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A Lesson from The Snowden Manhunt

Government Contractors Can Face Criminal Prosecution

By Thomas E. Zeno

International diplomatic quarrels involving the United States frequently spark a frenzy of media attention. Dramatic aspects of the manhunt for Edward Snowden are a classic example, ranking among the best of "007"-type tales of intrigue. However, government contractors should not overlook the report of possible criminal prosecution if investigators failed to complete the required background check before Snowden was approved for a security clearance. Although some Americans may think prosecutors are bluffing, they are not. As a former assistant U.S. attorney in the District of Columbia, I've prosecuted such cases before, and know the government will do so again. The Snowden saga provides a sobering lesson to everyone who makes a certification to the government.

The Background Check

Budget battles about right-sizing the federal government should not obscure the fact that crucial work is performed by thousands of federal workers who need security clearances before they can be hired. The protocol for getting a clearance requires that an investigator

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Compete or Enforce?

U.S. Chooses Enforcement of Tax Laws over Competition On Tax Rates

By Jay R. Nanavati and Justin Thornton

As many have noted, the world is now flat. Not only can a computer scientist in Bangalore compete with one in Mountain View for software sales, but the government of Liechtenstein can compete with the government of the United States in attracting investors' funds. In other words, if people are dissatisfied with the American tax regime, they can move their money, usually secretly, to a country with a regime that is more hospitable.

Faced with disappearing barriers to the flow of money, the U.S. government has two options. First, it can reduce the tax burden that it imposes in an effort to win the race to the bottom (or the top, depending on your perspective) and have the world's friendliest tax regime. Second, it can try to create new barriers to the outflow of money from the U.S. by stepping up criminal and civil enforcement of existing tax-related reporting requirements and creating new ones. Over the last five years, the U.S. government has emphatically chosen the second option.

The U.S. government recognizes that it cannot compete with tax haven countries on tax rates. The American people are unwilling to do without the things that their tax dollars provide: Social Security; Medicare; a military that costs more than those of the next 10 countries combined; almost 50,000 miles of interstate highways; and comparatively effective government. Instead of competing in a race that it knows it cannot win, it is opting out of the race and stepping up its criminal and civil tax enforcement. The post-UBS prosecutions of banks and individuals who commit tax evasion are one prong of the attack. The Foreign Account Tax Compliance Act (FATCA) is the other.

The UBS-Inspired Enforcement Wave Since 2009

Since the U.S. government entered into the historic deferred prosecution agreement with UBS in 2009, news of additional enforcement actions against banks

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has been unremitting. For example, the following banks, among others, have been publicly named in various types of U.S. enforcement actions: Wegelin & Co., Pictet & Cie, Neue Zuercher Bank, Credit Suisse Group AG, Basler Kantonalbank, Bank Julius Baer, Bank Frey, Bank Hapoalim, Bank Leumi, Mizrahi-Tefahot, and Liechtenstein Landesbank AG. According to the U.S. Department of Justice (DOJ), the government is, as of August 2013, actively investigating the Swiss-based activities of 14 financial institutions. This is in addition to publicly announced enforcement activities in India, Luxembourg, Israel, and the Caribbean.

Perhaps the most important development in the U.S. government's efforts to target offshore banks since the UBS deferred prosecution agreement is the Aug. 29, 2013, agreement between the U.S. and Swiss governments to encourage all Swiss banks to admit their role in U.S. tax evasion in exchange for non-prosecution agreements and substantial monetary penalties. To participate, Swiss banks have to make a complete disclosure of their cross-border activities; provide detailed information on U.S. taxpayers' accounts; and pay a penalty of 20, 30, or 50% of the maximum value of all non-disclosed U.S. accounts that were held by the banks, depending on when the accounts were opened. This will likely attract many Swiss banks and will foreclose the possibility of U.S. taxpayers' evading detection of their Swiss accounts. Presumably, this agreement with Switzerland will be a template for agreements with other countries.

Similarly, the government has aggressively pursued individual U.S. taxpayers. Since 2009, approximately 39,000 taxpayers have taken advantage of the IRS's Offshore Voluntary Disclosure Program (OVDP) to avoid criminal prosecution. They have paid over $5.5 billion in tax, penalties and interest. A number of taxpayers who did not avail themselves of the OVDP have been prosecuted. One of the latest examples is Aaron Cohen of Encino, CA, who pleaded guilty on Aug. 29 to concealing bank accounts at two international banks headquartered in Tel Aviv, Israel. Another is Henry Seggerman, who pleaded guilty on Aug. 28 to charges related to his participation in a scheme with family members to hide money in secret Swiss bank accounts. According to the DOJ, since 2009 the government has charged more than 30 banking professionals and 68 U.S. account holders with violations arising from their offshore banking activities.

