

A Conversation with Richard Bistrong

FCPA Violator and Undercover Cooperator

The below questions were submitted by Mike Koehler, Founder and Editor of FCPA Professor (www.fcprofessor) and a law professor at Southern Illinois University to Richard Bistrong on March 5, 2014, with a copy to Mr. Bistrong's attorney, Brady Toensing. The Q&A is intended to be used for scholarship and discussion related to the Foreign Corrupt Practices Act and related issues.

Richard Bistrong.

Most people likely associate his name with the manufactured [Africa Sting](#) FCPA enforcement action. The Africa Sting action involved a purported deal to purchase equipment for the presidential guard of an African Government with FBI agents posing as African Government officials and Bistrong working as an undercover informant.

The Africa Sting enforcement action resulted in criminal charges against 22 individuals. After extensive motions practice and two trials, all charges against all defendants were ultimately dismissed by the DOJ and the action ended with Judge Richard Leon (D.D.C.) calling the entire case a “long and sad chapter in the annals of white collar criminal enforcement.” (See [here](#)).

Bistrong was not charged in the Africa Sting case, but previously pleaded guilty to “real-world” FCPA conduct, including conspiring with others to bribe United Nations officials, Dutch officials, and Nigeria officials. (See [here](#) and [here](#)). This charge stemmed from Bistrong’s work as the international sales vice president for a large, successful and publicly traded multi-national corporation. Bistrong started to cooperate with the DOJ in June 2007 and Judge Leon ultimately credited Bistrong’s extensive cooperation at sentencing. (See [here](#)).

FCPA Professor seeks to highlight a wide range of voices on FCPA issues. With this goal in mind, I requested to communicate with Bistrong with the permission of his attorney. Bistrong's attorney, Brady Toensing (diGenova & Toensing) would not allow his client to discuss questions about the Africa Sting case.

At present, Bistrong is out of prison but still serving the supervised release portion of his sentence.

In this detailed Q&A, Bistrong describes: the circumstances that put him in a position to violate the FCPA; what made him think he could get away with it; his thought process when he realized he was caught; and how he spent his time in federal prison. In the Q&A, Bistrong not only looks back, but forward as well, and shares what he learned from his experience and what he hopes to accomplish in the future, including through his recently launched [blog](#).

Q: As to the underlying conduct you pleaded guilty to, describe the circumstances that put you in a position to violate the FCPA? Where you aware, at the time, that you were violating the FCPA? If so, what made you think you could get away with it?

A: First, let me take a moment to thank you for the opportunity to engage with you and your community through this Q and A. I know you have written a great deal about the Africa “sting” as well as the greater issue of personal enforcement and compliance. I appreciate that you have invited me to respond to your questions, and to openly express my own perspectives and experiences.

As to the underlying conduct, I pleaded guilty to one count of conspiracy to violate the FCPA, including its books and records provisions, as well as exporting controlled goods without the proper authorization. In addition, in exchange for cooperating with a number of UK enforcement agencies, both covert and overt, I was given “Immunity from Prosecution” by the UK Revenue and Customs Prosecutions Office.

As to the circumstances, from 1998 to 2007, I was traveling overseas approximately 250 days a year, and was posted to live and work from the UK twice during that period. So, in a general sense, I was literally traveling the world most of the time and was rarely “off the road.”

I was aware that I was engaging in illegal behavior at the time. However, at that time in my life, I wasn’t thinking about getting caught and did not think I would get caught. Many of the illegal conversations I had took place far away from the home office. Often, the only people present were me and the agent. Given my remote location, the lack of “witnesses,” and the fact that the company was pleased with my personal and divisional sales performance, I felt that there was little chance I would ever get caught. These circumstances are common in international sales, and that is a part of the challenge for current compliance professionals. Much of the conduct, like my own, is covered with secrecy and takes place at remote locales with little or no oversight.

Q: As to the underlying conduct you pleaded guilty to, at some point you must have realized that you were caught. Describe that point? What goes through one's mind at that point?

A: I was really caught at two different points. Each moment had its own set of dynamics and consequences.

First, was getting caught by my employer. I was called in on a Sunday in early 2007 to speak with corporate legal and investigatory personnel. That was a frightening moment, to say the least. I was alone facing a panel of attorneys and seasoned investigators. Of course, the first consequence that comes to mind in a situation like that is the loss of my job. It didn't take long to calculate that I would be terminated in the near future, so I started thinking about the financial consequences to my family.

