

Tuck International Forum: Confronting Corruption in Global Business

Thursday April 5 – Friday April 6

Dartmouth College. Tuck School of Business.

Conference Opening Address

The Ariel Halpern Lecture on Ethics and Social Responsibility

By

Frank Vogl¹

“Business school graduates face a fundamental choice when they enter positions of management and move towards leadership: will they place integrity above every other consideration in their careers, or will they be willing at times to compromise?”

Conference Panelists:

Jacqueline M. Beckett, Senior Corporate Counsel, New Mont Mining Corporation.

Martin Dimitrov, Assistant professor of Government, Dartmouth College

Marisa Lago, Global Head of Compliance, Corporate and Investment Banking, Citigroup

Malem Nahu Ribadi, Executive Chairman, Nigerian Economic and Financial Crimes Commission

Jenik Radon, Founder and Director, Eesti and Eurasian Fellowship, Columbia University, Attorney, Redon and Ishizumi, New York

Tom Valley, Director, Vietnam Program, Kenney School, Harvard University

Frank Vogl, Vogl Communications, Inc

Howard Weisman, VP, Associate General Counsel, Lockheed Martin Corporation

¹ Frank Vogl is President of Vogl Communications, Inc. in Washington DC and publisher of the not-for-profit daily www.EthicsWorld.org. He is a Trustee of the Committee for Economic Development (CED); the co-founder and member of the boards of directors of Transparency International and the Partnership for Transparency Fund; a co-founder and former member of the Fellows Program of the Ethics Resource Center (ERC); and, a member of the Advisory Council of the New Israel Fund.

Introduction

Ladies and gentlemen, it is a privilege to be here. I am delighted that in this leading center of scholarship that you should devote time to discussions of corruption. It is an honor to be asked to lead these discussions at this international forum.

The abundant evidence of business and governmental corruption in recent years has undermined public trust in major institutions. A crisis of corruption has swept across corporations, governments, civil society organizations (CSOs), charities, sports institutions and universities. At home here in the United States, and abroad, leaders have been shamed, imprisoned and forced to resign their positions of trust, but corruption continues unabated.

Exactly one year ago I received an e-mail from my friend Davendra Raj Panday in Katmandu who had just been released from prison. He wrote in part:

“Dear Frank, I have been free since this Tuesday and I have been in pretty good health and wonderful spirits all along...but the victory for democracy is only about 50%. We have to make sure that the reinstated parliament immediately passes a resolution for an election to the constituent assembly so that we can draft a new constitution ... I particularly recall our e-mail exchanges on democracy and public integrity ... Let us hope the experience of Nepal has some lessons for TI (Transparency International) policymaking. The King's dictatorship came into being on February 1, 2005 in the name of controlling corruption, among other things...The problem is, we have had the worst corruption and contempt for universal principles of accountability under the King's regime in our history. So, you see, we have to keep at it.”

Devendra Raj, a former finance minister of Nepal and a founder of Transparency International-Nepal spent more than 100 days in prison last year because he, and many others, are fighting for democracy. He believes this fight is crucial if corruption is to be curbed – corruption that is wrecking his country. He is fighting and he is winning. He has never taken the easy path. He – and others like him in many very difficult countries - never question the issue of integrity, never deem compromise with basic values and convictions to be worthy, and never shirk from being willing to make a huge personal sacrifice to contribute to a better world.

My core message to you today, to you as the future leaders of major corporations, is that like Devendra, you should never compromise your core values. You should never forget that as a leader you have a responsibility not only to pursue the course of integrity in all matters, but to serve as a model for others.

Integrity & Business Leadership

We will talk at this forum about corruption within the business context. My hope is that as we do so we shall never lose sight of the broader picture. Thanks to people like Davendra we can hope to see a world emerge of greater openness, freedom and justice. These, after all, are core requirements if private enterprise is to flourish.

Business school graduates face a fundamental choice when they enter positions of management and move towards leadership: will they place integrity above every other consideration in their careers, or will they be willing at times to compromise?

At the outset let me say that many of the successes of modern business are due to exceptional business leaders who have placed sound ethics above all else in their own corporate careers and in the ways in which they have led their companies. Their contributions, as a result, have not only benefited their companies and themselves, but society more generally. Our panel tomorrow involves people from mining, banking and the defense sectors and in each of these areas we can look to outstanding leaders of integrity. Leaders like James Sinclair in the mining industry, Normal Augustine formerly with Lockheed Martin, and Shaukat Aziz, formerly with Citigroup, who I shall mention in this lecture, can provide us with hope and make us optimistic.

