

**DIRECTORS, C-SUITE &  
CORPORATE COUNSEL:  
INCORPORATING ETHICS FOR  
SUCCESSFUL BUSINESS OPERATIONS**

**March 21, 2014  
Washington, D.C.**





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**DIRECTORS ROUNDTABLE**

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Directors, C-Suite Executives, and General Counsel have important responsibility maintaining ethics standards throughout all business operations. Four key areas are: (1) the increasing emphasis on compliance issues; (2) the education of employees regarding proper practices; (3) the need to ensure that outside partners and suppliers possess the same ethical core values as your corporation; and (4) furthering successful operations. Thomas Sager, Senior Vice President and General Counsel of DuPont, will focus his Keynote Address on how corporations ensure that they conduct business in compliance with legal requirements and consistent with their ethics and values.

The Distinguished Panelists will also discuss key ethics issues including compliance; government regulation and enforcement; investigating possible unethical and/or fraudulent behavior; treatment of employees; whistleblowing; privilege; and internal reporting.

**KEYNOTE SPEAKER**

Thomas L. Sager

Senior Vice President & General Counsel, DuPont

**DISTINGUISHED PANELISTS:**

Michael Feinberg

Counsel, Cahill, Gordon & Reindel, LLP

Angela Styles

Partner, Crowell & Moring LLP

Sanjay Bhandari

Partner, Ballard Spahr

Blake Coppotelli

Managing Director, Freeh Group International Solutions

Jack Friedman (Moderator)

Chairman, Directors Roundtable

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our Website, [directorsroundtable.com](http://directorsroundtable.com).)

**TRANSCRIPT**

**JACK FRIEDMAN:** I am Jack Friedman, Chairman of the Directors Roundtable. We are a civic group that hosts programming for Boards of Directors and their advisors, which includes General Counsel in the Bar. We have done 800 events globally and no one has ever paid to attend. This is truly a civic effort.

In this case it is a particularly in-depth look at the relationship between the legal and business parts of corporations. While most of the case examples may be international, a lot of the principles will be applied to domestic companies, and even private companies who have to worry people getting upset if the company does not conduct itself in the right way. I hope you can relate to how this may affect your particular company.

Tom will give his presentation and will dialogue with the Distinguished Panel.

I would first like to tell you why I respect Tom Sager. Tom not only is a capable General Counsel with great experience, but he is also known as one of the top handful of General Counsel who are committed to various important values and public policy issues. He is famous in the diversity area, but it goes beyond that. It also reflects DuPont's values. Tom has helped to make it part of the company.

I also wanted to mention some of the groups that are represented here who work with him. There is the Minority Corporate Counsel Association and the Women Lawyer's Group.

I would now like to have our keynote speaker, Tom Sager, come to the podium. Thank you.

**THOMAS SAGER:** Good morning to you all. Thank you for turning out as you have, I'm just heartened by the size of the group today.

I wanted to say up front, this is not a lecture, because I found over the years he who lectures today, is in the headlines tomorrow. (Laughter)

This is by design to be an engagement with you all and the panelists, and to learn from each other as to how we can address what I consider to be a very vexing problem for multinational corporations. As you grow and you're focusing on developing countries, the challenges in the area of risk I'm finding very daunting in that many of these countries have high corruption indexes. We have little physical presence. We are relying to a large extent upon third parties that we have to vet, and hopefully instill in them the core values of the DuPont Company, and of course, how to conduct business ethically in areas and cultures that don't necessarily align with ours.

This is an attempt on my part to share with you what we're doing by way of addressing this risk and to listen to you and the panelists regarding other ideas that might advance this whole area.

I do want to give a little background on DuPont. A number of you know DuPont quite well having represented us for any number of years, but perhaps some of you don't.

We are a 212 year old company, founded in 1802 on the banks of the Brandywine River in Wilmington, Delaware. We are into our third transformation and a free lunch for anybody who can get this question right.

Who was the first lawyer to represent DuPont?

**[AUDIENCE MEMBER]:** Brandeis?

**THOMAS SAGER:** No, Alexander Hamilton. (Laughter.)

He represented DuPont from 1802 to 1804. Of course, you know his fate. He died in a duel with Aaron Burr, but there is a silver lining to this cloud. They were both using DuPont gunpowder. (Laughter.)

Before I jump into some slides and I would like to have my Distinguished Panelists introduce themselves and their firms.

**ANGELA STYLES:** Hi, I am Angela Styles. I'm here from the law firm of Crowell and Moring. I am the chair of the Government Contracts Group in our D.C. office. My practice is primarily investigations and suspension and debarment for federal contractors. I spend a lot of time looking at their ethics and compliance programs, so that they can continue to do business with the federal government.

I'm also the Executive Director of the Defense Industry Initiative on Business Ethics and Conduct. It was started in 1986 by Jack Welch. You have defense companies who have been working for almost 30 years now on really bringing best practices to the forefront and working really hard to make sure companies in the U.S. and internationally really understand best practices for both ethics and compliance.

**THOMAS SAGER:** Thank you. Sanjay.

**SANJAY BHANDARI:** My name is Sanjay Bhandari, I am with Ballard Spahr and the co-head of their Anti-Corruption Group. I do a range of different things in that capacity. I do some investigations and defense of individuals and corporations, but also I tend to do quite a bit of compliance work. Helping multinationals develop systems that allow them to do business confidently in foreign markets along the lines of what Jack was talking about.

**MICHAEL FEINBERG:** My name is Michael Feinberg; I am with the law firm of Cahill Gordon and Reindel. My practice principally focuses on advising multinational corporations in complex securities litigations, internal investigations and regulatory inquiries and enforcement proceedings. The regulatory scrutiny facing publicly traded companies and financial institutions has increased significantly since the financial crisis. The "increase" is not limited to the number of investigations, but also the intensity and tactics with which regulators are conducting the investigations. To prevent such investigations, or at least remediate the underlying causes, we are working closely with a variety of multinational corporations to develop their internal control processes.

Hopefully, we will all benefit from our experience here today.

**THOMAS SAGER:** Blake.

**BLAKE COPPOTELLI:** Good morning. My name is Blake Coppotelli; I am with the Freeh Group, a firm that was founded by the former director of the FBI, Louise Freeh. I am a former prosecutor out of Manhattan, chief of a bureau that handled corruption issues in the city. My specialty is anticorruption compliance and investigations. Thanks.



**THOMAS SAGER:** Terrific, so let's get started.



**What do these companies have in common?**

1. 3M Company	31. Furmanite Corporation	61. Viacom (Paramount Pictures)
2. ABM Industries Inc	32. GlaxoSmithKline plc	62. Parker Drilling Company
3. Accenture plc	33. Goldman Sachs Group Inc	63. Qualcomm Incorporated
4. Alcoa Inc	34. Goodyear Tire and Rubber Company	64. Raytheon Company
5. Allianz SE	35. Grifols SA (Talecris Biotherapeutics Holdings Corp)	65. RINO International Corporation
6. Allied Defense Group Inc	36. Halliburton Company	66. Schlumberger NV
7. Alstom SA	37. Harris Corporation	67. Sololone Pharmaceuticals Inc
8. Analogic Corporation	38. Hewlett-Packard Company	68. Sensata Technologies Holding NV
9. Archer-Daniels-Midland Company	39. IDT Corporation	69. SL Industries Inc
10. AstraZeneca plc	40. Ingersoll-Rand plc	70. Smartermatic Corporation
11. Avon Products Inc	41. Keyuan Petrochemicals Inc	71. Smith & Wesson Holding Corporation
12. Baker Hughes Incorporated	42. Koch Industries	72. Sojitz Corp
13. Baxter International Inc	43. Koninklijke Philips Electronics NV	73. Sony Corporation
14. BHP Billiton Ltd	44. Kraft Foods Inc	74. STR Holdings Inc
15. Bio-Rad Laboratories Inc	45. Las Vegas Sands Corp	75. Stryker Corporation
16. Bristol-Myers Squibb Company	46. Layne Christensen Company	76. Tata Communications Limited
17. Bruker Corporation	47. LyondellBasell Industries	77. TE Connectivity Ltd
18. Cobalt International Energy Inc	48. Marathon Oil Corporation	78. Teva Pharmaceutical Industries Limited
19. Covidien Public Limited Company	49. Medtronic Inc	79. Time Warner Inc
20. Deere & Company	50. Merck & Co Inc	80. Total SA
21. Delta-Tucker Holdings/DynCorp International	51. Motorola Solutions Inc	81. Transocean Ltd
22. Dialogic Inc	52. MTB Systems Corporation	82. Wal-Mart Stores Inc
23. Diebold Incorporated	53. Nabors Industries Ltd	83. Walt Disney Company
24. DreamWorks Animation SKG Inc	54. NBCUniversal Media LLC	84. Walters Power International LLC
25. Dun & Bradstreet Corporation	55. NCR Corporation	85. Weatherford International Ltd
26. Eli Lilly	56. News Corporation	86. W8 Atkins plc
27. Embraer SA	57. Nordson Inc	87. WW Grainger Inc
28. Eni SpA	58. Olympus Corp	88. Wynn Resorts Limited
29. Expro International Group plc	59. Oracle Corporation	
30. Fresenius Medical Care AG & Co. KGaA	60. Parametrio Technology Corporation	

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This is a slide I use when I teach ethics with our young and up-and-coming leaders in DuPont and nobody ever gets this question right, but probably most of you have already figured this one out. It's not, again, to sit in judgment but given the sheer number of companies the answer is these companies are or were under investigation by the DOJ and the SEC. So its reason in part why we are here today. We can all benefit from the learnings of these companies, and certainly others.

I can only speculate as to the costs and the toll that's placed on these companies in the form of the distraction to the business, the cost associated with investigations themselves, obviously the reputational hit these companies take; and certainly, in some cases the fines either criminal or civil they are incurring. Not to mention, perhaps shareholder derivative actions and the like.

A very compelling reason as to why this is relevant and one we all ought to be concerned about.

This is a general overview on the guiding principles for all of us in this room. Rather than read it to you I'll lift out a few key concepts that corporations today certainly have significant incentive to get it right in your compliance and to ensure

## Overview

- Corporations have significant incentives to ensure they conduct business in compliance with legal requirements and consistent with an individual company's ethics and values.
- Central to operating in this manner is an informed and engaged workforce prepared to surface issues should a concern arise and a corporate culture dedicated to investigating and addressing issues raised.
- Key objective is to have strong and effective processes and procedures in place to identify and resolve issues BEFORE a true whistleblower situation develops.

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that our employees align with our ethics and core values.

The second point, of course, we need an engaged workforce. I will talk to you later about how we recently conducted a Spirit Survey with an eye to understanding their views on subjects like ethics and how that might serve our purpose in identifying groups in parts of the world where we have some work to do.

Of course, we want these employees fully engaged and dedicated to preserving an interdependent culture. Part and parcel to that is if they raise concern, we have an obligation to address and investigate these issues as quickly as they are raised.

The key to success is to put those cultures in place and get that engaged workforce so you avoid those whistleblower dynamics.

This one caught all of our attention of late, not surprising perhaps to some, but the incidence of whistleblower payouts is increasing alarmingly over the past several years. We'll hear more from the experts around that, but this one just caught my attention. Again, I want to emphasize the importance of the issue and how corporations need to get it right.

