

THE PRACTITIONER'S VIEWPOINT EMPLOYEES FACING CORRUPTION: A PERSONAL REFLECTION



By Richard T. Bistrong*

■ In the February 2014 issue of *Business Compliance*, we dedicated the issue to “those who suffer the consequences of bad decisions,” emphasizing that it is time to focus on “the consequences of our actions, and of the circumstances in which we take them.” The double issue featured the concluding parts of an article in two parts by Esther Pieterse and Sven Biermann entitled *Employees Facing Corruption*.¹ As someone who suffered those consequences, through fourteen and a half months in Federal Prison on a foreign bribery conspiracy charge, Richard Bistrong evaluates and compares his own experience and conduct with academic theory and asks if there are lessons learnt that might be shared with those at the front lines of international business? Using the Pieterse and Biermann Generic Decision Making Model as a companion to his own business conduct, Richard outlines a “way forward” for corporations and prompts further discussion, actionable “to-dos”, and perhaps to inspire internal research with respect to anti-bribery compliance, which is the focus of this article. In his own words: “As I do not see my own story as entirely unique, I hope this commentary, in detailing my own experience, might assist organizations by elevating topics that are not often discussed, or even acknowledged by some corporate executives.”

Prologue

In July 2012, I was convicted for engaging in conspiracy in the bribery of foreign

officials.² This article is inspired by a personal journey through the very thought processes and pressures that by

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1 Articles appearing in issues 02 and 03/2014 of the Journal of Business Compliance.

2 A recent Q and A (April 2014) with Richard Bistrong and Mike Koehler (FCPA Professor) which discusses Richard’s background can be found at <http://bit.ly/1qDipyV>

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accident and fortune have been discussed and presented within an academic and intellectual framework in the preceding issue of this Journal by Esther Pieterse and Sven Biermann. It is now my purpose to reflect on, to engage and stimulate discussion with respect to the existing field of anti-bribery compliance efforts by endeavoring to present compliance professionals with a real world front line perspective on foreign bribery based on this personal experience. In this article, I make numerous references to the aforementioned article of Pieterse and Biermann, but a brief synopsis is provided below so that one may not need to read the series to understand the comparative with my views borne of practical experience.

Employees Facing Corruption by Esther Pieterse and Sven Biermann

In their introduction Pieterse and Biermann (the “Authors”) state that bad behaviors and bad outcomes are “the result of bad decisions,” and that by

better understanding the decision making variables which influence individuals, and how those factors interact, the creation of an “effective anti-corruption risk mitigation strategy” will be made that much easier. Their work sets out to do this by describing “*how* employees make decisions and *how* such decisions can be influenced by targeting the underlying decision-making factors and variables.” The model they present is a Generic Decision Making Model (GDDM) and “that decisions and behavior are determined by a thought process” that is guided by:

- **Personal considerations**, based on personal calculations of risk (detection) and reward (benefit), as well as values and self-image.³
- **Societal considerations**, based on the environment around the individual “including the workplace, and interaction with the expectations set by private and public circumstances in which the employee finds him/herself.”

³ The rewards issue is similarly addressed as “gain” or “hedonic” goals in the article – *Combining Purpose with Profits* – by Birkinshaw, Foss, Lindenberg, MIT Sloan Management Review, Spring 2014.

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Drilling down into each of these considerations, the Authors isolate the following with respect to personal considerations of Profitability and Attitude:

■ **Profitability** is well understood when considering “benefits”, “costs” and “risk of detection,” as influencing the ultimate decision: to participate or refrain. Profitability also includes the indirect benefits of “gain,” including reputation, promotion, etc. In addition, as the Authors remark, when it comes to the risk of detection, the “position held within a company is likely to influence the employee’s perception of this risk”.

