

**Securities and Exchange Commission Historical Society**  
**Interview with Richard Beckler**  
**Conducted on May 9, 2012, by James Stocker**

**JS:** This is an interview with Richard Beckler for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm James Stocker. Today is May 9, 2012. We're talking with Mr. Beckler in his office at Bracewell & Giuliani in Washington, D.C. Mr. Beckler, thank you very much for being with us today.

**RB:** It's a pleasure to talk with you. Thank you.

**JS:** Great, for us, too. I understand you were born in Brooklyn. Did you grow up in New York City?

**RB:** I grew up in Brooklyn. I was born in Flatbush, a section of Brooklyn. When I was about ten or eleven years old, we moved to Brooklyn Heights. My mother lived with my father in the same apartment for fifty-odd years in Brooklyn Heights.

**JS:** Did you always know that you wanted to be a lawyer when you grew up?

**RB:** No, I actually was not sure. I went to Williams College. I was a history major at Williams and then graduated from Williams in 1961. It was the age of the draft. I went to Navy OCS and became a naval officer.

**JS:** Where did you serve?

**RB:** I spent most of my time on an aircraft carrier, the USS *Yorktown*. It was on the ship, the *Yorktown*, that – although I had no law degree – I was made an assistant legal officer. In those days, you didn't have to have a law degree to do either summary or special court martials. For many of the years I was on the ship, I participated in court martials as either trial counsel, which is what the prosecutor is called in military justice, or the defense counsel, and from that experience I got interested in going to law school.

**JS:** You ended up going to Fordham Law School?

**RB:** That's correct. My last year in the Navy, I applied to law school, got into Fordham, and I went to Fordham.

**JS:** Did you focus on criminal justice there?

**RB:** No. I pretty much knew where I wanted to work. I knew I wanted to work in the D.A.'s office in Manhattan, but I only took two criminal courses in law school. Otherwise, it was a general law school curriculum.

**JS:** Did you want to work at the D.A.'s office primarily because you wanted to return to New York City, or were you more interested in the type of work that they did?

**RB:** Of course, Fordham was located in New York City. I was stationed on the West Coast in

the Navy. I came back to New York and I wanted to get trial experience. I knew the best place to do it was the D.A.'s office in Manhattan. I applied there. It was the only job I applied to, and fortunately, I got the job. Frank Hogan was D.A. then. He had succeeded Tom Dewey in that job in the early 1940s and remained D.A. until he died, in the early seventies.

**JS:** What sorts of cases did you work on there?

**RB:** You start out as a young D.A. You do your misdemeanor cases and complaint bureau, loitering, prostitution, those kinds of cases. Then you work your way up to more serious felonies. Then, ultimately, I wound up in the fraud section of the D.A.'s office. I started doing some fraud prosecutions, which was, in those days, fairly new. We had a big scandal involving the Housing and Urban Development and the HEW. This is on a city-wide basis, not a federal one. Those sorts of fraud prosecutions were unusual in those days.

**JS:** New York City was a much different city, in some ways, back then, in terms of crime.

**RB:** Yes, actually it was. I was in the D.A.'s office from 1968 until 1973, and it was going crazy. You could make a movie every day. There was police corruption with the Serpico case, Columbia student riots, Cambodia invasion, riots, Black Power, crime was out of control. The city was pretty different then, pretty militant. There were a lot of problems – a lot of economic problems, a lot of crime problems – much different than it is today.

**JS:** Was Rudy Giuliani working in the office at that time?

**RB:** Rudy Giuliani at that time was in the U.S. Attorney's office in the Southern District, which was the federal counterpart to the Manhattan D.A.'s office – a very close rivalry. In fact, at that time Morgenthau was the U.S. Attorney and Frank Hogan was the D.A. They had sort of a rivalry. Subsequently, Morgenthau became the D.A., held that job for forty years himself.

**JS:** How did you make the transition to the Department of Justice from the New York D.A.'s office?

**RB:** I had thought about going down to Washington for a short period and I wound up getting offered a job by the Fraud Section of the Criminal Division of the U.S Department of Justice. I went down to Washington in '72 or '73, and became a line attorney in the fraud section. Although pretty quickly, I was made head of this major violators' unit and head of the SEC prosecution unit and subsequently, deputy chief of the section, and then chief of the section. I spent about seven years at Justice.

**JS:** Did they give you any training or orientation when you got there or did they just throw you on cases?

**RB:** Mine was unusual because I went to the Fraud Section. There were very few lawyers in

the section who actually tried cases. It's much different. The Fraud Section today at the Justice Department usually recruits seasoned assistant U.S. attorneys who are state prosecutors who have tried cases. When I went there, it didn't have those kinds of people, so I was lucky, in one sense, that I'd had a lot of trial experience in the D.A.'s office in Manhattan. When I got to Justice, they needed people with hands-on trial experience.

