

Jody Wilson-Raybould and the Law of Secret Recordings

Presented by: Stephen Thiele
November 19, 2019



Welcome

DISPUTE RESOLUTION GROUP

- General introductory remarks about in-house CPD seminar
- Continuing Legal Education hours
- Two presentations
- Law of Secret Recordings, and Fraud and Risk Management

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2. Secret recordings and professionals
3. Secret recordings in the employment and labour law context

Jody Wilson-Raybould

The SNC-Lavalin Affair



Ability to make a secret recording

Canada is a one-consent country

- A person is allowed to make a secret under the *Criminal Code* exception
- The test:
 - (1) the person must be a participant to the conversation;
 - (2) the person themselves must consent to being recorded; and
 - (3) the person making the recording was actually intended to receive the communication.

Professional responsibility

- Ethical responsibility of lawyers
- Secret recording made by lawyer will breach code of conduct
- Section 7.2-3, Law Society of Ontario's Rules of Professional Conduct:

A lawyer shall not use any device to record a conversation between the lawyer and a client or another legal practitioner, even if lawful, *without first informing the other person of the intention to do so*

Disciplinary decisions

- *Birman v. The Law Society of Upper Canada*, 2005 CarswellOnt 10260
- *Nova Scotia Barristers Society v. Ayres*, 1998 NSBS 1

Employment and Labour Law

The debate between recording and not recording

- Contentious nature of the employment relationship between employee and employer or union and employer results in the creation of secret recordings
- Practice of secret recordings in the workplace environment should be discouraged
- A measure of “last resort”

Secret recordings can backfire

- Relationship between employers and employees is governed by duties of loyalty and good faith
- Privacy concerns
- *Hart v. Parrish & Heimbecker Ltd.*, 2017 MBQB 68
- *Frederickson v. Newtech Dental Laboratory*, 2015 BCCA 357

Admissibility in Labour Law

Two approaches

- Secret recordings tendered for evidence in collective bargaining grievances
- Relevance v. Reasonableness
- *Direct Energy Marketing Ltd. v. Unifor, Loc. 975*, 2014 CarswellOnt 210 (ON LA)
- *Jazz Aviation LP v. Canadian Airline Dispatchers' Assoc.*, 2014 CarswellNat 4240 (CALA)

Practical responses in the workplace

- Clear and concise workplace policies that prohibit the making of secret recordings
- Warning that secretly recording workplace conversations is just cause for termination (*Winn v. Costco Wholesale Canada Ltd.*, 2012 CarswellOnt 4904)
- Disclosure of recording devices in environments where recording devices are necessary
- Employers should have two people in the room



Questions?

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PRESENTATION TWO

The next presentation will begin shortly

Risk Management and Fraud

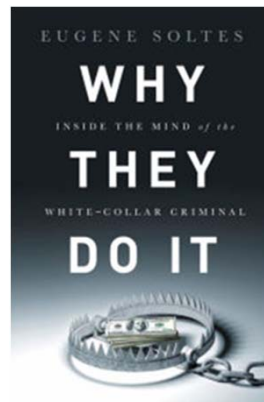
Presented by: Ken Jull
November 19, 2019



The views are those of the author and are not meant to represent the views of Gardiner Roberts LLP .

Risk and Causes of Non-compliance: An Introduction

- Eugene Soltes, *Why They Do it: Inside the Mind of the White Collar Criminal* (2016)
- Rational cost-benefit calculation in relation to crimes and offences dates back to the model proposed by Jeremy Bentham. Soltes provides a classic example of rational cost-benefit calculation with the yellow sheet of paper left behind by David Messer:



Soltes, Why They Do It

- Eugene Soltes, *Why They Do it: Inside the Mind of the White Collar Criminal* (2016)
- David Messer, 29 year old bank manager in Tampa Florida, sat down and made a list on a yellow legal pad

Cons of Stealing From the Bank

- Fugitive on the run
- Money won't last forever
- If caught, will go to jail

Pros of Stealing From the Bank

- Travel anywhere
- Live on islands
- Meet many women
- Party and prevent heart attack

