

**DIGESTS OF CASES AND REVIEW RELEASES
RELATING TO BRIBES TO FOREIGN OFFICIALS UNDER
THE FOREIGN CORRUPT PRACTICES ACT OF 1977
(AS OF JANUARY 31, 2002)**

Danforth Newcomb,*
Partner, Shearman & Sterling
(New York, New York)

*The author wishes to acknowledge the substantial contributions of Rachel Barnes, Saamir Elshihabi, Judith Reed, Michael Krauss, and Natalie Marjancik to the preparation of these digests.

© Shearman & Sterling 2002

TABLE OF CONTENTS

	Page
A. INTRODUCTION.....	2
B. FOREIGN BRIBERY CRIMINAL PROSECUTIONS UNDER THE FCPA.....	4
C. FOREIGN BRIBERY CIVIL ACTIONS INSTITUTED BY THE DEPARTMENT OF JUSTICE UNDER THE FCPA	36
D. SEC ACTIONS RELATING TO FOREIGN BRIBERY	40
E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES	52
F. PRE-FCPA PROSECUTIONS.....	75
G. ENDNOTES.....	77

A. INTRODUCTION

1. Foreign Bribery Prosecutions (Civil and Criminal) under the FCPA by the Department of Justice

In an effort to distill the available precedent relating to antibribery provisions of the FCPA, we have prepared a brief summary of the relevant prosecutions and review releases. A review of public information shows that only twenty-nine separate bribery schemes have been prosecuted under the FCPA. These cases arose out of activities in more than a dozen different countries. The illegal payments alleged have ranged from \$16,000 to \$9.9 million. These illegal payments represent varying percentages of up to forty percent of the business obtained. In all prosecuted cases, the "value given" has been money, most often paid into third-country bank accounts. The majority of the foreign officials are politicians or government officials, but bribes have been paid to presidents, senior military officers, ambassadors to the U.S. and employees of government-owned companies.

Twenty-three companies and fifty-four individuals have been charged under the FCPA in connection with allegations of bribery of foreign officials. Corporate fines ranged from \$10,000 to \$3,450,000. In January 1995, after the effective date of the Sentencing Guidelines for Organizations, Lockheed paid a record fine of \$21.8 million. Several executives have paid fines and received probation and community service sentences. Three executives have been imprisoned under the FCPA, and several received home confinement. Six individuals have been acquitted of the FCPA charges against them. The summaries for each criminal matter appear in Section B and summaries for each civil matter appear in Section C.

2. Securities and Exchange Commission (SEC) Actions relating to Foreign Bribery

There has been a recent resurgence in SEC actions where foreign bribery has been at issue. The SEC generally enforces the recordkeeping and accounting provisions of the FCPA (mostly through injunctive actions). In the context of these actions, bribery violations are often discovered. More recently civil monetary penalties are being levied against defendants in SEC prosecutions. There are fourteen SEC injunctive actions where foreign bribery was at issue. These matters are described in Section D.

3. Department of Justice FCPA Review Releases

In 1980, the Department of Justice established a review procedure by which any party may request a statement of the Department's present enforcement intentions under the FCPA regarding any proposed business conduct. In 1988, the Department revised its rules to establish an opinion procedure, which requires the Attorney General to issue an opinion in response to a specific inquiry regarding any potential FCPA violation. If the Department issues an opinion stating that the proposed conduct conforms to enforcement policy, that conduct is entitled to a presumption, in any subsequent enforcement action, of conformity with the FCPA. The Department's opinion procedure releases are summarized in Section E.

4. Pre-FCPA Prosecutions

Prior to the enactment of the FCPA, prosecutors utilized the mail and wire fraud statutes, the conspiracy statute, the false statements statute, and other federal criminal provisions to prosecute improper payments to foreign officials. A list of these cases appears in Section F.

B. FOREIGN BRIBERY CRIMINAL PROSECUTIONS UNDER THE FCPA

1. *U.S. v. Kenny Int'l Corp. (D.D.C. 1979)*¹

NATURE OF THE BUSINESS Distribution and sale of Cook Islands postage stamps by Kenny Int'l Corp. ("Kenny Int'l"), a New York corporation and a domestic concern.

BUSINESS LOCATION The Cook Islands

PAYMENT

- 1. Amount of the value** Financial assistance (worth NZ \$337,000) in connection with an election, *i.e.*, chartering an aircraft to fly voters from New Zealand to the Cook Islands, to reelect the then-Premier, Sir Albert Henry.
- 2. Amount of business related to the payment** Postage stamp sales worth approximately \$1.5 million per year (50% of which was shared with the government of the Cook Islands).
- 3. Intermediary** Shell corporations were created to transfer the funds.
- 4. The foreign official** Sir Albert Henry and The Cook Islands Party (the then-majority political party in The Cook Islands Legislative Assembly).

INFLUENCE TO BE OBTAINED To secure the renewal of a stamp distribution agreement, whereby Kenny Int'l obtained exclusive rights to the promotion, distribution and sale of Cook Islands postage stamps throughout the world.

ENFORCEMENT

- 1. Amount of the fine** Kenny Int'l pled guilty to the single count FCPA violation, consented to the entry of a permanent injunction against further FCPA violations, agreed to pay restitution to the government of the Cook Islands in the amount of NZ \$337,000 and paid a fine of \$50,000.
- 2. Individuals charged and their relationship to the business** Kenny, chairman of the board and president and majority shareholder of Kenny Int'l, pled guilty, consented to the entry of a permanent injunction against further violations and agreed to cooperate with the government of the Cook Islands whenever requested.
- 3. Other crimes charged** None.

2. *U.S. v. Crawford Enterprises, Inc. (S.D. Tex. 1982)*²

NATURE OF THE BUSINESS Sale of gas compression systems to Petroleos Mexicanos ("Pemex"), the national oil company of Mexico, by Crawford Enterprises, Inc. ("CEI"), a Texas corporation and a domestic concern.

BUSINESS LOCATION Mexico

PAYMENT

1. **Amount of the value** 4.5 % of each Pemex purchase order in which CEI was involved. Total of \$9.9 million.
2. **Amount of business related to the payment** CEI, and other companies involved, received \$225 million in purchase orders from Pemex.
3. **Intermediary** Grupo Delta, a Mexican corporation, which held itself out as CEI's sales representative in Mexico, while actually acting as the conduit for the bribe payments to the Pemex officials.
4. **The foreign official** Two sub-directors of Pemex: one was responsible for the purchase of goods and equipment, the other was responsible for the exploration and production of Mexican oil and gas.

INFLUENCE TO BE OBTAINED To obtain purchase orders from Pemex for turbine compression systems and related equipment.

ENFORCEMENT

1. **Amount of the fine** In a forty-nine count indictment, CEI and nine individuals were charged with conspiracy and multiple counts of bribery of foreign officials. CEI pled no contest and was fined \$3,450,000.
2. **Individuals charged and their relationship with the business** Crawford, the president and owner of CEI, pled no contest and was fined \$309,000. Hall, executive vice president of CEI, pled no contest and was fined \$150,000. Garcia, who assisted Grupo Delta, pled no contest and was fined \$75,000. Eyster and Smith were fined \$5,000 each. Beltran and Gonzalez, associated with Grupo Delta, were fugitives. McLean was acquitted of conspiracy (see Case No. 5 below regarding McLean and Uriarte).
3. **Other crimes charged** Conspiracy and aiding and abetting.

3. *U.S. v. C. E. Miller Corp. and Charles Miller* (C.D. Cal. 1982)³
U.S. v. Marquis King (D.D.C. 1983)

NATURE OF THE BUSINESS Process fabrication subcontract work for Crawford Enterprises, Inc. ("CEI") on sales of turbine compression systems to Petroleos Mexicanos ("Pemex"), Mexico's national oil company, by C.E. Miller Corp. ("CEMCO"), a California corporation and a domestic concern.

BUSINESS LOCATION Mexico

PAYMENT

1. **Amount of the value** 5% of each Pemex purchase order.
2. **Amount of business related to the payment** \$79 million in process fabrication subcontracts from Pemex.
3. **Intermediary** Grupo Delta, a Mexican corporation, which held itself out as CEI's sales representative in Mexico while actually acting as the conduit for the bribe payments to the Pemex officials.
4. **The foreign official** Two sub-directors of Pemex: one was responsible for the purchase of goods and equipment, the other was responsible for the exploration and production of Mexican oil and gas.

INFLUENCE TO BE OBTAINED To obtain from Pemex purchase orders for turbine compression systems and related equipment for CEMCO and CEI.

ENFORCEMENT

1. **Amount of the fine** CEMCO pled guilty to one count and was fined \$20,000.
2. **Individuals charged and their relationship with the business** Miller, president, chairman and majority stockholder of CEMCO, pled guilty to one count and was sentenced to 3 years' probation with 500 hours of community service. King, an officer and director of CEMCO, entered into a cooperation agreement and was, therefore, charged only with violations of the Currency and Foreign Transactions Reporting Act. He was sentenced to 14 months' probation and paid prosecution costs of \$5,000.
3. **Other crimes charged** Aiding and abetting CEI by assisting in the computation of bids with the knowledge that 5% of the purchase order value would be paid to officials of Pemex.

4. *U.S. v. Ruston Gas Turbines, Inc. (S.D. Tex. 1982)*⁴

NATURE OF THE BUSINESS Manufacture and sale of turbine (but not process) compression equipment to Petroleos Mexicanos ("Pemex"), Mexico's national oil company, by Ruston Gas Turbines, Inc. ("Ruston"), a Texas corporation and a domestic concern.

BUSINESS LOCATION Mexico

PAYMENT

1. **Amount of the value** 5% of the contract price, plus \$200,000.
2. **Amount of business related to the payment** Ruston, and the other companies involved, received \$225 million in purchase orders from Pemex.
3. **Intermediary** Grupo Delta, a Mexican corporation, which held itself out as CEI's sales representative in Mexico, while actually acting as the conduit for the bribe payments to the Pemex officials.
4. **The foreign official** Two sub-directors of Pemex: one was responsible for the purchase of goods and equipment, the other was responsible for the exploration and production of Mexican oil and natural gas.

INFLUENCE TO BE OBTAINED To obtain from Pemex purchase orders for turbine compression systems and related equipment for Ruston and CEI.

ENFORCEMENT

1. **Amount of the fine** Ruston pled guilty to one count charging violation of the FCPA and was fined \$750,000.
2. **Individuals charged and their relationship with the business** Eyster, president of Ruston, and Smith, vice president of Ruston. Both pled no contest and were fined \$5,000 each.
3. **Other crimes charged** None.

5. *U.S. v. International Harvester Co.* (S.D. Tex. 1982)⁵
U.S. v. McLean, 738 F.2d 655 (5th Cir. 1984), *cert. denied*, 470 U.S. 1050 (1985)
McLean v. International Harvester Co., 817 F.2d 1214 (5th Cir. 1987)

NATURE OF THE BUSINESS Supplier and a sub-contractor for Crawford Enterprises, Inc. ("CEI") in sales of turbine compression equipment to Petroleos Mexicanos ("Pemex"), the national oil company of Mexico, by Solar Turbines Int'l ("Solar"), a division of International Harvester Co. ("Harvester"), a Delaware corporation and an issuer.

BUSINESS LOCATION Mexico

PAYMENT

1. **Amount of the value** 5% of each Pemex purchase order, a total of \$9.9 million.
2. **Amount of business related to the payment** \$112 million in contracts.
3. **Intermediary** Grupo Delta, a Mexican corporation, which held itself out as CEI's sales representative in Mexico, while actually acting as the conduit for the bribe payments to the Pemex officials.
4. **The foreign official** Two sub-directors of Pemex: one was responsible for the purchase of goods and equipment, the other was responsible for the exploration and production of Mexican oil and natural gas.

INFLUENCE TO BE OBTAINED To obtain from Pemex purchase orders for turbine compression systems and related equipment for Solar and CEI.

ENFORCEMENT

1. **Amount of the fine** Harvester pled guilty to a single count of conspiracy to violate the FCPA, was fined \$10,000, and paid prosecution costs of \$40,000.
2. **Individuals charged and their relationship with the business** McLean, vice president of Solar, and Uriarte, the Latin American regional manager of Solar, were indicted in the CEI prosecution and charged with conspiracy and aiding and abetting. The court held that to convict an employee under the FCPA for acts committed for the benefit of his employer, the government must first convict the employer. Because the government did not convict McLean's employer, Harvester, the FCPA barred McLean's prosecution. Uriarte pled guilty and was sentenced to one year, suspended with unsupervised probation.
3. **Other crimes charged** See above.

ISSUES DECIDED

- 1.** An employee may not be prosecuted under the FCPA for acts committed for his corporate employer's benefit where the employer has only been convicted for conspiracy to violate the FCPA, not for a substantive violation of the FCPA itself.

6. *U.S. v. Applied Process Products Overseas, Inc.* (D.D.C. 1983)⁶
U.S. v. Gary Bateman (D.D.C. 1983)

NATURE OF THE BUSINESS Representing U.S. companies in the sale of spare parts and other smaller compression related equipment to Petroleos Mexicanos ("Pemex"), the national oil company of Mexico, by Applied Process Products Overseas, Inc. ("Applied"), a Texas corporation and a domestic concern.

BUSINESS LOCATION Mexico

PAYMENT

1. **Amount of the value** \$342,000 (representing 30% of Applied's gross profit derived from Pemex contracts).
2. **Amount of business related to the payment** \$5 million in purchase orders from Pemex.
3. **Intermediary** None.
4. **The foreign official** The Administrative Secretary to the Chief of Purchasing at Pemex and other Pemex officials.

INFLUENCE TO BE OBTAINED To obtain and retain contracts from Pemex for compression related equipment and spare parts.

ENFORCEMENT

1. **Amount of the fine** Applied entered into a cooperation agreement, pled guilty to the single count under the FCPA, consented to a permanent injunction prohibiting future violations and was fined \$5,000.
2. **Individuals charged and their relationship with the business** Bateman, chairman of the board, president and sole stockholder of Applied, entered into a cooperation agreement, consented to a permanent injunction, pled guilty to the five count misdemeanor violations of the Currency and Foreign Transactions Reporting Act in connection with the bribery scheme. He was sentenced to probation for three years. In addition, he paid a civil penalty of \$229,512, civil tax payments of \$300,000, and civil reimbursement of costs related to his prosecution of \$5,000.
3. **Other crimes charged** See above.

7. *U.S. v. Sam P. Wallace Co. (D.P.R. 1983)*⁷
U.S. v. Alfonso A. Rodriguez (D.P.R. 1983)

NATURE OF THE BUSINESS Mechanical, electrical and civil construction by Sam P. Wallace Co. ("Wallace Co."), a Texas corporation and an issuer.

BUSINESS LOCATION Trinidad and Tobago

PAYMENT

1. **Amount of the value** Series of payments, totaling \$1.391 million.
2. **Amount of business related to the payment** Not stated.
3. **Intermediary** None.
4. **The foreign official** The Chairman of the Trinidad and Tobago Racing Authority (TTRA), an agency of the government of Trinidad and Tobago.

INFLUENCE TO BE OBTAINED To obtain and retain a contract from TTRA to construct the grandstand and receiving building of the Caroni Racetrack project in Trinidad.

