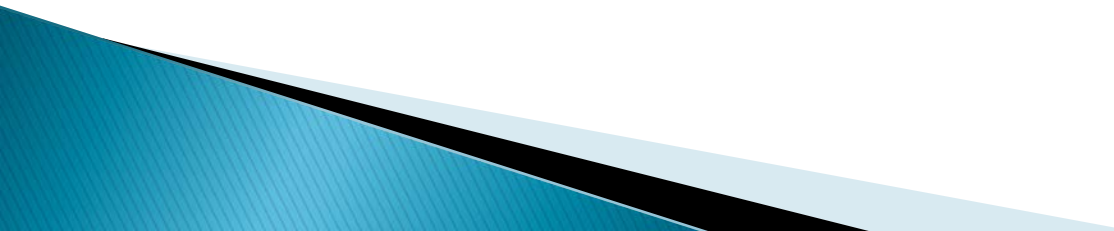


# International Activities: 3rd parties and the risk of corruption

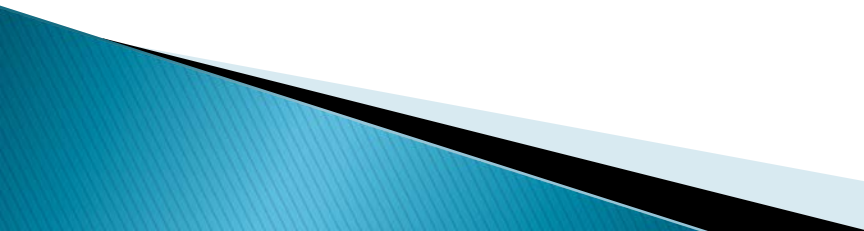
Brian Mitchell Warshawsky, UCOP



# Related topics

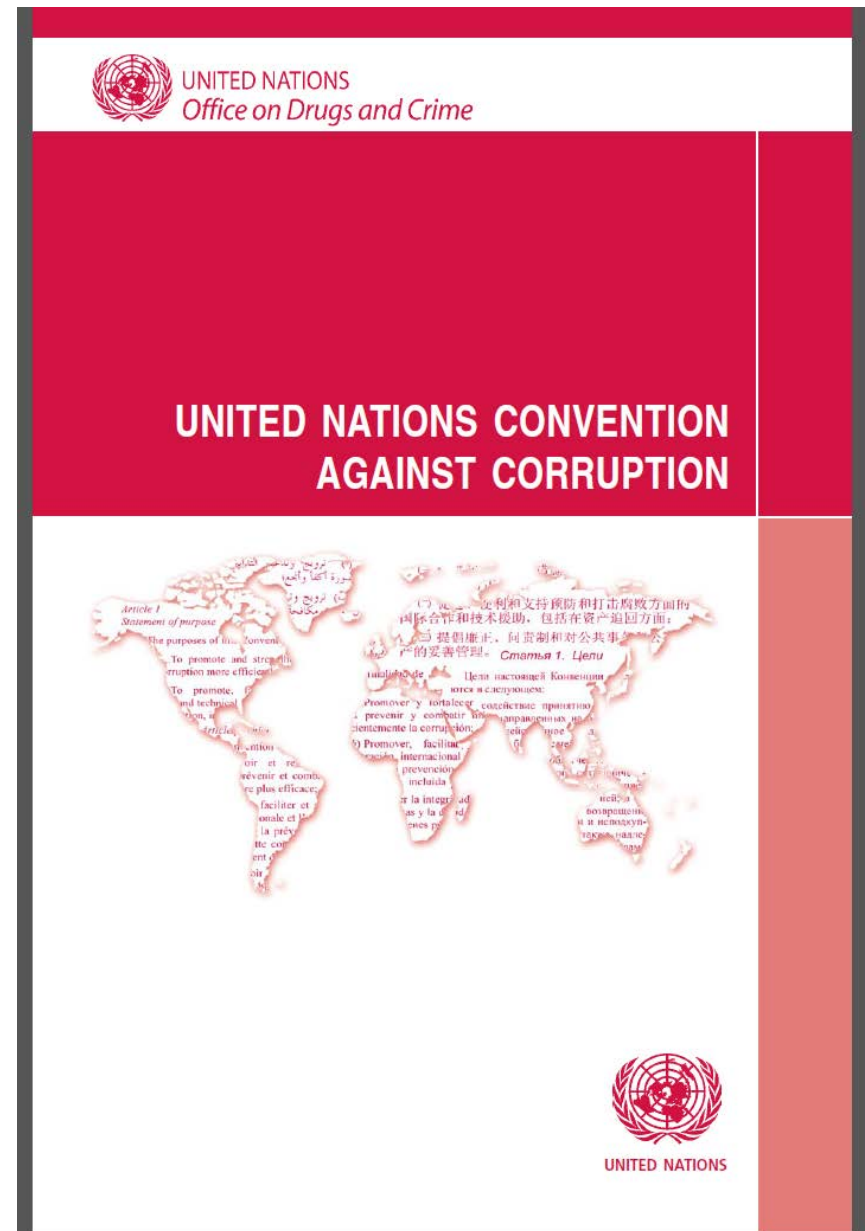
- ▶ Export Controls and shipping
  - ▶ Travel risks
  - ▶ At the border – travelling with laptops and mobile devices
  - ▶ Anti-corruption and 3<sup>rd</sup> party compliance
- 