Conclusion at Bottom of Yellow Legal Pad

- Dave, let's face the hard facts that you are a loser.....if you don't take it then you will regret it forever and you won't get another chance again I promise
- Messer packed up his brown Oldsmobile with money orders, traveler's checks, and more than \$150,000 in stolen cash.
- He skipped town, ready to enjoy the life he envisioned on the right side of his list.
- **The list was left behind for investigators to find**

Behavioral School

- The problem with the rational cost benefit model is that it does not take into account the behavioural school of thought.
- Soltes discussed the role of intuition, emotion, and other behavioural factors that may explain white collar crime.
- In Chapter 6 of his text, "I never once thought of the costs versus the rewards: Intuitive decisions", he provides an example of a fall from grace by a senior executive who tipped a friend on inside information for nominal financial reward, who never once thought about the costs versus rewards.

John Coates entitled "The Hour Between Dog and Wolf":

Risk-Taking, Gut Feelings and the Biology of Boom and Bust

- The research I encountered on steroid hormones thus suggested to me the following hypothesis: testosterone, as predicted by the winner effect, is likely to rise in a bull market, increase risk-taking, and exaggerate the rally, morphing it into a bubble.
- Cortisol, on the other hand, is likely to rise in a bear market, make traders dramatically and perhaps irrationally risk-averse, and exaggerate the sell-off, morphing it into a crash. Steroid hormones building up in the bodies of traders and investors may thus shift risk preferences systematically across the business cycle, destabilizing it.

Risk and Reform

- Coates proposes that a bonus system based on a business cycle of four or five years would be far superior to a compensation system that is based on one year returns.
- Coates also makes an innovative suggestion concerning the balance of people that organizations use: the integration of more women and older males in risk management may have positive effects, as both have lower testosterone levels.

John Doherty, "Decisions, risk and the brain" in Skinns, Scott and Cox, Risk

(Cambridge University Press 2011)

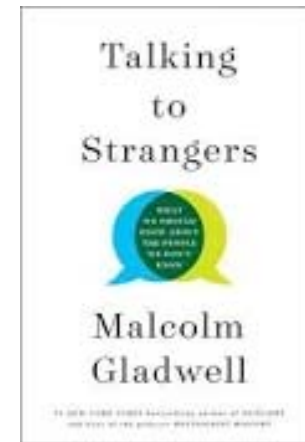
- Research shows that from a biological point of view, some are by nature more risk seeking in nature. John Doherty has written about this phenomenon in his article "Decision, risk and the brain".
- Doherty reported findings that "indicate that risk is encoded in the brain, and that one's attitude to risk (whether one is risk-seeking or risk averse) is also reflected in the brain in the areas involved in actively encoding the utility signals necessary to compute decisions."

Behavioural Theory and Predictions of Irrational Behaviour

- The Behavioural Economics movement attempts to inject behavioural empiricism into rational choice models. For example, Richard Thaler has written on “fairness games” and methods to encourage cooperation in business, which applies behavioural theory.
- At the predictive level, behavioural models can be used as a tool to attempt to anticipate potential irrational behaviour. This model attempts to anticipate what an organization *is likely to do*.

20:30:20 — Recognizing Irrational Tendencies and Counteracting them

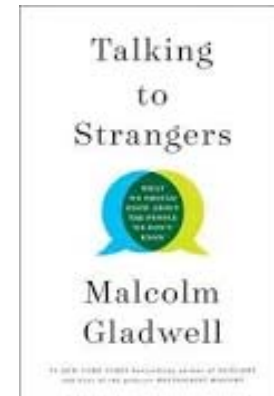
- Chamberlain was the only Allied leader of that time to spend significant time with Hitler. He made careful note of the man's behavior. "Hitler's appearance and manner when I met him appeared to show that the storm signals were up"
Chamberlain told his sister Hilda after another of his visits to Germany. But then "he gave me the double handshake that he reserves for specially friendly demonstrations". Back in London, he told his cabinet that he had seen in the Fuhrer "no signs of insanity but many of excitement".