This slide tells it all in respect to the issues that I'm speaking about. I spoke recently at several law schools on the subject and the focus was on the process and less on the culture, so it was a way of refreshingly engaging the young students as to the importance of the culture. If you have these whistleblower cases, it's really a reflection of the failure of your culture and the corporation rather than one where you should deal with it as a

The Wall Street Journal Saturday/Sunday, March 8 – 9, 2014

### Whistleblower's Payout Is \$64 Million

By SHARMA CHANDRASEKAR

Former J.P. Morgan Chase & Co. employee Keith Edwards—who provided tips leading to a payment of \$64 million by the bank to the U.S. government over insurance on home loans—will get \$63.9 million for his efforts, according to a court filing Friday.

Mr. Edwards' allegations kicked off a case against J.P. Morgan in which it was alleged the bank started falsifying certifying Federal Housing Administration

and the Department of Veterans Affairs loans as early as 2005, and the agencies suffered "substantial losses."

J.P. Morgan last month agreed to pay the \$64 million to settle the case with the agencies. The bank admitted it approved thousands of FHA loans and hundreds of VA loans that didn't meet underwriting requirements, according to the U.S. Justice Department.

In response, J.P. Morgan had said it would enhance its quality

control program for loans that are submitted in the future to the FHA's direct endorsement lender program. The bank had also said previously that it had enough money set aside in reserves to cover the settlement, and any financial impact related to exposure on future claims isn't expected to be significant.

A representative of J.P. Morgan didn't immediately respond to a request for comment Friday. Whistleblowers like Mr. Edwards can benefit from settle-

ments made under the False Claims Act. In the 2013 fiscal year, the Justice Department netted a huge year for False Claims Act cases, securing \$2.8 billion in settlements and judgments.

Mr. Edwards' payout was previously reported on Friday by Reuters. The news agency said Mr. Edwards had initially sued the bank under the False Claims Act in January of last year, and was later joined in the suit by the U.S. government.

## Foster a Culture of "Speaking Up"

*"Employees who indicated they had reasons for not reporting observed misconduct cite fear of retaliation as the foremost cause."*

Source: Culture Diagnostic Survey, 2009

Successful corporations will

- Train employees thoroughly on rules of conduct
- Establish channels through which employees are encouraged to raise potential concerns without fear of retribution
- Treat allegations seriously, establish robust investigatory processes and undertake appropriate corrective action

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marked success in dealing with the whistleblower question.

The fear of retaliation is what prevents many employees from coming forward and it's certainly perceived as real. Successful corporations follow the dots below, there's thorough training and there is a code of conduct in place, much like we have at DuPont, which addresses specifically the importance of speaking up. Retaliation is something that we will deal forcefully and effectively with.

You need clear and well-defined channels to air your concerns without the fear of retaliation. We need to treat all of these allegations seriously regardless of how meritorious they may appear or not appear to be.

**SANJAY BHANDARI:** Tom, do you want us to comment about these?

**THOMAS SAGER:** Sure, please do Sanjay.

**SANJAY BHANDARI:** One of the mechanisms that you are planning to talk about is hotlines and other ways of getting employees to speak up. This is one of the things that we are advising companies to do to help them set up anticorruption compliance systems and avoid problems by having employees empowered to report on these.

What we find generally is that the formal hotline channel tends to be a whole lot of effort for very little reward in terms of the quality of the information coming back through that third-party company that ensures confidentiality. The employee logs in and gets a particular number and they get a test case.

Instead, by far the better source for hearing back from the field and being able to rectify problems before they become big problems, is the regular managerial ranks reports. Good employees go to a good supervisor who then brings it forward. Is that consistent with your experience at DuPont?

**THOMAS SAGER:** That's right. We will touch on the various lines of communication and how one can speak out. There are any number of avenues that may be more comfortable given the relationship with the manager or not.

The other extreme which we faced recently at DuPont, is people are speaking up by going to extremes. In that they'll send a message accusing somebody of something and email almost the entire DuPont population. It has occurred in Romania and in India. There is a balance to be struck and you have to tailor that message with respect to communication and how it needs to be done discreetly. It will be investigated thoroughly and completely and there'll be closure.

That was something I have not had to deal with until just recently, and it really is problematic because now these allegations are out there for the whole world.

**MICHAEL FEINBERG:** To follow up on Tom's point, as many of you know, Hotline Reports do not come with warning labels. Upon receiving a Hotline Report, you do not know if the allegations are legitimate, retaliation by a disgruntled employee, or merely a misunderstanding. In addition, the report may not be conveyed by a native English speaker, the report may be cryptic, or the transcription of the report may be unclear.

As a result, one of the primary issues facing institutions is: “How do you handle such a report?” Without question, it is very important to have a hotline or another internal reporting mechanism. Yet, it is also important – potentially more important – to ensure that Hotline Reports, like any report of misconduct or ethical breach, are promoted and vetted properly and not left to “rot on the vine.”

Consequently, upon receipt of a report that appears absurd or ridiculous – which they sometimes do – an institution should, nevertheless, treat the allegations seriously and not ignore it. Even where no wrongdoing or misconduct is uncovered, companies should memorialize the nature, scope, and means of review, as such documentation may prove to be a valuable prophylactic tool in response to any future regulatory inquiry.

**THOMAS SAGER:** Angela, did you want to say something?

**ANGELA STYLES:** Yes, a lot of companies that I work with have not only their hotline, but have also started developing ask and help lines, they are not IT ask and help lines. They are really compliance and ethics ask and help lines. That is how it is named. A lot of people feel more comfortable calling the compliance, ethics ask line when they are in a lower tier and not comfortable to go to their manager or even if they are a lower level manager.

It's been very effective for a number of companies.

**THOMAS SAGER:** Good point. Blake?

**BLAKE COPPOTELLI:** Yes, I would like to add some information in terms of the hotline. The Department of Justice and the SEC in a guidance that they issued in November 2012, suggest in a very strong manner the requirement of corporations to have hotlines. There are a lot of issues and problems with them as my colleagues have pointed out.

The least of which is when you set up a hotline, for instance, for anti-corruption complaints to come in. The main use of the hotline is human resource related. It's not related to the purpose for which that hotline is set up.

Nonetheless the Department of Justice and the SEC has an expectation that a company will have a hotline, in addition to other avenues of reporting into senior management or lower management and then from lower management to senior management.

Part of the applicability and benefit of a hotline for a company is whether it's handled internally or externally. There is immediate memorialization of a complaint in logging into a system that that complaint was made. For companies that have robust compliance programs that triggers a process going forward that requires investigation and process review to see if there's legitimacy to the complaint to determine how the conduct occurred and what broke down to allow that conduct to occur.

When you have an open door complaint, most companies have a hotline and in their code of conduct they talk about the various other avenues, all of which come under the rubric of an open door policy. You can talk to anybody at any time and



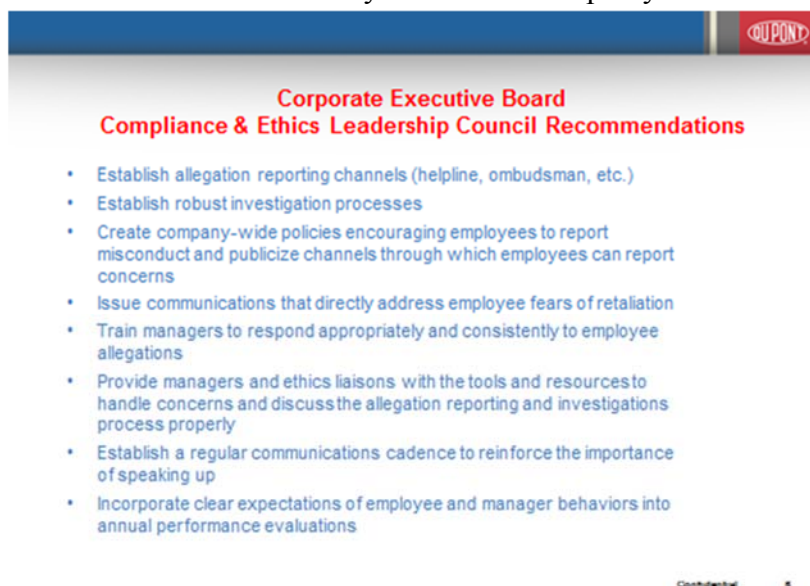
file a complaint depending on how comfortable you are in your circumstance.

I should mention that for open door complaints, we have seen our clients not have as significant a reporting and tracking and triggering protocol on the reporting through the open door policy as there is with hotlines. So there is a real benefit to the hotline that you don't see or we haven't seen in our clients on open door policy protocol. This is different for certain locations and jurisdictions, and I'll give Asia as an example.

Employees in Asia who are nationals, regardless of what country they're in, have a cultural obstacle with calling a hotline. They feel more comfortable with the open door policy that is flexible and applicable. What I mean by that is in the culture in Asia there is less chance that a line employee will tell a supervisor that there's an issue. It's a cultural thing.

Having an open door policy that's flexible, where that line employee or that lower management employee can talk to others in the company other than their immediate supervisor is a tremendous benefit to the company in terms of its open door policy.

**THOMAS SAGER:** That's a good point. So the culture of the country needs to be reconciled with your own company culture is what I'm hearing you say.



Moving on, I found this list provided by the Corporate Executive Board extremely helpful. It identifies what you need to have in place to have an effective means for reporting and investigating and addressing ethical allegations as they arise. I'm not going to read these to you but the penultimate recommendation is to establish a regular communications cadence to reinforce the importance of speaking up. I can't emphasize that enough.

This can be complemented by an employee survey; in our case it is anonymous, we call it a Spirit Survey. They go out once a year to our entire population and there are four or five segments to this survey. It's very easy to fill out. In the area of ethics this is what we ask by way of questions.

You either answer favorable, neutral, or unfavorable to the following: DuPont shows a commitment to ethical business decisions of conduct. I know how to report unethical business practices. I do not feel pressure to compromise ethical or compliance standards to get my work done. I feel comfortable reporting a violation of DuPont policies or standards of conduct if I observe one. Lastly, I can

report unethical practices without the fear of negative consequences.

This will provide us meaningful data and it will lift up where those responses are less than favorable, either neutral or negative to get to better understand through direct employee engagement where the problems lie or where the misunderstandings might exist.

I would recommend some means to gauge your employee population as to how they are interpreting their obligations as an individual employee and how they feel comfortable or not in dealing with those situations if in fact they encounter them.

**SANJAY BHANDARI:** Just real quickly on that point, Tom.

**THOMAS SAGER:** Sure.

**SANJAY BHANDARI:** I provided some benchmarking data in the handout that is outside. I am frankly surprised to see how low the usage of feedback surveys is. It is only about five percent of companies are reporting that they are using them. It is an incredibly effective tool because it can be anonymous; you can push it out to the entire organization. People do respond to them. The response rates are good. You can get localized data. You can figure out if you have a problem with people's understanding in a particular region.

They are very low-cost and very effective.

**THOMAS SAGER:** Third parties can be retained to do the service for you so it doesn't become an overburden to the corporation as they are done.

**MICHAEL FEINBERG:** Sophisticated internal controls are expensive and – without casting any dispersions – in general, businesses are reluctant to spend money on resources that are not going to generate revenue.

As opposed to seeking funding for internal controls out of “regulatory necessity” or a tool “good corporate citizens” should possess, such controls may be more easily digested by the “front-office” if they are portrayed as an offensive tool that the institution would like to utilize in the event of a regulatory inquiry. In other words, transform the controls from a burden to a benefit – from a “nice to have” to a “need to have.”