The way I got involved with the Securities & Exchange Commission was that the SEC has no criminal jurisdiction. They cannot try a criminal case. They can get a special assignment as an assistant U.S. attorney and try it along with a U.S. attorney, but they can't try it themselves. Most of the SEC cases that were prosecuted in those days were prosecuted in the Southern District of New York at the U.S. Attorney's office.

There are lots of securities cases, fraud cases, 10b-5s, other kinds of fraud – boiler room shops, misrepresentations, 10b-5s, manipulations, and so on – that occurred in other federal districts. We had this unit at the Justice Department that would try those cases in the other districts. Therefore, I tried a securities case up in Boston. I tried one in Philadelphia. I tried several of them out in Utah. In those days, again, the U.S. attorney's offices in those jurisdictions didn't have the people qualified to do SEC cases, unlike the Southern District, which has always had a cadre of prosecutors who are familiar with SEC prosecutions. I went out on the road and tried those cases. Now, a lot of those same U.S. attorney's offices, particularly Philadelphia, Boston, have that capability. But back forty years ago in the early seventies, they did not.

**JS:** My understanding is that you showed up in town just as the Watergate hearings were beginning.

**RB:** That's correct, yes.

**JS:** Was that something that people in the Justice Department were talking about a lot?

**RB:** The Justice Department – I would say the career Justice Department people – for the most part was a Democratic establishment. In those days I was certainly more of a Democrat than I am today. There was not much love, at least in the Justice Department, for Nixon. In fact, he had very few fans in Washington in those years. It did have the various attorney generals. Those were appointed by Nixon, and they came under fire, as you know.

I would say the overriding effect of Watergate is that it caused the creation of the Foreign Corrupt Practices Act. I can tell you a little bit about that, if you'd like.

**JS:** Absolutely. First, though, let me just ask you about one thing that you mentioned. You talked about the career staff within the Justice Department as being mostly Democratic. Did you notice a big split within the DOJ, between career staff and maybe people that only expected to be there for a few years before going into private practice or going somewhere else?

**RB:** Yes, there's always, in any bureaucracy – in the Justice Department there were always the career guys who were usually pretty much straight shooters. I mean, they may be Democrats, but they pretty much call it as they see it, whereas as the administrations change, as you know, the attorney general serves at the pleasure of the president and then that filters down. There are political slots all throughout the Justice Department.

The head of the criminal division, the assistant attorney general in charge of the criminal section, would be from the party of the president. I served under Phil Heymann, who was a Democrat, Dick Thornburgh, who was a Republican, Ben Civiletti, who was a Democrat, and went back and forth during the years that I was there, went from Republican to Democrat, back to Republican.

There was always a certain – I don't know if tension is the right word – but there were always a lot of career prosecutors at DOJ who felt that oftentimes the assistant attorney general or more likely, the deputy assistant attorney generals were not qualified for the job. They were often political appointees, appointed by a political appointee and they were not that qualified. There was always that tension.

**JS:** When you entered the Justice Department, did you expect to stay there for a number of years or did you think, “Well, two or three years, and then I'll go into private practice”?

**RB:** It's funny. When I went down to Washington originally, I thought I would stay there just

a few years, and go back to New York, because I still loved New York. That's where my home is. I still have a vacation house up there and a small apartment that I rent up there. I had no intention of staying in D.C., but the more I was at the Fraud Section, the more I liked it.

I didn't think I could duplicate the years I had in the D.A.'s office, in terms of the volume of cases, but when I was at Justice I got pretty lucky. I used to have trials all over the country, and got to meet lots of defense lawyers and prosecutors from all over the country, which was a nice network of people to know, and so I just stayed. I had almost eleven years as a prosecutor by the time I left, between the Manhattan D.A.'s office and Justice. The reason I left was two-fold. One, I don't think you should be a prosecutor lifelong, number one.

**JS:** Why not, if you don't mind me asking?

**RB:** I think you get too jaundiced, basically. I think you ought to step aside after X number of years as a prosecutor, before you get too one-sided. Then, of course, monetary reasons. I have a lot of children. I have six kids. I was having more kids, increasingly teetering on the edge of bankruptcy, so to speak. Not really, but that was a driving force, too. I would have left in any event.

**JS:** All right, let's move back a little bit towards Watergate and the origins of the Foreign Corrupt Practices Act. What is the relationship between these two?



**RB:** Watergate explored some of these outside committees that were supporting the president. At some point, there came to be a concentration, if you will, on donations to the Republican Party, and then donations to Congressmen and donations to Senators, and so on and so forth. There was a famous case involving ITT, a big corporation, and Dita Beard, a lobbyist who would distribute money around Capitol Hill.

There was lots of talk about political bribes, pay for play, as they call it today. By that time in the late seventies, I was deputy head of the Fraud Section and there were a few cases left over from the special prosecutors. You had Archibald Cox and Leon Jaworski, then several others in succession. By the time they closed the special prosecutor's office there were still a few cases left. One of them involved a fellow by the name of Claude Wild, who was a lobbyist on behalf of Gulf Oil. He was represented by Bill Hundley. He died a few years ago, a wonderful defense lawyer.

