

"Avoid countries where bribery is institutionalized"



["If the world turned upside down, I'd still have real estate" Israel and the UK ally against tax evasion](#)

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[✉ Gur Megiddo](#)

US white collar criminal defense expert Adv. John Pappalardo talks about stronger enforcement on international corruption.

Adv. John Pappalardo, an expert in criminal law and white collar criminal defense, has represented many multinational companies, a retired state president and even the Russian oligarch and opposition figure, Mikhail Khodorkovsky. In the 40 years of his legal career, Pappalardo has seen anti-corruption legislation take shape internationally and in the US, and has represented clients in international corruption cases involving many countries from Russia and China and through to Mexico and Gabon.

Although the development of anti-corruption legislation internationally hugely influences the operations of multinational companies in developing countries, he says: “There is no law in the universe that will change human nature; there are countries where corruption is institutionalized as a tradition of centuries, where the demand for a bribe is so blatant and clear, you cannot conduct business there in a legal manner. In such cases I advise my clients to keep their distance.”

Pappalardo heads the white-collar criminal defense department at law firm Greenberg Traurig, one of the most prominent firms in the US, and one of global renown, employing about 1,800 attorneys in 37 offices worldwide, including an office in Tel Aviv. Pappalardo began his career as a federal prosecutor in the field of white collar crime and advanced to the role of US Attorney for the District of Massachusetts. He crossed the line 21 years ago to become an attorney in the private sector, and has conducted most of his career with Greenberg Traurig.

The most prominent of Pappalardo’s clients is the Russian oligarch, Mikhail Khodorkovsky, considered one of the best-known opponents of Russian President Vladimir Putin. Pappalardo, however, cannot mention some of his most intriguing clients, given the confidentiality surrounding the trials against them. Among Pappalardo’s clients there is also a former state president suspected of federal offenses in the US, and against whom the case was closed without charges being filed; a variety of multinational companies, such as Walmart, whose name was recently linked to suspicions of having bribed senior government officials in Mexico; the firearms manufacturer Smith & Wesson; and also Israeli companies from the defense industries, including some government companies.

“The authorities marked certain industries”

In recent years, Pappalardo has focused on the field of compliance - i.e., providing consultancy to clients managing international businesses on organizational measures they should take to fulfill the requirements of the law to prevent corruption in their international activities. Pappalardo is considered a prominent expert on the Foreign Corrupt Practices Act (FCPA), federal legislation to prevent corruption in foreign countries, which is equivalent to legislative trends on the issue in various countries worldwide, including Israel. One of the distinguishing aspects of this new legislation is the ex-territorial jurisdiction, which allows a person to be prosecuted for an act that occurred outside the country.

“Many multinational companies woke up one morning to a reality in which they could find themselves in criminal proceedings under US law in connection with acts that occurred on the territory of a foreign country. It came as a total surprise; there had been no major speeches by politicians or regulators to prepare them for it,” says Pappalardo. “What did happen was that the federal authorities began to mark certain industries.”

According to Pappalardo, at first the federal authorities honed in on the pharmaceutical industry, with an emphasis on the efforts to market drugs by directly contacting doctors in overseas countries. “The inherent problem here, from a legal point of view, is that doctors are often public employees, and receiving a gift in kind to promote a particular drug is perceived as a bribe. The legislation addresses this particular situation in detail,” he explains.

“Another objective marked by the authorities,” says Pappalardo, “is the medical device industry, especially with regard to the conduct of companies in South America and Asia. In recent years, the international firearms industry was “marked” under the umbrella of FCPA enforcement. In the case of the arms industry, I was witness to the enormous enforcement efforts, almost unprecedented by authorities in their investigations, in terms of both scope and resources.”

Here Pappalardo is referring to an undercover investigation conducted around 2008 into various arms companies in several countries, including Pakistan, Nepal, Indonesia and Gabon. Firearms manufacturer Smith & Wesson, a client of Pappalardo, was one of the accused in a case in which 22 indictments were filed, some of which led to acquittal and the rest were dropped. “In this case there was an undercover investigation where FBI agents posed as civil servants in countries where the arms companies had representatives; meetings and events were held and covertly recorded on video and audio. Previously we had only seen investigative methods on this scale used in RICO cases primarily (federal legislation designed to tackle organized crime, used in the past to prosecute Mafia leaders G.M.). Today, too, we see that some federal authorities continue to mark the arms industry as a target for FCPA cases,” Pappalardo claims.