# Why this matters

- ▶ How well do you know your overseas partners?
  - ▶ How well do you know your overseas agents?
  - ▶ What is your liability for their actions as 3<sup>rd</sup> parties acting on your behalf?
  - ▶ Sponsors demanding FCPA and UKBA terms in agreements – what is your strategy?
  - ▶ Hosting foreign delegations
  - ▶ How do you demonstrate compliance?
- 

# Worldwide issue

- ▶ FCPA
- ▶ UK Bribery Act
- ▶ Extraterritoriality
- ▶ UN activities
- ▶ New laws emerging  
From other nations
- ▶ Enforcement on rise



# Program Overview

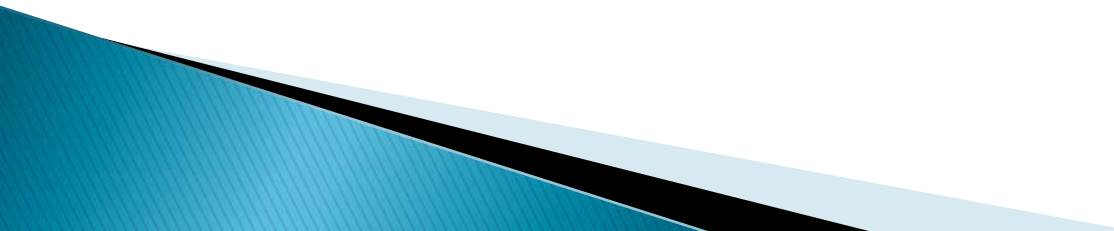
- ▶ **Regulatory compliance**
  - ▶ **Politically Exposed Persons (PEPs)**
  - ▶ **Instrumentality of a foreign government**
  - ▶ **Pre-travel planning and mitigation**
  - ▶ **Role of 3<sup>rd</sup> parties**
  - ▶ **New online eLearning tool**
- 

# Prior to international engagements...

## What questions must be asked?

- ▶ Are we Liable for improper benefits paid by intermediaries acting on our behalf?
- ▶ Overseas payments OK?
  - Political donation
  - Gifts
  - Preferential treatment
  - Entertainment
- ▶ What due diligence must be performed before a third party may be paid?
- ▶ Issues with money?
- ▶ What records must be maintained?
- ▶ Countries of higher risk?

