Lanny A. Breuer
Assistant Attorney General
Criminal Division
Prepared Address to
The 22nd National Forum on the Foreign Corrupt Practices Act
November 17, 2009

Introduction

Thank you for that kind introduction. Good afternoon, everyone. I am very pleased to be here. I would like to thank Homer Moyer, the Chair of the Forum, and Frederique Duranton of ACI for hosting such a worthwhile and well attended conference – my first as Assistant Attorney General of the Criminal Division.

We are all here today to consider a law enforcement challenge of truly global dimensions. The word "bribe" is, of course, known throughout the world. In the United States, it has been called a pay-off, a kickback, hush money, payola, and a sweetener. It is sometimes concealed behind what is called a commission, a reward, a finder's fee, a gratuity, or a "thank you." Other countries have even more colorful language, like in India where it is known as a "backhander," the Middle East where it is known as "baksheesh," or in Nigeria where it is sometimes called "dash." One of the most pointed, and accurate, word for bribe comes from Mexico where it is often called *mordida*, or "the bite."

But no matter what you call a bribe, and no matter where it takes place, the effect is equally corrosive. Just two weeks ago in Doha, on the occasion of the sixth and final Global Forum on Corruption, Attorney General Eric Holder described the effect by saying, "Corruption erodes trust in government and private institutions alike; it undermines confidence in the fairness of free and open markets; and it breeds contempt for the rule of law. Corruption is, simply put, a scourge on civil society." Indeed, President Obama has said, "The struggle against corruption is one of the great struggles of our time."

The Department of Justice plays a leading role in combating this global blight. And, as you know, we fight this fight each and every day. The importance of our efforts is only heightened in the current economic climate, one in which bribery in international markets offers a quick fix to the problem of a smaller pool of business opportunities, and in which corporate executives may be tempted both to look the other way and to invest fewer resources in their compliance efforts. I'm sure it will surprise no one here today if I caution you in this regard. The Department is looking carefully at lapses – both past, present, and future – in corporate compliance as a result of the downturn in the global economy.

Developments in the Past Year

Let me take a few minutes to talk about where our FCPA enforcement program has been and where I believe it is headed.

One can say without exaggeration that this past year was probably the most dynamic single year in the more than 30 years since the FCPA was enacted. We saw a record number of trials, a record number of individuals charged with FCPA violations, and record corporate fines, including $1.6 billion in global penalties in the Siemens matter and $579 million in penalties in Halliburton/KBR, a case from which I should note I'm personally recused. This past year continued the upward trend in FCPA enforcement upon which many have remarked at conferences such as this. Since 2005, we have brought 58 cases – more than the number of prosecutions brought in the almost 30 years between enactment of the FCPA in 1977 and 2005.

In some ways, the developments of the past year have been both encouraging and discouraging. Encouraging in that our enhanced enforcement efforts are yielding truly unprecedented results, but discouraging in that we've seen that CEOs and other high-level executives -- and even a Member of Congress -- think that paying bribes to get foreign contracts is simply "business as usual." *It is not business as usual. It is illegal. And it will not be tolerated.* And those that do pay or authorize bribes, or even just those who knowingly invest in corrupt deals, are now learning those lessons the hard way. If nothing else, this past year proves that.

The banner headlines in the past year were the resolutions of *Siemens* and *KBR/Halliburton* – and of course for good reason, as they were certainly milestone cases. But the past year also was significant for several other reasons. As I mentioned, we tried more individuals for FCPA violations than in any prior year. And we indicted more individuals than ever before. *That is no accident.* In fact, prosecution of individuals is a cornerstone of our enforcement strategy. This is seen clearly in the Control Components Inc., or CCI, prosecution, in which eight of the company's most senior executives have been charged, including the former CEO and the former finance and global sales heads, two of whom have already pleaded guilty and are cooperating.

Put simply, the prospect of significant prison sentences for individuals should make clear to every corporate executive, every board member, and every sales agent that we will seek to hold you personally accountable for FCPA violations. Though I am recused from the case, I can point out that this lesson was learned by Jack Stanley, KBR's former Chairman and CEO, who pleaded guilty and agreed to serve a seven-year prison term, subject to a reduction for cooperation. And just last week, a consultant for Willbros pleaded guilty and agreed to a seven year, three month sentence, subject to a reduction for cooperation.

2009 was also the year of the FCPA trial. During this past summer alone, there were

three separate trials in three separate districts, and in each, the defendants were convicted. First, there was the trial of Frederic Bourke in Manhattan. I had previously represented a subject in this matter. A jury found that Bourke conspired with others to acquire through corruption of very senior Azeri officials the state-owned oil company of Azerbaijan. Bourke was convicted of conspiracy, even though he did not personally pay the bribes and even though he, in fact, lost his multi-million dollar investment in this business venture. In spite of his many unrelated contributions to science and philanthropy over the course of his life, Bourke was sentenced last week to a year in prison.