FCPA was enacted in 1977, shortly after the Watergate affair, but the effect of the law can be likened to a “slow release” pill. According to Pappalardo, the real use of FCPA provisions in terms of prosecutions - and the big investigations on suspicion of FCPA offenses only took place in the last decade. The lack of experience in using FCPA provisions is, in Pappalardo’s opinion, one of the reasons for the relatively high number of acquittals achieved against defendants in the field of international corruption. According to Pappalardo, “a situation arose where no precedents had been set to establish proper interpretation of the law and so, in various cases, we saw in the indictments too broad an interpretation of the elements of the various offenses on the prosecution’s side. Such interpretation was often rejected by the courts.”

The reincarnation of the international investigation

One of the consequences of the international anti-corruption legislation in the different countries, and in particular among OECD countries, is the increasing cooperation between investigation authorities around the world. Pappalardo is under the impression that such cooperation occurs through unofficial channels too. This is because investigation authorities in different countries, having already worked together on an earlier case, feel comfortable about contacting their colleagues around the world and exchanging information that helps them fill in the picture in connection with allegations of violations made in several countries.

“An excellent example of the international dynamics of such cases is the Siemens case, with which you are intimately familiar in Israel,” says Pappalardo. “In 2008, Siemens admitted liability to the authorities in the US and Germany on a long list of international bribery actions. What did each of the states achieve from the investigation? In both the US and Germany, Siemens paid a fine of \$800 million. Among others, it is here that the interest in cooperation is to be found. In light of the American-German cooperation, we are also starting to see prosecutions of individuals in the many countries in which the deeds took place, including Israel.”

The aspect of the Siemens affair that is relevant to Israel concerns retired judge, Dan Cohen, who was convicted in 2013 of taking bribes from Siemens to promote its interests among the board of [Israel Electric Corporation](#) (IEC) (TASE: [ELEC.B22](#)) as part of a tender to purchase turbines. Cohen served as an IEC director during part of the period in which the tender was under discussion. Because of information sourced from the American-German file on Siemens, the investigation has also in recent months been renewed by the Israel Securities Authority and a number of former senior executives of the IEC were questioned under caution.

According to Pappalardo, one of the problems that arise in these long-term investigations is the running of the statute of limitations on the offenses. However, Pappalardo explains, there are suspension provisions in the law that enable prosecution even more than a decade after the occurrence of the acts underlying the offenses - as demonstrated in the Siemens' affair. "The lesson to be learnt here is that the reality has changed so that an inquiry in one country may well lead to an investigation in many other countries," says Pappalardo.

Pappalardo describes another trend in the handling of international cases of corruption in the US, whereby the authorities in different countries increase the enforcement and prosecution of senior company executives, alongside prosecution of the companies themselves and the payment of heavy fines by the companies.

Do you get the impression that the prosecution of executives, as opposed to the companies themselves, creates an effective deterrent?

"Yes, definitely. Ultimately, companies want to make money. It is true that in many cases they are required to pay heavy fines and their profits from illegitimate transactions are forfeited; in addition, there are cases where different licenses are revoked, and then significant opportunity costs are involved. But, despite this, at the bottom line, if the opportunity outweighs the risk, there is a great danger the company will take the risk and commit the offense. When you put an executive from that company behind bars, you send the appropriate message - it most certainly changes the rules of the game."

Thus far a few dozen senior executives in the US have been sentenced to prison terms of up to 8-9 years under the FCPA umbrella. According to Pappalardo, "The dynamics are such that the companies are prosecuted first, and after establishing the facts in the proceeding against the companies, they proceed to prosecute the persons involved. My feeling is that this has great consequence in the management of multinational companies around the world", says Pappalardo.

"Reasonable effort to prevent corruption"

What is required of a company operating in a developing country to prevent cases of corruption?

"Take, for example, the arms industry - there are Israeli companies in this industry, some of whom I represent, that conduct business in countries where the governments are not exactly transparent. In other words, from a regulatory perspective, there is institutionalized corruption there. Companies that want to work in such countries can do business in the manner that is acceptable there - or not do business at all. This often means that go-betweens are hired, although

it is important to emphasize that hiring a broker or agent to carry out banned activities on your behalf is still a crime. In fact, 90% of the international bribery cases brought to trial in the US included a broker.