# Charitable and other “giving”

- ▶ Universities are committed to investing in communities – Can charitable gifts corruptly influence a foreign official's decisions to obtain an improper benefit?
  - ▶ Entertainment and hospitality?
  - ▶ Political donations?
  - ▶ Country by country sensitivity?
- 

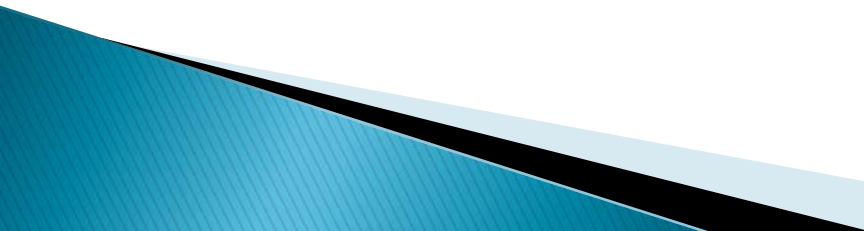
# Destination concerns?





# Regulations

U.S. Foreign Corrupt Practices Act (“FCPA”) and the United Kingdom Bribery Act (“UKBA”).

- ▶ In addition, many countries and jurisdictions have also instituted their own Anti-Corruption Laws.
  - ▶ You should become knowledgeable about any local Anti-Corruption Laws before engaging in activity with individuals or entities outside the United States
- 

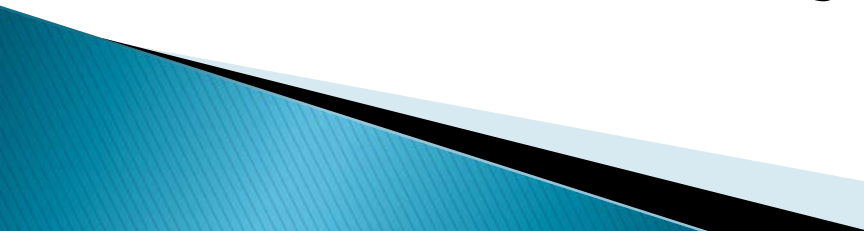
# Extraterritoriality

- ▶ Laws of one country may extend past their own borders
- ▶ Enforcement

# “Instrumentality”

- ▶ The FCPA prohibits the bribery of “any foreign official,” defined as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof.”
- ▶ On May 16, 2014, *US v. Esquenazi*, the Eleventh Circuit affirmed a broad **definition** of “instrumentality” of a foreign government, as the term is used in the **Foreign Corrupt Practices Act (FCPA)** to **define** who qualifies as a “foreign official” under the statute

# “Instrumentality”

- ▶ Broad two-pronged test
    - Government Control
    - Whether the entity performs a function the government treats as its own
  - ▶ A professor or other employee of a state-run university could be considered a “foreign official” for purposes of the FCPA.
  - ▶ Doctors serving as employees of government owned or operated medical facilities (clinics, hospitals, etc.)
  - ▶ Airport employees and local customs officials at country borders or ingress points (such as train stations and airports)
  - ▶ Public transit employees
  - ▶ Public dignitaries
  - ▶ Police officers or investigative bureau agents
- 

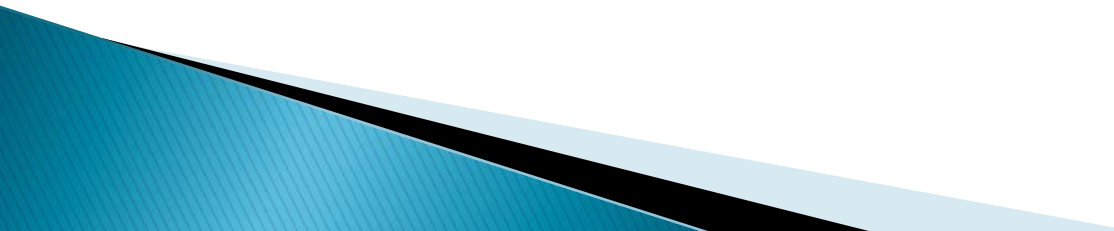
# PEP's

- ▶ A politically exposed person does not always mean an individual who directly holds public office, it also includes their immediate family members, close business associates, as well as any senior executives of state owned enterprises.
- ▶ The new FATF recommendation expanded the definition to include individuals of high status in International Sports Committees.