The U.S. government is also using so-called "John Doe summonses" to unearth information on U.S. taxpayers' foreign bank accounts. On April 7, 2011, a federal court granted the IRS and DOJ's request for a John Doe summons to force HSBC India to turn over the names of U.S. taxpayers "who at any time during the years ended December 31, 2002 through December 31, 2010, directly or indirectly had interests in or signature or other authority" over "financial accounts maintained at, monitored by, or managed through The Hongkong and Shanghai Banking Corporation Limited in India (HSBC India)."

The scale of the problem is staggering. According to the DOJ's court filings, there are 9,000 U.S. residents of Indian origin who have $100,000-minimum-balance accounts at HSBC India alone. According to the DOJ, however, for calendar year 2009, the most recent year for which information is available, there were only 1,391 FBARs

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The FCPA and Personal Jurisdiction over Foreign Nationals Residing Outside The U.S.

Part Two of a Two-Part Article

By Andrew M. Levine, Bruce E. Yannett, Scott Auby and Steven S. Michaels

In last month's issue we discussed one of two recent decisions in which U.S. District Court judges considered this question: When may foreign nationals residing continuously outside the United States be prosecuted on civil Foreign Corrupt Practices Act (FCPA) charges by the Securities and Exchange Commission (SEC), taking into account the due process "fair play and substantial justice" requirements of *International Shoe v. Washington*, 326 U.S. 310 (1945)? The two judges — Judge Richard J. Sullivan in *SEC v. Straub*, 11-CV-9645 (RJS), 2013 WL 466600 (S.D.N.Y. Feb. 8, 2013), and Judge Shira A. Scheindlin in *SEC v. Steffen*, 11-CV-9073 (SAS), 2013 WL 603135 (S.D.N.Y. Feb. 19, 2013) — came to very different conclusions on the issue. We turn now to the *Steffen* case.

The Decision in *Steffen*

The SEC's complaint in the *Steffen* matter alleged that, in connection with a tender that was awarded and then canceled by the government of Argentina for the design and production of a national identity card, Herbert Steffen, a former Chief Executive Officer of Siemens Argentina S.A. (Siemens-Argentina), and later a Group President of Siemens Transportations Systems (STS), a division of Siemens AG, along with six other former senior executives at Siemens AG, violated or aided and abetted Siemens AG's violations of the primary anti-bribery provisions of 15 U.S.C. § 78dd-1, as well as the books-and-records and internal-controls provisions of the FCPA set forth at 15 U.S.C. § 78m(b)(2)(A) and (B), as well as (b)(5). *Steffen*, 11-CV-9073, Complaint (S.D.N.Y. Dec. 13, 2011).

The SEC alleged that, in connection with the tender for the identity card project and then Siemens AG's efforts to obtain compensation from the Argentine government in arbitration before the World Bank's International Center for the Settlement of Investment Disputes (ICSID), Siemens AG paid roughly $100 million in bribes — more than $31 million of which was allegedly paid after Siemens AG became an issuer in 2001 — to win the tender and then to conceal the original bribery from the ICSID tribunal. Although the SEC alleged that Steffen had "longstanding connections in Argentina, which he acquired during his tenure at Siemens-Argentina," as found by Judge Scheindlin, the alleged misconduct by Steffen took place during or after his tenure as Group President at STS.

Parsing the allegations of the complaint, Judge Scheindlin noted that Steffen had allegedly been "recruited 'to facilitate the payment of bribes,'" and participated, starting in 2000 after the contract had been awarded and then cancelled, in "negotiating with the Argentine government, including with the newly elected president, which demanded that Siemens pay it bribes in order to reinstate the contract."

Judge Scheindlin noted that the SEC alleged that Steffen met with the CFO of another Siemens AG division, Siemens Business Services (SBS), and "pressured" the SBS CFO, including after Siemens AG became an issuer, to effect the bribery scheme; the SEC also alleged that Steffen told the SBS CFO, during the period in which Siemens AG was subject to the FCPA, "that SBS had a 'moral duty' to make at least an 'advance payment' of ten million dollars to the individuals who had previously handled the bribes because he and other individuals were being threatened as a result of the unpaid bribes."