“When you are involved in an industry which, by definition, works in a 'dangerous' environment, you should take a series of steps to extract yourself from real legal danger. The company must implement a strong compliance program - conduct training, include clauses in contracts with third parties that insist on compliance with the various laws. It must demand the right to conduct audits at the third party, and carry out such audits in practice, and complete transparency is also required with regard to the company's documentation. The FCPA requires you to make a reasonable effort to promote transparency and prevent bribery. In very big companies this means that you are required to pour vast amounts of capital on compliance, and if you don't conform to the rules, you're in trouble.

“Many perceive the FCPA as legislation to prevent bribery; it is not correct to see it this way. For example, there are the detailed obligations for maintaining accurate and transparent paperwork, according to the stringent minutiae the law dictates. We're talking about a regime of strict liability. A company that is caught in violation of these instructions, is violating the law; and this too is a message of the FCPA - because whoever meets the legal requirements in terms of documentation, simply cannot be performing acts of bribery.”

So are we witnessing the elimination of corruption in multinational companies?

“Ultimately, there is no law in the universe that could put an absolute end to corruption. The law will not change human nature. You cannot change the corruption institutionalized in countries that have a tradition of hundreds of years of acceptance that the government official is entitled to receive money simply because of his high position. I also don't think that the FCPA envisages putting an absolute end to international corruption. The FCPA mainly seeks to make companies more transparent to reduce the phenomenon. My duty as an attorney is to help my clients create the tools to protect themselves from prosecution. If there is someone along the chain who still practices corruption despite the tough new laws it is he who will be found responsible.”

Doesn't this incorporate a sort of passing the buck of responsibility, of turning a blind eye? After all there are cases where it is clear that without bribery there would be no deal.

“Taking a realistic view, there are countries in which the demand for a bribe is so blatant and clear, you cannot do business there otherwise. Situations are reached where a government official says to you 'you will hire my son and pay him such and such a sum of money' and there is no other way. It has nothing to do with the features of the product, it has nothing to do with the background of the company, it has nothing to do with your bargaining positions. In such cases, I advise my clients to keep away. If you can't do business the right way, it's not worth taking the risk of conducting business illegally.”

And do all your clients take this advice? “If a client pays me to advise him and does not take my advice on this matter, this is the point at which I say 'thank you' and advise him to seek legal counsel elsewhere. There have been such cases in real life. Anyone wanting to take a business

risk that includes substantial fines and prison sentences should do so without me. I don't have the means to help such companies.”

Has this also happened with Israeli clients? [Silence].

“Mikhail Khodorkovsky is an admirable personality”

The most famous case in the career of Adv. John Pappalardo is that of the Russian billionaire, the opposition figure, Mikhail Khodorkovsky. Pappalardo, together with Adv. Sanford Saunders from his office, was hired to represent Khodorkovsky on the eve of commencement of the proceedings against him in 2003. At that time Khodorkovsky was considered to be the richest man in Russia, with an estimated fortune of more than \$15 billion, in part, because of his holdings in the Yukos energy company, which was at the center of the charges against him. One of Khodorkovsky's partners in Yukos is Leonid Nevzlin, who is known in Israel mainly as a shareholder in 'Haaretz' newspaper.

In 2004, Khodorkovsky was charged with fraud, false reports and tax evasion in connection with transactions in which Yukos was linked in the purchase of Russian government companies as part of the privatization of the assets of the former Soviet Union. Khodorkovsky was convicted and sentenced to nine years in prison. Towards his anticipated release from prison, having had part of his sentence reduced for good behavior, Khodorkovsky was again put on trial in 2007, after being accused of charges of embezzlement in various oil transactions.

Today, the prevailing view in the West is that Khodorkovsky was persecuted because he challenged the regime of Russian President, Vladimir Putin. To this day, Khodorkovsky is considered one of the most prominent opponents of the Russian President. Ever since his release at the end of 2013, after Putin decided to pardon him along with members of the “Pussy Riot” band, Khodorkovsky has been among the supporters of the anti-Russian protests in Ukraine and has openly spoken out against Putin's policies.