20:30:20 — Recognizing Irrational Tendencies and Counteracting them

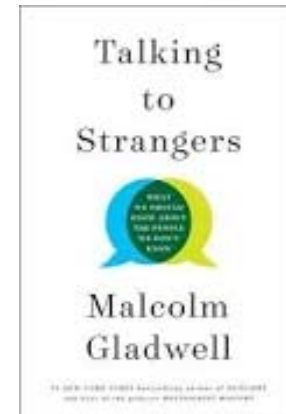
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- “The people who were right about Hitler were those who knew the least about him personally. The people who were wrong about Hitler were the ones who had talked with him for hours.
- This could all be a coincidence, of course. Perhaps Chamberlain and his cohort, for whatever private reason, were determined to see the Hitler they wanted to see, regardless of the evidence of their eyes and ears. Except that the same puzzling pattern crops up everywhere.” (At page 36)



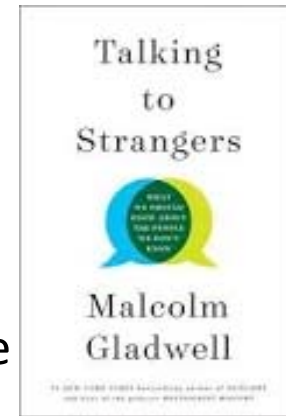
20:30:20 — Recognizing Irrational Tendencies and Counteracting them

- Implications for compliance:
- (a) Personal interviews may not be as effective as thought
- (b) Promises such as “I give you my word of honour that I will pay your account” delivered person to person may be deceptive.
- (c) Reference to the Diagnostic Statistical Manual (DSM) for Anti-Social Personality Disorder (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. Copyright 2000 American Psychiatric Association)



20:30:20 — Recognizing Irrational Tendencies and Counteracting them

- Henry Markopolos (the whistle blower in Madoff) developed a skepticism from work in a family business:
- “I saw a lot of theft in the Arthur Treacher’s. And so I became fraud aware at a formative age, in my teens and early twenties. And I saw what people are capable of doing, because when you run a business, five to six percent of your revenues are going to be lost to theft. That’s the Association of Certified Fraud Examiners’ statistics.....
- I saw our chicken and shrimp sprout legs and walk out the back door on a regular basis. They would throw cases of that stuff in the back of their cars. That was the *employees*.”

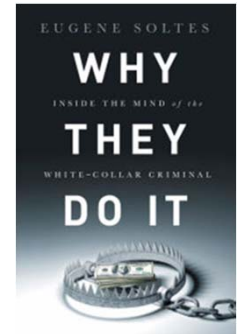


Gender, Diversity, Risk Management and Compliance



Risk and Causes of Non-compliance: An Introduction

- Eugene Soltes, *Why They Do it: Inside the Mind of the White Collar Criminal* (2016):
- Women are conspicuously absent from the ranks of prominent white-collar criminals. Of the few female managers convicted of white-collar crimes, one study showed that they tended to hold lower-level managerial or clerical positions and the magnitude of the harm they caused was considerably less than that associated with the average male offender. Women were also found to be less proactive in developing schemes and tended to be accomplices to duplicitous acts led by men. The lack of high-profile female offenders can no longer be attributed to the scarcity of women holding leadership positions either. These findings raise some important questions to consider about the proclivity of malfeasance by gender.



Gender, Diversity, Risk Management and Compliance

- Gender issues apply at every level of analysis of risk management and compliance.
- Curiously, the issue of gender and feminist analysis has not been in the forefront of most writing about risk management, compliance, or white collar crime.

INT:10:190: Gender, Diversity, Risk Management and Compliance

In 2003, Elizabeth Holmes launched a company which she would come to name Theranos, a combination of the words "therapy" and "diagnostics". She officially dropped out of Stanford University during her second year of college to pursue her business full time. Holmes wanted to create a portable device that could process any blood test with just a drop or two of blood from the finger. The ability to do a large number of laboratory tests from a small amount of blood would revolutionize health care.

During her deposition, the SEC attorneys pressed Holmes on whether Theranos technology was ever "deployed in emergency rooms, hospitals, on the battlefield or in medevac helicopters". They were claims she had made to board members like George Shultz. Her answer this time was "No".



INT:10:190: Gender, Diversity, Risk Management and Compliance

Theranos founder Elizabeth Holmes' trial set for summer 2020

By Ahiza Garcia, CNN Business, June 28, 2019

- Elizabeth Holmes, founder of failed blood-testing start-up Theranos, will go to trial August 4, 2020, a federal judge ruled Friday in San Jose, California.
- Holmes was indicted on federal wire fraud charges in June 2018 and stepped down from the company minutes before the charges were made public.
- She and former Theranos COO and president Ramesh "Sunny" Balwani allegedly engaged in schemes to defraud investors, doctors and patients, according to a release from the US Attorney's office at the time.