The integrity path is not an easy one to follow. The temptations to drift are very great. Especially so, in my view, in an era when the rewards for boosting corporate earnings are absolutely massive and when so many in business appear to have lost their moral compass. A couple of years ago former Federal Reserve Board Chairman Paul Volcker remarked that, "Corporate responsibility is mainly a matter of attitudes, and the attitudes got corrupted...in the 1990s. We went from 'greed is good' being said as a joke to people thinking 'greed is good' was a fundamental fact."

But, if the temptations of greed are large, so too are the risks. In the age of the Internet and globalization, which have spawned massive rises in civil society organizations around the world that are closely linked to the media, the modern corporation has nowhere to hide. The risks of corrupt deals being publicly exposed are greater today than ever before. E-mail trails have come back to haunt once pompous corporate leaders and contribute to their successful prosecution and their long-term imprisonment.

One aspect of the broad challenge of doing business with integrity relates to the temptations to secure added advantage over competitors by paying bribes, by using kick-backs to gain special influence, and by pressing cash into the hands of underpaid foreign government officials to speed and facilitate transactions. Corruption is our central theme at this forum.

Under pressure from German prosecutors, Siemens has recently owned up to over \$500 million in foreign bribes; just as recently, Prime Minister Blair quashed an investigation into alleged bribe-paying by BAA Systems in regard to huge defense contracts with Saudi Arabia, which has served only to heighten suspicions of bribery; just over a year ago an independent commission investigating the United Nations' food-for-oil program in Iraq found that almost 2,000 companies paid bribes to the Saddam Husain regime; in Africa, as much as 25% of GDP has been estimated by the African Union to be diverted through corrupt practices.

My definition of corruption is broad and relates to the large-scale abuse of high office.

- In business, the definition embraces not only the payment of bribes, but also the greed of top executives who take home vast sums - sometimes exceeding 1,000 times the annual average pay of the employees in their companies. I am talking about executives who in a variety of ways abuse their power to place their own enrichment above the priorities of their shareholders and other corporate stakeholders.

- In defining abuse of public sector office I include both the wealth illicitly secured by top officials; as well as the systems and conspiracies deployed by public officials to keep themselves in power and to broaden their control.

The Costs of Corruption

The costs of corruption are enormous.

- **Corporate ethics** - the scandals - from Enron to the 150 companies under investigation for having allegedly backdated stock options - have weakened public confidence in our free market system. They have produced calls for more regulation, such as the Sarbanes-Oxley Act, that add business costs, add internal controls and bureaucracy, and threaten to weaken creativity and enterprise. Over time, the trend could be damaging unless there is strong evidence of enlightened and ethical business leadership. Candidly, when six Wall Street firms share \$36 billion in bonuses among their staffs – a sum bigger than the GDP of some national economies – then one senses that greed is all-powerful and we have much to worry about.
- **Economic growth and trade** – corruption undermines the efficient functioning of markets; it robs economies of their assets and their potential. When public officials determine the allocation of scarce public funds on the basis of how they personally may profit, rather than on what serves the public good, then massive distortions arise in an economy. When regulations are imposed to enable officials to seek rents from business, then entrepreneurship is strangled. When contracts are won through bribes then commerce and trade are undermined with massive costs to growth and competitiveness.
- **Democratic values** – corruption works against the building of democratic institutions that serve the public. Its prevalence leads to a backlash and to populism as we have seen from Venezuela to the Palestine Territories.
- **Human rights** – corruption is often a quest for both riches and power and it not only involves grand theft, but the quashing of political opposition and public criticism. Where there is grand corruption there is inevitably huge human rights abuse.
- **Poverty** – Massive corruption has repeatedly wrecked otherwise good aid initiatives designed to reduce poverty. Criminal acts in public sector contracting, the misappropriation of public resources and bribery of politicians and civil servants adds to human suffering in country after country. The United Nations Millennium Development Goal of reducing global poverty by one-half by 2015 will not be attained so long as corruption continues unchecked.
- **Security** – the area of greatest concern in the context of corruption relates to security. The defense industry is a major sector of bribery: governments cloak their arms budgets in secrecy under the guise of national security, which provides officials with huge opportunities for illicit actions. Money-laundering, the sister of bribery, is a prime path taken to fuel funding of international terrorism. When a Pakistani scientist is bribed by North Korea and Iran to sell nuclear secrets then we see vividly the link between our security and curbing corruption.

