

## U.S. Sets Sights on Individuals for FCPA Infractions

By [Larissa Bernardes](#)

The conviction of a former U.S. congressman on corruption charges is more than just another public scandal, say white-collar crime analysts. It's a sign that the United States is increasingly willing to levy a 1977 anti-bribery law against individuals, they say.

The U.S. Justice Department has routinely used the Foreign Corrupt Practices Act (FCPA) in the past ten years against corporations that pay bribes to foreign officials to secure lucrative business deals. Department officials have cited 120 cases currently underway, compared to three convictions that listed the FCPA as a primary charge in 2003.

Investigators have historically focused on corporations who violate the law, but the United States is taking a new tact and prosecuting individuals. Take the August 5 conviction of William J. Jefferson, a former Louisiana congressman, charged with conspiracy to violate the FCPA in exchange for contracts with Nigerian business leaders.

The conviction is a sign that "there is a conscious effort on the behalf of the DOJ to go after individuals versus corporations," according to Michael Koehler, an assistant professor of business at the Indianapolis-based Law Butler University.

It's been "a very active summer for individuals being prosecuted" [for FCPA violations], said Koehler, a former practicing attorney who specialized in FCPA regulations. The Jefferson case follows a July 10 conviction of Frederic Bourke, a founder of the accessories firm Dooney & Bourke, for conspiracy to violate the law. A high-profile trial in California against two film producers is ongoing, he said.

Since January, at least nine individuals have either pleaded guilty to FCPA charges or have been indicted on bribery charges, according to FCPA Enforcement, a Web site managed by the Milwaukee-based Foley & Lardner LLP.

Jefferson, a Louisiana Democrat charged in June 2007, became the first U.S. congressman charged with FCPA violations. A federal jury in Virginia last week found him guilty on 11 counts out of 16, including conspiracy to commit FCPA, wire fraud and money laundering.

His case garnered mass media attention after court documents revealed that the FBI found \$90,000 dollars believed to bribery proceeds stashed in Jefferson's freezer.

Both Jefferson and Bourke were convicted for conspiracy to violate the FCPA and not the direct offense. The reason for that is very "simple", says Sharie A. Brown, partner and chair of the Foreign Corrupt Practices Act (FCPA), Anti-Corruption and Corporate Compliance Practice at Washington D.C.-based DLA Piper.

"The statue of limitations for the FCPA is five years. But there is no statue for conspiracy," says Brown. "It's easier to charge conspiracy than a direct offense because you can show that several people were involved."

That the Justice Department is utilizing the FCPA against individuals despite such barriers is a testament to its belief that the approach will achieve "maximum deterrence," said Koehler. "If you're an executive subject to FCPA, it's one thing to read about this and that corporation paying a fine [but] it's another thing to see a person in a similar position being sentenced to federal prison," he said.

What's more, other agencies are following the department's lead. The Securities and Exchange

Commission, for example, has recently said that it intends to pursue individuals for FCPA infractions, according to Koehler.

FCPA cases against corporations are also on the rise, but it's more common to see court cases involving individuals because companies try to settle with the government so that business can proceed as usual, according to Sharie A. Brown, a former senior counsel at the Mobil Oil Corporation.

Many times "individuals feel that they have no choice but to go to trial because these are professionals who have a good name in the community," said Brown. "They have a lot to lose."

But gathering information to form a case isn't easy. In many instances, developing countries take a 'wink and a nod' approach to FCPA compliance and sometimes do not cooperate with investigators when questions are raised, said Claudius Sokenu, a lawyer with Washington, D.C.-based Arnold & Porter LLP.

And though the creation of international mutual assistance treaties has lowered the hurdle for evidence gathering in FCPA investigations, the task remains difficult, said David DiBari, a lawyer at the London-based Clifford Chance LLP.

"In some cases, the activity is not illegal in the local foreign government or it may not fall under the terms of whatever mutual assistance treaty that exists," he said.

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