Judge Scheindlin concluded, however, that subsequent to when the SBS CFO allegedly authorized the bribes, "the allegations against Steffen are limited to participation in a phone call initiated by [a then Siemens AG Managing Board member] from the United States in connection with the bribery scheme," as well as another effort by Steffen, and other defendants, in the first half of 2003 to "urge" the then Managing Board member "to meet the demands [of Argentine officials] and make the additional payments." Although the SBS CFO allegedly authorized certain payments thereafter, Judge Scheindlin noted that this occurred only after the SBS CFO sought "additional guidance from 'superiors' including Siemens' Head of Compliance, Chief Financial Officer, Chief Executive Officer, and two members of the Managing Board, including [the defendant Managing Board member], whose responses [the SBS CFO] 'understood … to be instructions that he authorize the bribe payments.'"

The SEC's complaint, Judge Scheindlin found, alleged that the SBS CFO had made false statements and material omissions in Sarbanes-Oxley certifications. In summarizing the SEC's allegations against Steffen, Judge Scheindlin stressed Steffen's lack of alleged role with respect to the alleged books and records and internal control violations and the misconduct at SBS:

> While Steffen's actions may have been a proximate cause of the false filings — and even that is a matter of some doubt — Steffen's actions are far too attenuated from the resulting harm to establish minimum

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> contacts. Steffen was brought into the alleged scheme based solely on his connections with Argentine officials. In furtherance of his negotiations with those officials, Steffen "urged" and "pressured" [the SBS CFO] to make certain bribes. However, [the SBS CFO] did not agree to make the bribes until he communicated with several "higher ups" whose responses he perceived to be instructions to make the bribes. Once [the SBS CFO] agreed to make the bribes-following receipt of instructions from Siemens' management rather than Steffen[,] Steffen's alleged role was tangential at best. Steffen did not actually authorize the bribes. The SEC does not allege that he directed, ordered or even had awareness of the cover ups that occurred at SBS much less that he had any involvement in the falsification of SEC filings in furtherance of those cover ups. Nor is it alleged that his position as Group President of Siemens Transportation Systems would have made him aware of, let alone involved in falsification of these filings.

Steffen, 2013 WL 603135 at *4.

Judge Scheindlin stated, as well, that "it is not even clear that Steffen's actions were a proximate cause of the bribes being made, given [the SBS CFO's] perceived need for approval ... " *Id*. at *6 n.62.

Citing Judge Sullivan's decision in *Straub* with approval, and addressing the SEC's argument that jurisdiction lies over "an executive of a foreign securities issuer, wherever located, [who] participates in a fraud directed to deceiving United States shareholders," Judge Scheindlin held that "the exercise of jurisdiction over foreign defendants based on the effect of their conduct on SEC filings is in need of a limiting principle." *Id*. at *5. Thus, "[i]f this Court were to hold that Steffen's support for the bribery scheme satisfied the minimum contacts analysis, even though he neither authorized the bribe, nor directed the cover up, much less played any role in the falsified filings, minimum contacts would be boundless." *Id*.

Judge Scheindlin continued, "Absent any alleged role in the cover ups themselves, let alone any role in preparing false financial statements the exercise of jurisdiction here exceeds the limits of due process, as articulated by the Supreme Court and the Second Circuit." *Id*. The judge then buttressed her ruling on "minimum contacts" by holding that "Steffen's lack of geographic ties to the United States, his age, his poor proficiency in English, and the forum's diminished interest in adjudicating the matter [following the settlements of corporate actions against Siemens AG and Siemens-Argentina], all weigh against personal jurisdiction" under the requirement of "reasonableness." *Id*. at *6.

Judge Scheindlin thus directed the complaint against Steffen be dismissed, finding no need to reach Steffen's alternative argument that the SEC's 2011 action against him was untimely.

Conclusion

The due process analysis adopted by the court in *Straub* and *Steffen*, and particularly the latter's holding focusing on the impact of alleged individual misconduct on the alleged bribery-related falsity of financial statements filed with the SEC, and more generally on the alleged proximate role, *vel non*, a defendant plays with respect to primary anti-bribery charges, will likely give rise to renewed attention on personal jurisdiction as a defense to FCPA actions in civil cases, if not criminal cases as well. (Although due process challenges to personal jurisdiction in the criminal arena are governed not by the International Shoe "minimum contacts" and "reasonableness" tests, but instead by the requirement of a sufficient U.S. nexus, defined in a manner that is "neither arbitrary nor unfair," the tests can significantly overlap. *See United States v. Angulo-Hernandez*, 576 F.3d 59, 60 (Toruella, J., dissenting from the denial of en banc review) (citing cases from the First and Ninth Circuits).)

