READING 10.3

Foreign Corrupt Practices: How to Deal with Foreign Forms of Bribery

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Americans who travel on business to other lands frequently find themselves trying to do business against a backdrop of cultural patterns and expectations that they do not fully understand. How should businesspeople deal with customs that conflict with their own sense of ethics and U.S. law? Professor of global marketing Jeff Fadiman discusses bribery in non-Western countries—the reasons for it, the different kinds one can encounter, and how it is done. Because in many non-Western countries turning one's back on all requests for payoffs can be commercial suicide, Fadiman recommends that Americans play the local bribery game—but with our own rules.

INTRODUCTION TO "CORRUPTION"

Some years ago I wrote a "Traveler's Guide to Gifts and Bribes" for *Harvard Business Review* that described my own introduction to overseas bribery. It began with a Kenyan colleague's request for 1,000 shillings as his *zawadi* (gift) and an eight-band radio to bring home for his *chai* (tea). Both *chai* and *zawadi* can be Swahili terms for payoff. His request came after negotiations that settled details of a business venture. The sum he sought was small, but the radio added insult to my injury. Outwardly, I smiled. Inside, my stomach churned. As an American, I settle money questions before contracts are signed. Moreover, I equate bribery with crime. My reaction was standard U.S.A. "I'm American," I said. "I don't pay bribes." Then I walked away—from both my colleague and the deal.

As time passed, other Americans told me similar tales. Some had been bribed; some asked to bribe others. Some agreed. Some evaded. Some refused. None had felt comfortable. Nor would most other Americans. To briefly illustrate, consider your personal comfort level in these situations.

Ghana: You enter customs to clear a consignment of goods. You note high stacks of forms, strewn loosely on a single table. The clerk admits your papers will be "difficult" to find, raises his eyebrows, and awaits your reply.

Peru: To establish an office, you require a license. A government official informs you that the process has encountered "unanticipated difficulties" that may cause "indefinite delay." He awaits your reply.

China: Your firm, a major U.S. department store, has ordered high-quality Chinese-made garments for the fall fashion season. A provincial official explains that their trucks have encountered "unexpected problems" in moving the shipment to port; thus he cannot predict the arrival date. Your season is at risk. He awaits your reply.

United States: You testify before the Securities and Exchange Commission regarding alleged violations of the Foreign Corrupt Practices Act (FCPA). How would you defend your response to each "difficulty"? How well would each explanation satisfy U.S. law? How well would they satisfy you?

THREE AMERICAN DILEMMAS

Situations like these provide Americans with three dilemmas. The first is legal, since much of our discomfort is due to U.S. law. We are all too aware that the FCPA forbids U.S. companies to offer foreign "officials" funds to influence them in obtaining or retaining business. The act also prohibits indirect payments, since firms may not offer funds to third parties while "knowing or having reason to know" they will be used for those purposes. Small payments that persuade lower-level foreign officials to perform their routine, lawful duties are allowed, but the law sets no border between what is legal and illegal. This uncertainty has also acted as a restraint. In short, since 1977 the FCPA has effectively forbidden U.S. citizens to bribe. . . . U.S. firms face a world in which our trading partners can bribe, but we cannot.

The second dilemma stems from U.S. ethics. We receive most of life's essential goods and services without experiencing either preferential treatment or overt discrimination. We thus categorize bribery (even in our dictionaries) as a payment used to obtain something illegal. Thus, most of us dislike the very thought of paying bribes. Payoffs do occur in U.S. business, but (unlike in many other countries) they are not the norm, and thus are almost universally condemned. Americans abroad reflect these feelings. Most see themselves as personally honest, professionally ethical, and willing to do business under law, both U.S. and foreign. They also realize that foreign governments have formal laws against private payoff. In consequence, few U.S. firms want to make illegal payments of any kind to anyone.

However, U.S. law and ethics combine to generate a third dilemma, this one both global and commercial. We are a small minority in a world that sanctions payoff. What should we do when key foreign contacts declare that bribes are prerequisite to business? Once overseas, for example, most Americans realize that non-Westerners who solicit bribes are simply following the rules of their respective homelands. However, many of these rules are similar within most homelands. Asians, Africans, Arabs, Latins, and Eastern Europeans share certain common payoff patterns that we can recognize in almost all non-Western nations. That leaves us with two related problems. One is to research their rules; the next is to adjust ours, to the point where *we* can operate in ways that meet the legal, ethical, and commercial requirements of both sides.

WHY DO THEY BRIBE?