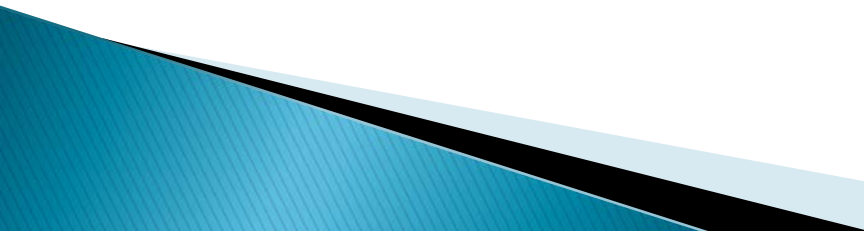
# PEP's

- ▶ The term "**politically exposed person**" generally includes a current or former senior foreign political figure, their immediate family, and their close associates.
- ▶ A "**senior foreign political figure**" is a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a senior foreign political figure includes any corporation, business, or other entity that has been formed by, or for the benefit of, a senior foreign political figure.
- ▶ The "**immediate family**" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children, and in-laws.
- ▶ A "**close associate**" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

# Gifts?

- ▶ The FCPA applies to any and all “things of value,” including gifts.
  - ▶ There are some exceptions to the general prohibition, however.
  - ▶ Faculty and Staff members should consult with local experts prior to giving any gifts to foreign colleagues at state-run universities overseas or even when hosting visits on campus.
  - ▶ No de minimis exception
- 

# Red flag situations

- ▶ Excessive or non-bona fide payment of travel expenses
  - ▶ Excessive gifts, entertainment, hospitality, administrative fees
  - ▶ Contribution to a non-U.S. political party or candidate for non-U.S. political office
  - ▶ Acceptance of cash or anything of value\* in excess of modest gifts and hospitality from anyone doing or seeking to do business with the university
  - ▶ Contracting with an entity owned or recommended by a Foreign Official such as their family members' businesses
  - ▶ Charitable contributions to organizations owned or recommended by a Foreign Official or owned by his or her family members
  - ▶ Conferring titles of honor
  - ▶ Promises of academic benefits from the university
- 



# Required Due diligence

## A. Politically Exposed Persons

- ▶ Due diligence relative to both collaborators and transaction data is a requirement of the FCPA and particular care must be taken with Politically Exposed Persons (“PEPs”). By nature, these individuals tend to be in positions of power and are vulnerable to corruption related activity.

## B. Countries known for corrupt business practices

- ▶ Certain countries are known for relatively corrupt business practices. An institution must consider the risk in doing business in these jurisdictions.

## C. Third Party Payments

- ▶ Corrupt payments by agents, consultants, and other third parties represent one of the highest risk areas under the FCPA. American organizations are vulnerable to the improper payments on their behalf by third parties.

# High Risk Travel

7/1/14 - 6/30/15


COUNTRY	CSAR	TOTAL TRAVELERS
Pakistan	5 - Very High	25
Burundi	5 - Very High	13
Sudan	5 - Very High	8
Afghanistan	5 - Very High	6
South Sudan	5 - Very High	6
Palestinian Authority	5 - Very High	3
Iraq	5 - Very High	1
Yemen	5 - Very High	1
Mexico	4 - High	867
South Africa	4 - High	545
Brazil	4 - High	484
Peru	4 - High	398
Kenya	4 - High	272
Israel	4 - High	271
Indonesia	4 - High	175
Colombia	4 - High	135
Ethiopia	4 - High	130
Guatemala	4 - High	96
Ecuador	4 - High	91
Malawi	4 - High	74


# Trip Brief



**Trip Brief** POWERED BY **iJET**

**Italy** (Prepared on Nov 11, 2008 9:27:59 PM GMT)

**TRAVEL ALERTS**  
KEY:  CRITICAL  WARNING  INFORMATIONAL

 11/10/2008 - Alitalia personnel disrupt flights in Rome and Milan, Italy, Nov. 10. More strikes threatened. Expect flight delays; confirm flight status.

