

International Money Laundering, Corruption and Terrorism
Course # 6521
Spring 2017
3 Credit Hours

Lecturers: Jack D. Smith and Thomas Lasich

Class Policy and Syllabus

I. Introduction

Welcome to *International Money Laundering, Corruption and Terrorism*. In our increasingly globalized world, attorneys must be able to advise their governmental, NGO and business clients regarding compliance with international and domestic laws enacted to thwart money laundering, corruption and terrorism. These laws are widely recognized as essential to the stability and security of civilized societies.

Despite over a trillion dollars in foreign aid over the past 60 years, 767 million people are still living on less than \$1.90 a day. Corruption is a central culprit behind this and many other evils plaguing our planet from joblessness and growing inequalities of income to environmental calamities and violent conflicts. Every year \$1 trillion is paid in bribes while an estimated \$2.6 trillion are stolen annually through corruption – a sum equivalent to more than 5 per cent of the global GDP.

High-level corruption depends upon the ability to launder money in Western countries. Terrorist organizations also rely upon money laundering to conceal both their funding sources and the nature of their activities from authorities. Thus, anti-money laundering, anti-corruption and anti-terrorism strategies are converging. All three aim to attack criminals or terrorist organizations through their financial activities and use financial trails to identify the various components of criminal or terrorist networks.

Anti-money laundering techniques and asset tracing are therefore critical not just to undermine international criminal enterprises such as the drug trade and human trafficking, but also to undercut global corruption and terrorism. This course examines both the criminal and civil mechanisms available to counter these crimes.

II. Course Learning Outcomes

Students successfully completing this course will know and be able to use the fundamental US and international laws and regulations for combatting global money laundering, corruption and terrorism. They will acquire a basic proficiency to develop evidence for and to resolve complex public corruption cases using tools of financial investigation, international collaboration and assistance, and asset recovery.

III. Logistics

When: We meet Thursdays from 6:00 p.m. to 9:05 p.m. from January 12, 2017 to April 13, 2017. There will be no class on March 9, 2017 (Spring Break).

IV. Materials

As much as possible, course materials will be available online. There is no single book that adequately addresses the three course areas, and using documents prepared by international organizations and national governments familiarizes students with the same online tools used by practitioners. As a back-up, most of the materials will be provided to students in a downloadable folder. **Please bring your laptops to every class to access new materials online and participate in the Simulated Case Exercise.**

Approximately 10 hours of class time will be devoted to an interactive *Simulated Case Exercise* designed to guide students through the basics of money laundering, corruption violations and Mutual Legal Assistance (MLA) by working through the steps of a hypothetical financial investigation in an automated environment. **Students will bring their laptops to each class** and use them to follow a money trail involving approximately 70 pieces of documentary evidence and hundreds of summarized bank records. This will involve the analysis of voluminous financial data, assembling numerous pieces of testimonial and documentary information and organizing the evidence into a basic Investigative File Inventory useful in preparation for trial. Students will then organize the evidence and their analysis in a paper to be submitted and graded.

V. Evaluation: Collaborative skills are essential for international corruption hunters, and all students will be required to work together in 4-5 person teams to solve the simulated case. After completion of the exercise, the teams will disband and each student will prepare a paper that organizes the evidence collected in the exercise in a format useful for attorneys in preparation for trial. The papers will be due on **March 21, 2017**, 19 days after the conclusion of the *Simulated Case Exercise*. Each paper must be based on individual effort without further collaboration, and the grades will count for 35% of the final course grades. The remaining 65% of the course grade will be based upon an essay-type, 48-hour take-home final examination at the conclusion of the course.

VI. Office Hours: As we do not have offices at the University, office hours will be by arrangement. Generally, we will be available both before and after classes. Jack Smith can be reached by phone at 610-566-3815 and by e-mail at jsmith@law.gwu.edu. Tom Lasich can be reached by phone at 912-266-3144 and by e-mail at Tlasich@aol.com.

VII. Policies:

- **Academic Integrity Policy:** Students must strictly adhere to the GW Law School's Academic Integrity Code (see GW Law School Bulletin, p. 65) and publication *Citing Responsibly*, and the University's Code of Student Conduct. At the time the exam is completed, each student must provide a signed Pledge of Honesty to the proctor (or Records Office if it is a take-home exam).