While businesspeople bribe for many reasons, three seem particularly relevant to Americans who deal with non-Western variants of payoff. Non-Western cultures have a communal dimension that we often ignore. Within these regions, people define themselves in two distinct ways, once as individuals and again as members of communal groups (extended family, clan, caste, sect, etc.). Each identity (individual, communal) creates specific obligations, reinforced by centuries of tradition. At least three of the communal obligations provide reasons for what we consider bribery.

1. *Meet extended family needs.* Payoff requests may be justified by the obligation to meet the financial needs of members within one's communal group, however broadly defined. In these cultures an individual lives symbolically within a series of concentric circles. The smallest—that closest to him—consists of blood kin, his immediate and extended family. The second is composed of kin by marriage. Outer circles consist of increasingly "fictional" kin, regarded as "brothers" ("uncles," etc.) because they share some portion of his past (agemates, schoolmates, army comrades, etc.). Zaire's President Mobuto, for instance, claimed 3,000 blood relations and perhaps 5,000 others as "kin." Collectively, members of these varied circles make up an extended family that we may deem fictional but they see as real.

Collective tradition requires each family member to aid all kin (both real and fictional) in need. Thus, any relative can ask a favor, sure it will be granted to the extent allowed by custom. In consequence, a wage earner may respond to dozens (or hundreds) of requests from kinsfolk, each of whom may ask for funds in times of joy (to feast) or crisis (to cope). Similarly, job holders must also share earned income among workplace superiors (who may also be kin, whether fictional or real). When they seek work, applicants pay hirers to consider them. When they receive it, part of each wage moves "up" to supervisors—even as other parts move "down" to extended family.

As a result, many non-Western officials live in a nightmarish netherworld of high status and shared poverty. Egyptian customs officers earn $25 per month. Liberian counterparts earn 50 cents per month, when paid. Mexican police net $65, after payoffs to superiors, fees to rent patrol cars, uniforms, weapons, bullets, and a "rich" patrol zone. *In nations where hirees know all earnings must be shared, they do not seek posts as a source of wages, but as platforms from which to freelance routine services for fees.* Thus, when U.S. business personnel appear, payoff requests begin.

2. *Exchange favors/forge relationships.* A second reason to seek bribes is to offer favors in return. In these cultures, the promise of a

future favor can often replace wages as a basis of economic security. If a supervisor hires a subordinate to perform a service, then pays a fee, the transaction is complete; no further relationship is required. However, if the subordinate rejects the fee and does the work as a favor, he creates a sense of obligation in the hirer and thus a potential relationship. In the future, he may ask this employer for a favor. Feeling under obligation, the employer may grant it, then ask a second favor in turn. The subordinate, placed under obligation in his turn, may once more grant it without asking payment. Thus, sequential favors launch relationships. Over time, the ebb and flow of favors should benefit both hirer and hiree, to the point where their relationship evolves from acquaintance to alliance to a fictional kinship that both find very real.

This "future favor exchange" is a key business tool in all non-Western nations. Japanese call it "inner duty." Kenyans create "relationship." Chinese seek "connections." Zulu call it "humanness"; Filipinos, "inner obligation." Each system of this type assumes that any person under obligation to another enters a relationship in which each prior favor must be repaid on request. Each repayment transfers the sense of obligation to the other side. The "good feelings" that spring from doing favors for each other create the trust prerequisite for doing business. Thus, when we appear—in need of business favors—exchanging current (U.S.) funds for future (on-site) favors appears a logical prerequisite for commercial relationship.

3. *Seek patronage, protection, security.* Payoff requests can finally be justified by the need to generate patronage. Americans derive security from their belief in the rule of law. Where such rule is lacking (or crumbling) security can also come from creating connections with those who have power, thus gaining their protection. "In America," one informant declared, "things are easy to get. You just buy them. In Congo, they are scarce. We cannot just buy what is not there. Thus, those who need big things must ask 'big men' (those with power) to get them. To get their attention, we present gifts—before, during, and after a transaction. In turn, they provide for and thus protect us. They are our fathers. By giving to them, we store for ourselves."

This "big man" pattern can also apply when seeking business opportunities. Consider a Ghanian tradition called "sharing the goats," from an earlier era where goats were used as currency. An Akan/Kwi proverb, *Obiya dedee wu nea ejumamu* ("Everyone eats at his work"), tells listeners that one's post should be used to enrich one's person. Thus, a businessman seeking to launch a venture will offer the official the "first goat" (money) before even making his request. He does this both to establish himself as petitioner and the official as authority, thereby publicly launching an unequal relationship. He will offer additional "goats" as the venture progresses (to reinforce this public image) and a final one, in gratitude, at its completion. More important, he will contribute further gifts and services ("goats") forever after, thereby periodically reaffirming his dependent status should he need further favors.

