

3rd Annual Government Enforcement Institute

Addressing Corporate Wrongdoing in 2016: Practical Considerations from the Corporate Defense Perspective

**A Panel Discussion, presenting views of corporate defense counsel
who are all former Federal Prosecutors.**

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The subject—in light of the recent policy statement in the 2015 Yates Memo by Deputy Attorney General Sally Yate--raises numerous questions, most as to the *practical applications* of its policies.

First, a look back at the recent history of DAG Policy Statements on Charging Corporations and their officers:

1999--The Holder Memo:

Deputy Attorney General Eric Holder (1997-2001) first stated the “Principles” in 1999, some two years after he initially took the post under Attorney General Janet Reno during the Clinton administration.

Thereafter, although not every DAG authored a similar memo, there was a string which followed, containing various revisions or alterations to certain of the principles.

2003—The Thompson Memo

Holder's successor, Bush administration DAG Larry Thompson (2001-2003), propounded a similar memo.

At that point, the Principles became a part of the U.S. Attorney's Manual, formally known as the Principles of Federal Prosecution of Business Organizations (USAM § 9-28.000).

The Thompson memo contained *nine factors* for prosecutors to consider when charging a corporation, but much of the attention focused on the giving of credit for the corporation's "cooperation" in the investigation of corporate agents.

The concept of crafting specific policy to motivate corporations as well as their officers and counsel to *assist* rather than *resist* an investigation, continued thereafter and remained a central theme.

The Thompson memo also specifically mentioned that credit for cooperation could be given for the *waiver of attorney-client and work product protections*. (This, however, was short-lived)

The Thompson memorandum for the most part remained in effect during the 2003–2005 term of DAG Jim Comey (now FBI director).

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"Punishing Corporations Isn't Enough: The Government's Push to Prosecute Individuals"