The second point for me was by far more significant. It was at this point that I truly hit bottom and started on my trajectory of rehabilitation, which continues to this day. It started in the Spring of 2007 with a call from the Justice Department to my attorney, Brady Toensing. They said they knew about the investigation by my then, former employer, and they offered to let us come in and Proffer.

It is really difficult to articulate the intensity of the Proffer experience. But I realized that, as described by DOJ Attorney Joey Lipton (at my sentencing), this was my "line in the sand." No matter what happened up until that first Proffer meeting, this was a chance to truly come clean with my misdeeds. For me, the process of cooperating with the government, which started with this first meeting, also allowed me to re-think how I had been living, and to start the healing process with my family and friends.

In other words, it was a real "clean house" opportunity for me and I took my obligations seriously. In fact, one of the initial participants in those DOJ Proffer discussions, in a letter to Judge Leon for my sentencing, called those Proffer sessions the "best prepared and thorough sessions" he had seen in his 26 year career.

So, to address your question, the first "what goes through your mind" moment was at my employer when I was thinking about the financial consequences; however, more significantly, when called in by the government, I was thinking, here was a chance to clean up my life, to start making amends with all those I had harmed, and to start the process of turning my life around.

Q: As a result of your guilty plea, Judge Leon sentenced you to 18 months in prison followed by three years of supervised release. What were your thoughts at sentencing? How did you spend your time in prison? No doubt in prison the question probably arises among inmates “what are you in for”? Did you get this question? What was the reaction inside prison to the Foreign Corrupt Practices Act?

A: As I began the process of cooperation in 2007, I was committed to accepting the consequences of my actions, which I knew included sentencing. I was facing a five-year sentence, but I was at peace with the process from a number of perspectives before Judge Leon pronounced his sentence. First, and most important, I was comfortable that Judge Leon knew, before pronouncing his sentence, of the “good, bad and the ugly” about my life.

While Judge Leon had the benefit of the report the Probation Department (PSR) plus the Sentencing Memos from the Department of Justice (5K1.1) and Mr. Toensing, he also had a chance to hear my extended testimony in the second Sting trial. I understood that not everyone standing before a Federal Judge at sentencing has that opportunity. Thus, I really felt that Judge Leon was going to make an informed decision, knowing all aspects of my life and conduct, including the periods before, during and after cooperation. For me, as the person getting sentenced, this was more important than the sentence itself.

As to what I was thinking during sentencing, I was carefully listening to all of Judge Leon’s words, and not just to the sentence itself. And, what stays with me today is his acknowledgement of my candor on the stand during the difficult process of cross-examination, the extraordinary nature of my cooperation, and most importantly, that I had turned my life around. No one likes to go to prison, but as I write this today, what remains with me is Judge Leon’s acknowledgement of my decision to change my life for the better. I will never forget his recognition about how far I had come personally, since the original conduct to which I pleaded guilty.

As to how I spent my time in Prison, I followed Judge Leon’s advice at sentencing to “use my time productively.” I started doing some research on educational programs available in most Federal Prison Camps. Once I was designated to Lewisburg, I started researching particular educational programs there with the aim of becoming a GED tutor or English as a Second Language (ESL) Instructor. Given my academic experience, having achieved a Master’s degree, I wanted to offer the value of my proficiency to others. I surrendered at the Camp on a Friday and on Monday I was in front of the Education Supervisor asking for a job. He was incredibly supportive and I ended up being both a GED tutor, AND an ESL Instructor.

It is hard to make a difference while serving a sentence, but the day before I was released, my supervisor said, “You made an impact here and your students will miss you.” Those kind words

really meant (and still mean) a lot to me. I was also a Physical Education instructor. I have always been devoted to an exercise regime and have run thirteen marathons. Still following Judge Leon's admonishment, as with the tutoring, I tried to be as productive with my time as possible by using the skills and knowledge I had to help others.

As to the "what are you in for?" Yes, you do get that question. Given that I did not want to discuss my cooperation with anyone and that I did not meet any other FCPA violators at Lewisburg, my experience involved a few questions about the FCPA from others who then went on to different subjects. I found two groups of people at Lewisburg; there were those who wanted to talk often about their cases, and those who hardly spoke about their cases. I put myself into the latter category.

Q: As a result of your participation in the Africa Sting case and the evidence that came out from that case, there are, no doubt, many people who have strong negative feelings towards you and what you did. How do you respond to these people?