■ **Attitude.** The first description of attitudes pertains to ethical values where “unethical behavior is an action that violates widely accepted (societal) norms.” Next comes emotional awareness that corruption leads to negative consequences in local economies and societies, with the conclusion that “lack of awareness can cause an employee not to recognize corruption as a moral

issue at all.” Most importantly, the Authors recognize that attitudes can change, especially “when an employee with a current strong disapproval of unethical behavior is exposed to an environment where corruption is an accepted societal norm for a longer period of time”.

As to societal considerations, the Authors address this in terms of Pressure:

■ **Pressure** from work, pressure from the personal environment, and pressure from the public environment. Interestingly, the Authors talk about peer groups within the context of pressures and how “individuals tend to look for behavioral clues within their peer group and prefer to behave similarly, finding rational explanations for their acts.”

Now, to “The Decision.”

The Authors state that when an employee “decides to engage in corruption” that on balance, “personal and societal considerations have steered to the conclusion that the benefit gained from corruption...provides a greater

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inducement than when refraining from corruption.” As the Authors later declare, “approval of corruption implies that employees find corrupt behavior to be in accordance with social norms,” and that approval “may also result from a lack of awareness of the negative consequences that corruption has for third parties.”

In choosing between participating or refraining from corruption, the Authors explain the complex and inconsistent way employees consider the rights and wrongs of a decision. Furthermore, as one considers the choices, employees use “rationalization strategies (consciously or unconsciously)”, as such strategies “enable the justification of generally disapproved behavior by finding moral excuses that segregate a decision from the generally held principles of the individual.” The Authors break down rationalizations into a number of components, including the trivialization of consequences, and the reference to corruption as victimless, among others. They also once again point to pressures to behave corruptly with particular focus on the demands “*to deliver ill-considered, unrealistic financial or other results.*”

What now follows is a statement of my own experience of the GDDM, which I certainly consider to be a valid, thoughtful and comprehensive academic paradigm.

Mea Culpa in Theory and Practice

Firstly, as I share my own experiences and perspectives, I make no attempt to justify my conduct, even as I explain how I rationalized my behaviors and decisions. What I did was wrong, personally, professionally and societally. It was wrong when I did it, and I knew it was when I did it; as a consequence, I suffered the loss of liberty for fourteen and a half months. Thus, as stated, I hope that this article provides value by providing a detailed description of how I rationalized bribery, without any attempt to justify my conduct. *These are the emotions, thoughts and behaviors that I seldom read about in the compliance debates or witness at compliance symposiums.*

Engulfed by the Perfect Storm

As to the framework of the Authors, I agree with almost all of their points, components and variables. In fact, I will share from my own experience that the temptations

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or “tipping points” as they describe in their “corruption propensities,” can be potentially overwhelming in favor of corruption to those at the front line of international business. While their model is the GDMM, mine is “the perfect storm,” and is based on four elements:

- Procurement instability
- Incentives
- The “no victim” illusion
- Bribery’s silent witnesses.

■ **Procurement Instability**

In many international markets, especially those with weak state institutions,⁴ procurements are few and far between, subject to cancellation, delay and renegotiation. When you add in possible annual renewals, the win of an international contract can extend for years, while a loss will not to be replaced in the near future. This creates enormous work pressure to succeed with a “win-big, lose-big mentality” at the front line.

Furthermore, even after a “Big Win,” there are numerous “touch points” where small bribes may be demanded in order to finalize the contract, pass inspection, or to receive payment; potentially turning a legitimate “win” corrupt.

The pressure on those at the front line of international business can be oppressive. I recall once being told “you are better off not telling me about a sales opportunity, because once you do I am going to be all over you to win it and get paid.” This element amplifies the dynamic of both pressure and profitability (benefit). Here the “gain goals” on the one hand, and a potential loss of long term business on the other, creates an enormous pressure to succeed – at all costs. When a corporation does not factor such procurement instability into regional growth forecasts in low integrity regions, the corporate environment delivers a straightforward message: “bring us success.” This leads us to the next storm component.