ENFORCEMENT

1. **Amount of the fine** Wallace Co. pled guilty to three counts under the accounting sections of the FCPA and was fined \$30,000.
2. **Individuals charged and their relationship with the business** Rodriguez, president of Wallace Co., pled guilty to the single count of bribery of a foreign official under the FCPA and received a sentence of 3 years' probation and a \$10,000 fine.
3. **Other crimes charged** Wallace Co. pled guilty to one count under the Currency and Foreign Transactions Reporting Act and was fined \$500,000. The SEC also brought actions against Wallace Co. and Rodriguez (see Section D, case No. 5, *infra*).

8. *U.S. v. Harry G. Carpenter and W. S. Kirkpatrick, Inc.* (D.N.J. 1985)⁸
U.S. v. Carpenter (D.N.J. 1985)

Environmental Tectonics Corp., Int'l v. W. S. Kirkpatrick & Co., Inc.,
659 F. Supp. 1381 (D.N.J. 1987), *aff'd in part & rev'd in part*, 847
F.2d 1052 (3d Cir. 1988), *aff'd*, 493 U.S. 400 (1990)⁹

NATURE OF THE BUSINESS Sale of Aero medical equipment consisting of ejection-seat trainers, disorientation simulators and other devices to the Nigerian government by W.S. Kirkpatrick, Inc. ("Kirkpatrick"), a New Jersey corporation and a domestic concern.

BUSINESS LOCATION Nigeria

PAYMENT

1. **Amount of the value** \$1.7 million, 20% of the contract value.
2. **Amount of business related to the payment** \$10.8 million contract.
3. **Intermediary** Kirkpatrick's local agent in Nigeria, an entrepreneur, who negotiated with various Nigerian officials and set up and controlled two Panamanian bearer share corporations, Deriks and Los, to receive the bribe payments from Kirkpatrick.
4. **The foreign official** Various Nigerian political and military officials in the Air Force, the National Party, the Medical Group, the Defense Minister and other key defense personnel.

INFLUENCE TO BE OBTAINED To obtain a \$10.8 million contract from the Nigerian government to furnish equipment for an Aero Medical Center in Kaduna Air Force Base in Nigeria.

ENFORCEMENT

1. **Amount of the fine** Kirkpatrick pled guilty to the single count and was fined \$75,000, to be paid over a five-year period.
2. **Individuals charged and their relationship with the business** Carpenter, former chairman of the board and chief executive officer of Kirkpatrick, pled guilty to the single count of bribery of a foreign official under the FCPA. He received a suspended sentence, was placed on probation for 3 years, was required to do community service work and was fined \$10,000.
3. **Other crimes charged** None.

9. *U.S. v. Silicon Contractors, Inc. (E.D. La. 1985)*¹⁰

NATURE OF THE BUSINESS Manufacture, sale and installation of radiation and fire-stop penetration seals for use in nuclear power plants by Silicon Contractors, Inc. ("Silicon"), a Texas corporation and a domestic concern.

BUSINESS LOCATION Mexico

PAYMENT

1. **Amount of the value** \$132,000.
2. **Amount of business related to the payment** Not stated.
3. **Intermediary** None.
4. **The foreign official** Mexican officials at the Comision Federal de Electricidad, a Mexican government agency.

INFLUENCE TO BE OBTAINED The award of a certain contract to manufacture and install radiation and fire-stop penetration seals for a nuclear power plant in Laguna Verde, Mexico.

ENFORCEMENT

1. **Amount of the fine** Silicon pled guilty to a single count FCPA violation, agreed to the entry of a permanent injunction prohibiting future violations of the FCPA and was fined \$150,000.
2. **Individuals charged and their relationship with the business** Hughes, Richardson and Noble, officers of Silicon. Sherman, a resident of England, and Diversified Group, Inc. (which acquired the stock ownership of Silicon) were also named in a civil injunctive action and agreed to the entry of permanent injunctions prohibiting future violations of the FCPA.
3. **Other crimes charged** None.

10. *U.S. v. Napco Int'l, Inc. and Venturian Corp.* (D. Minn. 1989)¹¹
U.S. v. Liebo (D. Minn. 1989)
U.S. v. Liebo, 923 F.2d 1308 (8th Cir. 1991)
See Also Civil Litigation Digest number 2

NATURE OF THE BUSINESS Sale of military equipment and supplies by Venturian Corp. ("Venturian"), a Minnesota corporation, and an issuer, and by its wholly owned subsidiary, Napco Int'l, Inc. ("Napco"), a Minnesota corporation and a domestic concern.

BUSINESS LOCATION Republic of Niger

PAYMENT

1. **Amount of the value** \$130,813.83, equaling 10% of the net revenues on contracts.
2. **Amount of business related to the payment** \$3.2 million in contracts.
3. **Intermediary** Two relatives of the Chief of Supply for the Niger Air Force, falsely posing as agents of Napco in Niger, were used to conceal the bribes.
4. **The foreign official** Two officials of the Niger government, the First Counselor of the Embassy in Washington, D.C. and the Chief of Supply for the Niger Air Force.

INFLUENCE TO BE OBTAINED To obtain certain Foreign Military Service contracts for spare parts and maintenance for C-130 military aircraft from the Niger Ministry of Defense.

ENFORCEMENT

1. **Amount of the fine** The companies pled guilty to a three count information, including one count charging bribery of a foreign official, and were fined \$785,000 in the aggregate. In addition, the companies paid the U.S. \$140,000 for settlement of civil liability and \$75,000 for settlement of civil tax liabilities.
2. **Individuals charged and their relationship with the business** In a related case, Liebo, vice president of the Aerospace Division of Napco, was convicted of an FCPA bribery violation and of false statements and sentenced to eighteen months' incarceration, suspended with three years' probation, which included sixty days of home confinement and 600 hours of community service.
3. **Other crimes charged** Multi-object conspiracy to defraud the U.S. and preparation of a false tax return.

ISSUES DECIDED

- 1.** A payment, gift or gratuity is given "corruptly" under the FCPA where it is intended to induce the recipient to misuse his official position in order to influence official action.
- 2.** A jury may find that an employee did not act "corruptly" in giving a gift to a foreign official if the evidence shows that the employee acted at his supervisor's direction.

11. U.S. v. Goodyear Int'l Corp. (D.D.C. 1989)¹²

NATURE OF THE BUSINESS Marketing of car and truck tires to the Iraqi government by Goodyear Int'l Corp. ("Goodyear"), a Delaware corporation and a domestic concern.

BUSINESS LOCATION Iraq

PAYMENT

1. **Amount of the value** \$981,124, a 7 % payment on sale of tires.
2. **Amount of business related to the payment** \$10 million in business.
3. **Intermediary** Use of a Greek company and Goodyear's advertising manager for Greece to prepare bogus advertising and marketing studies to conceal payments of cash to representatives of Iraqi foreign officials in Switzerland.
4. **The foreign official** An official of the Iraqi Trading Company, an Iraqi state-owned trading organization, through which the Iraqi government purchased virtually all of the tires for sale in Iraq.

INFLUENCE TO BE OBTAINED To influence the Iraqi government to buy Goodyear's car and truck tires.

ENFORCEMENT

1. **Amount of the fine** Goodyear pled guilty to the single count of violating the FCPA bribery section and was fined \$250,000.
2. **Individuals charged and their relationship with the business** None.
3. **Other crimes charged** None.

12. *U.S. v. Joaquin Pou, Alfredo G. Duran and Jose Guarsch* (S.D. Fla. 1989)¹³

NATURE OF BUSINESS Florida company, a domestic concern, engaged in business of recovering seized aircraft.

BUSINESS LOCATION Dominican Republic.

PAYMENT

1. **Amount of the value** \$20,000-\$30,000.
2. **Intermediary** Alfredo Duran, Miami lawyer, General Joaquin Pou (Dominican Republic Army, ret'd) and his Miami agent, Jose Guasch.
3. **The foreign official** Dominican Republic officials.

INFLUENCE TO BE OBTAINED Release of airplane confiscated for use in drug trafficking.

ENFORCEMENT Following this sting operation, Robert Gurin, president and sole shareholder of the company plead guilty to one count of conspiracy to violate the FCPA. Duran and Pou were each indicted on one count of conspiracy to violate the FCPA. Pou breached his bail conditions and returned to the Dominican Republic. In the trial of Duran (a former Chairman of the Florida Democratic Party), the court excluded evidence relating to his original codefendant, Pou, and after presentation of the prosecution's case, Duran was acquitted for lack of evidence.

13. *U.S. v. Young & Rubicam, Inc.* (D. Conn. 1990)¹⁴
U.S. v. Young & Rubicam, Inc., 741 F. Supp. 334 (D. Conn. 1990)

Abrahams v. Young & Rubicam, Inc., 793 F. Supp. 404 (D. Conn. 1994),
aff'd in part and rev'd in part, 79 F.3d 234 (2d Cir. 1996)

NATURE OF THE BUSINESS Advertising and marketing by Young & Rubicam, Inc. ("Y&R"), a New York corporation and a domestic concern.

BUSINESS LOCATION Jamaica

PAYMENT

1. **Amount of the value** of the 15 % commission Y&R received for the advertising budget of the Jamaica Tourist Board (about \$180,000 per year).
2. **Amount of business related to the payment** \$3.75 million.
3. **Intermediary** A company, Ad Ventures, was set up on Grand Cayman Island by the advisor to the Jamaica Tourist Board and an associate to hide the kickback scheme.
4. **The foreign official** An advisor to the Jamaica Tourist Board and the Jamaican Minister of Tourism.

INFLUENCE TO BE OBTAINED To obtain an advertising account with the Jamaica Tourist Board.

ENFORCEMENT

1. **Amount of the fine** Y&R pled guilty to a one count information charging conspiracy to bribe a foreign official and was fined \$500,000.
2. **Individuals charged and their relationship with the business** FCPA and RICO charges against all individuals were dismissed.
3. **Other crimes charged** RICO violations and perjury. The various activities and payments made by Y&R and the others in the conspiracy constituted a total of thirty-three alleged racketeering acts.

ISSUES DECIDED

1. A company is liable for an FCPA violation even where the bribe money is never actually paid to the foreign official as intended, but is instead kept by the intermediaries.

2. Although a violation of the antibribery provisions of the FCPA is not a predicate act under RICO, 18 U.S.C. § 1961 *et seq.*, a violation of the bribery provisions of the FCPA can be used to allege a violation of the Travel Act, 18 U.S.C. § 1952, which is a predicate act under RICO.
3. Even a single bribe of a foreign official can satisfy the RICO requirement of a "pattern of racketeering activity" where the defendant commits a number of acts (*e.g.*, travel, use of mails, installment payments) in furtherance of the FCPA violation.
4. To have standing to bring a private cause of action under RICO, a plaintiff must have been a target of defendant's FCPA violation. Targets include the foreign government whose officials were bribed and commercial rivals directly injured by the bribery.

14. *U.S. v. Morton* (N.D. Tex. 1990)¹⁵
U.S. v. Blondek, et al. (N.D. Tex. 1990)
U.S. v. Eagle Bus. Mfg. Co. (S.D. Tex. 1991)
U.S. v. Castle, et al., 741 F. Supp. 116 (N.D. Tex. 1990),
aff'd, 925 F.2d 831 (5th Cir. 1991)

NATURE OF THE BUSINESS Manufacture and sale of buses by Eagle Bus. Mfg. Co. ("Eagle"), a subsidiary of Greyhound Lines Inc., a Texas corporation and an issuer.

BUSINESS LOCATION Canada

PAYMENT

1. **Amount of the value** Canadian \$50,000, equal to 2% of price of 11 buses.
2. **Amount of business related to the payment** Valued at U.S. \$2.77 million.
3. **Intermediary** Morton, the Canadian agent of Eagle, used a Canadian corporation (owned and controlled by Morton) to help conceal the bribe.
4. **The foreign official** Castle, the president and Lowry, the vice president of the Saskatchewan Transp. Co., a Canadian Crown corporation.

INFLUENCE TO BE OBTAINED To ensure that Eagle's bid to sell 11 buses to the STC was accepted.

ENFORCEMENT

1. **Amount of the fine** In a civil action, Eagle consented to entry of a permanent injunction prohibiting future violations of the FCPA.
2. **Individuals charged and their relationship with the business** Morton, a Canadian national and the Canadian agent of Eagle, pled guilty to the single count of conspiracy to violate the FCPA and was sentenced to three years' probation. In a related case, Blondek and Tull, president and vice president of Eagle, respectively, and Castle and Lowry, the Canadian foreign officials, were charged with a single count of conspiracy to violate the FCPA. The court dismissed the count as to Castle and Lowry on the basis that foreign officials may not be prosecuted for conspiring to violate the FCPA. Blondek and Tull were later acquitted at trial.
3. **Other crimes charged** See above.

ISSUES DECIDED

1. Since the FCPA excludes from prosecution foreign officials who receive bribes, these officials may not be prosecuted under the general conspiracy statute, 18 U.S.C. § 371, for conspiring to violate the FCPA.

15. *U.S. v. F. G. Mason Eng'g, Inc. and Francis G. Mason (D. Conn. 1990)*¹⁶

NATURE OF THE BUSINESS Manufacture, sale, distribution and servicing of technical security countermeasure equipment ("TSCM"), i.e., "antibugging" devices by F.G. Mason Eng'g, Inc. ("MEI"), a Connecticut corporation and a domestic concern.

BUSINESS LOCATION Federal Republic of Germany

PAYMENT

1. **Amount of the value** 13.3% commission, an aggregate of \$225,688.
2. **Amount of business related to the payment** Not stated.
3. **Intermediary** None.
4. **The foreign official** An official responsible for selection, procurement and testing of TSCM equipment for the then West German Military Intelligence Service ("MAD"), an agency of the West German government.

INFLUENCE TO BE OBTAINED To be selected by MAD to develop, produce and sell a new TSCM device, known as the MICRO-G, that was designed to meet the requirements of MAD and other agencies of the West German government.

ENFORCEMENT

1. **Amount of the fine** MEI pled guilty to a single count of conspiracy to violate the FCPA, agreed to cooperate, was fined \$75,000 (jointly with its president, Mason) and agreed to pay restitution of \$160,000 to the then West German government.
2. **Individuals charged and their relationship with the business** Mason, president and sole stockholder of MEI, pled guilty to a single count of conspiracy to violate the FCPA, agreed to cooperate, was sentenced to five years' probation and fined \$75,000 jointly with MEI.
3. **Other crimes charged** See above.

16. *U.S. v. Harris Corp.* (N.D. Cal. 1990)¹⁷

NATURE OF THE BUSINESS Manufacture of telephone switching systems by Harris Corp. ("Harris"), a Delaware corporation and an issuer, through its Digital Telephone Systems ("DTS") division.

BUSINESS LOCATION Colombia

PAYMENT

1. **Amount of the value** \$22,845.
2. **Amount of business related to the payment** Not stated.
3. **Intermediary** A consultant, doing business as Polo, a Delaware corporation engaged in advising telecommunications companies of ways to obtain business in Latin American countries and a local Colombian company owned in part by a foreign official.
4. **The foreign official** A member of the Cámara de Representativos, the national legislature of Colombia, who had some influence in the award of government telecommunications contracts.

INFLUENCE TO BE OBTAINED To obtain telecommunications contracts from the Empresa Nacional de Telecomunicaciones, an instrumentality of the Colombian government.

ENFORCEMENT

1. **Amount of the fine** After hearing the government's evidence, the trial judge granted a motion for judgment of acquittal.
2. **Individuals charged and their relationship with the business** Iacobucci, vice-president of DTS, and Schultz, director of Human Relations at DTS.
3. **Other crimes charged** Conspiracy, making false books and records and aiding and abetting.