**BEFORE YOU GO: Italy**  
See Detailed Report below for full information.

Overview: [Italy](#)

**Security**

- ▶ [Security Overview of Italy](#)
- ▶ **Bombings:** Travelers have not been directly targeted by bombings in Italy.
- ▶ **Personal Security:** Petty crime is a significant concern throughout Italy.
- ▶ **Transportation Security:** Take security precautions when using public transportation and when on the road in Italy.

**Health**

- ▶ **Health Planning:** Health risks in Italy.
- ▶ **Immunizations:** Recommended immunizations for travel to Italy
- ▶ **Immunizations:** Vaccinations for All International Travelers.

**Entry/Exit**

- ▶ **Entry/Exit:** Customs export guidelines for Italy.
- ▶ **Entry Requirements:** Entry customs guidelines for Italy.
- ▶ **Passports:** Entry requirements for Italy.

**USEFUL NUMBERS FOR ITALY**

Done Internet

Includes:

- Current ALERTS
- Country/City Overview
- Security, Health and Entry/Exit information
- Useful (in country) phone numbers and Embassy Contacts
- Weather
- Currency Exchange Information
- And more....

# Worldcue®Planner



This site is sponsored by the  
Office of the President,  
Department of Risk Services,  
University of California.

Welcome Location Intel Global Travel Tips Tools Help

Welcome

## Welcome to Worldcue® PLANNER

Know-Before-You-Go Travel Intelligence®

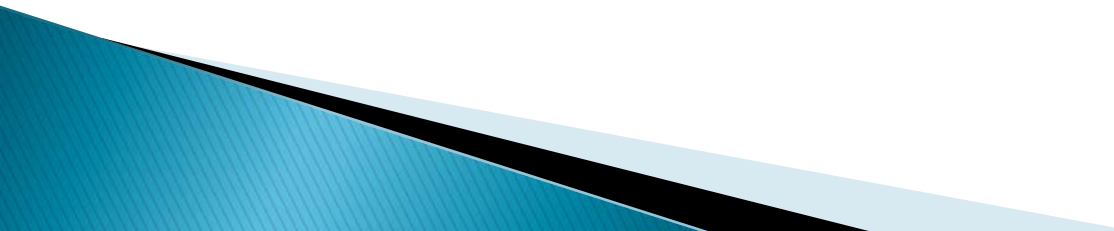
### Quick Tips for Getting Started

- ▶ Click the *Location Intel* tab to begin your search
- ▶ Choose a location or airport code
- ▶ Click **Go**

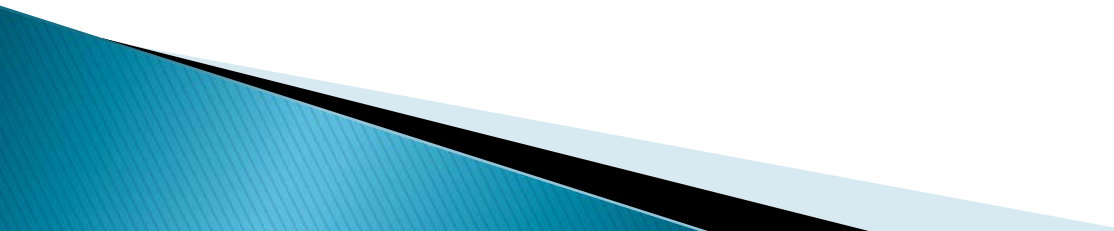


- This tool allows you to plan your trip and mitigate potential travel risks before traveling

# Risks of 3<sup>rd</sup> parties

- ▶ Local agents and experts often engaged overseas
  - ▶ Foreign collaborators and their personnel
  - ▶ Logistics
  - ▶ Subcontractors
  - ▶ Consortia/Teaming agreements
  - ▶ Industry partners and THEIR agents
- 

