



DIRECTORS  
ROUNDTABLE

# WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

**Michael Bailey**

Senior Vice President & General Counsel  
Bechtel Group, Inc.

## THE SPEAKERS



**Michael Bailey**  
*Senior Vice President  
& General Counsel,  
Bechtel Group, Inc.*



**Raymond Banoun**  
*Partner, Cadwalader,  
Wickersham & Taft LLP*



**Martin Weinstein**  
*Partner, Willkie Farr &  
Gallagher LLP*



**Philip Urofsky**  
*Partner,  
Shearman & Sterling LLP*

## TO THE READER:

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments and of his company's leadership as a corporate citizen, we are honoring Michael Bailey, General Counsel of Bechtel. His address focuses on challenges facing General Counsel of a corporation with operations in major countries throughout the world, each with its own economy, technological development, infrastructure and regulations. The panelists' additional topics include successful international compliance, selected tax issues for international M&A, and international governmental policies such as FCPA.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel.

**Jack Friedman**  
Directors Roundtable  
Chairman & Moderator

## Michael C. Bailey



Michael Bailey is General Counsel of Bechtel Group, Inc. He is responsible for leading the legal, ethics and compliance, and internal audit functions. He became a senior vice president in September 2001 and was elected to Bechtel's board of directors in 2010.

Mr. Bailey joined Bechtel in 1994 as a senior lawyer in Bechtel's legal department. In 1997, he was executive assistant to the Chairman and Chief Executive Officer, Riley Bechtel, and the President and Chief Operating Officer, Adrian Zaccaria.

From 1998 to 2004, Mr. Bailey served in various roles in Bechtel Enterprises (BEn – Bechtel's finance, development and investment business) including General Counsel, managing director for human resources and manager of direct investments and technology ventures portfolios. During this period, he also served as assistant general counsel of Bechtel Group, Inc.

During 2004 and 2005 he was transferred to InterGen (a global energy business then

owned by BEn and the Royal Dutch Shell group) as executive vice president and General Counsel.

In 2005, following the successful sale of InterGen, Mr. Bailey returned to Bechtel and relocated to London as a managing director in Bechtel's civil infrastructure global business unit. While in London, his role included global responsibility for the aviation business line as well as a number of services and functions.

In early 2010, Mr. Bailey rejoined the legal department as General Counsel of Bechtel Group, Inc.

Prior to joining Bechtel, he was a partner in the law firm of Borden Ladner Gervais, LLP in Toronto, Canada where he was included as one of the world's leading lawyers in the International Financial Law Review Guide. He earned his law degree from the University of Toronto.

## Bechtel

Bechtel is a global engineering, construction and project management company with more than a century of experience on complex projects in challenging locations. Privately owned with headquarters in San Francisco, we have offices around the world and 52,700 employees. We had revenues of \$27.9 billion in 2010, and booked new work valued at \$21.3 billion.

### What We Do

- Roads and rail systems
- Airports and seaports
- Fossil and nuclear power plants

- Refineries and petrochemical facilities
- Mines and smelters
- Defense and aerospace facilities
- Environmental cleanup projects
- Pipelines
- Oil and gas field development

### Signature projects

- Hoover Dam
- Channel Tunnel & Rail Link
- Kuwait oil fires
- Boston Central Artery/Tunnel
- Cingular wireless expansion
- Iraq reconstruction
- Three Mile Island cleanup
- Jubail Industrial City

- Hong Kong International Airport
- Bay Area Rapid Transit (BART)
- Katrina Hurricane disaster relief

### Safety First

At Bechtel we believe every accident is preventable, and our commitment to safety pays off.

- Year after year we are among the safest companies in our industry.
- Some 80 percent of our projects complete each year without a lost-time accident.
- In 2010, 42 projects each achieved more than 1 million consecutive safe work hours.

**JACK FRIEDMAN:** Welcome. This series of world honor for General Counsel over the years arose from Boards of Directors telling us that corporations never get credit for the good that they do. It's important to have programs that give executives, whether on the business side or the legal side, a forum to talk about what their companies are doing and what they are proud of. Also, it enables leadership to get to know about people that they have read about in the news, like our Guest of Honor.

The transcript of this event is going to be sent out to about 150,000 people globally. What makes this the leading honor for General Counsel is not just the event itself, but also sharing it with leaders all over the world.

We could spend the whole morning giving the outstanding qualifications of the various speakers, but we have a tradition that less is best. So I will briefly introduce the speakers as their turn comes, and they will make their introductory remarks. Then we will go on to an extended Roundtable discussion among the panelists and invite comments or questions from the audience. At the end the audience will be invited to come up to discuss one to one with the Distinguished Speakers.

I enjoyed very much learning that our Guest of Honor is from Canada. I like to go up to Banff and enjoy the Calgary Stampede. He may have a non-American perspective to bring to his job, which is very valuable. I want to thank Michael Bailey for his presence here, and we will start with his comments.

**MICHAEL BAILEY:** Thank you, Jack. I am honored to receive this recognition from the Directors Roundtable – though I really must accept it on behalf of a fantastic team: our in house legal, ethics and compliance and internal audit teams; our outside advisors – many of whom are here today – including our panelists; and an incredible business team who puts us “at the table” and lets us all enjoy the great challenge of working together to solve the issues – both



complex and straightforward – that we face each day.

I particularly appreciate the opportunity to listen to the thoughts and views of Ray, Martin, and Philip and to share a few thoughts of my own.

While the theme is a broad one on the challenges Bechtel faces given the size and scope of our work around the globe, the remarks I would like to share today are on one particular challenge about which I am passionate: ethics. Of course, I would be pleased to answer questions on this or any other topic to the extent that time permits.

I don't plan on an academic talk today, nor do I intend to recommend best practices for others to follow. There are many in this room, especially the members of this very distinguished panel, who are experts in the field and much more qualified for that than I am. Finally, I recognize that each company has its own attributes and so, while my thoughts may not apply to all, I hope that a few of you may find something of value in them.

Before discussing ethics at Bechtel, as a private company I am aware that publicly available information about us can be limited.

So let me begin my remarks by giving you a brief overview of Bechtel.

Bechtel is an engineering and construction company. In the words of our current CEO, Riley Bechtel: “We build big stuff.” We have “built big stuff” since the company was founded in 1898 by Warren Bechtel – Riley's great-grandfather. Between Warren Bechtel and Riley Bechtel, the company was led by Riley's grandfather, Steve Bechtel, Sr., and by Riley's father, Steve Bechtel, Jr.

Four generations of continuous Bechtel family leadership for over 110 years. And we expect many more generations to follow.

Our shareholders are family and non-family management. To say it another way, we are not a family-owned business, we are a management-owned business. Family and non-family shareholders are all actively involved in its day-to-day management.

Statistically speaking: we have over 50,000 employees worldwide and in 2010 our revenues were nearly \$28 billion and our new contract awards were over \$21 billion. This month, the leading engineering and construction periodical, *Engineering News Record*, named Bechtel the number-one United States contractor for the thirteenth

straight year. Bechtel consistently ranks among the top 10 contractors in the world.

While this might suggest otherwise, it is important to recognize that we are not driven by growth. We are driven to provide the very best service to our clients and to be recognized by them as the best at what we do. We do not strive to be the biggest; we strive to be the best.

In non-statistical terms: we work all over the world for governments and commercial customers, helping them plan, design, and build critical infrastructure that can transform companies, countries and economies. We are trusted by our clients with some of their most important investments – often their largest single capital investment in their history; and in many cases in remote and very difficult parts of the world.

We have a team of amazing people whose passion is to travel from project to project – each often for several years at a time and at great personal sacrifice – to deliver time and again on our promises to our clients. And in doing so, to make a difference in the communities in which we work.

Some of you may know that we have been involved with many landmark projects. To name a few – and time will permit only a few:

- The Hoover Dam.
- The Channel Tunnel Rail link from England to France – and more recently the High Speed 1 rail line into downtown London – tunneling under the Thames River and much of the city.
- The Hong Kong International Airport, and
- The world’s largest planned industrial cities – Jubail and Yanbu – where for 35 years we have helped and continue to help the Royal Commission expand Saudi Arabia’s industrial capacity and provide local employment. I believe that



the Jubail Industrial City is considered the largest civil engineering project in the world.

Today, we are involved in equally challenging projects – again a few examples in no particular order:

- In the Peruvian Andes, at over 10,000 feet elevation, we are building a \$4 billion copper concentrator.
- In Doha, Qatar, we are managing the construction of a new International Airport which will serve as the base for the very successful national airline – Qatar Airways. Situated on a reclaimed site next to the City of Doha, this project currently has over 45,000 construction workers building over 90 separate facilities, including a spectacular new main terminal building.
- In California’s Mojave Desert, we are building the world’s largest solar thermal facility using technology developed from a pilot project we supported in the 1990s.

- Teamed with the University of California, we manage the Los Alamos and Lawrence Livermore national laboratories – partnering with those labs to transfer to them the management and engineering skills we have developed over the last century.
- Just across the Potomac River, we are building the Dulles Metrorail Extension – an over \$1 billion fixed-price metro rail link that will, when complete, ease the commute and ultimately, when Phase 2 is awarded and built, connect Washington to the Dulles Airport.

To put our “ethics” challenge in context: in any year we are working on well more than fifty projects we classify internally as “major projects,” most of which range in total cost from \$200 million to well over \$10 billion. A large number of these projects are located in countries that rank near the bottom of Transparency International’s Corruption Perception Index. Each project can involve: procuring and importing into the country millions of dollars per day in materials, equipment and supplies; hiring and training hundreds to thousands of construction workers; and contracting for specialized services from companies who work for us or whom we manage for the client.

So how does Bechtel successfully compete and safeguard its reputation for ethics in this environment? Let me share with you a few thoughts about what has worked for us.

