



Program on
Corporate Compliance
and Enforcement
New York University School of Law

No Turning Back:
40 Years of the FCPA
and 20 Years of the OECD
Anti-Bribery Convention
Impacts, Achievements,
and Future Challenges

Organizers: U.S. Department of Justice,
Organisation for Economic Co-operation
and Development, and U.S. Securities
and Exchange Commission

Thursday, November 9, 2017
9:00 a.m.–6:00 p.m. Reception 6:00–6:45 p.m.
New York University School of Law

Greenberg Lounge
40 Washington Square South
First Floor





No Turning Back: 40 Years of the FCPA and 20 Years of the OECD Anti-Bribery Convention Impacts, Achievements, and Future Challenges

Thursday, November 9, 2017

New York University School of Law, 40 Washington Square South (Vanderbilt Hall), Greenberg Lounge (First Floor)

Organizers: U.S. Department of Justice, Organisation for Economic Co-operation and Development,
and U.S. Securities and Exchange Commission

Conference Objective

With the FCPA's enactment 40 years ago and 20 years after the adoption of the OECD Anti-Bribery Convention, the global fight against corruption has changed forever. This conference examines the major impact of these groundbreaking instruments on corporate behavior and law enforcement priorities. It explores the crucial role of cooperation between nations in investigating and prosecuting foreign bribery and the effectiveness of different approaches to corporate responsibility for bribery. The conference culminates with a discussion of the next era in FCPA enforcement and implementation of the Anti-Bribery Convention.

Conference Agenda

8:30–9:00 A.M. Registration

9:00–9:10 A.M. Opening Remarks

Drago Kos, Chair, OECD Working Group on Bribery in International Business Transactions

Sandra Moser, Acting Chief, Fraud Section, Criminal Division, U.S. Department of Justice

9:10–9:30 A.M. U.S. Department of Justice Keynote Address

Kenneth Blanco, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice

**9:30–10:00 A.M. The FCPA and the OECD Anti-Bribery Convention:
A Historical Perspective**

Moderator: F. Joseph Warin, Partner, Gibson, Dunn & Crutcher

Panelists:

Kara Brockmeyer, Partner, Debevoise & Plimpton

Mark Pieth, Former Chair, OECD Working Group on Bribery in International Business Transactions

10:00–11:00 A.M. The FCPA’s Impact on Corporate Behavior

Moderator: Jennifer Arlen ’86, Norma Z. Paige Professor of Law and Director,
Program on Corporate Compliance and Enforcement, NYU School of Law

Panelists:

Laurent Cohen-Tanugi, Managing Partner, Laurent Cohen-Tanugi Avocats

Charles Duross, Partner, Morrison & Foerster

Andreas Pohlmann, Partner, Pohlmann & Company

Kathryn Reimann ’82, Chief Compliance Officer and Managing Director,
Citibank, N.A. and Citi Global Consumer Banking

11:00–11:15 A.M. Coffee/Tea Break

11:15 A.M.–
12:15 P.M.

The OECD Anti-Bribery Convention's Impact on Bribery and Corruption Over the Last 20 Years

Moderator: Drago Kos, Chair, OECD Working Group on Bribery in International Business Transactions

Panelists:

Rachel Brewster, Professor, Duke University School of Law

Kevin Davis, Beller Family Professor of Business Law, NYU School of Law

Fritz Heimann, Founding Member, Transparency International

Paul Lagunes, Assistant Professor, School of International and Public Affairs, Columbia University

12:15–1:15 P.M.

Implementing the OECD Anti-Bribery Convention: Diverse Approaches

Moderator: Nicola Bonucci, Director for Legal Affairs, Organisation for Economic Co-operation and Development

Panelists:

David Green, Director, Serious Fraud Office, United Kingdom

Daniel Kahn, Chief, FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice

Eric Russo, First Deputy Prosecutor, National Financial Prosecutor's Office, France

Yoshimitsu Yamauchi, Director, International Affairs Division, Criminal Affairs Bureau, Ministry of Justice, Japan

1:15–1:30 P.M.

U.S. Securities and Exchange Commission Keynote Address

Steven Peikin, Co-Director, Division of Enforcement, U.S. Securities and Exchange Commission

1:30–2:30 P.M.

Lunch

2:30–3:30 P.M.

Globalization: Increased Foreign Bribery Risks and Increased Opportunities for Cooperation

Moderator: Mark Pieth, Former Chair, OECD Working Group on Bribery in International Business Transactions

Panelists:

Charles Cain, Acting Chief, FCPA Unit, Division of Enforcement, U.S. Securities and Exchange Commission

Marianne Djupesland, Senior Public Prosecutor, Anti-Corruption Team, ØKOKRIM, Norway

Darryl Wegner, Unit Chief, International Corruption Unit, Criminal Investigative Division, U.S. Federal Bureau of Investigation

3:30–4:30 P.M.

Corporate Liability for Foreign Bribery

Moderator: Jennifer Arlen '86, Norma Z. Paige Professor of Law and Director, Program on Corporate Compliance and Enforcement, NYU School of Law

Panelists:

Samuel Buell '92, Bernard M. Fishman Professor of Law, Duke University School of Law

Markus Busch, Head of Division, Federal Ministry of Justice and Consumer Protection, Germany

Pascale Dubois LL.M. '87, Vice President for Integrity, World Bank Group

Robert Luskin, Partner, Paul Hastings LLP

4:30–4:45 P.M.