■ **Incentives**

When a corporation speaks to the societal

4 See Matteson Ellis chapter in How to Pay A Bribe, 2014, Wraga.

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A CASE IN POINT:

Imagine a scenario from my own Plea Bargain. A bribe is paid to a public official in a large international tender in exchange for non-public information on the pricing being provided by other competitors. That inside information ultimately led to a lowering of the price offered to the end user in order to win the tender. Thus, the final price paid by the agency was lower than it would have been in a fair process: Not an excuse, but a self-justifying comfort to the perpetrator all the same.

goal of anti-bribery compliance, while offering financial incentive packages in lucrative markets that speak to a “win above all else,” mentality, then anti-bribery compliance and financial success become juxtaposed. In such cases, where compensation and compliance are not in alignment, those at the front line of international business will ponder, “what does management really want, compliance or sales?” In such circumstances, one objective will deny the other. In territories with a poor reputation for integrity, and where bonus compensation is indexed to personal business performance (as opposed to group or corporate success), anti-bribery compliance can rapidly be viewed as “bonus prevention” by those at the international field level. Thus, where incentives and compliance are not aligned, the personal considerations of gain or benefit get dramatically amplified at the cost of other societal considerations.

When an aggressive forecast is achieved in a highly corrupt territory, I wonder if anyone is asking, “How did we get there?” or is it all high fives in the C-suite? Again, it elevates and amplifies, if not distorts, the view of benefit or gain in the

thinking to those who are most likely to confront corruption.

■ The illusion of no-victims ■

To those at the front lines of international business, bribery has the false appearance of being a victimless crime. While the costs of corruption may be generally understood in intellectual terms, to individuals on the front lines, where the competition is intense, and the stakes are high, this level of societal awareness is not always so informed, or even recognized. In fact, all too often, bribery can be rationalized as a win-win, where sometimes the end-user (public agency) pays less money for the product due to the bribe. Imagine the impact of such thinking where one ponders the value being provided to the customer *due to bribes*.

In addition, in many countries, where weak state institutions exist (see Ellis) and procurement officials are poorly paid and undertrained, one might come to think of small bribes as “helping out” an impoverished official, thinking that such conduct “is the way things get done around here.” That thinking provides an

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interesting perspective when it comes to the Authors’ description of “Attitude,” as the judgment of what is ethical shifts from the “home office” value system, to what might be considered the norm at the front line.

This returns to the Authors’ prior statement of what happens when someone is exposed to an environment of corruption where bribery “is an accepted norm,” and what happens to that person’s thinking when such exposure is “for a longer period of time.” Having spent 250 days a year traveling overseas for ten years, I can share that the dynamic of “this is how it is done here” which is also communicated across colleagues and peers in similar roles, has an enormous impact on attitudes. Such communication can alter and shift one’s value system to a “new observable norm.” The influence of “everybody else does it, so why don’t you” should not be under-estimated, and I think the Authors give it appropriate weight in their model.

■ **Bribery’s silent witnesses** ■

In my experience, when talk turns to corruption, usually the only witnesses

present are the business person and the agent, end user or intermediary. Over time, as that working relationship becomes more familiar, you get complacent, you get comfortable, and the discussion starts to open. Once, where I was actually on holiday with an agent, having no prior indication of corruption, he informed me that he was “paying tolls” to win orders. I know to a compliance professional that sounds like an easy test scenario: just a) “call home”, b) unwind the upcoming transaction and c) do a complete disclosure.

But, at the front line, isolated, yet comfortable, it does not seem as black or white. After all, there was an upcoming transaction that was in the forecast, and there was no one else present. In addition, a disclosure would mean the complete discontinuation of all work with the agent, and how would that business be replaced? Would my manager welcome, or be upset at disclosing this discussion and walking away from a forecasted piece of business? As to the Authors’ thoughts that the risk perception of getting caught goes down as the rank of a person’s position within a company goes up, I

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have to agree. As a former VP of Sales, that was yet another variable supporting my own rationalization that I would never get caught; reality however, was that I would ultimately get caught three times, in three separate countries: a distorted vision indeed.