First: I often hear people say that ethics must be a “*business imperative*” – but I have never liked that expression because for me, *Ethics is more than a Business Imperative – it needs to be in your DNA.*

Of course, ethics for us is a business imperative. People hire us because they trust us. That trust has been earned over many decades and must be earned again every day for everything we do.

In my view, clients trust us because ethics is the foundation for what we do and who we are. It always has been. Doing the right

thing, and putting that above all else is what drives Bechtel and our values, business decisions, and success. Quality; safety; how we develop and treat our people; delivering on the promises we make to our clients; and delivering bad news as well as good news as early and honestly as possible — are all based on the foundation of our absolute commitment to ethics.

But saying that “ethics is a business imperative” to me implies in some sense that you must behave ethically to win business and succeed. This is why I don’t like this phrase. We don’t behave ethically to win business; we are ethical because this is who we are. It is this commitment to ethics that has allowed us to build the reputation and business we have. Not the other way around.

In my view, our absolute commitment to ethics all starts with the Bechtel family. I have had the privilege over more than 15 years to get to know Steve Bechtel, Jr. and his wife Betty; Riley Bechtel and Susie, and now Riley and Susie’s children, as well as many other Bechtel family members who have been and continue to be part of the business. To a person, they’re among the most modest, generous and honest people I have ever met. Over four generations and more than 110 years, they have built this character of modesty, generosity and honesty into the fabric of Bechtel and the people who make it up. Warren Bechtel’s handshake was his bond 110 years ago. It remains the same today for Riley Bechtel.

In addition to the ethics and integrity the family has built in to the company — I mentioned earlier that we are not a family-owned business, we are a management-owned business. Let me in part contradict that now. While we may not be a family-owned business — we are a “family business.” Spouses and children are part of the business — and on many projects provide vital support for the entire project team. Many of our employees are second, third and even fourth generation “Bechtel employees” — not just the Bechtel family.

“Ethics is more than a Business Imperative — it needs to be in your DNA.”

— Michael Bailey

The Bechtel family leadership and legacy; delivering on our promises; the values of modesty, generosity and honesty; the nature of our ownership-partners who are all active management; and the fact that we are a family business of many families who over generations have been part of Bechtel — have all contributed to establish an incredible long-term foundation of ethics for our policies, strategy, and day-to-day decisions. Some examples:

- Success for us is not solely defined by this quarter or this year’s financial results, but by building a business that will continue to succeed in the long term, and that our children will be proud that we were part of and that they themselves may someday join if they earn that right.
- While fair compensation is important to all of our employees, I genuinely believe that people at Bechtel — from the construction worker to the leadership team — work because we love being involved in the most exciting projects in the world. Period. We make a difference and we can see it happen every day as the projects “come out of the ground.” We don’t count each day how much money we have made. We count how much progress we have made on the projects we are building and the difference we are making in the communities where we work — including, most gratifyingly, the training we conduct that provides long-term careers for people who remain after we leave.
- Our annual financial targets, compensation programs and career development programs all reflect this. They’re not driven solely by results. Growth for the sake of growth is never an option.

In my experience, greed is a breeding ground for ethical violations. When coupled with

rewards and definitions of “success” that are solely focused on results or growth it is difficult to avoid. We are very lucky at Bechtel that over the generations we have developed a culture that is the opposite of “greed”. A culture that rewards modesty, generosity, and honesty and looks to build long-term business success, and not short-term financial success.

The second thought I would like to share is: *It’s not simply about “Tone at the Top” — it’s about “Ethics in Action.”*

Typically, when people discuss ethics and compliance, “tone at the top” and “compliance programs” are the subject and identified as the key factors to succeed. While these are important, this troubles me. Ethics isn’t just about words, or paper, or “tone.” Too often people treat ethics as a compliance matter rather than a much broader standard of behavior. As many of the headlines have shown over the past two decades, you can have world class compliance programs, codes of conduct, and speeches by management that deliver all the right messages. The “tone from the top” can be perfect — but the business and its ethics can still be corrupt.

While I believe we have an incredible commitment to ethics — it is in our DNA — to be effective, this commitment must be backed up every day by “actions.” That means delivering appropriate consequences, both positive and negative; and doing so consistently over time. This is what I mean by “Ethics in Action.” To fail to deliver consequences or to deliver the wrong ones undermines the commitment and the trust in it by employees and others. To use an overused cliché: “actions speak louder than words.”

At Bechtel — there is zero tolerance towards ethical violations. There has never been a doubt about this in my mind. I am 100%

confident that not only would Riley and the rest of the management team support my taking action on unethical behavior – they would expect it and consider inaction unethical. I have seen this many times. We have lost significant amounts of money on decisions to withdraw from bids or prospects because of our “no options,” “no alternatives,” “no excuses” approach to the issue. We act decisively when individuals behave unethically. There has never been a question, never a debate, never a calculation about the cost; never a hesitation about the right action to take.

Our annual compliance training includes a very powerful video message from Riley Bechtel that sums it up well. His message is that ethics is an absolute, his name is on the door – and he is clear and blunt: “If you get out on an ethical limb, my job is to saw it off.”

The last thought I would like to share is that: *The message must get out and employees must be fearless in their own commitment.*

I believe this is the biggest challenge for all of us. I think we do it well, but it is a constant battle and one where the need for improvement is continuous. We would particularly welcome your ideas. This is an area where we all need to share more with each other about what has worked and what hasn’t.

As I mentioned earlier, we are a large, complex organization with business and project teams around the globe, many in remote locations. As is the case with many companies, at any one time a significant number of our people are newly hired. Getting the message out is not easy and is not a “one time” process. Making sure people understand and believe that message – and as such, become fearless in their own commitment, is even more difficult.

By making people fearless in their commitment, I mean creating an environment so that: they are not afraid to raise ethical concerns they may see; they are not afraid to report ethical issues concerning their



colleagues, friends, bosses or senior management; and they *know* that there will be no negative repercussions for doing so – indeed, that the company *values* it.

We have a world-class ethics and compliance program led by a world-class leader. We have individual ethics and compliance managers in each business who are also senior business leaders. I believe this is important, as these business leaders can deliver our commitment to ethics as business leaders and not just ethics and compliance managers. We require ethics training and hold annual “in person” ethics workshops to drive the message home. We have all the additional elements in our overall program that you would expect to see, including what I think is an industry-leading compliance audit program that we are now implementing.

Let me share one aspect that is working well for us – our ethics workshops – and one area where we are looking to further improve.

Our “in-person” ethics workshops have proven to be an excellent tool not just in training the content but in delivering the message of our commitment. They are conducted in small groups and led by the local manager. They are organized around real case examples and small group discussions

of the issues and consequences. Everyone in the company participates. Initially, the cases were more generic. We have changed those so that they are real issues we have or could face. This has improved the sessions significantly.

The effect of these workshops is that employees in all locations see and hear the commitment of their leaders and peers to ethics and discuss case examples that include not just “is it ethical or not” questions – but the questions that focus on when, how, and where to report issues or concerns and the expectation that they do so.

The second area we are now looking to improve is how we can more effectively and broadly discuss real ethical issues that have arisen in the company and the specific actions and consequences that were taken. I consider this important for at least two reasons.

First, in general terms, people are trusting. We are trusting of our colleagues, of systems, and of our suppliers. As a result, we can become complacent. We may believe that corruption exists or ethical violations occur – just not in our own organizations. Discussing real situations that have happened can fight this complacency.

The second reason is a simple one: taking the right action and applying positive and negative consequences is not effective if no one ever hears about it. Making these situations visible not only re-enforces the company commitment to ethics, but also re-enforces that employees should not fear raising ethical concerns: the right action is taken.

A final comment on getting the message out and empowering our employees to be fearless in their commitment: we, and I think the ethics and compliance community in general, need to do more to look for good ideas from other models that have worked well. As an example, in Bechtel, we have an outstanding Safety Program. I believe that all employees understand our safety commitment and have no fear in raising concerns. Its success has evolved over the decades, and it is truly a program based on changing behavior, not dictating compliance. While we have used some of the ideas from our Safety Program in our Ethics and Compliance Program – I honestly think that there is a lot more for us to learn and to share with others. We are going to review this again and share lessons we think may apply more broadly to others. I hope each of you does the same – we all need to learn from each other.

To summarize again, my three thoughts on how we are safeguarding our reputation for ethics in the complex environment in which we work:

- Having an absolute commitment to ethics above all else is essential.
- But that commitment is not sufficient. You have to back that commitment up with appropriate consequences to make it believable. And you have to be consistent with the commitment and consequences over decades and over changes in leadership.
- In a large complex global business you have to continuously work to get the message out, demonstrate the commitment through making the violations and consequences visible, and make all employees

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fearless in their commitment to hold themselves and everyone around them accountable.

Thank you, and once again, I would like to express my appreciation to the Directors Roundtable for this recognition and to thank Jack for his personal commitment and enormous contribution. The programs that the Directors Roundtable sponsors provide an invaluable forum to examine critical issues facing business leaders and the opportunity to learn from our colleagues to better serve as our companies’ Directors and advisors. I hope my remarks have provided some contribution towards these efforts and I am confident that I will benefit from the discussion of my colleagues today.

**JACK FRIEDMAN:** Well, first of all, I want to say that you certainly have made me feel good. So, thank you very much!

In an earlier program some time ago – I’m not quoting someone from a private conversation – Jim Comey, who is the former U.S. Deputy Attorney General, said that his children and others generally look very carefully at the real conduct of parents: not just what parents tell them they’re supposed to do, but actually what parents *do* in terms of their ethical behavior and how they treat people. He said that, in his view, employees who work for an executive look as carefully at what their boss is really doing as the kids do with the parents. He said they hear the words, “We should do this or that,” but they’re also paying attention to the actions that follow.

I wanted to ask you, what would be an example either of something that in real life came up, or something in the hypotheticals in your discussion of an ethical situation

that might be discussed with the employees to raise awareness.