Are we winning?

Over the last dozen years there has been an unprecedented multilateral effort to curb corruption. There are many mothers responsible for this positive development. One of them has been Transparency International, which was launched in 1993 and which today has national chapters in 90 countries. It is headquartered in Berlin, Germany and it is the leading anti-corruption global non-governmental organization.

There have been hosts of impressive results and initiatives on the anti-corruption front and examples include:

- a major rise in public awareness worldwide of the dangers of corruption. The TI Corruption Perceptions Index has infuriated scores of governments and become a tool used across the globe to highlight the abuse of public office for personal gain.
- understanding of the corruption issue has been heightened by an enormous rise in research at universities and “think tanks” and even a sharp increase in attention to the issue at law schools and business schools.
- Nuhu Ribadu, who is participating in this conference here at Tuck, is the Executive Chairman of Nigeria’s Economic & Financial Crimes Commission. He has reported that over \$5 billion in stolen funds has been returned to his country over the last three years. He adds that Western governments and leading global banks are starting to cooperate in efforts by developing countries to repatriate stolen assets.
- Redempto Parafina, coordinator of the G-Watch, a non-governmental organization in the Philippines, reports that anti-corruption actions by a growing number of civil society organizations have led to huge cuts in basic school text book prices and the ending of schemes that saw tens of thousands of books failing to reach designated schools. This project has been supported by a small grant by the Partnership for Transparency Fund. PTF gives micro-grants of no more than \$25,000 to individual NGOs that develop very specific anti-corruption projects. More than \$1 million of grants have been made with what we estimate has been an 85% success rate – that is the projects achieved their goals.
- All of the major aid agencies now have anti-corruption as one of their key priorities, while 15 years ago none of them would even publicly acknowledge that it was an issue.
- The OECD agreed a convention to make foreign bribery of officials by companies a criminal offense – this has been signed by 36 countries, some of whom only a few years ago would allow companies to deduct their foreign bribes from their taxes.
- A UN anti-convention has been agreed for the first time and so too has a regional one for Latin America.
- Scores of national actions in dozens of countries have been taken to make government more transparent and accountable and to establish anti-corruption commissions.

I could provide many more examples of solid achievements. However, there are many reasons for concern. In November, a meeting organized by Transparency International brought

together over 1,200 delegates from 100 countries who crowded into plenary sessions and over 40 workshops at the 12th International Anti-Corruption Conference in Guatemala. It was an opportunity to take stock of the progress made and the challenges still be confronted.

- **Money** - Greed drives corrupt practices and usually the focus is on cash. Bar the taking of cash and you bar much of the abuse of office for personal gain – corruption. There is enormous anger across the globe about corruption by top politicians, about the looting of state coffers, about the shipping of these funds offshore, and about the difficulties of securing the repatriation of these stolen assets.

A central concern is money laundering. Progress has been made in recent years, partly due to the voluntary efforts of banks and TI in forging the Wolfsberg Principles. Then, 9/11 made international anti-money laundering a major governmental priority given the imperative to cut funding to terrorist organizations. The authority of the Financial Action Task Force (FATF) rose. Corrupt officials, however, continue to engage intermediaries who facilitate the laundering of stolen funds across national borders.

The application of laws and regulations to foil the facilitators is undermined by hosts of national regulations from one country to another that often seem to contradict international regulations and thus create confusion. Banks and regulators are working on this, but progress is slow. It is a similar jumble of often contradictory regulations that also complicates the issue of the repatriation of stolen assets. Hopefully, recent Nigerian successes may inspire progress across a broader front.

- **Punishment** – But corrupt officials and the complicit financial intermediaries will continue to forge ahead if they feel the risks are few. Punishment of top officials and politicians in this area is infrequent. As former Peruvian public prosecutor José Ugaz explained at the IACC that politicians in too many countries enjoy immunity from prosecution while they hold public office and then they secure asylum in countries that ignore extradition demands. Why, he asked, is former President Fujimori still able to stay in Chile after a year there and not be returned to face trial in Peru?

