

**MASSACHUSETTS SCHOOL OF LAW at ANDOVER**

**BUSINESS CRIMES**

**SYLLABUS FALL 2023**

**Professor Shane Rodriguez**

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**Webpage:** [**http://www.mslaw.edu/white-collar-crimes/**](http://www.mslaw.edu/white-collar-crimes/)

**TWEN:** [**www.lawschool.westlaw.com**](http://www.lawschool.westlaw.com)

**Text(s)**: ***Federal White-Collar Crime***, **Cases and Materials**, West Academic Publishing Eighth Edition. Julie R. O’Sullivan.

 ISBN: 9781636593852

**What is**

**Corporate**

**Crime:** Corporate crime is crime committed within the context of business organizations, whether they are corporations or other forms of private legal entity, and whether they are operated for profit or for other purposes. This is, if you like, “organizational” crime— though the field is not concerned with “organized crime” and other illicit enterprises, or with crime committed within military structures or principally concerning the malfeasance of public officials. The crimes at issue are almost always “white collar,” though many white-collar crimes are committed by individuals operating outside business organizations and thus are not corporate crimes. Corporate crime is, very roughly speaking, crime committed on the job in the private sector, and it can lead to the criminal prosecution of both individuals and organizations.

**Course**

**Description:** This three-credit course serves as an introduction to the field of corporate crime, which now covers a large and very busy realm of government and law firm practice. The course will give students a first exposure to: (1) the contemporary practice in federal government agencies and medium to large corporate law firms of investigating, sanctioning, and representing corporations and their managers and employees involved in potential criminal violations (and certain civil analogues); and (2) the debate in the public policy realm over whether, why, and how the criminal law should be applied to both individuals and firms in the corporate and business contexts.

This field is large, complex, and developing rapidly. An introductory course can cover only a selection of topics. This course will emphasize policy and the need to confront gaps and uncertainty in doctrine. As there is no unitary body of black letter law in this field, this is not that kind of course. The course is designed around a field of practice that requires attorneys to be familiar with matters of substantive criminal law, criminal procedure, evidence, attorney ethics, civil regulation, and corporate law. The field deals in complex fact patterns involving financial matters. So, this course is designed primarily to get students’ feet wet in each of these areas, remove some of the fear factor, and provide a framework for thinking and learning about problems in this area that will make the field more accessible over the course of a legal career.

**Day/Time: Tuesday/Thursday 7:30pm to 8:50pm**

**Grading** The midterm and the final examinations combine to determine your grade in this class. You are ***expected to participate*** ***in all class discussions***. I reserve the right at any time during the semester to modify and/or change the course grading.

 **Lack of attendance and/or class participation has the potential to impact negatively on the semester grade**.

**Course Requirements & Class Participation**

This syllabus sets the policies, goals, rules, and expectations for the course. *Please read this syllabus carefully prior to the first class.* I expect you to understand the class rules and class expectations when you arrive for the first class; I will not restate the contents of this syllabus in the first class. I will not answer questions about class rules and policies that are already stated in this syllabus.

**GOALS AND OBJECTIVES (“LEARNING OUTCOMES”) OF THE COURSE**

This is an introductory course in business (white collar) crimes. Successful students will master the complicated structure and functions of the doctrines, legal methods, legal reasoning, and legal analysis employed by lawyers when practicing “federal white-collar business crimes,” the process by which our American legal system protects individual and corporate rights. It is expected that students achieving a grade of “C” or better will have mastered the law and legal processes sufficiently to pass this course. It is also expected that successful students will achieve an understanding of the fundaments of business crimes that is sufficient to enable them to take the first steps to practice corporate or white-collar crimes upon graduation from the Massachusetts School of Law. Students who fail to master this course will receive a grade below that of “C.”

Merely learning the material to “get by” is unacceptable in this, or any other, law school class. Competent attorneys do not merely “get by;” they conscientiously and ethically root out ways to provide the highest possible level of client representation. Unsophisticated clients deserve to expect that their attorneys are knowledgeable, sophisticated, and diligent; indeed, that is why they hire them. If you want to become a lawyer, you must commit yourself to learning *all* the applicable rules of law, inside and out, and to learn how to apply those rules of law to a variety of fact patterns (this is called analysis). Because society demands much of lawyers, I will demand much of you.

**CLASS ATTENDANCE:**

**I CALL ON STUDENTS RANDOMLY, AND YOU ARE EXPECTED TO BE PREPARED FOR EVERY CLASS.** Students must come to class prepared to brief cases and for class discussion. You are expected to be in class and to participate. Individuals who have more than **three** unexcused absences during the semester may have their semester grade lowered by as much as one-third of a grade.