“Fabricated charges”

Since his release, Khodorkovsky has also had good economic tidings - in 2014 he, along with other shareholders in GML, Yukos's parent company, won a suit filed in international arbitration against the Russian Government, in respect of the nationalization of the assets of Yukos. According to the ruling, Russia will be required to compensate the shareholders with no less than \$50 billion. However, it will probably take some years before the shareholders see the money, if at all. Russia, on its part, announced that it would appeal the arbitration award.

“Mikhail is a personality who inspires admiration,” says Pappalardo of his client and his eyes shine. “He chose to stay in Russia in 2003, despite the advice he received from many to leave the country. He did so because he believed it was the right thing to do. He feels a deep connection to his country; he cares about what is happening there. Pappalardo says, “It is my opinion that the charges against Khodorkovsky were fabricated to the extent that they don't even exist, and are completely unfounded. So too are the claims against Yukos, which were rejected by an international tribunal recently.

Why did it need an American attorney to defend an accused person in Russia?

“The Russian constitution was drafted after the Communist era by western lawyers, as was the criminal legislation. As difficult as it is to believe, this legal system is quite similar to the American one. In addition, a major part of our role was to present our version to the Western world. During the years when Mikhail was put on trial, 2003-2004, the Putin administration was still perceived worldwide as a ‘managed democracy’ and still enjoyed the image of a relatively reliable regime, which earned it a certain amount of credit. Later on, Putin began to quarrel with various oligarchs, some of whom fled the country. He has taken control over the media and nationalized companies. But when we started working, we had to explain to the world who we were up against.”

After Khodorkovsky's release, Pappalardo met up with him in Washington in November 2014. “I was excited to see Mikhail relaxed and free, especially given the price he paid for the path he chose.”

Will we see this group of Khodorkovsky, Nevzlin and others ruling Russia one day?

“I think it’s unlikely to assume they themselves will lead Russia, because of the Jewish blood flowing in their veins. Unfortunately, in Russia, Jews are not candidates for leadership. There is definitely a chance they will support different candidates and try one day to build a new Russia with them. Let’s hope that the new Russia will be based on the Russian nation and its many skills, and not only on discovering the natural riches of the country, while ignoring the people.”

Between the time the interview with Pappalardo was held and the time of publication, there was an assassination of senior Russian opposition figure, Boris Nemtsov, who was found shot close to the Kremlin in Moscow.

Israelis are a creative nation, and Israel is considered a stable country for business

Adv. John Pappalardo advises diverse multinational companies on their businesses, including in Israel. “The type of companies I represent love doing business in Israel. It is a stable and growing country, Israelis are a creative nation and, compared to the world’s countries overall, Israel is not high on the list of government corruption,” says Pappalardo.

Recently, senior figures in the Israeli economy have spoken of reluctance among big companies to do business in Israel because of what they call “regulatory chaos” for example, the retroactive change in gas policy. Are you aware of this?

Pappalardo: “I have to admit that I am not aware of the regulatory changes you’re talking about. In general, regulatory changes do indeed deter business people, but it is something that happens in different places - take, for example, the changes in banking secrecy in Switzerland.”

And yet, there is an argument that big companies shy away from the “anti-business” atmosphere in Israel - are you familiar with this argument?

“I certainly do not know of anything like that, but I can understand the logic behind such arguments. There is a constant tension between commercial companies, the public and the politicians everywhere. There will always be those who say ‘we are not friendly enough to business’ or ‘we are too friendly to business.’ I’ve seen it over the years in many places. To my way of thinking, it is important that there is no abuse of legal authority in order to favor one business over another.

“In China, for example, they claim that laws with the objective of preventing corruption actually serve to give an advantage to one group over another - in such a scenario, companies have no way of handling it. What is important is to be able to define the business risk so you can size it up against the opportunity. In any event we see investments also in unstable countries. Why? Because profits are high enough. Israel, in any event, in the eyes of many of my clients, is a stable country for business.”

John Pappalardo

Personal: 66-years old, lives in Boston

Job: Head of the White Collar Criminal Defense Department at international law firm Greenberg Traurig

Track: BA in Government, Bowdoin College; J.D., Suffolk University Law School in Boston, various federal prosecution roles, US Attorney for the District of Massachusetts, associate and later a partner at Greenberg Traurig law firm.

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