We see each step in this process as bribery. Most non-Western colleagues do not. Rather, they see each "goat" as reaffirming tradition and thus displaying commercial wisdom. Thus, when we appear in search of business, some non-Western contacts seek our patronage. Others hope we seek theirs. Both groups simply want us to behave as custom commands. By "sharing goats," we signal that we seek relationships.

THEIR SIDE/OUR SIDE: WHO MUST "PLAY"?

For most of us, bribery begins at foreign borders. For convenience, consider it a game, complete with stages, rules, and players. As passengers disembark and divide into the conventional orderly lines for citizens and visitors, they are also separating into players and nonplayers. By passing through customs, they enter onto a foreign playing field, and some must begin to play the payoff game.

Players: These include all who must play (i.e., bribe). They have no option. Generally, this means all host nationals returning home as

well as former nationals who have immigrated abroad, regardless of current citizenship. It can also include their grown children, born in the United States. Former Vietnamese, for instance, returning to their homeland, find they must deal with problems of payoff. Whether Vietnamese citizens, U.S. immigrants, or American born, they are still Vietnamese at the border. In consequence, few reenter Vietnam without negotiating supplementary fees.

Non-players: These include most U.S. tourists. In general, first-time visitors are placed outside the foreign system. Knowing neither the language nor the culture, they clearly cannot know the rules regarding bribes. Thus, foreign nationals approaching them for extra payments could generate both anger and embarrassment, leading to mutual loss of personal and professional dignity. Consequently, they are often simply let alone.

Future players: This is not true, however, for future players, U.S. businesspeople who cross the foreign border with sufficient frequency to gradually become known. In this case, a gradually increasing mastery of host nation languages and customs works against them. The more effectively they penetrate the culture, the more likely they will be asked to play as their contacts, commercial value, and knowledge of the game expand.

Once across the border, we must decide who will most likely solicit bribes. To anticipate them, we must learn how payoffs operate at various social levels as well as which players within each class are most likely to approach. To illustrate, consider three social groups who might solicit U.S. business personnel.

Clerks (service class): This level includes all commercial and government personnel with whom Americans must make initial contacts, including employees in immigration, banks, firms, security units (police, etc.), and government departments. Since risk of punishment is low among this class of players, direct requests for cash are common. Notwithstanding, fear of public accusation leads clerks to use synonyms when suggesting extra fees. Many reflect concerns with food. Thus when soliciting bribes, Congolese and Moroccans ask for "children's beans." Kenyans and Indonesians refer to coffee money. Mexicans and Colombians speak of the "bite." Liberians ask for cold water. Chinese mention steamed buns and cigarettes, while Thai offer to "add value to your hot water" (i.e., make it tea). Other nations use similar terms. Americans should learn them, both to recognize the initial signal for a payoff and realize that the lower a petitioner's social class, the more direct (and cash oriented) his petition will be, and the less he will hope for a long-term relationship.

Officials (middle class): This group includes every administrator with whom we might logically do business. We refer to them as "bureaucrats" or "officials" and mean those who hold routine decision-making posts within commercial or government departments. These are the people who stand symbolically behind the clerks. They are middle class, hence more discreet. Their requests for payoff will be both larger in scope and more indirect in manner. Since bribery is formally illegal, direct discussion of it is both a social insult and commercial threat. In consequence, one side or both may use a go-between.

Executives (upper class): This includes executives in non-Western ministries, agencies, or corporations, who are often linked to long-established, wealthy families. The higher a key player's social class, the greater his need to preserve dignity—thus the more indirect, convoluted, and complex the bribery process may become. At this level, the number of people involved on both sides may expand exponentially. Colombians refer to the process as "twisted pastry" (*roscas*), to describe the intertwined commercial, social, professional, and military links among the families that make up that nation's upper class. Thus, to forge a "satisfying" financial arrangement at this level requires extensive contacts.

Among executives, the primary goal of both sides may go beyond cash transfer to developing long-term relationships. Latin informants suggest this type of (illicit) interaction should be handled with stylized flair, like a theater piece in which each partner knows what role to play. Asians claim it should be based on shared traditions, in which each side knows the others' expectations. Africans feel that mutual trust eliminates the need to negotiate, since

both parties will know what to do. From a U.S. perspective, however, all three statements suggest the existence of a lengthy and complex sequence of unspoken rules by which the game is played. We should research them.

