

WHEN PAYING A BRIBE IS NOT CONSIDERED A VIOLATION OF THE FCPA-

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A few years ago, I took a dozen U.S. students from an International Studies program from Kansas City to a two-week visit in Senegal and The Gambia, Africa. We landed in Dakar, Senegal. Our trip included staying with host families, attending local schools and some sightseeing that took us to The Gambia. The Gambia is a country in West Africa; to the exception of its port that opens on the Atlantic Ocean, The Gambia is entirely surrounded by Senegal, its sole neighbor. We were traveling by road between the capital cities of the two countries: Dakar and Banjul, The Gambia.

The last day of our trip we were driving back from Banjul to Dakar where a reception was awaiting for us at the US Embassy. Along the way at a check point, we were stopped by the border police. As I always did during all these trips including in Europe, I had collected all of students' passports for fear of some losing them. I got out of the 'bus' at the demand of the police who required that the "white kids" remain seated on the bus. It was hot on the outside. It was hotter inside the bus. We do not have the time or the space here to discuss my interaction with the police, but one questions they asked me was if the female students were my girl friends. My short answer was a clear "no." One of them asked if I could lend him one of the girls for a few minutes. While I promptly understood that they wanted some money from me, I resisted giving in. I stood there arguing with them for about forty-five minutes before deciding that I better give the 'something' they wanted. I took upon myself to give them the equivalent of about six U.S. dollars in local currency, and they let us go.

Working and traveling in Africa can present unique security risks for personnel. These security issues often require effective and efficient solutions. Companies are using a variety of strategies to resolve them. We will cover some successful approaches in a future column.

There is no written exception for personal safety-related payment in the Foreign Corrupt Practices Act (FCPA). Nevertheless, the FCPA generally understands that when and where individuals find themselves in situations where they believe that they face physical danger or illegal detention, payment of bride to escape the harm is not, in general, considered an infringement to the FCPA. The FCPA and companies always avoid including this exception in their compliance policies, for fear of abuse by employees who would find it simply convenient. For example, such payments should never be condoned when personnel are stopped for regular violations of the local laws.

In our case on the border of Senegal and The Gambia, there was no violation of any laws. While I did not perceive any imminent threat for me or the students, I took upon myself the risk of extending a bribe so we could get into Dakar before dark –I always avoided travelling with students at night- go to the embassy, and them get ready to catch our flight the following day to the U.S.A.

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