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## TRAINING THE NEXT GENERATION OF ANTI-CORRUPTION ENFORCERS: INTERNATIONAL ANTI-CORRUPTION CURRICULUM IN U.S. LAW SCHOOLS

*Mikhail Reider-Gordon\* & Elena Helmer\*\**

“...But that’s not all the law is. The law is also memory; the law also records a long-running conversation, a nation arguing with its conscience.”<sup>1</sup>

If law is memory and law school a place of educating on the history to those who will preserve or challenge what has come before, then as certain laws and regimes expand in scope and are more frequently enforced, it would appear to be an essential task for these educational institutions to adjust their curriculum accordingly and educate on these particular regulations.

The last twenty years have seen a tremendous growth in interest, research, and practice related to international corruption and corruption control. Many countries have begun to promulgate new anti-bribery laws, enact whistleblower protection statutes, civil society groups have gained traction in providing avenues for those wishing to report corruption, sanctions and debarment regimes have been expanded, asset recovery and anti-kleptocracy units have been formed by governments to claw back the stolen proceeds from corruption, prosecutions have escalated, more countries have become signatories to international anti-corruption conventions, and the cost of corruption has been assessed across a wide range of sectors, from education to defense, public procurement to the judiciary.<sup>2</sup> Recognition of the interrelatedness between corruption, transnational crime, money laundering, corporate social behavior, human rights, and the stability of national economies has occurred and elevated the discourse.<sup>3</sup> Arguably, significant gains have been made over the past decade in combating corruption.

With this growth in the “industry” of anti-corruption and the continued anticipated enforcement of yet more country-specific anti-bribery laws, it must be asked if U.S. law schools are genuinely rising to meet the educational needs in this subject area.

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<sup>1</sup> BARACK OBAMA, *DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE* 667 (1995).

<sup>2</sup> See, i.e., TRANSPARENCY INTERNATIONAL, *GLOBAL CORRUPTION REPORT 2007: CORRUPTION IN JUDICIAL SYSTEMS* (Diana Rodrigues & Linda Ehrichs eds., Cambridge University Press 2007), available at [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07\\_complete\\_final\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07_complete_final_EN.pdf).

<sup>3</sup> See generally UNODC’s Action against Corruption and Economic Crime, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/corruption/index.html?ref=menuaside>.

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As a result of our work as, Co-Chairs of the American Bar Association Section of International Law's International Anti-Corruption Committee<sup>4</sup> and as educators, we observed a two-fold phenomena regarding the aforementioned issue. First, law school graduates are seeking employment and genuinely expressing interest in anti-corruption work; however, said graduates received a minute amount, if any, of formal coursework regarding the anti-corruption regime. Supporting the argument for more formalized training in the anti-corruption regime are the law firms, corporations and government agencies who lament their inability to find young talent to assist in the prosecution, defense and compliance of and with anti-bribery laws.

The legal profession is presently full of older, experienced anti-corruption counsel the majority of whom received their training "on the job." But when this generation of prosecutors, investigators, compliance officers, defense counsel, activists, academics, suspension and debarment officers, and advisors retire will an adequately trained generation exist to not only continue their work, but also expand upon it? As anti-corruption investigations, enforcement, and compliance has grown globally and gained momentum, we wondered where is the fundamental awareness and training in anti-corruption to come from for those just entering or graduating from law school? Could and should this training be incorporated within, JD degree courses, LLM curriculum, post-graduate, and/or special certification programs? What would a national agreed-upon curriculum that provides a mandatory minimum exposure to the anti-corruption regime for law students consist of? Is such a curriculum even feasible?

We continued our pondering with more questions. What would a standardized or agreed-upon anti-corruption curriculum look like? What about anti-bribery statutes in other countries, should they be taught in the United States? What about LLB degrees, does the curriculum utilized in Commonwealth Countries include the opportunity to study the anti-corruption regimes? The International Bar Association has recently published a report, *Anti-Corruption Guide for Bar Associations*, stressing, "*Educating current and future legal professionals about the risks of corruption, and the policy and legislative framework to combat corruption, as well as the preventive measures that they can put in place, must be at the heart of the anti-corruption strategy of each bar association.*"<sup>5</sup> Article 5 (2)(a) references that all education programs "should include information about the international and national anti-corruption legal policy framework,"<sup>6</sup> and other elements<sup>7</sup>. Article 6 of the Report sets forth areas of focus for education programs on anti-corruption, with the first focus area being that of educating law students.<sup>8</sup> This is yet another recognition that if young lawyers are not being afforded formal training in law school, where will the next generation of compliance

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<sup>4</sup> The ABA Section of International Law International Anti-Corruption Committee facilitates efforts to deter corrupt practices and promote transparency across industries, organizations and countries through discussion and examination of the current international anticorruption regimes. See *International Anti-Corruption Committee*, AMERICAN BAR ASS'N, <http://apps.americanbar.org/dch/committee.cfm?com=IC700600>.

<sup>5</sup> INTERNATIONAL BAR ASSOCIATION, *ANTI-CORRUPTION GUIDE FOR BAR ASSOCIATIONS: CREATING, DEVELOPING AND PROMOTING ANTI-CORRUPTION INITIATIVES FOR THE LEGAL PROFESSION* (May 25, 2013), available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=A42D6B6E-75D9-487B-8E8F-A39BD4736CBC>.

<sup>6</sup> *Id.* at Article 5(2)(a).

<sup>7</sup> *Id.* at Article 5(2)(b)-(c).

<sup>8</sup> *Id.* at Article 6(a).

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officers, prosecutors, investigators, corporate defense counsel, sanctions and debarment officers come from?

## I. THE GROWTH OF ANTI-CORRUPTION REGIMES AND ENFORCEMENT

Twenty years ago, as some scholars noted, corruption was a phenomenon much lamented but little studied.<sup>9</sup> However, this is no longer the case. Since the mid-1990s, interest in corruption has proliferated.<sup>10</sup> The volume of scholarly research and studies, including those conducted or sponsored by international organizations, national governments, and NGOs, is enormous and continues to grow.<sup>11</sup>

Since the U.S. Foreign Corrupt Practices Act (FCPA) was passed in 1977<sup>12</sup> there has been an exponential expansion of the global anti-corruption regime.<sup>13</sup> Amendments to the FCPA, have significantly expanded the jurisdictional reach of the U.S. anti-corruption laws.<sup>14</sup> These laws are rigorously enforced by the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC), with dozens of negotiated settlements, fines and disgorgement reaching hundreds of millions of dollars.<sup>15</sup>

The establishment in 1989 by the Organization for Economic Co-operation and Development (OECD) of an *ad hoc* working group for comparative review of national legislations regarding the bribery of foreign public officials would ultimately lead to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions signed in 1997.<sup>16</sup> The Convention further precipitated the drafting of anti-bribery laws in member countries and began to draw attention to the connection between

<sup>9</sup> Robert E. Kennedy & Rafael M. Di Tella, *Corruption in International Business (A)*, HARV. BUS. SCHOOL Case 9-701-128 at 1 (2001).

<sup>10</sup> See Mark J. Farrales, *What is Corruption? A History of Corruption Studies and the Great Definitions Debate* (June 2005), available at <http://ssrn.com/abstract=1739962>.

<sup>11</sup> See GEORGETOWN LAW LIBRARY, INTERNATIONAL ANTI-CORRUPTION LAW RESEARCH GUIDE, <http://www.law.georgetown.edu/library/research/guides/intlcorruption.cfm> (last visited Apr. 29, 2015).

<sup>12</sup> Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 to -3, 78ff (2009) [hereinafter FCPA] (making the United States the first country to criminalize the bribery of foreign government officials).