WHO STARTS, AND HOW

Clerks (silent signals): No nation makes bribery legal. Thus, nowhere is it prudent to openly ask for or offer a bribe. As a result, most non-Western clerical/service personnel prefer potential clients (including U.S. business clients) to introduce the topic, thus reducing risks to themselves. If the client fails to act appropriately, however, and especially if (by virtue of being foreign) he or she does not know how to begin, personnel at this level will try to indirectly provide guidance, beginning by sending silent signals.

In Nigeria and Thailand, for instance, commercial and government clerks deliberately stack huge piles of paper in appropriate positions along tables and desks, as "silent" signals of how busy they are. In Zaire, postal workers pile incoming mail on post office floors rather than sorting and placing it in postal boxes. When patrons appear, they let the setting silently signal appropriate behavior. In China, inspectors visit businesses and hang coats up on hangers while accepting tea. The hanging coat serves as an unspoken signal to fill the pockets with cash. In each case, the signal simply asks potential clients to take the next step.

Client expresses commercial need: If clients know both the signal and the rules, they then approach the topic. The least sophisticated method (most used by Westerners) is a direct request for a specific service. Alternately, Mexicans and Colombians may politely mention how busy the officials must be, then express commercial needs in nonspecific terms. Thai and Vietnamese, perhaps more ceremoniously, may (1) do the same, (2) describe their own potential difficulties should these needs not be met, (3) ask the functionary's advice, (4) express willingness to follow it, and (5) display gratitude in advance. In every case, the purpose is to signal an initial willingness to consider payoff by vaguely expressing a commercial need.

Officials (difficulty = delay): An official may respond by citing "unspecified difficulties" that may cause "indefinite delay." These two verbal signals particularly disturb Americans because they clash with our desire for precision with regard to data. At this point, however, Americans often seek specific reasons for delay as well as equally specific (higher level) decision makers to resolve it. Sometimes these first reactions lead officials to deliberately delay decisions by referring them to supervisors. Alternately, they may accuse us of noncompliance with either real or fictional regulations. Others simply point in silence to the sheer volume of work piled on their desks and raise their eyebrows. In every case, such responses are simply second signals asking if we wish to carry on. We need only realize they are sent.

Client asks advice: Ideally, the potential client should respond to hints of difficulty and delay by asking the official for advice and/or offering to help. This can be done directly ("How can you facilitate . . . ," "How can I facilitate . . .") or indirectly. Sometimes, this is done through local proverbs (India: "Give and take is part of life, how . . ." Hungary: "Time is money to us all. Can you advise . . ."). Most often, the official may just agree to see what can be done. This is the first signal. If the client then responds with gratitude, agreement is reached.

HOW MUCH SHOULD WE PAY?

Standard rates? If asked to bribe, how much should we offer? What is appropriate? foolish? correct? Many Americans feel there are no rules and that petitioners charge what the market will bear. This may not be true. Several informants insist that rates in their nations are standardized by local custom. Egyptians and Indians, for example, contend that ethical behavior is central to clerical and middle-class *bakshish* (bribery). Officials know the rules and follow them. Thai and Filipinos also argue that those who violate traditional guidelines are criticized by coworkers and clientele alike. In Russia, payoff rates have standardized to the point where the daily newspaper *Komsomolskaya Pravda*

was able to compile a Moscow price list of commercial bribes.

Other informants also feel that custom regulates payoff requests, at least at lower social levels, except where society itself breaks down. Thus, where payoff expectations seem limited, they are clearly predictable. However, double, triple, and multiple standards may also be applied. Vietnamese, for instance, suggest one "range" of possible rates for host nationals, a second for ex-nationals, and a third for foreigners. Within each range, payments may be further segmented and thus standardized by homeland (foreigners), home region (nationals, ex-nationals), and smaller factors such as age, sex, apparent wealth, and intensity of (client's) commercial need.

Still more subtle graduations may also be set by local custom. One Thai national, seeking permits to begin a business, paid just enough extra to have her application placed near the top of an appropriate pile. Contented, she explained that she knew she could not afford to "reach the top" but paid what was required to "avoid the middle." Asked how she knew this, she replied that it was common knowledge. Asked how foreigners could learn this type of knowledge, she suggested they ask.

