

International Money Laundering, Corruption and Terrorism
Course # 6521-21 (Thursday night)
Spring 2023
3 Credit Hours

Lecturers: Jack D. Smith, Thomas Lasich and Scott Birdwell

Class Policy and Syllabus

I. Introduction

Welcome to *International Money Laundering, Corruption and Terrorism*. In our increasingly globalized world, an increasing number of attorneys are needed to advise business, government and NGO 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 modern civilized societies, and client violations carry severe penalties.

Despite several trillion dollars in foreign development aid over the past 70 years, 1.2 billion people in 111 developing countries still live in acute multidimensional poverty. Climate change and one-offs like the Covid-19 Pandemic and war in Ukraine exacerbate the situation. Corruption is a central driver of poverty as well as multiple other afflictions from joblessness and growing inequalities of income to environmental calamities and violent conflicts around the globe. An estimated \$2.6 trillion is lost through corruption – over 3 per cent of the global GDP.

Corrupt officials conceal their illicit gains by laundering money through financial centers around the world. Proliferators of weapons of mass destruction, terrorist and criminal organizations all use the same techniques to hide funding sources and the nature of their activities from authorities. Accordingly, the crime prevention strategies against these threats have been converging. The aim is to attack wrongdoers through their financial activities and use financial trails to identify the various components of their 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 understand and be able to work with fundamental international and US laws and regulations for combatting global money laundering, corruption and terrorism. They should also acquire a basic proficiency to uncover and organize evidence for the resolution of complex public corruption cases using tools of financial investigation, international collaboration and assistance, and asset recovery.

III. Logistics

When: We meet on Thursdays from 6:00 p.m. to 9:05 p.m. from January 12, 2023 to April 13, 2023. There will be no class on March 16 (Spring break). Lectures will be conducted live or online in accordance with Law School announced procedures, and students are expected to attend all sessions.

IV. Materials

As much as possible, course materials will be available online. There is no single book that adequately addresses the three course areas. Students will become familiar with the same tools used by practitioners by accessing online documents posted by government and international organizations. As a back-up, most of the materials will be provided to students in a downloadable folder. **Please have your laptops available during each class to access new materials online and participate in the *Simulated Case Exercise*.**

Nine hours of class time will be devoted to an interactive *Simulated Case Exercise* that guides students through the basics of money laundering, corruption violations and Mutual Legal Assistance (MLA) by working through the steps of a hypothetical financial investigation. **Students will use their laptops** to follow a money trail involving 70 pieces of documentary evidence and hundreds of banking transactions. 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.

- 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 Midterm paper in a format useful for attorneys in preparation for trial that organizes the evidence to prove-up money laundering violations and enable forfeitures of criminal proceeds. The papers will be due on **March 10, 2023**, 15 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 grade. The remaining 65% of the course grade will be based upon an essay-type, open-source, take-home final examination for which you will be allowed 10 days to complete (**April 24 – May 3**).

- VI. **Office Hours:** As we do not maintain physical offices at the University, students can meet with the professors in person only by appointment or online. The professors can be reached as follows:

- Prof. Lasich by phone at 912-266-3144 and by email at tlasich@law.gwu.edu.
- Prof. Smith by phone at 610-566-3815 and by email at jdsmith9@law.gwu.edu.
- Prof. Birdwell by phone at 703-896-0558 and by email at zsbirdwell@gmail.com