<sup>13</sup> See, *i.e.*, U.N. Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 42146, available at [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf) [hereinafter *U.N. Convention*]; see also The Org. for Econ. Co-operation & Dev., Convention on Combating Bribery of Foreign Pub. Officials in Int'l Bus. Transactions, available at [http://www.oecd.org/daf/anti-bribery/ConvCombatBribery\\_ENG.pdf](http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf).

<sup>14</sup> See FCPA, *supra* note 12 (including the 1988 Amendment that expanded the definition of foreign officials and broadened the jurisdictional reach of the Act; the 1994 Amendment which added accounting; and a series of subsequent laws, such as the Sarbanes-Oxley Act of 2002. Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745 (enacted July 30, 2002)).

<sup>15</sup> See, *e.g.*, Press Release, U.S. Dep't of Justice, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 Million in Combined Criminal Fines (Dec. 15, 2008), available at <http://www.justice.gov/opa/pr/2008/December/08-crm-1105.html>; Press Release, Sec. Exch. Comm'n, No. 2008-294, SEC Charges Siemens AG for Engaging in Worldwide Bribery (Dec. 15, 2008), available at <http://www.sec.gov/news/press/2008/2008-294.htm> [hereinafter *Siemens*].

<sup>16</sup> Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Feb. 15, 1999, 35 I.L.M. 1311. The Convention came into force in 1999. To-date, 40 countries have signed the Convention. See THE ORG. FOR ECON. CO-OPERATION & DEV., CONVENTION ON COMBATING BRIBERY OF FOREIGN PUB. OFFICIALS IN INT'L BUS. TRANSACTIONS: RATIFICATION STATUS AS OF 21 MAY 2014, available at <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>.

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corruption and economic development.<sup>17</sup> This international effort was followed by the UN Convention against Corruption,<sup>18</sup> adopted in 2003, whereupon 175 countries committed to implementing and enforcing anti-corruption laws, including those prohibiting the bribing of foreign officials while conducting international business.<sup>19</sup> These two substantial Conventions are supplemented by several regional instruments: the Inter-American Convention Against Corruption (1996),<sup>20</sup> the Council of Europe Criminal Law Convention on Corruption (1999),<sup>21</sup> the Council of Europe Civil Law Convention on Corruption (1999),<sup>22</sup> and the African Union Convention on Preventing and Combating Corruption (2003).<sup>23</sup>

This relatively new international framework bears directly on the day-to-day conduct of both international business and international legal practice. The wake of the collapse of the Soviet Union, in conjunction with the growth of the Internet and electronic communications, and a marked increase in transnational organized criminal enterprises, began to lift global awareness regarding the force of corruption and its influence across a spectrum of industries and sectors.<sup>24</sup> The cascading effect corruption has on the economy and development shifted the subject to the forefront of many government, international governmental and non-governmental organizations' agendas.<sup>25</sup>

What may appear to be a seemingly narrow area of law is rapidly becoming a major practice area that extends beyond the narrow scope of what might have been thought of as just another white-collar crime. Every major U.S. law firm, and now even many smaller-size firms, claim FCPA expertise and have sizable staffs of lawyers devoted to addressing FCPA issues. The SEC and the DOJ have entire units dedicated to investigating and prosecuting FCPA violations.<sup>26</sup> While there have been reports of a significant decline in law firm revenues, FCPA practice remains one of the few highly profitable areas.<sup>27</sup>

<sup>17</sup> Joseph Nye first made this connection in 1967, see Joseph S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, AM. POL. SCI. REV. 61.02, 417-427 (1967). Susan Rose-Ackerman subsequently documented the relationship, see SUSAN ROSE-ACKERMAN, *CORRUPTION: A STUDY IN POLITICAL ECONOMY* (1978). For recent articles, see Albert De Vaal & Ebben Wouter, *Institutions and the Relation Between Corruption and Economic Growth*, in REV. OF DEVELOPMENT ECON. 15.1, 108-123 (2011).

<sup>18</sup> *U.N. Convention*, supra note 13.

<sup>19</sup> For List of Current Roster of Countries and Their Specific Provisions, see *Legal Library*, U.N. OFFICE ON DRUGS & CRIME: TRACK, available at <http://www.track.unodc.org/LegalLibrary/Pages/home.aspx>.

<sup>20</sup> Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724, available at <http://www.oas.org/juridico/english/Treaties/b-58.html>.

<sup>21</sup> Council of Europe Criminal Law Convention on Corruption, Jan. 27, 1999, ETS No. 173, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>.

<sup>22</sup> Council of Europe Civil Law Convention on Corruption, Nov. 4, 1999, ETS No. 174, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>.

<sup>23</sup> African Union Convention on Preventing and Combating Corruption, July 11, 2003, available at <http://www.au.int/en/content/african-union-convention-preventing-and-combating-corruption>.

<sup>24</sup> See ROBERT NEILD, *PUBLIC CORRUPTION; THE DARK SIDE OF SOCIAL EVOLUTION* (Anthem Press 2002).

<sup>25</sup> See Barbara C. George & Kathleen A. Lacey, *A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks and Non-Governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives*, 33 Cornell Int'l L. J. 547 (2000), available at <http://ssrn.com/abstract=1431269>; *Issues Paper on Corruption and Economic Growth*, ORG. FOR ECON. CO-OPERATION & DEV., available at <http://www.oecd.org/g20/topics/anti-corruption/Issue-Paper-Corruption-and-Economic-Growth.pdf>.

<sup>26</sup> For information on the DOJFCPA unit, see *Foreign Corrupt Practices Act*, THE U.S. DEP'T OF JUSTICE, <http://www.justice.gov/criminal/fraud/fcpa> (last updated Jun. 12, 2015); For information on the SEC FCPA

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This need for expertise is not limited to U.S. companies or U.S. citizens. Foreign companies registered with the SEC are fully subject to the FCPA.<sup>28</sup> The United Kingdom passed its own anti-corruption law, the U.K. Bribery Act 2010,<sup>29</sup> which, in many respects, is more sweeping than the FCPA.<sup>30</sup> Additionally, in the past several years, Australia, Brazil, Canada, China, Russia, and numerous other countries have either promulgated new anti-corruption laws or significantly amended their existing statutes to criminalize foreign bribery and other corruption offenses and strengthen enforcement and compliance provisions.<sup>31</sup> As a result, countless law firms in the United Kingdom and elsewhere are re-orienting their practices to address this new legal framework.

The emergence of this new international legal framework has also spawned an entire new area of practice for accounting, forensic, and due diligence service providers. All major professional services firms now have entire units that focus on FCPA and anti-bribery compliance.<sup>32</sup> Investigative firms also offer dedicated groups devoted to providing services in due diligence and forensic work related to the FCPA and other anti-corruption regimes.<sup>33</sup> Additionally, many major companies engaged in international business has legal staff and compliance officers devoted to compliance with the FCPA and other anti-bribery laws and regulations.<sup>34</sup>

A parallel series of developments has also been taking place within the multilateral development institutions. Over the past 15 years, the World Bank Group, as well as other multilateral lending organizations, have implemented and are now actively enforcing a series of measures to deter corruption in their projects.<sup>35</sup> Similar efforts have been implemented by the U.N. through the creation of their Supplier Code of Conduct<sup>36</sup> and Procurement manuals.<sup>37</sup> An entirely new subset of rules and regulations is in development to address issues

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unit, *see Spotlight on the Foreign Corrupt Practices Act*, U.S. SEC. & EXCH. COMM'N, <http://www.sec.gov/spotlight/fcpa.shtml> (last modified Apr. 9, 2014).

<sup>27</sup> Joe Palazzolo, *FCPA Inc.: The Business of Bribery: Corruption Probes Become Profit Center for Big Law Firms*, *Wall St. J.* (Oct. 2, 2012), <http://www.wsj.com/articles/SB10000872396390443862604578028462294611352>.