The former top cabinet members in Kenya, who had been forced to resign office in 2005 because of documented allegations of their massive thefts, were reinstated into the Kenyan cabinet recently! In many countries the public has a cynical view of law enforcement – in one nation after another it seems that people are convinced that the law will never deal appropriately with the big corrupt crooks. It is hard to find evidence to suggest these views are misplaced. TI will shortly publish its *Global Corruption Report*, which will highlight the roles of the judiciary, where corruption has greatly aided the villains.

People are angry. The recent U.S. Congressional elections illustrated the point. Exit polls in the U.S. indicated that 75% of voters saw corruption in politics as a key issue as they went to vote. The result: many powerful incumbent politicians lost their seats – punishment indeed!

- **Personal Risks** - Fighting corruption is getting more difficult. The dangers are rising in many countries for those who seek to wage the good fight. From Nepal to Bangladesh and the Congo to Venezuela and Zimbabwe, anti-corruption campaigners live in fear of arrest or assassination. The murder of journalists investigating corruption in Asia and in Latin America

has been rising. The threats to non-governmental organizations in Russia by the Kremlin are serious. The pressures by authorities in Congo, Sri Lanka and Ethiopia, are intense on those who might seek to challenge public officials and call for transparency and accountability.

I hope that TI's annual Integrity Award is an encouragement to those who show constant courage and without whose efforts our fight would be far less. Our latest winner is Dr. Anna Cecilia Magallanes Cortéz from Peru who overcame enormous personal dangers to lead the force that successfully prosecuted 1,500 members of the criminal organization of General Vladimiro Montesinos, the collaborator of former President Alberto Fujimori.

- **Values** - crucial to the fight against corruption is the education of young people (as well as leaders of many diverse institutions from the media to business to academia, and of course government) about moral values. As Costa Rican President and Nobel Peace Prize winner Oscar Arias has eloquently noted, too little is being done to ensure in all societies that there is a core understanding and support of values that reach beyond material concerns and “place at the center the right of all human beings to a place under the sun.”

However, it is encouraging that in an increasing number of countries, civil society organizations are taking anti-corruption campaigns into the schools, working with teachers to find ways to make children strengthen their understanding of core values. Efforts are being made to involve faith-based organizations in this agenda (so far with limited success). More broadly, good governance campaigns by civil society in many countries are gaining traction with businesses and not-for-profit organizations that stress core values, building a values-based institutional culture, and emphasizing the importance to chief executives to demonstrate an ethical “tone at the top.”

- **Conventions** - Building international frameworks to achieve actions, to articulate the responsibilities of governments and to direct policies to curb corruption, has become a central theme of anti-corruption campaigns over the last decade. The OAS Convention was the first regional anti-corruption initiative of its kind, but its impact has been marginal at best. The challenge now is to ensure that its monitoring mechanisms are seen by the Latin public to be working. The anti-bribery convention of the Organization for Economic Cooperation and Development, signed by 36 countries, has yet to be enforced. There is now the United Nations Convention Against Corruption, which says all the right things. But, just like anti-corruption laws at the national level designed to secure clean governance and ethical politics, the key rests in enforcement. Alas, so far, the anti-corruption conventions have not been implemented. Enforcement is crucial and it is lacking.

Finally, in this brief overview of the balance sheet of success and failure on the corruption playing field, permit me to highlight two particular sectoral issues – humanitarian assistance and the environment.

- **Humanitarian Assistance** - the massive earthquake in Pakistan and the tsunami in Sri Lanka, Thailand, India and Indonesia highlighted the opportunities for large-scale corruption at times of humanitarian disaster when the charitable funds and the official aid flood into disaster situations in a haphazard manner. Time and again, it seems, the donors just do not learn from previous errors. The criminals benefit. Repeatedly, the opportunities for corrupt practices surface as the donors fail to coordinate adequately; their zeal to disburse funds rapidly overwhelms their

prudence; their focus on being seen by the media to be highly active relegates a focus on safeguards to a low priority, and, the lack of local information by international donors compounds the problems.

What can be done? The international community needs to focus still more directly on measures that ensure that the victims of future natural disasters obtain the maximum benefits in ways that are transparent and efficient. Key actions should include a greater commitment by donors to coordination, enhanced priority to engaging civil society as a meaningful partner by governments and donors, and strengthening independent monitoring, which can include civil society. Perhaps, there would be progress if there was a major international commission of investigation into corruption in the tsunami's impact on Sri Lanka and Indonesia, where by some accounts vast amounts of cash have still not been disbursed and the agonies of countless tsunami victims continue to this day.

