SYLLABUS [Posted]
Updated June 6, 2016
WHITE COLLAR CRIME
SUMMER 2016
Georgetown University Law Center

Professor: Kathleen McGovern
Location: McDonough 160
Class Days: Tuesdays, 6:00-9:20 p.m.

General Information:

Course objectives and expectations: This course is designed to provide students with an understanding of the elements and practical issues faced in complex white collar criminal investigations and prosecutions, with a particular focus on criminal securities fraud matters. Recent federal criminal prosecution trends and issues will be examined and applied to specific cases. Students will understand the relationship between the Department of Justice and the SEC in conducting parallel criminal and civil investigations, as well as particular issues arising from international investigations and the prosecution of business organizations.

Grading and Final Exam:

Your grade for the course will be based on attendance, class participation and a final exam. The final exam will be a multiple choice, take-home, open-book exam. The exam period will run from July 25 through August 5, 2016.

Readings: Assigned reading will be available on CANVAS for this course. I may make additional materials available on CANVAS, drawn from current developments in our area of study. Please check CANVAS regularly for additional materials.

Class Participation: The classroom setting for this course will be interactive. Participants are encouraged to raise issues and questions on topic during class sessions relate to the course concepts.

Contact information:
I. Class 1: The Basics/Building Blocks  May 31, 2016

- Overview of Basic Concepts in White Collar Crime
- Common Examples of White Collar Crime (Securities, Wire and Mail Fraud, etc.)
- What Makes a White Collar Crime Investigation Complex?
- Timeline of a White Collar investigation
- Common Themes, Trends and Recurring Issues

Assigned Reading:

1. *United States v. Bonds*, 784 F.3d 582 (9th Cir. 2015)

II. Class 2: Investigating a White Collar Matter  June 7, 2016

- General Considerations
- Investigative Tools
- Grand Jury (FED. R. CRIM. P. 6)
- Immunity
- Criminal v. Civil investigations
- Conducting Parallel Investigations

Assigned Reading:

1. United States Attorney’s Manual (USAM) 9-11.000 (Grand Jury); 9-23.000 (Witness Immunity)
2. Criminal Resource Manual 716-728
3. *United States v. Rajaratnam*, 719 F.3d 139 (2d Cir. 2013), cert. denied, ___ U.S. ___, 134 S. Ct. 2820 (2014) [Keynotes 1-16 (generally); 11-16 (specifically)]
5. *United States v. Stringer*, 535 F.3d 929 (9th Cir. 2008) [Keynotes 1-7]

III. Class 3: Discovery and Other Issues In White Collar Investigations  June 14, 2016

- Discovery- *Brady* and *Giglio* Obligations, Rule 16
- Dealing with Cooperators
- Conflicts and Multiple Representations
- Privileges (AC, work product)
- 5A right against self-incrimination
• Common Defenses in White Collar cases

Assigned Reading:

(1)  *Brady v. Maryland*, 373 U.S. 83 (1963)
(2)  *Giglio v. United States*, 405 U.S. 150 (1972)
(4)  *United States v. Mahaffy*, 693 F3d 113 (2d Cir. 2012)

IV. **Class 4: Charging Decisions for Conviction**    June 21, 2016 [guest lecture]

• Charging Considerations [healthcare fraud case study]
• Securities Fraud (insider trading)
• Aiding and Abetting Liability
• Conspiracy
  o Types of Conspiracies (Overt Act vs. Non-Overt Act)
  o Conspiracy Liability (*Pinkerton*)
  o Common Conspiracy Defenses
• “Cover Up” Charges

Assigned Reading:

(1)  18 USC §§ 2, 371, 1341, 1343, 1344, 1346-9
(2)  *Pinkerton v. United States*, 328 U.S. 640 (1946)
(6)  *United States v. Salman*, 792 F.3d 1087 (9th Cir. 2015), *cert. granted*, 136 S. Ct. 899 (Jan. 19, 2016)
(7)  *United States v. Bonds*, 784 F.3d 582 (9th Cir. 2015)

V. **Class 5: Prosecuting Business Organizations**    June 28, 2016 [guest lecture]

• Investigating Business Organizations
• Internal Investigations
• Principles of Prosecution of Business Organizations
• Privilege Issues related to companies [A/C, Attorney Work product, 5A]
• Evaluating Cooperation [JDAs, Indemnification]
• Compliance and remediation
• Resolutions (monetary penalties, monitors, court approval of DPAs)
• Effects of Corporate Resolution on Charging Individuals
• Current Trends in Corporate Enforcement

**Assigned Reading:**

1. *In re Kellogg, Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014)
4. USAM 9-28.000 (Principles of Federal Prosecution of Business Organizations)
5. Individual Accountability for Corporate Wrongdoing (“Yates memo”), September 9, 2015
6. DPA/NPA e.g. from FX/LIBOR
7. Fraud Section’s FCPA Enforcement Plan and Guidance (“FCPA Pilot Program”), April 5, 2016

**VI. Class 6: International Investigations**

- Foreign Corrupt Practices Act
  - Scope
  - Elements
  - Anti-Bribery Violations
  - “Books and Records” Violations
    - *Esquenazi* case study
- Extraterritorial Application of U.S. Securities and Commodities Laws
- Obtaining Evidence Overseas- MLATs and Extradition
- Coordinating Investigations with Foreign Law Enforcement and Regulators
- Compelled Testimony and *Kastigar*

**Assigned Reading:**

1. 15 U.S.C. §§ 78dd-1, 78dd-2, and 78dd-3, 78m(b)
2. USAM 9-47.000, et seq.
3. *United States v. Esquenazi*, 752 F.3d 912 (11th Cir. 2014)
5. Alstom, S.A. Information, Plea agreement and press release
6. *United States v. Duperval*, 777 F.3d 1324 (11th Cir. 2015)

**VII. Class 7: Lessons Learned from Significant Fraud Trials**

- What Can Go Wrong at Trial and How to Avoid It
- Sentencing
**Assigned Reading:**


(2)  *Schuelke Report* excerpt

**VIII. Class 8: Current Trends, DOJ Policies/Course Review and Questions**  July 19, 2016

- Current White Collar Crime Trends (Fx, Spoofing)
- DOJ’s Enforcement Priorities
  - Individual Accountability
  - DOJ Pilot Program
  - DOJ Compliance Counsel
- Course Review and Questions

**Assigned Reading:**


(2)  Yates memo

(3)  DOJ Pilot Program memo