**MICHAEL BAILEY:** One example we have used in our workshops is a hypothetical situation of a vendor who makes available tickets or opportunities or in one case makes a holiday home available to an employee who in turn offers it to his boss. The workshop calls for a discussion of the various possible issues as well as specific review of our code to identify applicable code provisions.

**JACK FRIEDMAN:** Thank you. We will move on to the next speaker: Ray Banoun is the Managing Partner here in Washington for the Cadwalader firm.

**RAY BANOUN:** I’d like to talk for a few minutes about the globalization of the regulatory and enforcement environment, and how the remarks that Michael just gave are very instructive in terms of what we see happening in enforcement around the world today.

The world has changed dramatically, as everybody knows. Businesses are much more global. They’re not insulated – whether it’s in Securities and Banking or in *any* other area – the barriers that companies had to protect their environment and to avoid regulatory or enforcement actions, have disappeared. When Switzerland can’t protect bank secrecy as it used to, it tells you something; it tells you that enforcement generally, the pressures of the regulatory environment brought by multiple countries, do have an impact, and the environment has changed.

As a result, we hear about it all the time, in the money laundering and the corruption





areas, that there's this cooperation worldwide among regulators and enforcement agencies. But it is not limited just to that area, although you notice it more often in that area or major scandals because these are of greater interest to people, as are the fines imposed and the associated costs of investigations.

Businesses really have had to adjust to having to deal with and react to and protect themselves from all these regulatory agencies and enforcement agencies that focus on particular industries and regions of the world and investigating them.

We see legislation being enacted in many countries, especially in the United States and the U.K., where the limits of jurisdiction that we used to expect – that is, where a country's jurisdiction ended at its border – now no longer exists. The United States and England take the view that jurisdiction extends way beyond their borders; it extends beyond the actions of companies that operate there or individuals who live, function, or who are citizens of, those countries; it extends to actions that occur outside the jurisdiction, but that impact that jurisdiction.

We have seen that in the U.K. Anti-Bribery Act that was enacted last year, and that will come into effect in July of this year, where *any* company that has a presence in England and is involved in corrupt conduct anywhere in the world will find that the United Kingdom will assert jurisdiction over that conduct and seek to enforce its statute.

We have also witnessed the failure to prevent conduct sometimes being made a violation. Again, England is leading the way in that with its Anti-Bribery Act, where a failure to prevent bribery is, in and of itself, a violation. On the other hand, we've also seen the counter-side, companies that take actions properly and effectively to avoid improper conduct by their employees. As Michael said, they have ethics programs that are not just on paper, but really are effectively enforced, function well, and are well understood by everyone – that, in and of itself, very often acts as a defense and a protection against potential regulatory and enforcement violations. There are several such examples in the anti-corruption as well as in the securities and a variety of other areas.

There are many reasons for having effective compliance, it's not just to protect against enforcement or regulatory actions; but also to protect against collateral consequences to a company. Obviously, reputational damage from adverse publicity is the most obvious such consequence, with significant impact on the business of a company worldwide. But also there are other collateral consequences, whether it's the EU requiring debarment of a company that is convicted of a criminal act; or here in the United States, suspension or debarment by the Department of Defense; or the State Department and Commerce Department denying licenses for export; or the World Bank and the other international financial institutions suspending or more aggressively acting against companies that violate the law.

Also in this global environment there are significant challenges for a company seeking to react to potential investigations. In many parts of the world there are very strict data

privacy laws that impact the way to deal with potential violations, such as handling a disciplinary action against an employee or seeking to cooperate with law enforcement authorities in a manner that causes the least disruption to the business. There are blocking and bank secrecy statutes, such as the ones in France regarding the disclosure of data to law enforcement authorities in another country.

So this globalization of enforcement poses more and more challenges that weren't there before. You didn't have this mix of enforcement plus protection of the individual as with data privacy in Europe which is considered a human right. These issues not only impact how a company investigates a violation, and decides whether to disclose the matter to law enforcement, but also how it cooperates with law enforcement authorities where three or four countries and multiple agencies in different countries are investigating the same thing jointly and cooperating with each other. The balance has shifted. It's no longer one that a company is able to control all the time. It has to be done much more intelligently.

The big issue comes back, really, to what Michael said, and that is ethics and compliance, and how do you create an environment where every employee understands that ethics is important. How do you react to allegations of wrongdoing? What do you do when something surfaces? How forcefully do you investigate internally? When do you decide to go further and disclose or not disclose, or take action against the individual who potentially violated the law? Can you discipline only for a clear-cut violation or can it be less? How do you tailor the action you take in order to make it effective and send a message to all employees that you will not tolerate any improper conduct? If you deal with the potential individual and then it's over and nobody hears about it, there's no message sent to others. There's no understanding anywhere else within the company as to what the consequences are. Communication is important. How do you communicate the actions you took to all the

employees? That is difficult in the current environment, because the data privacy and employment laws that exist in Europe make it very difficult to expose employees and to criticize them publicly.

These are very critical issues that need to be addressed in every one of these matters that arise, and they have to be considered seriously and thoughtfully right from the outset, not as things develop, because this globalization of the regulatory and enforcement environment is very real. The bottom line is, as Michael said, it must begin before *anything* arises, that is the degree of tolerance that a company has for any improper conduct must be addressed and communicated.

As you will see from the follow up discussion, these issues make the whole environment that a company has to function within, very different today than it would have been even four or five years ago.

**JACK FRIEDMAN:** Thank you very much. Before we go to our next speaker, I wanted to ask Mike a question. How do you relate to your outside law firms?

**MICHAEL BAILEY:** Our core activity of contract negotiation is performed almost entirely in-house. We look to outside law firm partners in a number of areas: local country legal advice; litigation and claims; intellectual property; and acquisitions and financings.

We also look to our outside law firm partners for a number of specialized areas such as immigration and visa work.

In overall terms, for our key outside law firms we try to establish a real partnership. We want them to know our business and objectives and be able to provide good, effective and practical advice.

**JACK FRIEDMAN:** Do you attend the Board meetings?

**MICHAEL BAILEY:** Yes, I'm a member of the Bechtel Board.

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**JACK FRIEDMAN:** You have a business background in the company; that's unusual for a General Counsel.

**MICHAEL BAILEY:** It is.

**JACK FRIEDMAN:** You are actually involved in operations.

**MICHAEL BAILEY:** I have had two opportunities to work on the business side of the organization. First, while General Counsel of our finance and development business I also was given responsibility over our telecommunication and fund investment portfolios. More recently, I was responsible for our global aviation engineering, procurement and construction business. We plan, design, and build airport terminals and related facilities around the world. To your question, this experience has been invaluable to me as General Counsel – it has given me a more business-focused approach to the legal department and to help make our advice more pragmatic and business-oriented.

**JACK FRIEDMAN:** The General Counsel of one of the great British firms commented that in moving around to different places the British family typically relates differently to a corporation than the American family does. He said the difference is that they have the Empire tradition. If you have a husband as an executive, and management said, “We want you to go across the globe for a few years. Tell us what you need.” He'll come back and say, “I talked to the family; everybody's saluting, we're ready to go.” With an American family, first you negotiate with the employee, and after all that is settled, he comes back and you

start a second line of negotiations with the wife about the kids, their schooling, etc. Americans are not used to the idea that you go anywhere the company asks you to go. I'm sure you have a number of employees that have also gone through the experience, as well as yourself.

**MICHAEL BAILEY:** Mobility is a big part of our business and the reason why we're successful. Many of our 50,000 people are willing and excited to move to where our work is – often on little notice. Being sensitive to family situations and impacts is important. But I don't see that as a U.S. vs U.K. issue for us. People join Bechtel knowing and excited by the fact that moving is part of our life. Of course, each family has their unique circumstances when moves arise and we work through those as sensitively as we can.

**JACK FRIEDMAN:** We'll move on in a second, but there is one more question that you stimulated. What is an example of a crisis assignment? What are the types of emergencies that you might be called on to handle, possibly on a humanitarian basis such as Katrina, or the current Japanese situation? It can happen all over the world and people must be desperate. Do you get phone calls saying, “People are starving, the whole infrastructure system has collapsed, how can you help?”

**MICHAEL BAILEY:** What we get are calls for help in major infrastructure areas. So, the Japan situation – Fukushima – we immediately arranged to have a team from a combination of our Government Contracting Group, our Power Team and our Mining & Metals Team, work with



a supplier from the mining side of our business to create a design for a specialized piece of pumping equipment that could be used. In a matter of days it was shipped with the support of the Australian, U.S. and Japanese governments. That's one example. Of course, we were also called upon in Katrina, and Iraq, as well as many other situations.

**JACK FRIEDMAN:** It's something about which companies are often taken for granted. People forget that the companies are helping out in these situations.

Our next speaker will be Martin Weinstein of Willkie Farr & Gallagher.

**MARTIN WEINSTEIN:** Thank you. One of the things we've learned about this morning is compliance. In the time that I've been doing this work, we've seen a lot of web-based training. People try to do things online because it's less expensive. But one of the things we've seen from Michael this morning is that, in compliance, there is no replacement for human capital. One of the things that we can all relate to, and one of the takeaways from today, is that you're not going to have a great ethics or compliance culture unless you have great leaders like Michael Bailey, and that's one of the reasons why Bechtel is where it is. They don't skimp when it comes to the human capital in compliance. So you can have as many webinars and training sessions as you want, but if you

don't have great leadership, I'm not sure it will get you where you want to go.

