



Corporate Type

by John Okray and Rachel V. Rose

Interview with Lanny Breuer, Recent Head of the U.S. Department of Justice's Criminal Division and Current Vice Chair of Covington & Burling LLP

Lanny A. Breuer served from 2009-2013 as assistant attorney general for the Criminal Division at the U.S. Department of Justice. As one of the longest serving Criminal Division chiefs in history, Breuer oversaw nearly 600 lawyers at the center of federal criminal prosecution, policy, and legislation in the United States. In his role as assistant attorney general, Breuer was widely recognized as a national leader on a range of federal law enforcement priorities, including the U.S. Foreign Corrupt Practices Act, health care fraud, money laundering, financial fraud, cybercrime, intellectual property theft, and public corruption. While at the Justice Department, Breuer spearheaded the publication of the Resource Guide to the U.S. Foreign Corrupt Practices Act, which stands as the definitive guidance document from the United States government regarding its enforcement of the FCPA. For his work in the Criminal Division, Breuer ranked sixth on Ethisphere's list of the 100 Most Influential People in Business Ethics internationally and was recently named by the National Law Journal as one of the 100 Most Influential Lawyers in the United States.

Breuer is vice chair of Covington & Burling and one of the leading trial and white collar defense attorneys in the United States. He specializes in helping clients navigate corporate crises, anti-corruption matters, money laundering investigations, cybercrime incidents, Congressional investigations, and other criminal and civil matters presenting complex regulatory, political, and public relations risks.

What impact do you feel the Foreign Corrupt Practices Act (FCPA) has had on the reduction of illegal bribes and related accounting crimes?

Breuer: The FCPA has become a vital tool for the U.S. Department of Justice (DOJ) to combat fraud and corruption



around the world. As the recent court and administrative decisions and pleas of various companies and individuals indicate, the FCPA has had both a deterrent effect and a positive compliance impact on corporations worldwide. This is further reflected in the similar laws other countries have adopted to combat illegal bribes to their officials. The UK, China, and South Africa have all passed anti-corruption laws. Over the last four years, prosecutors have brought charges against American and foreign companies and subsidiaries have been prosecuted. By leveling the playing field, American companies benefit the most when they can compete based upon the quality of their products and services and the competitiveness

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of their workforce. The Justice Department's successful track record is one reason why.

Have the FCPA and UK Bribery Act had material impacts in term of lowering any customary expectations in other countries about receiving bribes or maintaining or retaining business?

Breuer: I cannot speak for the foreign corrupt officials around the world, but anti-corruption laws have helped those who want to resist bribes. The FCPA empowers companies to be able to say to a foreign official, "I just cannot do what you are asking me to do because there is this enormous enforcement regime watching." The residual impact on the reputation of the company, the official and the country is significant because of the potential for worldwide exposure and criminal prosecution. What the DOJ has done is to empower people to do the right thing and other countries are following suit.

Have the Department of Justice and Securities and Exchange Commission (SEC) achieved similar success in relation to the FCPA that the DOJ and the Department of Health and Human Services have realized from their partnership in combating healthcare fraud?

Breuer: Yes. In general, during my four-year tenure at the DOJ, I was an enormous believer in partnerships. I have always been a huge believer in team sports and in collaborative efforts among colleagues. Creating a robust partnership with the SEC worked really well in enforcing the FCPA.

What practical advice would you have for an in-house attorney that learns that an employee, agent, or executive has engaged in activities that may have violated the FCPA?

Breuer: First, the decision must be made to address it either internally or externally with able counsel. This can help identify if this is a "one-off" event or more of a systemic problem. Second, the biggest mistake is to mask or turn away from it. Determine, in a very cogent way, how systemic and widespread the problem is. Third, make sure the requisite compliance program metrics are in places to minimize the chances of something like this happening again.

In relation to the 2012 DOJ/SEC FCPA Resource Guide, how would you describe the joint enforcement of the FCPA by the DOJ and SEC?

Breuer: It has been extraordinary. This relationship has shown that the Department has been able to prosecute these cases at an unprecedented level. It has been done in a comprehensive, fair and open manner. Pleadings and resolutions can be viewed online. These cases are of consequence and not cases of triviality. The Department has tried really hard to be fair and just. Over the last four years, the Department has brought more cases than ever before, but also equally important, our partners around the world have taken the baton as well. I believe it is because they see the United States' leadership in this area and desire to partner with responsible countries around the world. This has been a great success, which will only continue in an upward trajectory in the future.

What professional accomplishment are you most proud of?

Breuer: I am very proud of my record at Justice. In four years, the Department increased enforcement of the FCPA, overseeing more than 40 corporate resolutions and eight of the top 10 largest penalties in U.S. history. The Criminal Division secured convictions of more than three dozen individuals on overseas corruption-related offenses, a department record. And the Department collaborated with the Securities and Exchange Commission to publish critical guidance on the government's anti-corruption enforcement efforts. I also oversaw an innovative program known as the Kleptocracy Asset Recovery Initiative, a program that identified and forced the forfeiture of proceeds from foreign official corruption.

In addition, I oversaw the investigation concerning the London Interbank Offered Rate and launched the Justice Department's Money Laundering and Bank Integrity Unit. During my time at Justice, the unit secured approximately \$3.1 billion in criminal forfeitures from major financial institutions. The Department led the largest traditional organized crime prosecution and the two largest Medicare fraud cases in U.S. history. And we prosecuted the owners of an international data storage website for allegedly committing intellectual property infringement, one of the largest criminal copyright cases ever brought by the United States. More importantly, we were able to bring together top minds from a variety of government and private sources and this propelled the criminal division to the current role it plays in enforcing the laws in the United States today. I was fortunate to leave behind this legacy, which was built on the efforts of the entire Department. It was truly the privilege of my professional career to serve as the head of the Criminal Division and I will always cherish this experience.

As you transition back to the private sector with Covington & Burling, what role will you be assuming?

Breuer: My goal is to help Covington become the greatest law firm in the world. My practice will encompass a wide range of civil and criminal litigation matters, as well as governmental and internal investigations. As Covington's vice chair, I will work closely with senior leadership to implement the firm's long-term strategy, with a particular focus on the firm's international initiatives and practices. I feel fortunate to have been the head of the Criminal Division for the past four years and proud of what the Department accomplished, but I am ready to go back home.

More information about the FCPA can be found at www.justice.gov/criminal/fraud/fcpa/.