Coffee/Tea Break

4:45–5:45 P.M.

The FCPA and the OECD Anti-Bribery Convention: Unfinished Business

Moderator: Drago Kos, Chair, OECD Working Group on Bribery in International Business Transactions

Panelists:

Katherine Choo, Chief Investigative and Anti-Corruption Counsel, General Electric

Peter Eigen, Founder and Advisory Council Chair, Transparency International

Patrick Moulette, Head, Anti-Corruption Division, Organisation for Economic Co-operation and Development

Matthew Stephenson, Professor of Law, Harvard Law School

5:45–6:00 P.M.

Closing Remarks

Nicola Bonucci, Director for Legal Affairs, Organisation for Economic Co-operation and Development

6:00–6:45 P.M.

Networking Reception

Greenberg Lounge, Vanderbilt Hall, 40 Washington Square South

Keynote Speakers



Kenneth Blanco

**Acting Assistant Attorney General, Criminal Division
U.S. Department of Justice**

Kenneth Blanco is the Acting Assistant Attorney General of the Criminal Division at the Department of Justice. He was appointed to the position of Deputy Assistant Attorney

General, Criminal Division, in April 2008. During his tenure with the Criminal Division, Blanco has overseen a number of its sections, including the Money Laundering and Asset Recovery Section, the Narcotic and Dangerous Drug Section, the Organized Crime and Gang Section, and the Child Exploitation and Obscenity Section. Much of his work is in the international banking and financial services area.

Blanco joined the Department of Justice almost two decades ago as an Assistant United States Attorney in the Southern District of Florida. He later served as the Deputy Chief of Narcotics/Chief of the High Intensity Drug Trafficking Area, Acting Chief of Narcotics, and Deputy Chief of the Major Crimes Section in that office. Blanco has also served as General Counsel to the 94 United States Attorney's Offices and the Executive Office of United States Attorneys. Before joining the Department of Justice, Blanco began his career at the Miami-Dade State Attorney's Office.



Steven Peikin

**Co-Director, Division of Enforcement
U.S. Securities and Exchange Commission**

Steven Peikin was named Co-Director of the SEC's Division of Enforcement in June 2017. Before serving at the SEC, he was Managing Partner of

Sullivan & Cromwell LLP's Criminal Defense and Investigations Group. His practice focused on white collar criminal defense, regulatory enforcement, and internal investigations.

From 1996 to 2004, Peikin served as an Assistant U.S. Attorney in the Southern District of New York. He was Chief of the office's Securities and Commodities Fraud Task Force, where he supervised some of the nation's highest-profile prosecutions of accounting fraud, insider trading, market manipulation, and abuses in the foreign exchange market. As a prosecutor, Peikin also personally investigated and tried a wide variety of cases involving securities and commodities fraud, as well as other crimes.

Peikin received his bachelor's degree from Yale University and a law degree from Harvard Law School, both magna cum laude.



Jennifer H. Arlen

**Norma Z. Paige Professor of Law;
Director, Program on Corporate
Compliance and Enforcement,
New York University School of Law**

Jennifer Arlen '86 is one of the nation's leading scholars on corporate criminal and civil liability, medical malpractice, and experimental law and economics. She is a co-founder and past President of the Society for Empirical Legal Studies. She also is Vice President and a member of the board of directors (1991-93, 2006-09, 2016-present) of the American Law and Economics Association. Arlen serves as the Associate Reporter for the American Law Institute's Principles of Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations Project; is on the editorial board of the *American Law and Economics Review*; and edits the journals on Experimental Law and Economics and Empirical Legal Studies for the Legal Scholarship Network on SSRN.

Arlen has been a Visiting Professor at the California Institute of Technology, Harvard Law School, and Yale Law School, and was the Ivadelle and Theodore Johnson Professor of Law and Business at USC Gould School of Law before coming to NYU. Arlen received her B.A. in economics from Harvard College (1982, magna cum laude) and her J.D. (1986, Order of the Coif) and Ph.D. in economics (1992) from New York University. She clerked for Judge Phyllis Kravitch on the U.S. Court of Appeals for the 11th Circuit. Arlen teaches Corporations, Business Crime, and the Regulation of Foreign Corrupt Practices.



Nicola Bonucci

**Director for Legal Affairs
Organisation for Economic Co-operation
and Development**

Nicola Bonucci is the Director for Legal Affairs and the coordinator for accession at the Organisation for Economic Co-operation and Development. He joined the OECD in 1993 as a Legal Counselor and served as Deputy Director from 2000 until becoming Director in 2005. He focuses on general public international law issues, participating in the negotiation of international agreements, interpreting the basic texts of the Organisation, and providing legal opinions to the senior management (the Secretary-General and his deputies), the Council (the governing body of the OECD), and its subsidiary bodies.

He plays an active role in the drafting and the negotiation of the OECD legal instruments. He also deals with personnel matters, including litigation in front of the Administrative Tribunal of the OECD, budgetary issues, and contracts. Since 1997, Bonucci has been closely involved in the monitoring and follow-up of the OECD Anti-Bribery Convention and is a regular speaker at international conferences on this subject.

Before joining the OECD, Bonucci served as a Legal Officer with the Food and Agriculture Organization of the United Nations (FAO) in Rome, where he provided developing countries, especially those in Africa, with legal assistance on natural resources law.

Bonucci holds a DEA in public international law from the University of Paris X Nanterre, a DESS in international administration from the University of Paris II-Assas, and a Master of international and comparative law from the University of Notre Dame.



