

## At Tandem Computers: Installing the IPSIG Factor

Hotlines and ethics and ombuds offices are often good mechanisms for uncovering fraud or wrongdoing within a corporation. But what happens when the trail of corruption leads outside the organization?

This was the situation that confronted Tandem Computers, Inc., a Silicon Valley computer maker, six years back. When a company technician discovered that a Tandem Computer that had been supposedly been destroyed—computer makers routinely use equipment demolition contractors to melt down surplus or obsolete equipment so it will not undercut sales of current models—the company launched an investigation. It discovered that the employee who ran its “parts room” was stealing and selling used company equipment.

The company could have simply fired the corrupt employee, and there the matter might have ended. But Tandem sensed something deeper was at stake. It suspected it was being used by outside vendors and others—in particular the salvage and destruction company with which it entrusted its used computers. The company hired Neil Getnick, partner in Getnick & Getnick, a New York law firm, to help it get to the bottom of the matter.

According to Getnick, the salvage and destruction contractor was selling the used computers entrusted to it out of the back door, forcing Tandem, in effect, “to compete against itself” when the computers resurfaced on the market. Here was an instance of “clearly illegal conduct outside and against the organization.”

Tandem also hired a New York detective to help follow the trail. In 1991, the Tandem team laid out its evidence before Federal prosecutors. (For an account of the investigation see the *New York Times*, June 27, 1996.) The company “was determined to rid its industry of these corrupt businesses,” explains Getnick.

### A federal indictment

The result was a Federal indictment filed in June 1995 against the salvage and destruction company as well as a used-parts broker that was knowingly selling the stolen goods. Tandem also filed a civil lawsuit against the contractor under RICO, the federal racketeering statute. The civil lawsuit was recently settled, with the salvage and destruction company agreeing to pay Tandem \$15 million and to cooperate with future civil lawsuits as the government’s probe of computer salvage and destruction companies continues. The salvage firm’s principals were required to account for both their company’s holdings and their own private holding and divest all but a modicum. The company was dissolved and the principals agreed to removed themselves from any managerial role in the industry in the future.

“Many other companies might have chosen to take a different approach, i.e., ‘It’s something we don’t want to pursue. We’ll make the one corrupt employee go away and then put our hands over our eyes.’” says Getnick in a recent interview. But instead they [i.e.,

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Tandem] decided to work with the government to restore honest practices to the industry, "self-reporting" the fraud in their midst. This response had a higher ethical content, in Getnick's view. In the end, it also demonstrated that "good ethics is good business."

### **The private sector IG**

It also suggests a future role for a new type of corporate compliance watchdog: The Independent Private Sector Inspector General, or IPSIG, according to Getnick.

An IPSIG is a single office that combines legal, auditing, investigative, management and loss prevention skills—along with organizational independence. It is a concept modeled on the government Inspector General. In the Tandem case, Getnick and the New York detective assumed a role roughly like that of an IPSIG.

"An IPSIG is one of the tools that provides solutions in an environment that demands compliance with regulations and laws," notes Getnick. But it can also offer strategic competitive market advantages. Not only does it act to ensure compliance, but it actively uncovers illegal conduct. "It provides the additional advantage of looking into matters when there is conduct *against* the organization by outside market forces"—as in the Tandem Computer case. It offers a vehicle to monitor such situations so a company can respond systematically rather than on an *ad hoc* basis. (For more on IPSIGs, see *ethikos*, November/December 1995.)

"An IPSIG can be advantageous in vetting third-party vendors and seeing that purchasing agents are engaging in legitimate transactions, with proper bidding, and transactions free of kickbacks." Tandem Computers is currently said to be negotiating with one of its salvage and destruction contractors, requiring that contractor hire an IPSIG.

The IPSIG is "a marriage of good compliance and good business," continues Getnick. It helps ensure that the most qualified vendors will be selected. "Companies with an IPSIG to oversee the pre-selection of vendors and to oversee bidding have a mechanism to move business away from bad actors."

### **A pro-active role**

How does an IPSIG compare with a corporate ombudsperson, who also looks into instances of corporate wrongdoing? An ombudsperson strives to be "a neutral," available to all employees in a confidential environment, answers Getnick. An ombudsperson may investigate a complaint for a short time, but if serious wrongdoing is

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alleged, the investigation is likely to be turned over to the company's legal or security departments, or an outside attorney.