For example, you may suggest that you believe the company would be best served in the future by being able to point to a series of internal controls as evidence of the efforts the company has undertaken to prevent and uncover certain issues. You could also highlight that these undertakings will go a long way towards protecting the company.

Ultimately, explaining not only why such controls prevent inquiries, but also how such controls could be advantageous in defending the company in the future may make such expenditures more palatable.

**BLAKE COPPOTELLI:** Yes, it is the perfect segue. I will take the first point on the slide as demonstrative: reporting channels. It is not just good corporate citizenship to have an established reporting channel process in place in your corporation or within your client if you're outside counsel. It is in some

instances mandated by law.

For instance, reporting in, hotline, open door policy and how that information gets filtered and dealt with in the chain to senior management, to the audit, executive or compliance committees and then to the board is something else required by law. There are two cases out of Delaware which are the benchmark for board individual liability when it comes to reporting channels. One is *Caremark* and the other is *Stone v. Ritter*.

They are great cases to read because it sets the standard for board liability.

One of the things that is required is for the board to ensure that the corporation has the appropriate reporting systems in place. Technological or hard copy, it doesn't matter, reporting systems in place so that they can be informed of material issues that have come up in that company; both proactively and reactively.

It's not just board liability that's at stake, its corporate liability. One of the things that Mike mentioned is that this list is a great offensive tool to be able to use should an issue arise. That tool is for the corporate liability issue, setting aside *Caremark* and *Stone*, which deals with individual board liability for failure to monitor and ensure the institution of these reporting systems.

The corporate liability is the Golden Ticket that corporations are looking for to get them out of the focus of a DOJ or an SEC investigation. The perfect example of how these criteria and initiatives can benefit the corporation from an offensive standpoint is the Morgan Stanley case.

A few years ago the Department of Justice and the SEC in a very unusual circumstance publicly made a statement declining to prosecute Morgan Stanley for corruption issues in Asia related to a senior executive by the name of Garth Peterson. He was in their real estate investment division; he paid off a government official as part of a real estate transaction.

It was caught as part of an audit within Morgan Stanley. Morgan Stanley self-reported. The SEC and the Department of Justice began a joint investigation and hired outside counsel to represent them before the Department of Justice and the SEC. That same counsel ran an investigation, a parallel assessment of value and quality in the internal compliance program that Morgan Stanley had set up. A process review was done to determine what the breakdown was in their internal controls.

Based on their ability to show the robustness, with all these criteria being in place internally; they were able to get from the Department of Justice and the SEC a declination of prosecution. They declined to look at the corporation for corporate liability.

One of the major aspects of that was effectiveness of the reporting channels, of the hotline, the audit system, and the channels of reporting the information up through to senior management and the board.

**THOMAS SAGER:** Thank you, Blake. Angela?

**ANGELA STYLES:** A really important point is not to wait until you're under

investigation to be assessing your culture. It is better to assess first to see whether your ethics program is working, and separately, whether your compliance is working.

On the ethics side there are some really good third-party organizations that can help you develop what Tom was talking about, these employee surveys. They're not that expensive. They actually are incredibly effective. You can slice and dice them by small sites, particular programs, or particular parts of your organization.

The Corporate Executive Board has one and The Ethics Resource Center has another. I've used both of them with companies and I have to tell you it's a tremendous learning experience for you as outside counsel and also for inside counsel, for the lawyers, compliance and ethics people.

There's also a compliance maturity survey that the Corporate Executive Board does. So on the compliance side as opposed to understanding the ethics and culture, it benchmarks you against other companies in terms of the maturity of your compliance program. It is very good as well.

**THOMAS SAGER:** Excellent point, thank you.

We've done a lot of talking to you. Does anybody have a perspective they want to share or ask a question? Yes, sir.

**[AUDIENCE MEMBER]:** There's been a lot of talk about the help lines. Can you say a little more about the differences between an ombudsman and a help line?

**THOMAS SAGER:** Angela, do you want to take that one?

**ANGELA STYLES:** I can't say that I've seen one that's very effective, to be honest with you. A lot of companies have established an ombudsman but the ones that I've seen are not nearly as effective. People don't know how to go to them like they know how to go to a helpline or hotline.

**SANJAY BHANDARI:** The general point is that the tone at the top is insufficient and you need to also involve middle-management. There needs to be more than just one central channel and one central person responding to things. Rather than an ombudsman that's focused in one area, it's more effective to have many in each region. It is very helpful to have as an ombudsman the senior manager who is the leader for a particular country, knows that language, and understands the culture intimately. That person should also be one of the people responding to the compliance complaints or questions.

That tends to be more effective than a centralized ombudsman. You can have multiple ombudsmen.

**MICHAEL FEINBERG:** At the highest level, there are two potential benefits to having an ombudsman.

First, an ombudsman provides the company with an opportunity to have an interactive dialogue with the employee asserting the allegations. One of the real

issues with hotlines is in the very nature of the report. For example, someone calls and leaves a rambling message. On occasion, the message is incomprehensible or almost incomprehensible, and understanding the nature of the issue is left to a recipient of a transcript. An ombudsman encourages an interactive dialogue to determine the issue. Is it a human resources issue? Is it a compliance issue? Is it an ethics issue? You can have an actual dialogue.

Second, an ombudsman facilitates a unified institutional response. An ombudsman facilitates a standardized programmatic response to allegations of wrongdoing. Handling the same type of allegation differently based on region or recipient of report, affords an aggressive regulator, which most of them are right now, an opportunity to undercut your control efforts.

As you point to your efforts to investigate and remediate issues as evidence of your firm's commitment to a robust internal control culture, an ombudsman prevents a regulator from highlighting varying responses to similar reports. For example, an ombudsman avoids a regulator saying, "But you handled something in China different than London, different than Mexico, different than Albany."

Importantly, whether a hotline or an ombudsman is used, there is no silver bullet to any of these issues. Corporations can have both a Hotline and Ombudsman. Having both enables corporations to say, "We tried every way possible to ferret out wrongdoing throughout the process."

**THOMAS SAGER:** Thank you. Anybody else? Yes, sir.

**[AUDIENCE MEMBER]:** Is it possible to hear more about the Morgan Stanley example? Specifically, did the DOJ and SEC just conclude they'd done everything they could and this was a renegade factor?

**BLAKE COPPOTELLI:** Yes. The outside counsel, Davis Polk, did a tremendous job in putting together the compliance program and presenting that to the Department of Justice and the SEC in a number of meetings that they had. A real central part of that was their complete evaluation of the program, not only in Asia but enterprise-wide and all that went into the program from training to communications, the tone at the top, due diligence, reporting mechanisms, and the audit capability of the company.

The more that the DOJ and SEC saw that the company was trying to do the right thing, understanding from their perspective that no compliance program is 100 percent effective, they were able to see the rogueness of the employee.

They detailed in excess of 50 communications that were compliance related to that employee. They detailed and outlined that employee's responsibilities and obligations under the compliance program and a specific anticorruption program that the employee was aware of. They had that employee sign off on various items that were communicated as part of the training program that Morgan Stanley had.

Davis Polk was able to show the Department of Justice and the SEC that Morgan Stanley had in place a significant program that was robust, not only within their own right, but as compared to other financial service companies in that industry. They were able to identify and show the rogueness of that employee.



**[AUDIENCE MEMBER]:** Was it a self-report situation?

**BLAKE COPPOTELLI:** It was. I'm not sure if I mentioned this, but Morgan Stanley caught it in an audit which was a positive on their behalf which made an impact with the Department of Justice and the SEC. It was caught a year and a half after the actual payments were made. The system was triggered by any benefit that was provided to a government official.

Nonetheless it was caught, Morgan Stanley self-reported and that's what triggered the Department of Justice and the SEC's involvement. Not only did they self-report, but they immediately hired outside counsel to come in and do the four steps that I mentioned: 1) Representation of the corporation before the SEC and the DOJ. 2) The internal investigation to see what happened to fact find. 3) The process review to determine exactly how it happened; what was the breakdown in the internal controls in the compliance program that they had in place? And 4) an assessment of that compliance program for purposes of their dealing with the SEC and the Department of Justice and to the extent that they found deficiencies, which they found very few in terms of the robustness of the program comparison to best practices, they enhanced them.

Those enhancements were quickly implemented and communicated throughout the enterprise, which was another benefit to Morgan Stanley in the eyes of the Department of Justice and the SEC.

I will add one thing, the declination is important not only from the standpoint of companies needing to have robust compliance programs to show the DOJ and the SEC in reviews like Morgan Stanley, but also the UK Anti-Bribery Statute for multinationals may come into play. The UK Anti-Bribery Statute provides an affirmative defense to the corporation for a robust program. The Foreign Corrupt Practice Act does not. It's a mitigating circumstance.

The declination to Morgan Stanley occurred before the DOJ and SEC guidance, which was issued in 2012. The UK Anti-Bribery Statute became effective in July 2011. It is a clear indication by the Department of Justice, in my opinion, and the SEC said knowing the affirmative defense that's offered in the UK, under that statute, the Department of Justice and the SEC want corporations to know that even though they don't offer under the statute and affirmative defense, they have the ability to have the same result based on the robustness of their program.

It was a significant event because it was so public. In their press release they went through all of the criteria and factors which went into their declination decision so that corporations can clearly see the extent to which Morgan Stanley in their industry and area developed their own internal compliance program.

**THOMAS SAGER:** Apropos to those remarks, we do a survey every November of all our employees in which they need to certify to a number of questions which address everything from having not received kickbacks, conflicts of interest and the like, and those certifications are filed. Ultimately they are summarized and reported up to each function leader; general counsel for Legal and others need to certify for his or her entire organization. It is just another way to

reinforce the importance of this obligation upon employees of the corporation to make the certifications internally.

Let's talk about DuPont's approach and then we have a couple of hypotheticals we'd like to test your thinking on. This is how we view the whole area of ethics and compliance, individual responsibility reemphasized in the code of conduct.

I might add any of the materials that are referenced today will be made available to you if you leave a card.

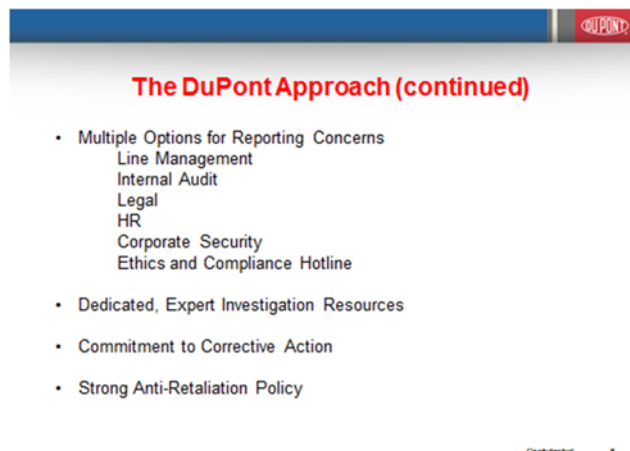


Core values, we have four: ethics, safety, environment, and respect for people. With each meeting, wherever it occurs in the world, we have core value contacts. We can see them referenced under the third dot. Each meeting is started by some observation or lesson learned in the area of ethics or one of these other core values and serves as a constant reminder when we start a meeting that it always starts with a review of the core values.

Our Legal Eagle Training, that's an LRN product. Many of you are probably familiar with LRN.