A: As I am sure you can imagine, if you look at the period of my cooperation (2007) to my release from the Camp at Lewisburg (2013), this has been a long and often painful process for me, and, more importantly, my family.

As I reflect on this period of my life, I am happy to have it in the rear view mirror and to be back with my loved ones and my community. As I mentioned in your prior question, Judge Leon knew the seriousness of my illegal conduct, the value of my cooperation, as well as my personal and professional efforts to contribute to society since the ending of my covert cooperation. When he weighed all of that, which I referenced as the "good, bad and ugly," he decided that a sentence was still warranted. I am at peace with that decision, and I served my time with dignity and provided value to others in their educational goals. Naturally, I will continue to try to make amends for my conduct for the rest of my life by investing my time with family and friends, and trying to make a positive contribution to society through my continued community service, both court ordered and elective.

Thus, it is really not for me to respond to those who have "strong negative feelings towards me," except to say as I continue on my path of healthy living, I wish no one ill will. I am at peace with the sum of this entire experience. I hope that others who might remain upset can realize the same peace as they move forward beyond those events.

Q: At your sentencing Judge Leon stated, "I have 100 percent confidence that you have turned the road and I have absolute confidence that you are not going to be back before me." Given that comment, what have you learned from this experience?

A: What I've learned is the importance of loved ones, inclusive of family and close friends, as well as the spiritual value of staying close to God.

I lost sight of the importance of those relationships during the years of conduct to which I pleaded guilty. My dedication to those bonds, which was once extremely strong in my life, had been replaced with the never ending want and accumulation of material things. "Getting caught" by the government stopped that downward spiral in my life and set me back on a course toward reconnecting with what is truly important in life and on a path of reconciliation.

Q: You recently launched "[Richard Bistrong FCPA Blog](#)." Why? In your opening post, you express your hope that your experience "might provide some value and insight to other individuals and corporations who are dealing with the reality of compliance 'on the ground.'" How do you hope to do this?

A: While this has been, as I have described, a "long and painful process," I have had a broad and extensive career as an international sales executive. In addition, I had an extended term as a cooperator for multiple governments, including the US and UK. So, I look at the blog as a vehicle to engage with compliance professionals on current FCPA issues and challenges, while sharing my own perspectives. I hope that by inviting outside comment and discussion, that I might ascertain if the sum of my experience and perspective brings value, and hence, complements the current level of debate and understanding. Furthermore, I look at this as a long-term process. I am happily employed in my community, working on a weekly basis to satisfy and exceed my court ordered community service, so I see this very much as an effort to find a long term voice in the compliance community.

I am not just speaking of recounting my story of "real bribes" and "real consequences," which I think as a stand-alone might be a compelling deterrence message to international sales and marketing teams. What really interests me is how to move beyond the obvious but important deterrence message into how I can help an organization with current and real compliance challenges, especially as they impact those operating in overseas markets.

I have noticed the recent dramatic increase in FCPA compliance material along with the proliferation of FCPA compliance firms. So, to be clear, I certainly understand that there is no shortage of compliance professionals and their offerings in the field of anti-bribery programs and ethics. But, does my perspective, as someone who experienced, through a long career as an international sales executive, coming face-to-face with actual corruption and actual consequences, not to mention a near "carbon-copy" prosecution in the UK, elevate the current level of perspective?

I certainly realize that some may dismiss or disregard my views, because of my past. I understand that. However, does that same experience bring value to the current community of

compliance practitioners and to those in the field who are coming face-to-face with this issue? Remember, it is the international sales and marketing teams which have to confront risk and corruption in their travels. In my opinion, they need governance tools for how to manage their challenges in the field beyond just the compliance paradigm of “don’t do it.” The dynamics of international sales are complicated, and they have regional peculiarities. The people dealing with those issues in their territories need solutions that address and incorporate those challenges, both globally and regionally. It is basically an additional extension to your own explanation for the need for [“FCPA Goggles.”](#)

For those involved in compliance, the choices that an international sales or marketing person faces when it comes to corruption risk might seem “black and white.” But in reality those choices become more difficult when sales, marketing and business development groups are operating overseas and are being compensated with lucrative sales compensation plans, as is often the case. Without realizing it, the anti-bribery message can get distorted, diluted, or worst case, discarded, as a sales person might think of compensation and compliance as a zero sum game. A dangerous situation for all involved.