But while the court's effort in *Steffen* to distinguish *Straub* and similar cases on their facts, and the *Steffen* decision's emphasis on the role of SEC filings in the due process calculus, do not ignore entirely the alleged role of the defendant with regard to primary anti-bribery matters, its jurisdictional approach is in tension with decisions that broadly construe the SEC's and the Department of Justice's (DOJ's) ability to prosecute aiding and abetting (as well as, in the case of the DOJ, conspiracy).

Indeed, only last fall, the U.S. Court of Appeals for the Second Circuit rejected arguments that the SEC's statutory authority to prosecute aiders and abettors required proof that the defendant "proximately caused" the primary violator's misconduct. *SEC v. Apuzzo*, 689 F.3d 209 (2d Cir. 2012). That decision, however, did not arise in the context of extraterritorial application, or in the context of a personal jurisdiction challenge, and it is likely that only further appellate guidance will be able to settle whether *Steffen's* reasoning can be said to have legs that go beyond the unique alleged facts there at hand.

More broadly, the ruling in *Steffen* and the general analysis in *Straub*, with its focus on SEC filings and their accuracy, raise questions of how the DOJ could assert and sustain personal jurisdiction against non-citizen employees and agents in suits under 15 U.S.C. § 78dd-2. That provision of the FCPA does not depend on SEC financial statement nexus. The two rulings raise similar questions regarding the viability of the aider and abettor and conspiracy liability theories the DOJ has enunciated as applicable to those who aid, abet, or conspire with primary violators of the "in-the-territory" anti-bribery provisions of the FCPA set forth at 15 U.S.C. § 78dd-3, regardless where those alleged aiders and abettors or co-conspirators reside. (*See* U.S. Dep't of Justice & U.S. Sec. and Exch. Comm'n, "A Resource

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conduct a rigorous background check of an applicant and submit a detailed report about the results of the investigation. Reports take weeks to compile because the investigator must locate and interview current and former employers, co-workers, friends and neighbors of an applicant. The investigator asks these sources a detailed set of questions ranging from their relationship with the applicant to knowledge of the applicant's beliefs and habits. As the last step in the background check, the investigator certifies that everything in the report is accurate. Relying on the accuracy of that certification, the government can then grant a security clearance and hire the applicant.

Although certifications are not often double-checked before an applicant is hired, the government requires random audits to ensure that the certified interviews actually occurred. A second investigator contacts a selection of sources to question them about whether they remember being interviewed as well as to compare details of the second interview with those contained in the certified report. If discrepancies appear with one source for an applicant, the second investigator interviews additional sources. When agents from the Office of Personnel Management assemble evidence that an investigator falsely certified to completing a background check, they refer the case for prosecution. Jurors returning a guilty verdict, and judges imposing a sentence of incarceration, took these cases as seriously as we did precisely because of the important work assigned to those needing clearances.

It remains to be seen whether Snowden's case will be made into a high-profile, public example of the actual harm caused by a security clearance issued after a false certification. My former team found a chilling example of the potential harm that could result from a false certification. As we prosecuted an investigator who falsely certified

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Peerce Appointed Co-Chair of NACDL

Marjorie J. Peerce, a white collar defense litigator at Ballard Spahr Stillman & Friedman, and a member of this newsletter's Board of Editors, has been appointed co-chair of the Sentencing Committee of the National Association of Criminal Defense Lawyers (NACDL). The NACDL is a professional bar association with more than 10,000 members. Its sentencing committee examines sentencing policies and practices and focuses on revisions to the federal sentencing guidelines.

"I'm honored to take leadership of the Sentencing Committee during this exciting time in criminal law sentencing," said Ms. Peerce. "Attorney General Eric Holder recently announced that the Department of Justice will no longer pursue mandatory minimum sentences for certain low-level offenders. My new co-chair and I see this as an opening to re-examine federal sentencing and the federal sentencing guidelines for other crimes."

