

International Money Laundering, Corruption and Terrorism
Course # 6521
Spring 2013
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 corruption, money-laundering and terrorism. These laws are widely recognized as essential to the stability and security of civilized societies.

Despite an estimated trillion dollars in foreign aid over the past 60 years, a 2003 UN report found that during the 1990s, a period in which people were relatively euphoric about global progress, "54 countries actually got poorer." The single most significant factor contributing to this continuing debacle is corruption.

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 the criminal or terrorist network.

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

II. Logistics

When: We meet Thursdays from 6:00 p.m. to 8:00 p.m.; alternate Fridays from 6:00 p.m. to 8:00 p.m. (1/18, 2/1, 2/15, 3/1, 3/22, and 4/5; and Wednesday 4/17/2013 from 6:00 to 8:00 p.m. We will not have class during the week of March 4 - 8, 2013--Spring Break.

Where: LL 102

III. Materials

As much as possible, course materials will be available online. There is no single book that adequately addresses these issues, and using documents prepared by international organizations and national governments familiarizes students with researching those tools. As a back-up, most of the materials will be provided to students in a downloadable folder.

Five weeks of the course will be partly 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 over 50 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.

IV. Evaluation: Thirty-five percent of the course grade will be based on a paper which organizes the evidence from the Simulated Case Exercise in a format useful for attorneys in preparation for trial. While students will work on the simulated case exercise in 4 or 5 person teams, the evidence summaries will be individual efforts submitted three weeks after the conclusion of the Simulated Case Exercise. 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.

V. 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.

VI. Policies:

- **Academic Integrity Code:** Students must strictly adhere to the GW Law School's Academic Integrity Code (*see* GW Law School Bulletin, pg. 60) 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, "Regular attendance at classes is required and is necessary for successful work. A

student who is shown by the instructor to be deficient in class attendance or participation will, after the instructor first attempts to communicate with the student, have a grade of No Credit entered on the record absent an excuse. No excuse for deficient attendance or participation will be granted except by the dean of students and then only for illness 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. 17 & 38).

- **Class Participation:** Students may be assigned to make short introductory presentations on issues or cases, usually with advance notice from the professors. Participation in 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 Disability Support Services (DSS) Office at: 202-994-8250 in the Marvin Center, Suite 242, to establish eligibility and the Office of Student Affairs at 202-994-8320 to coordinate reasonable accommodations. For additional information please refer to: <http://gwired.gwu.edu/dss/>. Remember, Law School examination protocol calls for anonymous grading and disclosure of disability to a professor has the potential to breach exam anonymity. Students may contact the Office of Student Affairs regarding registering with the DSS Office or eligibility to receive accommodations (e.g., note-taking assistance, adaptive technologies, etc.).
- **Recording of Classes:** This course will follow the Law School’s “Class Recording Policy,” available at the Student Affairs 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 Student Affairs Office.

Syllabus

I. Thursday, January 10: 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 XI (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, and 41-44, <http://siteresources.worldbank.org/NEWS/Resources/Star-rep-full.pdf>

Objectives: In this first session we 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. The international community is beginning to better understand how critical containing corruption is 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), the Financial Action Task Force and the European Union.

II. Thursday, January 17: The United Nations Convention against Corruption (UNCAC); Politically Exposed Persons (PEPs) and Their Enablers – JDS

Materials: United Nations convention against corruption, http://www.unodc.org/documents/treaties/UNCAC/publications/convention/08-50,026_E.pdf (preamble, articles 1, 6 (1), 8 (1) & (2), 14 (1) (a), 20, 23 (1), 31 (1), 40, 43 (1), 46 (1), (3) and (8), 52, 54 (1), 55 (1) and (6)

Politically Exposed Persons (World Bank, 2010), pp. xiii-xviii, http://www1.worldbank.org/finance/star_site/documents/PEPs/PEPs-E-book.pdf

Keeping Foreign Corruption Out of the United States: Four Case Histories, <http://www.financialtaskforce.org/wp-content/uploads/2010/02/Levin-report-on-US-facilitators-of-Africa-corruption-FOREIGN-CORRUPTION-REPORT-FINAL-as-of-2-2-10.pdf>, pages 1-7

Objectives: The UNCAC has been ratified by 164 countries and regional organizations. It has 71 articles containing numerous new and aggressive tools to combat corruption. We will examine how the UNCAC provisions and other measures can be used to combat corruption in any country, and the effectiveness of efforts to date. Special attention will be focused upon the effectiveness of regulatory requirements with regard to politically exposed persons. 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.