# Managing 3<sup>rd</sup> party risk

- ▶ Due Diligence, Due Diligence, Due Diligence
  - ▶ No direct DOJ guidance, however...
  - ▶ Need for screening, including credentials and RPS
- 

# 3<sup>rd</sup> Party Due Diligence

Mike has a reputation  
for "getting things done"  
when no one else can



# 3<sup>rd</sup> Party Due Diligence

Sarah always requests that her expenses are paid in advance





# 3<sup>rd</sup> Party Due Diligence

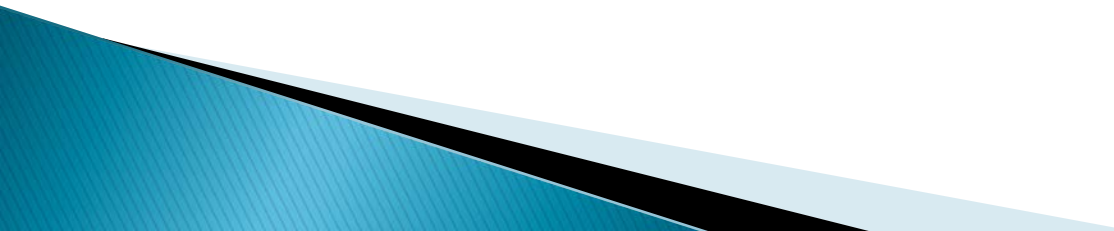
Abdul proposes payment  
to an account in a  
third country



Lucie proposes making  
contributions or donations  
to a political party



# Managing 3<sup>rd</sup> party risk

- ▶ Restrictions imposed
  - ▶ Acknowledgement
  - ▶ Ongoing training
  - ▶ Ongoing oversight
- 

# Intro to Foreign Corrupt Practices Act (FCPA)

UNIVERSITY OF CALIFORNIA

FOREIGN CORRUPT PRACTICES ACT (FCPA) AND ANTI-CORRUPTION

**MAIN MENU**

You can return here from any point in the course by clicking the home button at the bottom of the screen. Use the arrows at the bottom of the screen to navigate through the course.

- INTRODUCTION
- BACKGROUND
- UNDERSTANDING THE LAW
- RISKS AND CONTROLS
- CASE STUDIES
- CONCLUSION
- TEST YOUR UNDERSTANDING

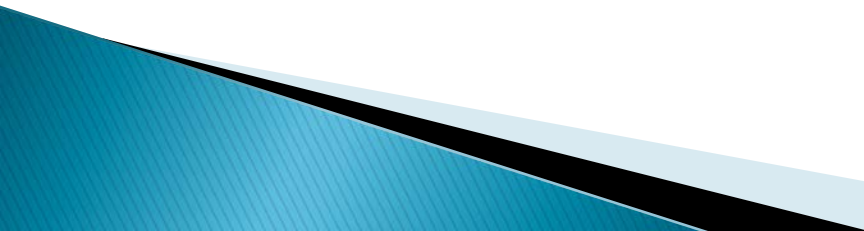
← | 🏠 | →

THOMSON REUTERS

# eLearning class

- ▶ This course will take you about 30 minutes to complete but you may pause or exit the course whenever you wish and your progress will be recorded.
- ▶
- ▶ At the end of the course there will be some questions to test your understanding of the material covered.

# LEARNING OBJECTIVES

- ▶ Understand the definitions of bribery and corruption
  - ▶ Be aware of the damage caused by bribery and corruption
  - ▶ Be familiar with the key provisions of the FCPA
  - ▶ Be able to identify "Red Flags" that may indicate illegal payments or other corrupt activity
  - ▶ Provide an official record of completion
- 



## UNDERSTANDING THE LAW



UNIVERSITY  
OF  
CALIFORNIA

### QUESTIONS

Click on each of these questions to learn more about the Foreign Corrupt Practices Act.

WHO IS A FOREIGN OFFICIAL?