He came to my office to try to work out a disposition for his client, Claude Wild. I was a career Justice guy at that point, but I was acting for the office of the special prosecutor in the sense that those cases were just sort of air-lifted over to the DOJ. This fellow said he could go up to Congress that day. This was in the late seventies.

**JS:** You're talking about Claude Wild here?

**RB:** Claude Wild. He said he could go up there with a wheelbarrow of money today and

distribute it and it'd be emptied out in an hour. This was after all the yelling and hooting and prosecutions and so on. Ultimately he wound up pleading guilty, and got time, though he didn't really do any time in jail. Out of all of that, came the report that Gulf Oil was not only making domestic political payments, but that perhaps were bribing politicians all over the world.

**JS:** Was that illegal at this time?

**RB:** No. There was no Foreign Corrupt Practices Act at that time. It was illegal in the sense that while doing it you could violate other statutes, such as transporting currency in excess of \$10,000 without declaring it in customs. Or they could try to construct some sort of a mail or wire fraud charge. Largely they were prosecuted by currency transportation statutes or use of the mail or wire fraud statutes – a scheme to defraud.

**JS:** These legal measures were available, but to your knowledge had any cases really been prosecuted up until that time, or many cases?

**RB:** As far as I know, there were no prosecutions ever for bribing a foreign government official. In fact, to tell you the truth, outside of price fixing against GE, there virtually were no white collar prosecutions of corporations for anything, other than anti-trust price fixing. It just didn't exist.

**JS:** We were talking about whether or not there were any prosecutions prior to the FCPA or

before the Watergate hearings.

**RB:** There really weren't any prosecutions of big companies, other than price fixing. There was a notorious case in which GE was involved in price fixing. The reason I say that is after this whole question came up about American companies paying bribes overseas, the attorney general appointed a task force. I was named the person in charge of that task force. I then had attorneys assigned to me from different government agencies, some from the SEC, some from the Internal Revenue Service, some from other divisions of the Justice Department, as well as FBI agents, Customs agents, Internal Revenue Service agents. At the same time, the SEC was asking for companies to make voluntary disclosures to them – if they had made any foreign payments. They had their voluntary disclosure program going on.

**JS:** That was not coordinated with the DOJ, at least at first?

**RB:** Not at first, but we kept talking with each other to some extent. Stanley Sporkin was head of the Enforcement Section. I was driving the train from Justice. Earl Silbert got involved, too. He was the U.S. attorney in D.C. at the time. I sent out probably fifty grand jury subpoenas to American companies. It was like a shockwave. Most of these companies had never had a grand jury subpoena before.

**JS:** Was this something that the attorney general was keen on prosecuting?

**RB:** Yes, he wanted us to find out.

**JS:** Do you think that came from the higher up within the administration? I guess it might have been the Ford administration by that point. Or was this already under Nixon that the investigations began?

**RB:** This would have been after '76. This would have been Griffin Bell. In '76, Carter was elected and this was in the '76 timeframe.

**JS:** So, the Ford administration still would have been in office.

**RB:** It may have kicked in, in '75, come to think of it. I'll have to check on that.

**JS:** The SEC's program had already started in 1975. They had this voluntary disclosure program where corporations would come forward and disclose whatever sort of bribery had gone on with the understanding that, well, maybe they wouldn't be prosecuted, but there was no real explicit guarantee about that?

**RB:** Right. Then at the Justice Department, there were some cases we locked into an actual prosecution – Lockheed in Japan, involving Prime Minister Tanaka. Other cases were pursued for a number of years – Westinghouse, Ford – and some resulted in pleas. Some just kind of ended. It's always been very difficult, and still is today, to get hard evidence from a foreign country, even if it's a friendly foreign country, as to an actual bribe being

paid.

**JS:** I want to ask you about that here in just a second. First, just let me ask you something. During these early years, one of the methods that the SEC certainly was using to catch these companies was through their tax reporting. These companies had funds that they were using to pay bribes, whether foreign or domestic, that were not being disclosed in a proper fashion, right?

**RB:** Right.

**JS:** Now looking back on this, it seems like a funny way to catch someone for paying a bribe.

**RB:** Yes, it's still commonly used today. Bribe payments today, right down to these most recent cases, they are often put on the books as consulting payments or legal fees or some such thing. You have got a books and records issue, which if your books and records are not accurate implies a mail or wire fraud. You are deceiving someone, that's on the mail and wire fraud statute track in there, which was why when the Foreign Corrupt Practices Act was written, it really was an incorporation of the mail and wire fraud statutes with an overlay of including a specific category of participants, such as foreign government officials. Does that answer your question?

**JS:** Yes, that does answer the question. That explains that process a little bit. How were the relations between the SEC and the DOJ on this issue at that time? Was one party maybe

pushing the other more for prosecutions or some sort of action?

