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#### **Government Enforcement Institute**

# Surviving Internal Investigations and Prosecution:

#### A General Counsel's Personal Experience

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### 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 <u>any</u> 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

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# **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.

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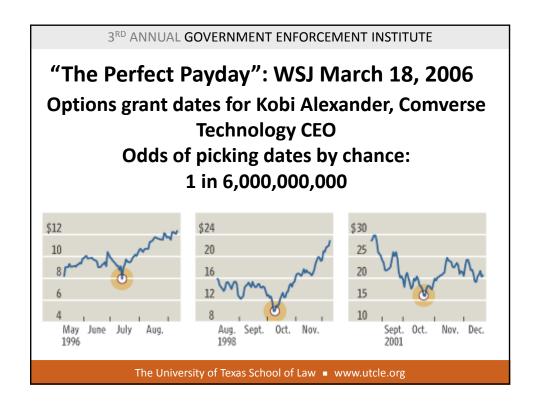
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## How Much is Enough?

"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

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