HOW TO PAY

Avoid public payoff: Public payoffs are often commercially counterproductive. Despite our U.S. preference for direct and open business interaction, no bribe should be offered, accepted, nor transferred overtly. If you are solicited in public, politely decline and deal with competitors. To offer a payment where others can watch may violate local tradition, anger a potential recipient's coworkers, and expose him/her to possible blackmail or even arrest. In short, it momentarily strips the non-Western contact of both personal and professional dignity. In consequence, the recipient may strike back, magnifying the originally "unspecified" difficulties mentioned earlier into specific and significant violations of law.

Use paper camouflage: A more prudent (and more non-Western) method of transferring supplementary payments is to use "paper camouflage." In simple form, this can be done by slipping funds between two documents, then passing them to the official. Filipino and Peruvian informants suggest these not be stapled, bound, or taped, lest officials even momentarily lose face in struggling to remove the contents. Indeed, many take pride in an ability to remove money so quickly and skillfully no coworker knows it takes place. A more common method is placing cash in an envelope. This is given the official with the instruction that he "read the documents as time allows," thus creating the illusion that both sides are conducting business. . . .

Add verbal camouflage: "Paper camouflage" should be accompanied by "verbal camouflage," meant both to conceal the transaction from listeners and create good feelings (and thus potential bonds) between giver and recipient. Thus "children's beans," "tea money," "steamed buns," and the like must never be given either in silence or with obvious bad grace. Rather, at the most basic level, a payoff must be given with verbal good wishes, often linked to directions as to how the funds may be used. Thus, Indians, Nigerians, and Thai may ask recipients to "use the documents (within the envelope) to educate your children." A giver may also include a business card to signal that future commercial interaction and thus a possible relationship are being solicited. The recipient signals agreement by returning his own. . . .

Executive Variants

Executive (upper class) bribery differs from clerical and mid-level variants mainly in scope. The wealthier the players, the more lavish their actions. The higher their social level, the greater their need to preserve reputations. Thus, though some methods of operation approximate those of the clerical class, their complexity, geographic scale, and time frame expand. Consider four differences most relevant to Americans.

Use multiple go-betweens: Clerks often seek bribes directly. Officials may use a go-between. Executives may utilize an entire network of subordinates, one for each decision maker. The higher the principal's social class, the more middlemen/women may be required. Thus, where Americans lack preestablished relationships

with key decision makers, appropriate go-betweens may prove useful in making contacts at higher social levels.

In many non-Western nations, go-betweens fill a respected commercial niche. Their work is to bring key commercial players together, then help them form mutually useful relationships. In Congo, for example, where they are known as *musalisi,* go-betweens are commercial generalists. In contrast, Japan's *nakodo* specialize in narrowly defined commercial fields. Professional go-betweens emerge in countries where business is conducted through informal primary relationships rather than formal, written rules. The fees they ask are not considered bribes, but fair compensation for service rendered. . . .

Social camouflage: Executive payoff patterns also differ from working-class transactions in their use of social camouflage. Whereas clerical and (much) mid-level bribery often occurs in offices, elitist arrangements most often begin within elegant social settings. However, exclusive restaurants, nightclubs, golf courses, and the like do not serve as settings for currency exchange, but as places for potential principals (or their go-betweens) to grow acquainted, to the point where allegedly illicit financial arrangement can eventually be discussed. This may occur in a single evening but will more likely take place over weeks, as several similar occasions may be needed to create a climate appropriate to the sensitivity of financial discussion that may occur. . . .

Verbal ambiguity: Even after such a climate is created, discussion remains indirect and deliberately vague. No overt mention of a money transfer is made by either principal. Rather, each side indulges in ambiguities, so artfully rendered as to leave no doubt as to their double meanings. At their core, however, these are no different than the comparatively direct discussions that occur at clerical levels, in that:

- The client indicates commercial need.
- The official postulates potential difficulties, indefinite delay.
- The client asks advice, or offers aid.
- The official promises to see what can be done.

Thereafter, conversation on the topic stops. Other subjects are introduced, to permit both sides to reflect on the risks and rewards involved in what has covertly been decided. The evening may end with nothing resolved. Nonetheless, both sides will have achieved their goals—shared experiences, deeper acquaintance, and thus creation of a climate within which further interaction can occur.

Expanded use of space and time: Consider the U.S. businessman who offers these statistics on getting contracts in China:

> To get a small contract, say $20,000 . . . it's a couple of dinners out. . . . For a $250,000 contract, it's a familiarization trip for the official to the States. A contract of a million and above? Then, we're talking about getting a visa for the guy's son.