**RB:** I would say we worked pretty well together, generally. There's always a little bit of competition between DOJ and the SEC, because DOJ feels that the SEC really does not have to ever try their cases – they neither admit nor deny. They were not as conscious of what evidence you really needed to bring. Now I say that not only as a defense lawyer today, but even back as a prosecutor – sometimes the SEC was able to stretch a settlement because the company comes in and they neither admit nor deny, so what? The SEC really doesn't have the proof.

Whereas in a criminal case, either you take a plea or you go to trial, but you had better have the evidence, because if you don't have the evidence, the judge isn't going to accept the plea. If you don't have the evidence you're going to lose at trial. It's a whole different ballgame in that sense. Having said that, there was a lot of cooperation between Justice and the SEC.

**JS:** I think it was in October '76 that the Department of Justice formed the Task Force under your direction. That's the date I have here from the news articles. In your investigations, were you mostly just looking at the data that the SEC had compiled or were you going out and actively investigating companies in the United States? Were you also going abroad to investigate?

**RB:** Both.

**JS:** How did that play out on a typical case?

**RB:** I had attorneys who would go overseas on different matters and travel around, work with customs agents, and in some instances try to make contact with the people who were passing the bribes – the foreign agents. We also used a lot of data that had been submitted voluntarily to the SEC. We put people in grand juries. We had different sources of information.

**JS:** There were obviously a lot of potential cases you could have been working on. Were you limited a little bit by manpower, in terms of what you could investigate?

**RB:** Absolutely. You know, there were 75, 100 – more, probably 200 corporations. Somewhere I have a list. That's what I was looking for a moment ago. Somewhere I have a list of those initial corporations that made disclosures. Enormous number of companies made voluntary disclosures to the SEC. We obviously were not going to be able to prosecute all of them, so we did a selective sampling, so to speak.

**JS:** When you traveled abroad to investigate these cases, the attorneys probably talked with American businessmen, they probably talked with government officials from other countries. Were people very cooperative?

**RB:** Oft times not, no. It's very difficult to get people to cooperate. You have to be very

careful. Most foreign countries – or most other countries you cannot interview foreign citizens on foreign soil. You have to get them to agree to come into the American embassy and be interviewed. You can't extend your criminal jurisdiction. Even today, if you wanted to go interview somebody for a criminal case in England, you'd have to do it through the embassy.

**JS:** Could you make much of an argument to them that it was in their interest to do so?

**RB:** You could, but for the most part, most of the other countries in the world were not interested in prosecuting bribery cases, which is why after I left the Justice Department there was a fellow named Mark Richard, whose name has probably come up in your research. He's now deceased. He spent a great deal of his time trying to get these OECD treaties together, these economic treaties whereby countries would cooperate with one another.

**JS:** Right. This was in, I think, the eighties and nineties, right?

**RB:** That's correct. Right. To get more cooperation. Finally a lot of countries signed the treaty. But frankly even today, in 2012, most countries are still not very interested in prosecuting foreign bribery cases outside the U.S. The U.S. does it. Britain does it a little bit. Germany did it a little bit in the Siemens case. France has done it a very little bit. But for the most part, we're the only country prosecuting these cases today.



**JS:** So, let's just go back to the mid-1970s. Was there a lot of interest at a high political level in pursuing these cases or were there some concerns about the possible ramifications on American business or diplomacy?

**RB:** That's a very good question. There were concerns because when you get to the very highest level of accusing – as is the case in Japan – a prime minister of accepting a bribe, you are definitely delving into foreign policy, if you will, or foreign relations. Ergo, it was decided that the Foreign Corrupt Practices Act would only be prosecuted within Main Justice, and only within the Fraud Section so that the political apparatus could, to some extent, control the cases.

You could not have an assistant U.S. attorney in Illinois send out a grand jury subpoena, subpoenaing people for violations of the Foreign Corrupt Practices Act, even though there could be an Illinois-based corporation that made a bribe overseas and it was jurisdiction or anything else. It was all done through Main Justice, and that was not unprecedented. That's true of tax cases. It's essentially true of anti-trust cases. Cases that have a broad implication are really much more tightly controlled.

That was the decision, and that was the right decision to make. These cases were very political, many of them. I went to lots of hearings on the Hill to defend either Justice's prosecution of or lack of prosecution of a particular case for one reason or another. They were always somewhat high profile, often involving big companies, and the CEOs of the companies. We had one where the CEO of Textron became the Secretary of Treasury

after he was CEO and so on and so forth. So, there was lots of political interest.

**JS:** My understanding is that the Ford administration formed a high level task force to investigate the issue of bribery abroad in March 1976, and it had Elliott Richardson, Henry Kissinger, Donald Rumsfeld, etc. Do you recall that impacting the Justice Department's work at all, or were these separate things, maybe a political panel?