Rachel Brewster

Professor

Duke University School of Law

Rachel Brewster is a Professor of Law at Duke University and the co-director of Duke Law School's Center for International and Comparative Law. Her scholarly research and teaching focus on the areas of international trade law, anticorruption law, and international relations theory. Her work examines the relationships between domestic politics and transnational legal regimes in the development and implementation of international economic policy. Brewster's recent publications include "Enforcing the FCPA: International Resonance and Domestic Strategy," *Virginia Law Review* (forthcoming Dec. 2017); "The Market for Global Anticorruption Enforcement," 80 *Law & Contemporary Problems* 193 (2017, with Samuel Buell); and "Pricing Compliance: When Formal Remedies Displace Reputational Sanctions," 54 *Harvard International Law Journal* 259 (2013).



Kara Novaco Brockmeyer

Partner

Debevoise & Plimpton

Kara Novaco Brockmeyer is a litigation partner based in the firm's Washington, D.C., office and a member of the White Collar & Regulatory Defense and Strategic Crisis Response and Solutions Groups.

Before joining Debevoise in 2017, she served as Chief of the SEC Enforcement Division's Foreign Corrupt Practices Act Unit and directed a nationwide team of attorneys and forensic accountants investigating violations of the FCPA. During her tenure, Brockmeyer oversaw many of the agency's largest and most complex FCPA investigations. Under her leadership, the SEC increased its coordination with other countries to reach global settlement resolutions. She was also one of the principal authors of the SEC-DOJ *Resource Guide to the U.S. Foreign Corrupt Practices Act*.

Over a 17-year career at the SEC, including five years as an Assistant Director, Brockmeyer led and personally conducted major investigations in all areas of SEC enforcement. She was also the founder and co-head of the division's Cross-Border Working Group.

Brockmeyer earned her J.D. in 1992 from the University of *Michigan Law School* magna cum laude and was Note Editor of the *Michigan Law Review*. She received her B.A. from Williams College cum laude in 1989.



Samuel W. Buell

Bernard M. Fishman Professor of Law

Duke University School of Law

Samuel W. Buell '92 is the Bernard M. Fishman Professor of Law at Duke University School of Law, where his teaching and research focus on criminal law and corporate crime. He is the author of *Capital Offenses: Business Crime and Punishment in America's Corporate Age* (W.W. Norton, 2016) and numerous scholarly publications on corporate enforcement and white collar offenses. From 1994 to 2004, Buell served in the United States Department of Justice, including as a lead prosecutor in the investigation of and prosecutions relating to the collapse of Enron Corporation.



Markus Busch

Head of Division

Federal Ministry of Justice and Consumer Protection, Germany

Markus Busch is Head of Division at the German Federal Ministry of Justice and Consumer Protection. His division's responsibilities include criminal law legislation on (foreign) bribery and corruption, economic crime, cybercrime, and environmental crime as well as legislation on the liability of legal persons. In 2017, he has been co-chairing the G20's Anti-Corruption Working Group.

Busch studied law in Germany and Switzerland and holds an LL.M. degree from Columbia University. Before joining the ministry, he worked as a judge and a public prosecutor.



Charles Cain

**Acting Chief
FCPA Unit, Division of Enforcement
U.S. Securities and Exchange Commission**

Charles Cain is the Acting Chief of the Foreign Corrupt Practices Act Unit within the Securities and Exchange Commission's Division of Enforcement. He has been in the SEC's FCPA Unit since its formation and with the Division of Enforcement for 17 years. As the Acting Chief, his roles include oversight of the national FCPA program, coordination with the DOJ and FBI, and supervision of individual investigations. During his tenure with the SEC, he has been responsible for numerous significant FCPA matters, as well as cases across a broad range of other areas including financial fraud, insider trading, offering fraud, market manipulation, disclosure fraud, and broker-dealer practices.



Katherine Choo
**Chief Investigative and
Anti-Corruption Counsel
General Electric**

Katy Choo is Chief Investigative and Anti-Corruption Counsel at GE, specializing in government and internal investigations in complex criminal and regulatory matters, compliance initiatives of the company, and preventive law. She also is a member of GE's Policy Compliance Review Board (PCRB), which oversees the company's strategic imperatives with respect to compliance. Choo has primary responsibility for counseling GE's businesses with respect to anti-corruption efforts globally relating to the Foreign Corrupt Practices Act and other anti bribery laws. She also serves as primary compliance counsel to GE's mergers and acquisitions transactions team. Choo has received

numerous awards at GE, including GE's Chairman's Award, the company's highest form of recognition.

Choo joined GE in 2003 after serving as an Assistant U.S. Attorney in the Southern District of New York, where she was Chief of the General Crimes Unit and a Deputy Chief in the Criminal Division. As a federal prosecutor, she specialized in prosecutions of white collar offenses and twice was a recipient of the U.S. Department of Justice Director's Award for Superior Performance and a recipient of the Federal Law Enforcement Officers Association's Group Achievement Award. During her tenure in government, Choo tried numerous federal criminal trials to verdict and argued numerous appeals in the Second Circuit. Before her work as a federal prosecutor, she worked as an associate specializing in complex civil litigation at the law firm of Davis Polk & Wardwell. Choo is a graduate of Wellesley College (Durant Scholar, Phi Beta Kappa) and Columbia School of Law (Harlan Fiske Stone Scholar).