<sup>28</sup> *See FCPA, supra* note 12.

<sup>29</sup> Bribery Act, 2010, c. 23 (U.K.).

<sup>30</sup> *See VIVIAN ROBINSON QC ET AL., THE FCPA AND U.K. BRIBERY ACT: A READY REFERENCE FOR BUSINESS AND LAWYERS* (2014).

<sup>31</sup> For individual country laws, *see Laws & Authorities*, U.N. OFFICE ON DRUGS & CRIME: TRACK, <http://www.track.unodc.org/LegalLibrary/Pages/AllLegalResources.aspx>.

<sup>32</sup> For example, see firms such as KPMG, Deloitte, E&Y, PwC, Navigant Consulting, Inc., Protiviti, Kroll, Control Risks, McGladry, FTI, BDO Seidman, etc.

<sup>33</sup> *Id.*

<sup>34</sup> Rebekah Mintzer, *Companies Making Anti-Corruption Compliance a Priority*, CORP. COUNSEL (May 7, 2015), <http://www.corpcounsel.com/id=1202725657475/Companies-Making-AntiCorruption-Compliance-a-Priority?slreturn=20150406215253>.

<sup>35</sup> *See, i.e.,* Carole Brookins, U.S. Exec. Dir. to the World Bank, testimony before the Senate Foreign Relations Comm.: Anti-Corruption Efforts of the MDBs (May 13, 2004), *available at* [http://www.globalsecurity.org/military/library/congress/2004\\_hr/040513-brookins.pdf](http://www.globalsecurity.org/military/library/congress/2004_hr/040513-brookins.pdf).

<sup>36</sup> *UN Supplier Code of Conduct Rev.04*, U.N. DEV. PROGRAMME (Jan., 2011), *available at* [http://www.undp.org/content/dam/undp/documents/procurement/documents/UNDP\\_supplier\\_code\\_of\\_conduct.pdf](http://www.undp.org/content/dam/undp/documents/procurement/documents/UNDP_supplier_code_of_conduct.pdf).

<sup>37</sup> *Procurement Manual: Sustainable Procurement Practice Group Rev. 5*, U.N. OFFICE FOR PROJECT SERV. (May 1, 2014), *available at*

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of corruption, fraud, collusion, and coercion through the procurement and lending practices of these institutions.<sup>38</sup> The collateral effects of these legal measures have serious implications for companies seeking to directly or indirectly participate in opportunities funded by these organizations.

The authors first raised the issue of the lack of formal legal training in corruption for law students at an American Bar Association Section of International Law conference in April 2014. Several anti-corruption bloggers subsequently picked up on similar themes. Richard Cassin, in October 2014, titled a blog posting “Memo to Law Schools: The World Needs Compliance Officers,”<sup>39</sup> calling upon U.S. law schools to start building a curriculum focused on compliance,<sup>40</sup> including anti-corruption laws, in order to begin to graduate law students prepared for assuming a role in at least one element of the combating corruption, that of building compliance.<sup>41</sup>

Because of these developments in law and legal practice, new Continuing Legal Education (CLE) courses that address the FCPA and other anti-bribery regimes are announced weekly. Countless law review articles are being generated and multiple blogs are dedicated solely to developments in both FCPA enforcement and the greater anti-corruption regime that now exists.<sup>42</sup> In addition to the aforementioned law review articles and blogs, dozens of books offering legal analysis of the FCPA have been published and numerous books and articles explore the topic of corruption in general and its specifics in various regions and countries of the world. Anti-corruption has become an interdisciplinary cottage industry.

From a management perspective, this new international legal framework directly affects day-to-day decision-making and operations of an organization. The SEC mandates that all companies registered with the SEC are to maintain accurate books and records and have a system of internal controls sufficient to, among other things, provide reasonable assurances that transactions are executed and assets are accessed and accounted for in accordance with management’s authorization.<sup>43</sup> Compliance with these rules and policies and procedures aimed at proactively combating foreign bribery has been highlighted in the joint SEC/DOJ FCPA Guidance.<sup>44</sup> Members of boards of directors may be held personally liable if their

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<https://www.unops.org/SiteCollectionDocuments/Procurement/UNOPS%20procurement%20manual%20EN.pdf>; *UN Procurement Practitioner’s Handbook*, U.N. OFFICE FOR PROJECT SERV. (Nov., 2006), available at <https://www.unops.org/SiteCollectionDocuments/Procurement/UN%20procurement%20practitioners%20handbook.pdf>.

<sup>38</sup> *UN Anti-Corruption Toolkit 2nd Ed.*, U.N. OFFICE ON DRUGS & CRIME (Feb., 2004), available at [www.unodc.org/pdf/crime/corruption/toolkit/AC\\_Toolkit\\_Edition2.pdf](http://www.unodc.org/pdf/crime/corruption/toolkit/AC_Toolkit_Edition2.pdf); *Private Sector*, U.N. OFFICE ON DRUGS & CRIME: TRACK, [http://www.track.unodc.org/private\\_sector/Pages/Tools.aspx](http://www.track.unodc.org/private_sector/Pages/Tools.aspx).

<sup>39</sup> Richard L. Cassin, *Memo to law schools: The world needs compliance officers*, THE FCPA BLOG (Oct. 29, 2014, 10:08 AM), available at <http://www.fcpablog.com/blog/2014/10/29/memo-to-law-schools-the-world-needs-compliance-officers.html>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See GEORGETOWN LAW LIBRARY, *supra* note 11.

<sup>43</sup> *Spotlight on Foreign Corrupt Practices Act*, *supra* note 26.

<sup>44</sup> U.S. DEP’T OF JUSTICE & U.S. SEC. & EXCH. COMM’N, A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT (2012), available at <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>; U.S. DEP’T OF JUSTICE, OPINION PROCEDURE RELEASE (2010), available at <http://www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/07/22/1002.pdf>.

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companies do not have adequate compliance programs.<sup>45</sup> The U.K. Bribery Act, Russia's anti-bribery law, that of Brazil, and legal regimes of multilateral lending institutions make similar demands for adequate compliance programs.<sup>46</sup> For companies engaged in international business, the cost of non-compliance with international anti-bribery regimes is simply too great to ignore.

Although the job market for lawyers and particularly recent law graduates is generally stagnant, compliance is one of the few areas where hiring is on the rise.<sup>47</sup> For instance, JP Morgan Chase announced in the fall of 2013 that it planned to spend an additional \$1.5 billion and create 5,000 new positions in the compliance area, a thirty percent increase in risk-control staffing.<sup>48</sup> For compliance jobs, companies seek candidates not only from among those with a business and regulatory background but also from among lawyers ("JD required" and "JD preferred" positions).<sup>49</sup>

Even non-governmental organizations (NGOs), particularly those receiving U.S. government funds through grants, direct or sub-contracts with USAID, State Department, the Millennium Challenge Corporation, and other government agencies as well as international organizations (the World Bank, UNDP, etc.), are now compelled to have anti-bribery and anti-corruption compliance programs in place and actively enforce them.<sup>50</sup> The single most significant driver behind the recent proliferation of NGO compliance programs is the fear of losing government funds if corruption and fraud in their programs is detected.<sup>51</sup>

Considering all these developments – the extent of FCPA investigations, typically spanning several countries and not infrequently having a global reach, the amounts of settlements entered into by multinationals with U.S. and foreign governments,<sup>52</sup> the complexity of matters which often include other hard-to-prove offenses such as money laundering, the need for a subsequent independent compliance monitor (a precondition to most FCPA settlements), the proliferation of compliance programs across industries and countries – guarantees that the demand for specialists in this area of law is not going away anytime soon.