IS ONLY CASH COVERED?

WHAT IF THE BRIBE WAS MADE INDIRECTLY?



## BACKGROUND

### TRUST AND REPUTATION

Trust is the most important driver of reputation. It is fundamental to the survival of any organization.

Bribery and corruption destroy trust and damage social and economic development.

The University of California is committed to making a positive difference that benefits our organization and the communities in which we operate.

We therefore have a **zero tolerance** approach to bribery and corruption.









# Agent red flags

## RISKS AND CONTROLS



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OF  
CALIFORNIA

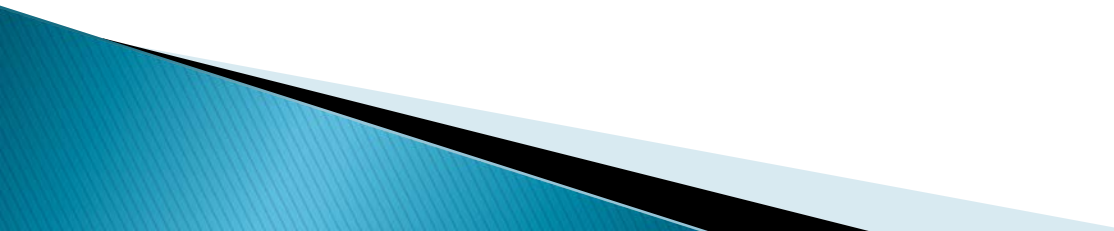
### RED FLAGS INCLUDE INSTANCES WHEN THE AGENT:

-  Has a reputation for getting things done when no one else can
-  Is recommended by officials in a decision-making position
-  Requests payments of expenses in advance
-  Lacks relevant experience in the activity for which retained
-  Is vague or evasive in explaining how he accomplished a particular task
-  Charges a fee that seems unusually large or disproportionate to the tasks undertaken

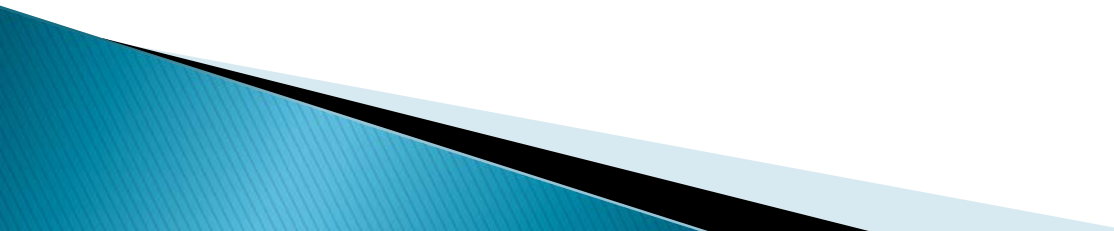




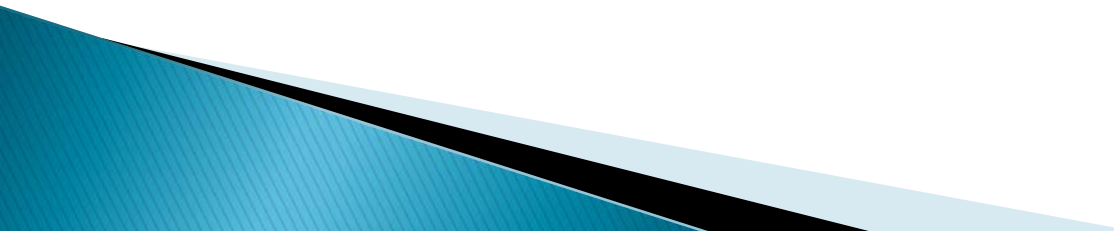
# Best Practices?