The other thing we spoke of earlier this morning at breakfast, before I get into my brief remarks, is children. Those of you who know me know that I get a lot of great material from our little boys. We have three little boys, and one of the things that I like to do is drive the two older kids to school in the morning, because you find out what goes on with your kids when you drive them to school. So I had to break the news to them a few days ago that I was not going to be able to drive them to school this morning because I would be attending this breakfast. Immediately, they asked, "Well, why is this day special," and I said, "Well, I'm going to be with somebody who is getting a World Honor." So, my son Max said, "Well, a World Honor, that's pretty big. That's bigger than just a national honor. Well, who is this guy?" I said, "Well, let's look at the website. So we went on the Bechtel website, and saw they build these really interesting things. My other son, Ethan, said, "That's really cool. Does he get to build that himself?" I said, "No, he's the lawyer." He looked very down, and he said, "I'm not sure I want to be a lawyer, I'd rather be an engineer." I said, "That's a good first move. It shows the education is paying off!" Then they said, "What is the Directors Roundtable?" So we looked on the internet at the Directors Roundtable website, and we saw all the great people that had gotten these various awards. The boys asked, "Why is Michael getting this award?"

I said, "Well, he's Canadian." And the boys jumped up and said, "This is great!" You see, my mother was Canadian, so their grandmother was born in Canada. They immediately asked, "Well, does he know the Sedin brothers?" If you know hockey — our boys play ice hockey — you know the Sedin brothers are great hockey players for the Vancouver Canucks. Then they looked around on the Directors Roundtable website and saw people from various countries who had received awards. They wanted me to tell you, Jack, how much they appreciate the Directors Roundtable giving Canadians a chance to get the award.

My topic for the next five or six minutes is going to be one of my favorites, which is disclosures. More than ever, companies may find themselves faced with decisions regarding whether to disclose wrongdoing in the company; wrongdoing of various magnitudes and various shapes and sizes, and not any particular type. So this can be a broad concept to think about. When are you going to tell *your* government or *some other* government about the wrongdoing? In other words, when do you make a disclosure? I wanted to lay out for you my view of the framework or the pathway to making these kinds of decisions, which are, candidly, among the hardest decisions that practicing attorneys can make.

First, you may be driven to make a mandatory disclosure by virtue of materiality or some other obligation that you find in the

SEC Stock Exchange rules. Some materiality issues are easier than others, but that's one box that you will want to talk about. Is the conduct material? If you're a publicly traded company, that's going to be more important than if you're a privately held corporation.

Another issue that has become more prevalent is whether you have some contractual obligation to disclose misconduct. Are you providing healthcare services? Do you have a government contract that obligates you to disclose? We'll talk more about those things.

The last category, and the one that we're going to talk most about this morning, is voluntary disclosure. My experience is that the vast majority of disclosure decisions fall into this last bucket. We could have a full-day seminar on this topic, but this morning we're going to spend about four or five minutes talking about it.

Materiality, as you all know, is a pretty squishy standard. It can be based on the cost of an item or potential impact on your business. There's qualitative and quantitative materiality. But as a practical matter, my experience is that most wrongdoing doesn't necessarily rise to the level of being material. So although it may be the most well-known bucket, the truth is, not too many disclosures of misconduct are driven by materiality.

So, with regard to mandatory disclosure based on materiality, I think if we recognize that it's one of those things that you really aren't going to see that often, we can put that to the side.

Contractual obligations to make a disclosure can arise from deferred prosecution agreements, non-prosecution agreements, and a whole variety of other contractual relationships. Companies have entered into these relationships with governments — mostly the U.S. government — which have, many people don't realize, very strict disclosure obligations. So if you represent companies, or you are with a company that has a consent decree or a deferred prosecution agreement or a non-prosecution agreement that has

“In a large complex global business you have to continuously work to get the (ethics) message out, demonstrate the commitment through making the violations and consequences visible, and make all employees fearless in their commitment to hold themselves and everyone around them accountable.”

— Michael Bailey

any term of years, you will find, within those agreements, very tight disclosure obligations. A failure to make those disclosures is a violation of those agreements. We are seeing these kinds of agreements, with these kinds of disclosure obligations, more and more, as alternative types of resolutions become more and more prevalent in our criminal justice and civil regulatory systems.

In the remaining few minutes, I'd like to talk about voluntary disclosure. People used to say, you would voluntarily disclose if you thought one day you were going to get caught. But that is substantially too simplistic a vision of how you ought to analyze voluntary disclosure.

First of all, we know from the Department of Justice's corporate prosecution guidelines — the various memos going from Thompson to Holder, to McNulty, to Filip — that the DOJ views voluntary disclosure as a very important thing. What they're not sharing with us is exactly what happens to you when you go into the voluntary disclosure process. This is true in every substantive area but one: antitrust. In the antitrust area, the DOJ's voluntary disclosure program has been very well thought out. If you go in early, you're going to get some level of immunity. But in areas like the Foreign Corrupt Practices Act and other areas, it's a bit of a crapshoot. In fact, there was a period of time in which, among the top ten largest fines in the international corruption area, six or seven of them, depending on how you count them, were a product of voluntary disclosures. If you are one of those companies, you ask yourself, how much did that voluntary disclosure get me? That's an

open question. The SEC guidelines — called the Seaboard Report, involves the same sort of calculus.

As a practical matter, though, when you think about voluntary disclosure, as opposed to thinking about the end game — how the regulators might ultimately dispose of your case — you should think about a few other topics. First, if you voluntarily disclose the wrongdoing, you have a chance to describe the conduct in a way that may be more favorable to your client than if the government reads about it in the paper or learns about it from some other source. Oftentimes that can be extremely valuable.

Second, if you have credible counsel, you have the ability to shape the investigation and the fact-finding. To put it a different way, it's a lot easier to conduct an internal investigation at the pace and the tempo and degree access that the company would like than to react and respond to search warrants and subpoenas. In fact, it is very common, in many of the investigations that we've handled, that the government never actually issues a single subpoena to the company. It is very valuable for a company to be able to maintain control over the internal investigation. You can even persuade the government that the wrongdoing does not rise to the level of anything that the government should investigate.

But here are the downsides to making a voluntary disclosure. The government will learn about something that they might not otherwise ever have learned about. While this may seem like a brazen calculation, the truth is, it is important and should be considered.

There is a huge amount of time, energy, and, these days, cost, involved in undertaking an internal investigation. There have been internal investigations that have run amok and cost extraordinary amounts of money, you may have read about some of them. Even investigations which are well managed can be very costly. As a practical matter, if you go to see the government, it is more than just simply going to see the government in the morning, and then taking the afternoon off.

If you report to the government, you may need to consider whether you will waive any applicable work product or attorney/client privilege protections. This has gotten better than a few years ago, when privilege waiver was viewed as a necessary element of “cooperation.” Now, by its own policies, the government can’t ask a company to waive the privilege. Still, it is a calculus the company will need to make: would the benefit of disclosing in a more fulsome way that waives the privilege outweigh the risks that arise, from third party litigants and otherwise, from losing privilege protection? Generally, we find that there are ways to get the benefits of a voluntary disclosure while still keeping the privilege intact.

Making a voluntary disclosure means a potential loss of control over the scope of the investigation. The government may say, “if you have a problem in this area, you need to look in the following other areas to see if there are problems.” Certainly the government doesn’t have the same incentives as the company to limit the scope of an investigation.

There are other areas and factors and circumstances that impact on disclosure, now more than ever before. Mergers, acquisitions, financing – we’ve talked about the World Bank and other lenders. If you plan to sell a business, is that business ready to be sold? Does it have a great compliance program? We’ve seen many examples where a company was in the process of being sold and wrongdoing was discovered, in due diligence or otherwise, and it had very serious consequences for the seller and the transaction.

On the buy-side of an M&A deal, if you’re about to take over a company, the government expects you to understand what it is that you are acquiring. Minimizing risks in this area, where the target company has FCPA problems, may involve disclosure and trying to work out something with the government before you acquire a company.

A voluntary disclosure to the U.S. government may require – or at least drive – a disclosure to foreign regulators. Today, more than ever – and this is a trend we’ve seen in the last few years – foreign governments and foreign prosecutors are very much involved in anti-bribery enforcement. That can increase both the cost and complexity of an investigation and resolution. It is like playing chess on a multi-dimensional board.

Of course, there are also the recently enacted Dodd-Frank whistleblower laws. I’ve teased a friend of mine, who is a member of the U.S. Senate, about the Dodd-Frank whistleblower laws giving lawyers a lot to talk about these days. She informs me that politically, it’s almost impossible to see the whistleblower provisions being unwound. I think these provisions have serious implications for compliance programs and compliance officers. But it appears that the Dodd-Frank whistleblower law is going to be with us for a long time. I have to confess to you, I do not know how it’s going to play out, but I think the increased likelihood of a whistleblower has to be factored into your calculation regarding voluntary disclosure.

In short, I think voluntary disclosure is one of the most interesting – some practitioners like myself would say “fun” – aspects of practicing in this area. Those people who are on the client end may not think it’s that much fun, but it’s very challenging. There are a lot of factors that go into these sensitive and critical decisions. Hopefully we’ll have a chance to discuss many of them today. The uncertainty and inability to predict the outcomes when you go to the government with a voluntary disclosure is by far the most challenging aspect of this,



but there are times in which – and I think we’ve heard a little bit about it today – given the potential to damage a company’s reputation or for other reasons, voluntary disclosure *may* be advisable. But I have to tell you, we’re very cautious about it, and when you walk in to see the government in a disclosure context, you have to know, it might not feel as good as you hope when you walk out.

So, Jack, thanks for allowing us to participate!

**JACK FRIEDMAN:** We had a program where the head of a California office of the SEC said if you’re going to have an important announcement, such as an earnings restatement, contact the local office within a couple days. I repeated this story at a New York program, and the head of Enforcement for the New York office started laughing, and said, “In New York, that time isn’t a couple days. If you’re going to have an important announcement, like a restatement,” he said, “how about a few minutes. As a matter of fact, give us a heads up in advance. Say, ‘The restatement doesn’t involve any terrible thing, we discovered so and so.’” The important thing was to give them the truth and a heads up.

Who should be involved in the company or from advisors outside the company when an important announcement is going to be made? It can even be not only the lawyers, but also PR people. Make sure that it's written in a way that sounds civilized, as opposed to aggravating the hell out of people because you blundered in how you worded it.