VII. Classroom Policies:

- **Academic Integrity Policy:** Students must strictly adhere to the GW Law School's Academic Integrity Code, Law School publication Citing Responsibly, and the University's Code of Student Conduct. At the time the examination is completed, each student must provide a signed Pledge of Honesty.
- **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 Dean of Students 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 Dean of Students Office and then only upon proof of unexpected serious illness, injury, or other emergency. A student whose excuse is accepted by the Dean of Students Office will be withdrawn administratively from the course." (GW Law School Bulletin, pp. 20-21 and 46).
- **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 located in Rome Hall, Suite 102, to establish eligibility. Once a student is registered and deemed eligible for accommodation, they should then contact the Dean of Students Office at 202-994-8320 or dss@gwu.edu to coordinate reasonable accommodations (e.g., note-taking assistance, adaptive technologies, etc.). For additional information please refer to: 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:** The Law School's "Class Recording Policy," is available at <https://www.law.gwu.edu/class-recording-policy>. Sessions of this class are not automatically recorded. Students may email in advance for a class to be recorded if they have one of the "Pre-Approved Reasons" listed in Para II(B) such as religious observances, family emergencies, and other authorized absences. Requests for recording and questions about the policy may be directed to the class professors or Dean of Students Office (deanofstudents@law.gwu.edu). Please remember that "recordings made for student use are intended to allow for review of classroom presentations and discussions by students who were absent from the relevant class or receive recordings as part of an accommodation. Any other use, whether by students or others, is strictly prohibited without the prior, express permission of the relevant instructor. Only the student on whose behalf a request for recording for a pre-approved reason was made (pre-approved reasons for recording are set forth at III(A)), will be granted access to that recording, except that the Office of the Dean of

Students or the class professor has authority to authorize others to view an existing recording for any pre-approved reason listed in the Class Recording Policy, subject to individual instructors' restrictions upon recording.”

Syllabus

I. Thursday, January 12, 2023

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

Materials: Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors (OECD 2019), read pp. 13-26,

<https://www.oecd.org/tax/crime/money-laundering-and-terrorist-financing-awareness-handbook-for-tax-examiners-and-tax-auditors.pdf>

National Strategy for Combating Terrorist and Other Illicit Financing (2018), pp. 3-6 (stop at end of “Goals, Objectives and Priorities” section),

<https://home.treasury.gov/system/files/136/nationalstrategyforcombatingterroristandotherillicitfinancing.pdf>

United States Strategy on Countering Corruption (December 2021), pp. 4-8,

<https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.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

Statement on Corruption by UN Secretary General Guterres before the UN Security Council (9/10/18), [https://www.un.org/sg/en/content/sg/speeches/2018-09-](https://www.un.org/sg/en/content/sg/speeches/2018-09-10/corruption-conflict-remarks-security-council)

[10/corruption-conflict-remarks-security-council](https://www.un.org/sg/en/content/sg/speeches/2018-09-10/corruption-conflict-remarks-security-council)

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 how the suppression of money laundering has become key to combatting the greatest threats to international prosperity and stability of the modern world: corruption, crime, terrorism and the proliferation of weapons of mass destruction (WMDs). 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 shelters criminals, terrorists and WMD proliferators. The key international instruments addressing these areas will be introduced, as well as the main players setting standards,

the United States, United Nations, Organization for Economic Co-operation and Development (OECD), and the Financial Action Task Force (FATF).

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

Materials: US Treasury Dept. Press Release (12/20/18) re publication of National Illicit Finance Strategy, <https://home.treasury.gov/news/press-releases/sm581>

Anti-Money Laundering and Countering the Financing of Terrorism National Priorities (FinCEN 2021),
[https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf)

2015 National Money Laundering Risk Assessment, pp. 22-87,
<http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf>

Examples of BSA and Anti-Money Laundering cases conducted by the US IRS Criminal Investigations, FY 2022 IRS Criminal Investigation Annual Report, pp. 6-8, 10, 14 and 18, <https://www.irs.gov/pub/irs-pdf/p3583.pdf>

Objectives: Review--

- Portions of the United States Money-Laundering Risk Assessments and the roles of the United States law enforcement, regulatory agencies and financial institutions in combatting money-laundering. This session will be continued into the next week.
- Money-laundering schemes using banks and non-bank facilities (and the mechanisms utilized to detect them), such as money services businesses, mispricing and Black Market Peso.