- **Class Attendance:** As reflected in the GW Law School Bulletin, “[r]egular class attendance is required and is necessary for successful work. A student who is deficient in class attendance or participation will, after the instructor or [D]ean of [S]tudents attempts to communicate with the student, have a grade of No Credit (NC) entered on the record absent an excuse. (Here, as elsewhere in the Bulletin, email correspondence to a student’s official Law School email address is one fully acceptable means for student notification.) No excuse for deficient attendance or participation will be granted except by the [D]ean of [S]tudents and then only upon proof of unexpected serious illness, injury, or other emergency. A student whose excuse is accepted by the dean of students will be withdrawn administratively from the course.” (GW Law School Bulletin, p. 19 & 40).
- **Class Participation:** Students will be expected to collaborate fully with their team members during the *Simulated Case Exercise*, and they may be assigned to make short presentations on issues or cases. Participation in class discussions is expected and encouraged, but will not receive extra credit of any sort.
- **Disability Support Services:** Any student who may need an accommodation based on the potential impact of a disability should contact the Office of Disability Support Services (DSS) at: [202-994-8250](tel:202-994-8250) located in Rome Hall, Suite 102, to establish eligibility. Once a student is registered and deemed eligible for accommodation, he or she should then contact the Dean of Students Office at [202-994-8320](tel:202-994-8320) to coordinate reasonable accommodations (e.g., note-taking assistance, adaptive technologies, etc.). For additional information please refer to: <http://disabilitysupport.gwu.edu/>
Law School examination protocol calls for anonymous grading. The disclosure of exam accommodations to a professor has the potential to breach exam anonymity. Students enrolled in interdisciplinary programs should be aware that protocols implementing accommodations for a given course will differ based upon which GW Division is offering the course.
- **Recording of Classes:** This course will follow the Law School’s “Class Recording Policy,” available at the Dean of Students Office Website. Essentially, students may request class recordings when they will be absent for religious reasons, family emergencies, and other authorized absences. Requests for recording and questions about the policy should be directed to the Dean of Students Office.

Syllabus

I. Thursday, January 12, 2017

All students should bring their laptops to download class materials.

Hours 1 – 2: Overview of Corruption, Money Laundering and Terrorist Financing, Global Impact and International Deterrence Efforts - JDS

Materials: World Bank and IMF Reference Guide To Anti-Money Laundering and Combating the Financing of Terrorism, Second Edition and Supplement on Special Recommendation IX (2006), Chapters I (A thru D only) and II, http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf

UNODC and World Bank Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan (2007), pages 5-21, <http://siteresources.worldbank.org/NEWS/Resources/Star-rep-full.pdf>

UNODC Fact Sheet on Corruption and Development, http://www.anticorruptionday.org/documents/actagainstcorruption/print/materials2016/corr16_fs_DEVELOPMENT_en_PRINT.pdf

UNODC Fact Sheet on Corruption and the Environment, http://www.anticorruptionday.org/documents/actagainstcorruption/print/materials2015/corr15_fs_ENVIRONMENT_en_PRINT.pdf

Objectives: Review what will be covered in the course and the areas you can expect to be addressed in the final exam. We will discuss the confluence of the three foremost areas of criminality threatening international prosperity and stability today: corruption, money laundering and terrorism. Containing corruption is critical to reducing bloodshed, poverty, disease, and environmental degradation in developing countries. Corruption enables and relies upon money laundering to hide ill-gotten gains and opens the door to the support of terrorism. The key international instruments addressing these provisions will be introduced, as well as the main players setting standards in the area, the United States, Organization for Economic Co-operation and Development (OECD), and the Financial Action Task Force (FATF).

Hour 3: U.S. National Money Laundering Risk Assessment and Money-laundering Typologies – JDS; TL

Materials: 2015 National Money Laundering Risk Assessment, pp. 1-4, 22-53, <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf>

Correspondent Banking, Bank Secrecy Act/Anti-Money Laundering Examination Manual (2014), pp. 177-182, <http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/ffiec-bsa-aml-examination-manual.pdf>

IRS – Examples of Money-Laundering Investigations - Fiscal Year 2017, <https://www.irs.gov/uac/examples-of-money-laundering-investigations-for-fiscal-year-2017>

Objectives: Overview:

- The 2015 United States “Money-Laundering Risk Assessment” and how the United States law enforcement, regulatory agencies and financial institutions coordinate to confront money-laundering;
- Money-laundering schemes using banks and non-bank facilities (and the mechanisms utilized to detect them), such as correspondent accounts, money transmitters, Black Market Peso, Hawalas and bitcoins. **Three students will be assigned** to make 3-minute presentations on selected typologies for the January 19 class: check cashers, foreign exchange dealers and casinos.

II. Thursday, January 19, 2017

Hour 1: Continuation of U.S. National Money Laundering Risk Assessment and Money-laundering Typologies including BMPE – JDS and Class Members

Materials: 2015 National Money Laundering Risk Assessment, pp. 54-87, <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf>

Objectives: Continue review of money-laundering typologies with focus on money services businesses, casinos and securities. **Three students will make three-minute presentations** on check cashers, foreign exchange dealers and casinos.