- ▶ Does it comply with the University's policies?
  - ▶ Would it be considered excessive, inappropriate, or a misuse of funds?
  - ▶ What is its purpose?
  - ▶ Does it demonstrate good judgment?
  - ▶ Could it damage the University's reputation?
- 

# What level of documentation?

- ▶ You should keep copies of all contracts and internal and external approvals relating to any dealings with other parties overseas.
  - ▶ Consult with your local compliance personnel as to the appropriate level of due diligence in light of the contemplated activities.
- 

# International Compliance needs

- Guidance procedures and best practices
  - Required documentation for approval and recordkeeping
  - Restricted party screening – know your PEP's
  - Vetting and approval of agreements
  - Consultation with Subject Matter Experts (e.g. Export Control Officer, Risk Services)
- 

# Questions?

Brian Warshawsky  
Ethics, Compliance and Audit Services, UCOP  
[Brian.warshawsky@ucop.edu](mailto:Brian.warshawsky@ucop.edu)

# Campus Export Control Contacts

- LBNL Scott Fong [shfong@lbl.gov](mailto:shfong@lbl.gov)
- UCB Scott Fong [shfong@berkeleyu.edu](mailto:shfong@berkeleyu.edu)
- UCD Craig Allison [ccallison@ucdavis.edu](mailto:ccallison@ucdavis.edu)
- UCI Marci Copeland [marci.copeland@rgs.uci.edu](mailto:marci.copeland@rgs.uci.edu)
- UCLA: Claudia Modlin [cmodlin@research.ucla.edu](mailto:cmodlin@research.ucla.edu)
- UCM Deb Motton [dmotton@ucmerced.edu](mailto:dmotton@ucmerced.edu)
- UCR Charles Greer, Jr [charles.greer@ucr.edu](mailto:charles.greer@ucr.edu)
- UCSB Brandt Burgess [burgess@research.ucsb.edu](mailto:burgess@research.ucsb.edu)
- UCSC Caitlin Deck [cddeck@ucsc.edu](mailto:cddeck@ucsc.edu)
- UCSC Ames: Andrei Trifonov [andrei.trifonov@uarc.ucsc.edu](mailto:andrei.trifonov@uarc.ucsc.edu)
- UCSD Brittany Whiting [brwhiting@ucsd.edu](mailto:brwhiting@ucsd.edu)
- UCSF Joanie Doherty [joan.doherty@ucsf.edu](mailto:joan.doherty@ucsf.edu) \_or  
Elaine Cooperstein [Elaine.Cooperstein@ucsf.edu](mailto:Elaine.Cooperstein@ucsf.edu)

# Campus and Medical Center Risk Management Contacts

- UCB Andy Goldblatt [omandias@berkeley.edu](mailto:omandias@berkeley.edu)
- UCD Eric Kvigne [epkvigne@ucdavis.edu](mailto:epkvigne@ucdavis.edu)
- UCD Med Center: Mark Vanderlinden [mvanderlinden@ucdavis.edu](mailto:mvanderlinden@ucdavis.edu)
- UCI Nida Niravanh [nniravan@uci.edu](mailto:nniravan@uci.edu)
- UCI Med Center: Nance Hove [nlhove@uci.edu](mailto:nlhove@uci.edu)
- UCLA Dean Malilay [DMALILAY@be.ucla.edu](mailto:DMALILAY@be.ucla.edu)
- UCLA Med Center: Johanna Klohn [jklohn@mednet.ucla.edu](mailto:jklohn@mednet.ucla.edu)
- UCM Carol Castillo [ccastillo22@ucmerced.edu](mailto:ccastillo22@ucmerced.edu)
- UCR Erica Healander [erica.healander@ucr.edu](mailto:erica.healander@ucr.edu)
- UCSB Mari Tyrrell–Simpson [Mari.Tyrrell-simpson@workcomp.ucsb.edu](mailto:Mari.Tyrrell-simpson@workcomp.ucsb.edu)
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- UCSF UCSF: Bruce Flynn [Bruce.Flynn@ucsf.edu](mailto:Bruce.Flynn@ucsf.edu)
- UCSF Med Center: Susan Penney [Susan.Penney@ucsf.edu](mailto:Susan.Penney@ucsf.edu)