**RB:** What was it?

**JS:** It was in March 1976. This is just from newspaper reporting at the time.

**RB:** My task force was in October '76. This was in March.

**JS:** Yes, yours was in October and this was in March, so it obviously happened before the task force was formed.

**RB:** I don't remember much about that task force.

**JS:** If you don't remember, it may not have had much impact.

**RB:** I don't remember much about it. I know all those names.

**JS:** If you don't mind, I'd like to talk about a couple of specific cases that you worked on.

One of the first big ones was Williams Companies, if you recall that, which was a Tulsa-based energy company and I think they had some fertilizer interests. My understanding is that in March 1978 they pleaded guilty, after there had been an eighteen-month investigation. Do you recall much about that case?

**RB:** No, I really don't. It was one of the cases in the task force. It was handled by guys who worked under me. I signed off on it, but I don't remember a lot about the facts of it.

**JS:** Right. It was settled by a plea bargaining agreement and as part of that plea bargain agreement, they basically agreed or were granted permission not to disclose the governments or officials that had been bribed. Was that a common feature of these plea bargain agreements?

**RB:** Yes, it was. This is, again, for foreign policy reasons. I'm not sure if you could get away with that today, in the disclosure world we live in today. Yes, it was done for security reasons, national security reasons. Sometimes it was better not to disclose this, and I do recall in that case, now that you mention it, some of the people involved. I think we had an agreement it wasn't going to be disclosed, and nobody balked at it, so that's the way it went down. The judge took the plea without a public disclosure.

**JS:** Right. Another big case at the time was Lockheed Corporation. There had been revelations that Lockheed had paid a lot of money in bribes abroad. I think the total was \$38 million to officials in seventeen countries, including a \$1 million payment to Prince

Bernhard of the Netherlands. Obviously this had huge repercussions in the internal politics of these countries. I think Prince Bernhard had to step down as the head of the army. Could you tell me a little bit about how the discussion within the Justice Department or between the Justice Department and the administration played out?

**RB:** Again, there were foreign policy considerations to any of these prosecutions, i.e., what would happen to the big foreign politician, whomever he might be, whether it was a royal family or an elected official or an appointed official and what would the fallout be? Justice and the administration tried to gauge those one-by-one. But generally speaking, my experience was if there was a good case, very rarely would Justice back down and not proceed under the general rubric of let the chips fall where they might. They didn't worry. Now there wasn't any major ally, as I recall, if you want to use that phrase, that ever was crippled because of any prosecutions that we did. In that sense, there wasn't any major fallout.

**JS:** It may have been a big public scandal in these countries, but it didn't take down the government.

**RB:** That's correct.

**JS:** Another issue in the Lockheed case that was interesting was, at least in the press reporting, the question of whether or not charges should be brought against the heads of the corporations involved. In Lockheed, for instance, you had Carl Kotchian, who was

one of the heads of the company. There was a question about whether or not to proceed on charges against him or other individuals involved. How did you all make that decision?

**RB:** That kind of decision making process still goes on today. When a major corporation commits a crime through one of its senior officers, do you charge the corporation alone, or do you charge the corporation and the CEO of the corporation? Or do you charge just the corporation and maybe the senior VP, or the sales manager of that country? How high do you go up?

Typically, most prosecutors today, and back then it was the case, try to work your way up the chain. If you can actually show that the CEO had knowledge of a bribe, and so on, and you thought you could prove it in court, then you would tend to indict the individual CEO. But there were a lot of factors that went into that. Could you prove the case against the individual CEO? Suppose the company comes in and says, "Look, we want to plead guilty and get this behind us, but we don't think you ought to charge any individuals." So you factor that in. How good is your case?

There's always a tension between charging the CEO and the company, charging both of them or just the one. Most times, quite often my experience has been – not only in prosecuting, but in defending these cases – quite often the actual bribe activity is kept from the knowledge of the top officers of the company. Now what's the reason for that? Is it to give them cover or is it just, look, this is the way we do business. Everybody

doesn't have to know. It's just like, for example, on a different level, a contracting officer in a small company might go out and pay a bribe to get a license to build something or do something, but the upper officers will never know.

**JS:** Sometimes these contracting officials have an interest in making sure that this goes through because it brings in the business and makes them look good, right?

**RB:** Right, exactly. There's always that tension. That certainly existed in the case of Carl Kotchian. He did lose his job over it, but he was never indicted, as I recall.

**JS:** I don't believe so either. The Ford Motor Company was another prominent case during this period. I think it concerned a kickback given to a general in Indonesia on a \$30 million contract. William Safire, at this time, was writing a lot of articles about the Carter administration in general, but also criticizing what he saw as some connections between the administration and the business community – they involved some corruption in a number of different areas. He charged that, at one point, the Ford Motor Company was being given the quote, unquote, “kid glove treatment,” because of the connections between Carter and Ford's chairman, Henry Ford II. Do you recall that being a political case at all?

