

## Paul Pelletier: Sporadic enforcement isn't effective enforcement

Monday, February 1, 2016 at 9:28AM

Paul E. Pelletier



At a recent ubiquitous FCPA conference, Assistant Attorney General Leslie Caldwell noted that even more resources would be added to the Fraud Section's FCPA Unit, increasing the number of prosecutors by 50% from 20 to 30 trial attorneys, making this specialty unit larger than the entire white collar sections of most United States Attorneys' Offices nationwide.

She also again noted the additional resource commitments of the FBI in the form of three squads situated across the country in the FBI's International Corruption Unit.

While resources can always be a welcome addition to the anti-corruption effort, by any fair measure, current resource allocations don't seem to provide adequate bang for the taxpayers' buck. Perhaps refocusing these additional FCPA resources toward a genuine and concerted effort to actually charge foreign government officials and dispossess them of their corrupt lucre would better serve the interests of justice.

Despite the FCPA unit's previous fortifications from 2010 to 2015 (to 20 trial attorneys), as I have noted in prior post for the FCPA Blog ([here](#)) and ([here](#)), FCPA investigations have continued to languish, with the seemingly solitary ameliorative effect of FCPA corporate resolutions being simply the collective fear engendered by the size of the monetary penalty. While appropriate training and retention efforts are certainly necessary and appropriate vehicles to rectify some of the deficiencies, adding more prosecutors will likely neither solve the problem nor provide the impetus for a more efficient and effective strategy.

Perhaps, rather than simply adding troops to help bolster the current reactive “whack-a-mole” approach, the 10 additional FCPA prosecutors could support a “strike force” model aimed at strategically disemboweling and deterring corrupt regimes.

In an article published last year in the *Westlaw Journal on White-Collar Crime* ([here](#)) I suggested that the DOJ should be prepared to radically alter the dynamic in the FCPA arena through a “proactive strategy” designed to “punish the bribe takers as well as the bribe payers and dispossessing the government officials of access to [their] ill-gotten gains.” Notably, the Administration’s [2015 National Security Strategy](#), while recognizing that “globalization has made it easier for corrupt officials to hide proceeds of corruption abroad,” mandates that prosecutors utilize the “broad range of tools” available to them “to recover assets stolen by corrupt officials and make it harder for criminals to hide, launder, and benefit from illegal proceeds.”

In her recent book, *Thieves of State*, author Sarah Chayes convincingly makes the point that international corruption, by providing havens and opportunity for breeding insurgencies, is a root cause of global instability. She further suggests that by strategically targeting U.S. law enforcement resources, such as the FCPA and asset forfeiture and money laundering laws, against known kleptocrats, their agents and their tainted assets, insurgencies in particular venues could be dramatically impacted. Against this backdrop, recent trends and events intriguingly highlight that the Department’s capabilities in this arena, if properly resourced and focused, could be used to considerable and consequential effect.

First, we know that through the rigorous regulatory enforcement of global financial due diligence mechanisms, government investigators can track and trace the movement of corrupt assets and sanction those financial institutions that fail to conduct proper inquiry. The whopping \$108 million (£72,069,400) penalty assessed [against Barclays Bank](#) by the British Financial Conduct Authority (FCA) on November 30, 2015, provides a stark example of the regulatory “stick.” According to press reports, the penalty emanated from a secret £1.88 billion transaction financed by Qatari politically exposed persons wherein Barclays failed to conduct even a modicum of diligence. Certainly, these regulatory penalties, when responsibly implemented, incentivize financial institutions to carry out the swift reporting of suspicious transactions necessary for law enforcement authorities to act.

Second, the United States and its global law enforcement partners have broad powers to quickly seize, dispossess and repatriate the ill-gotten gains of corrupt foreign officials. As an example, in December of last year the DOJ announced that, as part of its 2011 Kleptocracy Asset Recovery Initiative operated out of the Criminal Division, it had repatriated to the people of Kazakhstan approximately [\\$115 million in bribe payments](#) that had been seized from

Swiss bank accounts in a prior FCPA forfeiture action. The use of the repatriated funds is to be administered by a World Bank organization independent of the Kazakh government.

Third, in early 2015, the 11<sup>th</sup> Circuit Court of Appeals affirmed the conviction of [Jean Rene Duperval](#), a government official in Haiti who had been charged with laundering bribes he had been paid by American businessmen seeking to corruptly access the Haitian mobile telecom market. The money laundering conviction and nine-year sentence of Duperval, the director of a telecom company owned by the government of Haiti, again established that corrupt foreign officials or “bribe takers” are not beyond the reach of the long arm of U.S. criminal laws even though they cannot be prosecuted directly under the FCPA.

Sporadic enforcement, however, is not effective enforcement. It is not enough that, on occasion, foreign corrupt officials and their agents are prosecuted for conducting financial transactions with corrupt funds; that those funds are detected and seized by regulators and law enforcement officials; or that the bribe money is repatriated to its rightful owners, the fleeced victims of the corrupt officials. What *is* required is an unrelenting and focused strategy, similar to that employed by the heralded Medicare Fraud Strike Force, as well as the commitment of long term enforcement resources sufficient to alter the corrupt status quo in target countries. Based upon recent events, Nigeria might be just the place to start.

In a recent article in *The Economist*, Nigeria’s newly elected President, Muhammadu Buhari, reiterates his desire to [break the endemic cycle](#) of corruption in Nigeria and pledges his cooperation with foreign governments “to locate and then return missing billions siphoned out of Nigeria by leaders of previous administrations” to be reinvested in their economy. Any casual observer of FCPA enforcement trends will recognize that Nigeria is a country whose officials and their agents are routinely and prominently referenced in FCPA dispositions. Moreover, the slaughter of civilians and other crimes against humanity by the notorious Boko Haram, reported to be funded by Nigerian corruption, persistently remain front page news. There appears to be a rare opportunity here to strike at the heart of a deeply engrained culture of corruption. It should not be wasted.

The DOJ must consider permanently directing Criminal Division anti-corruption resources toward a sustained “strike force” strategy targeting those venues where the potential success is greatest. Why not start with Nigeria?

In recent remarks, [AAG Caldwell recognized](#) that the combined resources of the FBI’s three International Corruption squads, the Asset Forfeiture Section and the FCPA Unit, create a force multiplier capable of achieving significant results. Surely, the continued allocation of resources toward traditional whack-

a-mole FCPA investigations, if past is prologue, will continue to produce neither meaningful nor measureable results.

The DOJ and the FBI are well positioned to break the current mold and engage with receptive governments to cast off the chains of decades of corruption that drive countries like Nigeria into a spiral of despair and misery ripe for the influence of insurgencies. With the ready availability of resources, all that is required is the will to take up the challenge of making a real and lasting impact worldwide. After all, wasn't that the vision of FCPA enforcement when the statute was first enacted?

---

***[Paul E. Pelletier](#)** is a partner in the Washington, D.C. Office of Mintz Levin Cohn Ferris Glovsky and Popeo PC. His practice focuses on white collar criminal defense and compliance. He previously spent more than 25 years at the U.S. Department of Justice, serving as Chief of the Economic Crimes Section for the U.S. Attorney's Office in Miami and from 2002 to 2011 as Acting Chief and Principal Deputy Chief of the Criminal Division's Fraud Section. He can be contacted [here](#). Follow him on Twitter [@PePelletier](#).*

Article originally appeared on The FCPA Blog (<http://www.fcpablog.com/>).  
See website for complete article licensing information.