In other words, if you take a salesperson and put him in a country or region with a “low integrity index”, which is usually marked by inefficient, large, and sporadic procurements, while having a majority of that individual’s compensation as “personal performance driven,” then you have an inherent tension between compliance and compensation. As I have blogged in a number of posts, in such circumstances, compliance can come to become derisively referred to by the sales team as “business prevention.” And where you have the perception among the overseas sales force that compliance and individual sales success can’t coexist, it invites problems.

I think part of that thinking is encapsulated in a recent and relevant blog by Thomas Fox called [“Mickey Rooney and The 90 Cent Solution”](#) where he references the thinking of a foreign Regional Manager, who pondering compliance and sales, is alleged to have said “If I violate the code of conduct, I may or may not get caught...If I miss my numbers for two quarters, I will be fired.”

Thus, by sharing views like this, inviting comment and dialog, and applying my own observations and experiences, I hope that I might “contribute to the debate” of the compliance community.

Q: You spent the majority of your business career as an international sales executive dealing primarily with government contracting. Given this experience, how can a corporation prevent a salesperson in a far-off land, who is evaluated and paid based on meeting and exceeding sales quotas, from agreeing to a demand for an improper payment from a “foreign official,” or being informed that one is being made by a third party agent.

A: Isn't that the million dollar question? I've posted on this subject as "[Cisco and Russia: The Red Flags You Don't See.](#)"

Look at the Cisco example ([here](#)). Allegedly, the third party intermediaries start talking about where the commission is going to go (a public official), and the company employee walks out of the room. And when encouraged to stay he reportedly says, "I don't want to."

For the Compliance Officer, this is where the rubber meets the road, so to speak. As you articulated very well in your question, an international sales force operating in "far off lands" is under pressure to perform, usually has a bonus tied to sales, and has quarterly performance targets. And here it is, they have a deal on the table, and they reportedly hear the agents talking about a bribe.

I believe that it is a combination of compensation, corporate ethics and compliance training that will lead a salesperson to report a red-flag, and to shut down a transaction. In my experience, there is a gap in getting an employee to disclose the red flags that legal, finance and compliance are not likely to see via an audit or scheduled training.

A compliance officer needs to be working closely with human resources to look at the relationship between individual incentive compensation, and the territorial reputation for corruption. Compensation and compliance is not a "one size fits all" model. I know that HR has a great voice in most compliance programs including documentation, training, policy, etc, but I have not read much about bringing in HR into the discussion of individual compensation plans with a focus on each person's territorial corruption reputation. Again, from my perspective, it's a critical link.

I know that's a long answer, but in the context of my own observations, the relationship between compensation and compliance should be a primary element in the corporate vision of ethical behavior. Of course, the appropriate levels of training, and unwavering corporate codes of conduct are the critical components to populate and amplify the benefits (as well as consequences) of compliance to the sales and marketing teams. Nonetheless, ignoring the potential conflict between compensation and compliance poses a serious threat to the overall messages and programs of ethics and anti-bribery.

Q. Do you keep informed on FCPA issues and enforcement actions? If so, what is your reaction to this “new era of FCPA enforcement?”

A: Since my release from Lewisburg, I have spent a great deal of time reviewing FCPA related publications, including the numerous 2013 summaries published by some of the well-recognized law firms. I also try to stay current with all of the FCPA, Law, Risk and relevant Compliance blogs.

I have not yet formed a reaction to the “new era of FCPA enforcement.” Regardless, I don’t know of anyone who would seriously defend bribery. The debate, which I believe includes your own perspective, is not over the ends, but the means. Nonetheless, what continues to impress me is the recent exponential growth in the compliance industry and associated writings. Perhaps this industry growth should be seen as its own reaction and reflective of the new era. I know this brings in a separate discussion about “wasteful overcompliance” and “compliance fatigue,” as you discussed in a recent [interview](#). I certainly consider that to be a relevant debate, and one which I believe the marketplace will ultimately address.

Q: As you start a new chapter, what lies ahead for you and what do you hope to achieve?

First and most important is to continue on my path and dedication to healthy living, both personally and professionally. I took a lot for granted in my life, including financial security, the connection of family and friends, as well as my own liberty. I suffered great losses due to my own selfish behavior.

While all that is in the past, I do keep an eye on the rear view mirror as a reminder to never return to those behaviors, and to remember what is important. What I hope to achieve now, is somewhat similar to my goals before I surrendered at the Camp in Lewisburg. How I can contribute my experiences and perspectives to help others in their own challenges. It is my hope that my voice in the current FCPA debate brings some value to the field of compliance. Thank you again.