- **Environment** - There is an equal deficit in understanding, linkage and cooperation between environmental movements and the anti-corruption community. Initiatives have been launched relating, for example, to forestry and to safe water. However, progress has been tepid. There is a need for more research and the decision by Transparency International to focus its 2008 Global Corruption report on water may be beneficial. I am constantly struck how environmental NGOs and anti-corruption groups fail to come together more often and intensify their cooperation. What good are all the environmental protection laws in scores of developing countries when corporate executives can simply evade them by paying small bribes to inspectors? This is an area of huge potential, I believe, for cooperation between NGOs.

However, we are only at the start of a very long journey. We have seen progress and perhaps we could even claim to have reached the base camp at Everest. But, ahead of us the path is steep and treacherous. There will be reversals and none should be over-confident that we have the courage, the fortitude and the intelligence to outfox the business people and the public servants who repeatedly demonstrate enormous skill in building embedded networks of corruption and conspiring for their mutual gain.

Business Ethics

The approaches that business takes towards corruption are critical to reducing the costs and improving prospects for economic development, social justice, environmental protection and global security. Corporations have a responsibility for the scale of corruption in the world. The ethics they promote impacts our society in profound ways.

In recent years we have seen how U.S. corporate leaders, from Enron to WorldCom to scores of other corporations, cooked the books, cheated shareholders, perpetrated fraud, and personally pocketed fortunes. These scandals have done damage to the general image of business in society and to respect for corporate leaders.

It can be argued that the ethics of American corporations as a whole are not as abysmal as the media often suggests. There have been major accomplishments over the last 20 years. We are seeing an increasing number of companies striving to take corporate social responsibility seriously, with particular emphasis on human and labor rights, environmental protection and the health and safety of their employees and their customers.

However, these achievements have been overshadowed by the constant drumbeat of disclosures of corporate fraud, CEO crime, greed and lying, as well as record fines for wrongdoing. The nefarious actions of multinational corporations have even influenced best-selling fiction writers and Hollywood directors.

John Le Carré's villain in *The Constant Gardener* is an international pharmaceutical company. One telling paragraph in his book, for example, reads: "Tessa (*the murdered heroine of the novel*) believed that the irresponsible quest for corporate profit is destroying our globe, and the emerging world in particular. Under the guise of investment, Western capital ruins the native environment and favors the rise of kleptocracies. So ran her argument. It is a scarcely radical one these days," declares British diplomat Justin Quayle.

One would like to believe that CEOs are recognizing that the costs of being vilified around the world for unethical behavior are vast. There is a financial cost, a cost in terms of relationships with all stakeholders and the broader reputational cost. There are the costs to the individual reputations of business leaders themselves. But the case now unfolding in a Chicago corrupt where Lord Black, former CEO of Hollinger, is on trial is a reminder not only of the scale of abuse, but also of the lack of remorse and concern among those whose actions have destroyed the jobs and the pensions and the share values of tens of thousands of corporate stakeholders.

My fervent hope is that every business school student and every CEO in this country has the chance to take a look at a story that was run on CBS's "60 Minutes" several years ago about a businessman called Aaron Feuerstein, who owned a company called Malden Mills in Connecticut. It was destroyed by fire. He could have pocketed the \$300 million insurance money. Instead he not only rebuilt the factory, but paid all employees for 90 days in full. He said his first thoughts at the time of the disaster were for the distress caused to the employees and community. He had his values in good shape. Do you think he would endorse bribing foreign government officials to get a bit more business? Of course not.

But, we have not seen the same behavior from dozens of leaders of major corporations. Halliburton is alleged to have been embroiled in all manner of shady contracts, but there has been no punishment. The former CEO of Exxon-Mobil, a company that has allegedly been engaged in many actions that might be viewed by some as socially irresponsible behavior, retired with a \$400 million company payment. Two CEOs at Boeing resigned in recent years as a result of improper activities, but both enjoy handsome company pensions.

I believe that over time an increasing number of companies that fail to build corporate integrity cultures will fail. But, it will take time. This is not only an ethical issue. It is also a matter of management common sense. The modern company must be agile and creative to remain competitive. It cannot afford layers of bureaucrats to supervise subordinates. Executives have to be trusted. To maximize their productivity they need to be bound together within a corporation by an over-arching culture, driven from the top. A values culture that is based on trust. Writing in the GE Annual Report in 2001, then CEO Jack Welch explained at length how this values culture has to be the glue that enables the company to maximize its strength and potential. He noted in this essay, "Integrity - It's the first and most important of our values. Integrity means always abiding by the law, both the letter and the spirit. But it's not just about laws; it is at the core of every relationship we have."