Ms. Peerce represents clients in New York State and federal courts, as well as in federal districts throughout the country. She handles criminal and regulatory investigations involving securities regulation, the Internal Revenue Code, the Foreign Corrupt Practices Act, the Bank Secrecy Act, and government contract procurement and subsidy fraud.

Ms. Peerce is past president of the New York Council of Defense Lawyers, the largest regional organization of white collar defense lawyers in the country, and was that organization's first female officer and president. She has served as the chair of its Federal Sentencing Guidelines Committee. While chair of this committee, she made regular submissions to and testified before the United States Sentencing Guidelines Commission. Ms. Peerce is an NACDL representative on an American Bar Association task force to propose sentencing reforms for economic crimes. She also chaired the Criminal Law Committee for the Association of the Bar of the City of New York.

"This appointment is recognition of Margie's vast knowledge of sentencing practices and procedures," said Henry E. Hockeimer, Jr., Practice Leader of Ballard Spahr's White Collar Defense/Internal Investigations Group. "With 97%of federal cases resulting in guilty pleas, it's essential to have a thorough understanding of sentencing practices and an exceptional advantage to have a say in the reexamining and restructuring of them."

Ballard Spahr opened its New York office in July when it joined forces with Stillman & Friedman, a Manhattan litigation boutique. Lawyers in that office, known as Ballard Spahr Stillman & Friedman, focus on white collar criminal defense, municipal securities litigation and enforcement, civil litigation, appellate work, and consumer financial services regulation and litigation.

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the background investigation of an applicant applying to work in a nuclear facility, we envisioned the damage that could have occurred in a post-9/11 world if a terrorist had infiltrated the plant.

The lesson about false certifications from the Snowden manhunt is not limited to hackers, leakers and background investigators. The government routinely requires certifications from its contractors, who provide everything from weapons systems used in combat to health care services paid by Medicare and Medicaid.

Advising Your Clients

Designed to ensure human safety and the financial stability of government programs, these certifications cannot be considered routine by those who make them. The government is serious about each certification, and it is hunting for those who make them falsely, whether intentionally or recklessly.

We need to warn our clients that the intensity of the government's manhunt goes beyond criminal investigation. The False Claims Act (FCA) allows the government to recover treble damages in civil actions. Often more significant to our clients, the government can administratively exclude individuals or organizations from government contracting for years after submission of a false claim. As if this were not enough, the FCA has, since the passage of the Lincoln Law during the Civil War, mobilized an immense force of civilian investigators to search for and report false statements made by government contractors. These relators, as they are called, may receive millions of dollars (up to 30% of the government's recovery) based on information they provide. In order to spur lawyers to assist, the FCA also allows attorneys' fees to be paid in addition to the relator's percentage of the recovery.

Among the most important advice we can provide our clients involved in government contracting is the recommendation to create a robust compliance program based on standards and procedures that ensure hiring competent compliance personnel, training employees on correct practices, conducting effective internal monitoring to ensure accurate claims are submitted, and encouraging employees to report problems that could lead to false claims.

One person to whom I described the FCA incentives said that "it was better than the lottery." Whether or not that is true, the message cannot be repeated enough to our clients: Someone is watching the certifications you sign, with a huge financial incentive to report anything that appears false. Make sure there is nothing for him or her to find.

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Guide to the U.S. Foreign Corrupt Practices Act" at 34-35 (Nov. 14, 2012), http://1.usa.gov/14X1UQS).

Indeed, in this vein, a focus on SEC-related statements in the jurisdictional calculus might well be argued to construe the United States' interests under the "protective" theory of jurisdiction too narrowly, leaving on the judicial cutting room floor one of the important original purposes of the FCPA: the desire to reward U.S. (as well as other) businesses that conduct business honestly and transparently.

Finally, by focusing on financial statements as the lynchpin of the personal jurisdiction analysis, the two Southern District decisions could well lead SEC investigators to focus even more intently on securing evidence relating to individuals' roles in certifying an issuer's books and records as reasonably accurate, and its internal controls as adequate. That scenario raises the question of whether resources are better spent on such jurisdictional discovery as opposed to identifying primary antibribery violators and FCPA remediation.

Beyond the fact that, at some point, federal courts are prepared to refuse to entertain civil FCPA charges against foreign individuals with no or little physical contact with the United States, the important news coming from the recent Southern District decisions is not necessarily the SEC's loss in *Steffen*, but its victory in *Straub*. The teaching of the latter, if it is upheld, is that a foreign defendant who loses on personal jurisdiction could be liable in perpetuity based on a single e-mail that happens to pass through a U.S. server. That result is one that is likely to remain controversial until the appellate courts or Congress address that issue definitively.