Attendance is taken at the beginning of every class. You will be marked absent if you are not present when attendance is taken. Lack of attendance and participation will impact your overall course grade.

Because the classes are intended to be highly interactive, the listed anticipated due dates are to be considered aspirational. At times, especially at the beginning of the semester, we may fall behind of the anticipated due dates; it is also possible that we will move more quickly at times than anticipated. You therefore should continuously match those dates to what we have actually completed in class. Please be prepared for every class by staying slightly ahead of the anticipated due dates and by adjusting and readjusting as the semester progresses.

If you have read ahead substantially, we expect you to review what you have already ready just before class. It is no excuse to state, “I read the case too long ago to remember it.” Lawyers often write briefs months before they argue in court and, like you, are expected to know the material when they are called on to discuss the legal issues.

**NOTES And TAPE RECORDERS In CLASS**

I follow the syllabus and I test what I teach. Do all of the assigned readings and attend class and you will be prepared for the exams. It is necessary that you develop an effective method of recording and retaining the materials as they are taught and discussed. Because classes are interactive it is not advisable to take copious notes. Research strongly indicates that students who attempt to use word processers to “transcribe” class discussions perform less well on exams than do those students who actively participate in class.

Use of tape/digital recorders are allowed in this class and may be preferable for you. Since the classes are interactive and it is not always possible to take copious notes on every point, we recommend the use of tape/digital recorders in class. A recorder should assist in rounding out, or filling gaps in, notes. It also can serve as a “safety net” in a fast-paced class.

Some students take notes on a laptops or netbook, and this is fine. One caveat, however: we sometimes notice that students are more consumed with typing out what is said in class word-for-word than with listening and participating. The purpose of class is not for you to be a scribe; it is for you to develop analytical skills, and this cannot be achieved if you are single-mindedly typing. You will always be able to supplement the law we discuss in class with outside reading.

**CLASSROOM DECORUM**

All students are expected at all times to conduct themselves in a civil manner as follows:

1. Timeliness. Please arrive on time. Late arrivals are disruptive to the class. Tardiness should still be the exception rather than the rule. I often take attendance at the beginning of the class. Late students will be marked absent, and I will not change this designation if you come in later. MIf tardiness becomes an issue, i.e., if it starts to cause disruptions, I will impose a hard-and-fast rule that those arriving late will not be allowed into the classroom.

2. Stand, Name, Project. When you speak in class, whether it’s while volunteering or after being called on, please stand, state your first name, face the rest of the class (not me), and project your voice so as to be heard. Please do this for the entire semester. Speaking in public is uncomfortable at first, but even those of you who intend to practice transactional law as opposed to litigation must realize that the practice of law is a performance art as well as an intellectual endeavor.

3. Cell Phones and Messaging. *Except for class purposes*, there will be *no cell phone use in class.* I reserve the right to instruct students to leave the class immediately if they engage in text messaging, instant messaging, social media, or other forms of electronic communication during class, and will do so if this issue becomes a problem. If you refuse an instruction to leave, I will report you to the administration for discipline.

4. Laptop Computers. While I believe that laptop computers are an invaluable classroom tool, lately their use sometimes has become troublesome in several ways. Like cell phones, they beep and make noises when starting up. Please arrive early enough to start your laptop prior to class so the start-up noises will not be disruptive. If you cannot set up your laptop prior to class, please ensure that it is on mute and will not be disruptive.

5. It is never appropriate to use computers to play computer games, send and receive instant messages, surf the net, or perform other computer functions not related to the task at hand. I wander around the room a bit while teaching and will probably catch at least some of such off-focus activity if it occurs.

6. With limited exceptions, attorneys are not permitted to use their laptops, tabs, or other electronic devices while arguing or trying cases in court. The same will be true in my class. When you end up standing to present a case or answer questions framed by the professor, *you are to close your laptops and put down other devices*. Your focus will be on the professor and other students. If you feel that you are unable to remember all you have gleaned from your reading, you may refer to paper notes.

7. Talking in Class. This will be an interactive class, and it is normal for there to be a bit of a “buzz” while we are discussing a case or “hypothetical.” I do not usually get upset if the class is analyzing a hypothetical, and some students do a little “kibitzing” in the process. However, I still expect you to listen while others are talking so you can respond if called upon, and, most importantly, to respect others by not talking over them. I will not tolerate talking that doesn’t involve the subject matter at hand.

8. Eating/Drinking in Class. I generally do not approve of anything that might divert your focus from the class discussion and eating and drinking in class certainly falls into that category. On the other hand, I do understand that stressed-for-time students, especially evening students, often are unable to take meals at normal hours, and therefore need some sustenance to get them through. Generally, therefore, I tolerate small snacks and drinks during class. I will not tolerate full meals, full “submarine” sandwiches, or anything of the like. I also will not tolerate undue noise while eating, e.g., stubborn plastic wrappers, crunchy foods, etc. I will ban all foods and drinks in class if I think they are becoming a distraction.

