June 15, 2015

What Happened In Oslo Shouldn't Stay in Oslo

This post originally appeared on June 15th on the Richard Bistrong FCPA Blog www.richardbistrong.com and it is reposted with his permission.

Last week I had the pleasure and honor of participating in the Oslo, 2015 Anti-Corruption Conference, at the invitation of Helge Kvamme, Partner, Investigations and Compliance, Selmer Law Firm, Norway, and a member of the Organizing Committee as well as a speaker during the Conference. It was during the Conference that I engaged, via live video feed, in an interview with Robert "Bob" Appleton, Partner, Day Pitney, who from Norway, interviewed me in a one hour session titled "Bribery from the sharp end." During this session, Bob launched into a discussion which started from our first intersection in 2006, when he targeted me as Chairman of the UN Procurement Task Force, as a subject of a UN investigation on contract fraud.

Today I have the additional pleasure of presenting a "round-up" of this unique event from three different perspectives: Helge Kvamme, as one of the Organizers and speakers, Bob Appleton as a panelist as well as speaker, and Jo Sherman, CEO of EDT Software, which is a case management software platform for disputes and investigations (see www.discoveredt.com), who was an attendee. Given the importance of this Conference, which brought together anti-corruption leaders from around the globe, I hope that today I can play a part in making certain that "what happened in Oslo does not stay in Oslo."

So Helge, as one of the organizers, let's start with you, how about introducing everyone to the Conference, so to speak:

Richard, based on the feedback from participants, the second Oslo Anti-Corruption Conference that took place at the Felix Conference Centre was a great success. Myself, from the law firm Selmer and representing the Organizing Committee, pointed out in my opening address, that the conference this year, being a unique cooperation between ØKOKRIM (The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime), Transparency International Norway, PwC and Selmer, was focused on the Root Causes as well as Consequences of Corruption.

I also underlined that we must not be under the delusion that corruption is a victimless crime, and referenced your presentation with Bob Appleton closing Day 1, under the headline "Bribery from the Sharp End." I finalized my opening remarks, referring to this quotation from the President of World Bank Group, Jim Yong Kim: "Corruption steals from the poor. It steals the promise of a brighter future."

Then the Minister of Trade and Industry in Norway, Mrs. Monica Mæland, demonstrated the importance this conference has already taken in Norway, where in her key note address she thanked the organizers for the initiative and stated that the government is looking into the need for new actions not at least due to the recent cases of bribery and corruption involving state owned companies.

From the minister's key-note Thursday morning until the final presentation Friday afternoon, an impressive total of 30 national and international speakers and panelists gave very useful insights on topics like:

· National and international anti-corruption development and review of relevant cases both on a national and international level

· The causes of corruption and how a corrupt culture can emerge in organizations in spite of necessary policies and guidelines

· Presentation of OECD's latest report "Foreign Bribery Report -- An analysis of the crime of bribery of foreign public officials" containing very interesting findings from studies of all corruption cases from OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transaction entered into force in 1999

· Presentation of international initiatives regarding illicit financial flows after bribery payments including those ending up in tax havens under the control of corrupt regime leaders; including the presentation of the World Bank and the UN Office of Drugs and Crime's (UNODC) initiative The Stolen Assets Recovery Initiative (StAR) and FBIs Kleptocracy program

· Finance Norway's (the industry organization for the financial industry in Norway) Situation Report and Action Plan

· Responsible investments -- how to handle Corruption Risks in global investments

· The consequences of corruption with focus on the situations in Angola, Ukraine and Indonesia

Bob, what about you, given that you were invited as a speaker, including our own Q and A, what resonated with you from the entire event?

Thanks Richard. One presentation which I found extremely compelling, especially in the context of my work now as a lawyer counseling corporations on FCPA risks, as well as my former life as a DOJ Prosecutor and Chief of Investigations in two major international organizations, was the featured presentations by the FBI's International FCPA Unit who sent their squad leadership to Oslo. The FBI described their presence in Oslo as a sign of their commitment to combating foreign bribery, and as part of their effort to extend an "olive branch" to multinational companies and other national authorities to join in the fight against foreign bribery and violations of the FCPA.

Also worth mentioning was our that our live question and answer presentation received the highest acclaim from conference participants, who called it a "unique" and a very engaging session. While many of the facts we addressed about your confronting foreign bribery during your career as an International Sales VP in the Defense Sector, came out in my UN case and your subsequent US Plea Agreement, this was a valuable opportunity, and in fact quite rare, for a live audience to have the chance to hear your experience first- hand. Richard, you were also very generous in answering audience questions. Compliance officials in attendance commented that they found your real life experiences, as well as the 'lessons learned' discussion, invaluable.

Jo, what about you? Oslo is a long way from New York, why did you attend?

I attended this conference because I have, over recent months come to realize that that many of our international corporate clients, industry colleagues and partners are actually using our software not for the purpose for which it was originally designed, eDiscovery and litigation case management, but rather to manage internal investigations, many of which relate to alleged corruption or bribery. I attended the conference with the Manager of our London office, Mark Giles, to learn more

about the anti-corruption sector and it was indeed an informative and stimulating experience. Plus, I love Oslo and the calm sophistication of Oslo provided a perfect location for this event that attracted a diverse congregation of corporate compliance and ethics executives, representatives from charitable bodies, government officials, law enforcement officers, consultants, academics and international intelligentsia.