I have written at length elsewhere about the critical frameworks that businesses need to put in place to secure a viable integrity culture. In sum, companies need:

- model CEO and Board behavior to consistently set the right tone at the top;
- a dynamic code of ethics that is constantly updated and global in scope;
- Board direct oversight of the company's corporate social responsibility activities, including anti-corruption;
- management systems that ensure that the corporation's values are being implemented consistently;
- encouragement of workable whistleblowing systems that secure constructive results and that guard against retaliation and intimidation of employees;
- effective internal communications by corporate leadership that stresses the importance of the ethics codes, that highlights employees that are "walking the talk."
- far greater public reporting on every facet of the company's declared CSR agenda, including anti-corruption, through dedicated websites and annual special reports that include external monitoring.

Paying Bribes

Against this background, permit me now to focus much more specifically on corporate bribe-paying. Actions to prevent corporate bribery of government officials, or collusion with competitors to rig governmental contracts, are key areas of corporate integrity. The supply-side of corruption should not be seen as distinct from the core issues of business ethics. Rather, how a company operates relative to the public sector should be wholly driven by its values and integrity culture. Corporations that take their ethics codes seriously will not pay bribes, at home or abroad. They will have mechanisms in place to try and curb all forms of bribe-paying by their employees, by their partners and by intermediaries that might represent them.

First, a very brief word on the domestic landscape and then let us delve into aspects of international bribe-paying.

Boeing's bribery at the Pentagon highlights the fact that our own public officials are not immune from temptations and that the very largest U.S. corporations have indulged here at home in criminal bribery. Boeing's payment of over \$600 million in fines is the largest such payment ever for domestic bribery, but it remains to be seen whether even this vast sum is a deterrent to others.

From New Jersey to Louisiana, from Michigan to California, leading public officials are indicted on a prominent scale for accepting bribes in return for allocating public contracts to corporations. There are some 50 City of Chicago officials currently under indictment for alleged corrupt practices. Often, the deals involve real estate development. Here at home, just as around the world, the construction sector is probably number one in the corrupt practices league.

The special US Inspector General for Iraq has reported in detail on dozens of investigations that involve U.S. companies engaged in alleged bribery. New hearings in the U.S. Congress will make Americans more aware of the scale and the impact of such business practice on the war effort and the damage it does to America's prestige.

Then, our politics is awash in corporate money. It may all be legal funding for campaigns of one kind or another, but most of the time the motivation is to strengthen the influence of corporations with public officials. The benefits often sought by business may pertain to narrow areas of tax relief and subsidies, while the politicians gain added support to strengthen their chances of staying power. There is a quid pro quo here that lawyers will say is “in full compliance,” but which the public at large may sense has the whiff of corruption about it.

It has contributed to a sense among the American people of a political system that is rife with corruption. For the most part, although there are important exceptions, America’s business leaders have not been in the forefront of supporting reform. Their silence is a failure of their public responsibility – and corporations, just like citizens, have profoundly public responsibilities.

Now, permit me to turn to the global business landscape and bribe-paying across national borders. Private investment is crucial for development and the path to economic growth in most nations requires the import from business of capital and know-how. But the imports have to be clean. If the relationships are based on bribes, then the outcomes for the peoples of the developing countries will be negative.

The supply-side of bribery takes many forms and can be seen in many contexts. Let us just focus here on illicit payments made by multinational corporations to government officials outside of the corporation’s home country. Massive bribery is pursued by multinational corporations.

Enforcement is critical - companies need to fear being caught and punished for bribing public officials. Business leaders need to recognize that there are risks in bribe-paying. This is not the case today. Prime Minister Blair’s recent action on Saudi arms sales sends the wrong signal. This is especially unfortunate because the overwhelming majority of the 36 countries that ratified the OECD Anti-Bribery Convention, which came into force in 1999, are not enforcing it.

Not only should the law be applied, but loopholes in the laws should be closed. This is a vital point here with an audience of business school students. Too often the CEO is comforted by the assurances of the corporate general counsel that a planned corporate action is in compliance with the law. Sometimes this is not enough. The lawyers can be wrong. They were certainly wrong at Enron when they failed to raise red flags as the Board of Directors voted on two occasions to set aside the company’s code of ethics. Often the corporate lawyers have been negligent – how else can one explain some of the bizarre activities that went on at Enron and WorldCom and Tyco?