Can it be argued that this man is unaware of an entire dimension in non-Western business? Among executives, the scope of a payoff not only expands with regard to spending, but also space and time. At this level, the relationship's duration becomes increasingly significant to both sides. The more time taken in the presentation of a monetary favor, the more highly the presenter will be valued. Thus, the "gift" of membership in an exclusive U.S. club may require annual payment of required fees for many years. It is the long-term obligation that gives the gift its value. A U.S. college scholarship—made available for key decision makers' kin—can take years to complete; however, the receiving family may cherish the giver for a generation.

These deliberate expansions of the gift-and-favor process provide the most significant difference between lower- and upper-class patterns of bribery. The former wish to complete a single transaction with sufficient mutual goodwill to create the climate for another. The latter wish to gradually weave both sides into a web of lifelong mutual obligation that will form the basis for commercial trust. To do so takes time. Thus American executives should be particularly selective when choosing elite foreign colleagues. At this level, each relationship they offer may be meant to last a lifetime.

"PLAY" IN THEIR GAME?

No one forces us to bribe. If asked, why should we comply? Again, informants provide several reasons of commercial interest to Americans:

Gain commercial influence: One reason to consider non-Western forms of bribery is to acquire both an immediate and long-range commercial edge. Clearly, this can be achieved by gaining short-term influence over a potentially useful individual within a commercial setting, since a properly presented gift will place him under an initial sense of obligation. Over time, this can be nurtured into a longer-range relationship within which both sides exert influence on one another in ways each finds commercially useful.

Establish commercial reliability: As foreign strangers in a foreign land, we may be labeled high risk. Non-Westerners often find us untrustworthy, simply because we do not play by local rules. Thus, no one knows how an American will behave once commercial interaction has begun. This applies particularly to bribery. An Equadorian CEO once told me that he could never trust a man he couldn't bribe. "How else," he asked, "could I influence him?" A Hungarian contends that if you (the foreigner) accept the bribe, you will probably provide a favor in return, and thus can be trusted. Consequently, when you need a favor, you receive it. If not, you don't. Other informants agree, essentially arguing that one way to establish credibility in foreign commerce is to play by foreign rules, including payoff rules.

Avoid commercial ostracism: Conversely, refusing to bribe may damage your firm's commercial reputation in an unexpected way. The word may spread that you are "honest" (unbribable). A Budapest informant described the impact of this process on a U.S. business acquaintance. The American refused to either bribe or be bribed. The Hungarians who dealt with him decided that if he was "unbribable," he was unpredictable, thus "untrustworthy." Since bribery was both illegal and unavoidable within their system, to deal with him might actually create commercial risk, should he expose what they perceived as normal business methods to Hungarian law. In consequence, they chose to exclude him from the collective dimension of local Hungarian commerce. The American's commercial reputation ensured that his commercial efforts were ignored.

Save commercial time: Many informants argue that bribery saves time. A payoff can gain you special consideration. It can acquire commercial permission. It can hasten commercial action. Indians and Indonesians argue that officials control your commercial time by virtue of their post. You pay to avoid a deliberate imposition of delay. On occasion, the extent of this delay staggers U.S. imaginations. Vietnamese and Thai informants declare that payoffs create a "climate" wherein the official acts to save the foreign applicant "commercial time," which in these nations can be "ten years." To avoid this, Thai argue that "money cuts paper" (i.e., regulations).

Potential payoff, however, must also be evaluated in terms of human feelings. An official may equate rejection of what to him will seem a routine bribery request with rejection of relationship. He will thus do nothing to facilitate your project. That lack of action may indefinitely postpone it. Reexamine, for example, the situation of the U.S. department store in China. The project CEO had ordered quality garments for their fashion season, paid fair prices, but failed to develop long-range gifts-and-favors relationships with key decision makers in an appropriate ministry. In consequence, when an official informed him the trucks to transport the shipment from factory to port had met "unexpected difficulties," the American assumed the problems were mechanical and offered U.S. mechanics to "fix the trucks." This compounded his problems, for in fact, they were human. The deputy minister's message was simply an invitation to enter the system. The CEO's response was a rejection.

Make commercial connections: Recall that many non-Western traders conduct business along extended family networks, composed of kinsmen, colleagues, and comrades. To use an electrical analogy, each individual within a network is "wired" to all others by an intangible web of prior gifts and favors. Intermittent gifts and minor favors ensure all wiring remains in

repair. Thus, should one person "switch on" someone in the system by seeking a favor, human electricity will flow. In crisis, he need contact just those individuals needed to help surmount it. They can contact him in turn. Ideally, each crisis strengthens the entire system. However, all members must stay wired in, since other extended families have competing systems of their own.

