

A Journey to the Dark Side of Business Ethics And Steps to Protect Your Organization



The MetricStream GRC Summit & Richard Bistrong, 2015

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Today: Why Talk About the “Dark Side”?

- I survived a difficult series of events.
- Was my front-line experience all that unique?
- **What were my emotions, rationalizations and temptations. I knew it was illegal, so why break the law?**
- Does this story have value for today’s anti-bribery and compliance challenges?
Calibrating real risk.
- Is there sufficient focus on “dark side” behaviors at the field level?



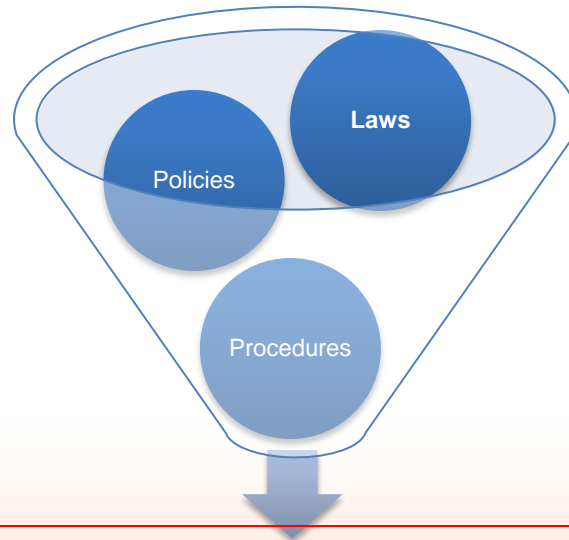
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My Journey

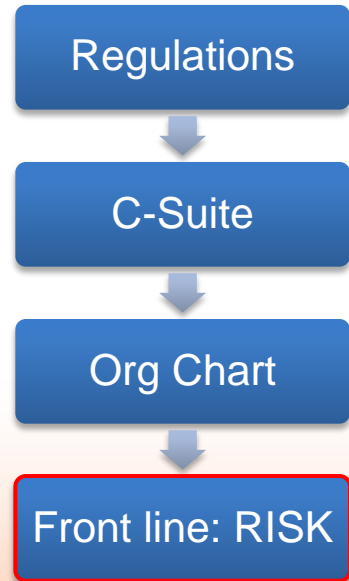
- **1984:** BA, University of Rochester. Institute of European Studies, Vienna *with honors cum laude*
- **1986:** MA, University of Virginia, Foreign Affairs: WH Fellowship offer
- **1987:** Fourth Generation in family business: Largest global manufacturer of bullet resistant products when business was sold in 1992
- **1995:** Starts as US Sales VP in a publically traded Defense and LE Contractor **98'** Intl Sales VP: Overseas 250 days per year, lived in UK part time. Lucrative and substantial compensation plan.
- **2007:** Terminated by employer, called in by DOJ, started five years of US/UK LE covert and trial cooperation as part of US Plea and UK Immunity
- **2012:** Sentenced to 18 months, served 14.5 and released in Dec. 2013
- **2014:** Engages with compliance community on front-line and behavioral issues

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The Distance Between the Law & the Front Line



Goal: Drive and execute **individual** compliant and ethical behavior at the front-lines of international business



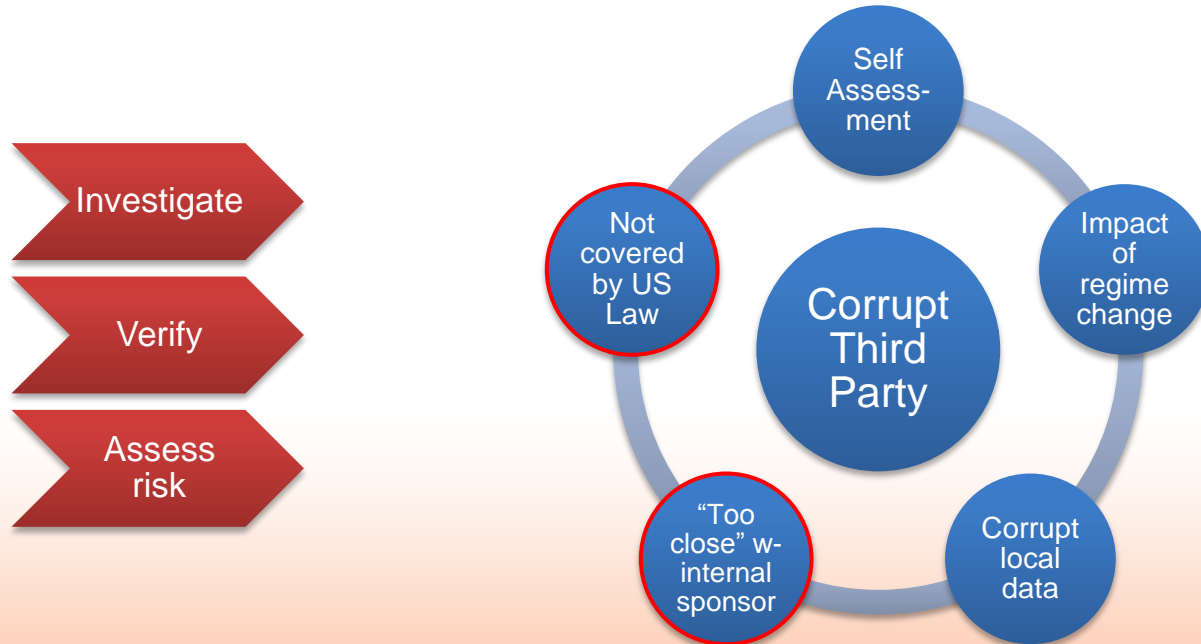
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Confronting Bribery in the Field: My Perfect Storm