While my own “perfect storm of bribery” may not fit squarely within the GDMM, each element does intersect with the major variables of the model, including personal and societal considerations, personal gain, risk of detection, attitudes and finally, pressures. Adding all of those together, I found it quite easy, as the Authors conclude, “to engage in corrupt practices.” Furthermore, in my own calculations, I moved across the threshold quickly, as my resistance to societal norms and values melted away at the front line of international business. As if proving the Authors’ model, when I completed my own process of rationalization, I concluded that my corrupt decisions were “morally justifiable.”

Performance: Profit or Conduct?

In part III of their series, the section “practical reflections” attempts to put the

Authors “in the shoes of the potential rogue employee,” and to reflect on the “practical issues that should be considered when designing an anti-corruption program, taking into account the composition of the factors (profitability, attitude and social pressures).”

The Authors state the propensity of an individual to engage in corruption can be “managed only if anti-corruption measures reduce the underlying risks.” While the Authors’ review of such measures includes the obvious, such as compensation schemes, internal sanctions, tone from the top, etc., they all point to the same objectives, which are:

- Decrease perceived profitability of corruption
- Strengthen the attitude to disapprove corruption
- Increase societal pressure to refrain from corruption.

I think that the issue of profitability remains central to any anti-bribery program. I agree with the Authors that

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compensation plans linked to personal sales performance strongly emphasize “the outcome based-component of evaluation.” Put more crudely in sales-speak, “you eat what you kill” points to one measure of success: profit and performance. Thus, I concur that in “shifting the focus on compensation schemes to behavior-based performance, it would decrease the pressure to reach business goals at all costs.” How? To quote the MIT Article, it would be by promoting the “social goals” of anti-bribery compliance over “hedonic” personal achievement, particularly in high-risk regions.

Calibration of Reward systems

One HR professional shared with me that in highly corrupt territories, bonus calculations are indexed one third each to Group, Entity, and Individual performance. Such a plan elevates a number of valid concepts. First, when it comes to international business, incentives are not a one size fits all model. For example, with someone who has responsibility for Scandinavia, where markets are mature, the institutions of state are strong, and there is a low reputation for corruption,

bonus indexes should differ from someone working in the Andean region of South America. In addition, it shows the value that HR can bring to an anti-bribery program outside the traditional scope of contracts, documentation, training, etc., by bringing an “objective perspective” to ensure that compensation and compliance are in alignment and are not operating as a zero-sum game to those in the field. Reward systems need to communicate a message: that an anti-bribery ethic and commercial success are in fact complementary goals. However, even with the re-engineering of compensation, and the articulation of sanctions, deterrence remains low “if the perceived risk of detection is low,” and when it comes to overseas business and the lack of witnesses, this is a challenging if not insurmountable dynamic.

The Wink, the Nod – and the No

Given the often isolated and secretive environments in which these discussions take place, often in “wink and nod” terms, detection remains difficult. The Authors propose a set of policy options including internal controls, audit

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measures and communication channels to encourage good faith reporting. While all of those measures help to contain the consequences of corruption by removing the financial tools of bribery available to field personnel, they don't necessarily address (as a stand-alone) the underlying behaviors prior to the corrupt conversation.

At the 2013 Dow Jones Global Compliance Symposium, the General Counsel of Siemens spoke about how one of his country managers in South East Asia was confronted with a potentially corrupt transaction, and his response was "no, but not because compliance says I can't do it, but because I don't do it." Thus, the best form of detection for a "red-flag" conversation that corporate and compliance executives cannot see or hear, is when the default behavior is to walk away and say "no," once corruption is detected. As to how you might get there, the Authors make an excellent suggestion when they state that high levels of control "if not supported by awareness of their underlying ethical purpose, can be tempting objectives for employees who do not understand

their importance and feel challenged to circumvent 'unnecessary controls'."