Bourke, of course, was not the only person sentenced last week; so was former Congressman William Jefferson, who was convicted of a conspiracy of which one object was to violate the FCPA by bribing former high-ranking Nigerian government officials. (Jefferson's is a case where I previously represented a witness and am therefore recused.) As you may have read, Congressman Jefferson was sentenced to 13 years in prison a few days ago. The last trial of 2009 ended in September with convictions against two Hollywood film executives who had bribed the now-former head of the Thai Tourism Authority to obtain various tourism-related contracts, including rights to run the Bangkok Film Festival. They are set to be sentenced in December.

As these cases demonstrate, we will not shy away from tough prosecutions and we will not shy away from trials. When put to the test, I believe you will see that we are ready, willing, and able to try FCPA cases in any district in the country.

But, of course, we do not try every FCPA case. Indeed, the vast majority are resolved short of trial. In the case of corporations, those resolutions take a number of forms, including guilty pleas, deferred prosecution agreements and non-prosecution agreements. And despite rumors to the contrary, we do also decline prosecution in appropriate cases. Although many of these cases come to us through voluntary disclosures, which we certainly encourage and will appropriately reward, I want to be clear: the majority of our cases do not come from voluntary disclosures. They are the result of pro-active investigations, whistleblower tips, newspaper stories, referrals from our law enforcement counterparts in foreign countries, and our Embassy personnel abroad, among other sources. I have personally traveled abroad and spoken with Embassy personnel about this issue.

With regard to corporate cases, the Department will continue to pursue guilty pleas or, if necessary, indictments against corporations – when the criminal conduct is egregious, pervasive and systemic, or when the corporation fails to implement compliance reforms, changes to its corporate culture, and undertake other measures designed to prevent a recurrence of the criminal conduct.

We also recognize that there will be situations in which guilty pleas or criminal charges are not appropriate. Now, we may have good-faith disagreements about when those circumstances present themselves, but we do not take our task lightly. We are mindful of the

direct impact on the company itself, as well as the numerous collateral consequences that often flow from these charging decisions. We are sophisticated attorneys, and we understand the challenges and complexities involved in doing business around the globe.

In FCPA cases, we strive to apply a consistent, principled approach, just as we do in other criminal cases. We consider the facts and circumstances within the Department's established framework, and we are guided by the Sentencing Guidelines in arriving at an appropriate sanction. In this way, we endeavor to provide clarity, consistency, and certainty in outcomes.

In appropriate cases, we will also continue to insist on a corporate monitor, mindful that monitors can be costly and disruptive to a business, and are not necessary in every case. That said, corporate monitors continue to play a crucial role and responsibility in ensuring the proper implementation of effective compliance measures and in deterring and detecting future violations.

We recognize the issues of costs to companies to implement robust compliance programs, to hire outside counsel to conduct in-depth internal investigations, and to forego certain business opportunities that are tainted with corruption. Those costs are significant and we are very aware of that fact. The cost of not being FCPA compliant, however, can be far higher.

Besides those costs, there is still the sometimes difficult question of whether to make a voluntary disclosure, a question I grappled with as a defense lawyer. I strongly urge any corporation that discovers an FCPA violation to seriously consider making a voluntary disclosure and always to cooperate with the Department. The Sentencing Guidelines and the Principles of Federal Prosecution of Business Organizations obviously encourage such conduct, and the Department has repeatedly stated that a company will receive meaningful credit for that disclosure and that cooperation.

That commitment has manifested itself in some of the resolutions just this past year. For example, while the Siemens case is, of course, by far the most egregious example of systemic corporate corruption ever prosecuted by the Department, it is also a prime example of the benefits that flow from truly exceptional cooperation. The benefits that Siemens received, even in the absence of a voluntary disclosure, were significant. First, the $450 million fine that was paid to the Department of Justice, as opposed to portions paid to the SEC and the German government, while a large amount of money in absolute terms, was dramatically less than the applicable Sentencing Guidelines range, which was $1.35 billion to $2.7 billion. Second, the resolution permitted Siemens to avoid mandatory debarment in certain locations and to make arguments about its suitability as a contractor in light of its extraordinary remediation. And third, the Department worked with Siemens to resolve this vast and remarkably complex matter in two years' time, permitting the company to get its business out from under the ominous cloud of such a large and well known criminal investigation.

Another example, on a much more modest scale, was the resolution of the Helmerich & Payne matter, a company that self-disclosed improper or questionable payments. The case was resolved through a non-prosecution agreement with a term of two years, a penalty of $1,000,000, which was approximately 30 percent below the bottom of the guidelines range, and compliance self-reporting by the company for a period of two years in lieu of an independent compliance monitor. Helmerich & Payne benefitted in several, very tangible ways from their efforts. The fine, type of disposition, length of disposition, and treatment of the monitor issue all reflect the forward leaning, pro-active, highly cooperative approach taken there.