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(Reports of Foreign Bank Accounts) filed disclosing 1,921 accounts at HSBC India. This is only one example. In April 2013, the government issued a John Doe summons to the Canadian Imperial Bank of Commerce FirstCaribbean International Bank (FCIB). The source of the government's suspicion that U.S. taxpayers were using FCIB to evade taxes was those very same taxpayers. The government based its application for a John Doe summons on information submitted by more than 120 FCIB customers who participated in the OVDP.

FATCA

Disturbed by the scale of offshore tax evasion that the UBS scandal revealed, Congress enacted FATCA in 2010. Its purpose was to force foreign financial institutions to report their U.S. customers to the IRS, or face a crippling 30% withholding

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IN THE COURTS

First Circuit Breaks Ranks With Other Circuits, Holding that 18 U.S.C. § 666 Does Not Apply to Gratuities

On June 26, 2013, the United States Court of Appeals for the First Circuit considered, as a matter of first impression within the Circuit, "whether § 666 criminalizes gratuities in addition to bribes." *See United States v. Fernandez*, Nos. 12-1289, 12-1290, 2013 WL 3215461, at *14 (1st Cir. June 26, 2013). After a survey of 18 U.S.C. § 666's legislative history, the First Circuit concluded "that gratuities are not criminalized under § 666." *Id*. at *20.

The case came to the First Circuit after a jury convicted Hector Martinez Maldonado, a former Puerto Rican Senator, and Juan Bravo Fernandez ("Bravo"), the owner of Puerto Rico's largest private security firm, of "unlawfully exchanging a trip to Las Vegas to attend a prize fight for favorable action on legislation." *Id*. at *1. The First Circuit concluded that § 666 did not prohibit gratuities and, thus, that the conviction could not be sustained as "the jury reasonably could have found that the trip was a reward for … prior conduct, rather than the quid pro quo for Martinez's later support of the bills," *id*. at *14.

Explaining this decision, the court stated that Congress adapted 18 U.S.C. § 666 from 18 U.S.C. § 201, which criminalizes both "bribes *and* gratuities on the part of federal officials," and separates the offenses into different subsections. *Id*. at *15 (emphasis added). The court did acknowledge the circuit split as to whether § 666 prohibits gratuities; however, the court decided to break ranks with contrary precedent from its sister circuits, finding that much of the language of today's § 666 tracks with § 201's bribery prohibition, rather than § 201's gratuity prohibition. *See id*. at *15-17. Key to the court's decision was its interpretation of the term "reward" in § 666, concluding that "the word 'reward' does not create a separate gratuity offense in § 666, but rather … it merely clarifies 'that a bribe can be promised before, but paid after, the official's action on the payor's behalf.'" *Id*. at *18.

This differs markedly from some other circuits that have found that reward under § 666 may also apply "when a payor intends to reward the official's past conduct," marking a significant circuit split regarding the proper interpretation the statute. *See id*. at *17 (emphasis omitted).

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In the Courts and Business Crimes Hotline were written by **Timothy Geverd** and **Holly Trogdon**, respectively. Both were summer associates at Kirkland & Ellis LLP, Washington, DC.

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on any payments they receive from a U.S. source. In spite of some delays in its implementation, there is every reason to think that all but the most defiant countries and financial institutions will comply with FATCA. FATCA will allow the IRS to pull a dragnet through the world's financial institutions and catch previously concealed U.S. taxpayers' bank accounts.

A Competition That the U.S. Can Win

While the U.S. government has concluded that it either cannot or should not compete with the favorable tax regimes of other countries, the U.S. enjoys substantial competitive advantages in other areas that help to attract capital to the U.S. Building on these advantages will complement the U.S. government's increased enforcement efforts and improve its effectiveness.

The U.S. must exploit its competitive advantages to make itself more attractive to wealth creators than are tax-haven countries. In the same way that Germany has used its capacity to manufacture high-value, precision products to avoid competing with (and surely losing to) developing countries on the basis of wages, the U.S. must use its unique strengths to convince the world's entrepreneurs to earn and keep their wealth in the United States. The U.S. can complement its efforts with vigorous enforcement of its tax laws to prevent those same entrepreneurs from enjoying the United States' unique offerings while free-riding on their less morally malleable fellow taxpayers by sending their wealth offshore.