As previously shared, not every front line business person thinks in terms of the societal consequences of bribery, especially while staying at luxury hotels and flying around the world in business class. Most of the intermediaries that I met with and knew over the course of my career were successful in their home countries, and most of my business travel was centered in reasonably comfortable surroundings, even in countries with poor standards of living. Thus, for most front line business personnel, there is a sense of isolation between their activities and the day-to-day lives of the local population. Thus, perhaps by engaging field business personnel in programs that strengthen their "attitude to disapprove corruption," and encourage an employee to think "beyond the bribe," and to become morally averse to corruption, then the "red-flag" in that secretive environment is removed before it is planted. Bribery is no longer a "win-win" without victims.

Winning engagement

A number of corporations engage

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in “community service” days where employees choose among a number of volunteer programs from which to engage. An overseas team might venture into a highly corrupt country and join an “anti-corruption initiative,” be it teaching, building, etc. Bribery looks bland from the comfort of business-class, but such an effort, as the Authors state, “can raise awareness concerning the negative consequences of corruption, creating new standards of social norms and pressures.” The intended result, they suggest, might be an organizational culture “that clearly treats corruption as an unethical business practice,” in deeds and words. How? *By personalizing and reducing “the psychological distance and limit the possibility of rationalization.”* Maybe the consequences of bribery might be best delivered knee deep in mud, building affordable housing to those who live in temporary shelters.

In other words, by getting rid of the illusion that bribery can be a “win-win” for the payer and payee, with no harmful effect, corporations can “create an awareness of corruption as an ethical issue,” and create a “moral self-governance” among

international business teams. Such a change of attitude is not going to be created through watching training videos, reading anti-bribery paperwork, or even by subscribing to anti-corruption newsfeeds; it needs to be more dramatic and impactful. When combining these initiatives with peer-to-peer participation, the process becomes one of sharing a societal and organizational commitment to a new norm where revulsion to bribery is the default attitude. The cost of such an overseas project is minor compared to the financial and reputation damage, not to mention the potential loss of liberty (as in my case), when enforcement officials discover corruption.

Invest early, invest long term

Once front line personnel are dispatched to work in their assigned regions, especially where low integrity reputations exist, they are exposed to a negative “social cocoon,” whereby the “practices and rules” in the territory are dramatically different than the “home office” environment. Thus, the fortitude and social environment of those field employees in high-risk areas need to be an area of focus, so that once such

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personnel board their vessels to travel, their awareness of ethics and complaint behaviors are already established and resistant to dilution, no matter how corrupt the territorial environment. In other words, “they won’t go local.”

In sum, anti-bribery compliance programs need to address incentives (benefits) and clarity of sanctions (costs) and to highlight controls (detection), but most importantly, be supported by a long-term platform which addresses organizational, personal and societal attitudes concerning the tragic consequences of corruption. From my experience and perspective, by ignoring any of those variables, a company puts themselves, as well as their personnel in great peril. This is not a menu whereby some, but not all can be selected. I entirely agree with Pieterse and Biermann in that “anti-corruption measures which only target one aspect of the decision making process will only have limited value, because they alone cannot completely reduce the risk of corruption.” I concur that all need to be incorporated into a single program, including “measures that alter the personal attitudes of employees

and increase the societal pressure to refrain from corruption.” Like legs of a heavy table, take one away, and the entire product will collapse. ■

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Richard blogs at www.richardbistrong.com about current front-line anti-bribery and compliance issues. Richard can be reached via his blog and he frequently tweets on [@richardbistrong](https://twitter.com/richardbistrong). Richard is a frequent speaker about his experience and current compliance challenges on the front lines of international business to corporations, industry groups and academia, more detail on which may be found at www.richardbistrong.com.