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Dealing with Corrupt Third Parties: A Ring of Lies



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What Might You Do With Today's Story?

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Beyond the Foreign Corrupt Practices Act

It is essential to develop a true revision and ethical opposition to corruption that surpasses the FCPA, writes Richard Bistrong

When Ethical Boardroom invited me to write this article, I started thinking about issues that go beyond the 'bolt-on' model of anti-bribery compliance.

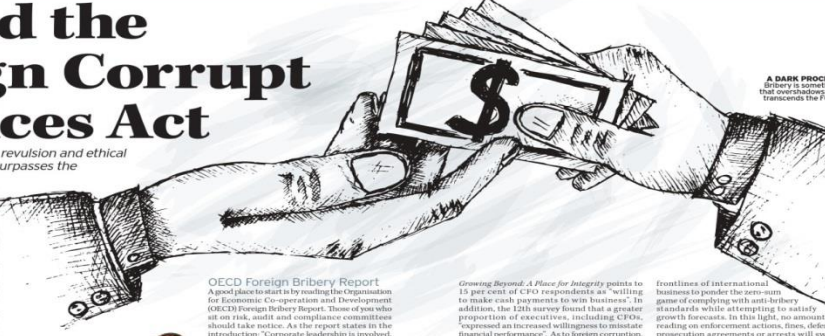
For, as Alison Taylor, director of energy and activities at BSR (Business for Social Responsibility), stated in her 2014 *Forbes* article *Compliance and Risk: Closing the Gap*, 'The traditional preventive approach to risk management is proving inadequate in the face of regulatory complexity, volatility and an environment of constant change, but what should replace it is not yet clear.'

As I say in social media feeds, I see a stream of articles that provide a continuous repackaging of enforcement actions and measures when compliance should report to and much about 'none from the top.' Speaking of which, I see a copy or perhaps bottom of my anti-bribery reading list in a 42-page analysis of the recent Alison Foreign Corrupt Practices Act (FCPA) settlement.

Which is longer, I wonder, the analysis of the settlement or the settlement? I remember what attorney Mike Volkov said in a January 2005 post on his Corruption, Crime and Compliance blog: 'Most of what I read in the ethics, compliance or corporate space is not helpful. It is filled with platitudes, general principles and no real world application. That is a real deficiency in this important time in compliance.'

Indeed, those papers and updates do nothing to help those in the field and those who are tasked with helping them manage corruption risk.

As Dr Roger Miles, behavioural risk lead at Thompson Reuters, wrote in a 2003 white paper *Risk Culture and Conflict Control: Time for a More Engaged Approach* 'Should the designers of financial controls spend some time looking at the dark side? Instead of regulating by defining and



Richard Bistrong
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enforcing some formalised version of normal behaviour, a better approach for supervisors seeking to regulate conduct might be to identify the pathologies of 'bad behaviour'. What are the warning signs and leading indicators? Can those be found in financial reports? (Hint: No, they cannot). Where do we need to look?

I think we need to look beyond FCPA to gain a significant greater understanding of corruption. We need to address its drivers, its implications and its consequences to reach substantially beyond rules and procedures that may be viewed at the field level as nothing but a set of workarounds.

Why bother? If we can get beyond a rote focus on satisfying the letter of FCPA to understand the behaviours and forces that facilitate overseas bribery, we can strive to create a practical set of tools and measures to help those who face corruption on the frontlines of international business and those who help them manage corruption risk.

OECD Foreign Bribery Report

A good place to start is reading the Organisation for Economic Co-operation and Development (OECD) Foreign Bribery Report. Those of you who sit on risk, audit and compliance committees should take notice. As the report states in the introduction, 'Corporate leadership is involved, or at least aware, of the practice of foreign bribery in most cases, raising perceptions of bribery as the act of rogue employees.'