Hour 2: The United Nations Convention against Corruption (UNCAC) - JDS

Materials: United Nations Convention against Corruption, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, preamble, articles 1, 6 (1), 8 (1) & (2), 13, 14 (1) (a), 20, 23 (1), 31 (1), 40, 43 (1), 46 (1), (3) and (8), 52, 54 (1), 55 (1) and (6)

Objectives: The UNCAC has been ratified by over 170 countries and regional organizations. It has 71 articles containing numerous innovative and aggressive tools to combat corruption. We will examine how the UNCAC provisions and other “top-down” measures are being used in the fight against corruption.

Hour 3: Tax Havens/FATCA/Whistleblowers – JDS

Materials: Africa's Bane: Tax Havens, Capital Flight and the Corruption Interface (Christiansen, 2009), pp. 1-11, <http://www.u4.no/recommended-reading/Africa-s-bane-tax-havens-capital-flight-and-the-corruption-interface/>

Internal Revenue Service Summary of Key FACTA Provisions, <https://www.irs.gov/businesses/corporations/summary-of-key-fatca-provisions>

G20 Anti-Corruption Action Plan 2017-2018 (2016 Hangzhou Summit), <http://www.g20.utoronto.ca/2016/160905-anticorruption.html>

OECD/G20 Base Erosion and Profit Shifting Project Explanatory Statement, pp. 4-5, 13-18, <http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf>

DOJ 2016 False Claims Act Recoveries, <https://www.justice.gov/opa/pr/justice-department-recovers-over-47-billion-false-claims-act-cases-fiscal-year-2016>

US Whistleblower Protection Programs, OSHA, <http://www.dol.gov/compliance/guide/whistle.htm#who>

Whistleblower Protection, OSC, <https://osc.gov/Pages/PPP.aspx>

Objectives: We will examine efforts to curb the use of tax havens by criminals, corrupt officials, multinational corporations and private citizens to launder ill-gotten gains, evade taxation and avoid government scrutiny. Also we will look at the role of whistleblowers and laws to protect them from retaliation.

III. Thursday, January 26, 2017

Hour 1: International Standards Relating to Money Laundering; Foreign Money Laundering Statutes; Proving the Predicate Offense – TL

Materials: United Nations Convention Against Transnational Organized Crime, articles 6 and 7, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, article 3, paragraphs 1 and 3 only, http://www.unodc.org/pdf/convention_1988_en.pdf

FATF Mutual Evaluation Report for Malaysia, Anti-money laundering and counter-terrorist financing measures (2015), pp. 5-7, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Malaysia-2015.pdf>

United States v. Eastman, 149 F.3d 802 (8th Cir. 1998)

United States v. Blackman, 904 F.2d 1250, 1256-1258 (8th Cir. 1990) – read Money Laundering section only

United States v. Mankarious, 151 F.3d 694, 701- 707 (7th Cir. 1998) – read only the section beginning with the paragraph “Next, the defense makes several arguments for reversing the money laundering convictions...” ending with the paragraph beginning with “The government admits....”

United States v. Lomow, 266 F.3d 1013, 1017 (9th Cir. 2001) – read section II A only

United States v. Carucci, 364 F.3d 339, 344-347 (1st Cir. 2004) – read section “2 Evidence of Specified Unlawful Activity” only

The three readings below are optional:

- Indonesia: ML - Law No. 8 of 2010 (articles 2, 3, 4 and 5 only) – in Participants Folder only
- Georgia: Criminal code of Georgia (article 194 only) – In Participants Folder only
- Burundi: ML Statute comparison – In Participants Folder only

Objectives: A sampling of money laundering statutes from various countries will be examined and compared to international standards. Despite efforts to standardize these statutes, the elements of proof for a criminal money laundering case vary from country to country. International mutual evaluation reports from organizations like the Council of Europe and the FATF disclose how well individual countries are performing in this area and the key issues. The level of proof required to establish the predicate offense varies by country and is an unsettled issue in many. The statutory language, case law and theories relating to this issue will be discussed.

Hours 2- 3: Explanation of Investigative Tools and Commencement of Simulated Case Exercise –TL

A simulated investigation will be initiated during this session and will continue through March 2. This exercise is an interactive program designed to guide students through the basics of money laundering, corruption violations and Mutual Legal Assistance (MLA) by working through a hypothetical financial investigation. The participants will be divided into 4 or 5 person teams and will investigate a simulated case with approximately 70 pieces of documentary evidence and hundreds of summarized bank records. This will involve the analysis of voluminous financial data, gathering numerous pieces of testimonial and documentary information and assembling the evidence in a manner suitable for presentation to legal decision-makers.

The use of investigative tools and a basic Investigative File Inventory for organizing evidence will be explained. The exercise will be conducted in an automated environment using computer applications to perform much of the financial analysis. Each student will be provided all training materials in an electronic folder to be used on their notebook computer.

