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2017

### Enforcement Challenges and Victories

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# Enforcement Challenges and Victories

In June 2017, CAPI presented the second installment of our signature conference, Global Cities II, which brought together anti-corruption leaders from government and civil society worldwide, including delegates from Bogotá, Cape Town, London, Melbourne, Miami, Montréal, New York, Paris, Rio de Janeiro, and San Francisco, to discuss important topics such as using data analytics to combat corruption, government transparency, enforcement challenges and victories, and innovations in oversight. Videos and other materials from Global Cities II can be found [here](#).

## Original CAPI Publication:

This brief was prepared by the Center for the Advancement of Public Integrity at Columbia Law School. We can be reached at [CAPI@law.columbia.edu](mailto:CAPI@law.columbia.edu).

CAPI would like to thank Andrew Kuntz, CAPI summer research intern and Columbia Law School student, for his authorship of this brief.

## Introduction

The Enforcement Challenges and Victories panel included Mary Cagle, Inspector General of Miami-Dade County, Wilson Leung, former Assistant United States Attorney and currently the Global Ethics and Investigations Manager at HP and Nick Maxwell, formerly with Transparency International UK and founder of NJM Advisory. Anita Das, CAPI Research Fellow, moderated the panel. PowerPoint presentations and videos of the Enforcement Challenges and Victories panel can be found [here](#).

## Enforcement Challenges: Mary Cagle, Inspector General of Miami-Dade County

Mary Cagle opened the panel with an assessment of three key challenges to enforcement work that her agency, the Miami-Dade OIG, has faced. First, Cagle discussed maintaining independence without undermining efficiency. She noted that her office had secured its independence in four ways: first, through the selection of the Inspector General via an independent, statutorily required, process involving a panel of community leaders; second, through empowerment to investigate anyone at any level of local government; third, by having relative budget security through ordinance and fees imposed on most County contracts; and fourth, by the designation of OIG lawyers as Assistant State Attorneys with the power to bring enforcement actions on behalf of the state.

Given that a watchdog agency may be tasked with investigating high level government officials, Cagle also emphasized that is important to understand how best to strike a balance between having a good relationship with the relevant administration while maintaining your distance. If the relationship is too acidic, then it may be more difficult to work with an administration to implement important recommendations. By contrast, if the relationship becomes too close, then there may be concerns, internally or externally, about the independence of investigations, which may undermine a watchdog's relationship with the community, whistleblowers, and other parts of the government.

A second challenge Cagle identified was in making people aware of the OIG, and she discussed how to cultivate a culture that is supportive of whistleblowing. Cagle's office is required by statute to engage in outreach, and she noted how responsive people tend to be when they learn about the OIG, particularly when the outreach is made accessible through videos and other technology. A related part of the challenge is building a culture that supports whistleblowing. Though acknowledging that this may not be appropriate in all situations, Cagle described Miami-Dade's "appreciation" model, which consists of favorably publicizing the act, sending the whistleblower a letter of thanks, and attempting to cultivate a positive view of transparency and watchdog agencies.

A third challenge to enforcement noted by Ms. Cagle involved taking context into account when engaging in oversight and making recommendations. Different problems require different solutions that reflect the varying structures, incentives, and perspective of the actors and agencies involved. Additional checks may not always resolve the problem and can sometimes merely create additional chokepoints for corruption and more paperwork to sift through for disclosures.

### **Enforcement Victories: Wilson Leung, Global Ethics and Investigations Manager, HP**

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Next to speak was Wilson Leung, former Assistant United States Attorney in San Francisco and currently the Global Ethics and Investigations Manager at HP, who provided an overview of an enforcement victory secured by the United States Attorney's Office for the Northern District of California in the case of *United States v. Leland Yee*.

The case targeted Leland Yee, a prominent politician in San Francisco, who served as a member of the State Assembly and State Senate in California. Though the case itself highlighted a successful investigation and prosecution of corruption, Leung also noted that it demonstrated how corruption can take the form of both tragedy and farce, and reminded the audience that investigations often lead to unexpected places. For Leland Yee, the tragedy was that his pursuit of public office drove him into debt, which led to his participation in corrupt and criminal conduct, including accepting money in exchange for using his influence as a public official. The farce was that his actions, particularly his participation in a conspiracy to purchase and import firearms from the Philippines, directly contradicted his strong public support of gun control.

The initial investigation, however, did not focus on Leland Yee, but instead involved a local underworld figure. In the course of the investigation, threads from Leland Yee's operation became visible. Yee ultimately pleaded guilty to a racketeering conspiracy, and was sentenced to 5 years' imprisonment.

Leung closed his overview by musing on the issue of corruption. Though every case is unique, practitioners may recognize certain recurring questions and themes in the course of their anti-corruption work: What possesses politicians to engage in corruption? Of the options open to them, why do public officials engage in certain crimes instead of others? Why do politicians engage in behavior that appears to carry a high chance of getting caught? Do certain political structures generate more corruption, such as one-party rule? Possibly the answers to some of these questions would aid in not only corruption enforcement, but prevention as well.