Laurent Cohen-Tanugi
**Managing Partner,
Laurent Cohen-Tanugi Avocats
Independent Compliance Monitor**

A member of the Paris and New York bars, Laurent Cohen-Tanugi is the founder and Managing Partner of Laurent Cohen-Tanugi Avocats, a boutique international law firm focusing on strategic corporate assignments in the areas of cross-border mergers and acquisitions, international arbitration, white collar criminal proceedings, and corporate governance, including anti-corruption compliance. Over a career of 30 years, Cohen-Tanugi has been a partner at major international firms such as Cleary Gottlieb (1982-2003) and Skadden, Arps (2005-07), as well as Senior Vice President and General Counsel of the French pharmaceutical group Sanofi (2004).

He is to date the only member of the French Bar to have served as independent corporate monitor on a global FCPA

matter, by appointment of the U.S. Department of Justice and Securities and Exchange Commission. He is currently engaged on another independent monitorship on behalf of the World Bank.

Cohen-Tanugi is a graduate of the École normale supérieure, Sciences-Po Paris, and the Paris and Harvard Law Schools. He is the author of numerous influential books on the rule of law, European affairs, transatlantic relations, and globalization. Cohen-Tanugi is a regular columnist and international lecturer, and he was a visiting lecturer at Stanford Law School from 2012 to 2016.



Kevin E. Davis

**Beller Family Professor of Business Law
New York University School of Law**

Kevin Davis teaches and conducts research on contracts, commercial law, regulation of foreign corrupt practices, and the relationship between law and economic development. Davis received his B.A. in economics from McGill University in 1990. After graduating with an LL.B. from the University of Toronto in 1993, he served as Law Clerk to Justice John Sopinka of the Supreme Court of Canada and later as an Associate in the Toronto office of Torys, a Canadian law firm.

After receiving an LL.M. from Columbia University in 1996, he was appointed an Assistant Professor at the University of Toronto and in 2001 was promoted to Associate Professor. Davis has also been a Visiting Assistant Professor at the University of Southern California, a Visiting Fellow at Cambridge University's Clare Hall, and a Visiting Lecturer at the University of the West Indies in Barbados.



Marianne Djupesland

Senior Public Prosecutor

Anti-Corruption Team, ØKOKRIM, Norway

Marianne Djupesland is a Senior Public Prosecutor at Norway's National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM). As a prosecutor at ØKOKRIM, she is in charge of investigations as well as bringing cases before the courts. Since 2011, she has been head of the Anti-Corruption Team, which is a multidisciplinary team of police investigators, economists, and lawyers. During her tenure, the team has investigated several complex international bribery cases related to Norwegian companies and has cooperated extensively with foreign jurisdictions.

Djupesland represents Norway in the OECD's group of law enforcement officials related to the Working Group on Bribery under the OECD Anti-Bribery Convention. She is also the Vice Chair of that group. Before joining ØKOKRIM in 2004, Djupesland worked in the Legal Department of the Norwegian Ministry of Foreign Affairs, in private practice in a large law firm, and as junior judge in a court of first instance. She obtained her law degree from the University of Oslo, Norway, and also has a degree in EU law from the University of Nancy, France.



Pascale Hélène Dubois

Vice President for Integrity

World Bank Group

As the head of the World Bank Group (WBG) Integrity Vice Presidency (INT), Pascale Hélène Dubois LL.M.'87 leads the WBG's investigative efforts and the pursuit of sanctions in connection with allegations of fraud and corruption on WBG-financed projects. INT also supports WBG operations with risk mitigation and prevention. Dubois previously served as the World Bank's Chief Suspension and Debarment Officer, and before that she managed the Voluntary Disclosure Program in INT.

Before joining the WBG, Dubois was in private practice in the U.S. and Belgium. She has also served as Co-Chair of the International Bar Association's Anti-Corruption Committee, Senior Adviser to the ABA's Section of International Law Anti-Corruption Committee, a certified fraud examiner, and Adjunct Professor at Georgetown University Law Center. Dubois received her Lic. Jur. cum laude from the University of Ghent, Belgium, and her LL.M. from New York University.



Charles Duross

Partner

Morrison & Foerster

Charles "Chuck" Duross is a partner at Morrison & Foerster LLP, where he heads the firm's global anti-corruption practice. Before joining the firm almost four years ago, Duross served as a Deputy Chief of the Fraud Section in the Criminal Division of the U.S. Department of Justice, where he was in charge of all DOJ FCPA investigations, prosecutions, and resolutions in the United States. Under his leadership, DOJ resolved more than 40 corporate cases resulting in approximately \$1.9 billion in monetary penalties, and the FCPA Unit secured convictions of more than two dozen business executives and money launderers. Working closely with his counterparts at the U.S. Securities and Exchange Commission, Duross was one of the principal authors of the DOJ and SEC joint publication *A Resource Guide to the U.S. Foreign Corrupt Practices Act*.

Duross also served as DOJ's principal representative to the OECD's Working Group on Bribery for many years. Once dubbed "Mr. FCPA," Duross is the recipient of the Attorney General's Distinguished Service Award for the prosecution and conviction of Congressman Jefferson, the first member of Congress ever charged with violating the FCPA, and the Assistant Attorney General's Exceptional Service Award for leading the United States' response to the OECD's Phase 3 Review. He is an Adjunct Professor at Georgetown University Law Center, where he teaches trial

advocacy, and he has been a lecturer on foreign corruption issues at Fordham, George Washington, Harvard, Michigan, and Penn law schools.