IV. Thursday, February 2, 2017

Hour 1: Elements of U.S. Money Laundering Statutes;

Materials: Participant's Folder:

- 18 USC 1956 – sections highlighted in yellow only
- 18 USC 1957
- 18 USC 641
- 18 USC 666
- USA Bulletin - Sept 2007 – Vol. 55, No. 5 – The Money Laundering Statute-pages 21 to 33
- Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, Read Chapter V - legal system requirements - criminalization of ML - pages V 1 to V 15, http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf

Objectives: We will examine the elements and level of proof required for the primary money laundering statutes. The U.S. statutes, enacted prior to the international guidelines, will be reviewed in detail since the case law is rich for each element. Issues include: evidence required to prove each element and how and where can such evidence be obtained (illustrated via the investigation of the simulated case); the benefits of using money laundering statutes; and when one money-laundering statute should be used over another.

Hour 2: Simulated Case Exercise Continues. Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

Hour 3: The Bank Secrecy Act and the Patriot Act - TL

Materials: USA Patriot Act, 15 Stat. 272 (2001) (Read index only to understand scope of the Act), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf

Designated Provisions of the Bank Secrecy Act (Participant's Folder):

- 31 USC 5313 – CTR – sections highlighted in yellow only
- 31 CFR 1010.310 to 311 – CTR
- 31 CFR 1010.100 (t) - definitions – FI
- 31 USC 5316 – CMIR
- 31 CFR 1010.100 (dd) - definition of monetary instrument

- 31 USC 5322 – Penalties
- 31 CFR 1010.350 – FBAR
- 31 USC 5331 - 8300 law
- FinCEN forms – scan for context, close review is not necessary
 - FinCEN form 104 – CTR
 - SAR (Suspicious Activity Report) for Banks
 - FinCEN form 105 – CMIR
 - FinCEN form 8300
 - FBAR form - TD F 90-22.1

Objectives: The primary provisions of the Bank Secrecy Act will be examined to learn how they deter money laundering. The evolution of anti-money laundering requirements through a series of subsequent legislative acts, including the Patriot Act, will also be addressed. Currency Transaction Reports (CTR), Report of International Transportation of Currency or Monetary Instruments (CMIR), Foreign Bank Account Reports (FBAR) and Suspicious Activity Reports (SAR) are the foundation for the government’s attempts to trace the movements of illegally obtained funds. The filing of false reports and attempts to avoid the filing requirements are criminal violations.

V. Thursday, February 9, 2017

Hour 1: People Power – Shaazka Beyerle (ICNC)

Materials: Lessons from Civil Resistance for the Battle against Financial Corruption, Ackerman, Beyerle (2010), available on Class Portal

Objectives: Understand how people power works and how bottom-up campaigns and civic initiatives impact corruption, improve accountability and support integrity champions.

Hour 2: Simulated Case Exercise Continues. Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

Hour 3: Asset Recovery – International Standards – TL

Materials: StAR NCB Good Practices Guide – pp. 21 and 22, including footnote 39, <http://star.worldbank.org/star/sites/star/files/Non%20Conviction%20Based%20Asset%20Forfeiture.pdf>

StAR Asset Recovery Handbook, pp. 9 to 18, <http://star.worldbank.org/star/sites/star/files/Asset%20Recovery%20Handbook.pdf>

USA Bulletin - Nov 2007 - Vol 55, No. 6 – Developments in International Forfeiture and Money Laundering Cooperation - pages 51 to 59, http://www.justice.gov/usao/eousa/foia_reading_room/usab5506.pdf

Objectives: The four main avenues available for international asset recovery will be examined – conviction based, non-conviction based, civil law suits and civil law process (generally available in civil law jurisdictions). These concepts will be reviewed in the context of international instruments that address asset recovery. Processes used in Civil Law countries will also be examined and compared to Common Law jurisdictions. Examination of selected cases will occur in Classes X-XI.

VI. Thursday, February 16, 2017

Hour 1: Basic Procedural Options for Forfeiture in the United States - Stefan Cassella

Materials: Civil Forfeitures 18 USC 981; Criminal Forfeiture 18 USC 982;

USA Bulletin - Nov 2007 – Vol. 55, No. 6 – Overview of Asset Forfeiture Law in the United States – pp. 8 to 21,

http://www.justice.gov/usao/eousa/foia_reading_room/usab5506.pdf

UNCAC, Article 31

Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, chapter V - legal system requirements – confiscation, pp. V 15 to V 19,

http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf

Objectives: Review of the U.S. civil and criminal forfeiture laws and procedures will continue with emphasis on their relationship to money laundering and terrorist financing. Civil or non-conviction based forfeiture is a concept that is not widely embraced by many foreign jurisdictions. This In Rem process is used extensively in the U.S. and international initiatives are currently underway to encourage other nations to utilize this tool in corruption and other illegal activity cases.

