

3RD ANNUAL

Government Enforcement Institute

Surviving Internal Investigations and Prosecution:

A General Counsel's Personal Experience

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3RD ANNUAL GOVERNMENT ENFORCEMENT INSTITUTE

The Internal Investigation

- A creation of the application of respondeat superior liability principles to criminal law and the incentive system of cooperation credit offered by the government (DOJ, SEC, etc.)
- Its practice is largely unregulated, so long as the government gets what it seeks
- A field of significant economic activity

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The Yates Memorandum

In order for a company to receive any consideration for cooperation under the Principles of Federal Prosecution of Business Organizations, the company must completely disclose to the Department all relevant facts about individual misconduct. **Companies cannot pick and choose what facts to disclose.** That is, to be eligible for any credit for cooperation, the company must identify all individuals involved in or responsible for the misconduct at issue, **regardless of their position, status or seniority**, and provide to the Department all facts relating to that misconduct.

*Sally Q. Yates, Deputy Attorney General
September 9, 2015*

How Many Documents Are There?

“[I]nvestigators often must reconstruct what happened based on a painstaking review of corporate documents, which can number in the millions, and which may be difficult to collect due to legal restrictions.”

Yates Memorandum.

How Much is Enough?

“But let me be clear – this does not mean companies are required to conduct overly broad investigations or embark on a years-long, multimillion dollar investigation every time a company learns of misconduct, or what I’ve heard described as ‘boiling the ocean.’ On the contrary, we expect companies to carry out a thorough investigation tailored to the scope of the wrongdoing.”

Sally Q. Yates
May 10, 2016

“The Perfect Payday”: WSJ March 18, 2006 Options grant dates for Kobi Alexander, Comverse Technology CEO Odds of picking dates by chance: 1 in 6,000,000,000



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First appeared as part of the conference materials for the
3rd Annual Government Enforcement Institute session

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