II. Thursday, January 19, 2023

30 Minutes: Typologies Continued - TL

30 Minutes: The United Nations Convention against Corruption (UNCAC) - TL

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 signed by 186 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 2: Tax Havens/Shells and Trusts/FATCA/Correspondent Banking/Whistleblowers – ZSB

Materials: Tax Justice Network Overview of Tax Havens, The State of Tax Justice 2020, pp. 12-16, 30-40, 49-55, https://taxjustice.net/wp-content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf

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

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>

OECD Announcement of Minimum Tax Agreement (10/8/2021), <https://www.oecd.org/tax/beps/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm>

Bank Secrecy Act/Anti-Money Laundering Examination Manual (2014), Correspondent Banking, (hardcopy in Participant's folder, pp. 177-182); Online: <https://bsaaml.ffiec.gov/manual> (We will walk through how to use the online manual in class – a bit tricky)

FinCen: Fact Sheet: Beneficial Ownership Information Reporting Rule Rulemaking (9/29/22), <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>

Justice Department's False Claims Act Settlements and Judgments Exceed \$5.6 billion in Fiscal Year 2021, <https://www.justice.gov/opa/pr/justice-department-s-false-claims-act-settlements-and-judgments-exceed-56-billion-fiscal-year>

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

Prohibited Personnel Practices (Whistleblowers), 5 USC 2302(b)(8)

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 survey the US government anti-money laundering examination manual, and look at the role of whistleblowers and their legal protections against retaliation.

Hour 3: The Bank Secrecy Act - TL

Materials: 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.

III. Thursday, January 26, 2023

First 75 minutes: 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>

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

FATF methodology – read just the website – one page (not the Methodology download) <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatfissuesnewmechanismtostrengthenmoneylaunderingandterroristfinancingcompliance.html>

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

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.

Final 110 minutes: Explanation of Investigative Tools and Commencement of Simulated Case Exercise - TL

A simulated investigation will be initiated during this session and will continue through February 23rd. 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 (Evidence Log) 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, 2023

First 30 minutes: Criminal Use of Cryptocurrencies – Chris Brown (DC AUSA)

Materials: Remarks of FinCen Director Kenneth A Blanco (8/9/18), <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-2018-chicago-kent-block>

2018 National Money Laundering Risk Assessment, (Section on Virtual Currencies), pp. 26-28, https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf

Ciphertrace Cryptocurrency Anti-MoneyLaundering Report (2018 Q3), pp. 2-8, <https://ciphertrace.com/crypto-aml-report-2018q3.pdf>.

DOJ Press Release (7/26/17): Russian National and BitCoin Exchange Charged in 21-Count Indictment for Operating Alleged International Money Laundering Scheme and Allegedly Laundering Funds from Hack of Mt. Gox, <https://www.justice.gov/usao-ndca/pr/russian-national-and-bitcoin-exchange-charged-21-count-indictment-operating-alleged>

FATF Report: Virtual Currencies – Key Definitions and Potential AML/CFT Risks (2014), pp. 10-12, <http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>

Objectives: Overview of cryptocurrencies, their misuse for criminal activities and money laundering, and applicable government regulations.

Next 70 minutes: Simulated Case Exercise Continues. Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

Final 80 minutes: Elements of U.S. Money Laundering Statutes - TL

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

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.

V. Thursday, February 9, 2023

First 65 minutes: Asset Recovery – International Standards – TL

Materials: StAR NCB Good Practices Guide – pp. 21 and 23, 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

Civil Forfeitures 18 USC 981; Criminal Forfeiture 18 USC 982; (read yellow highlighted sections only for both 981 and 982 in Participant's Folder only)

Objectives: The main avenues available for international asset recovery will be examined – conviction based, non-conviction based, civil law suits, unexplained wealth orders, extended confiscation and civil law process (generally available in civil law jurisdictions). US law on civil and criminal asset forfeiture will be discussed. 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 prominent cases will occur in the last hour of this class and in Class VI.

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

VI. Thursday, February 16, 2023

Hour 1: U.S. Strategies to Prosecute Domestic Corruption – JDS

Materials: Report to Congress on the Activities and Operations of the Public Integrity Section for 2019, pp. 10-20, <https://www.justice.gov/criminal-pin/file/1346061/download>

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://online.wsj.com/public/resources/documents/Abramoff-plea-deal01032005.pdf>

US v. Silver, 948 F. 3d 538 (2d Cir. 2020), cert. denied, 141 S. Ct. 656 (2021)

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.

