

3<sup>RD</sup> ANNUAL

## 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 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, Converse  
Technology CEO  
Odds of picking dates by chance:  
**1 in 6,000,000,000**



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## Title search: Surviving Internal Investigations and Prosecution: A General Counsel's Personal Experience

Also available as part of the eCourse

[In-House Counsel's Effective Management of Investigations](#)

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3<sup>rd</sup> Annual Government Enforcement Institute session

"Surviving Internal Investigations and Prosecution: A General Counsel's Personal Experience"