Hour 2: Simulated Case Exercise Continues: Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

Hour 3: International Mutual Legal Assistance (MLA) – TL

Materials: United Nations Convention against Corruption (UNCAC), Articles 38, 39, 46, 54, 55, 56 and 57,

http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

28 USC 1782

28 USC 2467

18 USC 3512

International Convention for the Suppression of the Financing of Terrorism
Articles: 12, 13, 14, 15 and paragraph 5 of art 7 and paragraph 3 of Article 8,
<http://treaties.un.org/doc/db/Terrorism/english-18-11.pdf>

United Nations Convention Against Transnational Organized Crime,
Article 18, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

Objectives: Mutual legal assistance in criminal investigations relating to corruption investigations is specifically covered in Chapter IV of the UNCAC and is also referenced in Chapters V and VI. MLA can be accomplished through a variety of informal and formal mechanisms depending on the type of information or evidence that is required. Domestic legislation generally controls the rules relating to MLA. However bilateral, regional and multi-lateral treaties and conventions often have the power of law and provide guidance in some jurisdictions. Issues involving dual criminality, specialty, admissibility of foreign obtained evidence and central authorities will be discussed.

VII. Thursday, February 23, 2017

Hours 1: Simulated Case Exercise Continues: Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

Hour 2: U.S. Strategies to Prosecute Domestic Corruption; - Eric Olshan (DOJ)

Materials: United States Internal Revenue Service - Examples of Public Corruption Investigations - Fiscal Year 2017, <https://www.irs.gov/uac/examples-of-public-corruption-investigations-fiscal-year-2017>

Sample Corruption Indictment: New Orleans Mayor Ray Nagin,
http://www.justice.gov/sites/default/files/usao-edla/legacy/2013/01/28/indictment_C_Ray_Nagin.pdf

U.S. v. Jack Abramoff – Plea Agreement,
<http://news.findlaw.com/wsj/docs/abramoff/usabrmff10306plea.pdf>

Evans v. US, 112 S. Ct. 1881 (1992)

Skilling v. US, 130 S. Ct. 2896 (2010), 2899-2901; 2925-2935

McDonnell v. US, 136 S. Ct. 2355 (2016)

Objectives: In addition to the FCPA and the anti-money laundering laws, prosecutors use numerous other laws to combat public corruption. We will examine the primary ones such as prohibitions against bribery, extortion, embezzlement, illegal kickbacks and tax evasion involving both elected and appointed officials from all levels of government including, local, county, state, federal, and foreign officials.

Hour 3: Simulated Case Exercise Continues: Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

VIII. Thursday, March 2, 2017

Hour 1: Politically Exposed Persons (PEPs) and Their Enablers – JDS

Materials: Politically Exposed Persons (World Bank, 2010), pp. xiii-xviii, <http://issuu.com/world.bank.publications/docs/9780821382493?mode=embed&layout=http://skin.issuu.com/v/light/layout.xml&showFlipBtn=true>

Keeping Foreign Corruption Out of the United States: Four Case Histories, pages 1-7, in Participant's Folder only

Objectives: We will focus upon the nature and effectiveness of regulatory requirements with regard to politically exposed persons. **Four students will be assigned** to present 3-minute summaries of cases illustrating problems with politically exposed persons and how they use U.S. professionals and financial institutions to conceal, protect, and utilize their ill-gotten gains: Obiang, Bongo, Abubaker and Angola.

Hours 2 – 3: Simulated Case Exercise Concludes –TL

Materials: No readings.

Objectives: The investigation of the simulated case will be concluded and the trial preparation will begin. The specific requirements for the graded paper will be discussed. This paper will constitute 35% of the final grade and must be submitted by **Tuesday, March 21, 2017**. Each student (not each group) will independently prepare this paper organizing the evidence from the Simulated Case Exercise in a format useful for attorneys in preparation for trial. There are three required elements for this paper:

- narrative overview of the money laundering and corruption scheme;
- selection of the evidence that proves each element of the most significant offense;
- analysis tracing the fruits of the crime to the underlying violation of law.

IX. March 9, 2017: No Class – Spring Break

X. Thursday, March 16, 2017

Hours 1 – 2: Overview of Money Laundering and Asset Forfeiture and Bank Secrecy Act Cases; Sanctions for Failure to Comply with Anti-Money Laundering Requirements - Les Joseph (Wells Fargo)

Materials: US v Lazarenko, 564 F. 3d 1026 (9th Cir. 2009)

Robert Antoine Indictment, Participant's Folder

FINCEN Overview, Sec 3.2, pages 2-6,
http://www.fincen.gov/news_room/rp/files/Sections_3.pdf

List of FINCEN Enforcement Actions (scan), http://www.fincen.gov/news_room/ea/

U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History (United States Senate, Permanent Subcommittee on Investigations, July 17, 2012), pp. 1-12, <http://www.hsgac.senate.gov/download/report-us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history>

USA Bulletin - September 2007 – Vol. 55, No. 5, Criminal Prosecution of Banks under the Bank Secrecy Act, pp. 54-71,
http://www.justice.gov/usao/eousa/foia_reading_room/usab5505.pdf

Objectives: Discuss the kinds of money laundering cases brought in the United States, as well as the evidence needed to prove specific elements of the crimes and achieve successful asset forfeiture. Review examples of witting and unwitting failures of bankers to halt money laundering in their institutions, and the sanctions levied upon them.