Each employee, every year, is required to take a minimum of two modules one of which is the code of conduct and possibly a third depending upon the business or function. Our Ethics and Compliance Days are devoted entirely to focusing on ethics and compliance and they're done by region primarily and within business units.

In the bullet that's referenced below are ways that we can communicate recent violations, obviously, with keeping the individual's name confidential but lifting up



problem areas that we've experienced and/or examples where employees have responded as we would like them to or evidenced ethical leadership or behaviors that we would want emulated elsewhere. I will show you an example of that.

Another tool that you may want to consider in these developing markets is we've developed wallet cards for our employees that are tailored to provide them counsel with respect to what are the rules of the road in China or Malaysia or Myanmar and they found these to be quite effective. And again, they are the size of a wallet card and a good reference tool

for the employees who work in that part of the world and our third parties.

Anybody want to jump in here?

**JACK FRIEDMAN:** Can you talk more about relations with third-parties? What do they have to answer to you as their customer?

**THOMAS SAGER:** It begins with the vetting process and each business approaches this just a little differently. I might add we have a lot of work to do in this area. We are trying to sort it out which is part of the reason we are doing this program. Hopefully, somebody can enlighten us a bit as to how to best handle them, monitor their behavior, instill in them the appropriate core values and provide a method by which they also can report if they're put in uncomfortable or unethical situations.

We have been burned in Russia, for example. As a result of those learnings we've got to get a more robust process in place there. To that end I was going to lift up at the end of the day a new guide we have for dealing with anti-bribery and anti-corruption. It's in its final draft, which covers the waterfront. Once it's out I will be more than happy to make it available to you. It addresses specifically the issue of third parties.

**JACK FRIEDMAN:** Is it just your suppliers?

**THOMAS SAGER:** No, salesmen. Any third-party we either deal with, such as distributors. There could be a whole host of people we interact with.

**JACK FRIEDMAN:** You mean upstream or downstream.

**THOMAS SAGER:** Correct.

**SANJAY BHANDARI:** Third-party intermediaries are the single largest area of concern for companies. For a company creating compliance systems it is one of, if not the largest area that we have to spend resources on in order to get right. It's the largest source of enforcement actions by some people's count. Ninety percent of anti-bribery and corruption enforcement actions arise when a company is dealing with a third-party that asks for them.

The reasons are fairly common sense, if you think about it. It is typical that you will engage a third-party because you are entering into a foreign market where you don't have the resources and the knowledge. You have to depend on somebody who is outside of your company, outside of your values. You have limited oversight over that person.

There is almost a behavioral science aspect to it.

Within your company, I can't tell you the number of times in dealing with companies on investigations or anticorruption compliance, you hear from people in the field, "If that's not us, if we're not actually doing that, it's not our problem right?"

It is a very widespread idea that you're not responsible for whatever the third-party might be doing, whatever your information, whatever red flags you have seen about the third-party, it's not your problem. That's wrong. It's completely

wrong with respect to the UK Anti-Bribery Act, which hold you strictly liable for the conduct of the third party. You don't even have to have any knowledge of the third-party's conduct. You just have to engage them.

The defense of adequate procedures that Blake talked about is your means of defeating that strict liability.

Your people have this inherent mindset of thinking about the third-party as a buffer, as a way to insulate themselves from conduct that they know they can't do themselves. On the third-party side, too, there's this idea of, "It's not really us. We're not really worried about the consequences of this."

It may fit with their culture, but they're not as concerned with the DuPont culture.

**THOMAS SAGER:** The interactions could be supply chain related. It could be the route to market; it could be a toll manufacturer. It could be a joint venture partner, like an SOE in China.

It takes many forms, Jack, and one is risk-based or should be, because there are so many. For example, our crop protection business is entertaining the notion of going from 2,000 to 5,000 distributors alone in India. Now how you vet that group and ensure that they remain compliant is going to be a real challenge.

**SANJAY BHANDARI:** It's going to be a very expensive undertaking as well. It really requires you to look at, if you want to do it thoroughly, your ledger of accounts and examine who is paid in these different countries and what are they doing for the company. If you want to do a proper risk-based analysis, anybody who's dealing with sensitive areas, people who are obtaining regulatory permits for you to build plants, or engage in a particular type of business, or keep the lights on, have an office in a particular city. Those are high risk in most countries in the Third World. Sales agents are high risk because they represent you.

**THOMAS SAGER:** Right. Blake, do you want to jump in here?

**BLAKE COPPOTELLI:** Yes, I'll just say that before the advent of the UK Anti-Bribery Statute, multinationals just had to worry about their third parties that had interaction with government officials.

Now with the UK Anti-Bribery Statute, which incorporates that, but also adds the element of commercial bribery, anything is fair game and multinationals now are faced with having to look at all of their third-party relationships worldwide because it's no longer restricted to those that have interactions with government officials.

Suddenly, multinationals have this new extraordinarily broad responsibility to address the risk that's inherent in their third-party relationships regardless of who they're interacting with outside of the corporation on behalf of that corporation.

The Freeh Group has worked with its clients, multinationals, to really evaluate their third-party management process. We have worked with clients to take what was a foreign, corrupt practice-centric compliance program and melded it

into an overall anticorruption program that takes into consideration government interaction and pure commercial bribery risk. One of the expectations of regulators is that this will be done and that this obligation is there.

The UK government, like the DOJ and SEC having issued the guidance for the FCPA, issued a guidance for the UK Anti-Bribery Statute and it's clear and consistent with the guidance that was issued by the Department of Justice and the SEC. It appears that they have the same expectations that the federal regulators do and have as it relates to their own internal compliance program.

As it relates to third-party management, now everything is fair game. You really have to evaluate your contracting process. Do you have the right contract language? Is the third-party signing off and affirming and contractually obligating itself to adhere to the corruption-related language that your company is funding? Is there the right certification or evaluation of that third-party's own policy, owned training mechanisms for corruption-related issues? Can you train that third-party?

Do you have the ability—and it's one of the staples of the DOJ and the SEC guidance as well as a staple under the UK Anti-Bribery Statute guidance—to have the appropriate due diligence in place that is risk-based?

If somebody is dealing with the vendor in a high-risk location, like Indonesia, your due diligence efforts in screening that third-party are more significant than if you're dealing with a third-party that's coming out of Canada, the UK or a lower risk country.

**THOMAS SAGER:** Jack has a question he wanted to throw out there.

**JACK FRIEDMAN:** This is related to what we're discussing from a different point of view. This has to do with the reputational aspect, not just the legal liability.

General Motors had this problem with ignitions; Toyota had the issue with brakes. Those products are made by suppliers and what's interesting, is that nobody highlighted who the suppliers were. It just targeted that company. The strategy for the CEO of General Motors is to get in front of the press right at the beginning and, without admitting guilt, express the company's concern.

That is one scenario, but here is another scenario. Apple is held responsible for the employment practices of their biggest manufacturer.

**THOMAS SAGER:** Foxconn.

**JACK FRIEDMAN:** Yes, the supplier is named and is publicized fully unlike the General Motors situation.

Then you have the clothes industry where some celebrity has a line of clothes, and the media is saying you are paying substandard wages in Central America or Southeast Asia. One of the issues that is apart from the law is the ethical standard that determines if you have a good company. You have to make sure people are paid good wages and have good working conditions.

How can you put that in a contract? Do you have to promise that your



product is made by workers in other countries who are treated humanely by American standards?

**ANGELA STYLES:** Everybody has a different definition of ethics.

**JACK FRIEDMAN:** Exactly, that is the point I am raising here.

**ANGELA STYLES:** Most companies simply state in their policies and procedures that you need to follow the laws of local countries. But in India, it is actually legal to hire somebody who is 12. Your policy and procedure may not say that you can't hire someone who's 12. It is because their ethics are different. Their values are different.

That 12-year-old might be supporting his family.

You really do have to recognize that in different countries there are completely different definitions of what ethics are. Even within our country there's a different definition of what is ethical or not ethical. It's different from company to company and it's very hard to say if something is ethical or not, because we all have a very different idea or definition of that.

**JACK FRIEDMAN:** What happens when you're at the world board level and someone says that even if it is legal in a country to hire 12-year-olds, we are not letting anybody supply us who hires 12-year-olds. No matter what the law or the cultural difference is, when our customers find out our products come from 12-year-olds, we're in a lot of trouble.

**MICHAEL FEINBERG:** The gentleman in the back earlier asked whether corporations are better served by a hotline or ombudsman and another person brought up the difference in ethics in Indonesia versus Florida versus England. While we are foreshadowing topics we will discuss later in the program, there is a tension between cooperation, whether it be cultural or geopolitical, and dictating a company's ethics.

For example, the use of finders is well-known throughout the Middle East and Asia and a finder's permissible conduct in accordance with local laws varies from nation to nation. If a company permits the use of finders, the company must also tackle how finders are vetted, monitored and, ultimately, what those finders are permitted to do. In these circumstances, cooperation is essential. If a company is vetting the finder locally – where certain things are permitted – and other places – where certain things are prohibited – you need to be able to cooperate across jurisdictions, functions, and nationalities to ensure consistency across the company, where possible.

**JACK FRIEDMAN:** The conclusion is that companies say they have ethical standards and make sure that people they do business with are ethical, too. Some companies may have to face up to the fact that, across the board in many situations, they are imposing on their whole network higher ethical standards. It may be perfectly acceptable and legal in other settings with other people and other countries; but their company is going to make sure the standards are above what people are used to.

**THOMAS SAGER:** That's exactly right. That's how we approach it.

**JACK FRIEDMAN:** Can you comment on that? How do you decide where you're going to raise the standards?

**THOMAS SAGER:** The standard applies to consistency in terms of approach and that's how we take it, whether its human rights or bribery or whatever the subject might be and if our bar is higher than the country in question, so be it. We will find some distributor or some partner who will adhere to the standards. There is not a lot of negotiation allowed.

It may sound arrogant and it may sound "the American way", but that's the way it is and that's how we remain compliant.

Does anybody disagree?

**BLAKE COPPOTELLI:** I'd just like to add that the human rights aspect of ethics is very important and I'm glad you touched on that. Not only on the corruption side is there a small indication of that within the statutes that I've mentioned, but recently the SEC added a conflict minerals requirement on multinationals that have conflict mineral issues. The OECD, as well has enacted a rule with guidance on conflict minerals which is all human interest-related.

At the core of the requirements is the third-party management of the issue and the vetting and the screening and making sure that the supply chain up-and-down from beginning to end shares the same core values.

**THOMAS SAGER:** Exactly, very good. We have a question over here.

**[AUDIENCE MEMBER]:** Good morning, thank you. You may address this question in the other materials, but I would like to come back to this issue of engaging individuals. I'm particularly interested from an in-house perspective where there can be tension between business people who may be very well-intentioned in trying to open new markets and finding themselves having to engage individuals as opposed to companies to help them in those markets.

There are many parts of the world where this is an issue. The first is a U.S. standard of how we do business. It seems that you are assuming that people are corrupt. It's not necessarily that anyone is pointing to a smoking gun. It's more a cultural issue of how you approach it.

What are some of the strategies for grappling with that and also how do you deal with individuals short of saying, "I'm assuming that you may be corrupt." That person is an outsider and you have to manage him and make sure he is actually complying. Especially if you aren't sure whether that person has fully internalized what you expect of him.

**MICHAEL FEINBERG:** I want to make two points.

First, a contrarian point. There is a fundamental policy question inherent in the premise of your question. Western legal principles and standards are being imposed on Western corporations that are engaging in businesses in emerging markets. Inherent in your question, however, is whether Western corporations are

being placed at a competitive disadvantage by being prohibited from engaging in conduct that non-Western or emerging market corporations are permitted.