INT:10:190: Gender, Diversity, Risk Management and Compliance



INT:10:190: Gender, Diversity, Risk Management and Compliance

Elizabeth Holmes' Lawyers Want Off Her Case: OCT 4 2019

- **The Theranos founder and alleged scam artist — who is facing federal fraud charges and a class-action suit — isn't paying her legal bills, per court filings:** <https://www.rollingstone.com/culture/culture-news/elizabeth-holmes-theranos-lawyers-cooley-llp-895633/>
- In a recent court filing, Holmes's lawyers, who are representing her against the plaintiffs of a class-action fraud lawsuit, are attempting to remove themselves from the case, claiming that they hadn't been paid by Holmes in almost a year. According to the Washington Post, three lawyers at Cooley LLP, the Palo-Alto-based litigation firm representing Holmes in the suit, are trying to remove themselves from the case, claiming that the firm "has no expectation that Ms. Holmes will ever pay it for its services as her counsel."



INT:10:190: Gender, Diversity, Risk Management and Compliance

- Elizabeth Holmes's Possible Defense in Theranos Case: Put the Government on Trial:
<https://www.nytimes.com/2019/05/08/business/dealbook/elizabeth-holmes-theranos-trial.html>
- Ms. Holmes's lawyers in the filing demanded records from the Food and Drug Administration and the Centers for Medicare and Medicaid Services related to their interactions with John Carreyrou, a reporter for The Wall Street Journal who broke the story about problems with Theranos's technology.
- He later wrote a devastating portrayal of the company, "Bad Blood: Secrets and Lies in a Silicon Valley Start-up," that paints a picture of questionable practices in the company's operations.



INT:10:190: Gender, Diversity, Risk Management and Compliance

- Elizabeth Holmes's Possible Defense in Theranos Case: Put the Government on Trial:
<https://www.nytimes.com/2019/05/08/business/dealbook/elizabeth-holmes-theranos-trial.html>
- A recent filing by Ms. Holmes, which was joined by Mr. Balwani, who goes by Sunny, outlines a possible defense:
- “In evaluating the government’s case, the jury should be aware that an outside actor, eager to break a story (and portray the story as a work of investigative journalism), was exerting influence on the regulatory process in a way that appears to have warped the agencies’ focus on the company and possibly biased the agencies’ findings against it,” the filing states.

INT:10:190: Gender, Diversity, Risk Management and Compliance

- An interesting aspect of the Holmes case, which perhaps reflects on gender in an odd way, is the attention focused on Elizabeth Holmes' voice.
- In the aftermath of the Theranos scandal, several people who knew Holmes claim the pitch of her voice was another aspect of her fraud.
- "When she came to me she didn't have a low voice", Dr. Phyllis Gardner, a professor of medicine at Stanford who interacted with Holmes during her freshman year of college, told ABC's Rebecca Jarvis on "The Dropout" podcast, a program centered around Holmes and her scam. "When I next saw her again was at the Harvard Medical School board meeting where she was being introduced. She spoke with a low voice and Gardiner thought, 'Oh my God.' It was quite off."

INT:10:190: Gender, Diversity, Risk Management and Compliance

- Speech coach Julie Foh, who teaches women to speak deeper, thinks Holmes purposely speaks with a lower voice in a bid to earn the respect of her male counterparts. "She decided that that was one way she would try to fit in with her peers, to try to speak closer to a male pitch range."
- The issue with a higher voice, according to businesswoman Vanessa Bombardieri, is that "people perceive you as younger and less experienced". This need to adjust voice tone is not reflective of equality in the workplace but is the reverse of that.
- Holmes' voice is a side issue in relation to gender and white collar crime. But it should be stressed that all persons should be treated on the basis of merit in the workplace, regardless of gender, race or physical characteristics. No one should feel compelled to change such characteristics to be able to fit in.