Hour 3: International Asset Recovery Actions; Political Will; Victim’s Rights – JDS

Materials: UNCAC, Articles 54, 55, 57

Illicit Flows, Kleptocrats’ Portfolio Decisions, or Realities in State Asset Recovery Cases (Abacha, Alamieyeseigha, Anglo Leasing), Participant's Folder, Readings: pp. 1-22, 30-38

US v. ONE GULFSTREAM G-V JET AIRCRAFT, 941 F. Supp. 2d 1 (D.D.C. 2013)

Justice News (2014), Second Vice President of Equatorial Guinea Agrees to Relinquish More Than \$30 Million of Assets Purchased with Corruption Proceeds,
<http://www.justice.gov/opa/pr/second-vice-president-equatorial-guinea-agrees-relinquish-more-30-million-assets-purchased>

Complaint : USA v. ‘The Wolf of Wall Street’ (USDC C. D. Calif 2016), read para. 1-33, 499-512, <https://www.justice.gov/opa/file/877166/download>

Victim's Rights and Restitution: USAO Middle District of Pennsylvania,
<http://www.justice.gov/usao/pam/vwa.html>;
<http://www.justice.gov/usao/pam/corruption.html>

U.S. v. Gayton, 342 F. 3d 1010 (9th Cir. 2003)

Objectives: Asset recovery is a “fundamental principle” of the UNCAC. Most observers agree that if the international community cannot succeed in restoring assets stolen from developing countries, corruption will continue to destabilize developing countries unabated. **Three students will be assigned** to present short summaries of the Abacha, Alamiyeseigha, and Anglo Leasing cases.

Following up on the lecture from Class VI, the four main avenues available for international asset recovery will be examined within the context of individual cases – conviction based, non-conviction based, civil law suits and civil law process (generally available in civil law jurisdictions). Victim's rights and the role of restitution will also be discussed.

XI. Tuesday, March 21, 2017: Due Date for Simulated Case Paper

XII. Thursday, March 23, 2017

Hour 1: Continuation of International Asset Recovery Actions; Political Will; Victim's Rights – JDS

Hours 2 -3: Foreign Corrupt Practices Act of 1977 (FCPA); 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - Brian Privor (SEC)

Materials: Foreign Corrupt Practices Act of 1977 (FCPA), 15 U.S.C. §§ 78dd-1, et seq (only sections 78dd-1, 78m, and 78ff), <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>, pages 92-94 and 100-102.

FCPA Resource Guide (2012), <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>, pages 10-21, 38-45, and 68-71

SEC v Siemens, <http://www.sec.gov/news/press/2008/2008-294.htm>

At Siemens, Bribery Was Just a Line Item, Frontline World,
<http://www.propublica.org/article/siemens-bribery-1220>

Toxic Transactions (7 min. video), <https://www.youtube.com/watch?v=08zZKp4EGeQ>

Plea Agreement: USA v. Odebrecht (USDC, E. Dist NY 2016), read introductory para. on p.1, and paras. 2, 4, 8, 12, 18, 20-21, Attachment B (Overview of the Bribery Scheme), paras, 19-23. 71-73, <https://www.justice.gov/opa/press-release/file/919916/download>

1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Preamble and Articles 1-12), http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

Transparency International 2015 Corruption Perceptions Report, <http://www.transparency.org/cpi2015#results-table>

Transparency International Progress Report 2015: Enforcement of the OECD Anti-Bribery Convention. First download the 2015 Report and read pp. 4-7, http://www.transparency.org/whatwedo/publication/exporting_corruption_progress_report_2015_assessing_enforcement_of_the_oecd; Second, click on [View country-by-country details in our special online section](#), and choose United States from the drop down bar on the right and read all 5 sections of the U.S. report from Recent Developments – 2014 Findings and Context. Lastly, Go back to the drop down bar, select Turkey and read all 5 sections of the Turkey report from Recent Developments – 2014 Findings and Context.