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<sup>45</sup> U.S. SEC. & EXCH. COMM'N, LITIGATION RELEASE NO. 21162: SEC V. NATURE'S SUNSHINE PRODUCTS, INC., DOUGLAS FAGGIOLI AND CRAIG D. HUFF, CASE NO. 09CV672 (D. UTAH, FILED JULY 31, 2009) SEC CHARGES NATURE'S SUNSHINE PRODUCTS, INC. WITH MAKING ILLEGAL FOREIGN PAYMENTS (2009), available at <https://www.sec.gov/litigation/litreleases/2009/lr21162.htm>.

<sup>46</sup> See Bribery Act, *supra* note 29 at Section 7; see Brazil Clean Companies Act art. 7 (XIII), Jan. 29, 2014, Law No. 12,846.

<sup>47</sup> See *JPMorgan to Suffer \$4 Billion Compliance Hit in 2013: Report*, FORBES (Sep. 13, 2013, 11:43 AM), <http://www.forbes.com/sites/thestreet/2013/09/13/jpmorgan-to-suffer-4-billion-compliance-hit-in-2013-report/>.

<sup>48</sup> *Id.*

<sup>49</sup> See generally LAW CROSSING: THE LARGEST COLLECTION OF LEGAL JOBS ON EARTH, <http://www.lawcrossing.com>; SIMPLY LAW JOBS, [simplylawjobs.com](http://simplylawjobs.com); HG.ORG LEGAL RESOURCES, <http://www.hg.org>, etc.

<sup>50</sup> See, e.g., Ben DiPietro, *Q&A: Gayle Macias, World Vision*, WALL ST. J., (Jun. 12, 2013), available at <http://blogs.wsj.com/riskandcompliance/2013/06/12/qa-gayle-macias-world-vision/?cb=logged0.5894001102550126>.

<sup>51</sup> For a discussion of anti-corruption compliance issues in international NGOs see Elena Helmer & Stuart H. Deming, *Non-Governmental Organizations: Anti-Corruption Compliance Challenges and Risks*, 45 INT'L LAW. 597, 597-624(2011).

<sup>52</sup> See, e.g., *Siemens*, *supra* note 15.



## II. EMPIRICAL RESEARCH

Many practitioners today found themselves investigating and prosecuting corruption matters because they were the only ones with experience with complex financial crimes, or were familiar with the culture of a country that played a role in a case that arose, or because their firm was already on retainer by a multinational when an allegation arose. Initially they had the luxury of time as cases were brought only occasionally and some investigations might last years.<sup>53</sup> Conveniently for many, practitioners' knowledge was being built over a span of time so that when this swell of recent increase in global enforcement arrived, they had enjoyed a relatively lengthy learning period. Moreover, many were fortunate enough to serve with or comment to the agencies and institutions that have drafted or amended these anti-corruption provisions. However, significant challenges can be anticipated for those graduating now who will not enjoy the luxury of a decade in which to build the requisite knowledge. We pondered whether, as a community of experienced anti-corruption practitioners, we have given adequate consideration to how the next generation should be trained.

We formulated two initial surveys to establish a baseline understanding of the current U.S. legal education landscape: a curriculum survey of the top 100 U.S. law schools<sup>54</sup> and a survey of members of the ABA Section of International Law's Law Student, LLM and Young Lawyer Outreach Committee.<sup>55</sup>

### A. The Anti-Corruption Curriculum Review

Some universities, primarily through their political science departments, have been offering undergraduate courses, such as Crime, Corruption and Democracy, Political Corruption and Governance, Governance, Corruption and Development, etc., for many years.<sup>56</sup> However, corruption related courses have been a rarity in law schools. In the past, a law student would get, at best, a brief discussion of foreign bribery or the FCPA in a course on white-collar crime or international business transactions.<sup>57</sup> But typically, despite the

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<sup>53</sup> See FOREIGN BRIBERY REPORT: AN ANALYSIS OF THE CRIME OF BRIBERY OF FOREIGN PUBLIC OFFICIALS, ORG. FOR ECON. CO-OPERATION & DEV. (Dec. 2, 2014), available at <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm> (indicating a 7.3 years average duration of bribery cases concluded in 2013).

<sup>54</sup> *Best Law Schools*, U.S. NEWS & WORLD REPORT, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings?int=992008> (last visited July 7, 2014).

<sup>55</sup> Mikhail Reider-Gordon & Elena Helmer, *Courses in Corruption, White Collar Crime and Financial Fraud at Top 100 Law Schools* (unpublished survey) (on file with authors); Mikhail Reider-Gordon & Elena Helmer, *ABA International Anti-Corruption Committee Survey of Law Students & New Lawyers* (unpublished survey) (on file with authors) [hereinafter collectively *Surveys*].

<sup>56</sup> See, e.g., EXPLOREGEORGETOWN, <http://courses.georgetown.edu/index.cfm?Action=View&CourseID=GOVT-452&AcademicYear=2012&AcademicTerm=FallSpring>; *Directory of Classes*, COLUMBIA, <http://www.columbia.edu/itc/barnard/polisci/lu/>; STANFORD BULLETIN EXPLORE COURSES, <https://explorecourses.stanford.edu/search?view=catalog&filter-coursestatus-Active=on&page=0&catalog=&q=IPS+207%3A+Governance%2C+Corruption%2C+and+Development&collapse=>

<sup>57</sup> See, i.e., RALPH H. FOLSOM ET AL., INTERNATIONAL BUSINESS TRANSACTIONS: A PROBLEM ORIENTED COURSEBOOK, QUESTIONABLE PAYMENTS TO FOREIGN OFFICIALS 752-765 (11th ed. 2012).

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increasingly vital and complex role corruption plays in securities law, international trade, criminal law, international law, auditing, accounting, corporate governance, and business management, only a passing reference to it would be made. At worst, there would be no mentioning of corruption at all.

Less than a decade ago, when one of the authors started teaching a course in Competitiveness and Corruption at Ohio Northern University College of Law, she was able to locate only a handful of corruption related courses taught at other U.S. law schools. One course, Corruption, Economic Development and Democracy was taught at Yale, by Professor Susan Rose-Ackerman.<sup>58</sup> New York University, Columbia and Cornell periodically offered Corruption and Corruption Control taught by the same adjunct professor, a former federal prosecutor.<sup>59</sup> Georgetown and University of Houston Law Center offered specialized courses.<sup>60</sup> George Washington Law School began teaching an anti-corruption curriculum in 2006 and continues to offer the course as an elective.<sup>61</sup> Other than these few, most law schools did not have much to propose in terms of anti-corruption, though White Collar Crime was taught in a number of them.

By mid-2015, the situation improved, but perhaps not at a rate commensurate with the growth of the global anti-corruption regime. Our anti-corruption curriculum review<sup>62</sup> examined 106 institutions<sup>63</sup> and assessed each school to determine if it offered specific corruption/FCPA course(s), classes on white-collar crime, and classes on financial fraud.<sup>64</sup> Within each of these categories, the survey categorized the courses as to whether they were open to J.D. students, allowed undergraduates to take the classes, or were restricted to LL.M. or graduate students.<sup>65</sup> Each course description was further evaluated to ascertain if they specifically described the study of any of the following: the FCPA, the U.K. Bribery Act, the U.N. Convention against Corruption, the OECD Convention,<sup>66</sup> global corruption, political corruption, RICO, and other unspecified corruption. The categories were then statistically analyzed on their merits and as they related to whom the respective schools offered the courses. Lastly, utilizing a search feature contained within the Anti-Corruption Research Network (ACRN) website<sup>67</sup> as well as additional internet research, the authors queried for international courses on corruption offered by higher education institutions, without prejudice to law school specific curriculum. As a result of these developments, we concluded that a

<sup>58</sup> Susan Rose-Ackerman, YALE JACKSON INST. FOR GLOBAL AFFAIRS, <http://jackson.yale.edu/rose-ackerman-0>.