Hours 2 -3: Simulated Case Exercise Continues: Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

VII. Thursday, February 23, 2023

Hour 1: Enforcement Actions against Financial Institutions – Les Joseph (Wells Fargo)

Materials: Wall Street Journal Article re Danske Bank: How One Stubborn Banker Exposed a \$200 Billion Russian Money Laundering Scandal,
<https://www.wsj.com/articles/how-one-stubborn-banker-exposed-a-200-billion-russian-money-laundering-scandal-1540307327>

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

FINCEN Overview, <https://www.fincen.gov/what-we-do>

List of FINCEN Enforcement Actions (scan), <https://www.fincen.gov/newsroom/enforcement-actions>

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

Robert Antoine Indictment, Participant's Folder

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.

Hours 2 – 3: Simulated Case Exercise Concludes

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 **Friday, March 10, 2023**. 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;
- tracing the fruits of the crime to the underlying violation of law (the predicate offense).

VIII. Thursday, March 2, 2023

Hours 1-2: Overview of International Asset Recovery Actions and Political Will/Victim's Rights– ZSB/JDS

Materials: UNCAC, Articles 51, 53, 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

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>

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>

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. We will also address the role of political will, victim's rights and restitution. **Three students will be assigned** to present short summaries of the Abacha, Alamiyeseigha and Anglo Leasing cases from the “Illicit Flows” assigned reading,

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

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

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

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>

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.

IX. Thursday, March 9, 2023

Hour 1: State Building and the Fight against Corruption – JDS

Materials: UN Sustainable Development Goals, Goal #16, Click on and read Targets and Indicators, <https://sdgs.un.org/goals/goal16>

A Beginner’s Guide to Nation Building (2007), Download full report, read pp. xxiii to xxxviii, https://www.rand.org/pubs/research_briefs/RB9241.html ^[1]_[SEP]

What We Need to Learn: Lessons from 20 Years of Afghanistan Reconstruction (SIGAR 2021), pp. 1-7, <https://www.sigar.mil/pdf/lessonslearned/SIGAR-21-46-LL.pdf> ^[1]_[SEP]

Objectives: Examine the four tasks essential to stabilizing fragile states (provide security, governance, economic stabilization and development), and strategies for overcoming the corruption and entrenched interests aligned against good governance reforms.

Hour 2: The FATF Recommendations - JDS

Materials:

The FATF Recommendations, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012, updated March 2022), pages 10-30, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

National Risk Assessment of Money Laundering and Terrorist Financing (Austria 2021), <https://www.bmf.gv.at/en/topics/financial-sector/money-laundering-and-terrorist-financing.html>

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 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.

Hour 3: Basic Procedural Options for Forfeiture in the United States - Stefan Cassella

Materials: Civil Forfeitures 18 USC 981; Criminal Forfeiture 18 USC 982; (read yellow highlighted sections only for both 981 and 982 in Participant's Folder only)

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

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.

FRIDAY, MARCH 10, 2023: DUE DATE FOR SIMULATED CASE PAPER

THURSDAY, MARCH 16, 2023 – NO CLASS – SPRING BREAK

X. Thursday, March 23, 2023

Hours 1 and 2: Foreign Corrupt Practices Act of 1977 (FCPA); 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – ZSB (Scott Birdwell, Former SEC); Erin McCartney, Daniel Klimow (SEC)

Materials:

Bribery Case Studies:

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-resourceguide.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;

Speech by SEC Staff: The Advantages of a Dual System: Parallel Streams of Civil and Criminal Enforcement of the U.S. Securities Laws, *Remarks by Thomas C. Newkirk Associate Director, Division of Enforcement and Ira L. Brandriss Staff Attorney, Division of Enforcement U.S. Securities & Exchange Commission* 16th International Symposium on Economic Crime Jesus College, Cambridge, England, September 19, 1998, available at: [https://www.sec.gov/news/speech/speecharchive/1998/spch222.htm#FOOTNOTE 395139.htm](https://www.sec.gov/news/speech/speecharchive/1998/spch222.htm#FOOTNOTE_395139.htm)].