INT:10:190: Gender, Diversity, Risk Management and Compliance

- **Keep your voice down**
- New research shows that women in law are lowering their voices to sound more masculine **by Matthew Halliday, Precedent Magazine**
- In a new study, Yosh Halberstam, an economics professor at the University of Toronto, shows that female lawyers are, en masse, lowering their voices to sound more masculine.
- That doesn't mean it's a good idea to modify your true identity at work. According to Halberstam, there is growing evidence that doing so exacts a cognitive and emotional toll.

INT:10:190: Gender, Diversity, Risk Management and Compliance

There are numerous competing theories about the role gender plays in white collar crime. One theory (Amy Stoyan, “Missing Persons: The Absence of Women in White Collar Crime”, unpublished paper for “Financial Crimes and Corporate Compliance”,) is that due to social conditioning, women assess risk differently and are more risk-averse.

INT:10:190: Gender, Diversity, Risk Management and Compliance

- The empirical data raises many theoretical issues that have been debated within feminism.
- For example, cultural feminists argue that female values such as caring and connection will play a larger role as gender equality permeates the boardroom.
- Extending this theory into regulatory law would suggest that as Boards become more populated with women, there will be a greater care taken by corporations with respect to their workforce and the community.

INT:10:190: Gender, Diversity, Risk Management and Compliance

- By contrast, dominance theorists focus on righting the power imbalance. (See Patricia Cain, “Feminist Jurisprudence: Grounding the Theories” in *Feminist Legal Theory: Foundations*, D. Kelly Weisberg, ed. (Philadelphia: Temple University Press, 1993), at 359371.)
- This theory would argue that female directors will make corporate governance decisions in the same way that men do.

INT:10:190: Gender, Diversity, Risk Management and Compliance

Devon W. Carbado; Cheryl I. Harris, Intersectionality at 30: Mapping the Margins of Anti-Essentialism, Intersectionality, and Dominance Theory, 132 Harv. L. Rev. 2193 (2019).

The evolution of the Women's March in response to the election of Donald Trump to the presidency posed a range of questions, issues, and debates implicating anti-essentialism, intersectionality, and dominance theory. The very concept of a women's march was contested: Why a women's march? Who were the women called upon to participate? Which women would lead it? On the issue of leadership, some women specifically invoked intersectionality to argue for the inclusion of Black, Latinx, Muslim, and queer activists as leaders.



INT:10:190: Gender, Diversity, Risk Management and Compliance

- <https://www.theglobeandmail.com › business › article-companies-with-mor...>
- September 12, 2019 - Companies with more female executives have higher credit quality, ... a correlation between gender diversity and higher credit ratings,

INT:10:190: Gender, Diversity, Risk Management and Compliance

Aaron Dhir's article "Towards a Race and Gender-Conscious Conception of the Firm: Canadian Corporate Governance, Law and Diversity ((2010), 35 Queen's L.J. 569) argues that gender and racial diversity in the boardroom may counteract against the tendency for groupthink.

FRAUD: Risk Management in a Wide Range of Commercial Dealings

InterMune press release: W. Scott Harkonen served six months of confinement at his home in San Francisco.



FRAUD: Risk Management in a Wide Range of Commercial Dealings

InterMune Press Release

- **“InterMune Announces Phase III Data Demonstrating Survival Benefit of Actimmune in IPF,”** the document said in bold-face letters.
- Following it in italics was this sentence: *“Reduces Mortality by 70% in Patients with Mild to Moderate Disease.”*
- Those two sentences were Harkonen’s crime.

FRAUD: Risk Management in a Wide Range of Commercial Dealings

InterMune Press Release

- People with mild to moderate cases of the disease (as measured by lung function) had a dramatic difference in survival. Only 5 percent of those taking the drug died, compared with 16 percent of those on placebo. The P value was 0.004 — highly significant.
- But there was a problem. This mild-to-moderate subgroup wasn't one the researchers said they would analyze when they set up the study. Subdividing patients after the fact and looking for statistically significant results is a controversial practice. In its most extreme form, it's scorned as "data dredging." The term suggests that if you drag a net through a bunch of numbers enough times, you'll come up with something significant sooner or later.



FRAUD: Risk Management in a Wide Range of Commercial Dealings

InterMune Press Release

- **‘No falsification of data’**
- In the trial, much was made of P values and the issue of after-the-fact analyses.
- Two of the government’s experts testified that if a study misses all its “primary endpoints” (as this one did), then it’s improper to draw conclusions about a drug’s effect in subgroups identified later. The press release acknowledged missing the primary endpoints, but it didn’t indicate that the featured subgroup was identified after the study’s data were collected.