But, much more importantly, too often the general counsel sees their mission as narrowly interpreting the laws – even finding loopholes – to maximize the flexibility and agility of their corporations. In so doing they all too often set aside considerations of ethics. There is no better example than in the field of international bribery. And my plea is that corporate executives need to ensure at all times that they not only listen to the lawyers, but they also listen to their consciences.

The U. Foreign Corrupt Practices Act (FCPA) and the OECD Anti-Bribery Convention, which it greatly influenced, permit ‘facilitating payments.’ Our laws use this term to bless payments to foreign government officials to speed business transactions in foreign countries.

They are meant supposedly to be just small payments to customs and immigration and other low-level foreign officials. These are bribes.

The lawyers can say what they like, but when a citizen puts cash in the hands of a customs official then he is paying a bribe. If an executive from a U.S. company seeking a U.S. residence permit for a foreign employee paid a bribe to a U.S. immigration official, then he would be arrested. If a U.S. executive made a secret cash payment to a U.S. customs official to speed imported goods into this country and he was caught, then he would be flung into prison. If a U.S. executive wanted to accelerate the granting of a building permit and made cash secret payments to U.S. Environmental Protection Agency officials to secure the right outcome and was caught, then only his lawyer might find a way to claim this was not a corrupt practice.

Each of these kinds of situations, however, if pursued by U.S. corporate executives with foreign officials in foreign countries, could be construed by U.S. lawyers as being perfectly legal under the “facilitating payments” clause of the FCPA.

Many U.S. business executives are unwilling to go into poor countries and demonstrate patience when seeking basic permits. They would rather pay to jump the line. Getting a work permit for a foreign person in this country can take months, and environmental permits can take years, and we accept this. But, in the poorer countries of the world too many U.S. executives believe that bureaucratic delays are no more than invitations to pay bribes.

I say poorer countries, because if American companies tried to apply the “facilitating payments” clause when doing business in Canada, in the U.K. and in Switzerland, and accordingly paid bribes to officials, they would be arrested and the incidents would make the front pages of the newspapers.

The damage done by these “facilitating payments” is enormous. It undermines the integrity of the executives who make the payments. They of course know that bribing people is wrong. These payments leave an image of how Americans do business in poorer countries that damages the reputation of U.S. business and indeed of America. And, by making these payments we contribute to the corruption in countries that already are plagued by this illness and where there are courageous individuals striving to secure reforms.

When the U.K. enacted legislation in line with the OECD Convention, it made no allowance for facilitating payments. Thereafter, BP announced that under its policy “no facilitation payments should be made directly or indirectly by any BP company or BP employee worldwide.” And when you talk to Royal Dutch Shell about this matter you are steered to its business principles which state: “Our commitment to business integrity is clear and unequivocal. We do not bribe, nor do we accept bribes. We do not sanction illegal payments of any kind.”

There are many actions that can be taken to curb the demands for bribes and to reduce corporate bribe-paying. They range from abolishing the “facilitating payments” clause of the U.S. law to harsh enforcement of the FCPA and the OECD Convention. They include greater oversight by the U.S. Congress of the foreign business practices of our corporations. In the mid-1970s the late Senator Frank Church of Idaho chaired a Senate committee on multinational corporations. The hearings exposed extensive bribe-paying by some of the largest American companies, including Exxon and Gulf Oil, culminating in revelations that Lockheed had bribed Prime Minister Tanaka of Japan to win commercial aircraft orders. It was these hearings,

together with the disclosures of corporate illicit payments related to the Watergate scandals that set the stage for the passage of the FCPA in 1977.

I have no doubt that unless business takes the lead and makes major voluntary efforts to fight corruption, first in its own enterprises and then across the globe, then the time will come when Congress will act once again.

Don't Pay Bribes

Permit me to suggest that there are always times in international commerce when an executive faces a difficult choice. The answer every time must be the same: don't pay bribes. It is better to walk away from a deal, than to undermine your personal integrity and place the reputation of your company at risk.

There are situations where the only option is to quit and run, rather than bribe. But, there are many situations, even in countries perceived to have high levels of corruption, where foreign companies can succeed without bribing. My own experience enhances my conviction that businesses can take approaches of total operational transparency that win respect and success.