**MARTIN WEINSTEIN:** In my experience, you need to have the in-house lawyer, and if you're going to make a disclosure, the General Counsel involved. External counsel should coordinate with media relations, because often people accuse the lawyers of speaking in terminology that nobody else can understand. And, of course, the company's senior management needs to be involved in the decision. You wouldn't want to have your CEO giving a presentation and not being fully informed and able to answer a potential question about a disclosure that's going to be made. So, you have your business folks, your legal folks, both internal and external, and your media relations people. Oftentimes, where you want to have a very solid relationship with the regulators, you'll want to give them the appropriate heads up. So it's a pretty complicated group of folks who are involved in making these sorts of public disclosures, and they need to be very carefully planned and orchestrated.

**JACK FRIEDMAN:** Is it the CEO or the CFO, or both?

**MARTIN WEINSTEIN:** I think it depends on what kind of disclosure it is. If you're going to make a disclosure that deals with financial accounting, I don't think you want to leave the CFO out. If you're going to make a disclosure that involves something that's non-financial—

**JACK FRIEDMAN:** Such as a drug recall, or an auto braking recall?

**MARTIN WEINSTEIN:** These are very fact-specific.



**RAY BANOUN:** And to the extent that you're going to have anyone at the company meeting with outside investors, outside representatives, outside investment banks or outside analysts, you're going to have to have the CFO involved. Clearly what Marty is saying is that these decisions have to be made at the very highest level because the impact is substantial. Once you get into that mode of disclosing, you can control to some extent what will happen, but you cannot fully control it. So you've got to anticipate, right then, before you make any disclosure, all the consequences that can happen and be ready to respond to any follow-up both publicly, with the government, and internally.

**JACK FRIEDMAN:** I assume that you have one point person telling everybody, "Nobody talks to anybody until the point person in the firm knows about it and makes sure it's being assigned to the right person on the team."

**RAY BANOUN:** Right, it has to be done that way.

**PHILIP UROFSKY:** That's certainly the case for an external comment of any sort. But Ray's comment about internal is as

important. When you start, if you're doing an investigation, you may be able to keep it inside the company, but you're certainly not going to keep it contained within the company; people will start asking questions. "Why is this computer being checked? Why are the lawyers in the office? Why are these computers being copied? Why are these documents, these file rooms being gone through?" It's important at the very beginning to have a plan. What are we going to say to our employees? What are we going to say to our customers, if they ask? Not that you're necessarily going to voluntarily tell everyone you have an investigation, your customers, your suppliers or your government. But the people who are primarily going to know there is an investigation are your own employees, and they're going to want to know why.

**JACK FRIEDMAN:** Do they send out emails to everybody? "I won't be home tonight because everybody was told not to leave the building because there are lawyers all over the place," or rather just a statement like, "I'll be late for dinner."

**PHILIP UROFSKY:** GE had a problem many years ago. They did what Michael suggested. They used that problem proactively going forward as an example in their training programs. They had a video that was widely circulated, and they even lent it out. It starts with an interview with a woman who was in their aircraft engines business, which was the business that got into some trouble. She comes in one day and half the offices are empty, half the desks are empty, and it was a significant blow not just to the business, but to the working conditions in the company. There are ways of managing the internal communications both during an investigation and afterwards.

**JACK FRIEDMAN:** Then you, as the General Counsel, have to mobilize and determine with whom you have to coordinate to say something important enough that you would certainly tell the Board before you made the announcement.

**MICHAEL BAILEY:** Every company has their own culture of how these things are done. In ours if something like that were to happen, it's not going to be a question of is the CFO involved or isn't he, this is pretty straightforward. It would be me; Peter, who is our CFO; Bill, who is our president; and Riley. If it's a big, important issue, we would talk about and deal with it immediately and put whatever resources are required on it, including our public relations team.

**JACK FRIEDMAN:** Would it be inside or out?

**MICHAEL BAILEY:** That would depend. If it were a major crisis, I expect we would seek advice from an outside crisis management consultant on how to handle communications.

**JACK FRIEDMAN:** They only tell you, "Get it all out there right away so that it's all behind you and don't let it leak out gradually." Every time it's on the news, they say, "Never let anything leak out. Just lay it out there, everybody's shocked and they get over it, and move on."

What function is likely to be the point contact? It's a very important thing to have everybody who's involved, like all the people you mentioned, not get individual calls from reporters, from suppliers, from employees, even board members.

**MARTIN WEINSTEIN:** If the media wants to ask questions about general topics that have nothing to do with a specific case, we might talk to the press. But on case-specific matters, when there's a plea, when there's a negotiation, when there's a settlement, we, as outside lawyers, don't talk to the press. As a practical matter in the organizations that I've seen, they have people inside the company, like public relations people, handling it.

**JACK FRIEDMAN:** The Communications Office?

**MARTIN WEINSTEIN:** The Communications Department typically has a very



skilled approach to this, and this is particularly the case when we are now in a world where the regulators in many of the matters that we deal with require as part of a settlement agreement that the government preapprove press releases or public statements about the settlement. So we are extremely careful. It's one point person, and it's usually a communications person within the company. But it is very fact-specific and every situation is different.

**JACK FRIEDMAN:** It's very important that the initial contact never go to someone who has a serious heavy-duty title who is a decision maker, because God forbid it goes to that office and they accidentally say something. You want it to be filtered through somebody. It's like saying, "Call the White House spokesman's office; don't call the President's office, because he can honestly say, 'I don't know anything; we'll get back to you.'" That's a buffer to these top executives who might start talking.

**MARTIN WEINSTEIN:** I'm not sure that scenario is as prevalent today as perhaps it used to be. I think that most CEOs of major corporations today are able to handle the media. They also want to be the one to reassure their constituencies. They have boards; they have shareholders;

and they have employees. I think CEOs want to be the ones to make the statement. I think the statements are generally well thought out, and I think the idea that there's going to be some buffer has gone away largely because we are in an instant news cycle, and so my sense is that the communications person handles the day-to-day inquiries from the press, but if there's a major statement to make, the chief executive officer wants to, and probably should be, the one to make it.

**RAY BANOUN:** That's why these issues must be thought out in advance, because you can't wait until they arise, because news happens much faster. You can't tell a reporter, "Give me half an hour; I'll come back to you," and go into panic mode. You've got to have thought about what are the options, what are the likely things you would say, depending upon the facts you have.

**JACK FRIEDMAN:** Our next speaker is Philip Urofsky of Shearman & Sterling.

**PHILIP UROFSKY:** Good morning. Before I move to my topic, Marty and I go back a fair ways. Jack had asked us, do you ever work together? More often in the past, we were opposing each other. All three of us, actually, are former prosecutors, and I

remember when I was a prosecutor, standing up and saying, “Hello, I’m from Washington and I’m here to help you, and please, come in. Make your voluntary disclosures. You’ll be treated fairly; everything will be okay,” Marty would stand up and say, “I never bring anyone in.” Over time, since I joined what my former colleagues refer to as “the dark side” and I’ve probably moved a little closer to Marty. With experience, Marty’s moved a little closer to me; we both recognize that disclosures are sometimes necessary, but they come at a great cost. If the government does give you a benefit, my analysis has been that a company that makes a voluntary disclosure generally gets a discount off of the sentencing guidelines of ten to even 50% in some cases. But that’s still leaving you with 50% or more of that guidelines range, and that can be a very significant penalty, as well as monitoring and everything else. You give a prosecutor the suggestion that there’s a case there, very few prosecutors are going to walk away from that, and that’s the bottom line of disclosure.

Just one other thing, my daughter played baseball with Marty’s sons. She was the only girl on the team.

**MARTIN WEINSTEIN:** She was a marvelous hitter – the best technical hitter on the team, I should add!

**PHILIP UROFSKY:** But to give you an example, Marty’s sons wanted to know, “Why aren’t you going to be there this morning?” My daughter just said, “Please be quiet on your way out.”

We’ve talked a lot this morning about global issues and global concerns about disclosure; I thought I’d spend my ten minutes going a little more micro, and contrasting some of the experiences that I’ve had in one country.

Over the past year or so, it seems I’ve been asked, and my colleagues and my firm have been asked, to represent companies, executives, audit committees, and directors in Chinese companies. Some of them



are Chinese nationals; some of them are American nationals who are working for or as directors of these Chinese companies. A lot of the themes that you’ve heard come through, but what strikes me is Michael’s description of this as a family and a management-run company, four generations of families, of the family having significant roles. You just don’t see that, obviously, in PRC companies. You’re more likely to be dealing with first-generation. I’m not talking at this point about the state-owned enterprises, which are an entirely different animal. I’m talking about what are sometimes fairly significant companies in China, where the entrepreneur was a powerful person, for various reasons, maybe, and formed the company, acquired the company, built the company, and it’s his company. Usually, not always, it’s his company, and he’s run it over the years as his personal fiefdom. If he wanted something, he got it. If he told someone to do something, it happened. Then these companies have grown into an area where they are now trying to access the U.S. capital markets, or are doing joint ventures with U.S. companies or western companies, or are sometimes acquiring U.S. or other western companies.

There are legal aspects to that, and there are cultural aspects to it, and it creates a clash in areas that you don’t necessarily expect. In my practice, it’s mostly investigations and defense, and advice on compliance. When you’re dealing with companies, particularly in an investigation context, it’s very interesting, because I’ve seen a number of disasters where between some lack of sensitivity on the investigator’s side and some oversensitivity on the Chinese side, a situation is created where the investigation appears to be obstructed, the SEC and the DOJ get involved, and then everyone’s feeding on the body at that point.

Part of the issue is the cultural aspect of an almost single person who views himself as the company. The other issue is that American executives, American companies are used to American-style litigation, so they understand that if they get sued, or if they’re suing, there’s going to be, unless they’re successful in a motion to dismiss, there’s going to be discovery, and the discovery’s going to mean that people are going to come in and look at everyone’s files and this and that, and they just accept that this is an unfortunate aspect of American litigation.

