil False Claims Act context have not been as willing to take collective "knowledge" principles as a given. See, e.g., *United States v. Sci. Applications Int'l Corp.*, 626 F.3d 1257, 1274 (D.C. Cir. 2010) ("We nonetheless believe that under the FCA, 'collective knowledge' provides an inappropriate basis for proof of scienter because it effectively imposes liability, complete with treble damages and substantial civil penalties, for a type of loose constructive knowledge that is inconsistent with the Act's language, structure, and purpose.").

[4] See, e.g., *United States v. LBS Bank-New York, Inc.*, 757 F. Supp. 496, 501 n.7 (E.D. Pa. 1990) (endorsing the concept of collective knowledge and noting "specific intent cannot be aggregated similarly"); *Sci. Applications Int'l Corp.*, 626 F.3d at 1275 (rejecting a version of the collective knowledge theory that would "allow[] a plaintiff to prove scienter by piecing together scraps of 'innocent' knowledge held by various corporate officials, even if those officials never had contact with each other or knew what others were doing in connection with a claim seeking government funds") (internal quotations omitted).

[5] See *New York Cent. & Hudson River R.R. Co. v. United States*, 212 U.S. 481, 494–95 (1909).

[6] U.S. Dep't of Just., *Just. Manual* § 9-28.210 (2023).

[7] See, e.g., *United States v. Pacific Gas and Electric Co.*, No. 14-cr-00175, 2015 WL 9460313, at *3 (N.D. Cal. Dec. 23, 2015) (hereinafter "PG&E") (considering the government's instructions to the grand jury that "the company, not any individual, but the company through the actions of its employees" can willfully violate the law).

[8] Loosely based on *United States ex rel. Harrison v. Westinghouse Savannah River Co.*, 352 F.3d 908 (4th Cir. 2003).

[9] *Bank of New England*, 821 F.2d at 855–56.

[10] *Id.*

[11] Even before *Bank of New England*, a line of cases involving common carriers also relied on a corporation's collective knowledge to find knowing and willful failures to act in response to a specific affirmative regulatory obligation known to the corporation. See, e.g., *United States v. T.I.M.E.-D.C., Inc.*, 381 F. Supp. 730, 738–41 (W.D. Va. 1974) (finding that a motor carrier company had willfully disregarded its duties under motor vehicle safety regulations where employees collectively knew that violations were occurring and the corporation declined to act on that knowledge).

[12] *Bank of New England*, 821 F.2d at 847, 854.

[13] *Id.* at 847, 855.

[14] *Id.* at 855.

[15] *Id.* at 856.

[16] See, e.g., PG&E, at *3 ("There is ample persuasive precedent and widespread acceptance of legal treatises that define a 'collective knowledge' theory to prove that a corporate defendant acted 'knowingly.'"); *LBS Bank-New York, Inc.*, 757 F. Supp. at 501 n.7 ("[K]nowledge possessed by employees is aggregated so that a corporate defendant is considered to have acquired the collective knowledge of its employees") (citations omitted). But see *Sci. Applications Int'l Corp.*, 626 F.3d at 1274 ("We nonetheless believe that under the FCA, 'collective knowledge' provides an inappropriate basis for proof of scienter because it effectively imposes liability, complete with treble damages and substantial civil penalties, for a type of loose constructive knowledge that is inconsistent with the Act's language, structure, and purpose.").

[17] See, e.g., *Sci. Applications Int'l Corp.*, 626 F.3d at 1274; *LBS Bank-New York, Inc.*, 757 F. Supp. at 501 n.7; *Westinghouse Savannah River Co.*, 352 F.3d at 918 n.9 (rejecting an argument that the district court should have instructed the jury on collective knowledge in a way that would have allowed the "cobbling together of pieces of 'innocent' knowledge to find the requisite scienter"); *First Equity Corp. v. Standard & Poor's Corp.*, 690 F. Supp. 256, 260 (S.D.N.Y. 1988) ("While it is not disputed that a corporation may be charged with the collective knowledge of its employees, it does not follow that the corporation may be deemed to have a culpable state of mind when that state of mind is possessed by no single employee.").

[18] In fact, even in the civil False Claims Act context, where the relevant mens rea requirement is "knowingly," courts have rejected the notion that the mere combination of innocent knowledge—without, for instance, evidence of intentional corporate siloing of relevant information—can establish corporate scienter. See, e.g., *Sci. Applications Int'l Corp.*, 626 F.3d at 1275–76.

[19] Mihailis E. Diamantis, *Corporate Criminal Minds*, 91 *Notre Dame L. Rev.* 2049, 2069 (2016).

[20] *Bank of New England*, 821 F.2d. at 857.

[21] *Id.* (discussing evidence that one of the bank's head tellers received a memo on the reportability of transactions under the Currency Transaction Reporting Act and knew that the transactions were reportable, "but, on one occasion, deliberately chose not to file a [report] . . . because [the customer] was 'a good customer.'").

[22] See Steve Solow, *What Does A Corporation Have to "Know" to Be Criminally Prosecuted?*, COMPLIANCE & ENFORCEMENT, https://wp.nyu.edu/compliance_enforcement/2016/10/05/what-does-a-corporation-have-to-know-to-be-criminally-prosecuted/ (last visited Jan. 13, 2026) ("[T]he PG&E case represents the first adjudicated case in decades to hold a corporation liable for a knowing and willful charge based on a theory of collective intent.").

[23] *PG&E*, 2015 WL 9460313, at *3–6.

[24] *Id.* at *3–4.

[25] *Id.* at *1 (explaining that "a district court may not dismiss an indictment for errors in grand jury proceedings unless such errors prejudiced the defendants") (citation omitted).