### **Enforcement Developments**

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Nick Maxwell, formerly with Transparency International UK and currently the Principal of NJM Advisory, examined enforcement challenges involving the flow of corrupt capital into high-end real estate in cities throughout the world. Mr. Maxwell opened his discussion by identifying corrupt capital as a global vulnerability to public integrity, and opined that enforcement to combat this issue is severely lacking. Maxwell posited that this is due to the ease and desirability of laundering money through real estate. The ease comes from the ability to use offshore companies and shell companies to avoid ever having to disclose the true owner of properties. The desirability comes from real estate being a reliable way to store wealth generally, and a good way, more specifically speaking, to take funds out of legal systems where they might be vulnerable to law enforcement. Corporate secrecy adds an additional layer of complexity to these matters, because legitimate and illegitimate enterprises may engage in similar patterns of activity, which make investigation and enforcement all the more challenging.

Though the existence of under-enforced public integrity issues is nothing new, the estimated scale of real estate money laundering sets it apart. The United Nations believes that less than 1% of illicit wealth is even detected. Transparency International has found that since 2004, over £180 million worth of property has been brought under criminal investigation in the UK as the suspected proceeds of corruption.

To assess this vulnerability, Maxwell described a study done to determine how much of London real estate was owned by offshore companies. This effort made use of data analytics to evaluate personal and corporate holdings in order to understand the risk factors for public integrity. The study was done in collaboration with law enforcement. Of the properties held by foreign companies, 89% were held by companies incorporated in what are considered to be “secret” jurisdictions, such as the British Virgin Isles. Such ownership may routinely be highly concentrated. For example, in a certain bureau in London, almost one out of every ten buildings was owned by a foreign company that was incorporated in a secret jurisdiction.

Maxwell noted that though anti-money laundering provisions should act as a safeguard against this type of activity, real estate is not always subject to the type of transparency requirements that have been imposed on other industries to address corruption. Further, asset recovery cases involving international corrupt capital being laundered through property have been rare, and there have been few to no reports of criminal penalties against complicit real estate agents. Though financial disincentives are in place in certain jurisdictions, they have proven ineffective given the size of the real estate market and the fact that real estate is a commission-driven business: in most cases it is more financially advantageous to simply sell the real estate and pay the fine than to never buy it in the first place.

Enforcement may improve, however, as this problem gains wider recognition. Maxwell believes that new tools, in conjunction with public discontent, may drive the type of follow-up needed to overcome this challenge to public integrity and ultimately to enforcement efforts.

### **Enforcement beyond the Panel: Challenges and Solutions**

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The panel presentation was followed by a break-out session, where conference delegates shared enforcement experiences and built on the themes of the panel discussion. First, delegates identified a common challenge to enforcement as the lack of direct enforcement power in the offices conducting these investigations. Separate enforcement entities, such as prosecutor’s offices, routinely decline to take on corruption cases, sometimes because of a lack of resources or a lack of familiarity with that area of law. One potential solution was identified in the Miami-Dade OIG, which maintains a practice of having in-house lawyers designated as Assistant State Attorneys. Though such a practice is dependent on the political realities of a given agency, it has allowed the Miami-Dade OIG to avoid or minimize the difficulties associated with finding a prosecutor to take on its cases.

A second experience shared by delegates was that enforcement alone is not always effective in protecting against the reemergence of corrupt practices. Intertwined with this was a discussion about balancing a harm-reduction model of enforcement against a penalty and deterrence-based model. Each model relies on the goal of steering behavior and relies on incentives to push or nudge behavior that effects the ultimate action, or inaction, of individuals involved. As delegates noted, combating corruption needs to be more than just deterrence, and ideally would happen through internal and institutional change which can be achieved through education programs (like outreach to agencies and officials) and rewards, such as distributing integrity awards at public ceremonies, and sending out letters highlighting desirable conduct.

Third, delegates discussed how measurement models may impact the evaluation of an office’s effectiveness. Though successful prosecution is one common baseline, other models included the attempted evaluation of systemic change, included determining whether recommended changes to an agency are adopted. This notion of trying to accurately measure success raises the issue of whether successful outcomes in the short term might create new avenues for corruption, as additional checks sometimes add opportunities for corruption. Finally, measuring success can have other unexpected effects, when, for example, an office is deemed to have solved the corruption problem (meaning the office is no longer necessary), or leaders may argue that greater “success” in terms of enforcement actions brought by the anti-corruption agency means that corruption in government has actually increased.

Delegates suggested that developing the means to become a revenue-generating agency, such as by billing other governmental agencies for investigations or keeping revenue generated through an investigation, can be helpful in pushing back against such arguments.

Handling the proposal of and implementation of recommendations was a particular point of interest for delegates because it is a common tension point between anti-corruption agencies and other government entities, including legislative and executive bodies. Delegates identified the fine line between overstepping your role vis a vis the agency and effectively and firmly providing and facilitating implementation of recommendations, and counseled caution in this area. The delegates also noted the importance of handling properly the issue of whether and how widely to publicize the recommendations made in an enforcement action. Effective publicizing an action depends on appropriate engagement with the media and communicating the right pieces of information.

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The series is made possible thanks to the generous support of the Laura and John Arnold Foundation. The views expressed here are solely those of the author and do not necessarily represent the views of the author's organization or affiliations, the Center for the Advancement of Public Integrity, Columbia Law School, or the Laura and John Arnold Foundation.

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