Taken to its logical extreme, if two companies are both seeking a lucrative contract and the emerging market company is permitted to retain the services of a finder that is known to pay bribes, but the western company is prohibited from retaining that same finder out of bribery concerns, who do we presume is going to get the contract? Who is going to get the rights to the natural resources? It's a complicated question. It's a global policy question.

Second, I do not want to belabor the point that was raised earlier regarding the importance of structure, documentation, vetting, due diligence, and transparency, but a corporation needs to be able to document the nature and extent of the due diligence conducted.

You may ask, why? A mentor of mine once reminded me, "Show me a town of 5,000 people and I will show you a town with a jail." No company is going to get it right 100 percent of the time. When a rogue individual does something troubling, when a mistake is made, when the employee pays the bribe, or the wheels are greased, an institution will want to be able demonstrate the scope of their efforts:

Look, we did everything we could. We told this guy 37 times he can't pay an official. We had him sign affidavits and declarations saying he wasn't going to pay the official. We vetted him. We had a third party vet him. At the end of the day, we're not police. We're not following him around and making sure he doesn't do that. The money did not come from my company's account. He fronted it and when he got paid at the end, it was not our dollars.

There are many ways to demonstrate a company's internal controls. In the end, the company will want to be able to demonstrate the absence of a systemic problem: "It's only one finder, not 40."

Turning to Tom's example of vetting 3,000 salespeople, the company's ability to evaluate all the personnel will be significantly more challenging than a company's ability to assess a single finder. The costs associated are going to be very different, the obligations will likely be very different, and what is considered sufficient or adequate diligence may, ultimately, be very different.

**THOMAS SAGER:** The point is well taken about documentation but the engagement is where the impact is felt. You can do it in a nonjudgmental way and it has to be the face on the ground. You can say to the distributor unequivocally, "We do not compete in this manner. If you lose an account or an opportunity because somebody's doing something unethical, it's okay." That's the type of conversations we have with our people, particularly the newer bodies to the team.

I can't emphasize enough engagement. When I was looking in China we engaged a number of general counsels. One was with Walt Disney and we talked about corruption in China. He said, "Tom, the only way you get at it is through one-on-ones with your employees and every third-party you're dealing with. You

do it in a purposeful well-thought-out way without coming across as judgmental. Without assuming the person is corrupt and has to be monitored.”

That's labor-intensive, but it's the most effective way to get at this whole issue of third parties.

**SANJAY BHANDARI:** I want to make two quick comments on that in response to your question. First there's the policy issue that was raised and what I suggest is that policy question has been answered for U.S. companies and it's increasingly being answered overseas in the same way.

We've all been reading about the anti-corruption party in India and their ascendance. Brazil has passed its own anti-bribery act that's more robust than even the U.S. version. The climate is changing. It's changing very rapidly.

The second thing is to take a slight contrarian view to what Michael said, and that is, the checklist approach that is often taken with respect to third-party due diligence. You do a risk-based due diligence and then you have them sign certain covenants. You get audit rights, you get termination rights. You get a vacation every year. We're done; right? I push out all of my training and I'm good. I can show that I have five certifications. Here are the five times I pushed out all of my training; I'm in the clear.

Agencies don't view it that way when you read the Morgan Stanley declaration. For example, they took the time to explain what they did. At least one of the things that they were persuaded by was that it was a genuine commitment. There was a variety of online training. Morgan Stanley was not taking the “simply check the box” approach.

When you have third parties with inherent cultural forces that create a problem, you need to do more with them. There is a little bit too much emphasis on “check the box” and not enough recognition of the fact that they may need a specialized handling. You're going to need to engage them on a cultural level; one-on-one, on a human level. Assess who they are, what's their cultural? What's their reputation?

When you do your online trainings of your own people, it's not enough just to have some secretary of the third-party click through your online training and then say they were trained.

Where it's important, you want every single person at that third-party who's going to be doing significant business for your company to be well-trained and share your values.

Finally, where it's important, the companies need to do more auditing of third parties. It's hardly ever done. It can be done in a variety of ways. It doesn't have to be a huge endeavor with outside counsel and outside auditors. It can be one of your own internal people just sitting down with them, and looking at a few accounts to test a few things. You'll get response.

**JACK FRIEDMAN:** Many years ago I sat in on a class of a famous Harvard professor of international corporate law. He was asked, “Are American companies

more ethical in their dealings around the world?” At that time some of Latin America was known for corruption. He answered is, “Yes, because of the IRS.”

We had better audits by the IRS and better control over tax reporting by U.S. companies. It forced American corporate operations to be more honest.

**[AUDIENCE MEMBER]:** Some of the current red flag countries are some of the fastest growing economies in the world.

Many of them, like India for example, have anti-corruption statutes; indeed India’s mirrors the UK’s to a significant degree. Brazil, Nigeria, China, where everybody is a government official and if you do healthcare you know how attenuated the activities of your representatives are.

Can we get more specifics on emerging tools to conduct audits and follow up on third parties? For example, Angela described some useful evaluative tools internally to check on the viability of compliance programs. I see an emerging battery of quantitative third-party tools available to monitor, to test the conduct of third-party Asians; especially in red flag countries.

Can you comment on that and talk about specific tools?

**SANJAY BHANDARI:** Sure, it's going to vary greatly industry-to-industry and by the type of third-party that you’re dealing with. For example, one company has a particular procedure that they use for auditing trucking companies in Azerbaijan. When they go there they want to see certain accounts and they want to talk to these people versus when they’re talking to a sales agent in Turkey.

It’s going to vary by the type of industry and the type of risks that are presented. For Pharma and in those countries, you’re going to want to pay attention to the Indian equivalent of Advamed and the Pharma organization there. Also look at their professional codes, because the last time I looked at them they prescribed some conduct that was a little bit different.

You would look at the particular interactions that pose the most threat. Examples would be the gatherings of key opinion leaders and sales interactions with hospitals and doctors. That’s what you would be looking in your distributor’s books.

You want to check travel, their use of travel expenses, travel agents that they use. It’s going to be very fact specific.

**ANGELA STYLES:** A number of the defense companies that are working internationally have been working with a few companies in the UK on developing tools their employees can have on their iPhone, all the things you have to walk through when you’re sitting there dealing with a third-party.

Not necessarily the documents, but a checklist of questions to be asked, and they’re getting pretty sophisticated. There are folks walking around literally with it on their phone.

**JACK FRIEDMAN:** There is now an investigation app?

**ANGELA STYLES:** It's hard to remember everything. It's really helpful for



people. If I am dealing with a particular type of buyer or a particular type of third-party and my company thinks it is important it can be quite helpful.

**THOMAS SAGER:** Did we answer your question?

**[AUDIENCE MEMBER]:** That was a useful answer. Thank you.

**THOMAS SAGER:** Great.

**SANJAY BHANDARI:** There is one other question in the front row.

**[AUDIENCE MEMBER]:** I focus mostly on representing companies doing business in China and Chinese investors doing business in the U.S. I hear a lot of things about China, Asia in general, and I often say “What is considered to be corruption in the rest of the world is considered collaboration in China.”

Having said that, there is a lot of discussion on documentation and structure that is important. Often times it is not so much what is said that is important but who says it.

Particularly in China where there is somewhat of a top-down hierarchy, is there enough commitment from your clients? Tom, how often do you go out to your sales people and make that presentation? There is nothing better than a handshake and face-to-face discussion; particularly, in a country like China.

I’d be interested in hearing about experiences in terms of commitment from the boardroom.

**THOMAS SAGER:** I’ve spent too much time in China. (Laughter)

I find the engagement is critical, so town meeting forums are an ideal setting in which you can engage a fairly large cut of your organization and address these issues in a very direct manner. A lot of the action occurs doing business in China, at least for DuPont, when you do joint ventures. The question becomes, “Are your core values going to be part of that entity?”

That’s where the tone at the top really comes through forcefully and that’s where you can make a big change in terms of how that joint venture approaches the business at-large and where the conversation needs to occur from the outset. Typically they’re 51-49, as you know. You’ve got to be strong in your conviction that this is the way we have to operate if we’re going to do business with you and do business in China.

That’s one of the big areas in which I’ve spent a lot of time and energy in negotiations and then following up through the audit process. That’s served us reasonably well.

**JACK FRIEDMAN:** We had a program here in Washington a few years ago with Jim Comey, who at the time was Global General Counsel of Lockheed and is now the head of the FBI. He said he had small children who noticed every little thing that their parents did to see how the parents’ actual conduct related to what the children were told.

He felt that employees of organizations do the same thing. Employees watch

every little thing to see if their bosses live up to the rules.

An issue in ethics is how you set the example at the very highest level of the company.

**THOMAS SAGER:** Excellent point. We haven't mentioned remote locations and how problematic they are. There are fewer employees. Typically there is a strong-willed person who is overseeing the operation and they are really at risk. For companies such as DuPont where we keep a very small office the question is: "How do you engage them in a very meaningful way and frequent enough that the message is communicated in a way that that office understands the importance of compliance and the core values?"

Does anybody have any thoughts on how you tackle the remote location issue?

**ANGELA STYLES:** That's very interesting, because the Department of the Air Force has been quite focused on this issue lately and the head of the Suspension and Debarment Office for the Air Force has been out making speeches and actually has an article about this small site issue. A couple of important points he makes is that a small site being run by one person needs constant contact and communication with people outside that chain. On military sites, where you have a contractor, it can be hard to get to them. It takes two hours to get through the gate and check on those people. They are literally posting their hotline signs back up because they know somebody from the company is coming in the gate and they were alerted to it.

The most important thing they've found is checking the accounting and financials and the ability of the people at that small site to make purchases on their own. Two is the change that they have outside. If there is something going on those people will frequently meet with people that aren't in their direct chain.

**THOMAS SAGER:** Very good point.

**BLAKE COPPOTELLI:** I would just add it's not just about oversight or monitoring in remote locations. It's creating a perception within the location that they're not remote. The point that was just made to change the culture so that they feel that there is a relationship with senior management.

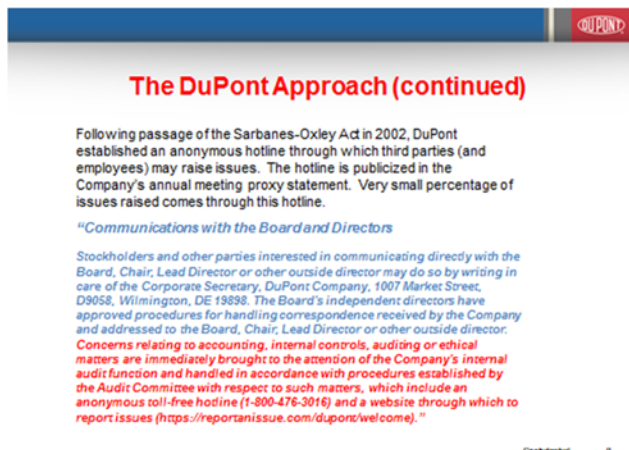
Senior management need the top-down commitment demonstrated through their direct participation in the education of the remote location employees. Then they feel less remote and more a part of the family.

Training doesn't stop at the end of the module. Training doesn't stop at the end of the conference or the internal meeting between lower management and line employees. An effective tool of training, which is an unintentional benefit of what was just mentioned, is to have senior management show up and create the perception that there is a family atmosphere and we're all committed and we're all in this together. That is as critical a training tool as anything else.