The Chinese companies view it as “how can this be?” If you go in and tell them, “We need to image your computer and read everything on it, and we’re not going to tell you what we’re going to be doing, and we’re going to decide what’s relevant,” this is viewed as extremely disrespectful and unnecessary. They will say, “This is the allegation; I’ll tell you what you need to know about it.” Of course that’s not how an investigation works, and you can’t accept that, but you run into this issue over and over again.

Now, there are a couple of different aspects that are relevant to how these Chinese companies get into these issues, and frankly, they could avoid some of them just through better preparation. If you’re looking at them as a business partner, or if you’re being asked to become a director, you’re certainly going to want to look very hard at how this company grew, and how it got to what it is



today. Even if it's an issuer in the United States, you can't necessarily rely on it having the kind of controls that you would expect at a public company.

If it came into the markets through an IPO, then chances are it may be a little bit farther advanced than some of the others, because it's been counseled by auditors and lawyers on what's necessary to make its offering statement, what's expected for it to be able to provide audited financial statements. It doesn't mean that they got it all right, but it means that someone has tried to look at its controls in advance to say, "Are we going to meet the standards expected of a U.S. public company?"

On the other hand, there are a number of companies that have gone public in the United States through reverse mergers, and they find a shell company that acquires them, and then they own it, right? In that case, in very many cases, there's almost no advance work to bring the controls up to spec, and then you, let's say, come in as a partner or as a director, and you're assuming that because they have an audited financial statement, they have all the controls that you've supported. Sometimes they don't. You take a great risk if, for example, you get audited financial statements, not necessarily by one of the Big Four or Big Six companies, from your prospective partner in a power project in China and you say, "They're audited. Someone signed off on it. That means they signed off on the controls" – not necessarily.

This is when you think about how you ensure that you're not going to get in trouble. There's a significant risk to Chinese companies, and it's not the traditional risk that you think of: "China is a red country on the TI index." It's that as a business matter, you're not necessarily dealing with the kind of company that you would think it is, because it's a public company; you're still dealing with an entrepreneurial company with a key man, and even though there's a board and an audit committee and everything, it doesn't mean that they are going

to be able or are fulfilling the functions that you would expect from a U.S. audit committee or a U.S. board.

So I think when we talk about things like the globalization of enforcement, China is one of those case studies you can make about how each company has to be viewed very carefully, and the kind of hallmarks for compliance that you would ordinarily look for – is it public? Is it audited? Does it have an audit committee? Does it have independent directors? – aren't always as reliable as you would hope from a business perspective. From a legal perspective, they create significant risk, and you have to address that through your own compliance and through ensuring your people on the ground are properly trained and sensitized to the relevant risks. They need to be trained before they go in, not just in how you handle the currency and what are the security risks, but what are the risks for the company, and what should they be on the lookout for, and who can they call if they think something is going terribly wrong. These are the issues that need to be planned in advance, and some of them are business risks; some of them are compliance risks; some of them are ultimately legal risks. All of this requires planning. At the end of the day, if you're in a voluntary or involuntary disclosure situation, you have the expectations of the U.S. regulators which don't necessarily change depending on the country or region involved. They still are going to expect that you, as the partner of a Chinese company, implemented effective U.S.-style compliance.

**JACK FRIEDMAN:** A few years ago – and I don't know if it's still true – a senior SEC official in California said that one of the biggest problems that they had was trying to explain to Chinese banks operating in California about regulation and disclosure. She said they tried to comply – it had nothing to do with fighting the system – they just didn't get it. They kept going to seminars to understand the whole approach and it was driving their American subsidiaries in California crazy.

I want to ask the panelists about the Foreign Corrupt Practices Act. First, why is it such a big deal? It comes up all the time now, and General Counsel seem to be very preoccupied with it. Secondly, if you're talking to a Board who are basically businesspeople, what do you tell them? What do they need to know about this important subject?

**PHILIP UROFSKY:** The FCPA is a very interesting statute in the way that it is largely enforced through private enforcement, through companies' own compliance programs. When I started doing this work ten or fifteen years ago with Peter Clark, he and I were probably the only ones in the Department of Justice who even knew what the FCPA was. I was a line attorney and Peter was the Deputy Chief of the Fraud Section, but when you walked outside the DOJ, all of a sudden this was big stuff! Even though there were very few enforcement actions being brought on an annual basis at the time, this was very big stuff outside of the department. Companies were putting enormous resources, as they are today, into compliance and, quite frankly, policing themselves – albeit not always successfully.

But the contrast between that and what we saw overseas at the time was startling. There was very little compliance work being done overseas by companies, and no enforcement work being done by governments. What happened here in the United States was that there were a number of early cases involving big companies. These didn't necessarily result in the kind of fines you see today, though some of them were significant, but the risk of debarment from public contracting, even if rarely implemented, was of particular concern for companies in the defense industry. For that reason, the defense industry took the lead through the Defense Industry Initiative in developing best practices, and other industries which are similarly dependent on government support in one way or the other – the oil and gas industry, with concessions, and now today, the medical industry with Medicare and Medicaid and other regulatory interactions – have undertaken similar compliance initiatives.

Thus, the private sector paid significant attention to compliance in response to the risk of enforcement, and that risk has gotten greater over the past couple of years since the OECD [Organisation for Economic Co-operation and Development] convention in 1997. There is much more international cooperation; there's much more international enforcement action. For example, the Siemens action from a couple of years ago, which still holds the record for fines at \$1.6 billion against a single company, was initiated by the German authorities. In a number of cases that I did as a prosecutor, we began actually to get evidence from overseas after the OECD convention. The Swiss showed us bank records, voluntarily; it was unheard of. Both the willingness of foreign prosecutors to bring these cases and the growing international cooperation between prosecutors raises the risks for all companies and is likely to result in more international compliance initiatives, making it easier for U.S. companies to get cooperation in their due diligence efforts.

The substantial monetary penalties also drive an increased willingness for companies both in the U.S. and overseas to implement effective compliance measures. The fines have gone up partially because of the sentencing guidelines, which limits the wiggle room on both sides. The days have gone, when a prosecutor could just — as may have happened — make up a number and tells the company, “Here’s your number.” Now both sides at least have to go through the exercise of the guidelines, which requires calculation of anticipated gain, and then negotiate the discount from what may be a considerable base fine.

However, let me just say this about the fines. There have been some enormous fines in the FCPA world over the past couple of years. Siemens’s combined German, SEC and DOJ penalties were over \$1.6 billion. Halliburton’s was \$500–600 million. The total fines and penalties assessed against all the members of the TSKJ consortium — Technip, Snamprogetti, Japan Gas and KBR — are well over \$1 billion.



But, although these fines make the headlines, they are not the full story. Last year, the U.S. government brought twenty FCPA cases against corporations, with a record annual take of \$1.8 billion in fines. Two-thirds of those fines resulted from three cases. Eighty percent were from six cases. The average fine, if you take those outliers out, for an FCPA matter is no more than \$20 million. It’s not chicken feed, but it’s also not breaking the bank in most cases. That’s an interesting stat, as I started looking and slicing and dicing the stats.

**RAY BANOUN:** Also, to keep it in perspective, there are still a lot of declinations that occur, where the Justice Department, after looking at the evidence, concludes, “We’re not going to take any action.” It’s still possible; the problem is that these declinations are not published. You can’t get real statistics because companies do not want it known if they were never openly investigated and no action was taken against them.

Probably the current trend is that, at least for the time being, there are greater opportunities to avoid monitorships, which is the single most problematic, expensive and complicated relationship you can have. Having

been a monitor in at least one matter, I can tell you that it’s a very difficult situation for everybody — the company, the government and the monitor. I’m not sure what you get out of a monitorship ultimately, anyway.

But to answer your question, what is probably the biggest issue of concern is that the damage to a company’s reputation is enormous. The collateral consequences are enormous, even when these smaller financial settlements have occurred, the costs were significant: investigative costs, reputational costs, remediation costs, not only in terms of that particular matter, but as the company continues to do business.

So I think that’s very important to recognize.

**MARTIN WEINSTEIN:** This is a question we get asked a lot, which is, “Why FCPA, why now?” Then, “What can you do, what’s the big takeaway from it?”

I think there are three things that we have to think about as a practical matter. First, the level of international commerce is much greater than ever before. You didn’t used to have, on the front page of the paper, issues regarding the Euro, the meltdown in Greece, the meltdown

in Portugal. I mean, to be fair, 25 or 30 years ago, it just didn't matter that much in terms of the global economy. Now, the economy is much more globalized, and you've got companies like Bechtel who are always doing business internationally. It used to be that only a select few industries did business internationally. Now, *everybody's* international. It's like having more cars on a freeway; you're going to have more accidents.

Second, FCPA cases today involve a lot more money. When we prosecuted the Lockheed case, now almost 20 years ago, the fine was \$24.8 million, which was considered to be an extraordinary amount of money. The SEC didn't even take an interest in the case! Now you have much more money involved. And it's not just higher fines, although fines have skyrocketed. It's also follow-on civil actions. We had a case in court just recently in which the foreign governmental agency whose directors had solicited bribes tried to intervene in the criminal case by claiming they were a victim of the bribery. They hired separate counsel in an attempt to recover restitution in the criminal proceeding. We, as the company counsel, were standing side-by-side with the government, fighting the attempt by the organization whose officials solicited or accepted bribes to recover money as restitution as a victim of the crime. Interestingly, the foreign institution's counsel was a plaintiffs' class action firm that had taken the matter on a contingent fee basis. So when you have these amounts of money, you're going to attract a lot of attention.

Finally, Sarbanes-Oxley and the scandals that led to its passage — Enron, MCI, WorldCom, and others — have made voluntary disclosures much more prevalent, which leads to more cases. So this confluence of events has made FCPA a very significant regulatory tool that is here to stay.