FRAUD: Risk Management in a Wide Range of Commercial Dealings

InterMune Press Release

- The prosecutors also emphasized that Harkonen had a financial motive for spinning the study in the most positive way. This wasn't hard to find. The third paragraph of the press release said: "We believe these results will support use of Actimmune and lead to peak sales in the range of \$400-\$500 million per year, enabling us to achieve profitability in 2004 as planned."
- What's unusual is that everything in the press release was correct. What was lacking, the prosecutor, jury, judge and appeals court concluded, was context.

FRAUD: Risk Management in a Wide Range of Commercial Dealings

InterMune Press Release

- Harkonen's defenders also think that context is important.
- The press release said the results for the primary endpoint weren't statistically significant. A Morgan Stanley analyst wrote the next day that the study probably wasn't enough to get Actimmune an FDA label for IPF, although that wasn't out of the question. When the study was [published in the New England Journal of Medicine](#) in January 2004, the authors wrote that "a clinically significant survival benefit could not be ruled out."
- In short, Harkonen's defense team argued that nobody was deceived by the press release. InterMune's executive was just expressing an opinion on the usefulness of his company's drug — an opinion the government didn't share.



Would this constitute fraud under Canadian Criminal law?



Fraud Definition

Fraud is defined in section 380 of the *Criminal Code*:

- 380. (1) Every one who, by **deceit, falsehood or other fraudulent means**, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service.

Olan

Dickson J. (as he then was) set out the following principles of the *actus reus* in the foundational case of *Olan* [\[1\]](#) the offence has two elements: dishonest act and deprivation:

- the dishonest act is established by proof of deceit, falsehood or "other fraudulent means";

Olan

Cont'd...

- the element of deprivation is established by proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim, caused by the dishonest act.

[\[1\]](#) *R. v. Olan*, [1978] 2 S.C.R. 1175. ("*Olan*")

R. v. Theroux, [1993] 2 S.C.R. 5 (“*Theroux*”)

Justice Dickson’s decision in *Olan* established fraud as an offence of general scope capable of encompassing a wide range of dishonest commercial dealings. The Supreme Court in *Theroux* recognized the important contribution of this case to the development of the law of fraud.

Theroux

Olan marked a broadening of the law of fraud in two respects. First, it overruled previous authority which suggested that deceit was an essential element of the offence. Instead, it posited **the general concept of dishonesty**, which might manifest itself in **deceit, falsehood or some other form of dishonesty**. Just as what constitutes a lie or a deceitful act for the purpose of the actus reus is judged on the objective facts, **so the "other fraudulent means" in the third category is determined objectively**, by reference to what a reasonable person would consider to be a dishonest act.

Includes Non-Disclosure of Important Facts

In a number of subsequent cases, courts have defined the sort of conduct which may fall under this third category of other fraudulent means **to include the use of corporate funds for personal purposes, non-disclosure of important facts**, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property...^[1]

^[1] *Theroux*, at paragraph 18.

FRAUD: Risk Management in a Wide Range of Commercial Dealings

InterMune Press Release

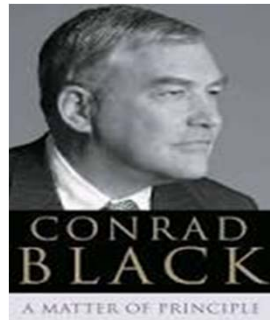
- **“InterMune Announces Phase III Data Demonstrating Survival Benefit of Actimmune in IPF,”** the document said in bold-face letters.
- Following it in italics was this sentence: *“Reduces Mortality by 70% in Patients with Mild to Moderate Disease.*
- 380. (1) Every one who, by deceit, falsehood or other fraudulent means?

ANALYSIS OF THE LAW AND GREY AREAS



Outer Limits That Are Clear

There will necessarily be outer limits of “other fraudulent means” as interpreted by reasonable people. Therefore, it is important that the conduct which may reach the level of criminality is not so vague that potential defendants may step over the line without realizing it. In June of 2010, the Supreme Court of the United States made a move towards more clearly delineating the line at which conduct becomes fraudulent in the cases of *Skilling v. United States* and *Black et al. v. United States*.



