Students take bribe(ry class)

SIU offers new course on Foreign Corrupt Practices Act enforcement and compliance

BY JENN BALLARD
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When a U.S. business takes foreign officials out for a fancy dinner and bottle of wine, is that considered bribery? It could be. Businesses have sometimes been disciplined for “wining and dining” because of how it can influence the relationship.

“We could all agree that a suit-case full of cash to a foreign government official to get a foreign government contract is bribery,” said Michael Koehler, an assistant professor at Southern Illinois University School of Law. “But that’s where the consensus stops. When you dig into this topic, it’s not as simple as it appears.”

The challenge to define bribery and the U.S. regulates businesses in foreign relations are topics Koehler will address in a new class this semester at SIU’s law school.

Koehler teaches the upper-level elective “Current Developments in American Law: Foreign Corrupt Practices Act.” The course, which began last month, has 20 students enrolled.

It’s one of the first Foreign Corrupt Practices Act (FCPA) law school classes in the nation specifically devoted to enforcement of and compliance with that statute, Koehler said.

The FCPA was enacted in 1977 to govern U.S. business interactions with other countries. The law prohibits businesses from accepting or offering bribes to foreign officials in exchange for government contracts or other business.

In 2010, the U.S. Securities and Exchange Commission’s Enforcement Division created a specialized unit to further enhance its enforcement of the FCPA. The law has emerged as a legal and compliance concern for business organizations — both public and private and across a variety of industry sectors — doing business in the global marketplace.

“Understanding how the law is enforced and critically analyzing it and developing FCPA compliance skills is really a skill set for any future lawyer to have,” he said.

Koehler designed the class using his book “The Foreign Corrupt Practices Act in a New Era,” which will be published next year.

Koehler has spent more than a decade studying the FCPA, practicing international business law for eight years at Foley & Lardner LLP before becoming a professor in 2008 at Butler University in Indianapolis. He joined the SIU faculty last year.

He also teaches courses on corporations, securities regulations, torts and international business transactions.

“This specific class has been on my mind for a very, very long time,” he said. “I have a lot of prior writings and materials that form the basis for the content in this class. It all helps me develop an expertise in the FCPA area.”

In the course, students study the law itself, its history, judicial decisions involving it, enforcement of it and resolved FCPA enforcement actions.

SIU law school Dean Cynthia Fontaine said the course “represents an expansion of our skills-based training” and “complements two of our specializations — comparative law and business and transactional law.”

“FCPA compliance is a very growing area,” she said. “So I think this class will prepare our students for these exciting job prospects.”

The interpretation of the law, Koehler said, provides students “with a wealth of information to critically analyze it.”

“When businesses encounter corrupt officials in many aspects of their business — that’s where the controversy resides, I think. From a policy perspective, how do we deal with that reality?” he said.

“That’s why U.S. businesses must understand the law and develop company policies and procedures, he said.

“A lot of people think a company that violates FCPA, ‘Well, that’s just a bad company. And in some cases, that is true,” Koehler said. “But most FCPA violations involve companies that are otherwise viewed as offering the best products and services for the best prices.”

Four companies this year and 10 last year underwent SEC enforcement actions. Currently, JPMorgan Chase & Co. is under investigation for bribery for hiring Chinese foreign officials’ children in exchange, allegedly, for business gain.

“In our economy, U.S. businesses both large and small will regularly confront compliance issues arising from potentially corrupt activities,” said Peter F. Tomczak, a partner at Baker & McKenzie LLP who specializes in FCPA matters. “And law schools should prepare their students to think deeply about and advise clients upon these significant issues.”

The course also exposes students to topics, Koehler said, including corporate criminal liability, U.S. Department of Justice and SEC enforcement policies and “a working knowledge of resolution vehicles that are used to resolve FCPA enforcement actions.”

“They can use this class as a window into so many other topics, like doing business in the global marketplace,” he said. “While not many people in this class are likely to become FCPA practitioners on day one, I strongly feel that the skill set developed in this class will be transferable to many other areas of law and, therefore, be of great use to the students.”

The FCPA course is one of two new classes offered this semester. The other is a seminar on electronic discovery.

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