The most troubling aspect, and we could have a whole two- or three-day discussion on different aspects of the FCPA, is that with

the recent frenzy surrounding the FCPA, I am concerned today that people may get advice which causes them to confuse real or significant FCPA issues with what should be FCPA non-issues. I am hearing from the Department of Justice that counsel are coming in with their clients to confess conduct which, in fact, is not wrongdoing. They come in with their forensic accountant, the general counsel, the plan to go to all 65 countries; and the prosecutor says, "I'm not sure why you need to investigate this." So, as people feed on the frenzy, I worry that people may not be given the proper advice to differentiate those FCPA matters which are very significant — and there are a lot that are very significant — from those matters that are really not that significant. The industry that's grown up about it threatens to dilute the quality of the advice on what is an extremely sensitive topic with extremely serious ramifications.

**RAY BANOUN:** What Martin was saying is absolutely correct. One of the senior people in the Department of Justice recently said that many of the expansive internal investigations are not driven by the Department of Justice. If a company comes in and tells the Department, "We're going to do twenty things," the Department is not going to say, "You only need to do five of these."

A great deal of what a company ends up having to do is driven by what it promises when it makes the disclosure. That's why it has to be well thought out. What you get from the discussion here is that you have to really consider and determine, at the very outset, what are the issues, what is the scope of your investigation, and if you will make a disclosure, remember that the reason you're doing it is to maintain control, limit the disruption to the company, and to limit potential penalties and consequences. It has to be very well focused.

**PHILIP UROFSKY:** The interesting thing about some of these disclosures is when you go in and you tell them, "Well, we had this issue here," whatever it is, "this issue

here, and that's what we want to talk to you about," the first question the government will ask you after you finish your presentation is, "Okay, how do you know that's all there is, and how do you know that's the only place this is taking place?" If you haven't planned your disclosure in advance, you wind up going back out and doing a lot more work than you had anticipated. You often find problems that you didn't necessarily know were there, and the government takes credit for it at that point. Whereas if you take your time on a disclosure — I'm not saying stall, but make sure that you're prepared before you go in — and you've already got an answer to that question, then you again can help shape the ultimate scope of the investigation and of the resolution.

Also, Marty's point is very good: there are times when you shouldn't be going in even if you have identified some issues. There was a settlement last week where the company apparently came in on one issue but what they settled on was another issue. That other issue — whatever they walked in with, the government eventually took a pass on and concluded that either it wasn't a violation or there wasn't sufficient evidence. However, *then* the government said, "But since you're in the office anyhow, why don't you answer this question about what else is going on?" The company wound up doing a global audit and finding an actual violation — different from what they had initially disclosed — and that's what they wound up having to settle.

**JACK FRIEDMAN:** Is this more or less in the category of someone getting a notice from the IRS for a personal audit, and the taxpayer goes in, and being a good citizen, discloses something. The IRS official says, "All I originally wanted was to be sure you had the receipts for your charitable contribution. Now tell me more about this other thing." Then the taxpayer says, "Why did I volunteer?"

**RAY BANOUN:** I don't think anybody goes to the IRS voluntarily; unless you have a gigantic Swiss account and there are

significant consequences that lead you to disclose. So I would not compare going to the IRS for the disclosures we are discussing here.

However, one of the problems is, of course, when you settle these cases, you don't settle on everything. You settle on certain things. What often happens is as a result of investigating something, that when you go in, you make a disclosure – I'm not saying it always happens – but very often, the situation is that you will go in and you'll make a disclosure that is real because you have a real issue. Then you discover something that is more serious, and so as a result, when the settlement occurs, it occurs on one of these new matters you uncovered as opposed to the original purpose of the disclosure.

**JACK FRIEDMAN:** When you go in, you're in essence implicitly volunteering to be questioned on anything.

**RAY BANOUN:** Yes, you'll have to anticipate and make sure, when you go in, that you're going in because there's a real reason to go in. But once you go in, because there's a real reason to go in, you have to assume that there's a likelihood that it's going to result in a more expansive investigation that covers more matters than what you went in to disclose, because other things may come out in the process.

The reality is we've learned from independent counsel and independent prosecutors that if you have the time to investigate, you can ultimately find something. You can find problems if you investigate enough. So there has to be reason for making a disclosure, and you always have to keep in mind why you made the disclosure.

**PHILIP UROFSKY:** You do not go in to become an adjunct of the government. As company counsel or audit committee counsel or whoever, you're still representing a client. You still have the responsibility to represent that client. You're not simply going in and telling the government, "Tell me what to do. I'll go and investigate anything



you ask." You *should* push back when the government seeks what you consider to be unreasonable. But you're in a much stronger position and better able to do that if you come in with a plan and say, "Look, here's the plan; it's reasonable; it addresses the risks," rather than having them define at the beginning what they want, and then you saying, "Well, no, I think that's unreasonable." So I think careful planning and anticipating the government's questions – both with respect to the conduct being disclosed and your overall business practices – is critical or you *are* buying yourself an enormous legal bill.

**JACK FRIEDMAN:** I'd like to open up the discussion to anybody who would like to ask some questions or make some comments.

**QUESTION FROM AUDIENCE:** What are corporate strategies regarding voluntary disclosure?

**RAY BANOUN:** Well, you should not assume automatically that disclosure needs to be made. No. There are many considerations here. There may be situations where you have to disclose – if you are a publicly traded company – where a disclosure has to be made in a public filing. In which case, you want to manage that disclosure and decide that disclosing it to multiple

agencies is better than having the agencies to which you make the disclosure share it with another agency, and then the message gets slanted in a different way.

There may be situations, as Martin said, where you have no choice but to disclose because you're required to disclose. But the reality is that you have to know what the facts are. You have to know what the issues are.

You need to evaluate first of all if there's a violation, and secondly, what the real pros and cons are, what the consequences are. You also have to know whether the company has had similar issues in the past that were not disclosed and that are likely to surface now. So what's the past history of the company? If you have a company that just entered into a consent decree two years earlier, you have a totally different situation. These factors are very critical.

**MARTIN WEINSTEIN:** So I would start off with the following understanding, which is regardless of whether you go to any of the regulators – SEC, DOJ, or foreign regulators – if you find wrongdoing, you have to address it in a way such that even if you decide ultimately not to make a disclosure, if the government calls you up two or three years later, you can stand up and say, "We handled it exactly how you would have wanted us to handle it, and consistent with our corporate culture." Sometimes people feel as though if you don't make a disclosure, you're going to address remediation a certain way, and if you do make a disclosure, you're going to address it in a different way. I think that's a mistake. Regardless of whether you're disclosing or not, you've got to fix it, you've got to get out in front of it, you've got to properly investigate it, and you've got to make sure it doesn't happen again. And then there are any number of situation-specific overlays, which we have seen in many cases. There are instances in which a privately held company, for example, may say, "We're a family business; we've been a family business for a long time; the reputation of the family is the most

important thing, so we're going to disclose to the government. We are going to do that, because if there's even a 1% chance this will come out publicly, we want to be out in front of it. Our reputation is that important. We will take all of the other risk and collateral damage, because the reputation of the family is extremely important."

There will be instances where your external auditors may force you into a position of disclosure by saying, "We can't sign off on your financials because we think there's a material weakness." External auditors have become a *lot* more cautious in the last ten or twelve years. They were nowhere in sight 20 years ago on these issues. We probably deal with two or three big disclosure issues a month. External auditors for publicly traded companies are usually somewhere in the equation. It tends to be a lot of the same people, so over time you can develop a rapport, and confidence that everyone understands the issues.

Then you have boards of directors who may be risk-adverse in this area, because there's nothing like directors seeing the caption in the Enron case, where under the "V" were a host of then-business luminaries, to make the directors say, "Let's err on the side of disclosure."

Now, does everybody sleep better? I don't think we have those expectations, but the calculus has shifted so dramatically in the last ten years that the chances that you're going to make a disclosure are much greater than they were before. The key question is, as everybody else has said, is to be prepared, to understand it, but also to have the experience, thoughtfulness, and judgment as counselors. You have to understand what's happening and know when to push back and ask a company or its board, "Do you really need to do this?"

**PHILIP UROFSKY:** Let me just say that there are a couple different other issues. One, if you are a public company, then you have Dodd-Frank risk. That elevates *any* violation and *anything* that could be a

violation. You're going to have an employee or a contractor or a supplier who's going to say, "Well, I can make some money off this," and go into the SEC before they even come to you. At least if you've investigated and remedied it, you have an answer for the SEC, and that whistleblower doesn't get anything if you can convince the SEC not to take action. So there is that.

But I think the other issue that is worth evaluating is what you're going to be telling the government. If you've got an obvious bribe to retain or obtain business, and it's a big deal, that, to some degree, obviously pushes you very much into the disclosure realm. But my partner, Dan Newcomb, who's been doing this as long as anyone, likes to tell me that I'm too enamored of jury issues, I just like to read the statute. This is an issue I used to have with Peter Clark, too, is let's look at the statute first, especially if you've got some issue that it's not even clear it's a violation. Maybe it's an area where the government has, for its own reasons, muddied the waters significantly as to whether or not it's a violation, such as a facilitation payment or payments that aren't to obtain or retain business but nevertheless bring some money into the house, such as getting a tax refund. Situations where they have brought cases under these theories, but the legal theory has never been challenged in court. You do have to look at these jury issues – what Dan refers to as the "jury issues" – but say, "Wait a minute. Do I really want to walk an issue into the government, and then have an argument with the government – in public, possibly – about whether or not this is a violation? Instead, let's remedy it; let's document that we've remedied it; let's make a decision now. Do we need to walk this in or not?"

Now, you know, that feeds into the other issues, what we used to call the "lottery of discovery." You're going to walk it in if someone else is going to walk it in anyhow or the government's going to learn of it anyhow; otherwise you are not if you think the government will never learn of it. This is, of course, a risk, and the government has

all sorts of ways of learning of it. But at one point, you really do need to say, "Wait a minute. Do I know what I'm even walking in, and am I sure that I've got a violation here, or something that's so close to a violation that I'm willing to engage the government on it."