<sup>59</sup> Ronald Goldstock, CTR. FOR STRATEGIC & INT'L STUDIES, [http://csis.org/files/media/isis/pubs/hills/hills\\_Goldstock.pdf](http://csis.org/files/media/isis/pubs/hills/hills_Goldstock.pdf).

<sup>60</sup> Curriculum Guide: Courses, GEORGETOWN LAW, [http://apps.law.georgetown.edu/curriculum/tab\\_courses.cfm?Status=Course&Detail=1676](http://apps.law.georgetown.edu/curriculum/tab_courses.cfm?Status=Course&Detail=1676); Law Center, UNIV. OF HOUSTON, [http://www.law.uh.edu/schedule/class\\_information.asp?cid=11387](http://www.law.uh.edu/schedule/class_information.asp?cid=11387).

<sup>61</sup> Jessica Tillipman, *GW Law 'Caught On' Six Years Ago...*, THE FCPA BLOG (Oct. 30, 2014, 6:02 AM), available at <http://www.fcpablog.com/blog/2014/10/30/gw-law-caught-on-six-years-ago.html>.

<sup>62</sup> Special thanks to Rachel Sanders, Managing Consultant at Navigant, and Oyesanmi Alonge, JD/LLM '14, Ohio Northern University College of Law, for their work on this survey. *Surveys, supra* note 55.

<sup>63</sup> There are 106 "Top 100" and 51 "Top 50" law schools due to ties in rankings. *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> See 15 U.S.C. § 7201 (2010).

<sup>67</sup> See *Courses*, ANTI-CORRUPTION RESEARCH NETWORK, <http://corruptionresearchnetwork.org/courses-trainings> (last visited Aug. 28, 2014).

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growing number of U.S. law schools and foreign higher learning institutions are now offering courses on corruption-related subjects.

Our survey of the anti-corruption curricula of the top 100 U.S. law schools found that more than half of them (59 percent) offer a course on white-collar crime or a similar broad overview course.<sup>68</sup> Of the law schools surveyed, twenty-five have courses related to financial fraud, such as Securities Fraud Investigation and Litigation (Stanford, Temple, University of Southern California); Fraud, Insider Trading and Securities Law Issues (Fordham), and others, keeping up with legal developments in the securities regulation area.<sup>69</sup> However, it was observed that many of these are offered sporadically and are not necessarily made available to all students on an on-going basis.<sup>70</sup>

Only twenty-five law schools out of the top 100 now offer specialized courses related to corruption.<sup>71</sup> They range from very narrowly defined topics, such as the Foreign Corrupt Practices Act (New York University, University of Virginia) to broader coverage, for example, International Efforts to Combat Corruption (Harvard and Georgetown) and International Money Laundering, Corruption and Terrorism (George Washington University).<sup>72</sup> Again, these special topic courses are not offered on an on-going basis.<sup>73</sup> Quite the opposite: many of the courses may only be available every few years, ensuring that at least one to two years of law student classes are precluded from the option of sitting in them.<sup>74</sup> Several law schools also offer very general courses, such as Public Corruption and the Law (Chicago, Northwestern), Political and Corporate Corruption Law (Rutgers), Combating Corruption (Loyola Marymount), and Political Corruption (Buffalo), with some of these courses gravitating more towards political science than law.<sup>75</sup> In addition, a corruption component is now included in a number of other courses, from Federal Criminal Law, Complex Federal Criminal Practice, and RICO, to Risk Management in Emerging Markets (Chicago-Kent).<sup>76</sup> Only three schools out of the entire 106 surveyed offer a course on corruption law that includes mention of the U.K. Bribery Act, the U.N. Convention against Corruption, or the OECD Convention in its syllabus or course description.<sup>77</sup>

Our anti-corruption curriculum survey of the top 100 law schools demonstrates that whilst international anti-corruption law may be a growth area in the greater legal industry, law schools have not as yet caught up. Only 27 percent of schools in the top 100 offer a specific course on corruption to J.D. students.<sup>78</sup> When LL.M. and graduate student courses are included, the figure rises by another 24 percent taking the overall percentage of law schools that offer some education relating to corruption above the 50 percent mark.<sup>79</sup> Again,

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<sup>68</sup> *Surveys*, supra note 55.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Surveys*, supra note 55.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Fordham University, Georgetown University, Northwestern University, T.C. Williams School of Law (University of Richmond). *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

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however, the issue of consistent training and education comes back to the availability and ubiquity of courses to the average U.S. law student undergoing the traditional three years of study. If law students do not have consistent opportunity to learn of the anti-corruption regime in any significant way, does it matter? Where are new lawyers to receive their training?

An emerging trend in U.S. legal education is related to the increasing importance of compliance, including anti-bribery and anti-corruption compliance, and the growth in the number of compliance professionals.<sup>80</sup> The authors are aware of at least one school, the Thomas Jefferson School of Law in San Diego, that has launched an LL.M. program in Compliance and Risk Management.<sup>81</sup> Several law schools are offering, or preparing to offer, students certificates in compliance focusing on foreign corrupt practices and bribery, trade laws, and money laundering.<sup>82</sup> For example, the University of Dayton School of Law announced in 2013 that it would offer a certificate in global corporate compliance which includes corruption and bribery.<sup>83</sup> In addition, some law schools offer compliance-related courses and degrees for non-lawyers, such as Widener's Master of Jurisprudence (MJ) certificates in Regulatory Analysis and Compliance and in Global Compliance.<sup>84</sup>

With the continuing employment growth anticipated in the compliance area, law schools have stepped up their efforts to open new centers and programs and offer courses focusing on various aspects of compliance to give their graduates a real or perceived advantage in job search and hiring. So too have many international schools and private companies which began to advertise special certification or training programs centered around key aspects of anti-corruption, be it compliance, investigations, or industry-specific issues, such as bribery in procurement or corruption in education.<sup>85</sup>

Companies and educational institutions recognize that what law schools are failing to include in their core curriculum creates an opportunity to generate revenue by capitalizing on job-seeking fears of new graduates who may feel the need to receive specialized training in the topic of anti-corruption. For instance, the business association TRACE International, Inc. has developed paid programs, Online Anti-Bribery Training for Employees and Intermediaries<sup>86</sup> and TRACE Anti-Bribery Specialist Accreditation,<sup>87</sup> for those interested in

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<sup>80</sup> Julie DiMauro, *U.S. Compliance Education Expands as Demand Increases*, REUTERS (Dec. 3, 2014), <http://blogs.reuters.com/financial-regulatory-forum/2014/12/03/u-s-compliance-education-expands-as-demand-increases-part-one-law-schools/>.

<sup>81</sup> Author Mikhail Reider-Gordon discloses that she served as an adjunct professor in the school's LLM program in 2012-2013.

<sup>82</sup> For example, Seton Hall offers a Pacific Healthcare Compliance Certification Program. See *Program Schedule: Asia-Pacific Healthcare Compliance Education Program*, SETON HALL LAW, <http://law.shu.edu/Compliance/health/asia-pacific/schedule.cfm> (last visited Aug. 8, 2015).

<sup>83</sup> *Dayton Unveils Certificates in Cyber Law, Global Corporate Compliance*, THE NAT'L JURIST (Sep. 23, 2013), <http://www.nationaljurist.com/content/dayton-unveils-certificates-cyber-law-global-corporate-compliance>.

<sup>84</sup> See *Corporate Law Regulatory Analysis & Compliance*, WIDENER UNIV., <http://delawarelaw.widener.edu/prospective-students/compliance-programs/graduate-level-certificates/corporate-law-regulatory-analysis-compliance/> (last visited Aug. 14, 2015).