The IPSIG, by contrast, has a more pro-active, investigative role. Its job is to report to the company *and* an outside entity—a government or regulatory agency, or, in the case of corporations that have not run afoul of the law (and have not had an IPSIG imposed on them), the organization's outside board members. An IPSIG and an ombudsperson can play complementary roles, asserts Getnick.

What sort of background should an IPSIG have? "No one person makes the right IPSIG," says Getnick, adding that the approach is a multi-disciplined one. "It requires a combination of skills working together. It has been achieved in organizations with a consortium approach." A law firm could team up with an investigative accounting firm, for instance.

According to Getnick, "an increasing number of companies and government entities are moving toward IPSIGs." He sees it as a promising way of "institutionalizing ethics in the system as a result of market demand rather than by government fiat." Companies can say to themselves: "Here is a chance to establish ourselves at the top of our business."

### **A new IPSIG association**

Along these lines, The International Association of Independent Private Sector Inspectors General (IAIPSIG) was formed in 1994. Its working group consists of 60-70 members, primarily law firms, investigative firms, and large accounting firms "that are capable of performing IPSIG services," says Getnick. The association developed a Code of Ethics in early 1996.

Getnick was asked if a corporate IPSIG can be truly independent since it is hired by a company and reports—at least in the non-remedial model where an IPSIG is not *required*—to the corporation's senior managers and out-

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side directors.

He cites the IAIPSIG's code of ethics, which states that "An IPSIG shall not engage in any conduct that would tend to or would in fact compromise its independence." The Code explains further: "Independence means that the IPSIG is independent of both the host organization and the reporting entity. To be independent, an IPSIG must be impartial and objective in its fact gathering, fact finding, analytic, and reporting activities. It must be unconstrained by the host organization's internal politics and biases. Its activities must be guided by a singular dedication to the assignment, untainted by self-interest."

Getnick compares the circumstance to financial audits conducted by Big Six accounting firms. They too are hired and paid by corporations but are expected to be independent. By and large, accounting firms have been able to maintain their accounting standards and principles. A violation of those standards amounts to a serious breach of professional ethics. In most (if not all) circumstances, such a violation is regarded as more grievous than the loss of any given assignment.

#### **Combating corporate corruption**

Overall, companies are taking more aggressive steps against corruption today. Many probably would accept the use of the RICO statute by Tandem in the Silicon Valley case. Ten years ago, by contrast, no Fortune 1000 company would have sanctioned the use of such an "anti-business tool," says Getnick.

To cite another example: New York City's commercial carting industry has long been dominated by organized crime. "Legitimate companies chose to go along to get along." They paid outrageous prices to have their waste carted away.

Then came along Houston-based Browning Ferris Industries (BFI), which said, in essence, "We'll take it upon ourselves to crack that industry." The law enforcement community "reinforced their efforts with a series of investigations and prosecutions." The bottom line: "Through the involvement of BFI for a relatively short time—four years—average commercial carting prices were reduced by 40 percent." Some have calculated that this was equivalent to a \$500 million tax break for those New York City businesses.

The False Claims Act provides another example. This federal statute, whose *qui tam* provisions allow private plaintiffs, or whistleblowers, to share in monies recovered by the government in fraud cases, is often viewed by corporations as an anti-business statute. What can we do to guard ourselves against the False Claims Act? some ask. "Yet, to the extent that the *qui tam* provisions are anti-fraud provisions they can be used by business strategically."

He cites the example of a dealer in medical equipment, Ron Wells (see *ethikos*, January/February 1996), who was approached by a medical equipment wholesaler: "We would like you to buy a new product. It has a higher reimbursement under Medicare." Wells, after examining the product—a low-grade pump to treat lymphedema, a swelling of the limbs—said: "Go away and try it elsewhere. It's a scam." But the wholesaler went to other companies who weren't so choosy, and Wells' business "suddenly found itself under a tremendous competitive disadvantage by acting in a traditional manner," says Getnick, who represented Ron Wells.

What was the company to do? It chose to level the playing field by bringing its own False Claims Act action. It went to the government. At the end of the day, the case was settled. The fraudulent practice was stopped. The crooked wholesaler had to cough up \$4.9 million, of which 18 percent went to Wells. "And it [Wells' firm] enhanced its reputation as the cleanest actor in the business."

Regarding IPSIGs, Getnick could see the concept working in the Salvage and Destruction sector of the computer industry. An IPSIG would provide "a high level of assurance to the computer industry" that the computers they supplied would really be destroyed and not recycled to undercut those very same computer companies.

Today, more companies have become "very careful whom they award contracts to so they aren't bringing in people who will not comply with the company's overall ethics and compliance standards." ■