

The Twin Fights For Human Rights and Against Corruption

By Neil V. Getnick

Fellow delegates to the Ninth International Anti-Corruption Conference, I came here to Durban, South Africa, as did you, to lend my voice and to demonstrate my commitment to the fight against corruption. We all know what we are against. Today, I would like to speak with you about what we are for. For the fight against corruption to take on full meaning we must insure that we build a social order based on principles of integrity. Such a society must be committed to insuring the human rights of its inhabitants. Then and only then does the fight against corruption gain substance. By so doing, we lay the foundation that transforms that fight into a moral imperative.

I believe that my invitation to speak at this conference derives out of my activities in the last decade as a private lawyer in the United States.

My law firm Getnick & Getnick views itself as a private commercial law firm with public interest goals. We have a dedicated anti-fraud and anti-corruption law practice. We represent individuals, corporations and governmental entities seeking civil remedies to combat fraud and corruption.

We see a world where the law is an instrument for justice, a means to fight corruption and reform society. We aim through our law practice to develop and implement means to prevent and detect corrupt business practices, to generate creative remedies through the law to fight fraud and corruption, and to help structurally reform the way business is conducted based on principals of honesty and integrity.

We focus on four areas of practice: (1) Complex fraud investigation and litigation; (2) federal and state whistleblower cases; (3) internal and independent monitoring; and (4) human rights.

We have helped the U.S. computer industry overcome systemic theft and diversion of computer parts. We have contributed to the sweeping anti-corruption program in New York City by helping develop the Independent Private Sector Inspector General concept, a highly effective way of monitoring companies. We have worked side by side with the U.S. Department of Justice, initiating a health care fraud whistleblower case resulting in a \$1 82 million recovery by the Federal Government.

But, in truth, for me this fight began not in the last decade but close to three decades ago, where as a student at Cornell University I met my friend Koigi wa Wamwere. I remember how we spent much of our freshman year speaking of the future and how we might make a difference in the world. At the end of the year, Koigi announced that he had chosen to return to Kenya to act on his concerns.

That was the last time I would see Koigi for twenty-five years. But such was the measure of the man that I remained profoundly affected by him. He went on to play a pivotal role in the quest for human rights in Kenya. I remained at our university where after being elected to Cornell's Board of Trustees my early actions fighting against corruption and for human rights focused on university investments in U.S. companies doing business in South Africa. My point then, and it has not changed today, is that the fight against corruption rightfully included opposing the

activities of companies which aided and abetted the Apartheid system of governance -- for example, by helping design and maintain the computer infrastructure supporting the passbook system by which racial separation was enforced.

As I passed from college to law school to entering my profession, I followed the story of my friend Koigi -- his detentions, his emergence as a leader of the opposition in the Kenyan parliament and his exile to Norway under United Nations protection. Despite his guaranteed safety, Koigi returned to Kenya in 1993 where he founded the National Democratic Human Rights Organisation undertaking a human rights and anti-corruption investigation. The Kenyan government responded by imprisoning Koigi again and putting him on trial for his life. Of that situation, the New York Times said, "An emblematic case [in Kenya] is Koigi Wamwere, now on trial for his life on what Amnesty International considers trumped up charges. A determined opponent of tribalism, brutality and corruption, Mr. Wamwere has been a political prisoner for most of the past two decades."

Our law firm was privileged to co-ordinate a world-wide campaign for his release. In 1995, with the help of world-wide pressure, he averted being sentenced to death. In 1996, he was released from prison. And in 1997, his conviction was vacated. Thus I came to be reunited with my lifelong friend. Since his release we have joined together in our continuing struggle against corruption and for human rights.

We are guided by certain sources of inspiration, amongst them Robert Kennedy, Martin Luther King and Nelson Mandela. In 1962, Robert Kennedy, then Attorney General of the United States addressed the fight against corruption in words that are as meaningful today as they were then. Here is what he said:

"In too many major communities of our country, organised crime has become big business. It knows no state lines, it drains off millions of dollars of our national wealth, infecting legitimate businesses, labour unions and even sports. Tolerating organised crime promotes the cheap philosophy that everything is a racket. It promotes cynicism amongst adults, it contributes to the confusion of the young and to the increase of juvenile delinquency.