International Cooperation:

International Organization of Securities Commissions Multilateral Memorandum of Understanding, overview at <https://www.iosco.org/about/?subsection=mmou>

and overview of the Enhanced MMOU at:
<https://www.iosco.org/about/?subsection=emmou>

Optional:

Transparency International: Exporting Corruption - Progress Report 2020: Assessing Enforcement of the OECD Anti-Bribery Convention, https://images.transparencycdn.org/images/2020_Report_ExportingCorruptionFull_English.pdf. Read Executive Summary, pp. 6-10, then read and compare the reports on Turkey and the United Kingdom, pp. 116-120.

Objectives: Securities fraud, including accounting fraud, foreign corrupt payments, insider trading and market manipulation, destroys confidence in capital markets and impairs the market's ability to finance economic growth and development. This session will identify the primary securities frauds and how the perpetrators attempt to conceal their activity and proceeds. The session will also present a number of solutions for addressing securities fraud.

The session will include a focus on the American FCPA, the grandfather of foreign bribery statutes. The FCPA 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 the TI OECD report listed as an optional reading.

Hour 3: People Power – Shaazka Beyerle (Senior Fellow, Terrorism, Transnational Crime and Corruption Center, Schar School of Government and Policy, George Mason University)

Materials: [What's Next](https://summit4democracy.org/whats-next-for-the-s4d-translating-high-level-talk-to-grassroots-action/) for the Summit for Democracy: Translating High-Level Talk to Grassroots Action, Summit for Democracy, Lewanika, Beyerle (23 December 2021), <https://summit4democracy.org/whats-next-for-the-s4d-translating-high-level-talk-to-grassroots-action/>

Overcoming Hurdles to Citizen Activism for Fiscal Governance, Beyerle, O'Regan(2019), <https://www.transparency-initiative.org/blog/4880/fiscal-futures-overcominghurdles-to-citizen-activism-for-fiscal-governance/>

How Romanian People Power Took on Mining and Corruption, Beyerle and Olteanu (17 November 2016), <https://foreignpolicy.com/2016/11/17/how-romanian-people-power-took-on-mining-and-corruption-rosia-montana/>

Objectives: Review the power of civil resistance and how bottom-up campaigns and civic initiatives impact corruption, improve accountability and support integrity champions.

XI. Thursday, March 30, 2023

Hour 1: Funding Terrorist & WMD Operations; Corruption & National Security – ZSB

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>

FATF Guidance on Counter Proliferation Financing, pp. 3-5, <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Countering-Proliferation-Financing.pdf>

US Treasury Report: National Proliferation Financing Risk Assessment (2018), pp. 9-24, 32-35, https://home.treasury.gov/system/files/136/2018npfra_12_18.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 and WMD proliferation. WMD proliferation and proliferation financing are both global phenomena that occur across international borders, utilize multiple entities and individuals from different countries, and seek to exploit gaps in international and national frameworks designed to prevent such activity.

As for terrorism, the direct costs of each attack 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 (LookingGlass Cyber Solutions)

Materials: 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>

European Terrorist Lists - 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>

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. 7-12,
<https://www.icj.org/wp-content/uploads/2014/10/CoE-Human-rights-and-fight-against-terrorism.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.

XII. Thursday, April 6, 2023

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

Materials: Politically Exposed Persons (World Bank, 2010), pp. xiii-xv and 3-8,
<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, <https://www.hsgac.senate.gov/imo/media/doc/FOREIGNCORRUPTIONREPORTFINAL710.pdf>

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: Civil Actions against Terrorist Financing: Alien Tort Statute; Anti-Terrorism Act –JDS

Materials: 18 U.S.C. 2331, 2333-2338, 2339A, 2339B and 2339C

JASTA Congressional Findings, <https://www.congress.gov/114/plaws/publ222/PLAW-114publ222.pdf>

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, 882 F. 3d 314 (2d Cir. 2018), read all except Part I of the Discussion (Jurisdiction).