17. *U.S. v. Steindler, et al.* (S.D. Ohio 1994)¹⁸

NATURE OF THE BUSINESS Manufacture and sale of aircraft engines and related products and services by General Electric Co. ("GE"), a corporation and an issuer.

BUSINESS LOCATION Israel

PAYMENT

1. **Amount of the value** \$7.875 million.
2. **Amount of business related to the payment** Contracts exceeding \$300 million.
3. **Intermediary** Katz, an Israeli attorney, set up an elaborate scheme of transferring funds into cash and smuggling them across the Swiss-German border to deposit them in Swiss bank accounts.
4. **The foreign official** Dotan, an Israeli Air Force ("IAF") officer, who oversaw the purchase and maintenance of the IAF's aircraft engines.

INFLUENCE TO BE OBTAINED To obtain business with the Israeli government for aircraft engines and related services.

ENFORCEMENT

1. **Amount of the fine** See below.
2. **Individuals charged and their relationship with the business** In an eighty-nine count indictment, the grand jury charged Steindler, the international sales manager of GE, with six counts of violating the FCPA bribery section. Steindler and Dotan, an Israeli citizen, were charged with one count of violating the books and records sections of the FCPA. One count alleged that Steindler, Dotan and Katz, an Israeli and U.S. citizen, conspired to divert U.S. funds from contracts with the Israeli Air Force to their personal accounts. Sixteen counts addressed mail fraud, six alleged wire fraud, and fifty-seven counts charged the three individuals with money laundering. Steindler pled guilty to three counts of conspiracy, wire fraud and money laundering and was sentenced to eighty-four months' incarceration and a forfeiture of \$1,741,453. Dotan and Katz remain fugitives.
3. **Other crimes charged** See above.

18. *U.S. v. Vitusa Corp. (D.N.J. 1994)*¹⁹
U.S. v. Herzberg (D.N.J. 1993)

NATURE OF THE BUSINESS Sale of milk powder to the government of the Dominican Republic by Vitusa Corp. ("Vitusa"), a New Jersey corporation and a domestic concern.

BUSINESS LOCATION The Dominican Republic

PAYMENT

1. **Amount of the value** \$20,000.
2. **Amount of business related to the payment** Collecting a debt of \$163,000.
3. **Intermediary** Vitusa's agent, Horizontes Dominicanos, a broker located in the Dominican Republic, owned and operated by Mancebo, a resident of the Dominican Republic.
4. **The foreign official** An unnamed senior official of the government of the Dominican Republic, with power to authorize the government to release the balance due to Vitusa.

INFLUENCE TO BE OBTAINED To obtain an outstanding balance due to Vitusa on an earlier contract to sell milk powder to the government of the Dominican Republic.

ENFORCEMENT

1. **Amount of the fine** Vitusa pled guilty to a single count violation of the FCPA, agreed to cooperate and was fined \$20,000.
2. **Individuals charged and their relationship with the business** Herzberg, president, chief executive officer and sole stockholder of Vitusa, pled guilty to the single count of violating the FCPA, was sentenced to 2 years' unsupervised probation and was fined \$5,000.
3. **Other crimes charged** None.

19. *U.S. v. Lockheed Corp.* (N.D. Ga. 1994)²⁰
U.S. v. Love (N.D. Ga. 1994)
U.S. v. Nassar (N.D. Ga. 1994)

NATURE OF THE BUSINESS Manufacture of aircraft and associated components (primarily for sale to the U.S. Department of Defense and to foreign governments) by Lockheed Corp. ("Lockheed"), a Delaware corporation and an issuer.

BUSINESS LOCATION Egypt

PAYMENT

1. **Amount of the value** \$600,000 for each C-130 aircraft sold to Egypt, a total of \$1 million was transferred.
2. **Amount of business related to the payment** A \$79 million contract for three aircraft.
3. **Intermediary** The foreign official's husband facilitated the bribe payment.
4. **The foreign official** Lockheed's consultant in Egypt between 1980 and 1990 (responsible for the development of markets and sales prospects for Lockheed), who then became a member of the Egyptian Parliament from 1987 through 1990 and used her influence with the Egyptian Ministry of Defense to direct business to Lockheed.

INFLUENCE TO BE OBTAINED To obtain a contract for the sale of three C-130 Hercules aircraft to Egypt in 1989.

ENFORCEMENT

1. **Amount of the fine** Lockheed pled guilty to conspiracy to violate the FCPA bribery section, agreed to cooperate and paid a \$21.8 million fine and a \$3 million civil settlement. The \$24.8 million total penalty was calculated under the alternative fine provisions, based on twice the gain to the defendant.
2. **Individuals charged and their relationship with the business** Nassar, a regional vice president (for Lockheed International), and Love, a sales director (for Lockheed Aeronautical). In a related case, Love pled guilty to a single count and was fined \$20,000. Nassar pled guilty to two counts and was sentenced to one and a half years in prison.
3. **Other crimes charged** Conspiracy to defraud the U.S. government's foreign military funds programs. The final count charged Love, the sales director, with perjury.

20. *U.S. v. Saybolt North America Inc. (D. Mass. 1998)*²¹
U.S. v. Saybolt Inc. (D. Mass. 1998)
*U.S. v. David H. Mead (D.N.J. 1998)*²²
U.S. v. Frerik Pluimers (D.N.J. 1998)

NATURE OF THE BUSINESS Provision of executive management, financial management and administrative services to Saybolt-related companies in the western hemisphere, which perform quantitative and qualitative bulk commodities testing, by Saybolt, Inc., Saybolt Western Hemisphere, Saybolt North America Inc., and Saybolt de Panama, S.A., each domestic concerns.

BUSINESS LOCATION Panama

PAYMENT

1. **Amount of the value** \$50,000 from funds controlled by Saybolt International (The Netherlands) to fund the payment to an intermediary of Republic of Panama Government officials.
2. **Amount of business related to the payment** Not stated in Indictment.
3. **Intermediary** Person acting as an intermediary for senior officials of the Government of the Republic of Panama.
4. **The foreign official** Officials of the Government of the Republic of Panama.

INFLUENCE TO BE OBTAINED To obtain the following: (i) contracts for Saybolt de Panama and its affiliates to perform import control and inventory inspections for the Government of the Republic of Panama's Ministry of Hydrocarbons and the Ministry of Commerce and Industries; (ii) expedited tax benefits for Saybolt de Panama and its affiliates from the Government of the Republic of Panama, including exemptions from import taxes oil materials and equipment and reductions in annual profit taxes; (iii) a secure and commercially attractive operating location for an inspection facility in Panama; and (iv) a lock-out of Saybolt's competitors by retaining possession and control of Saybolt de Panama's existing location in Panama.

ENFORCEMENT

1. **Amount of the fine** For its data falsification violations, Saybolt Inc. was given a five year probation term and ordered to pay a \$3,400,000 fine and an \$800 special assessment. For their FCPA violations, Saybolt Inc. and Saybolt North America Inc. each were given a five year probation term, held jointly and severally liable for a \$1,500,000 fine, and ordered to pay an \$800 special assessment. Saybolt Inc. must also establish and maintain an effective compliance program regarding the operation of its qualitative inspection and testing services, subject to the Environmental Protection Agency's review and approval. Saybolt Inc. has also entered into a cooperation agreement with the Department of Justice, promising its full cooperation in the investigation and prosecution of individuals responsible for its criminal conduct. Furthermore, Saybolt must advertise in petroleum

industry trade publications the terms of its guilty plea to data falsification charges. David H. Mead was convicted and sentenced to four months of confinement, four months, home detention, three years, supervised probation and a \$20,000 fine.

2. Individuals charged and their relationship with the business

David H. Mead, a resident alien of the United States, was a president (Saybolt, Inc.), a chief executive officer (Saybolt Inc. and Saybolt Western Hemisphere), chief executive (Saybolt North America Inc.) and an executive vice-president (Saybolt North America Inc.). Frerik Pluimers, a national and resident of The Netherlands, was a chairman of the board of directors (Saybolt Inc. and Saybolt North America Inc.), a president (Saybolt North America Inc. and Saybolt International), and a chief executive officer (Saybolt International).

- 3. Other crimes charged** Saybolt Inc. was also charged with conspiracy to falsify Clean Air Act reports and falsify test results, conspiracy to violate the FCPA, and wire fraud. In addition to violating the FCPA, Saybolt North America Inc. was charged with conspiracy to violate the FCPA. Mr. Mead and Mr. Pluimers were charged with conspiracy to violate the FCPA, use of facility in foreign commerce in aid of racketeering, and aiding and abetting.

RELATED CASE *Stichting Ter Behartiging Van De Belangen Van Oudaandeelhouders In Het Kapitaal Van Saybolt International B.V. (Foundation of the Former Shareholders of Saybolt International B.V.) v. Philippe S.E. Schreiber and Walter, Conston, Alexander & Green P.C.* (S.D.N.Y. 2001) (99 Civ. 11441, Memorandum Order, Filed June 13, 2001).

At Issue Claim is that Defendant advised Saybolt that the payment to Panamanian officials would be illegal if made by an American company, but the payment by a foreign affiliate may be legal. Defendant failed to advise Saybolt that any involvement by its officers in arranging the payment by the affiliate could result in criminal liability. Plaintiff suing for legal malpractice.

Outcome Court finds that Saybolt did not rely on Defendant's advice, since doing so would negate *mens rea* requirement for FCPA violation. However, FCPA criminal violations against Saybolt and its CEO showed that they knew at the time of bribe that it was illegal and corrupt. In addition, Court determines that since this issue was raised during CEO's FCPA case, collateral estoppel precludes re-examination of Defendants' liability.

21. U.S. v. Herbert Tannebaum (S.D.N.Y. 1998)²³

NATURE OF THE BUSINESS Garbage incinerator manufacturer, Tanner Management Corporation ("Tanner").

BUSINESS LOCATION Argentina

PAYMENT

1. **Amount of the value** \$16,000 paid to an undercover agent posing as an Argentinian Government official.
2. **Amount of business related to the payment** Not stated in Information.
3. **Intermediary** Incorporation of a fictitious entity, Cybernet USA, to disguise the secret payment to the agent of the Government of Argentina.
4. **The foreign official** An undercover agent posing as a procurement officer of the Government of Argentina.

INFLUENCE TO BE OBTAINED To obtain a contract for sale of a garbage incinerator to the Government of Argentina.

ENFORCEMENT

1. **Amount of the fine** Herbert Tannebaum pled guilty to conspiring to violate the FCPA and was sentenced to confinement for a year and a day and a fine of \$15,000.
2. **Individuals charged and their relationship with the business** Herbert Tannebaum, president of the Tanner Management Corporation.
3. **Other crimes charged** None.

22. *U.S. v. Control Systems Specialist, Inc.* (S.D. Ohio 1998)²⁴
U.S. v. Darrold Richard Crites (S.D. Ohio 1998)

NATURE OF THE BUSINESS Purchase, repair and resale of surplus military equipment by Control Systems Specialist, Inc., an Ohio corporation and domestic concern.

BUSINESS LOCATION Brazil

PAYMENT

1. **Amount of the value** \$257,139, disguised as consultant fees, paid to a Brazilian Air Force Lieutenant Colonel ("BAF/Lt. Col. Z") for each bid accepted by BAF/Lt. Col Z on behalf of the Brazilian Aeronautical Commission ("BAC").
2. **Amount of business related to the payment** At least forty-four purchases of surplus U.S. military equipment for repair and resale to the BAC.
3. **Intermediary** None.
4. **The foreign official** BAF/Lt. Col. Z, who was authorized to make purchases of military equipment on behalf of the BAC.

INFLUENCE TO BE OBTAINED To obtain a contract for Control Systems Specialist, Inc. to sell surplus U.S. military equipment, including two gas turbine power units, to the BAC.

ENFORCEMENT

1. **Amount of the fine** Darrold Richard Crites pled guilty to a three count information charging a conspiracy to violate the FCPA, violation of the FCPA, and bribery of a U.S. public official. Pursuant to the plea agreement, Mr. Crites must pay a special assessment of \$50.00 for the conspiracy and FCPA violation counts and \$100.00 for the bribery of a U.S. public official count. Mr. Crites also agreed to make complete restitution for all damage that resulted from his violations. The plea agreement did not specify the length of a prison term and he was sentenced to three years probation and 150 hours of community service. Mr. Crites also entered into a cooperation agreement with the Department of Justice.
2. **Individuals charged and their relationship with the business** Darrold Richard Crites, president of Control Systems Specialist, Inc.
3. **Other crimes charged** Conspiracy to violate the FCPA and bribery of a U.S. public official.

23. *U.S. v. International Material Solutions Corporation and Thomas K. Qualey*
(S.D. Ohio 1999)²⁵

NATURE OF THE BUSINESS Sale of ten fork lift trucks.

BUSINESS LOCATION Brazil

PAYMENT

1. **Amount of value** \$67,563.00.
2. **Amount of business related to the payment** \$392,250.00.
3. **Intermediary** None.
4. **The foreign official** Lt. Col. in the Brazilian Air Force.

INFLUENCE TO BE OBTAINED Approval of a bid to sell ten fork lift trucks

ENFORCEMENT

1. **Amount of fine as to Corporate Defendant** \$500 and 1-year probation.
2. **Amount of fine as to Individual Defendant** \$2,500, 3-years probation, 4-months home confinement with work release.
3. **Individuals charged and their relationship with the business** Thomas K. Qualey, President of the Company.
4. **Other crimes charged** Conspiracy to violate the FCPA.

24. *U.S. v. Cantor* (S.D.N.Y. 2001)²⁶
U.S. v. Weissman (S.D.N.Y. 2001)²⁷

NATURE OF BUSINESS ABNH is a Delaware corporation engaged in the origination, production, and marketing of mass-produced secure holograms.

BUSINESS LOCATION Saudi Arabia

PAYMENT

1. **Amount of the value** \$239,000.
2. **Amount of business related to the payment** Approx. \$597,500 (bribe was 40% of the contract's value).
3. **Intermediary** Foreign agent of ABNH.
4. **The foreign official** Saudi Arabian government officials.

INFLUENCE TO BE OBTAINED Awarding of contract to produce holograms for foreign government by depositing \$239,000 into a Swiss bank account.

ENFORCEMENT Morris Weissman, former chairman of the board and CEO of ABNH and former chairman, CEO and director of ABN indicted on two counts of violating the FCPA. Joshua Cantor, former executive vice president and general manager of ABNH and later its president and a director, pleaded guilty to one count of violating the FCPA.

RELATED CASES *SEC v. Weissman, Cantor, Gorman and Gentile*, *SEC v. American Bank Note Holographics, Inc.*; *In the Matter of American Bank Note Holographics, Inc.* (See SEC Digest Number 10)

25. U.S. v. Daniel Ray Rothrock (W.D. Tex. 2001)²⁸

NATURE OF BUSINESS Sale of approximately 20 workover oil rigs to RVO Zarubezhneftstroy (“Nestro”), a Russian government owned purchasing agency, by The Cooper Division of Allied Products Corporation (“Allied”). Allied is a Delaware corporation based in Chicago, Illinois, and a US issuer.

BUSINESS LOCATION Russia

PAYMENT

1. **Amount of the value** \$300,000.00
2. **Amount of business related to the payment** \$5.5 million, plus other unstated amounts.
3. **Intermediary** Trading & Business Services, Ltd.
4. **The foreign official** Haitian customs and tax officials.