**RAY BANOUN:** There are other factors that are totally independent. We've had situations where an independent member of the board plainly states, "If a disclosure is not made, I'm resigning." The other directors will not be willing to take the risk! Well, that, in and of itself, creates an immense problem. Once a member of the board threatens to resign if a disclosure is not made, it drives the ultimate decision.

We've had instances where it was felt that the U.S. did not have jurisdiction over the conduct because the company involved was foreign or the conduct occurred outside the U.S., but the parent company was a U.S. filer. Although remedial action was taken, exactly what the client insisted was never going to happen, happened. A disaffected party contacted the Justice Department and a full investigation ensued.

So a lot of these things have to be evaluated at the outset, the evidence and the potential things that are likely to occur as well as the consequences of any decision you take. You have to know why you're going in.

**JACK FRIEDMAN:** Thank you. I'd like to close by asking Michael my favorite question for the Guests of Honor. In the five minutes a month that you may have free, what do you like to do on your own time?

**MICHAEL BAILEY:** That's very easy. I have four children, so any free time I have, I spend with them.

**JACK FRIEDMAN:** Let me thank you all for coming, especially our Guest of Honor. Thank you.



**Raymond Banoun**  
Cadwalader, Wickersham  
& Taft LLP  
Partner

**C A D W A L A D E R**

Raymond Banoun, one of the leading business fraud litigators in the nation, is the Managing Partner of Cadwalader's Washington, D.C. office and oversees the firm's Business Fraud practice. A Fellow of the American College of Trial Lawyers who has been named among the top 500 litigators in the country by Lawdragon and a leading lawyer by *Chambers USA*, he represents corporations, financial institutions, investment firms, law firms, and individuals in all aspects of criminal investigations and litigation, both pre- and post-indictment, as well as in complex civil litigation, including class, shareholders, whistleblower, and RICO actions in federal and state courts.

Ray also has represented clients in matters involving the Foreign Corrupt Practices Act, the anti-fraud provisions of the securities and commodities statutes, the criminal and civil False Claims Act, insurance and bankruptcy fraud, the various economic sanctions laws, violations of export control licensing requirements, technology transfer regulations, the criminal provisions of the U.S. Internal Revenue Code, criminal anti-trust enforcement, health care fraud and abuse, government procurement fraud, and environmental enforcement.

He has conducted audits and internal investigations of U.S. and foreign companies and financial institutions to ensure compliance with laws, and devised remedial plans, compliance programs, policies, procedures, and

forms to comply with laws and regulations. He also has defended such institutions in inquiries by the Federal Reserve, state banking regulators, and federal prosecutors, and advised them with respect to foreign secrecy and confidentiality laws, the offshore regulatory environment, asset forfeiture issues, letters rogatory from foreign jurisdictions, as well as regarding international mutual assistance and tax treaty requests. His expertise in these areas extends to Switzerland, England, France, Luxembourg, Hong Kong, Bermuda, the Cayman Islands, the Bahamas, Panama, and other European and Caribbean countries. Ray is well-versed in the money laundering laws of the United States and foreign countries, including the USA PATRIOT Act and the Bank Secrecy Act and has co-authored a treatise entitled *Money Laundering, Terrorism and Financial Institutions*, published by The Civic Research Institute.

Prior to joining Cadwalader, Ray served for 13 years as an Assistant United States Attorney for the District of Columbia, where he headed the Fraud Division, and for three years as a Special Assistant to the United States Attorney for the Central District of California in Los Angeles. He was a partner at the Washington, D.C. firm of Arent, Fox, Kintner, Plotkin & Kahn where he chaired the Business Fraud Group. He also clerked for U.S. District Court Judge Harold H. Greene.

**Cadwalader, Wickersham & Taft LLP**

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With more than 500 attorneys in eight offices — New York, London, Charlotte, Washington, Houston, Beijing, Hong Kong and Brussels — we offer clients innovative solutions to legal and financial issues in a wide range of areas, including antitrust, banking, business fraud, corporate finance, corporate governance, energy and commodities, environmental, healthcare, insolvency, insurance, intellectual property, litigation, mergers and acquisitions, private equity, private wealth, real estate, regulation, securitization, structured finance, and tax matters.



**Martin J. Weinstein**

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**WILLKIE FARR & GALLAGHER<sup>LLP</sup>**

Mr. Weinstein represents Fortune 500 companies and their Audit Committees or Boards of Directors in a wide variety of foreign business practices, compliance, and white-collar matters, including the FCPA and financial fraud. He regularly designs and benchmarks corporate compliance programs, conducts internal investigations worldwide, and counsels on a variety of foreign business practice areas involving export controls, trade sanctions, and related matters. He also negotiates business transactions and represents clients before federal and state authorities, as well as before Congress.

*Chambers USA* and *Chambers Global* have given Mr. Weinstein tier 1 rankings since 2007. Mr. Weinstein was also named one of the “100 Most Influential People in Business Ethics” in 2007, and as one of the “Attorneys Who Matter” by *Ethisphere* Magazine in 2009, 2010, and 2011.

In 25 years of practice, Mr. Weinstein has handled numerous sensitive complex investigations and litigation matters involving international, financial, and political issues. For example, Mr. Weinstein:

- Defended or prosecuted many of the biggest FCPA cases in history
- Tried nearly 40 federal jury trials across the country
- Represented Boards of Directors and Audit Committees of major multinationals in sensitive investigations or government enforcement actions
- Represents a major multinational oil company in defending charges of human rights abuses
- Developed compliance programs for many of the Fortune 500
- Represented the Director of Export Compliance for a major defense contractor
- Represented one of the two major political parties in the 1996 Campaign Finance investigation carried out by various Congressional Committees and Justice Department prosecutors
- Represented the Commissioner of Major League Baseball in the Pete Rose matter
- Represented the former CFO of a major multinational in a landmark SEC enforcement proceeding involving the Foreign Corrupt Practices Act (FCPA)

Interests: charitable/political fundraising, international affairs, ice hockey, sports, running/triathlons.

**Willkie Farr & Gallagher, LLP**

Willkie Farr & Gallagher LLP is an international law firm composed of approximately 630 attorneys across eight offices in the United States and Europe. Our practice is globally integrated, yet it enables international offices to function independently in order to deliver the most appropriate localized legal services to our clients – from Fortune 500 companies to the pro bono community causes we regularly represent.

The compliance and enforcement practice group at Willkie advises U.S. and multinational corporations on a wide range of domestic and international compliance issues. We also represent companies and

individuals in U.S. civil and criminal enforcement matters before federal agencies and congressional committees and in judicial and administrative proceedings, in particular those brought by the U.S. Department of Justice and Securities and Exchange Commission. We have particular expertise in compliance and enforcement matters relating to international business practices such as those involving the Foreign Corrupt Practices Act (“FCPA”), export controls, trade sanctions, and securities enforcement.

We have substantial expertise in conducting internal investigations, advising on business transactions, and counseling companies and individuals on compliance and corporate governance matters. We have defended civil and criminal enforcement matters involving securities fraud, the FCPA, trade sanctions,

federal procurement fraud and qui tam litigation, healthcare fraud, economic espionage, money laundering, and Sarbanes-Oxley whistleblower allegations. We have represented issuers, officers and directors, and accounting firms in numerous investigations by the SEC, including allegations of fraud under sections 10(b) and 13 of the Securities Exchange Act of 1934. We also have significant experience assisting clients in benchmarking and drafting corporate compliance programs.

Our clients include Fortune 500 companies and other leading businesses and individuals in the aerospace/defense, automobile, financial, infrastructure, manufacturing, media, oil and gas, oilfield services, petrochemical, pharmaceutical/medical devices, retail, and telecommunications industries.



**Philip Urofsky**  
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University of Virginia School of Law, J.D., 1988,

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University of Virginia, B.A., 1985, with Highest Distinction

**Practice**

Mr. Urofsky, a partner in the firm's Litigation Group, is a former federal prosecutor whose responsibilities encompassed investigating and prosecuting criminal and civil violations of the Foreign Corrupt Practices Act (FCPA), as well as the money laundering and mail and wire fraud statutes and economic sanctions laws and regulations. He advises clients on conducting internal investigations, designing and implementing compliance programs, and responding to and defending against federal, state, and international criminal, civil, and administrative investigations, prosecutions, and trials on behalf of both business entities and individuals.

Prior to joining the firm, Mr. Urofsky served as a law clerk to the Honorable James M. Sprouse of the U.S. Court of Appeals for the Fourth Circuit and in a number of trial and supervisory positions within the U.S. Department of Justice's Criminal Division where he handled all aspects of criminal prosecutions, including investigations, trials, and appeals. Prior to leaving the Department, he served as Assistant Chief of the Fraud Section, with responsibility for supervising or participating in virtually every FCPA investigation and prosecution. In addition, Mr. Urofsky was a member of the United States' delegation to the OECD Working Group on Corruption and was designated by the U.S. as an expert in anti-corruption law and compliance for the Group's peer review process. As a DOJ attorney, Mr. Urofsky was the primary drafter of the Department's Principles of Federal Prosecution of Corporations and lectured widely on corporate compliance issues.

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Shearman & Sterling has been advising many of the world's leading corporations and financial institutions, governments and governmental organizations for more than 135 years. We are committed to providing legal advice that is insightful and valuable to our clients. This has resulted in groundbreaking transactions in all major regions of the world.

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of Rohm & Haas and sale of Morton International and its calcium chloride and Styron businesses; Suncor Energy in its \$15.8 billion merger with Petro-Canada; Brazilian conglomerate JBS in its acquisition of U.S. poultry company Pilgrim's Pride through a bankruptcy proceeding; Société Générale in combination of its asset management operations with Crédit Agricole's; and Sterlite in its \$500 Million Convertible Bond Offering in India.

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