Objectives: The American FCPA is the grandfather of foreign bribery statutes, and it is being used more aggressively today than ever before. Bribing a foreign public official is also a crime in the countries that have ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The effectiveness and interplay of these provisions is summarized in TI OECD report assigned for reading, with special attention upon two countries for illustration and comparison: United States and Turkey. Notable cases include the Oil for Food Scandal, Siemens, Halliburton, Wal-Mart, and Weatherford.

XIII. Thursday, March 30, 2017

Hour 1: Funding Terrorist Operations; Corruption and National Security – JDS

Materials: Corruption, Protest, and Militancy (2015), Sarah Chayes, <http://carnegieendowment.org/2015/06/25/corruption-protest-and-militancy/if6y>

FATF Report on Financing of the Terrorist Organization Islamic State in Iraq and the Levant (ISIL) (2015), pp. 5-7, 12-26, <http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf>

FATF Report on Emerging Terrorist Financing Risks (2015), pp. 9-44, <http://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf>

Objectives: Understand why corruption is a national security problem, especially as it relates to conflict, popular protest and the emergence of militant political movements. Review financing fundamentals of terrorist organizations. The direct costs of individual terrorist attacks are relatively low (the 2002 Bali bombings cost \$50,000). However, maintaining a terrorist network is a multimillion-dollar undertaking. To maintain a veil of legitimacy, large terrorist organizations need millions of dollars for propaganda and public works such as schools and hospitals. The money comes from numerous sources, including witting and unwitting contributions from mosques, nongovernmental

organizations, wealthy donors and charitable foundations; kidnapping for ransom; drug running and other criminal enterprises; and exploitation of natural resources. Attacking funding networks in the chain of terrorist financing is an international priority in the fight against terrorism.

Hours 2 -3: Terrorists Lists; Criminal Prosecution of Terrorist Financing Cases; Preservation of Human Rights in the Combat against Terrorist Financing – Mike Taxay (FBI)

Materials: Overview of European and International Legislation on Terrorist Financing, pp. 29-44 (Chap 5.2-5.2.3), <http://www.statewatch.org/news/2009/apr/ep-study-eu-int-legis-terrorist-financing.pdf>

What to Charge in a Terrorist Financing or Facilitation Case, United States Attorneys Bulletin, volume 62, number 5 (September 2014), pp. 9-15, <http://www.justice.gov/sites/default/files/usao/legacy/2014/09/23/usab6205.pdf>

Designated Foreign Terrorist Organizations, <http://www.state.gov/j/ct/rls/other/des/123085.htm>

Office of Foreign Assets Control, <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

The Guidelines on Human Rights and the Fight against Terrorism, adopted by the Committee of Ministers (Council of Europe) on 11 July 2002, pp. 7-13, http://www.un.org/en/sc/ctc/specialmeetings/2011/docs/coe/coe-rights_guidelines_en.pdf.

Holy Land Foundation: FBI summary, <https://archives.fbi.gov/archives/dallas/press-releases/2009/dl052709.htm>

Holy Land Foundation: United States v. El-Mezain, 664 F. 3d 467 (5th Cir. 2011), cert. denied, 133 S. Ct. 525 (2012), pp. 543-545 (4th Amendment and blocking orders)

Objectives: Managing the United States, United Nations and European Union “terrorist lists” in a way that observes fundamental rights and which is subject to judicial review is essential for the impartial and realistic implementation of targeted asset-freezing actions.

The primary terrorist lists kept in the United States are:

- Foreign Terrorist Organizations (FTO) (Dept of State)
- State Sponsors of Terrorism (Dept of State under Export Administr. Act, Sec 6(j))
- Terrorist Exclusion List (TEL) (Dept of State under 8 USC 1182)
- Specially Designated Nationals and Blocked Persons (SDN) (OFAC, Dept of Treas.)
 - Specially Designated Terrorists (SDTs)
 - Specially Designated Global Terrorists (SDGTs)

The reading materials address the primary strategies used to protect citizens against those who would finance terrorism without improperly compromising individual rights to

protection of personal liberty, information, freedom of speech, privacy and property. Arguments and evidence resulting in the largest terrorism financing conviction in the United States (Holy Land Foundation) will be examined.

XIV. Thursday, April 6, 2017

Hour 1: The FATF Forty Recommendations - Larissa Gray (World Bank)

Materials: FATF Report on Global Money Laundering & Terrorist Financing Threat Assessment (2010), pp. 7-11,
<http://www.fatf-gafi.org/media/fatf/documents/reports/Global%20Threat%20assessment.pdf>

The FATF 40 Recommendations, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012), pages 11-31,
http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

Objectives: The main players in setting standards to address terrorist financing are the United States, the OECD, the Financial Action Task Force (FATF) and the European Union. They have addressed the issue from different perspectives (the types of financing, the possibility of freezing and confiscating assets, etc.) while generally linking the issue to measures taken to combat money laundering. Intelligence sharing is a driving force in combating terrorist financing. The FATF Forty Recommendations set the international standards for anti-money laundering measures and combating the financing of terrorism. The recommendations are intended to be implemented at the national level through legislation and other legally binding measures.