INFLUENCE TO BE OBTAINED Sales contracts of workover oil rigs.

ENFORCEMENT Daniel Ray Rothrock, vice president of Allied’s Cooper Division with responsibility for international sales, was charged with one count of causing the issuer, Allied, to keep false books and records and so violating the FCPA. Rothrock was sentenced to 1 year unsupervised probation and \$100 special assessment.

26. *U.S. v. Richard K. Halford* (W.D. Mo. 2001)²⁹
U.S. v. Albert Franklin Reitz (W.D. Mo. 2001)³⁰
U.S. v. Robert Richard King (W.D. Mo. 2001)³¹
U.S. v. Pablo Barquero Hernandez (W.D. Mo. 2001)

NATURE OF BUSINESS Development of port facilities, international airport, resort, marina, residential estates, quarry, salvage operation and dry canal in Costa Rica by OSI Proyectos, the Costa Rican subsidiary of Owl Securities and Investment Ltd (“OSI Ltd.”). OSI Ltd has its principal place of business in Kansas City, Missouri and is a domestic concern.

BUSINESS LOCATION Costa Rica

PAYMENT

1. **Amount of the value** conspirators agreed to pay an unspecified total amount, but including one payment of \$1,500,000.00
2. **Amount of business related to the payment** not stated.
3. **Intermediary** OSI’s Costa Rican agent
4. **The foreign official** Costa Rican politicians, party officials and candidates for political office.

INFLUENCE TO BE OBTAINED Land concession to construct, develop and operate the multi-use facility described above and to obtain favorable changes to Costa Rican law and regulations.

ENFORCEMENT

1. **Amount of fine**
2. **Individuals charged and their relationship with the business**

Richard K. Halford was a stockholder and Chief Financial Officer of OSI Ltd and as such was both a domestic concern and acting on behalf of a domestic concern. Halford pleaded guilty to one count of conspiracy to violate the FCPA.

Albert Franklin Reitz was the vice president and secretary, employee and stockholder of OSI Ltd., responsible for the solicitation of investors. As such, Reitz was a domestic concern and acting on behalf of a domestic concern. Reitz also pleaded guilty to one count of conspiracy to violate the FCPA. King and Hernandez, a Costa Rican citizen, were also employed by OSI Ltd.

Robert Richard King was a stockholder and officer of OSI Ltd, and as such was both a domestic concern and acting on behalf of a domestic concern. Pablo Barquero Hernandez is a Costa Rican national employed by OSI Ltd. and in that capacity was an agent of a domestic concern. Both were indicted on seven counts of FCPA violations. The indictment alleges that King was responsible for soliciting investors in the United States for the Costa Rican project. The indictment further alleges that Hernandez was the Costa Rican intermediary for the bribe payments. Hernandez has not appeared in this action and there is a warrant for his arrest. King has brought a motion to dismiss the indictment which is pending as of January 2002.

3. **Other crimes charged** Halford pleaded guilty to three counts of willful tax evasion. Reitz pleaded guilty to one count of mail fraud and using a fictitious name and address as part of his conduct of making false and fraudulent representations and omissions of fact to solicit investors in OSI Ltd., knowing that a prior cease-and-desist order prohibited the offer and sale of OSI Ltd securities in Missouri; one count of making false and fraudulent statements to an investigating agent of the United States government; and one count of making fraudulent and false statements on a federal tax return. King and Hernandez were also indicted on two counts of racketeering and one count of conspiracy to defraud the United States.

27. *U.S. v. David Kay* (S.D. Tex. 2001)³²

NATURE OF BUSINESS American Rice, Inc. ("ARI") has a Haitian subsidiary, Rice Corporation of Haiti ("RCH"), engaged in the import of rice to Haiti. ARI is a Texas corporation and a US issuer.

BUSINESS LOCATION Haiti

PAYMENT

1. **Amount of the value** not stated.
2. **Amount of business related to the payment** not stated.
3. **Intermediary** none.
4. **The foreign official** Haitian customs and tax officials.

INFLUENCE TO BE OBTAINED false shipping documents reducing amount of customs duties and sales taxes due to Haitian authorities.

ENFORCEMENT David Kay was a vice president of ARI with responsibility for supervising sales and marketing in Haiti. Kay has been charged with twelve counts of violating the FCPA.

C. FOREIGN BRIBERY CIVIL ACTIONS INSTITUTED BY THE DEPARTMENT OF JUSTICE UNDER THE FCPA

1. *U.S. v. Carver, et al.* (S.D. Fla. 1979)³³

NATURE OF THE BUSINESS Oil drilling in Qatar by Holcar Oil Corp. ("Holcar").

BUSINESS LOCATION Emirate of Qatar

PAYMENT

- 1. Amount of the value** \$1.5 million.
- 2. Amount of business related to the payment** Not stated.
- 3. Intermediary** None.
- 4. The foreign official** A Qatar government official, who was the Director of Petroleum Affairs and had authority to approve the concession agreement.

INFLUENCE TO BE OBTAINED An oil drilling concession agreement in Qatar.

ENFORCEMENT Carver and Holley, officers and shareholders of Holcar, consented to the entry of permanent injunctions prohibiting future violations of the FCPA.

2. *U.S. v. Dornier GmbH* (D. Minn. 1990)³⁴

NATURE OF THE BUSINESS Maintenance and supply of spare parts for military aircraft by Dornier GmbH, a domestic concern, as a Subcontractor for Napco (See also Criminal Digest Number 10, U.S. v. Napco)

BUSINESS LOCATION Republic of Niger

PAYMENT

1. **Amount of the value** \$175,000 (5% of funds received).
2. **Amount of business related to the payment** \$3,518,315.
3. **Intermediary** None.
4. **The foreign official** Chief of Supply for Niger Air Force.

INFLUENCE TO BE OBTAINED To secure a contract for spare parts and maintenance of military aircraft.

ENFORCEMENT Permanent injunction against future FCPA violations.

3. *U.S. v. American Totalisator Co. (D. Md. 1993)*³⁵

NATURE OF THE BUSINESS Manufacture and sale of totalisator systems by American Totalisator Co. ("ATC"), a Delaware corporation and a domestic concern.

BUSINESS LOCATION Greece

PAYMENT

1. **Amount of the value** Amount of payments not stated.
2. **Amount of business related to the payment** Not stated.
3. **Intermediary** ATC's Greek agent.
4. **The foreign official** Officials of The Horse Races Administration of Greece ("ODIE"), an instrumentality of the Greek government.

INFLUENCE TO BE OBTAINED To secure a contract for the sale of a totalisator system and spare parts to ODIE for the Phaleron racetrack in Athens.

ENFORCEMENT ATC consented to the entry of a permanent injunction prohibiting future violations of the FCPA.

4. *U.S. v. Metcalf & Eddy (D. Ma. 1999)*³⁶

NATURE OF THE BUSINESS Architectural and Engineering Services to a Municipal Sanitary and Drainage Organization.

BUSINESS LOCATION Egypt

PAYMENTS

1. **Amount of the value** Unspecified travel advances and accommodation upgrades for the organization's Chairman, his wife and two children for two trips to Europe and United States.
2. **Amount of business related to the payment** \$36 million.
3. **Intermediary** None.
4. **The foreign official** Chairman of the Sanitary and Drainage Organization.

INFLUENCE TO BE OBTAINED The Chairman's influence over subordinate officials involved in the technical review of bids and directly with the funding source (U.S. AID).

ENFORCEMENT Metcalf & Eddy consented to an injunction:

1. Implementing a specified compliance program.
2. Implementing financial and accounting controls.
3. Promptly investigate and report alleged FCPA violations in the future.
4. Include in future Joint Venture Agreement representation and undertaking by each partner as to FCPA matters.
5. For 5 years annual audits and compliance certificates as to FCPA matters.
6. Periodic reviews at least every 5 years of its FCPA policies and programs.
7. Cooperate with a further investigation.
8. Pay a fine of \$400,000 and cost of investigations of \$50,000.
9. Permanently enjoined from FCPA violations.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

1. *SEC v. Page Airways, Inc.* (D.D.C. 1978)³⁷

NATURE OF THE BUSINESS Sale and servicing of aircraft by Page Airways, Inc. ("Page"), a New York corporation and an issuer.

BUSINESS LOCATION The Republic of Gabon, Malaysia, Ivory Coast, Morocco, Saudi Arabia and Uganda.

PAYMENT

- 1. Amount of the value** In excess of \$2.5 million.
- 2. Amount of business related to the payment** \$60 million of goods and services (a sum amounting to nearly one-third of Page's total sales between 1971 and 1976).
- 3. Intermediary** Foreign entities owned by some of the Asian and African foreign officials.
- 4. The foreign official** Asian and African government officials, including the President of the Republic of Gabon, the Chief Minister of Sabah, Malaysia and the Ivory Coast Ambassador to the U.S.

INFLUENCE TO BE OBTAINED To sell Gulfstream II aircraft and other aircraft, products and services throughout the world.

ENFORCEMENT Page consented to the entry of a permanent injunction prohibiting future violations of the FCPA. Charges against six of Page's officers and/or directors were dismissed.

2. *SEC v. Katy Indus., Inc.* (N.D. 111. 1978)³⁸

NATURE OF THE BUSINESS Oil production by Katy Indus., Inc. ("Katy"), a [state] corporation and an issuer.

BUSINESS LOCATION Indonesia

PAYMENT

1. **Amount of the value** \$250,000, amounting to 13.33% of the annual net profit from the contract.
2. **Amount of business related to the payment** \$10 million contract.
3. **Intermediary** Payments were made through an offshore Cayman Island corporation, owned by a consultant of Katy and a representative of the foreign official (who was a close friend of the foreign official).
4. **The foreign official** A high-level Indonesian government official able to assist Katy in obtaining an oil production-sharing contract.

INFLUENCE TO BE OBTAINED To obtain a thirty-year oil production-sharing contract with Pertamina, Indonesia's oil and gas company, giving Katy the exclusive right to explore and develop oil and natural gas in Indonesia.

ENFORCEMENT Consent judgments were entered with respect to Katy and two individual defendants (who were directors of Katy). These judgments permanently enjoined the defendants from engaging in future violations of the FCPA. Katy was also ordered to amend its filings and establish a Special Review Committee of outside directors to report to the board of directors, who were to act on the request.

3. *SEC v. International Systems & Controls Corp. (D.D.C. 1979)*³⁹

NATURE OF THE BUSINESS Provision of services and products for the development of energy, agriculture, and forestry resources and the processing, storage, and handling of natural resource and agricultural products by International Systems & Controls Corp. ("ISC"), a Delaware corporation and an issuer.

BUSINESS LOCATION Saudi Arabia, Iran, Algeria, Ivory Coast, Nicaragua, Chile and other countries.

PAYMENT

1. **Amount of the value** In excess of \$23 million.
2. **Amount of business related to the payment** \$750 million in business.
3. **The intermediary payor** Payments were effected through ISC's subsidiaries and foreign entities owned as controlled by foreign officials.
4. **The foreign official** Senior foreign government officials (and associates of such officials) including a Saudi government official, Iranian government officials, a senior Algerian military official, the Iranian Ambassador to the U.S. and the Iranian Minister of Finance, the President of Nicaragua and members of the Chilean Junta.

INFLUENCE TO BE OBTAINED To secure certain contracts.

ENFORCEMENT ISC and two individual defendants (who were the officers of ISC) consented to the entry of permanent injunctions prohibiting future violations of the FCPA. Ancillary relief included the amendment of ISC's filings and appointment of an Audit Committee and a Special Agent.

4. *SEC v. Tesoro Petroleum Corp. (D.D.C. 1980)*⁴⁰

NATURE OF THE BUSINESS Exploration, development, production, purchase and sale of oil and gas by Tesoro Petroleum Corp. ("Tesoro"), a Delaware corporation and an issuer.

BUSINESS LOCATION Worldwide

PAYMENT

1. **Amount of the value** In excess of \$200,000.
2. **Amount of business related to the payment** Multimillion dollar contracts.
3. **The intermediary payor** A foreign finder/consultant, who assisted Tesoro in negotiating agreements with foreign governments.
4. **The foreign official** Foreign government officials or political leaders.

INFLUENCE TO BE OBTAINED Foreign oil and gas concessions from foreign governments.

ENFORCEMENT Tesoro consented to the entry of a permanent injunction prohibiting future violations of the FCPA. In addition, Tesoro agreed to appoint a new director who would be satisfactory to the SEC and undertook to keep accurate books and records.

5. *SEC v. Sam P. Wallace Co. (D.D.C. 1981)*⁴¹

NATURE OF THE BUSINESS Mechanical, electrical and civil construction by Sam P. Wallace Co. ("Wallace Co."), a Texas corporation and an issuer.

BUSINESS LOCATION Trinidad and Tobago

PAYMENT

1. **Amount of the value** Series of payments totaling \$1.391 million.
2. **Amount of business related to the payment** Not stated.
3. **The intermediary payor** None.
4. **The foreign official** The Chairman of the Trinidad and Tobago Racing Authority (TTRA), an agency of the government of Trinidad and Tobago.

INFLUENCE TO BE OBTAINED To obtain and retain a contract from TTRA to construct the grandstand and receiving building portion of the Caroni Racetrack project in Trinidad.

ENFORCEMENT Wallace Co. consented to the entry of a permanent injunction prohibiting future violations of the FCPA. In addition, Wallace Co. agreed to the establishment of an independent committee of the board of directors to conduct an internal investigation and report to the SEC.

6. *SEC v. Ashland Oil, Inc.* (D.D.C. 1986)⁴²
Howes v. Atkins, 668 F. Supp. 1021 (E.D. Ky. 1987)⁴³
Williams v. Hall, 683 F. Supp. 639 (E.D. Ky. 1988)⁴⁴

NATURE OF THE BUSINESS Refining, transporting and marketing crude oil products by Ashland Oil, Inc. ("Ashland Oil"), a Kentucky corporation and an issuer.

BUSINESS LOCATION Oman

PAYMENT

1. **Amount of the value** Purchase of a nearly worthless chromite mine owned by the foreign official for \$25 million.
2. **Amount of business related to the payment** Not stated.
3. **The intermediary payor**
4. **The foreign official** Equerry to the Sultan of Oman and an official of the Omani government.

INFLUENCE TO BE OBTAINED To obtain crude oil contracts with the Oman Refining Company, an instrumentality of the government of Oman.

ENFORCEMENT Ashland Oil and Atkins, chairman and chief executive officer of Ashland Oil, both consented to the entry of a permanent injunction that prohibited Ashland Oil from using corporate funds for unlawful political contributions or other similar unlawful purposes.

ISSUES DECIDED

1. An employee allegedly discharged by reason of reporting or refusing to participate in FCPA violations that (via the Travel Act) constitute predicate acts under RICO has standing to bring a civil RICO suit if the employee can show that the discharge was in furtherance of a conspiracy to violate RICO.
2. A company's FCPA violations can spawn shareholder suits seeking, among other things, reimbursement of the illegal payments.

7. *SEC v. Montedison, S.P.A. (D.D.C. 1996)*⁴⁵

NATURE OF THE BUSINESS Agro-industry, chemical, energy and engineering industries by Montedison, S.P.A. ("Montedison"), an Italian corporation and a U.S. issuer.

