

**University of Southern California**  
**Department of Political Science**

**Political Science 452**

**WHITE COLLAR CRIME (Rev. 08/29/12)**

Fall 2012 – 6:30 p.m., Wednesdays, VKC 104

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Office Hours: Wed. 5:00 to 6:00 p.m.,  
VKC 231C (other times by appointment)  
(213) 740.7035

**Course Description:**

This class covers the consequences and enforcement efforts directed toward the emergence of White Collar Crime (“WCC”). Since the Watergate scandal in the early 1970’s, White Collar Crime has captured the nation’s attention, with high profile cases such as the Martha Stewart, Enron, and Bernard Madoff Ponzi scheme prosecutions, to name a few. The scope of the problem is vast, and the cost to society and our polity caused by WCC can be substantial. Efforts to combat this social affliction have captured the nation’s interest and generated substantial debate as to its nature, cause(s), and appropriate methods of enforcement. In this seminar we will examine various aspects of the criminal justice system involved with the investigation, prosecution, and defense of WCC cases. Major focal points will include substantive criminal laws that target WCC as well as the institutions, prosecutors, federal agencies and defense attorneys who specialize in handling (and defending) these cases. The class will be taught in the manner of a law school seminar, with emphasis on analysis of actual legal opinions and case law as well as discussion of legal and underlying philosophical issues.

The student will be expected to think and express herself critically about the issues and principles underlying important legal decisions and dilemmas, and to consider policy ramifications in taking and defending positions. Participation in class discussions will be expected.

**Course Requirements:**

Course Oral Presentation & Participation	33%
Research assignment/paper	66%

Beginning in late September, each student will be expected to make an oral presentation on a relevant topic for discussion in class. There will be no examinations. A significant paper/research project will be due on December 10, 2012 on some topic or controversy covered by the class.

**Required Reading:**

- Course Text – **White Collar Crime: Cases, Materials & Problems**, J. Kelly Strader and S. Jordan (LexisNexis, 2d<sup>th</sup> Ed. 2009 (“WCC”))
- Additional Course Readings will be posted and available through “pdf” postings on Blackboard each week.
- Additional materials may be assigned during the semester.

POSC 452 Class Schedule (Fall 2012 Schedule):