I can assure you that the Department's commitment to meaningfully reward voluntary disclosures and full and complete cooperation will continue to be honored in both letter and spirit. I am committed to no less. Together, the Department and the private sector have the opportunity to ensure a climate of compliance and self-disclosure – one that offers very tangible benefits for both of us.

The Road Ahead

Let me talk briefly about what else you can expect to see in the months and years ahead.

In addition to holding culpable individuals accountable and meaningfully rewarding voluntary disclosures and genuine cooperation, we will continue to focus our attention on areas and on industries where we can have the biggest impact in reducing foreign corruption.

As I mentioned in a speech last week to the Pharmaceutical Regulatory and Compliance Congress, one area of focus will be overseas sales in the pharmaceutical industry. In some foreign countries and under certain circumstances, nearly every aspect of the approval, manufacture, import, export, pricing, sale and marketing of a drug product may involve a "foreign official" within the meaning of the FCPA. The depth of government involvement in foreign health systems, combined with fierce industry competition and the closed nature of many public formularies, creates, in our view, a significant risk that corrupt payments will infect the process. Our remarkable FCPA unit and our terrific health care fraud unit will be working together to investigate FCPA violations in the pharmaceutical industry in an effort to maximize our ability to effectively enforce the law in this high-risk area. Looking ahead, our FCPA unit will be looking at other areas and industries for stepped-up enforcement where we deem appropriate.

We will also be focused on asset forfeiture and recovery. Earlier this year, I directed all our attorneys to speak with their supervisors and determine in every case whether forfeiture is appropriate. We will seek forfeiture in all appropriate cases going forward. As the Attorney General emphasized recently in Doha, we must work with our international counterparts to ensure that corrupt officials do not retain the illicit proceeds of their corruption. We will be taking advantage of the expertise of both the Fraud Section and our Asset Forfeiture and Money

Laundering Section to forfeit and recover the proceeds of foreign corruption offenses.

In addition, we will continue to work with the Departments of State and Commerce and the SEC. With them, we will press for ever-increasing vigilance by our foreign counterparts to prosecute companies and executives in their own countries for foreign bribery – both through the OECD and less formal means. This is part of a long-term goal to ensure a level-playing field for U.S. companies. In fact, in January 2010, two essential treaties on mutual legal assistance and extradition will come into force that will streamline our work with foreign counterparts. The evidence from this past year suggests progress has been made, but more needs to be done, and we are committed to doing it.

As we undertake these efforts, we hope to do so with enhanced resources. As I imagine most of you have heard, in 2007 the FBI created a squad with agents dedicated to investigating potential FCPA violations. The squad has been growing in size and in expertise over the past two years. In addition, we have begun discussions with the Internal Revenue Service's Criminal Investigation Division about partnering with us on FCPA cases around the country. Finally, we are now pursuing strategic partnerships with certain U.S. Attorney's Offices throughout the United States where there are a concentration of FCPA investigations. Our successful efforts thus far in FCPA enforcement have been due in large part to the amazing work of our talented career prosecutors in the Fraud Section and enforcement responsibility, of course, will remain with the Criminal Division's Fraud Section. But these partnerships, we hope, will greatly increase our resources and permit us to capitalize on the skill and expertise of AUSAs in some of the best U.S. Attorney's Offices in the country.

So, as you can see, there is much going on in our FCPA program. And that program certainly has the wind at its back. Indeed, as we look to the future, we will be building on the extraordinary efforts and success of our Deputy Chief over the FCPA area, my friend Mark Mendelsohn, who is beginning to explore options for the next phase of his career. Mark has been an exceptional public servant and a visionary steward of the FCPA program. Regardless of where Mark chooses to go, we will miss him greatly.

Of course, we also will be building in the years ahead on the talent and successes of a very deep bench within the Fraud Section. The Fraud Section is home to many of the finest prosecutors in the country. It is my distinct honor and privilege to work with them. They are, quite simply, among the most terrific lawyers anywhere. The Department's FCPA enforcement depends on the many skilled and experienced line prosecutors in the Fraud Section, as well as the investigators – principally from the FBI – who collaborate with them. In the last five years, their number has increased, their experience has grown, and their efforts, quite frankly, speak for themselves. I am confident that our veteran prosecutors will seamlessly move our FCPA enforcement efforts forward. And I am also confident that, although there are big shoes to fill, the next Deputy Chief will help lead the FCPA enforcement program to even greater heights.

Conclusion

As we consider what lies ahead, we must not lose sight of the reasons for strong FCPA enforcement and compliance. An economy free of corruption levels the playing field; an economy free of corruption vindicates the Rule of Law; and an economy free of corruption ensures open, transparent, and fair functioning of our global markets. We should all settle for nothing less. Indeed, we will settle for nothing less.

Thank you all for the work you do and for inviting me to address you this afternoon. I would be happy to take your questions.