BUSINESS LOCATION Italy

PAYMENT

1. **Amount of the value** Approximately \$272 million.
2. **Amount of business related to the payment** Not stated.
3. **The intermediary payor** Off-shore subsidiary companies of Montedison in Curacao and the British Virgin Islands.
4. **Intermediary** A Rome real estate developer.
5. **The foreign official** Italian politicians.

INFLUENCE TO BE OBTAINED To secure political backing to either change the terms of a contract, or to overturn the decision of a judge.

ENFORCEMENT Montedison has been charged with committing financial fraud by falsifying documents to inflate artificially the company's financial statements. The SEC's complaint also charges Montedison with violating the corporate reporting, books and records, and internal control sections of the Securities Exchange Act of 1934. Following Cross motions for Summary Judgment by the parties in early 1998, final judgment was entered in favor of the SEC and against defendant Montedison in March 2001.

8. *SEC v. Triton Energy Corp. (D.D.C. 1997)*⁴⁶

NATURE OF THE BUSINESS Operation of an oil and gas recovery project in Indonesia by Triton Indonesia, Inc. ("Triton Indonesia"), a wholly owned subsidiary of Triton Energy Corp. ("Triton Energy"), a Delaware corporation and an issuer.

BUSINESS LOCATION Indonesia.

PAYMENT

1. **Amount of the value** \$287,500.
2. **Amount of business related to the payment** Not stated.
3. **Intermediary** Roland Siouffi, Triton Indonesia's business agent, acted as an intermediary between the company and Indonesian government agencies.
4. **The foreign official** Various officials of the Indonesian government, including government auditors and tax collectors.

INFLUENCE TO BE OBTAINED To, among other things, (i) obtain a favorable decision from tax auditors reducing Triton Indonesia's tax liability relating to technical service fees, (ii) obtain from auditors a favorable final report and cost certification for the 1988 and 1989 annual audits, (iii) obtain both a decision from the Indonesian government that Triton Indonesia was in a nontaxable position and for a refund of a previously paid corporate tax, (iv) obtain a refund on previous Value Added Tax payments, and (v) obtain a favorable decision to revise rates paid under a pipeline tariff and procure a refund of the purported overpayment.

ENFORCEMENT The SEC filed a civil injunction action against Triton Energy Corp. and Philip Keever and Robert McAdoo, two former senior officers of Triton Indonesia. The SEC sought to enjoin Triton Energy Corp., Keever and McAdoo from future violations and to recover monetary penalties. Triton Energy Corp. consented to an injunction against future violations and to pay a \$300,000 penalty. Keever consented to a similar injunction and to pay a \$50,000 penalty. In addition, four other former Triton Energy Corp. executives consented to a cease and desist order enjoining them from causing any further violations.

9. *SEC v. International Business Machines Corporation (D.D.C. 2000)*⁴⁷

NATURE OF THE BUSINESS IBM-Argentina, an indirectly wholly owned subsidiary of IBM entered into a systems integration contract with Banco de La Nacion Argentina, a government-owned commercial bank.

BUSINESS LOCATION Argentina

PAYMENT

1. **Amount of the value** at least \$4.5 million.
2. **Amount of business related to the payment** \$250 million.
3. **Intermediary** Capacitacion Y Computacion Rural, S.A., a subcontractor for an alternative banking software system.
4. **The foreign official** Several directors of Banco de La Nacion Argentina.

INFLUENCE TO BE OBTAINED Not stated.

ENFORCEMENT The SEC alleged violation by IBM of the FCPA accounting provisions because IBM consolidated its subsidiaries' financial results in its SEC reports. The SEC did NOT allege IBM itself had inadequate accounting controls or that people at IBM knew of or authorized the payments or made false entries in IBM's book or records. IBM consented to a cease and desist order as to the book and records provision and paid a civil fine of \$300,000. There are related proceedings in Argentina and Switzerland to recover the \$4.5 million payment.

10. *In the Matter of American Bank Note Holographics, Inc.*⁴⁸
*SEC v. Weissman, Cantor, Gorman and Gentile (S.D.N.Y. 2001)*⁴⁹
*SEC v. American Bank Note Holographics, Inc. ("ABNH") (S.D.N.Y. 2001)*⁵⁰

NATURE OF BUSINESS ABNH is a Delaware corporate and is engaged in the origination, production, and marketing of mass-produced secure holograms.

BUSINESS LOCATION Saudi Arabia

PAYMENT

1. **Amount of the value** \$239,000.
2. **Amount of business related to the payment** Approx. \$597,500 (bribe was 40% of the contract's value).
3. **Intermediary** Foreign agent of ABNH.
4. **The foreign official** Saudi Arabian government officials.

INFLUENCE TO BE OBTAINED Awarding of contract to produce holograms for foreign government by depositing \$239,000 into a Swiss bank account.

ENFORCEMENT ABNH consented to a \$75,000 civil penalty for violation of the anti-bribery provisions of the federal securities laws. ABNH consented to an order requiring it to cease and desist from committing or causing any violation, and any future violation, of the FCPA and other accounting controls in the SEC proceeding.

ABN settled the SEC's injunctive action consenting to the order permanently restraining it from violating the antifraud, periodic reporting, record keeping and internal controls provisions of the federal securities laws. Certain other officers of ABN and ABNH not directly involved in the FCPA violations settled SEC civil actions against them, consenting to permanent restraint orders prohibiting violations of antifraud, periodic reporting, record keeping, internal controls and lying to auditors provisions of the federal securities laws and injunctions suspending them from appearing or practicing before the Commission as accountants.

Two executive officers of an ABNH customer, Colorado Plasticard, consented to being permanently restrained and enjoined from violating and aiding and abetting violations of the antifraud, periodic reporting, and lying to auditors provisions of the federal securities laws. The Colorado Plasticard officers each agree to pay a \$20,000 civil penalty.

RELATED CASES *U.S. v. Cantor; U.S. v. Weissman.* (See Criminal Digest Number 24.)

11. *In the Matter of Baker Hughes Incorporated*⁵¹
*SEC v. KPMG-SSH (S.D. Tex. 2001)*⁵²
*SEC v. Eric L. Mattson and James W. Harris (S.D. Tex. 2001)*⁵³

NATURE OF BUSINESS KPMG Siddharta Siddharta & Harsono, a public accounting firm in Indonesia (KPMG-SSH) and Sonny Harsono (Harsono), a partner of KPMG-SSH, which is an affiliate firm of KPMG International. KPMG-SSH was the accountant and agent for Baker Hughes Incorporated (BHI). Eric Mattson was BHI's former CFO and James Harris was BHI's former Controller.

BUSINESS LOCATION Indonesia

PAYMENT

1. **Amount of the value** \$75,000.
2. **Amount of business related to the payment** \$2.93 million.
3. **Intermediary** KPMG-SSH.
4. **The foreign official** Indonesian tax official.

INFLUENCE TO BE OBTAINED Reduction of tax assessment for PT Eastman Christensen (PTEC), an Indonesian company beneficially owned by BHI, from \$3.2 million to \$270,000.

ENFORCEMENT Action against KPMG-SSH and Harsono was the first joint civil injunctive action by the SEC and DOJ. BHI's CFO and Controller authorized Harsono and KPMG-SSH to pay the bribe in order to significantly reduce the tax assessment against PTEC. The amount of the bribe was then included in an invoice to PTEC, which paid the invoice and improperly entered the transaction on its books and records as payment for professional services rendered. The defendants consented to the entry of a final judgment that permanently enjoins both defendants from violating and aiding and abetting the violation of the anti-bribery provisions of the FCPA and the internal controls and books and records provisions of the Exchange Act.

The administrative order against BHI also finds that BHI senior managers authorized payments to BHI's agents in India and Brazil in 1998 and 1995, respectively, without making an adequate inquiry as to whether the agents might give all or part of the payments to foreign government officials in violation of the FCPA. BHI consented to a cease and desist order as to the internal controls and books and records provision of the Exchange Act.

RECENT ACTIVITY Mattson and Harris are challenging the SEC and alleging that the payment was not in contravention of the FCPA. They claim that the payment was due to extortion by a corrupt government official who threatened to peg the company with an excessive tax bill if not paid off. They also claim that there was no business to attain or retain, nor was any illegal advantage gained.

12. *In the Matter of Chiquita Brands International, Inc.*⁵⁴
*SEC v. Chiquita Brands International, Inc. (D.D.C. 2001)*⁵⁵

NATURE OF BUSINESS Chiquita Brands International, Inc. (Chiquita) is a New Jersey corporation with an indirectly wholly owned subsidiary, C.I. Bananos de Exportación, S.A. (Banadex), in Colombia engaged in the import/export of bananas and operating a port facility.

BUSINESS LOCATION Colombia

PAYMENT

1. **Amount of the value** \$30,000.
2. **Intermediary** Comercio Exterior Asesores Limitada (CEA), Banadex's customs broker.
3. **The foreign official** Colombian customs officials.

INFLUENCE TO BE OBTAINED Renewing the Banadex port facility's customs license.

ENFORCEMENT Settled cease and desist order against Chiquita for violating the FCPA books and records and internal accounting controls provisions. Consent order entered in federal court requiring Chiquita to pay a \$100,000 civil penalty.

The administrative order finds that, in breach of Chiquita's strict policies and procedures and without the knowledge or consent of any Chiquita employee, Banadex's chief administrative officer authorized Banadex's agent, CEA, to pay Colombian customs officials to obtain the port facility license renewal and instructed Banadex's security officer and controller to make the payments from a Banadex account for discretionary expenses. The payments were incorrectly identified in Banadex's books and records.

The order further finds that Chiquita's internal audit staff discovered the payments during an audit review, and after conducting an internal review, Chiquita took corrective action, including terminating the responsible Banadex employees and reinforcing internal controls in its Colombian operations. According to the order, Chiquita audit staff had previously made management aware of a number of instances in which Banadex had not provided required documentation regarding discretionary payments.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

1. FCPA Review Procedure Release 80-01 (October 29, 1980)

NATURE OF THE BUSINESS American law firm ("Law Firm").

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT Law Firm seeks to fund the American education and support of the adopted children of an honorary official of the government of the foreign country.*

1. **Amount of the value** \$10,000 per annum.
2. **Intended recipients** Two individuals who are the adopted children of an honorary official of the government of the foreign country.

REASON FOR PAYMENT See above.

OPINION Funding does not implicate the FCPA where (i) the official, who is elderly and semi-invalid, has only ceremonial duties; (ii) the natural parents are employees of the foreign government but are not in a position to influence official positions that would in any way benefit the law firm; and (iii) there has been no suggestion that any preferential treatment would be granted in return for the proposed conduct.

2. FCPA Review Procedure Release 80-02 (October 29, 1980)

NATURE OF THE BUSINESS Castle & Cooke, Inc. ("Castle & Cooke") and two subsidiaries.

BUSINESS LOCATION Unspecified foreign country.

PROPOSED ARRANGEMENT Employee of a Castle & Cooke subsidiary would like to run for public office while retaining his private employment.

1. **Amount of the value** Public office to be held by Castle & Cooke subsidiary employee.
2. **Intended recipient** Employee of Castle & Cooke subsidiary.

REASON FOR ARRANGEMENT Employee of a Castle & Cooke subsidiary in the foreign country has been asked by a political party in that foreign country to run for the legislature.

The employee would like to retain his private employment with Castle & Cooke both during the campaign and, if elected, while serving in public office.

OPINION The employee's candidacy does not implicate the FCPA where (i) the employee's duties with the subsidiary do not include any type of advocacy work or any type of representation before the government on the corporation's behalf; (ii) the government post is essentially part-time and it is common practice for legislators to hold outside employment; (iii) the employee will fully disclose his continuing relationship with the corporation; (iv) the employee will refrain from participation in any matters that would directly affect the corporation; (v) the employee's salary will be based on the amount of time he actually works for the corporation; and (vi) an opinion of local counsel states that, as structured, the proposed conduct does not violate local conflict of interest or other laws.

3. FCPA Review Procedure Release 80-03 (October 29, 1980)

NATURE OF THE BUSINESS Unspecified domestic concern.

BUSINESS LOCATION West Africa

PROPOSED ARRANGEMENT Contract with attorney domiciled and functioning in West Africa.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Attorney domiciled and functioning in West Africa.

REASON FOR ARRANGEMENT Domestic concern wishes to enter into contract with West African attorney. The contract makes two specific references to the FCPA: (i) the attorney agrees and represents that he is not, and during the course of the agreement will not be, a foreign official; and (ii) the contract expressly prohibits payments to foreign officials.

OPINION None of these facts or circumstances reasonably cause concern about the application or possible violation of the FCPA. However, if there were reasonable cause for concern, the contract provisions alone would not be sufficient to preclude liability.

4. FCPA Review Procedure Release 80-04 (October 29, 1980)

NATURE OF THE BUSINESS Lockheed Corp. ("Lockheed") and Olayan Group (a Saudi Arabian diversified trading, services and investment organization) plan to enter into certain agreements with each other for the purpose of engaging in certain prospective business transactions with the government of Saudi Arabia and with the government-owned Saudi Arabian Airlines Corp. ("Saudia").

BUSINESS LOCATION Saudi Arabia

PROPOSED ARRANGEMENT Suliman S. Olayan ("Olayan"), the Chairman of the Olayan Group, is also an outside director of Saudia.

OPINION Arrangement does not implicate the FCPA where: (i) it is represented that Olayan will abstain from voting with respect to any matters concerning Lockheed or any of its subsidiaries before the Saudia Board and will disclose Olayan Group's relationship with Lockheed to the Board; (ii) Olayan will not use his position as a Saudia director to influence, on behalf of Lockheed, any act or decision of the Saudi government or of Saudia; (iii) Olayan holds no other position with the Saudi government and devotes little time as a Saudia director; (iv) the arrangement does not violate any local laws; and (v) Olayan is not considered to be an officer of Saudia and is not authorized to act on behalf of Saudia, other than to participate in Board meetings.

5. FCPA Review Procedure Release 81-01 (November 25, 1981)

NATURE OF THE BUSINESS Bechtel Group Inc. ("Bechtel"), a privately owned engineering, construction and project management firm, wishes to do business with the SGV Group ("SGV"), a multinational corporation headquartered in the Philippines that provides auditing, management consulting, project management and tax advisory services.

BUSINESS LOCATION Philippines

PROPOSED ARRANGEMENT See above.

- 1. Amount of the value** Unspecified
- 2. Intended recipient** Companies involved.

REASON FOR ARRANGEMENT Unspecified.

OPINION Proposed business relationship does not implicate the FCPA where, among other things, (i) all payments to SGV will be made solely by check or bank transfer and will be made only to SGV or its officers/employees; (ii) both Bechtel and SGV are familiar with the FCPA; (iii) no individual associated with SGV is a foreign official under the definition of the FCPA; (iv) the proposed relationship does not violate local law; and (v) the entertainment, meal and travel expenses of SGV employees will be reimbursed only upon Bechtel's written approval.

6. FCPA Review Procedure Release 81-02 (December 11, 1981)

NATURE OF THE BUSINESS Iowa Beef Packers, Inc. ("IBP").

BUSINESS LOCATION Soviet Union

PROPOSED ARRANGEMENT IBP intends to furnish samples of its packaged beef products to officials of the Soviet Ministry of Foreign Trade ("MVT").

1. **Amount of the value** Less than \$2,000.
2. **Intended recipient** MVT officials.

REASON FOR ARRANGEMENT To promote sales of IBP products to the government of the Soviet Union.