Hours 2 - 3: Civil Actions against Terrorist Financing: Alien Tort Claims Act; Anti-Terrorism Act -JDS

Materials: Boim v. Holy Land Foundation, 549 F. 3d 685 (7th Cir. 2008), cert denied, Boim v. Salah, 558 U.S. 981 (2009)

Linde v. Arab Bank, 384 F. Supp. 2d 571 (E.D.N.Y. 2005)

Arab Bank Case, description of verdict by victorious plaintiffs (2014),
<http://www.osenlaw.com/case/arab-bank-case>

Arab Bank Settlement, Participant's Folder Only.

Kiobel v. Royal Dutch Petroleum, 133 S. Ct. 1659 (2013)

In re ARAB BANK, PLC ALIEN TORT STATUTE LITIGATION. 2015 WL 8122895 (2d Cir, 12/8/15), pet. for cert. pending 10/5/2016

Objectives: Review causes of action against terrorism brought through the Alien Tort Claims Act and Anti-Terrorism Act. The advantages of civil procedures over criminal

procedures (especially the lower burden of proof) together with triple damages provisions may make civil actions against donors under 18 USC 2333(a) a greater threat to terrorist financing than criminal actions. If banks fail to implement sufficient controls on high risk accounts to safeguard against money laundering, corruption and terrorist financing, they may be exposed to liability from private lawsuits under 18 USC 2333.

XV. Thursday, April 13, 2017

Hours 1 -2: Civil Actions against Terrorist Financing (continued); Torture Victims Protection Act (TVPA); Foreign Sovereign Immunities Act (FSIA); Actions filed directly against Terrorist Organizations and Corporations supporting Terrorism - JDS

Materials: Foreign Sovereign Immunities Act (FSIA), 28 USC 1602-1607

Justice Against Sponsors of Terrorism Act (FASTA) PUBLIC LAW 114–222—SEPT. 28, 2016, <https://www.congress.gov/114/plaws/publ222/PLAW-114publ222.pdf>

Torture Victim Protection Act of 1991 (“TVPA”), Pub.L. 102–256, 106 Stat. 73 (1992)

Yousuf v. Samantar, 699 F. 3d 763 (4th Cir. 2012), cert denied, 134 S. Ct. 897 (2014)

In re Terrorist Attacks on September 11, 2001, Civil Action No. 03-CV-9848 GBD, Findings of Fact and Concl. of Law (S.D.N.Y., 12/ 22/11), Iran/FSIA, pages 2-3 and 46-53, Participant’s Folder Only

Donald v. United Klans of America, No. 84-0725 (S.D. Ala. Feb.12, 1987), Participant’s Folder Only

Omagh bombing families win multi-million pound legal case, <http://www.belfasttelegraph.co.uk/news/local-national/omagh-bomb-families-win-multimillion-pound-legal-case-14330853.html>

In re CHIQUITA BRANDS INTERNATIONAL, INC. ALIEN TORT STATUTE AND SHAREHOLDER DERIVATIVE LITIGATION, 2015 WL 71562 (USDC, S.D. Fla., 2015)

In re CHIQUITA BRANDS INTERNATIONAL, INC. ALIEN TORT STATUTE AND SHAREHOLDER DERIVATIVE LITIGATION, 2016 WL 324913 (USDC, S.D. Fla., 2016)

Cardona v. Chiquita Brands International, Inc. 760 F. 3d 1185 (11th Cir. 2014), cert. denied, 135 S. Ct. 1842 (2015)

Objectives: The FSIA establishes the rules permitting civil actions against state sponsors of terrorism. It was liberalized in 2016 by the FASTA, a law that may have to be amended because of concern about exposing the United States, its taxpayers, its service members, and its diplomats at risk if similar laws were to be adopted by other countries.

The international community is working together under the provisions of the UNCAC to facilitate recovery of assets lost to corruption. The same provisions applicable to corruption can be utilized for terrorist financing recovery actions. In addition to actions against funders of terrorism, civil tort actions can sometimes be lodged against the terrorist organization themselves. The Southern Poverty Law Center has been using this tactic to bring the Ku Klux Klan to its knees over the past 40 years, and the victims of the 1998 Omagh bombing won a multi-million dollar victory against the Real Irish Republican Army in Dublin Ireland in 2009. If a corporation makes any payment to a foreign terrorist organization, whether under duress or not, there may be liability under 18 USC 2333.

Hour 3: Evaluations and Final Review - JDS

Materials: No reading assignments.

Objectives: Course evaluations, general summary, review of major themes and preparation for Final Exam.

XVI. April 24 to May 4, 2017: Period for writing a 48-hour take-home examination.