On first arrival, commercial Americans lack access to these systems, and indeed may not know they exist. Swahili describe such outsiders as *wageni* (strangers), meaning those with neither (local) friends nor kin. Japanese call them *gai koku jin* (outside-country-men), meaning those who lack all (Japanese) connections. Namibia's Xhoi-San simply call them "predators." Other non-Western nations use similar terms. Invariably, the unspoken implication is that such people should be shunned.

Thus, we face two options on first entering such settings. One is to ignore these competing systems altogether, thus risk remaining on the periphery of on-site commercial interaction. Another is to tap, selectively, into those commercial groups that seem most relevant to our venture, then learn to operate within them. In areas where connections seem prerequisite to commerce, we should develop them. Non-Westerners argue that what we see as bribery is, in fact, a useful method to accomplish this, by signaling foreign decision makers that we seek not just brief connections but relationships that lead to future business.

Avoid commercial retaliation: We must also realize there are penalties for staying off the playing field. By rejecting an offer to enter the system, we risk generating both private embarrassment and public loss of face. This loss is felt with equal intensity by a traffic policeman, customs clerk, corporate administrator, junior minister, or anyone else who requests what funds he feels are due to him in exchange for future favors he will do for you. Thus, when refused, each one may wish to retaliate. . . .

PLAY THEIR GAME? USE OUR RULES!

Naked bribery—exchanging U.S. currency for commercial favors—is the least subtle and most inconsiderate form of payment available to American business. Naked bribery ignores non-Western commercial traditions that idealize subtlety, gradualism, and long-term ties through an *exchange* of gifts and favors. Among Americans, naked bribery actively promotes ill will, thereby eroding rather than forging relationships. The same applies to Americans who trade abroad. There as here, *the more money you give, the less the recipients will like you and the less you will like them.* Surely, we can play in foreign payoff games while using other rules—U.S. rules that satisfy our sense of ethics and our law. Consider the following.

Rule 1: Adjust Our U.S. Mindset

Why not begin by adjusting our American mindset? Consider, for instance, our U.S. view of non-Western target markets. Rather than labeling them as "less developed" or "corrupt," why not mentally equate them with Adam Smith's classic free market—a countrywide shopping mall, where every imaginable service is now for sale? This specifically includes those so-called "routine services" (customs clearance, application forms, commercial permits) that we Americans subconsciously expect either for free or fixed/fair prices, since U.S. officials receive fixed/fair wages to provide them. Since non-Western officials do not receive such fees, they will solicit them from us. Moreover, they will use at least five rules that differ markedly from ours:

- No fixed prices; each fee is negotiable.
- No contracts; each deal is based on trust.
- Buyer pays in advance; service comes after.
- Terms of agreement may change on the way.
- Twin goals: make profit, forge ties.

Why not adjust our pre-payoff mindset to these Third World realities?

Next, why not adjust our view of non-Western payoff requests? Why not research them—like any other business problem—before launching an initial venture? Each inquiry you make will provide a contact who may offer opportunities to enter the system in ways that satisfy you both. Examine the economic context within which each request appears—such as the actual

wages available to officials who solicit you or the degree to which existing poverty is shared. Analyze the social context, such as the degree of kinship within each foreign firm. Analyze the legal context: Do those you work with have protection under law, or must they seek it from the rich and powerful? Now consider the payoff requests: Are they attempts at extortion or bids for relationship?

Rule 2: Deflect Cash Requests

Shield strategy: Why not develop a deflection strategy? Is everyone who solicits us interested only in private enrichment? How artfully can we deflect each solicitor away from an initial focus on cash payment and toward more attractive alternatives? *One useful first step might be to use the FCPA as a "commercial shield," which we need only raise to deflect requests for money payoff.* Unlike our foreign competitors, we need only state that U.S. law forbids such payoffs then ask if we could be of service in some other way. Look long range. Could we not offer uniquely U.S. services or opportunities or contacts? How could our firm enhance the business of a key non-Western contact over decades? Could he do the same for us? Would we then have a Third World-style relationship, and would that satisfy the FCPA?

Go-between strategy: Go-betweens can serve as on-site educators, deflecting requests for cash payoff before they are asked. Locate them by developing contacts with U.S.-based foreign nationals who are prominent both in their homeland and your commercial niche. Let these lead you to equally respected contacts—well connected to their own extended families—within the target market you intend to enter.