Helge, can you share some more information about your speakers?

Speakers and panel participants were national and international experts and representatives for public and private organizations from Norway, USA, UK, Ukraine, Angola and Indonesia. As Bob mentioned, speakers from FBI International Corruption Unit gave very interesting presentations on the Kleptocracy program regarding the "Follow the Money" initiatives and presented the impressive results in the last years regarding freezing and returning of billions of USD in stolen assets, representing a considerable achievement and a dramatic increase compared to earlier periods. At least US$20 billion is stolen each year, so much more remains to be done, but recent cases shows that asset recovery can and does work, though requires tenacity and creativity.

Richard, the need to strengthen the international cooperation and commitments regarding recovery of the proceeds of corruption and denial of safe haven to corrupt officials was referred to by many of the speakers at the conference. They were pointing at the effectiveness of a civil, non-conviction based forfeiture system as well as a system of Self-Reporting of corruption cases with the possibility of leniency based on the involved company's Anti-Corruption Compliance efforts and cooperation.

The presentations on the situations in Angola, Ukraine and Indonesia, really proved the faces of the victims of bribery and corruption and the need to fight corruption to help the poor people of the world. Neither peace, nor development and human rights can flourish in an atmosphere of corruption.

Jo: Indeed, a theme that provided an undercurrent to many of the presentations was the devastating impact corruption can have on humanitarian projects in third world communities. As one of the presenters said "it's distressing to hear the wealthy beneficiaries of corruption rationalize the status quo and the extreme social injustices that humanitarian projects are trying to address."

Bob: Agreed. The Conference presentations on anti-corruption efforts in Angola, Tanzania, and Ukraine, as well as information from these countries on the success of anti-corruption efforts and to highlight the scourge bribery has on developing and poorer countries.

I also enjoyed, and thanks to Helge, for asking me to participate in a panel on the Anti-Bribery Report from the OECD, which studied 427 made foreign bribery cases around the world from 1999 through 2013.

I provided my analysis of the report, based on my experience of more than 15 years in the field, doing these cases on the front lines, and completing more than 700 bribery and corruption investigations throughout the world. My view, as I expressed, is that the report statistics should be viewed in context of made cases, as to opposed to the total "incidents" of bribery. However, some significant aspects of the report are worthy of consideration and consistent with my findings- including that a third of all foreign bribery cases are the result of self-reporting, and that law enforcement is responsible for a mere 13% and the media and whistleblowers an even smaller fraction. I stated that there is much to be done in the fight against bribery and corruption, and that many countries must join that fight as most international corruption is not being

addressed. The reasons for this include conflicts of interest with a number of the local authorities, the involvement of government officials in those countries who are in positions of power, as well as a lack of resources, and support from the governments.

Jo: As Helge himself said "millions of people are without fresh water in Africa largely due to corruption". On this theme, the words of Norway's Henrik Ibsen are particularly poignant "the worst a man can do to himself is to do injustice to others".

Bob, from your days at the DOJ, was there anything particular about the FBI presentation of interest?

Definitely Richard. In his presentation, FBI Supervisor Ren McEachern informed the audience that the FBI has dramatically increased their resources devoted to foreign bribery. McEachern referred to the increase as a clear signal of the priority the FBI now places on international corruption cases. McEachern also told the audience of the FBI is committed to greater cooperation with foreign authorities. I think these are major steps Richard, and other national authorities and investigative bodies should take note, and follow the lead. It is only with and through continuous and real international cooperation that the fight against corruption has any chance.

Helge: Richard, your own session "Bribery from the Sharp End", became a highlight of the conference with a strong message. As you well state "you bribed foreign officials, cooperated with international law enforcement and went to prison," and at the conference, you shared this front line experience through an engaging session with Bob, for the benefit of others who confront overseas corruption risk in the field and for compliance practitioners tasked with helping them to manage corruption risk. On your video link from New York, where you exchanged perspectives with Bob, this session really gave a unique, and for the first time in Norway, a real life and exceptional insight into the root causes of corruption.

Jo: Indeed, the interview provided compelling and somewhat confronting insight into the ease with which intelligent well-credentialed executives can gradually become "ethically numb" if they are continually focused on vigorous pursuit of sales targets and bonuses. 'Ethically' numb perhaps but not 'comfortably' so. Richard, you paid a heavy price for your transgressions having spent time in prison, and it was interesting to hear about your work as an educator, where you were paid 23 cents an hour to teach other inmates English. Nonetheless, yours is a lesson on the considerable personal and professional consequences of corruption.

Thank you Jo. Well, as the voice of the attendee, let's give you the final word, anything you would like to share as a take-away?

Overall the conference was confronting yet inspiring. There is much work to do but it appears there is a growing spirit of collaboration and a new energy in the global anti-corruption community. It will not be easy and there will be casualties but, as Ibsen says, "Never wear your best trousers when you go to fight for freedom and truth."