III. **Friday, January 18: Tax Havens, U.S. National Money Laundering Strategy and Money-laundering Typologies – JDS/TL**

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/>

2007 National Money Laundering Strategy, pp. v-vi, 16-71, http://www.fincen.gov/news_room/rp/nmls.html

Correspondent Banking, Bank Secrecy Act Anti-Money Laundering Examination Manual, http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_047.htm

Objectives: This class will discuss:

- The use of tax havens by corrupt officials to launder their ill-gotten gains and enjoy them without detection.
- The 2007 United States “Money-Laundering Threat Assessment” and how the United States law enforcement, regulatory agencies and financial institutions interface to confront money-laundering.
- Money-laundering schemes using banks and non-bank facilities (and the mechanisms utilized to detect them), focusing on correspondent accounts, money transmitters, Black Market Peso Exchange and Hawalas.

IV. Thursday, January 24, 2012: International Standards Relating to Money Laundering; Simulated Case Exercise Begins –TL

Materials: Council of Europe Moneyval evaluation report on Ukraine, [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2009\)4Rep-UKR3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2009)4Rep-UKR3_en.pdf), pp. 33 to 37 (recommendation 1)

United Nations Convention Against Corruption, article 23

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

Objectives: The international standards relating to the criminalization of money laundering will be examined. Country specific statutes will be compared to these standards and further examined in light of international mutual evaluation reports.

A simulated investigation will be initiated during this session and will continue through March 1. 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 over 50 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 work will be conducted in an automated environment using computer applications to perform much of the financial analysis. Each student will be provided software and all training materials to be used on their notebook computer. Students will utilize a basic Investigative File Inventory to organize the evidence.

V. Thursday, January 31: The Bank Secrecy Act and the Patriot Act; Simulated Case Exercise Continues -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: Examine the primary provisions of the Bank Secrecy Act 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 be examined. 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.

VI. Friday, February 1: Elements of Money Laundering Cases; Simulated Case Exercise Continues -TL

Materials: Participant's Folder:

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

Objectives: The elements of proof for a criminal money laundering case vary from country to country. However, the U.S. statutes are as comprehensive as any and therefore we will review them as a base line. 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 a money laundering statute; when should one money laundering statute be used over another?

The simulated case exercise will continue.

VII. Thursday, February 7: Overview of Money Laundering and Asset Forfeiture Cases; Simulated Case Exercise -Les Joseph/TL

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

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.

The investigation of the simulated case will continue. Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

VIII. Thursday, February 14: International Mutual Legal Assistance (MLA); Simulated Case Exercise – JDS/ 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.

The investigation in the simulated case will continue. Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

IX. Friday, February 15: Asset Recovery – International Standards; Simulated Case Exercise - TL

Materials: UNCAC, Articles 54, 55, 57

StAR NCB Good Practices Guide – pp. 21 and 22 including footnote 39, http://www1.worldbank.org/finance/star_site/documents/non-conviction/NCBGuideFinalEBook.pdf

StAR Asset Recovery Handbook, pp. 9 to 19, http://www1.worldbank.org/finance/star_site/documents/arhandbook/Asset-Recovery-Handbook.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 the UNCAC and other international instruments that address asset recovery. Processes used in Civil Law countries will also be examined and compared to Common Law jurisdictions.

The investigation of the simulated case will continue. Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

X. Thursday, February 21: U.S. Strategies to Prosecute Domestic Corruption; Simulated Case Exercise -Jack Smith (DOJ)/TL

Materials: United States Internal Revenue Service - Examples of Public Corruption Investigations - Fiscal Year 2012,
<http://www.irs.gov/uac/Examples-of-Public-Corruption-Investigations-Fiscal-Year-2012>

Sample Corruption Indictment: Charles Costanzo,
<http://www.scrantontimestribune.com/projects/costanzo2.pdf>;

U.S. v. Jack Abramoff – Information, <http://www.c-span.org/pdf/abramoff010306.pdf>

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)
<https://bulk.resource.org/courts.gov/c/F3/342/342.F3d.1010.02-50377.html>

Jefferson County (largest municipal bankruptcy in US history): U.S. v. McNair, 605 F. 3d 1152, (11th Cir. 2010), cert. denied, 131 S. Ct. 1599 (2011),
<http://docs.justia.com/cases/federal/appellate-courts/ca11/07-11476/200711476-2011-02-28.pdf?1301266219>, pp. 1-3, 119-134.

Objectives: In addition to the FCPA (discussed March 22) 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. Victim's rights and the role of restitution will also be discussed.

The investigation of the simulated case will continue. Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

XI. Thursday, February 28: Basic Procedural Options for Forfeiture in the United States; Simulated Case Exercise - TL

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.

The investigation of the simulated case will continue. Each team will independently follow leads to gather evidence of criminal violations and to trace corruptly acquired assets.

XII. Friday, March 1: 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 19, 2013**. Each student (not each group) will prepare this 8 to 12 page 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;
- discussion 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.

XIII. Thursday, March 14: Money Laundering and Asset Forfeiture Cases Continued; Bank Secrecy Act Cases; Sanctions for Failure to Comply with Anti-Money Laundering Requirements - Les Joseph

Materials: FINCEN Overview,
http://www.fincen.gov/news_room/rp/files/Sections_3.pdf

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>

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

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: Continuation of the February 16 lecture. This session focuses upon examples of witting and unwitting failures of bankers to halt money laundering in their institutions, and the sanctions levied upon them.