OPINION Arrangement does not implicate the FCPA where: (i) sample products are intended as items for MVT officials' inspection, testing, and sampling; (ii) sample products are not intended for their individual use, but will be provided to them in their capacity as MVT officials; and (iii) the Soviet government has been informed that IBP intends to furnish sample products to MVT officials.

7. FCPA Review Procedure Release 82-01 (January 27, 1982)

NATURE OF THE BUSINESS Department of Agriculture of the State of Missouri.

BUSINESS LOCATION Mexico / Missouri

PROPOSED ARRANGEMENT Missouri's Department of Agriculture seeks to host ten representatives of the Mexican government in a series of meetings in conjunction with agricultural business in Missouri. The Department intends to pay the officials' reasonable and necessary expenses, including meals, lodging, entertainment and traveling.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Mexican government officials and individuals representing Mexican private sector agricultural businesses.

REASON FOR ARRANGEMENT To promote sales of Missouri agricultural products in Mexico.

OPINION Arrangement does not implicate the FCPA.

8. FCPA Review Procedure Release 82-02 (February 18, 1982)

NATURE OF THE BUSINESS Ransom F. Shoup & Co. ("Shoup"), a closely held Pennsylvania corporation in the business of selling, repairing and designing voting machines.

BUSINESS LOCATION Nigeria

PROPOSED ARRANGEMENT Shoup has a contract with Frederick Ogirri ("Ogirri"), a temporary employee in the U.S. of the Consulate of Nigeria, to pay him a 1% finder's fee for assisting in the formation of a contract between Shoup and the Federal Election Commission of Nigeria to design and sell voting machines.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Ogirri.

REASON FOR ARRANGEMENT See below.

OPINION Contract does not implicate FCPA where, among other things, (i) Ogirri, a temporary low-level clerk who performs purely ministerial duties, has no influence with the Nigerian government and (ii) the fee is consideration solely for Ogirri's advising Shoup in the marketability of its machines in Nigeria, the customs, protocol and business practices of Nigeria, and introducing Shoup to an identified business agent in Nigeria.

9. FCPA Review Procedure Release 82-03 (April 22, 1982)

NATURE OF THE BUSINESS Unspecified Delaware corporation seeks to do business with the government department of Yugoslavia responsible for the procurement of property and services for the Yugoslav military.

BUSINESS LOCATION Yugoslavia

PROPOSED ARRANGEMENT The company proposes to pay the government-controlled trade organization a percentage of the total contract price as well as additional payments.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Government-controlled trade organization.

REASON FOR ARRANGEMENT A senior official of the government-controlled trade organization advised the company that it is the law of Yugoslavia that if a firm intends to do business with the military of that country, an agency agreement with the trade organization is necessary. The agency agreement would obligate the company to make the payments detailed above.

OPINION Agreement does not implicate the FCPA where, among other things, there is no expectation that any individual government official will personally benefit from the proposed agency relationship.

10. FCPA Review Procedure Release 82-4 (November 11, 1982)

NATURE OF THE BUSINESS Thompson & Green Machinery Co. ("T&G"), a generator manufacturer and producer.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT T&G intends to compensate a foreign businessman who acted as its agent in connection with a generator sale to a foreign government, even though the businessman's brother is an employee of that government.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Foreign businessman who acted as T&G's agent in promoting generator sale to foreign government.

REASON FOR ARRANGEMENT Unspecified.

OPINION Arrangement does not implicate FCPA where (i) written consultant agreement with foreign businessman precludes the businessman from using any part of his commission to pay a finder's fee to a third party, and also expressly references the FCPA; and (ii) both the businessman and his brother signed separate affidavits in which they pledged adherence to the FCPA's antibribery provisions.

11. FCPA Review Procedure Release 83-01 (May 12, 1983)

NATURE OF THE BUSINESS Unspecified California corporation seeks to do business with a Sudanese corporation whose head is appointed by the President of Sudan, but which operates independently of the Sudanese Government.

BUSINESS LOCATION Sudan

PROPOSED ARRANGEMENT The California corporation proposes to use the Sudanese corporation as its agent in connection with sales to commercial and government customers in Sudan and other regional nations. The Sudanese corporation would act as a commercial sales agent and would be paid on a commission basis.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Sudanese corporation.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where, among other things, (i) payment will be made directly to the Sudanese corporation, rather than any individual; and (ii) all purchase contracts will contain notice of the agency relationship between the California and Sudanese corporations.

12. FCPA Review Procedure Release 83-02 (July 26, 1983)

NATURE OF THE BUSINESS Unspecified American company that currently participates with two foreign companies in a joint venture in a foreign country. The joint venture has a long-term contractual relationship with a foreign entity that is owned and controlled by the government of the foreign country.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT The American joint venture participant intends to invite the general manager of the foreign government entity to extend a planned U.S. vacation for approximately ten days in order to take a promotional tour of certain facilities of the American joint venture participant. The American joint venture participant intends to pay for all reasonable and necessary actual expenses of the general manager and his wife during this tour.

1. **Amount of the value** No more than \$5,000.
2. **Intended recipient** Foreign government entity general manager and his wife.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where, among other things, (i) all expenses will be paid by the American joint venture participant directly to the service providers, and (ii) the expenses will be recorded accurately in the company's books and records.

13. FCPA Review Procedure Release 83-03 (July 26, 1983)

NATURE OF THE BUSINESS Department of Agriculture of the State of Missouri ("Department") and CAPCO, Inc. ("CAPCO"), a Missouri corporation engaged in the management of properties owned by foreign investors.

BUSINESS LOCATION Missouri / Singapore

PROPOSED ARRANGEMENT Department and CAPCO intend to offer to pay the reasonable and necessary expenses of a Singapore government official in connection with a series of site inspections, demonstrations and meetings to be held in six Missouri counties during an approximately ten-day period.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Singapore government official.

REASON FOR ARRANGEMENT To promote the sale of certain Missouri agricultural products and facilities to an instrumentality of the Government of Singapore.

OPINION Arrangement does not implicate the FCPA.

14. FCPA Review Procedure Release 84-1 (August 16, 1984)

NATURE OF THE BUSINESS Unspecified American firm seeks to engage a foreign company as its marketing representative in a foreign country.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT Foreign company's principals are related to the foreign country's head of state and one of these principals personally manages certain of the head of state's private business affairs and investments.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Foreign company with close ties to head of state.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where (i) foreign company agrees to a variety of express restrictions designed to prevent any FCPA violations (*e.g.*, (a) foreign company agrees not to pay anything of value to any public official in the foreign country for the purpose of influencing the official's official acts; (b) company agrees that if it does violate the FCPA, its agreement with the American firm will be rendered null and void; (c) foreign company will be solely responsible for all of its costs and expenses incurred in connection with its representation of the American firm; and (d) the foreign company will make, when required, full disclosure to the U.S. government and the foreign government of its identity and amount of commission applicable to a specific contract); and (ii) foreign company was chosen because of its proven track record rather than its ties to the head of state.

15. FCPA Review Procedure Release 84-2 (August 20, 1984)

NATURE OF THE BUSINESS An unspecified American firm ("Firm") seeks to transfer the assets of a foreign branch office to a foreign-owned company, and then to invest in the foreign company. Foreign regulatory approval would be required for this transaction.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT A remark by an agent of the foreign company indicated the foreign agent's possible intent to offer a small gratuity to low-level foreign government employees to facilitate the transaction.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Low-level foreign government employees.

REASON FOR ARRANGEMENT See above.

OPINION The FCPA has yet to be implicated because, among other things, (i) no payments were ever made to officials of the foreign government; (ii) employees of the American Firm discouraged payment of any gratuity; (iii) the Firm has pledged not to violate the FCPA; and (iv) the Firm retains the right to sever its relationship with the foreign company if it learns of any FCPA violations.

16. FCPA Review Procedure Release 85-1 (July 16, 1985)

NATURE OF THE BUSINESS Atlantic Richfield Co. ("ARCO") has announced plans for the construction of a chemical plant in France.

BUSINESS LOCATION France

PROPOSED ARRANGEMENT ARCO intends to invite officials of the French government ministry responsible for the issuance of permits and licenses for the project to the U.S. to meet with ARCO officials and to inspect an ARCO chemical plant.

1. **Amount of the value** Unspecified.
2. **Intended recipient** French government officials.

REASON FOR ARRANGEMENT The meetings and plant inspection are to address environmental and management concerns raised by French authorities in connection with the operation of a large-scale chemical plant.

OPINION Arrangement does not implicate the FCPA where (i) ARCO has furnished an opinion that the proposed conduct does not violate French law; (ii) the travel will occur during a period of not more than one week; and (iii) ARCO will pay the reasonable and necessary expenses of the French delegation, including air travel, lodging and meals.

17. FCPA Review Procedure Release 85-2 (December 1985)

NATURE OF THE BUSINESS Unspecified American business entity.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT In order to identify the foreign government agencies most capable of settling the American business entity's legal claim against the foreign government, the entity proposes to hire as its agent a former official of that foreign government to identify and contact the appropriate foreign government agencies.

1. **Amount of the value** \$40 per hour, plus expenses, up to a limit of \$5,000.

2. **Intended recipient** Former official of the foreign government who currently holds no government position.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where, among other things, the agent (i) is not presently an official of the foreign government or a candidate for political office; (ii) promises to abide by the FCPA; and (iii) will not pay any portion of his compensation to any "foreign official" within the definition of the FCPA.

18. FCPA Review Procedure Release 86-1 (July 18, 1986)

NATURE OF THE BUSINESS Three unspecified U.S. corporations.

BUSINESS LOCATION Great Britain and Malaysia

PROPOSED ARRANGEMENT The three corporations, in three separate and unrelated arrangements, seek to employ individual members of the parliaments of Great Britain and Malaysia to represent the firms in their business operations in the respective nations.

1. **Amount of the value** \$36,000; salary of \$40,000 to \$60,000 per year; and \$48,000 plus 30% of the profits generated by member's representation.
2. **Intended recipient** Two members of the British Parliament and one member of the Malaysian Parliament.

REASON FOR ARRANGEMENT See above.

OPINION Although members of Parliament are "foreign officials" under the FCPA, the arrangements do not implicate the FCPA where, among other things, (i) none of the three Parliament members occupies any legislative position of influence other than that possessed by a single member in a legislative body of many members; (ii) the employment relationships will comply with the local laws of each respective country; and (iii) each member agrees to make full disclosure of his employment relationship with a U.S. corporation and agrees not to vote or conduct any legislative activity for the benefit of the corporation.

19. FCPA Review Procedure Release 87-1 (December 17, 1987)

NATURE OF THE BUSINESS Lantana Boatyard, Inc. ("Lantana") seeks to sell military patrol boats to a British company that will in turn resell these boats to the Nigerian government.

BUSINESS LOCATION Unspecified

PROPOSED ARRANGEMENT Lantana wishes to pay a 10% commission to an international marketing organization in consideration for the organization's assistance in facilitating the sale of the patrol boats.

1. **Amount of the value** Unspecified.
2. **Intended recipient** International marketing organization.

REASON FOR ARRANGEMENT See above.

OPINION The commission does not implicate the FCPA where the marketing organization will promise that the commission will not be used for any activity or purpose that would violate the FCPA.

20. FCPA Review Procedure Release 88-1 (May 12, 1988)

NATURE OF THE BUSINESS Mor-Flo Indus., Inc. ("Mor-Flo") intends to construct a facility for the production of gas and electronic water heaters in Mexico.

BUSINESS LOCATION Baja California, Mexico

PROPOSED ARRANGEMENT Mor-Flo intends to participate in an established Mexican government debt-equity swap program under which Mor-Flo would acquire certain deeply discounted debt interests of the government of Mexico and then exchange this debt paper with the government at an exchange rate established by the government. Mor-Flo must pay a fee to the government and its financial agent in order to participate in the program.

1. **Amount of the value** Approximately \$362,000.
2. **Intended recipient** Government of Mexico and its designated financial agent.

REASON FOR ARRANGEMENT See above.

OPINION Fee payments do not implicate the FCPA where (i) Mor-Flo will secure written confirmation from the financial agent that the agent is the authorized representative of the government of Mexico and that none of the fees will be used for any purpose prohibited by the FCPA; and (ii) the arrangement does not violate any local law.

21. FCPA Review Procedure Release 92-1 (February 1992)

NATURE OF THE BUSINESS Union Texas Pakistan, Inc. ("Union Texas"), a U.S. corporation that plans to enter into a joint-venture agreement with the Ministry of Petroleum and Natural Resources of the government of Pakistan.

BUSINESS LOCATION Pakistan

PROPOSED ARRANGEMENT Union Texas proposes to provide petroleum industry training to government personnel, and to pay the necessary and reasonable expenses for such training.

1. **Amount of the value** At least \$200,000 annually.
2. **Intended recipient** Pakistani government personnel.

REASON FOR ARRANGEMENT Under Pakistani law, the government may require petroleum exploration and production companies to provide training to government personnel -- in various technical and management disciplines -- to efficiently perform their duties related to the supervision of the Pakistan petroleum industry. Texas Union's agreement with the government obligates the company to a minimum annual expenditure of \$200,000 for such training.

OPINION Arrangement does not implicate the FCPA.

22. FCPA Opinion Procedure Release 93-1 (April 20, 1993)

NATURE OF THE BUSINESS Unspecified major commercial organization with its principal place of business in Texas ("Organization").

BUSINESS LOCATION Unspecified former eastern bloc country

PROPOSED ARRANGEMENT The Organization has entered into a joint venture partnership agreement with a quasi-commercial entity wholly owned and supervised by a foreign government. Among other things, the agreement calls for fees to be paid to the directors of the joint venture partnership, including directors who are also employees of a state-owned and controlled entity.

1. **Amount of the value** Directors' fees of approximately \$1,000 per month.
2. **Intended recipient** Foreign directors of the joint venture partnership.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where (i) foreign directors' fees ultimately will be reimbursed by the foreign partner and (ii) the Organization will undertake to educate the foreign directors about the FCPA.

23. FCPA Review Procedure Release 93-2 (May 11, 1993)

NATURE OF THE BUSINESS Unspecified American company ("Company") that sells defense equipment.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT Company seeks to enter into a sales agreement with government-owned business that holds a license giving it a virtual monopoly in the foreign company's defense equipment industry. In order to do business with the country's military, all foreign suppliers must enter into a written agreement with the government-owned business under which the supplier agrees to pay to the government-owned business a percentage of the total contract price relating to the sale of defense equipment.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Government owned business.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where the Company will pay all commissions directly to the country's treasury or, in the alternative, the commissions will be deducted and withheld by the government customer from the purchase price.

24. FCPA Opinion Procedure Release 94-1 (May 13, 1994)

NATURE OF THE BUSINESS Wholly owned subsidiary of an unspecified American company. The subsidiary manufactures products for use in clinical and hospital laboratories, and owns a plant in the foreign country.

BUSINESS LOCATION Unspecified foreign country.

PROPOSED ARRANGEMENT Subsidiary seeks to enter into a contract with the general director ("General Director") of the state-owned entity from which it purchased the property on which its land is located. General Director would provide consulting assistance in the subsidiary's efforts to obtain direct electric power service for its plant and improved access to plant facilities. Both require government cooperation.