<sup>85</sup> See, e.g., *Professional Certificate in Anti-Corruption*, INT'L CENTRE FOR PARLIAMENTARY STUDIES, <http://www.parlicentre.org/anticorruption/> (last visited Jul. 7, 2014).

<sup>86</sup> *Online Anti-Bribery Training for Employees and Intermediaries*, TRACE INT'L, INC., [http://www.traceinternational.org/Training/Online\\_Anti-Bribery\\_Training.html](http://www.traceinternational.org/Training/Online_Anti-Bribery_Training.html) (last visited Jul. 7, 2014).

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acquiring or improving their skills in the anti-corruption compliance area. Additionally, the U.K. based Centre for Parliamentary Studies now offers a one-week certificate course, "International Anti-Corruption Professional," while the Hague Academy offers a training program on integrity and anti-corruption.<sup>88</sup> Transparency International's School of Integrity sells a seven-day course designed for "senior students, graduates and young professionals eager to learn how to make a stand against corruption and to achieve greater transparency in their country."<sup>89</sup> The Basel Institute on Governance provides a two-day workshop on corruption research methods.<sup>90</sup> And the International Anti-Corruption Academy (to be discussed *infra*) runs the ten-day International Anti-Corruption Summer Academy, an intensive ten-day programme "designed for professionals looking to consolidate their experience and enlarge their competences to better counter corruption."<sup>91</sup> This is, by far, not an exhaustive list.

Interestingly, whilst only half of the top tier U.S. law schools offer a corruption-related curriculum, schools with programs in subject areas as diverse as health,<sup>92</sup> business,<sup>93</sup> public affairs,<sup>94</sup> and economics<sup>95</sup> have begun to add courses specifically on issues of corruption to their educational catalogs. There have even been anti-corruption guidelines for an MBA curriculum published by the 3rd Global Forum for Responsible Management Education that are dedicated to instigating curriculum guidelines on anti-corruption for business schools and management programs.<sup>96</sup> Arizona State University's Thunderbird Graduate School of Global Management and Leadership began including an overview of the FCPA in its 2008 Fraud Accounting curriculum.<sup>97</sup> Developing over the past few years would appear to be a recognition by academics across the globe of the importance in adding components of anti-corruption curriculum into academic coursework toward building a more corruption-aware population and therefore perhaps better preparing people to combat it.<sup>98</sup>

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<sup>87</sup> TRACE Anti-Bribery Specialist Accreditation, TRACE INT'L, INC., [http://www.traceinternational.org/Training/TRACE\\_Anti-bribery\\_Specialist\\_Accreditation.html](http://www.traceinternational.org/Training/TRACE_Anti-bribery_Specialist_Accreditation.html) (last visited Jul. 7, 2014).

<sup>88</sup> See, The Hague Academy for Local Governance, Open Courses: Integrity and anti-corruption (June 29-July 10, 2015), <http://thehagueacademy.com/blog/2014/04/integrity-anti-corruption-2015/>.

<sup>89</sup> Transparency International School on Integrity, *About School*, <http://transparencyschool.org/summer-school/> (last visited Aug. 14, 2015).

<sup>90</sup> Services, BASEL INST. ON GOVERNANCE, <https://www.baselgovernance.org/services> (last visited Aug. 14, 2015).

<sup>91</sup> Summer Academy, INT'L ANTI-CORRUPTION ACAD., [http://iaca.int/opentrainings/summer\\_academy.html](http://iaca.int/opentrainings/summer_academy.html) (last visited Aug. 14, 2015).

<sup>92</sup> Surveys, *supra* note 55.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> ANTI-CORRUPTION WORKING GRP., *Anti-Corruption Guidelines ("Toolkit") for MBA Curriculum Change, PRINCIPLES FOR RESPONSIBLE MGMT. EDUC.* (2013), available at <http://actoolkit.unprme.org/wp-content/uploads/2013/06/PRME-AC-WG-Toolkit.pdf>.

<sup>97</sup> Author Mikhail Reider-Gordon discloses she was the lecturer.

<sup>98</sup> See, *i.e.*, Omer Hashim Ismail, *The Failure of Education in Combating Corruption in Sudan: The Impact on Sustainable Development*, 2 OIDA INT'L J. SUSTAINABLE DEV. 43, 43-50 (2011), available at <http://ssrn.com/abstract=1981403>.

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A number of non-U.S. law schools<sup>99</sup> now also offer specialized courses: The Hague Law School at the Hague University (The Netherlands) provides a course specifically around multinational corporations and anti-corruption.<sup>100</sup> Sogang University (South Korea) Department of Law offers a class on addressing corruption issues via a comparative cultures approach.<sup>101</sup> The University of Aarhus (Denmark) offers a course on corruption and law and efforts toward the harmonization of global anti-corruption laws.<sup>102</sup> The Australian National University put forward a course focused on transnational anti-corruption laws.<sup>103</sup> And the University of the Western Cape offers an LLM in Transnational Criminal Justice and Crime Prevention with anticorruption as one of the four modules comprising the course of study.<sup>104</sup> As with many U.S. courses, the consistency of these particular course offerings is not always immediately apparent. Many appear to be offered sporadically or are subject to the specific instructor's availability and willingness to offer the class.

Clearly a gap has begun to be identified and now a rush of programs, ranging from broad and comprehensive, to niche and narrowly focused, are beginning to be offered.<sup>105</sup> Whilst some institutions appear to be genuinely attempting to educate and prepare the next generation of practitioners, an equal number could be viewed as opportunistic with little real value for the young lawyer that might spend their money to attend. The critical questions are what is the composition of a core anti-corruption curriculum and whether a consensus on it can be reached not only amongst U.S. law schools but those in other countries. As an attempt to answer these questions, the United Nations Office on Drugs and Crime (UNODC) has commenced the Anti-Corruption Academic Initiative (ACAD)<sup>106</sup> to partially answer a perceived need for a standard curriculum around anti-corruption in law schools.<sup>107</sup> The effort was launched in 2011 as a collaborative academic project with the OECD, the UNODC and International Bar Association to develop a comprehensive set of resources on corruption and corruption-related issues for academic institutions to "encourage the teaching of anti-corruption issues as part of courses such as law, business, criminology and political science and thereby address the present lack of inter-disciplinary anti-corruption educational materials suitable for use at both undergraduate and graduate levels."<sup>108</sup> ACAD suggests that the

<sup>99</sup> The authors did not undertake a formal survey of non-U.S. based law schools.

<sup>100</sup> *Key Issues of Corporate Governance*, SUMMER SCHOOLS IN EUROPE.EU (July 20-24, 2015), <http://www.summerschoolsineurope.eu/course/4330/key-issues-of-corporate-governance>.

<sup>101</sup> *Corruption and Law*, SUMMER SCHOOLS IN EUROPE.EU (JULY 3-31, 2013), <http://www.summerschoolsineurope.eu/course/1766/corruption-and-law>.

<sup>102</sup> *AU Course Catalogue: 1610F13 Political and Administrative Corruption*, AARHUS UNIV. (2013), available at <http://kursuskatalog.au.dk/en/coursecatalog/Course/show/33069/>.

<sup>103</sup> *Programs and Courses: Transnational Anti-Corruption Laws*, AUSTRALIA NAT'L UNIV., available at <http://programsandcourses.anu.edu.au/course/LAWS8009>.

<sup>104</sup> *South African-German Centre for Transnational Criminal Justice, LLM Program*, UNIV. OF THE WESTERN CAPE, available at <http://www.transcrim.org/3-The%20Centre/5-LLM%20Programme/> (last visited Jul. 7, 2014).