Peter Eigen

**Founder and Advisory Council Chair
Transparency International**

Peter Eigen is the founder of Transparency International (TI), a nongovernmental organization promoting transparency and accountability in international development. From 1993 to 2005 he was Chair of TI and is now Chair of its Advisory Council. From 2005 to 2011 he was the Founding Chair of Extractive Industries Transparency Initiative. In August 2014, he co-founded the HUMBOLDT-VIADRINA Governance Platform in Berlin. Today he chairs the board of the Platform's Fisheries Transparency Initiative and co-chairs the initiative Climate Transparency.

Eigen worked at the World Bank in economic development for 25 years, managing its operations in numerous countries in Africa and Latin America. He taught at the universities of Frankfurt/M, Georgetown, Harvard (John F. Kennedy School of Government), and Johns Hopkins (SAIS). Since 2003 he has served as Honorary Professor at the Freie Universität Berlin.

In 2004, Eigen was awarded the *Reader's Digest* European of the Year, and three years later the Gustav Heinemann Award. Germany awarded Eigen its Grand Cross of Merit in January 2013 in recognition of his efforts to combat global corruption.



David Green

Director

Serious Fraud Office, United Kingdom

After 25 years of prosecuting and defending at the Criminal Bar, David Green was appointed the first Director of Revenue and Customs Prosecutions in April 2005. He headed the Revenue and Customs Prosecutions Office from its launch until the department was merged with the Crown Prosecution Service in January 2010.

Green returned to the bar in April 2011. He was appointed Director of the Serious Fraud Office in April 2012. Green was called to the bar in 1979, appointed Recorder in 1996, and took silk in 2000.



Fritz Heimann

Founding Member

Transparency International

Fritz Heimann is one of the founders of Transparency International (TI), served on its board of directors, and chaired its national chapter in the United States. He is co-author of *Confronting Corruption*, with Mark Pieth, to be published in November 2017 by Oxford University Press. He has been actively involved in TI's work on the OECD Anti-Bribery Convention and the UN Convention Against Corruption.

Heimann served as Associate General Counsel of the General Electric Company. He helped manage GE's corporate compliance programs in the anti-corruption and anti-trust fields, and he continues to serve as counselor to the General Counsel. He graduated from the University of Chicago with a J.D. from the Law School and a B.A. from the College.



Daniel Kahn

Chief, FCPA Unit, Fraud Section,

Criminal Division

U.S. Department of Justice

Daniel Kahn has been with the Department of Justice, Criminal Division, Fraud Section, since 2010; was an Assistant Chief in the Foreign Corrupt Practices Act (FCPA) Unit from 2013 to March 2016; and has been the Chief of the FCPA Unit since that time. He has tried and convicted a number of individuals in FCPA, securities fraud, and other white collar cases and was the lead prosecutor on 10 corporate FCPA resolutions, including the guilty plea of Alstom, resulting in the largest-ever fine by the department in an FCPA case. Kahn earned the Assistant Attorney General's Award for Exceptional Service for his work on the Alstom case and the Assistant Attorney General's Award for Distinguished Service for his part in prosecuting a bribery scheme involving the state-owned and state-controlled telecommunications company in Haiti. In connection with that case, Kahn was Co-Counsel in the first conviction at trial of a foreign government official for laundering proceeds of FCPA violations.

Before joining the Department of Justice, Kahn spent six years at Davis Polk & Wardwell LLP. He graduated summa cum laude from Cornell University and cum laude from Harvard Law School.



Drago Kos

Chair, OECD Working Group on Bribery in International Business Transactions

Drago Kos is currently the Chair of the OECD Working Group on Bribery in International Business Transactions, Co-Chair of the Defence Corruption Monitoring Committee in Ukraine, and Adviser to the Kosovo Anti-Corruption Agency. He used to be International Commissioner and Chair of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) in

Afghanistan. Between 2003 and 2011 he was the Chairman of the Council of Europe's Group of States against Corruption (GRECO). Between 2011 and 2012 he was a Special Adviser to the Anti-Corruption Agency of the Republic of Serbia. He is also a former member of the COGEL (U.S. Council on Government Ethics Laws) Global Affairs Committee.

Between 2004 and 2010, Kos was the first Chairman of the Commission for the Prevention of Corruption of the Republic of Slovenia. Before that, he was a Deputy Director of the Slovenian Criminal Investigation Directorate and Head of the Organised Crime Section of the Slovenian Police.

Since October 2010, he has been Managing Partner in R.U.R. LLC, a consultancy company registered in Slovenia and active in the areas of corporate integrity, prevention of corruption, forensic auditing, due diligence, anti-money laundering, asset tracing and recovery, and more. In 2014, he led the Slovenian Chamber of Commerce's working group producing the first guidelines on Slovenian corporate integrity. He used to be a soccer player and UEFA/FIFA referee and is now a UEFA/FIFA referee observer.



Paul F. Lagunes

Assistant Professor

**School of International and Public Affairs,
Columbia University**

Paul Lagunes obtained his Ph.D. in political science from Yale University and is an Assistant Professor at Columbia University's School of International and Public Affairs. His research on the political economy of development examines the issue of corruption, especially as it affects subnational governments in the Americas.

He has published in *PLOS ONE*, *Latin American Research Review*, *Political Psychology*, *Harvard Journal of Hispanic Policy*, *Politics & Policy*, and *Journal of Social Issues*, among other outlets. Lagunes is also the co-editor with Susan Rose-Ackerman of *Greed, Corruption, and the Modern State: Essays in Political Economy*.