**RB:** Yes, Bill Safire was a gadfly. I knew him. In fact, I remember he came to my going away party when I left the Justice Department. You know, we just treated him like any other reporter, really. When I was in charge of it, I never called the shots in a political

sense. In fact, in my own case, historically, as I mentioned earlier, I was a Democrat, worked for Bobby Kennedy part-time, when he ran for the Senate in New York. Then over the years I progressed. By the time I left Justice in 1979, I was just about all the way there towards being a Republican for a lot of different reasons.

During my whole time as a prosecutor, I never called the shots on a political basis. So, any time that Safire, on the one hand, or Al Gore, who was always accusing us of going easy on people – he was the young congressman in charge of investigating the committee. We just pretty much ignored it. It wasn't really a factor. It isn't a factor. Department of Justice has a great cadre of independent prosecutors, regardless of what their own political beliefs are. We didn't pay a lot of heed to Safire.

**JS:** Was there a lot of public pressure on the administration or the DOJ to bring prosecutions against these companies? Was this a significant issue? Were people genuinely outraged by the idea that an American company would pay a bribe abroad?

**RB:** I think, generally speaking, the American public attitude was they just didn't like the idea of American companies spreading their money around the world to sell products. It was not a political issue. It was a general perception. Both the Ford and the Carter administration, in continuing on, always wanted to have that out there. But actual prosecution of individual cases, there really haven't been very many until recently. That is a lot of investigating, a lot of talking, a lot of settlements, a lot of voluntary agreements, and so on and so forth.

Everything is much more heightened. For example, just today in this Walmart situation. I'm not involved in that case, but there's been an enormous amount of publicity over whether Walmart should be prosecuted and if so, how vigorously. It has really been heightened. The same thing with Halliburton. I did represent Halliburton for quite a while and still do in some cases. Halliburton has always gotten hammered by the press for whatever the press thinks they did or did not do and so on. It blows hot and cold, I guess, is the answer.

I don't perceive that there is a burning desire to prosecute American companies for bribes paid overseas, generally speaking. It depends on the nature of the bribe, who it is being paid to, and what is being garnered as a result of it. It's just so prevalent, even today, all over the world, on facilitating payments. I'm getting really technical with you. My own estimate is that people are not that outraged by it. It's a crime, though. It'll always be on the books.

**JS:** There's one more case that I would like to ask you about, if you don't mind. The Bert Lance case, which was not directly a Foreign Corrupt Practices Act case, but there were at least some possible connections to foreign bribery. Would you mind telling me a little bit about that case?

**RB:** Sure. Bert Lance was Jimmy Carter's campaign chairman. When Jimmy Carter was elected, Bert Lance became head of OMB, which was then and still is now a very



powerful position. This case resided in the Fraud Section. I was then the head of it. We became aware of certain improprieties in this Bank of Calhoun that he ran, and shifting of monies around and so on and so forth.

We commenced an investigation and ultimately, the attorney general had to recuse himself. The deputy attorney general, whose name was Peter Flaherty, had been the mayor of Pittsburgh and he really wasn't equipped to supervise the case. He had no prosecutorial experience at all. It was decided to appoint three independent career prosecutors to supervise the case so, again, I was called upon, as head of the fraud section; John Kenney, who was then chief assistant U.S. attorney in the Southern District of New York; and the third fellow by the name of Cono Namarato, who was then a head prosecutor in the tax division of the Justice Department. We supervised that prosecution. It was actually prosecuted by attorneys in the Fraud Section, where I was, along with the help of an assistant down in Atlanta. Bert Lance went to trial. He was acquitted of impropriety.

I can remember when we were looking at that case at one point – when Lance came to Washington I remember there was a headline, “Richest Man in the Administration Throws Party in Georgetown House, Brings in Caviar from,” wherever. It was one of these society columns. That particular day – we had his accounts day-by-day – Bert Lance had less in his account than most lawyers in the Justice Department. He had no money at all, but he was shifting money around. Anyway, he was acquitted, so that was the end of that case. There were some other special prosecutions that we had, too. We

did Jimmy Carter's warehouse. We did that for a while, until that was removed and sent to a particular special prosecutor.

**JS:** Was that one also connected to Bert Lance?

**RB:** It was a peanut warehouse that Jimmy Carter had, his brother's.

**JS:** That's definitely a very interesting case. That one didn't deal directly with foreign bribery.

**RB:** That's correct. Actually, the Bert Lance case really had not a lot to do with foreign bribery.

**JS:** I did see one article that said that he had helped out a couple of millionaires, Eugene Holley and Roy Carver, who had paid a bribe in Qatar.

**RB:** I had forgotten that connection.

**JS:** Bert Lance, as I understand it, knew these gentlemen and helped arrange an appointment with a State Department official to talk about this case. Basically they had paid a bribe and expected to be granted an oil concession. Then that was eventually withdrawn from them. They wanted to go to the State Department and complain. They went in and complained, "Well, we paid this bribe. We spent all this money and now we're not

getting our oil concession.”