While the details are well-defined among the 17 countries and 417 enforcement cases used in the analysis, the fact that in 41 per cent of cases, management-level employees paid or authorised the bribe is a disturbing statistic that should not be ignored.

If we analyse this data and combine it with useful reports on corruption and corporate fraud from organisations such as Control Risks and EY, we find in each instance an arrow pointing to management conduct that is either participatory (at worst) or willfully blind (at best) when it comes to organisational behaviour regarding corruption and bribery. Given these findings, how do those at the frontline supposed to respond when ethics, standards and reputational concerns that should emanate from the C-Suite are potentially dysfunctional? While we don't want to overstate conclusions from a limited data set, concern is warranted.

The 13th EY fraud survey *Overcoming Compliance Fatigue* points to a 'persistent minority of executives (that appears willing to justify unethical behaviour'. The 12th EY survey

Growing Beyond: A Place for Integrity points to 15 per cent of CFO respondents as 'willing to make cash payments to win business'. In addition, the 12th survey found that a greater proportion of executives, including CFOs, 'expressed an increased willingness to misstate financial performance'. As to foreign corruption, more specifically '84 per cent of respondents report that background checks (on third parties) were not being performed'. Finally, as to training, only 46 per cent of all CFOs attended anti-bribery and compliance training. Is anyone worried yet?

Together with a downturn in commodity prices that's unlikely to bring out the best in business practices as competition increases for the same business at low revenue, we face a potential perfect storm of misbehaviour. As Control Risks stated in its paper *International Business Attitudes Towards Corruption*, 'These days your companies are good at talking about principles. Not all of them are able to demonstrate that they put principles into practice.'

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frontlines of international business to ponder the zero-sum game of complying with anti-bribery standards while attempting to satisfy growth forecasts. In this light, no amount of reading on enforcement actions, fines, deferred prosecution agreements or arrests will answer you beyond FCPA to where you can meaningfully address the relevant organisational issues.

Where do you start? From my perspective, unwind the growth forecasts and incentives plans and start at ground zero to see how both align – or conflict – with the messages and programmes of anti-bribery compliance. Ask if the spoken rules of compliance and the unspoken rules of how we do things around here all carry the same message: 'We don't believe.'

The risks presented by the FCPA cut across every part of a multinational company's business model. Tackling corruption risk requires clear-eyed consideration as to whether an organisation's strategic goals are realistic in high-risk markets. It requires leadership that provides meaningful oversight and moderate ethics. It requires incentive systems that reward creative approaches to combating bribery instead of rewarding those who meet unattainable goals by any means necessary. It requires a fundamental acceptance

of values and norms that embrace transparency, along with an understanding of the wider social consequences of corporate actions. The realities of power and implicit messaging means that the forces of compliance cannot outdo a company's corruption risk in the face of contradictory messaging from a leadership team that clings to plausible deniability. The organisation's entire culture must be shifted to meaningfully address the FCPA. This requires transformational change.

For a clear analogy, consider the financial services industry, whose quantitative-risk models and pervasive compliance processes did little to check bankers' pathological risk-taking behaviour. Compliance systems can always be gamed. Corruption is a natural and inescapable. It involves humans making decisions in real time, often under significant pressure. No more process can solve a problem rooted in social norms and how groups behave in organisations.

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The social cocoon of crime

Going beyond FCPA must also address the consequences and implications of bribery upon society, governance and security. While we hear very little of this within the compliance community per se, I am grateful to the non-governmental organisations (NGOs) and thought leaders who have raised this issue and who are now amplifying the message to the business community. Corrupt businesses tend to underplay the effects of their behaviour; such euphemisms for bribery are the need to 'grow a few herbs' and the argument that there's no other option in certain markets all speak to this.

It's becoming harder and harder to dole out the causal effects of corruption as observed credibly. Link it to an increased risk of terrorism and civil war and expose it as a driver of poverty and inequality. A company cannot view its approach to corruption as separate from its broader contract with the societies in which it operates.

Compliance are also focused on a new phase of individual accountability that has profound implications for companies. The strategic shifts of Transparency International (TI), the sector's leading risk, over the last few years accurately reflect the new environment for corruption risk. With its *Enmark* the Corruption campaign, TI has broadened its mission from thought leadership and commentary to tackling the sensitive and difficult issue of holding corrupt individuals accountable. This moves the NGO right onto the frontline of anti-corruption. It will put corporate relationships with politically exposed people under more scrutiny than ever.

Asking James Coheran, an Ottawa-based consultant who has written and worked on the links among international development, governance and security, about the broader corruption's impact, he notes: 'There's a mentality of you gotta do it to win, but really it's OK. So'

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Lets Stay in Touch

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