<sup>105</sup> See Ann Juergens & Angela McCaffrey, *Roleplays as Rehearsals for 'Doing the Right Thing': Adding Practice in Professional Values to Moldovan and United States Legal Education*, 28 WASH. U. J. L. & POL'Y 141 (2008), available at <http://ssrn.com/abstract=1330452>.

<sup>106</sup> See *The Anti-Corruption Academic Initiative (ACAD): An Overview*, U.N. OFFICE OF DRUGS AND CRIME, <http://www.track.unodc.org/Academia/Pages/ACADOverview.aspx> (last visited May 9, 2015).

<sup>107</sup> The authors disclose that they have been contributors to this initiative.

<sup>108</sup> *The Anti-Corruption Academic Initiative (ACAD): An Overview*, *supra* note 106.

materials and guidance they make available could also be used to form a base for the development of a course for LL.M. or master's level students wishing to obtain a degree focused on combating corruption.<sup>109</sup> UNODC states that they have already worked with a broad range of institutions to support the piloting of the course. The institutions that have already delivered the course in full or in part include American University Washington School of Law (U.S.), Renmin University (China), University of Athens (Greece), University of Sussex (U.K.), Washington and Lee School of Law (U.S.), University of Liberia (Liberia), and the University of Belgrade (Serbia).<sup>110</sup> However, the ACAD initiative is yet to have any significant impact on law school curriculum.

Perhaps the most comprehensive answer to the question of the core composition of the core anti-corruption curriculum has been provided with the launch of the International Anti-Corruption Academy (IACA) in Laxenburg, Austria, in 2011.<sup>111</sup> Established as an international organization and currently with 64 state parties,<sup>112</sup> IACA offers, in addition to short-term courses, a two-year Master in Anti-Corruption Studies (MACS) degree.<sup>113</sup> The MACS curriculum has been designed by the leading anti-corruption academics and practitioners from around the world who recognized the need to prepare anti-corruption enforcers, prosecutors, investigators, defense counsel, compliance officers, and other practitioners to deal with the complexities of corruption and corruption control in the modern world. The Academy does not require a law degree for admission but "a minimum of three years of relevant work experience or a proven history of academic research in areas related to anti-corruption and/or compliance."<sup>114</sup> The MACS curriculum includes the general concepts and issues related to corruption, disciplinary perspectives (economics, social and political science, law, business), as well as anti-corruption and corruption prevention.<sup>115</sup> The Academy graduated its first Master in Anti-Corruption Studies class in December 2014.<sup>116</sup> Although only one of its seven modules is devoted specifically to anti-corruption laws and international initiatives, the MACS multi-disciplinary and holistic approach may nevertheless serve as a model for law schools as well and can easily be expanded upon to serve the needs of law schools and law students.

## B. The Law Students and Young Lawyers Survey

The other element of the equation of corruption law training is that of the law students themselves. The authors sought to gain an understanding from those currently enrolled in law school and those recently graduated as to both their experience with any relevant curriculum as well as their need and desire for exposure to the anti-corruption

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Author Elena Helmer discloses that she currently serves as Academic Course Director at IACA.

<sup>112</sup> *See Parties and Signatories*, INT'L ANTI-CORRUPTION ACAD., <http://iaca.int/constituency/parties-signatories> (last visited May 9, 2015).

<sup>113</sup> *Master in Anti-Corruption Studies (MACS)*, INT'L ANTI-CORRUPTION ACAD., <http://www.iaca.int/master-programme/mac.html> (last visited Jul. 7, 2014).

<sup>114</sup> *Id.*

<sup>115</sup> *See the MACS curriculum overview. Id.*

<sup>116</sup> *IACA Holds Graduation Ceremony for MACS 2012-2014*, INT'L ANTI-CORRUPTION ACAD. (Dec. 10, 2014), <http://iaca.int/480-iaca-holds-graduation-ceremony-for-macs-2012-2014.html>.

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regime. A survey of eight core questions was constructed, which was open to all 414 members of the Law Student, LL.M. and Young Lawyers Outreach Committee and made available to the group via a link to an Internet-based site where the survey was housed.<sup>117</sup> We received 58 responses to the survey, which are discussed below.

Among those who completed the survey, over 70 percent of respondents were actively enrolled in a J.D. or LL.M. program when they took the survey and of that group, nearly 90 percent were in their second or third year of law school.<sup>118</sup> The second largest cohort after this, accounting for nearly 18 percent, were those who had passed the Bar exam but had been in active practice for less than one year.<sup>119</sup> No respondent had been in practice for more than 2 years.<sup>120</sup> A little less than half of those taking the survey were employed, with the majority working in equal distribution across large law firms, small firms, NGO/charitable organizations, corporations, and academia/think tanks.<sup>121</sup> In light of the responses received regarding anti-corruption law education, it was surprising to learn that nearly 75 percent of those employed did not have work that ever involved matters related to issues of bribery/corruption or compliance with the enforcement regime.<sup>122</sup>

In response to a question asking if they were offered or would have the opportunity to take a specialized course on corruption/bribery/FCPA law, less than 20 percent responded in the affirmative.<sup>123</sup> The numbers rose above 50 percent for more general courses on white collar/financial crime.<sup>124</sup> In a striking contrast to the educational offerings the students received, 88 percent of all respondents stated that they thought it would have been of value to have been offered a course specifically on anti-corruption law.<sup>125</sup> Those surveyed were allowed to write in comments to the last survey question, "What were the more important points you learned (or expect to learn) from a corruption-related course?"<sup>126</sup> The responses ranged from, 'The role of a lawyer in addressing corruption issues,' 'How to spot signs of corruption and properly monitor compliance of current laws,' 'How to recognize and avoid it,' 'How to address client's needs in order to prevent or address corruption issues as they arise in business transactions' to 'Even in local government practice a solid understanding of anti-corruption would be beneficial.'<sup>127</sup> None expressed regret at having taken a course on anti-corruption and none proclaimed such a course as a waste of time.<sup>128</sup> One individual observed that at his school, discussion of the FCPA had been integrated into a number of different courses, woven through classes such as International Litigation, Transnational Crime, and White Collar Crime.<sup>129</sup>

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<sup>117</sup> *Surveys, supra* note 55.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Surveys, supra* note 55..

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Surveys, supra* note 55..

<sup>129</sup> *Id.*



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Based on the law student and young lawyers' survey responses, there appears to be a distinct disconnect between the preparedness current law students are seeking and the curriculum they are offered.<sup>130</sup> Overwhelmingly, the survey respondents identified value in learning about anti-corruption statutes and practice despite the fact that few of them had any immediate practical need for such knowledge.<sup>131</sup> Yet nearly all could identify where this education would prove valuable and could anticipate a time when that instruction might serve them in their careers.<sup>132</sup> As one young lawyer put it, "I would have taken a course on FCPA because it effects [sic] many businesses, but nothing was available. Now I'm hoping to get this information through CLE."<sup>133</sup>

## III. PEDAGOGICAL APPROACH

One of the authors, Elena Helmer, taught a course entitled Competitiveness and Corruption at Ohio Northern University College of Law for eight years and the other author, Mikhail Reider-Gordon, has regularly guest lectured on the topic at law schools.<sup>134</sup> Elena Helmer applies a multidisciplinary approach to the topic, engages students in regular and active classroom discussions and individual and group assignments, and includes significant practical components in the course. Her experience can perhaps serve as a model for courses in other law schools and provide for some uniformity in the coverage of the subject matter.

Professor Helmer's course starts with a background study of the phenomenon of corruption. This is essential because most American law students do not know of the significance and magnitude of the problem of corruption outside (and even inside) the United States. As one JD student put it, "Every class is a revelation and a shock to me." The introduction to the course requires using sources from multiple areas of study (political science, sociology, economics, history, and law) to define corruption and study its types, causes, and consequences. The indexes and metrics of corruption are also introduced.

