

“Patience Can Cook A Stone: Reinvigorating The Fight Against Corruption”

Keynote Address by Leonard F. McCarthy, Vice President

ICAC Symposium, Hong Kong (10 May 2012)

1. Introduction

I came to Hong Kong for the first time in 2001—to learn about the Hong Kong Model. It was the buzzword in anti-corruption circles at the time. Having been behind the curve, I also ate sashimi here for the first time. More than a decade later, I am pleased to return to the Fragarant Harbor—looking for inspiration and new ideas.

2. Hong Kong

To the Commissioner and our hosts, you should take credit for putting a universal model for the investigation of corruption on the table in 1973. Four years earlier, they put a man on the moon. I read somewhere that in colonial times some policemen in Hong Kong likened their stance towards corruption as either *getting on the bus, standing in front of the bus, or watching the bus go by*. The authorities here are better able to judge the phenomenal progress you have made.

With the limited research I have conducted, it is clear that Hong Kong has become a progressive center of legal and investigative innovation. We take a leaf out of your courts’ bright-line rules to protect copyright and your stellar rise to prosecute insider trading and boardroom corruption. All you need to do now, is to help push the world to establish an international stolen assets court—a *Court for the Puppet Masters*.

3. Judges Judge

Judges sometimes have an uncanny ability to navigate the arcana of the human spirit: a skill of analyzing facts and stating the plain logic that often escapes ordinary mortals.

At the World Bank, we grapple with the link between corruption, development and the rule of law. Then, in an illuminating judgment from a court on the African continent, comes the following: *Corruption lowers the moral tone of a nation and negatively affects development and the promotion of human rights*. They have said it as well as any of us could.

Or to those under scrutiny, who work in the merciless sun of fighting corruption, this gem from the Hong Kong Appeals Court in 1996: *“The more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence, before the Court concludes that the allegation is established.”*

Seven years later, Sir Anthony Mason in the matter of **HKSAR vs Lee Ming**, with stupendous clarity of thought, delivered a studied reasoning into the duty of prosecutors to disclose, and by extension, what type of quasi-legal conduct constitutes an affront to the public conscience.

So find your hearts: as long as we have judges, don’t be afraid.

4. The Omnipotent State

Mao Zedong (1893-1976) is reported to have argued that “*political power grows out of the barrel of a gun.*” If we fast-forward to 2012, corruption hunters must stick to their guns when confronted with an overzealous state. It has been said the genius of autocracy is that “*fear reduces most men to a cowardly commonality*”. When prosecutors do strike back, it tends to be against former, retired or out-of-favor heads of government.

More seriously, political constructs or models of government alone are not synonymous with clean or corrupt states. Germany in 1933 was by all accounts a flourishing democracy; Singapore has cleverly reversed reputational costs, ranking amongst the top 20 foreign investment hubs worldwide.

On Monday, 7 May, Transparency International released its latest index of countries ranked according to corruption perception. The top 5 are New Zealand, Denmark, Finland, Sweden and Singapore; and the worst scores go to Somalia, North Korea, Myanmar, Afghanistan and a threesome of Uzbekistan, Turkmenistan and Sudan at 1.6. Whatever we make of this, those assembled here: You are the gatekeepers of the law; and you can change things.

My own view is that the state could be cloaked with velvet or in venom. Unless states are clearly incorrigible and unrepentant in criminology terms, the challenge for upstanding judges, prosecutors, investigators, auditors, and members of civil society and the media, is to move governments—open them up, and help to keep them honest—in small ways, steady like cooking a stone. Because as the Ashanti speaks: *If we understand the beginning, the end will not trouble us.*

5. Insights from the World Bank

The World Bank functions like a cooperative trust of 188 member states, which, through its lending and development assistance, fights poverty, garners knowledge and helps to make the world a better place—in many ways.

One of the pillars of development is that economic and social progress can succumb to corruption; into which poverty is born.

Authoritative research has shown that the economic rate of return, the cost of doing business and the cost of capital are negatively impacted by corruption. Smart country and institutional leaders ditch corruption!

Where there is a lot of money, there is a lot of risk; that is why the World Bank and other international leaders advocate increased vigilance in the face of increased money flows.

Our development past is littered with roads dating back to 4000BC; now the experts say our future rests on infrastructure (20% of World Bank lending these past 10 years went to roads, while infrastructure presently accounts for 43% of assistance to middle and lower income countries).

The work of the World Bank's Integrity Vice Presidency is on the record for you to judge. What we want most from you is to investigate and prosecute our cases—hard as they may be—where warranted, so that together we can reduce the incidence of corruption and make your criminal justice systems thrive.

Of more practical relevance to our audience this morning, the following observations drawn from my past three and a half years at the World Bank:

- Commitment, facilitation and administration fees are not less risky—just because they are wrapped up in contracts.

- Corruption has many spin-offs: One is that insider trading and collusion are flip sides of the same coin. On the other hand, fear of prosecution moderates cartel behavior.

- A forceful voice is emerging about the need for a coherent international dispensation on compensation of and restitution to the victims of corruption.

- With all the brainpower in this room, we should marshal our resources to conduct a global threat assessment of the intersection between organized crime services and economic development.