**RB:** I had forgotten that aspect of it. That had nothing to do with the prosecution.

**JS:** Now I want to talk a little bit about the process of drafting the Foreign Corrupt Practices Act. This took place in 1976 and 1977. Did the DOJ offer any input into that process?

**RB:** Yes, there was a lot of input. The staffers on Congress – I forget which committee it was written by – but anyway, there was a lot of input by Justice. We had some input in the Fraud Section. We obviously got the mail and wire fraud language put into it. You didn’t have to be a genius to give that input. That was a logical place to formulate the basis of the statute for jurisdictional purposes. Then for articulating the scheme, the standing language had been tested in the courts for many years.

You really just had the mail and wire fraud statute, and overlaying that was this foreign bribery, foreign officials aspect. The other aspect that was as important was to have a books and records provision. Even today, a lot of people don’t realize that you can have a violation of the Foreign Corrupt Practices Act without ever bribing anybody because the books and records –

**JS:** In practice have cases been prosecuted on that?

**RB:** The SEC has used it in injunctive actions. Generally speaking, it hasn’t been a tool in a

criminal case as an independent prosecution, just books and records. But it's there. You have to keep accurate books and records, which has nothing to do with paying a bribe or not paying a bribe.

**JS:** We won't go in too much into the twists and turns of drafting that legislation and when various contributions were made. But there were two sections of the act that I wanted to ask you about. The first is the so-called Eckhardt Amendment, which allowed payments to be made to foreign officials "to expedite routine government services," quote, unquote. If certain types of payments were made, for instance, to speed up a contract, rather than to get a contract, it might not be considered illegal under the act. Can you tell me a little bit about how that provision came about?

**RB:** It was pretty much acknowledged that from the get-go, when the statute was being written, there are a lot of payments that are made around the world and in the U.S. that are just for purposes of expediting things. To bring your goods into port, you have got to give 50 bucks to this guy or that guy or 100 bucks or 200 bucks, whatever it might be, to get your goods unloaded. Sometimes it's more money than that and sometimes the amount of money can add up to considerable sums, sometimes millions of dollars over a period of time.

So the question is, what is a facilitating or an expediting payment? To tell you the truth, that still hasn't been ironed out right down to today. There's still a lot of confusion about that and a lot of controversy about that. The bill clearly acknowledges that there's room

for facilitating payments. Sometimes you want to get your truck unloaded or your goods unloaded. I keep using those examples because that's where they most often come up, at the customs level or at the entry of goods level.

In South America, or wherever it might be, the guy's sitting there behind a desk. He's half asleep. You need him to go out and get his people to move things, so you give him some money. Does the U.S. really want to prosecute those cases? The answer is no. There's thousands if not millions of instances of that and you have to decide that's not what we had in mind. So, therein lies the problem.

Today, if you take all of those – and even if you accumulate millions of dollars to a large corporation, it may still be, quote – in SEC terms – “an immaterial amount of money.” On the other hand, in some small companies maybe it is a, quote, “material amount of money.” But the fact of the matter is, there's really no total agreement on what is and what isn't. That's why you have this advisory opinion. You write to the Justice Department and you say, “Look, we're doing X, Y and Z. Is that okay?” Sometimes they'll say yes, sometimes they'll say no. Sometimes they'll say, “We can't give you an answer.”

**JS:** So it goes. The other provision of the Foreign Corrupt Practices Act that I wanted to ask you about is this so-called National Security Clause, this idea that if a payment is made with the knowledge of certain U.S. government officials', and with written authorization, that it will be acceptable. This stemmed from the apparent fact that many U.S.

companies had cooperated either with intelligence officials, or other officials in the government to transfer money to certain officials to get them to do what they wanted, right? So, this was written into the act. Did this actually come up during your time in government service?

**RB:** Not really. There were some cases that involved what's called graymail, where you can't talk about what really went on. But it was not a big factor, to my recollection anyway, at least from my vantage point, the subject of passing money onto government officials with consent of the government. It wasn't a big factor that I can recall.

**JS:** While you were still working in DOJ, did any other countries come to the U.S. and ask for assistance in setting up their own version of the Foreign Corrupt Practices Act?

**RB:** Occasionally there would be some liaison that was done. That was not necessarily my bailiwick. I was more in executions on the trial side of things, not on the foreign policy treaty cooperation. That was not my bag, so to speak.

**JS:** We've talked a lot about your career in the Department of Justice. Have you dealt much with the Foreign Corrupt Practices Act since you've returned to private practice or entered private practice?

**RB:** Yes. Over the years, I've represented probably maybe thirty, forty, fifty different companies with FCPA problems. Some were pretty minor. Others were major. The Act

has become, in the last seven or eight years, very active.