Vagueness Shoal

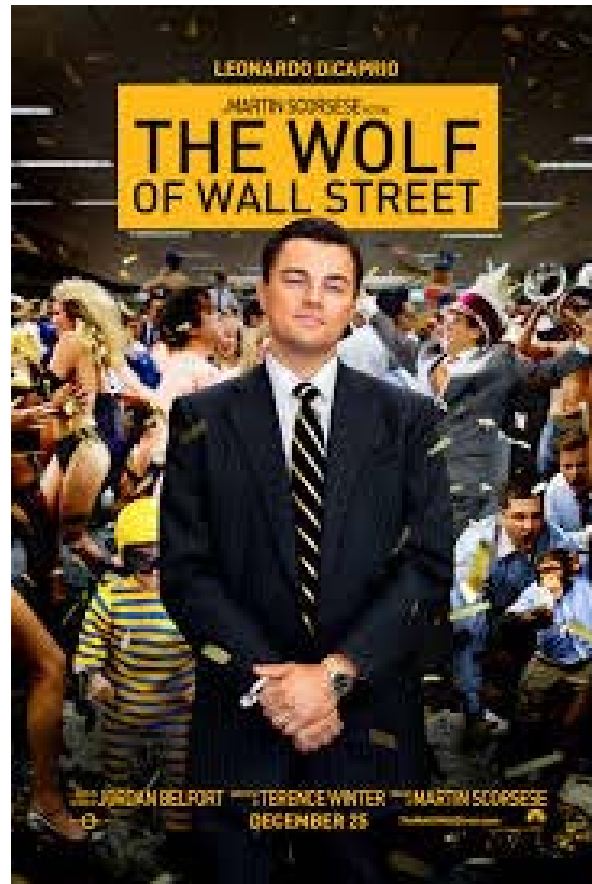
In *Skilling* (arising from the Enron case) Justice Ginsburg, for the majority of the Court, set out the reasoning for the restriction of the honest services doctrine. In proscribing fraudulent deprivations of “the intangible right of honest services,” the Court held that Congress intended at least to reach schemes to defraud involving bribes and kickbacks. Construing the honest-services statute to extend beyond that core meaning, the Court concluded, “would encounter a vagueness shoal.” *Skilling, supra*.

Risk of Loss

Second, Olan made it clear that economic loss was not essential to the offence; the imperilling of an economic interest is sufficient even though no actual loss has been suffered. By adopting an expansive interpretation of the offence, the Court established fraud as an offence of general scope capable of encompassing a wide range of dishonest commercial dealings.^[1]

^[1] *Theroux*, at paragraph 17.

Hollywood, the glorification of financial crime versus the plight of victims. (Page INT-15)



Hollywood, the glorification of financial crime versus the plight of victims. (Page INT-15)

- A different but equally challenging public perception is that white collar crimes are glamorous because of the lavish lifestyles that they fund, in the absence of violence.
- Movies such as *The Wolf of Wall Street* (which did an exceptional job of telling the true story of the rise and fall of a white collar criminal, Jordan Belfort) sell more tickets because of the glamour associated with yachts, large houses, exotic cars and seemingly endless parties. The tragic ending may be forgotten or overshadowed by the images of success.

INT:10:30.10 A Wide Spectrum of Subject Areas

- The ultimate irony is the allegation that the movie was funded by the proceeds of a massive fraud perpetrated against the Malaysian government.
- This story is told in *Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood, and the World* (Tom Wright and Bradley Hope, *Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood, and the World* (New York, Boston: Hachette Books, 2018).

INT:10:30.10 A Wide Spectrum of Subject Areas

- *Billion Dollar Whale* reads like a novel, but is based on the true story of allegations that a Malaysian named Jho Low defrauded the Malaysian government of \$700 million in an elaborate scheme of shell companies and promises of investment opportunities in the Middle East.
- Jho Low allegedly conspired with former Prime Minister Najib, who is on trial over his alleged involvement in the looting of sovereign wealth fund 1MDB.