6. What Effective Authorities Do

It is with great irony that I read an essay in which a fellow World Banker argues that the creation of an anti-corruption commission is a manifestation of a policy maker's desire to renege on any stated commitment to reform.

That is why the opinion by Matthew Stephenson is particularly striking, where he argues that political accountability and sustainability are central to the independence and interdependence of anti-corruption agencies.

I am reminded of a conversation I had with a policeman in Ankara in 2002. He told me it had become fashionable to set up units and staff them with “audigators” to keep “corrupticos” in office—people who have no power—and inevitably do nothing. How do we escape the “audigator-syndrome”?

The most successful authorities around the world step up criminal action against the corrupt; pursue multi-jurisdictional strategies; track and return illegal proceeds; use information and intelligence to prevent and attack corruption, both the act of corruption itself and its psychological grip; and finally, they make it their business to monitor, measure and disclose their operating results.

Although laws don't have legs, progressive organizations are looking at criminalizing deception, willful blindness, plain obstruction and the evasion of auditing of assets. And whilst you are at it, beseech your finance and trade ministers to require multinationals to disclose all third party and government payments when they win major contracts in your countries.

For some, oversight committees can be a drag, but the effective ones give cover, provide a counterpoint in the precarious exercise of balancing public power, and play the role of trusted advisor when the going gets tough.

Resilient enforcement authorities know their center, defy geography and understand that you can say “yes,” to say “no.” They overcome the poverty of leadership and find a way to firmly ground themselves as a public good—free from the vagaries and fickleness of time.

7. Sharp Investigative and International Practice

These days, cutting-edge practitioners study stock exchanges, the risks affecting certain sovereign wealth funds and the beneficial ownership of financial institutions; and use tax intelligence to dissect the architecture of international bribery.

Modern day large-scale corruption requires an army of advisors and professionals to put the scheme in place. Focusing on those whose expertise is indispensable to a criminal enterprise can often help expose its vulnerable underbelly. We should make it legally untenable for intermediaries to say: *“I did not know,”* or *“There was no duty upon me to find out.”*

A lot has been said about information sharing. At the Integrity Vice Presidency, we receive complaints about bids that are essentially “FCPA” in character—but often the complainant has no idea. Through a rigorous scrutiny of a bidding or project cycle, we know which government officials did what, where and when.

Bribes traffic between people—those who give the money—and those who fix the contract. We can tell you who they are and how their corrupt influences and schemes permeate business practice.

Collectively, we can also be creative with the laws we have and the actors we confront.

Take the Swiss who treated the Abacha clan as a criminal enterprise when confronted with the difficulty of proving the illicit origins of a myriad of accounts.

Using “Mareva” letters to put banks and financial institutions on notice about the illicit origin of funds in their possession, can pave the way for suspicious transactions reporting, and the temporary freezing of assets.

Section 490 (15) of the Canadian Criminal Code allows interested parties to apply to court for access to anything detained by authorities in the course of an investigation. This is fertile soil for external bodies with a statutory objective of combating corruption, à la the Illicit Assets case (*Biens Mals Acquis*) that broke new ground in French courts a year ago.

In Canada when authorities found wanting the legal instruments necessary to seize the assets of Tunisia’s Ben Ali, it quickly enacted the Freezing Assets of Corrupt Regimes Act to overcome this obstacle.

And finally—not to forget the convening force of international organizations—it is worth doing a case study about how the UN Task Force gained access to Swiss bank accounts during the Oil-for-Food investigation in the mid-2000s.

I am sure that in this room lies a wealth of wisdom and a factory of ideas about practical things we can do to prevail over corruption.

8. Concluding Perspective: Invigorate your fight against corruption

We all have a story to tell. I sadly learnt about the theory of corruption only at university. I hope it was not too late. Then I saw the naked face of it when gangsters paid off a policeman in a police station, to release one of their members detained for dealing in light drugs. But thinking back, our society was a twisted, make-believe one, where what you see is not what you get. And then of course we all watched repeated scenes from *The Godfather II*, which made corruption look cool.

It is therefore instructive to look back in history to see how ideas, problems and challenges have evolved.

In the early 1600s the Dutch started what many believe to be the first multi-national—the VOC—to address complications resulting from the spice trade and the void associated with Portugal's perceived inability to supply spices to Europe. The company was ultimately weighed down by corruption in 1800.

This conference is aptly entitled FIGHTING CORRUPTION- in a changing world. Margaret MacMillan in her book "*Paris 1919*" clinically dissects the six months before June 1919 which changed the world, and gave it some of the intractable problems which modern society still grapples with today.

Five to seven years from now, the 450 of us assembled here in Hong Kong will look back and be asked how we—in the aftermath of the financial storm—have stemmed the tide, by reinvigorating the systems of integrity, law and order across the globe.

I value your time and feel privileged that you listened to me. Even if you don't see the silver bullet hold on to tenacious judgment, in your quest to fix something that is as old as the mountains.

Remember, as one of the three Nelsons said: *"The secret to success is to own nothing, but to control everything."*

I hope this conference leaves you invigorated and empowered, so that you leave here tomorrow saying "Friday is better than yesterday."

Thank you and go well.