**THOMAS SAGER:** Excellent. On this particular subject, the only point I would like to make is again, that there's an individual employee responsibility and they have multiple ways of communicating concerns with respect to the conduct

they have observed. We are at the other end of the spectrum from an ombudsman. We think the avenues that we provide and the responsibility the employee undertakes should be sufficient enough to drive the culture to where we want to ultimately be.

Post-Sarbanes-Oxley, we have this in all of our proxy statements. It is with



respect to how the hotline can be of assistance and how one can register a complaint, particularly those external to the company. This is something you all should have if you don't already in your public disclosures going forward.

This was our focus in 2013. We want to shift to an interdependent culture so that I'm my brother's keeper so to speak. We're there in the area of safety; I'm not sure we're close in the area of ethics but we're working to reach that goal.

I call your attention to new employee misconduct. We're in the process of



renewal now, in which we will be hiring 40,000 people by year 2016. We're addressing attrition and growth. A lot of them will be external to the United States. What we've found over the last several years is the incidents of confirmed violations in ethics are disproportionately new employees, on the job five years or less.

We had to double down on our onboarding and our orientation and now we have buddy systems in place. Every new employee is assigned an experienced

employee who they can go to and ask any questions they have with respect to core values. It serves us extremely well and I offer that as a strategy to address the new employee dynamics.

That employee who is sitting and watching this presentation, who doesn't understand the culture and complexity and completeness can ask questions about what he observed such as, "Should I be reporting this to someone?" That has served us well in a number of incidents and situations. We have a question.

**[AUDIENCE MEMBER]:** A couple years back I heard a keynote address by Preet Bharara at the SIFMA conference, the Securities Industries and Financial Markets Association conference.

He was talking about the same issue on training. Training new employees can be so much orientation that it becomes disorientating. Someone walks out of a

week of training sessions and their head is spinning. They're not really sure where that comes out.

His suggestion at the time relates to something Blake mentioned in his earlier remarks. If on the first day of a new employee arriving at your company, his ethics training consisted of walking him into the office of the CEO and the CEO looked at him and said we don't lie, we don't cheat, we don't steal. We behave ethically, honorably, with integrity in all circumstances. Do you have any questions?

That's the ethics training for the first day. From that point on we'll let that sink in and then we'll give you the detailed training afterwards.

Does the panel have any thoughts on that?

**THOMAS SAGER:** It's far too simple. (Laughter) Those gray areas are too many and multifaceted. That approach doesn't lend itself to understanding the culture and how one goes about addressing questionable situations.

It's a cadence you develop being with the orientation. We've talked about the safety contacts and ethical contacts when the meeting starts. We talked about a town meeting that starts off with the theme around ethics. We talked about the ethics certification.

All of those things should come in a fairly well and measured fashion with a constant reminder to the employee that this is very important. I'm of the dripping school. The more you drip, the more they'll inculcate and internalize and hopefully will get to that inter-dependent culture, but somebody else might have a different view.

**[AUDIENCE MEMBER]:** It's not so much a different view Tom, but I was very struck by what you just said about your sense that it tends to be the newest employees, the newest personnel who not always, but often times are the root cause of issues. I would put to the panel a related question and that is whether to be provocative, profiling is pertinent and appropriate to good ethics and compliance policies. Is it good policy to be targeting, however you define populations, populations that you think tend to be high risk?

**ANGELA STYLES:** It's important to recognize the people coming into your company are likely to not have the same values as you; whatever age they are. While I wouldn't call it profiling, it is important to recognize that you have to inculcate them into what your ethics and values and culture are. They didn't get it from home necessarily. They didn't get it at their last company. You really do have to train them in terms of what you believe ethical thinking is: ethical values and how you make ethical decisions.

I want to make everybody feel a little bit better on the piece about people coming in to a company and not being what you need them to be. These are three stories that have come out in the past six months, and it isn't just about companies.

The Air Force Academy is investigating whether 40 freshmen cadets cheated on chemistry tests. Thirty Navy supervisors were suspected of cheating on written tests to be certified as instructors at the Nuclear Propulsion School. Ninety-two

nuclear launch officers are suspected of cheating on launch proficiency tests. This is all in the past six months.

These aren't issues that companies are just struggling with, particularly on the new people and profiling and trying to figure out what people do we really need to train in our ethical values.

**JACK FRIEDMAN:** Since you work so much with government contracting including the Defense area, I understand that the Defense industry in general has the longest and most intense history of compliance and ethical traditions compared to any other industry.

Could you tell us some hard lessons that have been learned or practical techniques people use in the Defense industry that might be applicable elsewhere?

**ANGELA STYLES:** First, it's a highly regulated industry. The most important thing the Defense industry has learned over time is when you have suppliers, they've learned how to audit them, how to insure that the certifications are accurate so they can comply with the "Buy American" requirements and rules about specialty metals and things like that.

Most importantly for what we're talking about today, is the Defense industry has learned over time the difference between compliance and ethics. You can walk into any company and have beautiful policies and procedures. They're just wonderful. They look great. They cover every issue you could possibly think of.

But there's no tone at the top. There's no training on ethics. There's no training on ethical decision-making.

You can't regulate every action. You cannot have a policy or procedure that your employees are making. What is most important is to train them in ethical thinking. How do I make a decision that is right, that is consistent with what this company wants when there's not a rule?

I'll tell you, 70 percent of the time there's not a rule for them. They need to have a way of thinking that will lead them to ask the right person or lead them to make the right decision.

**JACK FRIEDMAN:** Some years ago the Dean of the Harvard Business School sent an e-mail to alumni saying that he was upset that Skilling at Enron was a Harvard Business School grad. He decided that instead of having a separate ethics module in the first year curriculum that each first year course was to have some content that incorporates ethics issues. This applied to production, finance, marketing and so on.

That was his conclusion about how to do it.

**THOMAS SAGER:** Thank you. Did anybody want to respond to the question about profiling?

**[AUDIENCE MEMBER]:** In technology, they're pushing a concept called big data and data analytics. They are trying to gather as much information as they can from multiple sources internally and externally to look for behaviors that could

be corruptive in this area of ethics violations.

How do you weigh in on that and how do you feel about it?

**THOMAS SAGER:** I don't think I'm knowledgeable enough to give you a meaningful response.

We always talk about red flags and I know you have regions that are part of the heat map and you've got red flags. The hypothetical that we were going to discuss with you illustrates a great example where red flags were surfacing and nobody within that hypothetical company picked up on them. If they did they tended to ignore them.

I'm not sure that is a form of data analytics.

**ANGELA STYLES:** I think some of the Defense contractors are getting pretty sophisticated at it because of their clearances and dealing with classified information.

The employee surveys that they conduct are not just 10 questions, more like 100. They are just what you want to answer as an employee. They are taking information from two directions: 1) the one-on-one employee survey (and they're slicing and dicing that data) and 2) using their laptop data on all kinds of big data and analytics because they don't want to end up in a Navy Yard situation.

Dealing with classified materials they are almost required to go in that direction.

**[AUDIENCE MEMBER]:** Isn't there a privacy issue in the big data mining looking for ethics violations?

**ANGELA STYLES:** Absolutely.

**THOMAS SAGER:** Certainly from a personal perspective that would be problematic.

**JACK FRIEDMAN:** What are the legal problems with an investigation in terms of the rights of the employee?

In France if you begin an investigation you must tell an employee within two days that you are conducting an investigation.

**THOMAS SAGER:** Michael do you want to respond?

**MICHAEL FEINBERG:** Yes. Unfortunately, we only have limited time left to discuss some of the issues with doing such an investigation.

First, and foremost, a primary issue concerns data privacy and client security. Different nations have different laws. An investigation in the District of Columbia, will be handled quite differently from Japan, China, Brazil, or Russia both forensically and how the company handles legal issues concerning interviews, privileges, and the attorney-client relationship.



### Selected Issues for Multinational Companies

- Local legal requirements related to labor and data protection, particularly in the European Union, must be accommodated.
- Companies must be sensitive to cultural differences across regions and ensure that local programs are tailored to encourage reporting.
- In the wake of the SEC whistleblower bounty program, companies must work even harder to ensure employees raise concerns with the company first rather than report directly to the SEC.
  - Are financial incentives a viable option?

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While the U.S. law imposes certain obligations, in foreign jurisdictions, the ability to review e-mails, interview witnesses, and access personal accounts may be dramatically different. There are certain places in the world where such a review is simply more restrained.

For instance, materials that may be considered ordinary business records in the United States may be considered a “state secret” in China. The broad definition of “state secrets” in China makes identifying

and excluding information from a review or production to a regulator quite complicated and politically precarious. Consequently, the ability to undertake a U.S.-styled internal review is complicated by the potential for limited access to certain communications and accounts.

Going to the big data point raised in the audience member’s question, ethics can be difficult and complicated to implement. Ethics requires an intense understanding of the culture of business, as well as many other factors, if a company is going to “get it right.” All of the things we mentioned today are part of a more universal way to think of ethics, but there is no one silver bullet.

**THOMAS SAGER:** Michael one of the moments for me was when I was in China for the 12th time. Self-disclosure is not something they understand or is part of their culture.

**MICHAEL FEINBERG:** It may not be part of the domestic culture.

We have all heard the law-school anecdotes: an employee in Japan refusing to permit a female attorney in the room; the employee who proceeds to lie to the attorney for two hours in an interview, rather than impugning a supervisor.

How do you handle different norms in different cultures? Imposing U.S. law and U.S. styled investigations globally is something we are facing every day. It is making the investigations very complicated.

**SANJAY BHANDARI:** Just to return to Jack's question for one second.

There is something the company should have in the toolbox when you’re building out your hotline and your other procedures for getting information. You need to also have localized country-specific procedures for responding to it because of the point Jack raised.

That’s true in France and it’s also true in Brazil that unless you respond and take an employment action, there is a data privacy component. That’s what Jack was talking about. There’s also a labor law component in these countries. In Brazil and many other countries, unless you respond within 10 days, you have to

decide whether you're going to take an adverse employment action from the time you received the information.

If you don't take that action within that timeframe, you can't terminate that employee even if you find that they committed misconduct. They violated your policy or they breached their contract. You need to know that in advance. It's a very short timeframe.

**MICHAEL FEINBERG:** Another example concerns *UpJohn* warnings.

When U.S.-trained lawyers travel abroad and issue *Upjohn* warnings, employees located outside the United States may react very differently from U.S.-based employees. The foreign-based employee may immediately stop the interview following an *UpJohn* warning, saying "I have no idea what happened." However, if counsel does not *Upjohn* the foreign-based employee, the company itself is put at risk.

The intersection between domestic culture and norms with U.S. legal requirements raises complicated issues for U.S.-based companies and U.S. practicing lawyers.

**JACK FRIEDMAN:** For our transcript and for those who are here that are not familiar, what is *Upjohn*?

**MICHAEL FEINBERG:** Certainly. *Upjohn* is also known as a corporate Miranda warning (*Upjohn Co. v. United States*, 449 U.S. 383 (1981)). In short, *Upjohn* is the notice an attorney gives an employee informing the employee that the attorney represents only the company and not the employee. The attorney informs the employee that the privilege over communications with the employee belongs to the company, and that the company may choose to waive this privilege and disclose what the employee says to a government agency or other third party.