It is not the gangster himself who is of concern. It is what he is doing to our cities, our communities, our moral fibre. Ninety percent of the major racketeers would be out of business by the end of this year if the ordinary citizen, the businessman, the union official, and the public authority stood up to be counted and refused to be corrupted....

It is our national faith that the system of competitive enterprise offers the best hope for individual freedom, social development and economic growth. Thus, every businessman who cheats on his taxes, fixes prices or underpays his labour, every union official who makes a collusive deal, misuses union funds: they damage the free enterprise system in the eyes of the world and so do a disservice to the millions of honest Americans in all walks of life.

Where we have evidence of violations of the law by these "respectables," we will take action against the individuals involved as well as against their companies. But in the end this ... is not a situation which can be cured by the Department of Justice. It can only be cured by business and unions

themselves.”

Of particular meaning as we look back on those words today is the fact that Kennedy delivered his message not as part of an anti-corruption address, but rather at the beginning of a major speech on civil rights. The connection between the fights against corruption and for human rights is as true now as it was then.

Newly developed weapons to wage those fights include the Independent Private Sector Inspector General or IPSIG. This is a highly effective independent monitoring mechanism equally effective at monitoring a company for payment of bribes as for unfair labour practices.

An IPSIG is a private sector firm with legal, auditing, investigative, management, and loss prevention skills. It is employed by an organisation (voluntarily or by compulsory process) to ensure compliance with recent law and regulations. It serves to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organisation.

The development of such cutting edge tools makes the question of fighting corruption not so much whether we can do so, but rather, whether we have the will to do so.

In 1966, four years after his earlier quoted remarks, Robert Kennedy came to South Africa where speaking at Cape Town University he delivered what would come to be known as his Day of Affirmation speech. In that address, Kennedy outlined the principles equally applicable to removal of the system of Apartheid as to the fight against corruption. He explained that in the introduction of a new order of things, the road is strewn with many dangers — among these are futility, expediency, timidity, and comfort. His biographers have said that evening in Capetown as Bobby Kennedy ascended to the stage that evening tears glistened in his eyes. Here is what he said:

”Each time a man or woman stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he or she sends forth a tiny ripple of hope, and crossing each other from a million different centres of energy and daring those ripples build up a current which can sweep down the mightiest walls of oppression and resistance.

.And everyone here will be judged - will ultimately judge himself [or herself] - on the effort he [or she] the extent has contributed to building a new world society and to which his [or her] ideals have shaped that effort.”

Against this background, it is of little surprise that two and a half decades later The Robert F. Kennedy Memorial Centre for Human Rights emerged as a leading advocate in the international campaign to free another fighter against corruption and for human rights, Koigi wa Wamwere. In 1995, I testified before the U.S. Congressional Human Rights Caucus, reading from a letter surreptitiously delivered by Koigi to a trial observer and passed on to me. I told the caucus:

From his prison cell, Koigi turns to us, saying: ‘Convey our best regards to the American people. One day, we shall also overcome.’ As symbolised by these words from our own civil rights movement, Koigi has come to embody what Martin Luther King, Jr. described as ‘a committed life.’ Let us, in turn, here Koigi’s plea for Kenya, for Africa and the World and fulfil his hope for mankind.

Thus what for me began as a path embarked upon so long ago takes me today to Durban, South Africa. And what better place to confront the fight against corruption than in a free and democratic South Africa which by its example has shown us that even the seemingly impossible is within our grasp. Yet, I know that I could not come to this land with a full heart walking alone.

Koigi and I have travelled a long distance together, both metaphorically and physically. We passionately believe that, in the spirit of Nelson Mandela, the ideal setting for us to address this topic together is this conference in this place at this time. And so it is my privilege and honour to introduce my brother Koigi wa Wamwere.

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