During the 2016-17 academic year, Lagunes served as a Visiting Scholar at the Inter-American Development Bank in Washington, D.C. He serves as a voting member of Evidence in Governance and Politics, the Center for the Advancement of Public Integrity, and the Museum of Political Corruption.



Robert Luskin

Partner

Paul Hastings LLP

Robert Luskin is a partner in the Investigations and White Collar Defense practice at Paul Hastings and is based in the firm's Washington, D.C., office. He is one of the best-known and most highly regarded litigators in Washington, D.C., concentrating in complex criminal and civil litigation at both the trial court and appellate levels.

Luskin has devoted his attention recently to the unique challenges posed by the representation of foreign corporations and financial institutions in multijurisdictional, cross-border criminal investigations and has reached path-breaking agreements in these areas with the DOJ. He has special expertise in civil and criminal investigations under the Foreign Corrupt Practices Act (FCPA) and has represented foreign corporations in three of the five largest FCPA investigations ever resolved with the DOJ and the Securities and Exchange Commission, including settlements involving Alstom, Braskem, Total, and Technip. He currently represents a number of major foreign corporations in a variety of high-profile matters.

Luskin also has extensive recent experience representing individuals and financial institutions in investigations of potential violations of U.S. sanctions laws before the DOJ, OFAC, and state, federal, and foreign regulators. He has a keen understanding of current enforcement trends and issues, having represented a major French bank and more than a dozen senior executives of BNP Paribas in criminal and civil sanctions investigations and currently representing

British and Middle Eastern financial institutions in ongoing criminal and civil regulatory investigations. Luskin is an Adjunct Professor of Law at Georgetown University, where, together with Daniel Kahn, he teaches a course in global anti-corruption.



Sandra Moser

**Acting Chief, Fraud Section,
Criminal Division
U.S. Department of Justice**

Sandra Moser is the Acting Chief of the Criminal Division's Fraud Section in Washington, D.C. She joined the Fraud Section in 2012 after seven years with the U.S. Attorney's Office for the District of New Jersey. Moser assumed the Acting Chief role in 2017 after previously serving the Fraud Section as its Principal Deputy Chief, Acting Senior Deputy Chief over the Section, and an Assistant Chief in the Section's Securities and Financial Fraud Unit.

She previously worked at Morgan, Lewis & Bockius and Drinker Biddle & Reath, both in Philadelphia, and clerked for Judge Norma L. Shapiro, U.S. District Court, Eastern District of Pennsylvania and Judge Marjorie Rendell on the U.S. Court of Appeals for the Third Circuit. Moser earned her J.D. cum laude from the Northwestern University School of Law and two B.A. degrees from the University of North Carolina at Chapel Hill.



Patrick Moulette

**Head, Anti-Corruption Division
Organisation for Economic Co-operation
and Development**

Patrick Moulette is the Head of the Anti-Corruption Division in the OECD Directorate for Financial and Enterprise Affairs. In this role, he designs and manages the work program of the 43-country Working Group on Bribery in International Business Transactions, including the evaluation process to monitor the implementation

of the OECD Anti-Bribery Convention and its associated Recommendations. Moulette joined the OECD in 1991 as a member of the Secretariat for the Financial Action Task Force (FATF), which safeguards the global financial system against money laundering and terrorist financing. In November 1995, he was promoted to Executive Secretary of the FATF. Previously, he worked for the Department of the Treasury of the French Ministry of Finance. Moulette is a graduate of the Paris Institute of Political Studies (Sciences-Po) and has Master's degrees in public law and in corporate law.



Mark Pieth

**Former Chair, OECD Working Group
on Bribery in International Business
Transactions**

Mark Pieth has been Professor of Criminal Law and Criminology at the University of Basel in Switzerland since 1993. He has served twice as Dean of the Basel Law School. In 2014, Sussex University, U.K., presented him with an honorary doctorate. As an academic he has published extensively in the areas of economic crime, criminal law, criminal procedure, and sanctioning.

From 1989 to 1993, Pieth was Head of the Section on Economic and Organized Crime at the Swiss Federal Office of Justice. During this time, he was a member of the Financial Action Task Force on Money Laundering. From 1990 to 2013, he chaired the OECD Working Group on Bribery. In 2004 and 2005, Pieth was a member of the Independent Inquiry Committee into the UN's Oil-for-Food Programme in Iraq (Volcker Committee). From autumn 2008 to summer 2014, he was a member of the Independent Advisory Board of the World Bank Group. Pieth chaired the Independent Governance Committee to oversee the reform process of FIFA from November 2011 until the end of 2013. From 2013 to 2016, he was Chairman of the Sanction Appeals Board of the African Development Bank. He was member of the Independent Committee to revise the practices of the legal

and financial industry in Panama. As of spring 2017, he has been a member of the Vetting Panel of the International Association of Athletics Federations, and he has been asked to join the Expert Advisory Group on Transparency of the Inter-American Development Bank.

Pieth is the founder and Chair of the Basel Institute on Governance. In this capacity he has co-initiated several collective actions, including the Wolfsberg Group and the WEF's Partnering Against Corruption Initiative.