For all of the gnashing of teeth about the United States' decline relative to countries like China and India, the U.S. still offers enticements to entrepreneurs that neither China nor India are likely to offer any time in the foreseeable future. These "common goods" include a vital democracy, relatively uncorrupt and transparent government, the rule of law, clean air and water, strong infrastructure, cultural openness, and perhaps most important to the innovators of the world, freedom of speech and religion.

The U.S. dominates the world in innovation because it is virtually without peer in providing these inducements to the world's creative entrepreneurs. China fights the Internet; the United States created it.

The government of China imprisons people for asking for a greater say in their own government. The people of the United States are so accustomed to having a voice that they often cannot be bothered to vote.

People in China and India watch government officials grow rich off of their government jobs. They expect to pay bribes to use even the most routine government services.

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BUSINESS CRIMES HOTLINE

TEXAS

SEC Gets Emergency Asset Freeze in Forex Trading Scheme

On July 12, 2013, the Securities and Exchange Commission (SEC) announced an emergency asset freeze against Kevin G. White, an unregistered money manager accused of defrauding investors in a foreign currency exchange (FOREX) trading scheme. The U.S. District Court of the Eastern District of Texas granted the SEC's request, as well as a temporary restraining order against White and his companies.

White is alleged to have made numerous misrepresentations to investors, including falsely describing his credentials and background, failing to disclose disciplinary history to investors, and failing to register securities with the SEC, the U.S. Commodity Futures Trading Commission (CFTC), and the Financial Industry Regulatory Authority (FINRA). White was not currently registered or associated with the New York Stock Exchange or any member organization at the time of the SEC's complaint.

White is accused of using investor misrepresentations to solicit nearly $7.1 million for a FOREX trading fund. The crux of these misrepresentations included statements that the fund's compound annual growth rate was more than 36%, with total fund returns of more than 393%. The SEC claimed that — in actuality — the fund had realized substantial losses and was currently valued at approximately $3 million. The SEC also contended that White has misappropriated $1.7 million of fund investments to pay for personal and unrelated business expenses, an amount in excess of the cumulative management fees he collected from investors. Director of the SEC's Forth Worth, TX, Regional Office, David Woodcock, stated that "White and his companies brandished phony credentials and a can't-miss trading strategy to lure investors into a web of deceit." The CFTC is also pursuing parallel charges.

WASHINGTON, DC

Panasonic and Subsidiary SANYO Settle Price-Fixing Disputes

On July 18, 2013, the Department of Justice (DOJ) announced that Japanese-based Panasonic Corp. and its subsidiary, SANYO Electric Co. Ltd., agreed to plead guilty and pay a combined $56.5 million in fines for their roles in separate price-fixing conspiracies.

Panasonic plead guilty to three counts of conspiracy to restrain trade under section 1 of the Sherman Act (15 U.S.C. § 1). The charges stemmed from Panasonic's involvement — as early as July 1998 and continuing through at least February 2010 — in bid rigging and price-fixing of various vehicle switches, steering angle sensors, and automotive high-intensity discharge ballasts that were sold to major car manufacturers, including Toyota and Honda. As a result of Panasonic's and other co-conspirator's agreements to suppress and eliminate competition, the parts were sold to consumers at higher prices.

SANYO also plead guilty to one felony count of conspiracy for its agreement to fix the prices of cylindrical lithium ion battery cells used in notebook computer battery packs. Panasonic and Sanyo have also agreed to cooperate in DOJ's ongoing investigations. As of Panasonic's (and Sanyo's) plea date, 11 companies and 15 executives have pled or have agreed to plead guilty in connection with the DOJ's investigation, which has netted more than $874 million in criminal fines. The agreements are subject to approval by the District Court.

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Tax Havens

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People in the U.S. are so sensitive to government corruption that when it is uncovered, their reaction is moral outrage.

Rivers and air in China and India are filthy; rivers and the air in the United States are actually cleaner today than they were 40 years ago when President Nixon created the Environmental Protection Agency.

Conclusion

With a flat world, the United States competes with every other country for the world's wealth-creators and capital. It cannot hope to win a tax competition with tax-haven countries any more than it can hope to win a manufacturing wage competition with Bangladesh. In short, the United States must compete for wealth-creators and capital in those areas in which the U.S. has a competitive advantage, while also vigorously enforcing the law to prevent and punish tax evasion.

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