**THOMAS SAGER:** Blake?

**BLAKE COPPOTELLI:** The only thing that I would add to what Sanjay said is, not only do you need a local plan, but you also need a crisis-management for the first 72 hours when a critical issue is communicated internally within that company.

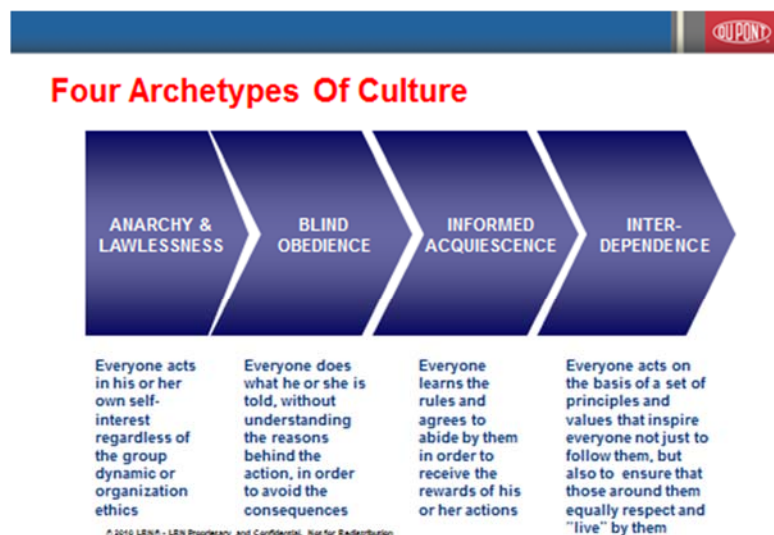
There are a lot of issues that arise and it's right to counsel issues. It's privilege issues. It's resourcing and staffing for the investigation. There are PPAR considerations for the investigation.

There are PPAR considerations that the company might have to consider regarding its reputation should the incident or the facts you're investigating come to light in some way. That first 72 hours is critical, and it could determine the successful result of an investigation for that company. That 72-hour plan needs to be fluid and flexible because every circumstance is different, every jurisdiction is different. The laws are different. But as part of that you need to have local counsel and resources mapped out.

You need to be able to, from an investigative standpoint, rely on a core group of local resources even if the investigations for independence purposes is being managed and supervised from a different jurisdiction, such as the United States.



To add to something Mike said, you may not send a U.S. lawyer into Asia to conduct interviews. You may have local counsel or local investigative resources do those interviews because of the cultural issues that you may have to face in conducting that investigation.



You want to make sure that you're completely familiar with the local laws related to what Mike was saying which are blocking statutes. That's what they're called. They block the ability of data for instance, and other information from being disclosed to the company or to third parties.

**THOMAS SAGER:** As you think about your cultures, you might want to begin to think about where they are on the evolution. I would submit to you that the interdependent culture is where

you would ultimately want to be.

I also wanted to talk about whistleblowing. We've addressed the first two points quite adequately but I wanted to propose to the panelists the issue of whistleblower/bounty programs. Should companies consider financial incentives within the company itself as a way to address or cut off some of the whistleblower activity that they may be incurring or encountering? Thoughts?

**JACK FRIEDMAN:** It's the first time at one of our programs that someone has raised the idea of having a payment system for people to come forward and tell you what's going on.

**Business Ethics Bulletin – A Training Tool**

November 16, 2012

**BUSINESS ETHICS BULLETIN**

Business Ethics Bulletins are issued in collaboration with Internal Audit and Legal to highlight recent issues, both positive and negative, regarding our DuPont Code of Conduct.

**Nature of Concern**

Given the challenging and uncertain business conditions we are facing as we close 2012, it is timely to remind ourselves of the importance of sound accounting and control procedures, key components of our core value of highest ethical behavior.

**Key Reminders - Revenue Recognition**

Accounting standards require that revenue cannot be recognized until it is earned. The company has policies in place to ensure that these standards are followed. As a general rule, the company recognizes revenue only when the following four requirements are met:

- o persuasive evidence of an arrangement exists;
- o delivery has occurred (title has passed) or services have been rendered;
- o the seller's price to the buyer is fixed or determinable;
- o collection is reasonably assured.

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**THOMAS SAGER:** You are rewarding them for what they should be doing in the first place.

**MICHAEL FEINBERG:** It's a good question.

Employees are paid not only to perform a function, but also to perform the function in an ethical employee and legally compliant manner. I would posit that every employee gets paid to be a whistleblower and to incentivize someone to become an extra-

special whistleblower at the expense of others seems to be counterintuitive to the culture you're trying to foster within the company.

At the same time, however, I do not believe that a company should punish employees for whistleblowing – indeed, such punishment is prohibited. Besides the legal ramifications of inhibiting whistleblowers, I believe you want to encourage employees to do “the right thing.” Importantly, the company wants to avoid supervisors instructing and subordinates to bury issues. A supervisor should not say, “Look, I understand that could be an issue. We don’t want to raise that right now. We’ll deal with our financials in the next quarter.” Rather, you want the supervisor, the subordinate, and everyone in the firm to be incentivized to report issues as quickly and as articulately as possible.

**THOMAS SAGER:** Contrary view?

**BLAKE COPPOTELLI:** I'll just add one thing. The guidance that I mentioned from the Department of Justice and the SEC talks about incentivizing compliant behavior and they're all for it.

There's an implication that there is a regulatory expectation that compliant behavior should be incentivized. That is different from the issue of the whistleblower.

The issue with the whistleblower should be a separate point of analysis from what the DOJ and SEC expect. When you incentivize whistleblowing, you in effect incentivize the discredibility of individuals who are part of the reporting process.

**THOMAS SAGER:** Contrary view. Do we have one?

**[AUDIENCE MEMBER]:** This is a very important issue. The Enforcement Division of the SEC does not like the idea that a company would offer to pay somebody more for making a report internally rather than going directly to the SEC. I have heard of creative efforts by companies to basically structure it to say, you will sign you are going to comply with our internal reporting procedures and report to us. We're not going to pay you for that, but you're going to agree that you will forego any whistleblower bounty.

At the end of the day if you go to the SEC you cause them to do an investigation.

That's creative, but the SEC doesn't like that either. They really want this reporting provision to be unfettered.

**THOMAS SAGER:** Excellent. Thank you for those comments.

**ANGELA STYLES:** There are some companies that have started to incent in bonuses and salaries for leaders and managers an element of ethics. They are trying hard to measure it. Take the cultural survey that's being done. If your entity is scoring high on the cultural survey, then you'll get a bigger bonus is really hard to do from a compensation structure perspective. There are a number of companies that are trying to incent the managers and leadership by how ethical or compliant their sections are.

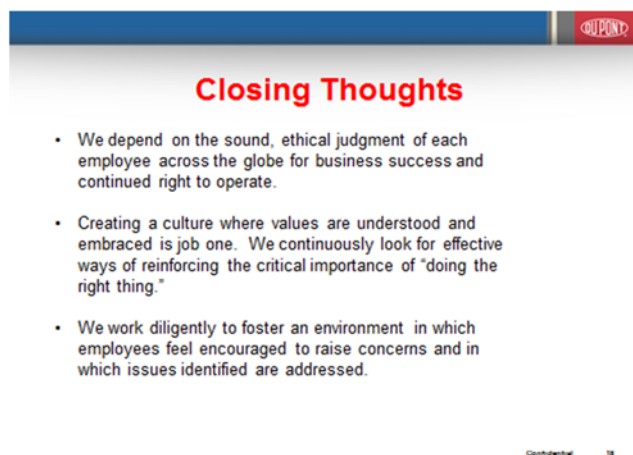
**THOMAS SAGER:** Walk the talk.

**MICHAEL FEINBERG:** I would also add that companies are investing in compliance and internal control. As you probably already know, JP Morgan recently announced the decision to increase the compliance budget from \$1 to \$2 billion in 2014 and, according to senior management, such an expenditure will remain at that level for the foreseeable future.

Such an effort is a different spin on the idea of rewarding compliant culture. It's the company saying this is important to us. It's more than words or engagement; it's "putting your money where your mouth is."

The increased expenditure represents a public effort to take compliance seriously and, notably, provided the bank with a positive news-cycle.

**THOMAS SAGER:** I'm going to skip ahead, we had some hypotheticals but we don't have time for those right now.



Two or three closing thoughts, obviously the point Angela made with respect to teaching ethical judgment is critically important. You can't anticipate every situation that's coming across your desk and not necessarily theirs, but they have to develop those instincts.

The culture itself, I can't emphasize enough how important it is to work on that culture and drive the importance of doing the right thing. Then, foster that environment by encouraging people to come forward and raise those concerns. Your companies or

clients will be better off at the end of the day.

I wanted to turn it back over to Jack, our emcee and host for any comments or perhaps questions or provocations he might want to offer.

**JACK FRIEDMAN:** There is a quote by T.S. Eliot that I admire. He said, "They constantly try to escape from the darkness outside and within by dreaming of systems so perfect that no one will need to be good." The fact of the matter is that personal integrity counts and not just the systems that firms try to put in place.

I would like to close with a question for Tom. What is your vision about the issue of whether companies that are more ethical may be at a competitive disadvantage? If you can't bribe to get a contract in some countries, how do you deal with it?

**THOMAS SAGER:** Certainly we have all experienced a transaction that may have gone the other way because somebody did something untoward or we considered it to be. When you lift it up and you think strategically about this whole issue, about core values and whether it brings a competitive advantage,

without question it does.

Our President of the United States set a great example, by the regulations they put forth with respect to wanting to know the ethical or the compliance track record of perspective bidders for government work. That is the tone that needs to be set, certainly by the federal government.

Quite frankly, we're finding we're getting more business because of our reputation in the marketplace in certain sectors. Unequivocally it is in your company's competitive interest and it brings the advantage if you have core values.

**JACK FRIEDMAN:** They are related to corporate success.

**SANJAY BHANDARI:** On that point, there have been statistical studies, *Ethisphere Magazine*, for example, publishes an annual survey and they track and rank the most ethical companies. There is a correlation between sustainable economic successes, a statistically significant correlation between that and how they rank in terms of their client system.

You might goose things for a brief period by engaging in unethical conduct, but eventually the chickens are going to come home to roost.

The other thing is in a lot of situations where we've been called in to look at a problem after the fact and clean it up, what we find is that the non-compliant behavior was not really a competitive advantage. It was a product of ineffective salespeople.

**JACK FRIEDMAN:** People who are unsuccessful and cut corners because they were desperate?

**SANJAY BHANDARI:** Right.

**JACK FRIEDMAN:** The Directors Roundtable is built upon not only the expertise of our Distinguished Speakers, but also the participation and involvement of the audience. I want to thank everybody for coming and especially Tom for inspiring and creating this topic for us.

**THOMAS SAGER:** Thank you.



**Thomas L. Sager** is senior vice president and general counsel, DuPont Legal. He started his career with DuPont in August 1976 as an attorney in the labor and securities group.

Mr. Sager helped pioneer the DuPont Convergence and Law Firm Partnering Program and continues to have oversight responsibility. Through his leadership, this program has become a benchmark in the industry and has received national acclaim for its innovative approach to the business of practicing law. He was named associate general counsel in 1994. In January 1998 he was named chief litigation counsel where his responsibilities included oversight of all litigation and IT support for the entire function. He was named vice president and assistant general counsel in November 1999, and to his current position in July 2008.

Born in Winchester, Mass., he received his J.D. from Wake Forest University School of Law in 1976.