Andreas Pohlmann

Partner

Pohlmann & Company

Andreas Pohlmann is Founding Partner of Pohlmann & Company, a multidisciplinary law and consulting firm based in Frankfurt and Munich. From 2007 to 2010 he was Chief Compliance Officer of Siemens AG. Thereafter, from 2010 to 2011, he was a member of the Executive Board of Ferrostaal AG in Germany, responsible for legal affairs and compliance. From March 2013 to May 2014 he served as Chief Compliance Officer and member of the Executive Committee of SNC-Lavalin Group in Montreal. Since 2014 he has been a member of the Special Committee of Petrobras in Rio de Janeiro to oversee the company's independent investigation. In 2016, Pohlmann was appointed by the U.S. DOJ and U.S. SEC as Independent Compliance Monitor for a European corporation. He is a member of the Advisory Committee of the World Economic Forum's Future of Trust and Integrity project.

Pohlmann began his professional career at chemical group Hoechst AG in Germany. Thereafter, he worked at Celanese AG in Germany and Celanese Corporation in Dallas as a member of the company's Group Executive Committee. He graduated from Goethe University in Frankfurt and holds a doctoral degree from the University of Tuebingen, Germany.



Kathryn Reimann

Chief Compliance Officer and

Managing Director

Citibank, N.A. and Citi Global

Consumer Banking

Kathryn S. Reimann '82 is the Chief Compliance Officer and Managing Director for Global Consumer Businesses and for Citibank N.A. She leads the compliance functions for Retail Banking, Credit Cards, Real Estate Lending, Consumer Finance, and other consumer businesses for North America and across 48 countries. As a member of the Citibank N.A. executive team, she sets compliance strategy for the bank.

Reimann joined Citi in August 2006 from American Express, where she had been Senior Vice President, Chief Compliance and Ethics Officer. Before joining American Express in 1998, she was Senior Vice President, Chief Compliance Officer and a Senior Counsel of Lehman Brothers Inc. Reimann began her career as a litigation attorney, initially with the firm of Curtis, Mallet-Prevost, Colt & Mosle, and thereafter in the General Counsel's Office of Dean Witter Reynolds. Previously, she clerked for Associate Justice Stewart G. Pollock of the New Jersey Supreme Court.

A graduate of Princeton University, Reimann completed her undergraduate degree and thesis with honors at Princeton's Woodrow Wilson School of Public and International Affairs. She received her J.D. from New York University School of Law.



Eric Russo

**First Deputy Prosecutor
National Financial Prosecutor's Office,
France**

Eric Russo graduated from the Université de Nancy-II in 1998 with a Master's degree in business and tax law before joining the National School for the Judiciary. He started his career in 2002 as an investigating judge, an occupation in which he carried out investigations into allegations of complex criminal cases, drug trafficking, and white collar crimes.

Then he joined the French Department of Justice, where he was appointed Chief of the Commercial Section, specializing in corporate law, contract law, insolvency law, money laundering, and asset forfeiture. In 2008 and 2009, Russo participated as France's official representative in the United Nations' working group on international trade law. He also took part in a large number of negotiations within the European Union commission.

In 2012, he was appointed Chief of Staff of the General Attorney of Paris, then joined the Parquet national financier (National Financial Prosecutor's Office). Over the last three years, Russo has been carrying out investigations and has prosecuted cases on foreign bribery and corruption, money laundering, and complex tax fraud. During the preparation and voting process of the Sapin 2 Act 2016, the French Parliament's Legal Committee consulted him as an external expert.



Matthew C. Stephenson

**Professor of Law
Harvard Law School**

Matthew Stephenson is Professor of Law at Harvard Law School, where he teaches administrative law, legislation and regulation, anti-corruption law, and political economy of public law. His research focuses on the application of positive political theory to

public law, particularly in the areas of administrative procedure, anti-corruption, judicial institutions, and separation of powers.

Before joining the Harvard Law School faculty, Stephenson clerked for Senior Judge Stephen Williams on the D.C. Circuit and for Justice Anthony Kennedy on the Supreme Court. He received his J.D. and Ph.D. (political science) from Harvard in 2003 and his B.A. from Harvard College in 1997.



F. Joseph Warin

**Partner
Gibson, Dunn & Crutcher**

F. Joseph Warin is Chair of the Litigation Department in Gibson, Dunn & Crutcher's Washington, D.C., office and Co-Chair of the firmwide White Collar Defense and Investigations Practice Group. He is a former federal prosecutor.

The AmLaw Litigation Daily named Warin Litigator of the Week on September 21, 2017, for his victory in defending KeyPoint Government Solutions in overlapping class actions arising out of the cyberattack on the U.S. Office of Personnel Management in 2015. *Securities Docket* also recently named him to its Enforcement 40 list for 2017. Warin is one of only 10 lawyers currently ranked in *Chambers USA* in five categories, including a Star in Nationwide FCPA and D.C. Litigation: White Collar Crime & Government Investigations. *Chambers* honored Warin with the Outstanding Contribution to the Legal Profession Award in 2017 and the *Chambers USA* Award for Excellence in the category of Litigation: White Collar Crime & Government Investigations in 2014. *Chambers Global* 2017 ranked Warin a Star in USA-FCPA "with exceptional expertise across all aspects of anti-corruption law." *Chambers Latin America* ranked him as a top-tier lawyer in Latin America-wide fraud and corporate investigations from 2015 to 2017. This year, *Who's Who Legal* selected him as a Thought Leader: Investigations,

who obtained the biggest number of nominations from peers and corporate counsels. In 2016, *Who's Who Legal* and *Global Investigations Review* also named Warin to their list of the world's Ten Most Highly Regarded Investigations Lawyers. In addition, BTI Consulting named Warin to its 2017 BTI Client Service All-Stars list.