9. Civility above All Else. There is often intellectual tension is a law school classroom especially with subjects like federal white collar business crimes, on which reasonable minds can differ. Students and professors can differ -- sometimes widely – in their views on morals, ethics, society, politics, and ways of life. It is my intention to treat each of you with the utmost courtesy and respect, even when we disagree. In turn, I expect that each of you will also treat each other with respect and courtesy. Passionate argument is terrific if kept civil and respectful. Remember: argue the issues, not the personalities!

***Class Assignments Topics:***

**Week 1**

**Class 1 Chapter 1**: **Course Introductions and Expectations**

 **Class 2 Chapter 4: Entity Liability**

 **Readings**:

**Entity Liability** Introduction pages: 152 - 152

**Section** **A.** Criminalizing Corporate Conduct **–** 152 - 163

**Section B.** Principles of Liability **–** 163 - 188

**Week *2***

 **Class 1 Chapter 4: Entity Liability**

**Readings**:

**Section** **C.** Department of Justice Charging Polices **–** 189 - 211

**Section** **D.** U.S. Sentencing Guidelines: Organizational Sentencing – 211-222

**Class 2****Chapter 4: Entity Liability**

 **Readings**:

**Section E**. Deferred Prosecution Agreements – 224 – 234

**Section F.** Corporate Internal Investigations - 234 – 244

**Section G.** Managerial Liability: “Responsibility Corporate Officer” Doctrine 244 – 259

**Week *3***

**Class 1 Chapter 5: Perjury, False Statements, and Claims**

 **Readings**:

**Statute Supp**: 18 U.S.C. §§ 1621, 1623, 1001

**Section** **A**. Perjury– 262 - 273

**Section B**. False Statements – 273 – 297

 **Class 2** **Chapter 6: Obstruction of Justice**

 **Readings**:

**Statute Supp**: 18 U.S.C. §1503

**Introduction** Pages: 332 – 334

**Section A.** The “Omnibus” Clause of 18 U.S.C. §1503 – 334 - 358

**Section B.** Obstruction of Proceedings Before Congress and Federal Agencies under 18 U.S.C. §1505 – 358 – 361

***Week 4***

**Class 1 Chapter 6: Obstruction of Justice**

 **Readings**:

**Section C.** Witness Tampering Under 18 U.S.C. §1512 – 361– 376

**Section D**. Sarbanes-Oxley Act of 2002 Prohibition of Destruction of Records and Whistleblower Provisions – 376 - 403

 **Class 2** **Chapter 7: Mail and Wire Fraud**

 **Readings**:

**Statute Supp**: 18 U.S.C. §§ 1341, 1343,

**Mail & Wire Fraud** Pages: 403 - 405

**Section** **A**. The Mailing or Wiring in Furtherance Element – pages: 405 - 415

**Section B**. 1. Scheme to Defraud Element– 415 – 426

2.Intent to Defraud: Intent to Injure? 426 - 431

3.Varieties of Fraud– 431 – 437

***Week 5***

**Class 1 Chapter 7: Mail and Wire Fraud**

 **Readings**:

**Section C**.Permissible Objects of a Scheme to Defraud **–** 437 - 438

**1.****Property** 438 – 447

**2. Intangible Property** 447 – 460

**3. “Honest Services”: Section 1346** 460 – 480

 **Class 2** **Chapter 7: Mail and Wire Fraud**

 **Readings**:

 McDonnell v. United States – 480 – 490

***Week 6***

 **Class 1 Chapter 8: Public Corruption**

 **Readings**:

**Section A** Federal Bribery and Gratuities Under § 201 – 492 – 514

**Section B** Extortion Under Color of Official Right § 1951 (The Hobbs Act) – 514 – 533

**Section C** Federal Program Bribery, Theft, and Fraud Under § 666 –533- 545

 **Class 2 Chapter 9: Securities Fraud**

 **Readings**:

**Section A** Rationale for Insider Trading Prohibition – Donald C. Langavoort: Trading: Regulation, Enforcement, and Prevention § 1:2 to 1:6, at 1-8 to 1-17 (West 2002) – 583– 589