<u>Date</u>	<u>Topic</u>
August 29, 2012	<p><b><u>Class 1: Introduction.</u></b></p> <p>Introduction and overview of the course. What is “white collar crime” and why are substantial resources committed to battling it? Is White Collar Crime defined by the criminal or by the nature of the criminal act? Consider essential elements of such crimes: mens rea – required mental elements. Statutory interpretation in WCC Cases. The special problem of false statements prosecutions as a “surrogate offense” for underlying substantive criminal offenses. The Martha Stewart case and more recent false statement conviction of Hollywood director John McTiernan.</p> <p><b>Reading:</b> WCC Chap. 1, pp. 1 – 14; Readings: (1) <i>Martha Stewart Case</i> in “Tangled Webs: How False Statements Are Undermining America” excerpt from James B. Stewarts book (pdf excerpt); (2) <i>U.S. V. John McTiernan</i>, 9<sup>th</sup> Cir. Opinion, dated August 20, 2012 (pdf op.)</p>
September 5, 2012	<p><b><u>Class 2: Corporate (Entity) &amp; Individual Liability [Guest Lecturer WFF].</u></b></p> <p>Are corporations “people”? Mitt Romney thinks they are (apparently), so should such artificial entities be prosecuted to the full extent that humans are? What does it mean for a corporation to have a criminal intent? What is the basis/ policy rationale for prosecuting corporations? Responsible Corporate Officer doctrine and the collective knowledge doctrine. Principles of Corporate Prosecution (DOJ) and the rise of Deferred Prosecution Agreements. Defending the corporation when upper management has established “policies” against employees committing the offense – the “Beusch Doctrine”.</p> <p><b>Reading:</b> WCC: Chap. 2, pp. 15 - 50; Readings: (3) <i>U.S. v. Beusch</i>, 596 F.2d 871 (9<sup>th</sup> Cir. 1979)(pdf op.); (4) <i>White Collar Crime and the Construction Industry</i>, Excerpt of Article by G. B. Newhouse, pp. 593-595.</p>
September 12, 2012	<p><b><u>Class 3: The Overcriminalization of Criminal Law/ Civil v. Criminal Sanctions/Sentencing Guidelines.</u></b></p> <p>“Overcriminalization” describes the trend in America – and particularly in Congress – to use the criminal law to “solve” every problem, punish every mistake (instead of making appropriate use of civil penalties) or the use of less drastic social alternatives, to coerce Americans into conforming behavior to satisfy social engineering objectives. Criminal law is supposed to be used to redress only that conduct which society thinks deserving of the greatest punishment and moral sanction.</p> <p><b>Reading:</b> WCC: Chap. 19, pp. 613- 663; Readings: (5) “Principles for Revising the Criminal Code”, by Edwin Meese, Testimony before House Judiciary Comm., 12/13/11 (Heritage Foundation); (6) “As Criminal Laws Proliferate, More Are Ensnared”, WSJ reprint, by Gary Fields &amp; John Emshwiller</p>
September 19, 2012	<p><b><u>Class 4: Conspiracy – Heart of WCC [GBN].</u></b></p> <p>At or near the “heart” of white collar crime organizational criminal activities is the concept of <i>conspiracy</i>, a truly ubiquitous weapon in the war against White Collar Crime. As an inchoate crime, conspiracy has long been the “darling of the modern prosecutor’s nursery” and it remains so today. We examine the applications (and potential for abuse) of this useful sweeping criminal statute, including vicarious liability under <i>Pinkerton v. United States</i> and useful evidentiary implications of using conspiracy as the centerpiece to most white collar prosecutions. <b>Guest Speaker: XXXX</b></p>

**Reading:** WCC: Chap. 3, pp. 51-81;

Additional Reading: (7) “Law of Conspiracy: Conspiracy Prosecutions in Federal Cases”, G.B. Newhouse, DOJ Federal Practice Manual, 1993, pp. 1-17.

September 26,  
2012

**Class 5: Mail & Wire Fraud.**

Mail fraud is the classic example of a criminal statute which started modestly (to prevent the use of U.S. Mails to commit fraudulent schemes) but because of its flexibility and aggressive expansion by prosecutors (endorsed by courts), has metamorphosized into a ubiquitous tool in the federal prosecutor’s arsenal – indeed a rival to conspiracy in its frequency and efficacy in the war on crime. We will consider the vast variety of such schemes, including Ponzi schemes, as recently exemplified in the Madoff Ponzi Scheme.

**Reading:** WCC: Chap. 4, pp. 83-138;

**Readings:** (8)

October 3,  
2012

**Class 6: Mail Fraud On Steroids – Right to Honest Services, Corruption I.**

Federal fraud cases are not limited to common law garden variety fraud – but the mail fraud statutes have been used by aggressive federal prosecutors as useful tool to combat local corruption, despite the anti-federalist implications of same. We consider the McNally decision and progeny, including the Supreme Court’s 2011 decision in the Jeffrey Skilling (Enron) prosecution.

**Reading:** WCC: Chap. 4, pp. 90-125;

**Readings:** (9) *Jeffrey Skilling v. U.S.*, 130 S. Ct. 2896 (2010),

October 10,  
2012

**Class 7: Corruption II- Bribery, Gratuities & Extortion.** Traditional Federal Corruption Tools. Topics include: Bribery and corruption prosecution of federal offices and Hobbs Act and RICO prosecutions.

**Reading:** WCC: Chap. 7 & 8, pp. 221-273;

**Readings:** (10).

October 17,  
2012

**Class 8: Securities Fraud & Computer Crimes:**

Few commercial crimes have a bigger impact than the threat to free and open exchange of markets posed by corrupt traders of public securities (e.g., securities fraud) including disruption to the medium of today’s internet markets (and computer crimes). We will consider the recent emphasis on prosecuting, among other crimes, insider trading, and the impact of parallel civil proceedings brought by the SEC in the battle against securities fraud.