Darryl Wegner

**Unit Chief, International Corruption Unit,
Criminal Investigative Division
U.S. Federal Bureau of Investigation**

Darryl Wegner entered on duty as a Special Agent of the Federal Bureau of Investigation in 2004. Upon graduation from the FBI Academy, he was assigned to the Boston Field Office, where he investigated international terrorism and securities fraud. In 2011, he transferred to the Counterterrorism Division in Washington, D.C., where he program-managed extraterritorial terrorism investigations in East Africa. Wegner earned the Attorney General's Distinguished Service Award for his work on the investigation and extradition of an Al Shabaab commander and emissary to Al Qaeda in the Arabian Peninsula, Ahmed Warsame, who was captured in international waters and brought to New York to face charges. In 2012, Wegner returned to Boston to supervise the complex financial crimes program.

Since 2015, Wegner has led the International Corruption Unit in Washington, D.C., which manages FBI investigations involving foreign corruption, kleptocracy, and antitrust matters. Before the FBI, Wegner was a corporate attorney in New York and a mechanical engineer in the automotive industry in Michigan. He earned his J.D. at Boston College Law School and his B.S. summa cum laude in engineering-physics at Hope College in Holland, Michigan.



Yoshimitsu Yamauchi

**Director, International Affairs Division,
Criminal Affairs Bureau
Ministry of Justice, Japan**

Yoshimitsu Yamauchi was appointed public prosecutor in 1995 and has extensive working experience in the field of criminal justice and international cooperation. As public prosecutor, Yamauchi served with the Special Investigation Department of the Tokyo Public Prosecutors Office and has played an active role in conducting investigations of prominent foreign bribery cases and security fraud cases. Of particular note, he was appointed lead prosecutor and successfully led his team through an investigation of a large-scale foreign bribery case involving multiple countries.

Yamauchi also has extensive working experience as a government attorney. He worked on the negotiation of the first Mutual Legal Assistance Treaty (MLAT) with the United States along with various international works, including the negotiation of the United Nations Convention Against Corruption. In addition, Yamauchi has, for more than a decade, attended countless international conferences including the Working Group on Bribery of the OECD, United Nations, G7, and FATF. Through his devoted efforts, he has established his reputation as an expert in the field of international cooperation both in theory and in practice.

Yamauchi is currently head of the International Affairs Division, which serves as the central authority for various MLATs as well as UNTOC and UNCAC. He is in charge of overseeing the handling of mutual legal assistance and extradition requests as well as representing Japan at international negotiations and conferences in criminal matters.



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Second Circuit Limits Judicial Scrutiny of Deferred Prosecution Agreements

by **John F. Savarese, Ralph M. Levine, David B. Anders, Marshall L. Miller, and Christopher R. Deluzio**

In an anticipated and important decision, the Second Circuit Court of Appeals overturned a district court's order requiring the unsealing of an independent monitor's report detailing HSBC's compliance with a deferred prosecution agreement. *United States v. HSBC Bank USA, N.A.* (Nos. 16-308, 16-353, 16-1068, 16-1094, July 12, 2017). In so doing, the Second Circuit substantially limited a district court's power to scrutinize DPAs, thereby following a course similarly embraced by the D.C. Circuit (as discussed in our prior [memo](#)).

In the district court, Judge Gleeson granted the joint request by DOJ and HSBC to approve the DPA, subject to the Court's ongoing oversight of the DPA's implementation pursuant to the Court's asserted "supervisory authority"—a decision we discussed in our earlier [memo](#). As part of its oversight, the Court ordered the government to file under seal an independent monitor's report, which eventually led to a member of the public requesting access to the report. Concluding that request as a motion to unseal, the Court granted the motion, finding that the monitor's report was a "judicial document" subject to the public's qualified First Amendment right of access. The government and HSBC appealed.

The Second Circuit's reversal was decisive, and grounded in the fundamental constitutional theory of separation of powers: "the district court impermissibly encroached on the Executive's constitutional mandate to 'take Care that the Laws be faithfully executed.'" In rejecting the district court's assertion of its supervisory authority to monitor implementation of the DPA, the Second Circuit found that such an assertion was inconsistent with the "presumption of regularity... ascribed[] to prosecutorial conduct and decisionmaking." The Second Circuit flatly rejected the existence of any "freestanding supervisory power" and observed that "a federal court has no roving commission to monitor prosecutors' out-of-court activities just in case prosecutors might be engaging in misconduct."

The Second Circuit further rejected several other proffered grounds for the district court's authority to supervise the DPA. Citing the D.C. Circuit's decision in *Fokker Services*, the Second Circuit refused to interpret the Speedy Trial Act's "vague" approval requirement as imbuing courts with an ongoing oversight power¹ and instead limited the court's role to determining whether "a DPA is bona fide before granting a speedy trial waiver."² The Second Circuit also rejected as unripe and overly speculative the argument that the monitor's report is a judicial document—and, thus, subject to a qualified public right of access—by virtue of the potential future relevance of the report to resolving a motion to dismiss the criminal information or to adjudicating an asserted breach of the DPA.

The decision in *HSBC* should further allay concerns that prosecutors and corporate defendants seeking to resolve investigations through DPAs may face unpredictable judicial second-guessing and the specter of public docketing of sensitive reports about DPA compliance. Although the Second Circuit identified certain hypothetical situations that

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