

# To Whom Does a Defense Business Owe a Duty When There is an Opportunity to Pay a Bribe

Philip M. Nichols

## Abstract

The defense industry has a long history with bribery. Bribes paid by defense businesses had a central role in the Congressional Hearings that preceded enactment of the United States' Foreign Corrupt Practices Act. Scarcely a year has gone by since then without revelations of bribes paid by a defense business somewhere in the world, and studies by Transparency International and the Organisation for Economic Cooperation and Development each suggest that bribery continues to plague the defense industry. The defense industry often counters that it works in a complex, multicultural environment in which personal payments to government officials are often expected. They also point to competition from weapons manufacturers that freely pay bribes. Bribery in the defense industry raises special concerns. For one thing, bribery tends to go hand in hand with diminished quality, which raises concerns about the safety of military personnel and others directly involved. For another, bribery tends to create an environment in which rules and regulations are ignored, which raises concerns about weapons flowing in contravention of rules intended to protect civilians and international order. The claims made by defense businesses and the concerns raised by bribery in the defense industry present a question: to whom does a defense business owe a duty when presented with an opportunity to pay a bribe? Should a defense business's primary duty be to its investors? To develop an answer to this question this paper examines the empirical claims made by defense businesses as well as the validity of the concerns raised by bribery in the defense industry. The paper also examines possible sources of duty, including local and international law, interpretations of law such as the United Nations Guiding Principles, complicity theory, and others. Controlling bribery in the defense industry poses special challenges due to the necessarily secretive nature of many of the transactions. Understanding the duties of a defense business firm could provide insights into the extent to which social institutions should involve themselves in undertakings to control such bribery.