**Section B** Traditional Theory – 589 – 594

**Section C** Misappropriation Theory – 594 – 607

***Week 7***

**Class 1 Chapter 9: Securities Fraud**

 **Readings**:

**Section D** Tipper/Tippee Theory – 607 – 616

**Section E** Securities Fraud Under 18 U.S.C. § 1348 – 616 – 619

**Section F** Accounting Fraud – 619 – 640

 **class 2 Chapter 9: Securities Fraud**

 **Readings**:

**Section G** Dodd-Frank Whistleblower Program – 640 – 648

***Week 8***

**Class 1 Mid-term Exam**

**Class 2 Chapter 10: Conspiracy**

**Readings**:

Introduction – 648 - 649

**A.** Practical Consequences of a Conspiracy Charge – 649 – 653

**B.** Elements/Principles of Liability – 653 – 679

**C.** Aiding and Abetting – 679 - 684

***Week 9***

 **Class 1**

**Chapter 11: The Racketeer Influenced and Corrupt Organization Act (“RICO”)**

**Readings**:

 Introduction – 685 - 688

**Section A** Elements/Principles of Liability

1. **Enterprise See Next page**

United States v. Turkette – 688 – 694

Cedric Kushner Promotions, LTD. v. King – 694 – 701

 **Class 2 Chapter 11: The Racketeer Influenced and Corrupt Organization Act (“RICO”)**

**Readings**:

1. **Pattern of Racketeering**

**Activity**: H.J. INC. v. Northwestern Bell Tel. Co. – 701 – 707

1. **Conduct of Enterprise’s**

**Affairs:** Reves v. Ernst & Young – 708 – 713

1. **RICO Conspiracy**: United States v. Elliot – 714 – 721

Salinas v. United States – 722 – 723 (See Next Page)

**Section B** Prosecutorial Powers and Policies

1. Charging and Evidentiary Considerations
2. Criminal Forfeiture
3. DOJ Approval Requirements and Charging Directions

***Week 10***

 **Class 1 Chapter 12: Money Laundering**

 **Readings**:

**Section A** “Transaction” Offenses Under § 1956(a)(1) and § 1957 – 730 - 747

**Section B** “Transportation” Offenses Under § 1956(a)(2) – 747 - 759

**Section C** Non-Banking Systems: Challenges for Future – 759 – 776

**class 2 Chapter 13: Grand Jury**

 **Readings**:

**Section A** Grand Jury Function – 776 – 782

**Section B** Rules Controlling Grand Jury Operation: Fed. R. Crim. P. 6 – 782 - 789

***Week 11***

**class 1 Chapter 14: Discovery**

**Readings**:

Introduction **-** 816 - 817

**Section A** “Brady Material” – 816 – 817

 Brady v. Maryland – 818 – 818

 United States v. Bagley – 818 – 839

 United States v. Ruiz – 839 – 843

**Section B** Pretrial Discovery: Fed.R.Crim.P. 16 – 843 – 849

**class 2 Chapter 14: Discovery**

**Readings**:

**Section C** Jencks Act or “3500” Material: Witness Statements – 849 - 851

**Section D** Witness List **–** 851 – 852

**Section E** Trial Subpoenas: Fed.R.Crim.P.17 – 852 – 854

**Section F** Discovery Hypothetical 855 – 856

***Week 12***

**class 1 Chapter 15: Fifth Amendment: Testimony & Immunity**

 **Readings**:

**Section A** Formal Immunity Pursuant to § 18 U.S.C. §§ 6002-05

 Kastigar v. United States – 857 – 877

**Section B** Proffers – 877 – 882

 United States v. Valez – 882 -888

**Section C** Informal Immunity Agreements – 888 – 897

**Class 2 Chapter 17: The Attorney-Client Privilege and the Work Product Doctrine**

 **Readings**:

**Section A** Qualifying for Protection – 936 – 949

**Section B** Losing the Privilege: Waiver – 949 – 970

***Week 13***

 **Class 1 Chapter 17: The Attorney-Client Privilege and the Work Product Doctrine**

 **Readings**:

**Section C** DOJ’s “Compelled-Voluntary” Waiver Policy – 970 – 978

**Section D** Losing the Privilege: Crime/Fraud Exception – 978 – 985

**Section E** Privileges and Governmental Actors – 985 – 992

**Class 2 Chapter 19: Plea Bargaining and Cooperation Agreements**

 **Readings**:

**Section A** Plea Bargaining: Constitutional Standards – 1040 – 1064

**Section B** Fed. R. Crim. P. 11 and Guidelines Bargaining – 1064 – 1075

**Section C** Cooperation Agreements – 1075 – 1101

***Week 14***

 **Class 1 Chapter 19: Plea Bargaining and Cooperation Agreements**

 **Readings**:

**Section C** Cooperation Agreements – 1075 – 1101

**Class 2** Finish up any material / final exam prep

***Week 15***

**Class 1** Finish up any material / final exam prep

 **Class 2** Finish up any material / final exam prep

**READING WEEK December 5 – 11, 2023**

**FINAL EXAM TBD**