Nestle USA, Inc. v. Doe, 593 U.S. (2021), https://www.supremecourt.gov/opinions/20pdf/19-416_i4dj.pdf

Kemper v. Deutsche Bank AG, 911 F. 3d 383 (7th Cir. 2018)

Optional:

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)

Linde Plaintiffs’ Statement Regarding Court of Appeals Technical Remand of Landmark Civil Victory in Linde v. Arab Bank, PLC Terror Financing Case, https://www.osenlaw.com/sites/default/files/uploaded/Counter-Terrorism/Arab_Bank/2-9-18_Arab_Bank_Judgment.PDF

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

National Security Archive, “Chiquita Papers Are Key Evidence in International Criminal Court Filing” (read first three paragraphs), <https://nsarchive.gwu.edu/briefing-book/colombia/2017-05-18/chiquita-papers-are-key-evidence-international-criminal-court>

Settlement reached in Chiquita case involving US deaths (2018),
<http://www.foxnews.com/us/2018/02/05/settlement-reached-in-chiquita-case-involving-us-deaths.html>

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.

XIII. Thursday, April 13, 2023

Class Evaluations (15 min.)

Hour 1: Victims of Torture and Suing Enablers (Aiders and Abettors) - TL

Materials:

Justice Against Sponsors of Terrorism Act (JASTA) 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)

July 24, 2014 - ATS- Cardona v. Chiquita Brands International, Inc. 760 F. 3d 1185 (11th Cir. 2014), cert. denied, 135 S. Ct. 1842 (2015)

June 2016 - In re CHIQUITA BRANDS INTERNATIONAL, INC. ALIEN TORT STATUTE AND SHAREHOLDER DERIVATIVE LITIGATION, 190 F.Supp.3d 1100^[1]_[SEP](USDC, S.D. Fla., 2016)

January 2018 - In re CHIQUITA BRANDS INTERNATIONAL, INC. ALIEN TORT STATUTE AND SHAREHOLDER DERIVATIVE LITIGATION, 284 F. Supp. 3d 1284, ^[1]_[SEP](USDC, S.D. Fla., 2018)

National Security Archive, “Chiquita Papers Are Key Evidence in International Criminal Court Filing” (read first three paragraphs), <https://nsarchive.gwu.edu/briefing-book/colombia/2017-05-18/chiquita-papers-are-key-evidence-international-criminal-court>

Objectives: The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) became effective in 1987 and established requirements for each State Party to criminalize acts of torture and to ensure that their legal system also provides redress through civil procedures. The Torture Victim Protection Act (TVPA), which amended existing US law, was passed to be in compliance with these international

requirements. Courts have analyzed the theories of secondary liability that may apply under TVPA, but the issue of suing aiders and abettors became more clear in 2016 with the passage of the Justice Against Sponsors of Terrorism Act (JASTA).

Hour 2: Foreign Sovereign Immunities Act; Actions Against State Actors and Organizations Supporting Terrorism - ZSB

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

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

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

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

In re Terrorist Attacks on September 11, 2001, 298 F. Supp. 3d, (S.D.N.Y. 3/28/18), Saudi Arabia/FSIA, Read Section on Motions to Dismiss, pp. 641- end.

Global Magnitsky Human Rights Accountability Act (2016), 22 USC 2656, read section 1263

Department of Treasury Enforcement Release, OFAC Settles with Bittrex, October 11, 2022.

Objectives: Civil actions against state actors and sponsors of terrorism are possible only if there is an applicable exception to the doctrine of sovereign immunity. Such exceptions can be found in “jus cogens” norms of international law and conduct and a patchwork of statutory exceptions, most importantly the Foreign Sovereign Immunities Act. Resolution of these kinds of cases often requires deft judicial interpretations, including by the Supreme Court. The mechanisms for recovery will be explored, including prospects for recovery of judgments.

The U.S. Government is also increasingly relying on sanctions programs to deprive terrorists and corrupt actors, whether states, entities or individuals, of the resources to finance their operations. We will explore the use and effectiveness of sanctions, particularly the Magnitsky sanctions, in the fight against terrorism and corruption.

Hour 3: Final Review - JDS

Materials: No reading assignments.

Objectives: General summary, review of major themes and preparation for Final Exam.

APRIL 24 – MAY 3, 2023: 10-DAY PERIOD FOR WRITING TAKE-HOME FINAL EXAMINATION.