[26] *Id.* at *4–5.

[27] *Order Regarding Jury Instr. on Intent Elements of Regulatory Counts, United States v. PG&E*, No. 3:14-cr-00175 (N.D. Cal. Jul. 26, 2016), ECF No. 826 (Jury Instruction No. 28: Willful Intent of a Corporation).

[28] Collective knowledge instructions were again at issue in a 2016 case, with both the government and the court declining to endorse a "collective intent" version of the doctrine. See *United States v. FedEx Corp.*, No. 14-cr-00380, slip op. (N.D. Cal. Apr. 18, 2016). In the prosecution of FedEx for allegedly knowingly and intentionally conspiring with online pharmacies to deliver illegal prescriptions, FedEx moved to dismiss its indictment based on grand jury instructions that it argued had allowed for "collective mens rea." *Id.* at 1. The court denied the motion, finding both that FedEx had failed to establish that the instructions actually had endorsed "collective intent" rather than knowledge, and that

FedEx had failed to identify any authority that called into doubt instructions on collective intent or collective knowledge. *Id.* at 2. While the district court did not further explain its reasoning, the government's opposition to FedEx's motion to dismiss suggests that even the government understood the grand jury instructions at issue to only apply to the establishment of knowledge, not intent. See United States' Opposition to Motion to Dismiss the Indictment Due to Errors in the Grand Jury Proceedings at 10, *United States v. FedEx Corp.*, No. 14-cr-00380 (N.D. Cal. Apr. 6, 2016) ("The defendants contend that the collective-knowledge doctrine 'has been the subject of considerable . . . criticism' since *Bank of New England*, but they provide little support for that claim. Indeed, all of the sources that they cite for this proposition are focused on a different question – whether it is would be appropriate to apply the collective-knowledge approach to more culpable states of mind, such as actual malice or intent.") (citations omitted).

[29] See *PG&E*, 2015 WL 9460313, at *4–5 (discussing *T.I.M.E.-D.C., Inc.*, 381 F. Supp. at 738, 741); see also *Riss & Co. v. United States*, 262 F.2d 245, 248 (8th Cir. 1958) (holding that corporate willfulness in the context of a motor carrier safety regulation related to limiting drivers' maximum number of hours per day can be shown if the defendant "either intentionally disregards the statute or is plainly indifferent to its requirements") (citation omitted); *United States v. Sawyer Transp., Inc.*, 337 F. Supp. 29, 30 (D. Minn. 1971) (same, for a requirement to maintain driver logs); *T.I.M.E.-D.C., Inc.*, 381 F. Supp. at 740 (same, for a requirement related to driver impairment).

[30] *LBS Bank-New York, Inc.*, 757 F. Supp. at 501 n.7 ("Although knowledge possessed by employees is aggregated so that a corporate defendant is considered to have acquired the collective knowledge of its employees . . . specific intent cannot be aggregated similarly.") (citations omitted).

[31] See, e.g., *Bank of New England*, 821 F.2d at 857 (discussing the bank teller's intent to violate the Currency Transaction Reporting Act).

[32] In addition, at least one state, Massachusetts, permits the use of collective knowledge to establish corporate knowledge (but not intent or recklessness) in criminal cases. See *Commonwealth v. Martins Maint., Inc.*, 190 N.E.3d 1099, 1104–11 (Mass. App. Ct. 2022) (finding sufficient evidence, based on the collective knowledge of employees, to establish probable cause that company knowingly violated a labor trafficking criminal statute); *Commonwealth v. Springfield Terminal Ry. Co.*, 951 N.E.2d 696, 705 n.17 (Mass. App. Ct. 2011) (explaining that the collective knowledge doctrine is appropriate when "liability requires a showing of knowledge only," but inappropriate when "liability requires a showing of intent or recklessness"). DOJ pronouncements would not necessarily guide state law use or interpretation of the collective knowledge doctrine.

[33] See, e.g., *PG&E*, 2015 WL 9460313, at *4; *Sci. Applications Int'l Corp.*, 626 F.3d at 1275.

[34] See, e.g., *Westinghouse Savannah River Co.*, 352 F.3d at 919 ("If we established such a [single actor] rule, corporations would establish segregated 'certifying' offices that did nothing more than execute government contract certifications, thereby immunizing themselves against FCA liability."); *United States v. Shortt Acct. Corp.*, 785 F.2d 1448, 1454 (9th Cir. 1986) ("If [defendant's theory was] accepted by the courts, any tax return preparer could escape prosecution for perjury by arranging for an innocent employee to complete the proscribed act of subscribing a false return.").

[35] *Sci. Applications Int'l Corp.*, at 1275–76 ("Under the FCA, if a plaintiff can prove that a government contractor's structure prevented it from learning facts that made its claims for payment false, then the plaintiff may establish that the company acted in deliberate ignorance or reckless disregard of the truth

of its claims."). Additionally, in the pleadings stage of securities fraud class actions, at least some courts appear to recognize the potential relevance of collective knowledge in the context of corporate scienter. *Rahman v. Kid Brands, Inc.*, 736 F.3d 237, 246 (3d Cir. 2013) (declining to accept or reject the "corporate" or "collective scienter" doctrine, but explaining that, under the doctrine, "[a] plaintiff can use corporate or collective scienter to plead an inference of scienter against a corporate defendant without raising the same inferences required to attribute scienter to an individual defendant") (citing *City of Monroe Emps. Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651 (6th Cir. 2005) as recognizing the doctrine).

[36] See, e.g., *Bank of New England*, 821 F.2d at 857 (identifying a single employee with the requisite knowledge and intent, despite a collective knowledge finding).