1. **Amount of the value** \$20,000 over twelve months.
2. **Intended recipient** General Director of a state-owned enterprise.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where, among other things, (i) General Director was hired because of his knowledge and expertise in the area and not for any influence

with government officials, and (ii) General Director makes a series of express representations designed to prevent any FCPA violations (e.g., (a) General Director will not use his official position to assist the subsidiary; (b) General Director will not use his compensation to make payments to other foreign officials; (c) General Director will abide by all local laws in connection with his relationship with the subsidiary; (d) General Director's compensation is not dependent on the subsidiary's success in obtaining the needed government cooperation; and (e) if General Director violates any of these representations, the agreement will be automatically rendered null and void and he will forfeit compensation under the agreement.

25. FCPA Opinion Procedure Release 95-1 (January 11, 1995)

NATURE OF THE BUSINESS Unspecified U.S.-based energy company ("Company").

BUSINESS LOCATION Unspecified country in South Asia

PROPOSED ARRANGEMENT Company seeks to donate \$10 million to help fund a modern medical complex presently under construction near the Company's future plant. The donation is to be made through a charitable organization incorporated in the U.S. and through a public liability company located in the foreign country.

1. **Amount of the value** \$10 million.
2. **Intended recipient** Medical facility that is open to the public.

REASON FOR ARRANGEMENT Company looks to ensure that its employees and affiliates will have access to modern medical facilities.

OPINION Donation does not implicate the FCPA where (i) the Company will require certifications from all officers of the charitable organization and foreign liability company that none of the funds will be used in violation of the FCPA; (ii) none of the persons acting on behalf of the charitable organization or foreign liability company are affiliated with the foreign government; and (iii) the Company will require audited financial reports detailing the disposition of the donated funds.

26. FCPA Opinion Procedure Release 95-2 (September 14, 1995)

NATURE OF THE BUSINESS Two unspecified American companies that seek to enter into two transactions in a foreign country.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT One of these transactions involves the creation of a new company in the foreign country ("Newco"). A majority of the investors in Newco will be foreign government officials.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Foreign government officials.

REASON FOR ARRANGEMENT Unspecified.

OPINION Arrangement does not implicate the FCPA where, among other things, (i) investors will recuse themselves from any government decision affecting the two American companies and Newco; (ii) the investors and the two American companies expressly certify that they will not violate the FCPA; and (iii) the investors and two American companies agree to a variety of express restrictions designed to prevent any FCPA violations (*e.g.*, (a) the two companies have not made and will not make any payments to any foreign official in connection with Newco; (b) the shareholders are all passive investors of Newco and will exercise no management control of Newco while holding government office; (c) the shareholders will take all steps necessary to ensure compliance with the FCPA; (d) Newco's board will meet at least annually to report on its activities and compliance with the FCPA; (e) all Newco payments to shareholders will be made solely by check or bank transfer; and (f) all third parties hired by Newco would be required to sign an FCPA compliance representation as part of the retainer agreement).

27. FCPA Opinion Procedure Release 95-3 (September 14, 1995)

NATURE OF THE BUSINESS Unspecified American company.

BUSINESS LOCATION Unspecified foreign country.

PROPOSED ARRANGEMENT American company seeks to enter into a joint venture with, among other parties, a relative of the leader of the foreign country in which the joint venture will conduct business. In addition, the relative, a prominent businessman who also holds public and party offices, is himself a "foreign government official" for purposes of the FCPA.

1. **Amount of the value** Annual payments of \$100,000 to \$250,000, plus percentage of profits received as a result of government projects awarded to the joint venture.

2. **Intended recipient** Joint venture partner who is related to the foreign country's leader and who is a "foreign government official in his own right."

REASON FOR ARRANGEMENT See above.

OPINION Arrangement is permissible where joint venture partner agrees to a series of detailed restrictions designed to prevent any FCPA violations, including, for example, (i) no payments from the American company may be used for any purpose that would constitute a violation of the laws of the foreign country or of the FCPA; (ii) if the joint venture partner's official duties change so that he makes decisions affecting the joint venture, he will notify the other partners so that appropriate actions may be taken; (iii) the joint venture partner will initiate no meetings with government officials; and (iv) in connection with any meeting with government officials, the joint venture partner will provide a letter to the most senior relevant official stating that the joint venture partner is acting solely in a private capacity.

28. FCPA Review Procedure Release 96-1 (November 25, 1996)

NATURE OF THE BUSINESS Unspecified nonprofit corporation established to protect a particular world region from the dangers posed by environmental accidents ("Nonprofit").

BUSINESS LOCATION Nations from an unspecified region of the world

PROPOSED ARRANGEMENT Nonprofit proposes to sponsor and provide funding for up to ten government representatives to attend environmental training in the U.S.

1. **Amount of the value** \$10,000 to \$15,000 per year.
2. **Intended recipient** Up to ten government representatives.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where, among other things, the Nonprofit does not seek to obtain or retain business with the regional governments.

29. FCPA Opinion Procedure Release 96-2 (November 25, 1996)

NATURE OF THE BUSINESS U.S. corporation engaged in the manufacture and sale of equipment used in commercial and military aircraft.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT U.S. corporation seeks to renew, with modifications, an existing marketing representative agreement with a state-owned enterprise of the foreign country ("Enterprise"). The Enterprise would serve as the requestor's exclusive sales representative in the foreign country.

1. **Amount of the value** Unspecified.
2. **Intended recipient** State-owned enterprise of the foreign country.

REASON FOR ARRANGEMENT See above.

OPINION Arrangement does not implicate the FCPA where, among other things, (i) the Enterprise is not in a position to influence the procurement decisions of other government entities, (ii) the arrangement is in compliance with all local laws and (iii) the Enterprise agrees to certify that it will not in any way violate the FCPA.

30. FCPA Review Procedure Release 97-01 (February 27, 1997)

NATURE OF THE BUSINESS U.S. company whose wholly owned subsidiary is submitting a bid to a foreign government-owned entity to sell and service certain high technology equipment.

BUSINESS LOCATION Unspecified foreign country.

PROPOSED ARRANGEMENT In connection with its bid, the U.S. company entered into a Representative Agreement with a privately held company ("Representative") in the same foreign country. The U.S. company subsequently learned that more than fifteen years ago the Representative may have made an improper payment to an official of the foreign government.

1. **Amount of the value** Unspecified.
2. **Intended recipient** Privately held foreign company.

REASON FOR ARRANGEMENT See above.

OPINION While Company's engagement of Representative does not presently violate the FCPA, the Company should closely monitor the performance of the Representative.

31. FCPA Opinion Procedure Release 97-02 (November 5, 1997)

NATURE OF THE BUSINESS U.S. based utility company.

BUSINESS LOCATION Country in Asia.

PROPOSED PAYMENT

1. **Amount of the value** \$100,000.
2. **Intended recipient** Government entity.

REASON FOR PAYMENT To help fund an elementary school construction project near the location of the company's plant. Before releasing any funds, the company will require a written agreement from the government entity that the funds will be used solely to construct and supply

the elementary school. The written agreement will set forth other conditions to be met by the government entity, including (i) guaranteeing the availability of land, teachers and administrative personnel for the school, (ii) guaranteeing timely additional funding of the school project in the event of any financial shortfall, and (iii) guaranteeing provision of all funds necessary for the daily operation of the school.

OPINION Donation does not implicate the FCPA since it will be made directly to a government entity rather than any foreign government official.

32. FCPA Review Procedure Release 98-01 (No Date Stated)

NATURE OF THE BUSINESS U.S. based industrial and service company.

BUSINESS LOCATION Nigeria

PROPOSED ARRANGEMENT A Nigerian Government agency levied a \$50,000 fine on the company for the contamination clean up of a site formerly leased by the company's subsidiary. To clean up the environmental contamination, the company retained a Nigerian contractor, experienced in removing environmental contaminants and recommended by Nigerian Federal Environmental Protection Agency (FEPA) officials. Upon drafting a proposal for the contaminant's removal, the contractor advised the company to take the following actions to ensure Nigerian Government approval of the clean-up: (1) pay the \$50,000 fine to the Nigerian Government through the contractor, and (2) pay \$30,000 in "community compensation and modalities" to Nigerian FEPA and Ports Authority officials through the contractor.

1. **Amount of the Value** \$30,000.
2. **Intended Recipients** Nigerian FEPA and Ports Authority officials.

REASON FOR PAYMENT See above.

OPINION If the company pays the requested fine and community compensation and modalities to the contractor for the benefit of the Nigerian Government agencies, the Department of Justice will further investigate whether criminal prosecution is merited. Conversely, the Department of Justice will reconsider taking enforcement action if the company pays the fine and contractor's fee directly to an appropriate Nigerian Government agency, provided that when the environmental clean up is completed to the satisfaction of the Nigerian Government, the Government will pay the contractor its fee.

33. FCPA Review Procedure Release 98-2 (August 5, 1998)

NATURE OF THE BUSINESS U.S. company with a wholly owned subsidiary engaged in the sale and service of military training programs.

BUSINESS LOCATION Unspecified foreign country

PROPOSED ARRANGEMENT The company's wholly owned subsidiary is submitting a bid to a foreign government-owned entity to sell and service a military training program. In connection with this bid, the company intends to enter into a Settlement Agreement and Release, an International Consultant Agreement, and a Teaming Agreement with a privately held company ("Representative"). The Representative had previously performed marketing and consulting services for the company's subsidiary pursuant to an invalid Representation Agreement.

1. **Amount of Payment** (i) pursuant to a Settlement Agreement and Release the company will pay a commercially reasonable lump sum payment in settlement for the prior services the Representative rendered under the invalid Representation Agreement; (ii) pursuant to an International Consultant Agreement the company will pay the Representative a monthly retainer and reimburse extraordinary expenses in exchange for the Representative's product sales and service advice; and (iii) pursuant to a Teaming Agreement the company will strengthen the Representative's ability to compete for government contracts and to provide goods and services.
2. **Intended Recipients** Privately held, non-governmental entity

REASON FOR PAYMENT See above.

OPINION The Company's engagement of the Representative does not presently violate the FCPA.

34. FCPA Review Procedure Release 00-01 (March 29, 2000)

NATURE OF THE BUSINESS American law firm (the "Law Firm") and a foreign partner of the Requestor ("Foreign Government Official"). Note that ordinarily, foreign officials are not covered by the FCPA, *see United States v. Castle*, 925 F.2d 831 (5th Cir. 1991), and cannot be the recipient of an FCPA Opinion. In this matter, however, the foreign official in question is also a director of an American law firm and is therefore a domestic concern in his own right. *See* 15 U.S.C. § 78dd-2(h)(1).

BUSINESS LOCATION Unspecified foreign country ("Country X")

PROPOSED ARRANGEMENT Law Firm seeks to maintain insurance benefits for Foreign Government Official and his family while he is in office and on leave from the Law Firm. In addition, Law Firm proposes to pay Foreign Government Official the interest due on his partnership contribution as well as an estimated lump sum "client credit", discounted to present value, that would be due to Foreign Government Official under the Law Firm's standard leave policy. Finally, Law Firm is guaranteeing Foreign Government Official a return to full partnership and its attendant privileges and profits when he leaves public office.

1. **Amount of the value** The insurance benefits will be paid by Foreign Government Official at the discounted rate available to all of Law Firm's partners currently on leave. Interest on partnership contribution will be paid at a widely available bank

rate and identical to rate paid to all Law Firm's partners. The amount of the other value is not specified.

2. Intended Recipient Foreign Government Official.

REASON FOR PAYMENT See above.

OPINION No enforcement action under the FCPA will be taken against the Law Firm or Foreign Government Official where: (i) the proposed arrangement does not violate local law; (ii) the Law Firm undertakes to (1) not represent clients before the Foreign Government Official's ministry; (2) maintain a list of all clients previously represented by the Foreign Government Official or for which the Foreign Government Official is entitled to client credit; (3) not advise or represent such clients in any matter involving doing business with, including lobbying, the Government of Country X, its ministries, agencies, and legislative bodies; and (4) inform the Foreign Government Official whenever he should recuse himself in a matter involving the Law Firm or a client of the Law Firm; and (iii) Foreign Government Official undertakes to recuse himself and refrain from directly or indirectly participating or taking any action to affect decisions by the Government of Country X relating to (1) the retention of the Law Firm; (2) any government business with any current or former client of the Law Firm or of the Foreign Government Official while a partner of the Law Firm or for which he is entitled a client credit; or (3) any matter in which the Law Firm or a client of the firm has lobbied the government.

35. FCPA Review Procedure Release 01-01 (May 24, 2001)

NATURE OF THE BUSINESS Unspecified American company ("US Co.") to enter into 50/50 joint venture with a French company ("French Co.").

BUSINESS LOCATION Unspecified foreign country.

PROPOSED ARRANGEMENT U.S. Co. and French Co. will each contribute pre-existing contracts and transactions to the joint venture, including contracts contributed by French Co. that were obtained prior to the French Law Against Corrupt Practices. U.S. Co. represented the following: (i) French Co. represented that none of its contributed contracts or transactions violated any applicable anti-bribery law; (ii) U.S. Co. may terminate the joint venture agreement or refuse to undertake its obligations if French Co. has breached its representations or violated any anti-bribery law; (iii) no funds contributed by U.S. Co. nor funds of the joint venture will be used to pay any compensation to any agent of French Co. in connection with contracts contributed to the joint venture; and (iv) the joint venture will enter into new agent agreement in accordance with rigorous compliance program.

1. Amount of Payment Unspecified.

2. Intended Recipients Unspecified.

REASON FOR PAYMENT See above.

OPINION Joint venture does not implicate FCPA based on the representations by U.S. Co. and the covenants not to undertake any knowing act in the future in furtherance of a prior act of bribery concerning contracts contributed by French Co. to joint venture. The Department of Justice made the following clarifications: (i) it interpreted French Co.'s no-violation representation to include the laws of the jurisdictions of the government officials with the ability to have influenced the decisions of their governments to enter into the contracts contributed by French Co. to the joint venture, thus, U.S. Co. may face FCPA liability if the joint venture takes any action in furtherance of a payment to a foreign official with respect to a previously existing contract irrespective of whether the agreement to make such payments was lawful under French law at the time the contract was entered into; and (ii) it declined to endorse the "materially adverse effect" standard for U.S. Co.'s ability to terminate the joint venture agreement in the event of a previous act of bribery.

36. FCPA Review Procedure Release 01-02 (July 18, 2001)

NATURE OF THE BUSINESS American company ("U.S. Co.") and foreign company ("Foreign Co.") that seek to enter into a consortium to bid on and engage in a business relationship with the government of Foreign Co.'s home country.

BUSINESS LOCATION Unspecified foreign country.

PROPOSED ARRANGEMENT

1. **Amount of Payment** Unspecified.
2. **Intended Recipients** Foreign Co.'s chairman and shareholder ("Foreign Official") acts as an advisor to one of his country's senior government officials and is a senior official in public education in that country.

REASON FOR PAYMENT See above.

OPINION Consortium is possible where a series of detailed restrictions are taken designed to prevent any FCPA violations, including: (i) Foreign Official will not initiate or attend any meetings with government officials on behalf of the Consortium; (ii) Foreign Official will recuse himself and will not participate in his official capacity in any discussion or consideration of or decision about the award of the business project; and (iii) a legal opinion confirms that the formation of the Consortium and the relationship with Foreign Official do not violate the laws of the foreign country; (iv) all Consortium's bid submissions informed relevant foreign government ministries, agencies and officials of Foreign Official's relationship to the Consortium and his recusal on any matters relating to the Consortium that may be brought before any such ministries, agencies and officials; (v) the Consortium agreement provides that each Consortium member agrees not to violate the FCPA, and any such breach grants the non-breaching members the right to terminate the Consortium agreement.