WCC: Chap. 5 & 6, pp. 139 - 220;

**Readings:** (11)

October 24,  
2012

**Class 9: False Statements & Perjury – the Rise of the Surrogate Offenses.**

Federal law enforcement officials frequently initiate an investigation based on a violation of substantive criminal law (anti-trust, securities or fraud) only to end up charging the defendant with ancillary white collar crimes that arose during the investigation – the “surrogate offenses.” False statements remain the weapon of choice when the main arsenal misfires – prosecuting a defendant for lying about the crime rather than the crime itself. History and utility of false statement prosecutions; rise and fall of the “Exculpatory No” Defense. Consider again, the Martha Stewart case, Scooter Libby and the ill fated Roger Clemmons prosecution. What harm, if any, is actually caused when a suspect lies to investigators?

**Reading:** WCC: Chap. 9 & 10; pp. 275-331;

Readings: (12) *U.S. v. Myers*, 878 F.2d 1142 (9<sup>th</sup> Cir. 1989);  
(13) *Brogan v. United States*, 522 U.S. 398 (1998) and the case against Ralph William Myers.

October 31,  
2012

**Class 10: Show Me the \$\$\$: Tax Crimes and Money Laundering Offenses.**

Since White Collar Crime is generally an economically driven offense, one efficient way of combating it is by “following the money” and seizing the proceeds of criminal activity. The powerful IRS; impact on specific intent crimes.

**Reading:** WCC: Chap. 12 & 13 ; pp. 357- 425;  
**Readings:** (14)

November 7,  
2012

**Class 11: Grand Jury Practice – The Immense Powers of Prosecutors.**

Contemporary prosecutors enjoy unparalleled tools in investigating and prosecuting white collar crime. We consider the scope and powers of the grand jury to gather documents, compel testimony of witnesses as well as irregularities and abuse of the grand jury. Grand jury secrecy? What is the purpose of Rule 6(e)?

**Reading:** WCC: Chap. 16 ; pp. 523- 549;  
**Readings:** (15)

November 14,  
2012

**Class 12: Defending White Collar Crimes: Internal Investigations & Etc.**

Ethical dilemmas posed by practitioners of the art of white collar criminal defense. Do WCC offenders get off easier (or more frequently) than common criminals? We consider the art of white collar criminal defense and the tools and limitations employed by defense counsel. Also consider the “internal investigation” by counsel for impacted corporations – determining when and how to investigate.

**Reading:** WCC: Chap. 15 & 17; pp. 497 – 522, 551 - 574;  
**Readings:** (16) Excerpt of “Defending White Collar Crime” by Kenneth Mann and Book review of same by Tom Glassberg.

November 28,  
2012

**Class 13: Sentencing White Collar Offenders:**

How should the white collar offender be treated upon conviction? Traditionally the WCC defendant fare relatively easily even after conviction. This lecture will discuss the changes made in the federal system with regard to sentencing and treatment of white collar offenders and the perceived need to get “tough on” white collar criminals like Bernard Madoff.

**Reading:** WCC: Chap. 19, pp. 613- 663;  
**Readings:** (17)

Dec. 5, 2012

**Class 14: Wrap Up: Forfeitures & Other Issues**

**Reading:** CJ: Chap. 20, pp. 665 – 708;  
**Readings:** (18)

**Paper due in Class (beginning of class period)**

**Important Note**

Any student requesting academic accommodations based on a disability is required to register with Disability Services and Programs (DSP) each semester. A letter of verification for approved accommodations can be obtained from DSP. Please be sure the letter is delivered to one of your instructors (or the TA) as early in the semester as possible. DSP is located in STU 301 and is open from 8:30 a.m. to 5:00 p.m. (Mon. – Fri.). Their phone is (213) 740-0076.