Nurture both professional and personal relationships with potential go-betweens, to the point where trust develops. Meet FCPA concerns by paying reasonable, well-documented fees for the service they provide. Do not ask them to arrange cash payoffs. Some U.S. firms skirt the law's intent by hiring foreign agents, then feigning ignorance of how they bribe. Why clash with FCPA concerns about indirect payment? Instead, use well-briefed go-betweens to educate potential foreign colleagues about your commercial limitations, including those imposed by the FCPA. Simultaneously, ask them to educate you about the limitations placed upon these same potential colleagues and anyone else with whom you might wish to do business.

Patron strategy: Thereafter, seek links with powerful on-site commercial allies. There are still too many countries in which Americans have no recourse to law. If you are not connected, in such regions, you are not protected. If you are not protected, you are fair game for that type of bribery we call exploitation. Therefore, as both your project and on-site expertise expand, consider asking go-betweens to aid you, over time, to develop relationships with a visible, established, and respected "commercial family" operating prominently in your field. Within their network, nurture contact with a patron to whom you can turn for advice in resolving local business problems (such as contract noncompliance) in local ways.

Rule 3: Counterbribe, American Style

An American proverb states that the best defense is a counterattack. Why not counterbribe, using methods that meet both U.S. and foreign norms? Why not use our uniquely American commercial strengths (access to capital, technology, marketing expertise, etc.) to create degrees of foreign commercial dependence on U.S. products, projects, and firms?

Goods strategy: Consider, for example, a Western firm's experience in 1970s Zaire—a time when the economy had decayed so badly that even ranking civil servants went unpaid. In consequence, key Zairois officials approached the firm's CEO requesting current funds for future favors. Instead, he responded by "donating" surplus goods for resale in black markets, thus enabling the officials to continue in their posts. Over time, they grew increasingly dependent on the firm's largesse, thus increasingly willing to provide commercial favors in their turn. By transforming the payoff from currency to saleable goods, the CEO created a gradually expanding degree of commercial dependence among its solicitors. In essence, they ended by working for him.

Status strategy: Counterbribery may also mean transforming cash requests into commercial status. Consider the experience of a U.S. firm in Java, which sought to buy rural acreage on which to site a factory. When numerous peasant owners refused to sell at any price, the firm worked through Indonesian officials to send them on the *hadj* (pilgrimage) to Mecca. Sending the *hadji* (pilgrims) added 10 percent to the purchase price for the land. However, the firm initially transformed a situation that normally would engender payoff requests by providing both religious and social status to virtually everyone involved.

Assume, hypothetically, that it repeats the process, financing a pilgrimage each year for both its most reliable employees and the oldest, most venerable men in surrounding communities. Would that not create both commercial and religious dependence among both groups? For the firm, that might mean a protected work site, contented workforce, and respect from the surrounding population. It might also lead to widespread local purchase of its products. Could *any* of these be achieved with cash bribes?

Service strategy: Counterbribery can also mean transforming payoff requests into commercial service. Key non-Western decision makers can be provided training and equipment in specific services they need but cannot provide—or sometimes even imagine. One U.S. informant deflected payoff requests in this way while investigating opportunities in Eastern Europe. Initially, his potential venture partners sought only bribes and capital. Refusing (citing the FCPA), he counteroffered expertise in marketing, only to realize that the very concept of demand creation lay outside their previous (communist) experience.

He responded by transforming their cash requests into services intended to develop their dependence on his firm. Initially, he provided his new colleagues with computers, then with training as to how they could be used in marketing. Periodically, he intensified the process by upgrading the equipment as well as selectively introducing them to U.S. marketing experts who reinforced his views. Gradually, as their professional dependence on computers deepened, their commercial dependence on U.S. marketing methods intensified, as did their personal dependence on my informant.

These strategies do not exhaust the list. Project heads could easily devise new options, each meant to simultaneously enhance commercial opportunity (for "them"), create commercial dependence (on "us"), and avoid the giveaway of U.S. funds. The FCPA provides us with a priceless opportunity: to gain an on-site reputation for providing services instead of bribes. As our legal dilemma dissolves, home offices may respond more favorably to overseas requests for funds. Turning private payments into public service should meet congressional, corporate, and even personal U.S. moral norms, thus easing our ethical dilemma. Finally, we can even resolve our commercial dilemma. Not only can we learn the rules of foreign payoff games, but how to modify them so that we can play.