37. FCPA Opinion Procedure Release 01-03 (December 11, 2001)

NATURE OF BUSINESS Unspecified American company ("US Co.") has, with the assistance of a foreign dealer ("Dealer"), submitted bid to unspecified foreign government for sale of equipment to the foreign government.

BUSINESS LOCATION Unspecified foreign country.

PROPOSED ARRANGEMENT U.S. Co. will review its agreement with Dealer following remarks to U.S. Co. employee ("Employee") by Dealer's president and principal owner that Employee understood to mean that Dealer would make or had made payments to government officials so that the bid would be accepted ("Payments"). US Co. represented the following: (i) through counsel, it investigated the comments and found no information to substantiate the implication of the comments; (ii) it has obtained Dealer's representation that no Payments were made or promised to government officials in connection with the equipment sale; (iii) Dealer would certify in proposed Dealer Agreement that no Payments had or will be made, or if such Payments are made, U.S. Co. may terminate the Dealer Agreement and withhold sums otherwise owed to the Dealer under the agreement; (iv) Dealer Agreement provides for annual audit of Dealer's books and records by US Co. to ensure Dealer's compliance with its representations and warranties contained therein and US Co. will fully exercise this right; (v) it will timely notify the Department of Justice if it becomes aware of information substantiating the Payment allegations; and (vi) neither Dealer nor anyone acting on behalf of the Dealer has made or promised to make the alleged Payments.

1. **Amount of Payment** Unspecified.
2. **Intended Recipients** Officials of foreign government.

REASON FOR PAYMENT See above.

OPINION Department of Justice does not presently intend to take any enforcement action with respect to the Dealer Agreement, based on all the facts and circumstances as represented by the US Co. and the Dealer.

F. PRE-FCPA PROSECUTIONS

1. *U.S. v. J. Ray McDermott & Co. Inc., E. D. Louisiana, Feb. 22, 1978*
2. *U.S. v. General Electric Co., et al. (Cr. No. 80-320), D.N.J., Sept. 4, 1980*
3. *U. S. v. Bethlehem Steel Corporation (80 Cr. No. 0431), S.D. N. Y., July 24, 1980*
4. *U.S. v. The Williams Companies (Cr. No. 78-00144), D. D. C., Filed March 24, 1978*
Currency and Foreign Transactions Reporting Act (transporting currency in excess of \$5,000 into and out of the U.S. without proper reporting). Fine and civil penalty of \$187,000.
5. *U.S. v. Control Data Corporation (Cr. No. 78-00210), D.D.C., Filed April 26, 1978*
Mail fraud and Currency and Foreign Transactions Reporting Act. Fine and penalty of \$1,381,000.
6. *U.S. v. Westinghouse Electric Company (Cr. No. 78-00566), D. D.C., Filed Nov. 15, 1978*
False statements to Export-Import Bank and Agency for International Development. Fine of \$300,000.
7. *U.S. v. United Brands Company (Cr. No. 78-538), S.D. N. Y., Filed July 19, 1978*
Mail Fraud. United Brands paid \$2.5 million in bribes to the president of Honduras, in an effort to receive a reduced local tax on the exportation of bananas. The company also sought a twenty-year extension of favorable terms on its Honduran properties. Fine of \$15,000.
8. *U.S. v. United States Lines, Inc. (Cr. No.)* Conspiracy to defraud the Federal Maritime Administration. Fine of \$5,000.
9. *U.S. v. Sea-Land Service, Inc. (Cr. No. 78-103), 1978* Conspiracy to defraud the Federal Maritime Administration. Fine of \$5,000.
10. *U.S. v. Seatrain Lines, Inc. (Cr. No. 78-49)* Conspiracy to defraud the Federal Maritime Administration and Currency and Foreign Transactions Reporting Act. Fines against Seatrain of \$260,000 and against a subsidiary, Ocean Equipment, for \$260,000.
11. *U.S. v. Lockheed Corporation (Cr. No. 79-00270), D. D.C., Filed June 1, 1979*
Currency and Foreign Transactions Reporting Act, wire fraud, false statements to Export-Import Bank. Fine and penalties of \$647,000.
12. *U.S. v. Gulfstream American Corporation (formerly known as Grumman American Aviation Corporation) (Cr. No. 79-00007), D.D.C., Filed June 7, 1979*
False statements to Export-Import Bank, and Commerce Department (Shipper's Export Declarations). Fine of \$120,000.

13. *U.S. v. Page Airways, Inc., Fed. Sec. L. Rep. (Cr. No. 79-00273) (CCH), 96, 393 D.D.C., filed April 12, 1978* Currency and Foreign Transactions Report Act. Fine and civil penalty of \$52,647.
14. *U.S. v. Textron, Inc. (Cr. No. 79-00330), D.D.C., July 1979* Currency and Foreign Transactions Report Act. Fine and civil penalty of \$131,670.
15. *U.S. v. McDonnell Douglas Corporation., et al. (Cr. No. 79-516), D.D.C., Sept. 8, 1981* Mail fraud, wire fraud, conspiracy, false statements to Export-Import Bank.

G. ENDNOTES

1. U.S. v. Kenny International Corp. (Cr. No. 79-3 72), D.D.C., filed Aug. 2, 1979; and U.S. v. Finbar B. Kenny, et al. (Civ. 79-2038), Aug. 2, 1979
2. U.S. v. Crawford Enterprises, Inc., Donald G. Crawford, William E. Hall, Mario S. Gonzalez, Ricardo G. Beltran, Andres I. Garcia, George S. McLean, Luis A. Uriarte, Al L. Eyster, James R. Smith (Cr. No. H-82-224), S.D. Tex., Houston Division, Oct. 1982
3. U.S. v. C. E. Miller Corporation and Charles E. Miller (Cr. No. 82-788), C. D. Cal., Sept. 1982; and Related Case of U.S. v. Marquis King (Cr. No. 83-00020), D.D.C., Jan. 1983
4. U.S. v. Ruston Gas Turbines, Inc. (Cr. No. H-82-207), S.D. Tex., Sept. 1982; and Related Case of U.S. v. Al Lee Eyster and James R. Smith (Cr. No. H-82-224), S.D. Tex., Oct. 1982
5. U. S. v. International Harvester Company (now known as Navistar International Company) (Cr. No. 82-244), S.D. Tex., Nov. 1982; and Related Cases of U.S. v. George S. McLean and U.S. v. Luis Uriarte (Cr. No. 82-224), S.D. Tex., Oct. 1982
6. U.S. v. Applied Process Products Overseas, Inc. (Cr. No. 83-00004), D.D.C., May 1983; and Related Cases of U.S. v. Gary Bateman (Cr. No. 83-00005), D.D.C., Jan. 1983
7. U.S. v. Sam P. Wallace Company, Inc. (Cr. No. 83-0034) (PG), D.P. R., Feb. 1983; U. S. v. Alfonso A. Rodriguez (Cr. No. 83-0044 (JP)), D.P.R., Mar. 1983
8. U. S. v. Harry G. Carpenter and W. S. Kirkpatrick, Inc. (Cr. No. 85-353), D.N.J., Oct. 1985
9. Environmental Tectonics Corp., Int'l v. W.S. Kirkpatrick & Co., Inc. (Nos. 87-5328 & 87-5546), D.N.J. 659 F. Supp. 1381 (D.N.J. 1987), aff'd in part & rev'd in part, 847 F.2d 1052 (3d Cir. 1988), aff'd, 493 U.S. 400 (1990)
10. U.S. v. Silicon Contractors, Inc., Diversified Group, Inc., Herbert D. Hughes, Ronald R. Richardson, Richard L. Noble and John Sherman (Cr. No. 85-251) (E.D. La., June 1985)
11. U.S. v. NAPCO International, Inc. and Venturian Corporation (Cr. No. 4-89-65), D. Minn., March 1989, FCPA Rep. 697.74; U.S. v. Richard H. Liebo (Cr. No. 4-89-76) (D. Minn., Mar. 1989), 923 F.2d, 1308, 1312 (8th Cir. Minn.), Jan. 15, 1991); U.S. v. Dornier GmbH (Civil Injunction)
12. U. S. v. Goodyear International Corp. (Cr. No. 89-0156), D.D.C., May 1989
13. U.S. v. Joaquin Pou, Alfredo G. Duran and Jose Guarsch, (S.D. Fla. 1989)

14. U. S. v. Young & Rubicam Inc., Arthur R. Klein, Thomas Spangenberg, Arnold Foote, Jr., Eric Anthony Abrahams, and Steven M. McKenna, 741 F. Supp. 334 (D. Conn. Feb. 7, 1990) (Cr. No. N-89-68 (PCD))
15. U.S. v. George V. Morton (Cr. No. 3-90-061-H), N.D. Tex. (Dallas Div.), March 1990; U.S. v. John Blondek, Vernon R. Tull, Donald Castle and Darrell W.T. Lowry (Cr. 741), F. Supp. 116 (No. 3-90-62-H) (N.D. Tex., June 1990); U.S. v. Eagle Manufacturing, Inc. (Civil Action No. B-91-171), S.D. Tex., Oct. 1991
16. U.S. v. F.G. Mason Engineering and Francis G. Mason (Case No. B-90-29), JAC, D. Conn., June 1990
17. U.S. v. Harris Corporation, John D. Iacobucci and Ronald L. Schultz (Cr. No. 90-0456), N.D. Cal., Aug. 1990
18. U.S. v. Herbert B. Steindler, Rami Dotan, and Harold King (Cr. No. 194-29), S.D. Ohio, Mar. 17, 1994
19. U.S. v. Vitusa Corporation (Cr. No. 94-253) (MTB), D.N.J., Apr. 1994; and Related Case U.S. v Denny Herzberg (Cr. No. 94-254) (MTB), D.N.J., Apr. 1994
20. U.S. v. Lockheed Corporation, Suleiman A. Nassar and Allen R. Love (Cr. No. 1:94-Cr-22-016) N.D., Ga., Atlanta Division, June 1994
21. U.S. v. Saybolt North America Inc. and Saybolt Inc. (Cr. No. 98CR10266WGY), D. Mass., Aug. 18, 1998
22. U.S. v. David H. Mead and Frerek Pluimers (Cr. No. 98-240-01), D.N.J., 1998
23. U. S. v. Herbert Tannebaum (Cr. No. _____), S. D. N. Y. 1998
24. U.S. v. Control Systems Specialist, Inc. and Darrold Richard Crites (Case No. CR-3-98-073), S.D. Ohio, Filed Aug. 19, 1998
25. U.S. v. International Material Solutions Corporation and Thomas K. Qualey (CR-3-99-008) S.D. Ohio 1999
26. U.S. v. Cantor (Cr. 687), S.D.N.Y. June 4, 2001
27. U.S. v. Weissman, (01 Cr. 529), S.D.N.Y. July 18, 2001
28. U.S. v. Daniel Ray Rothrock, (Cr. No. 343) W.D. Tex., June 13, 2001
29. U.S. v. Richard K. Halford (Cr. No. _____) W.D. Mo., 2001
30. U.S. v. Albert Franklin Reitz (Cr. No. _____) W.D. Mo. 2001

31. U.S. v. Robert Richard King and Pablo Barquero Hernandez, (Cr. No. 01-190) W.D. Mo., June 27, 2001
32. U.S. v. David Kay (Cr. No. 4-01-914) S.D. Tex., December 12, 2001
33. U.S. v. Carver et al. (S.D. Fla. 1979)
34. U.S. v. Dornier GmbH (D. Minn. 1990)
35. U.S. v. American Totalisator Company Inc. (Jan. 1993)
36. U.S. v. Metcalf & Eddy (Civil Action No. 99-12566) D. Mass. 1999
37. SEC v. Page Airways, Inc., James P. Wilmot, Gerald G. Wilmot, Douglas W. Juston, Ross C. Chapin, James P. Lawler, T. Richard Olney (D.D.C., Civil Action No. 78-0645, commenced Apr. 12, 1978)
38. SEC v. Katy Industries, Inc., et al. (N.D. Ill. (Civil Action No. 78c-3476), commenced Aug. 30, 1978, Lit. Rel. No. 8519)
39. SEC v. International Systems & Controls Corporation, et al. (ISC) (D.D.C., Civil Action No. 79-1760, commenced July 9, 1979)
40. SEC v. Tesoro Petroleum Corp. (D.D.C. No. 8-2961, November 29, 1980)
41. SEC v. Sam P. Wallace Company, Inc., Robert D. Buckner and Alfonso A. Rodriguez (D.D.C., Civil Action No. 81-1915, commenced Aug. 13, 1981, Lit. Rel. No. 9414)
42. SEC v. Ashland Oil, Inc., Orin E. Atkins (Civil Action No. 86-1904, commenced July 8, 1986, Lit. Rel. No. 11150)
43. Howes v. Atkins, (Civ A. No. 83-279) E.D. Ky Sept. 2, 1987
44. Williams v. Hall, (Civ A No. 84-149) E.D. Ky April 5, 1989
45. SEC v. Montedison, S.P.A. (Civil Action No. 1:96CV02631 (HHG) (D.D.C. Nov. 21, 1996))
46. SEC v. Triton Energy Corp., et al. (Civil Action No. 1:97CV00401 (RMU) (D.D.C. Feb. 29, 1997))
47. SEC v. International Business Machines Corporation (00-Civ.-3040) D.D.C., December 21, 2000
48. In the Matter of American Bank Note Holographics, Inc. SEC Administrative Proceeding File No. 3-10532 (July 18, 2001)
49. SEC v. Weissman, Cantor, Gorman and Gentile (01) CV 6449 S.D.N.Y. 2001

50. SEC v. American Bank Note Holographics, Inc. ("ABNH") (01) CV 6453 S.D.N.Y. 2001
51. In the Matter of Baker Hughes Incorporated SEC Administrative Proceeding File No. 3-10572 (September 12, 2001)
52. SEC v. KPMG Siddharta Siddharta & Harsono and Sonny Harsono (Civil Action No. H-01-3105) (S.D. Tex.) (Filed September 11, 2001)
53. SEC v. Eric L. Mattson and James W. Harris (Civil Action No. H-01-3106) (S.D. Tex.) (Filed September 11, 2001)
54. In the Matter of Chiquita Brands International, Inc. SEC Administrative Proceeding File No. 3-10613 (October 3, 2001)
55. SEC v. Chiquita Brands International, Inc., (Civil Action No. 1:01CV02079 (D.D.C. Oct. 3, 2001))

DANFORTH NEWCOMB is a litigation partner in the New York office of Shearman & Sterling. His practice covers a wide variety of civil, administrative and complex criminal matters. His experience with the Foreign Corrupt Practices Act began in 1976 with the investigation of Lockheed Aircraft Corporation's foreign marketing practice that was the precursor for the FCPA. In recent years, his practice relating to the FCPA has included grand jury investigations, Department of Justice inquiries, FCPA review requests and internal investigations relating to transactions in Europe, Latin America, the Middle East, Asia and former eastern bloc countries. Mr. Newcomb is a member of the Board of Advisers to The Foreign Corrupt Practices Act Reporter and the American Bar Association Task Force on the FCPA. His FCPA clients include companies in construction, energy, telecommunications, financial services, capital goods, manufacturing and power generating.

Mr. Newcomb graduated from the University of Vermont in 1965 and from Columbia Law School in 1968.