XIV. Thursday, March 21: International Asset Recovery Actions and Political Will – JDS

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

Tommy Suharto/Garnet Investments,
<http://guernseyfiu.gov.gg/article/6001/Judicial-Review>

Obiang, pages 1-17,
<http://egjustice.org/sites/default/files/DOJ%20Forfeiture%20Complaint%20-%20House%20+%20Car.pdf>

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. The primary options available for recovering assets will be introduced and examples of both successful and unsuccessful recovery cases will be reviewed. Students will be assigned cases to present.

XV. Friday, March 22: Foreign Corrupt Practices Act of 1977 (FCPA); 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - Brian Privor

Materials: Foreign Corrupt Practices Act of 1977 (FCPA), 15 U.S.C. §§ 78dd-1, et seq (only sections a-c),
http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00000078--dd001-.html

Department of Justice Lay-Person's Guide to the FCPA,
<http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf>

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.pbs.org/frontlineworld/stories/bribe/2009/02/at-siemens-bribery-was-just-a-line-item.html>;

SEC v. Halliburton, <http://www.sec.gov/news/press/2009/2009-23.htm>

1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Preamble and Articles 1-12),
<http://www.oecd.org/dataoecd/4/18/38028044.pdf>

Transparency International 2012 Corruption Perceptions Report,
<http://www.transparency.org/cpi2012/results>

Transparency International Progress Report 2012: Enforcement of the OECD Anti-Bribery Convention, pp. 4-9, 35-38, and 42.
http://www.transparency.org/whatwedo/pub/exporting_corruption_country_enforcement_of_the_oecd_anti_bribery_conventio

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 four countries: Switzerland, Turkey, UK and United States. Notable cases include the Oil for Food Scandal, BAE Al Yamamah, Siemens, Halliburton and Wal-Mart.

XVI. Thursday, March 28: Terrorists Lists; Criminal Prosecution of Terrorist Financing Cases; Preservation of Human Rights in the Combat against Terrorist Financing -Elizabeth Shapiro

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>

Countering Terrorist Financing: Progress and Priorities (DOJ congressional testimony, 9/21/11), <http://www.justice.gov/nsd/opa/pr/testimony/2011/nsd-testimony-110921.html>

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,
[http://www.coe.int/T/E/Human_rights/h-inf\(2002\)8eng.pdf](http://www.coe.int/T/E/Human_rights/h-inf(2002)8eng.pdf)

Holy Land Foundation: FBI summary,
<http://dallas.fbi.gov/dojpressrel/pressrel09/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 Administration 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 Treasury)
 - 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.

XVII. Thursday, April 4: The FATF Forty Recommendations - Larissa Gray

Materials: Financial Action Task Force (FATF) Report on Terrorist Financing (2008), pp. 4-20,
<http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Terrorist%20Financing%20Typologies%20Report.pdf>

FATF Report on Global Money Laundering & Terrorist Financing Threat Assessment (2010), pp. 7-10,
<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),
[http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20\(approved%20February%202012\)%20reprint%20May%202012%20web%20version.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20(approved%20February%202012)%20reprint%20May%202012%20web%20version.pdf)

Objectives: While the direct costs of putting individual terrorist attacks are relatively low (the 2002 Bali bombings cost \$50,000), 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 largely through fundraising efforts worldwide, including witting and unwitting contributions from mosques, nongovernmental organizations, wealthy donors and charitable foundations. Attacking funding networks involved in the chain of terrorist financing can debilitate terrorist operations.

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.

XVIII. Friday, April 5: Civil Actions against Terrorist Financing: Alien Tort Claims Act; Anti-Terrorism Act -JDS

Materials: *Almog v. Arab Bank, PLC*, 471 F. Supp. 2d 257 (E.D.N.Y. 2007)

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

Objectives: Review causes of action against terrorism available 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.

XIX. Thursday, April 11: Civil Actions against Terrorist Financing (continued); Foreign Sovereign Immunities Act; Actions filed directly against Terrorist Organizations and Corporations supporting Terrorism - JDS

Materials:

Boim v. Holy Land Foundation, 549 F.3d 685 (7th Cir. 2008), cert. denied, 130 S. Ct. 458 (2009)

FSIA, 28 USC 1602-1607

Samantar v. Yousuf, 130 S. Ct. 2278 (2010)

Donald v. United Klans of America, No. 84-0725 (S.D. Ala. Feb.12, 1987),
http://www.splcenter.org/pdf/dynamic/legal/beulahvunklan_judgment.pdf

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., 792 F. Supp. 2d 1301,
(S.D. Fla., 2011)

Objectives: 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 30 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 public or private company makes any payment to a foreign terrorist organization, whether under duress or not, it may expose itself to liability under 18 USC 2333.

XX. Wednesday, April 17: Final Review - JDS

Materials: No reading assignments.

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

XXI. April 22 to May 3: Exam Period