The second part of the course shifts the focus to law and involves a discussion of the legal response to corruption under national and international law. It starts with domestic anti-bribery laws (nearly every country in the world has them) intended to deter corruption of government officials within the state. Then the course moves to an extensive discussion of the U.S. FCPA with specific examples from recent cases. The course explains that this statute has become the model for subsequent international anti-bribery conventions and a number of foreign anti-bribery laws. Further, the FCPA is also discussed in its relationship with several other federal statutes, in particular, securities laws, whistleblower protection laws, RICO, the "honest services" law, etc.

The next part of the course takes students to the international anti-bribery arena where the most dramatic developments are taking place. The class takes a close look at the existing international anti-bribery conventions by discussing their relationship with each other and the domestic laws of various countries as well as their implementation and enforcement in those countries.

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

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The course also covers the anti-corruption practices of international lending and development institutions such as the World Bank, USAID, and other organizations, which have put anti-corruption programs at the forefront of their agendas and employ anti-corruption programs in their own procurement and development practices. Cases and other sources from the World Bank and other institutions are used to illustrate the approaches taken and the role of lawyers in the process.

The final part of the course covers topics at the intersection of business and law, namely, how to do business in a corrupt environment without violating domestic and international laws, including dealing with extortionist situations; instituting and maintaining anti-corruption compliance and education programs; the role of compliance officers and other corporate officers in maintaining the integrity of the business; conducting corporate investigations, and dealing with the DOJ and the SEC in the event violations are uncovered. The emphasis is on teaching students to recognize potentially dangerous situations, preventing violations, and complying with anti-bribery laws and conventions.

Throughout the course, the use of case studies proved to be extremely helpful. Case studies the author uses go beyond the typical law school research and writing assignments as they, again, involve multidisciplinary studies and frequently reflect broader business considerations. For example, students are asked to recognize situations that can potentially trigger the application of the FCPA; analyze a statute or regulation for creating opportunities for corruption; compare two or more international anti-bribery conventions; compare the anti-corruption measures undertaken in two different countries; analyze a DOJ indictment in an FCPA case and provide company management with recommendations on how to prevent similar violations in the future; develop a plan of action when the company's overseas subsidiary is facing extortionist demands from local government officials or is threatened to be sued or assaulted if a bribe is not paid. The results of each case study are discussed in class.

Throughout the entire course, significant emphasis is placed on the ethical aspects of legal practice and conducting business in general. Issues of the professional responsibility of lawyers are discussed, in particular, in the last part of the course in connection with establishing corporate compliance programs, dealing with management and employees during the investigation process, and responding to potential violations of anti-corruption laws.

The other author, Mikhail Reider-Gordon, has taught sporadically for both LL.M. programs and as a subject-matter expert guest lecturer on the anti-corruption regimes within larger courses on business law or white-collar crime. Her curriculum is not dissimilar in approach, beginning the course with the history of the FCPA and the Travel Act; subsequent developments with international conventions, and a comparative legal analysis of other countries' anti-corruption/anti-bribery provisions. The curriculum largely uses real cases for the students to examine, delving into how the corruption arose, was identified, investigated, and settled. Common schemes and the intersection with other transnational crimes are explored; interpretations of "instrumentality," affirmative defenses, considerations made by corporations during the internal investigative phase, information sources, procedural considerations with the involvement of third parties, civil society efforts, and the various types of corruption that occur are covered. As the instructor actively works in investigating charges of corruption and in advising and building anti-corruption compliance programs for clients, real-life examples are used to assist students in understanding, cross-jurisdictional

challenges and cooperation, the different legal systems' approaches to settlements, and how the relevant laws are applied.

#### **IV. INTRODUCING ANTI-CORRUPTION IN THE LAW SCHOOL CURRICULUM**

With a growing number of law schools offering corruption-related courses, we asked ourselves and our colleagues yet another question: What might prevent law schools from introducing a new anti-corruption course in the curriculum? Challenges to adding such a course are discussed below.

##### **A. The existing course overload of JD students and the need to compete for space in the already busy law school curriculum**

Currently, law schools strive to offer a broad variety of courses to cater to the needs and interests of their students. At the same time, in many schools, elective upper-level courses have to compete for students with the bar exam-tested subjects of the core curriculum. As is common in many schools (though perhaps not the top-tier schools), students are advised to take as many courses that are tested on the bar exam as possible. The result is that J.D. students typically take the core curriculum courses for at least two years, leaving the maximum of two semesters, and often only one semester, for electives. The trend towards schools requiring six or more hours of clinical courses and at least one seminar for graduation also diminishes the prospects for J.D. students to take such a course in anti-corruption.

The answer to this problem might be including a corruption-related course in the list of courses required for a certificate or other recognition of specialization in corporate or business law or some other appropriate track. Where such an option does not exist, at least the inclusion of an anti-corruption component in other, related courses (such as White Collar Crimes, International Business Transactions, Financial Fraud, etc.) would be beneficial.

##### **B. The need to satisfy the minimum enrollment requirements**

In the current economic situation, when the number of applications to many law schools has dropped as much as 35 percent or more, compared to four or five years ago, law schools may require the guarantee of a minimum enrollment before introducing the course in the curriculum. In larger law schools, this threshold should not be difficult to satisfy. However, in smaller schools, this can definitely pose a problem.

##### **C. Unfamiliarity of the existing law school faculty with the topic**

Considering the number of highly qualified practitioners in the field, particularly in big cities with large law firms and/or headquarters of multinational corporations, delegating the teaching of the anti-corruption course to adjunct professors with solid practical experience might be a good (and also a very cost-effective) solution. This is the way many compliance-related courses are taught in law schools, resulting in law students gaining practical as well as theoretical knowledge of the subject. However, there remains space for those academics who desire to focus their careers fully on research and the study of a myriad of topics around corruption and law that can then be taught in the classroom.

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On the other hand, some schools are cutting down on the number of adjunct professors for financial reasons. Schools seeking to raise their job placement rates for new graduates may wish to rethink any plans to decrease instruction in this area. As was observed above, as the requirement for compliance grows for most mid-size and large companies, so too does the job market for practitioners with experience in this area.<sup>135</sup>

### D. Lack of textbooks

With the explosion of the number of corruption-related publications, assembling a course pack should not be a problem. Additionally, a lot of materials are available on the Internet for free so the course pack can be very cost effective. However, when considering developing an effective course reading list or text on corruption and bribery law, some level of standardization would be beneficial in all courses taught to law students on the subject. The UNODC ACAD could be leveraged further as a forum in which to gather recommendations and promote dialogue between educators and practitioners toward building a consensus on a core curriculum. A certain level of harmonization could go a long way to ensuring a baseline understanding by new lawyers, with additional reading lists compiled based perhaps on certain specialty subjects such as procurement, sectors or specific industries, international development aid, civil society efforts, etc. Whilst there exists a plethora of freely available information, not all of it should be viewed as equal in value; much of it is discursive, redundant, or lacking any in-depth legal analysis.

## V. CONCLUSION

Given that corruption touches so many aspects of life – education, the judiciary, sports, politics, political stability, procurement, national security, human trafficking, money-laundering, human and indigenous peoples' rights, environment, business, economics, public health, public safety, stolen asset recovery, etc., it would appear that the topic has become a requirement in preparing young lawyers no matter what specialty they ultimately elect to practice. The international and national legal frameworks and developments in legal practice make it hard to ignore. Following the efforts of the U.N. Office on Drugs and Crime to develop a core anti-corruption curriculum, the authors advocate a commensurate effort toward the maturity of a curriculum for U.S. law students.

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<sup>135</sup> See *Surveys*, *supra* note 55.