**JS:** Why do you think that is?

**RB:** I think it's a function of two things. One, the world has become much smaller. The economic welfare of an American company depends on world markets, whereas really it's funny – forty years ago a company could do pretty well and never sell anything overseas. Now every company has to be a worldwide, international company. That's the way they have to think. That's the way they have to operate. They have to operate under an international set of rules and so on and so forth. There's more activity, foreign economic activity, number one.

Number two, everything today, from my older vantage point, is becoming more heightened than it was before. Conduct that was overlooked years ago as perhaps a transgression, or maybe a civil case or a dispute, has now become a criminal case, so there's more activity.

Number three, there was a change of personnel. The people who head up the Fraud Section now are more aggressive and they're going after cases. Peter Clark, who headed up the group for many, many years, was very good. He was not particularly inclined to bring as many prosecutions as his successor was. And a lot of companies have signed these treaties with a lot of other countries, so there's more talk about it.

**JS:** From your perspective, is the law still accomplishing its purpose of preventing corruption abroad while also striking a balance between, say, U.S. economic interests and –

**RB:** I think there's probably less inclination to do a major bribe. Companies today are certainly trying to structure a program whereby they eliminate that. Every major company today has a compliance program in place. So, there's a lot less activity. I think at the highest levels, I think it has really had an effect. I think the low level facilitating payments, whatever you want to call them, are just as pervasive as they ever were. I don't see it being eliminated, no matter what we do. If any company were inclined to bribe a prime minister today, I doubt it would happen because of the Foreign Corrupt Practices Act. It's just a whole different time that we live in. I think it's had an impact.

**JS:** I understand that you just recently wrote an article for the *Wall Street Journal* about the Foreign Corrupt Practices Act.

**RB:** Yes, I started writing it as an op-ed piece and then the timetable was so short that I had to do it as a letter to the editor, although it got pretty good treatment. It got three or four columns as a letter to the editor, which is quite large. It came about because of a FCPA sting case that occurred here in Washington before Judge Leon on the U.S. District Court. The government had set up a Foreign Corrupt Practices Act sting. They indicted twenty, twenty-two different entities or companies for attempting to bribe the Prime Minister of Gabon.



It was all a sting operation. It was not true. It was an outrage, the case. The case was originally indicted with all twenty-one people, then it was broken up into five indictments and then recomposed. It wound up being four – supposed to be four or five successive trials. The first trial happened in the summer of 2011. Nobody was convicted. A hung jury. The second trial started in October of 2011, then ended in January of 2012. One case was thrown out along the way, and the jury hung on all the others. The evidence was outrageous. The case was trumped up. It was a bad mistake.

I think that case was prompted by the desire to make a big sting FCPA operation, and it fell flat on its face. When I wrote this piece to the *Wall Street Journal*, it was after the trial had resulted in another hung jury and an acquittal of one defendant. Before a motion was being heard, the Justice Department came into the courtroom that next week to say what it was going to do. I wrote this article in anticipation of that, hoping that Justice would do the right thing and get rid of the case. This is ultimately what happened. They just dismissed everything.

To me it was a real black mark on a couple of fronts. One is that the sting operation was ill-considered. The FBI tactics were outrageous. The primary prosecution witness was a drug addict, an abuser to a major degree. There were so many problems with the case. After they got burned the first time around, they should have hung it up. But they went for a second. At one point it looked like they might try to go for a third, but they finally became wise. That case pretty much shocked me, so I wrote this letter. There are a lot of cases that are being prosecuted today that I don't think normally are crimes. They're

sometimes bad judgments.

**JS:** Are you talking specifically about FCPA cases?

**RB:** No, across the board, a lot of these corporate cases. I think the honest officials, if you follow those cases at all – they get a little bit carried away. The Supreme Court had to bang that down. In some instances, there's not enough thought being given to what you really need to have to show a criminal case. That's one of the things I feel very strongly about today.

I'm in favor of good prosecutions. We have to have them. I'm not in favor of prosecutions that are brought to respond to headlines or pressure from one side or the other, politically. I hope that the Justice Department, which has a long tradition of independent prosecution – I hope it keeps it that way.

**JS:** If you were looking into your crystal ball, do you see the level of Foreign Corrupt Practices Act cases remaining relatively high in the future, or do you think it's going to taper down a little bit?

**RB:** I have a sense it's probably going to taper down a little bit. I'm not sure why I can say that, but I just think it will. I think that companies are more conscious of it. Prosecutors have made their point, so to speak. I think it will, but I don't know. I could be dead wrong.

**JS:** Well, Mr. Beckler, looking back on your long career and involvement with the Foreign Corrupt Practices Act, do you have any final thoughts to add about that or anything else?

**RB:** No. I love practicing law. I'll practice until I die. I'm never going to retire. I don't want to retire. I have too much fun practicing law. It's a great profession and I'm happy to contribute to this little part of history.

**JS:** All right. We wish you many more years of career success.

**RB:** Thank you.

**JS:** Thank you.

[End of Interview]