In the early 1990s I was privileged to be asked to join a remarkable American entrepreneur, James Sinclair, in a mining venture in Tanzania. This was a country that for over 20 years had evolved a strong suspicion of foreign corporations and had therefore been reluctant to permit them to develop the nation's gold, diamond, nickel, copper and other mineral resources. Mr. Sinclair, the Chairman of Sutton Resources of Canada, understood that if his company was to succeed in Tanzania, then he had to earn the trust of the authorities.

There were those in Tanzania's Government, no doubt including the then youthful Minister of Energy and Mining, Jakaya Kikwete, who were suspicious of foreign companies, who had experienced their arrogance and who had seen how some had come to grab assets, maximize short-term profits and move elsewhere. Mr. Sinclair took up residence in the country. For months he dedicated himself to understanding the local culture, the people and the ways in which one earned respect. He believed that success would result from transparency, honesty, good deeds and a long-term investment commitment.

I was an advisor to the Chairman and a member of Sutton's Board of Directors. We never paid bribes. We demonstrated that we were good corporate citizens. Our company went to substantial lengths to underscore our long-term commitment as solid corporate citizens to Tanzania. Mr. Sinclair's daughter, Marlene, settled in Tanzania and has played and continues to play important roles in philanthropy in the social services area there. Our commitment was the basis for establishing trust and in response we were treated fairly by the Government.

We engaged in long-term philanthropy. We assisted the government to build a global strategy to attract more top quality foreign investment into the mineral sector. We set clauses in our mining contracts to fund training for Tanzanian geologists. We took the lead in assisting with healthcare for miners and we raised the bar in mining contracts in Tanzania when it came to environmental protection.

Sutton Resources was acquired by one of the world's largest mining companies, Barrick Gold Corporation of Canada. In recent years Barrick has invested major sums in mining in Tanzania and the success of our company, followed by Barrick's success, has brought hundreds of millions of dollars of foreign direct investment into that country.

And, Mr. Sinclair, who today heads TanRange of Canada, has continued to invest in Tanzania and build a host of high value mineral assets with great potential. He has never paid bribes. Nobody asks him for bribes. He has succeeded in building trust and being seen as a partner to a nation striving to develop. His approach and his company are examples of what I believe must be the corporate anti-corruption compact of the future. Moreover, Mr. Kikwete is now the President of Tanzania with formidable experience, influenced in part by James Sinclair's example, in understanding how good foreign corporate investors can contribute to his country's development.

In conclusion, let me emphasize that the James Sinclair approach is the route that must be encouraged. It is about not paying bribes. Importantly, it is also about making meaningful corporate contributions to the communities and the countries in which one operates as a business.

Corporations have opportunities for huge rewards that can and will be all the greater and more sustained if their actions are driven by uncompromising integrity cultures. The business leaders of tomorrow who will enjoy the most respect and the most success will be those who know that doing the right thing is always preferable to doing what may yield the maximum short-term profit. On a panel tomorrow at this international forum I shall share in a conversation with leaders from three industries.

One is from Newmont, the world's largest gold mining company, that operates in a business sector where bribery is commonplace and where I believe the Sinclair approach is an appropriate example of how to do things the right way. Another of our panelists is from Lockheed Martin where a few years ago its Chairman and CEO was Norman Augustine. He is a model of the corporate leader who puts integrity first. Time and again he reminded employees that when it came to acting with integrity there was no room for compromise.

And, our third panelist is from Citigroup – the world's largest financial services firm and one that inevitably has faced many challenges on the integrity front. A decade ago the then head of private banking at Citi, Shaukat Aziz, now incidentally the Prime Minister of Pakistan, approached Transparency International and suggested a partnership to convince the world's leading banks to strive to set new, high voluntary standards for anti-money laundering. That initiative was a formidable success. It serves as an example of how, even in the complex arena of corruption, leadership on a voluntary basis by business can do great good. What we must all strive for is to encourage students at business schools to emulate those rare leaders such as Jim Sinclair, Norm Augustine and Shaukat Aziz, and recognize the benefits they have brought for their firms and more broadly for society.

Thank you.

Frank Vogl
President,
Vogl Communications, Inc.
& www.Ethicsworld.org,
2000 P St.NW.
Washington DC 20036

Tel: 202 331 8183
Fax: 202 331 8187
Voglcom@gmail.com