Mr. Sager is past chairman of the Minority Corporate Counsel Association, a group that advocates for the expanded hiring, retention and promotion of minority attorneys in corporate law departments and the law firms they serve. In addition, he serves as a board member for the CPR International Institute for Conflict Prevention and Resolution; Delaware Law Related Education Center; Delaware Community Foundation and the Atlantic Legal Foundation. He is also a member of the Widener University Board of Trustees; Advisory Board of the University of Delaware Weinberg Center; Law Board of Visitors at Wake Forest University School of Law; the Board of Trustees of the Lawyers' Committee for Civil Rights Under Law; chairman of the National Association for Law Placement (NALP) Foundation Board of Trustees; and Trustee, Christiana Care. In 2010, Mr. Sager was named to the ABA Task Force on Preservation of the Justice System.

In January 2005, Mr. Sager was the Distinguished Lecturer for the Corporate Counsel Technology Institute, at the Inaugural Annual Technology Lecture Series, held at Widener University School of Law. In addition, Mr. Sager has received the following recognition:

The Thomas L. Sager Award from the Minority Corporate Counsel Association. This award was established in his name and given in recognition of his individual efforts and achievements to promote diversity in the legal profession and will be presented annually. In 2001 he received the Spirit of Excellence Award, presented by the American Bar Association Commission on Racial and Ethnic Diversity in the Profession. In 2009 Mr. Sager received the CPR Corporate Leadership Award. Mr. Sager also was recently recognized by The National Law Journal as one of the 40 most influential attorneys in the past decade, and was featured in American Lawyer Magazine as one of the top 50 Legal Innovators. In November 2011, Mr. Sager received the Community Legal Aid Society's Founders' Award in recognition of his contributions to the cause of equal access to justice.

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**Michael L. Feinberg** is a Counsel in Cahill Gordon & Reindel LLP's Securities Litigation & White Collar Defense practice group.

Michael advises global financial institutions, broker/dealers, hedge funds, corporations, and their directors and officers in complex securities litigation, internal investigations and regulatory inquiries and enforcement proceedings by governmental agencies and Self-Regulatory organizations including the U.S. Department of Justice, U.S. Securities and Exchange Commission, U.S. Department of Treasury, U.S. Commodity Futures Trading Commission, FINRA, State Attorney Generals, state securities regulators, the U.K. Financial Services Authority, and the European Commission (DG Competition).

Prior to joining Cahill, Michael managed complex litigation, internal investigations, and regulatory enforcement proceedings at Credit Suisse during a period of unprecedented enforcement activity focused on Wall Street. Earlier, Michael was a litigator in private practice where among other matters, he represented the underwriting syndicate in the *Refco* multidistrict litigation, one of the largest MDL's in U.S. history.

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## CAHILL

**Cahill Gordon & Reindel LLP** was founded in 1919 and quickly built a national reputation for excellence in the financial and corporate areas. During the mid to late 1930's, Cahill earned status as a "Securities Act" firm and during and after the Second World War, under the leadership of John T. Cahill, the legendary former U.S. Attorney for the Southern District of New York, Cahill grew dramatically. Maintaining its innovative corporate law practice, the firm also came to be counted among the leading litigation firms in the nation.

Cahill has thrived for nearly a century by focusing on the most significant opportunities and complex challenges facing the top financial services firms and other multinational corporations. Our premier transactional and litigation groups have developed impressive records of accomplishment in high profile cases and headline-grabbing deals. Cahill lawyers are highly client-driven. The firm is specifically chosen by clients because of our experience, depth of knowledge and facility in managing challenging situations.

Cahill is known for innovative trial strategies and financing solutions that draw on the strengths of the entire firm and reflect a wider perspective than that typically afforded by the specialized niches and micro practices that make up a large law firm. A passion for challenging and distinctive work is at the heart of our firm culture and explains why Cahill consistently wins cases and ranks among the most active firms in the financial league tables year after year.

Among our ranks are lawyers who joined Cahill following distinguished careers in the Securities and Exchange Commission, United States Department of Justice, Department of the Treasury, Federal Trade Commission and other federal and state agencies.

Our lawyers are committed to advancing the goals of not-for-profit organizations through our pro bono program, and we are proud of our unique partnership with The Legal Aid Society, which helps disadvantaged New Yorkers, including children, immigrants and the disabled achieve justice under the law.





**Angela B. Styles** is a partner in Crowell & Moring's Washington, D.C. office and co-chair of the firm's Government Contracts Group. Prior to joining the firm, Ms. Styles served in the federal government as Administrator for Federal Procurement Policy within the Office of Management and Budget at the White House, a position requiring confirmation by the United States Senate. Ms. Styles also served in the General Services Administration Public Buildings Service in a Senior Executive Service appointment. In these positions, Ms. Styles was responsible for the policies and regulations governing all purchases by the federal government. Ms. Styles led presidential initiatives on federal contracting and worked on a wide variety of legal, legislative and policy issues associated with contractor ethics, federal contracts compliance, homeland security, terrorism related indemnification, and labor management relations. Ms. Styles

also chaired the Federal Acquisition Regulatory Council, the Federal Acquisition Council, and the Cost Accounting Standards Board.

Ms. Styles' current practice concentrates on government contracts counseling and litigation, including procurement ethics and compliance, civil and criminal fraud matters under the False Claims Act, mandatory disclosure, procurement integrity, the Anti-Kickback Act, GSA Schedule contracting with an emphasis on pricing issues, GSA leasing, and Buy American and Trade Agreements Act compliance. In addition, Ms. Styles conducts complex internal investigations, corporate compliance reviews, and training programs on ethics and public sector contract compliance.

Most recently, Ms. Styles' counseling practice has focused on advising clients on federal mandatory disclosure rules, suspension and debarment, and compliance with multi-faceted federal, state and local contracting requirements under the American Recovery and Reinvestment Act (ARRA) of 2009. Ms. Styles also has extensive experience advising clients on complex appropriations and Anti-Deficiency Act issues.



**Crowell & Moring LLP** was founded in 1979 by

53 lawyers who left a large national firm to begin a different kind of law firm. Since then, we've grown to 500 lawyers in Washington, D.C.; New York; San Francisco; Los Angeles; Orange County; Anchorage;

Cheyenne; London; Brussels; and affiliate offices in Cairo and Riyadh. And we've created some impressive milestones along the way.

We structured our leadership team like a business instead of a traditional law firm. This innovative approach helps us operate more efficiently and make smart decisions faster.

Of course you want results. But “winning at any cost” is rarely, if ever, the right answer. What you want is consistent, high quality results, delivered on time and under budget. In short, “no surprises” – ever. Our holistic approach to pricing, legal project management, and continuous improvement is tailored to you, and your needs. We achieve all that and more by constantly asking you “what went well” and “what needs improvement?” Our goal: to reshape the business of law. There are no sacred cows here. We’re constantly challenging our business model—from the talent we seek to recruit, to how we develop the right skills to meet your needs for consistent, high quality results, efficiently delivered. We’re fostering an environment of entrepreneurship. We’re redefining our role as strategic advisers. It’s all part of our commitment to how we define success. Not by our standards, but by yours.



**Sanjay Bhandari** is a former federal prosecutor, a former SEC enforcement attorney, and an experienced trial lawyer in criminal and intellectual property cases. His practice focuses on government enforcement, investigations, and intellectual property litigation. Mr. Bhandari is a member of the firm's Strategic Planning Committee, and a co-head of its Anti-Corruption Practice Group.

Mr. Bhandari's government enforcement experience includes large international corporate investigations, compliance counseling, and representing individuals and corporations in government investigations and enforcement proceedings. He has extensive experience with anti-corruption laws (including the Foreign Corrupt Practices Act (FCPA)), health laws, and securities laws, including revenue recognition and other accounting issues. He has also handled cases involving antitrust, environmental, money laundering, and tax issues, among others.

Mr. Bhandari's intellectual property experience includes several trials involving copyright, patent, and trademark issues. He has litigated intellectual property cases involving chemicals, DRAM and other memory chips, medical and other software, television broadcasts, and many different types of trademarks and trade dress. He has also handled various types of trade secret disputes. Mr. Bhandari has tried approximately 20 cases before juries, judges, and arbitrators, including trials that ran several months in length.

Mr. Bhandari has tried approximately 20 cases before juries, judges, and arbitrators, including trials that ran several months in length. Representative government enforcement/investigations matters include conducting worldwide investigations into potential FCPA violations at medical device, transportation, and other companies, including in-country investigations in Azerbaijan, Germany, India, Russia, and Turkey; reviewing and providing recommendations for improvement of the FCPA compliance program of several companies; and representing numerous individuals in internal and government investigations relating to adulteration, anti-kickback, misbranding, off-label promotion, and other FDA and health law issues.

Mr. Bhandari was in government service from 1999 to 2008, as an Assistant U.S. Attorney in the Southern District of California and an SEC Enforcement Attorney at the SEC's headquarters in Washington, D.C. Matters he handled included *United States v. Cunningham*: the largest bribery case ever brought against a sitting member of Congress.



**Ballard Spahr LLP** is a national firm of more than 500 lawyers in 14 offices across the country. Our attorneys provide counseling and advocacy in more than 40 areas within intellectual property, litigation, business and finance, real estate, and public finance. We represent a diverse cross-section of clients that range from large public companies and privately held corporations to government agencies and nonprofit organizations. Our practices span the life sciences and technology, energy, health care, and other sectors that are driving innovation and growth in today's marketplace.

The firm's mission is straightforward: to provide nothing less than excellence in every legal representation. Our client focus is absolute. We help clients achieve success as they define it. We respect and anticipate their needs, take action to keep them informed, and devise forward-thinking solutions to get the most favorable results. This is Ballard Spahr's pledge.





**Blake A. Coppotelli** joined Freeh Sporkin & Sullivan, LLP ("FSS") in May 2011 as a Partner in the firm's New York office. Prior to joining FSS, Coppotelli was a Senior Managing Director with Kroll Associates Inc., advising public and private clients on public corruption, government, regulatory, and/or corporate investigations, financial and investigative due diligence, internal corporate controls and governance, and ethics policies. During his ten years at Kroll, his legal and investigative experience enabled him to be appointed to various independent ethics oversight positions by public and private clients and/or concerns, and to serve as an Independent Private Sector Inspector General on numerous high profile matters. His current practice concentrates in these areas, as well as in white-collar criminal defense.

Prior to joining Kroll, for thirteen years, Coppotelli was an Assistant District Attorney in the Manhattan District Attorney's Office, ending the last four years of his tenure as Chief of the Labor Racketeering Unit and Construction Industry Strike Force. Coppotelli also served as a Senior Investigative Counsel advising other investigative Assistant District Attorneys on investigative strategies, legal issues, and trial practice.

While chief, Coppotelli supervised the investigation into District Council 37, of the American Federation of State, County, and Municipal Employees Union. The investigation secured the convictions of more than twenty-five union officials and nine corporations for grand larceny, scheme to defraud, and bribery. Coppotelli also supervised the racketeering and anti-trust indictments of eleven members of the Lucchese crime family, including the family's acting boss, two capos, eleven construction companies, and numerous union officials from Local 608 of the Northern Regional Council of the United States Brotherhood of Carpenters, Local 1 of the Builders and Allied Craftsmen, and Local 20 of the Laborers International Union. Coppotelli further supervised the investigation of New York State Senator Guy Velella for conspiracy to receive bribes for influencing the awarding of public contracts.



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