INT:10:30.10 A Wide Spectrum of Subject Areas



High Court rejects Najib's 'fishing expedition' in SRC trial

- KUALA LUMPUR, Nov 15 — The High Court today dismissed Datuk Seri Najib Razak's bid to get statements recorded from witnesses by investigators for his corruption trial over SRC International Sdn Bhd's RM42 million.
- High Court judge Mohd Nazlan Mohd Ghazali described the former prime minister's attempt to obtain such information as a "fishing expedition", and also rejected Najib's request to have the SRC trial delayed from the next scheduled hearing date of December 3.

<https://www.malaymail.com/news/malaysia/2019/11/15/high-court-rejects-najibs-fishing-expedition-in-src-trial-refuses-delay-of/1810257>

INT:10:30.10 A Wide Spectrum of Subject Areas

- Jho Low became known for partying with Britney Spears and Paris Hilton, who are also alleged to have received enormous amounts of 1MDB money. Low, who allegedly used 1MDB cash to bankroll the 2013 Leonardo DiCaprio film The Wolf of Wall Street, is a fugitive, believed by some to be in hiding in China.



INT:10:30.10 A Wide Spectrum of Subject Areas

- In May of 2011 Jordan Belfort, the real Wolf of Wall Street, was invited to a party in Cannes, France, hosted by Red Granite, a company that was created by Jho Low. Belfort thought something wasn't right about the event which cost at least \$3 million.
- Belfort stated at the time that he thought this was a scam: "anybody who does this has stolen money . . . You wouldn't spend money you worked for like that."

INT:10:30.10 A Wide Spectrum of Subject Areas

- Others embroiled in the scandal include the U.S. investment bank Goldman Sachs. At least six countries, including the U.S. and Singapore, have launched corruption investigations into 1MDB.⁵²
- Low lived the high life, exemplified by the purchase of a super yacht "Equanimity" which features a cinema and gym.

INT:10:30.10 A Wide Spectrum of Subject Areas



Competition Bureau

The Little Black Book of Scams 2nd edition

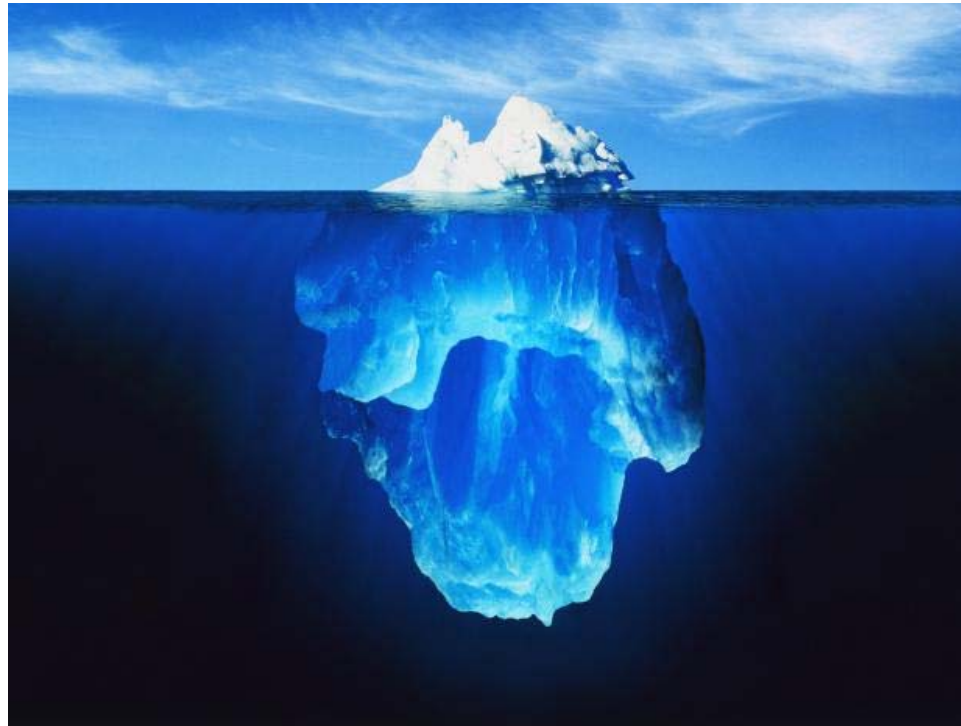


Competition Bureau

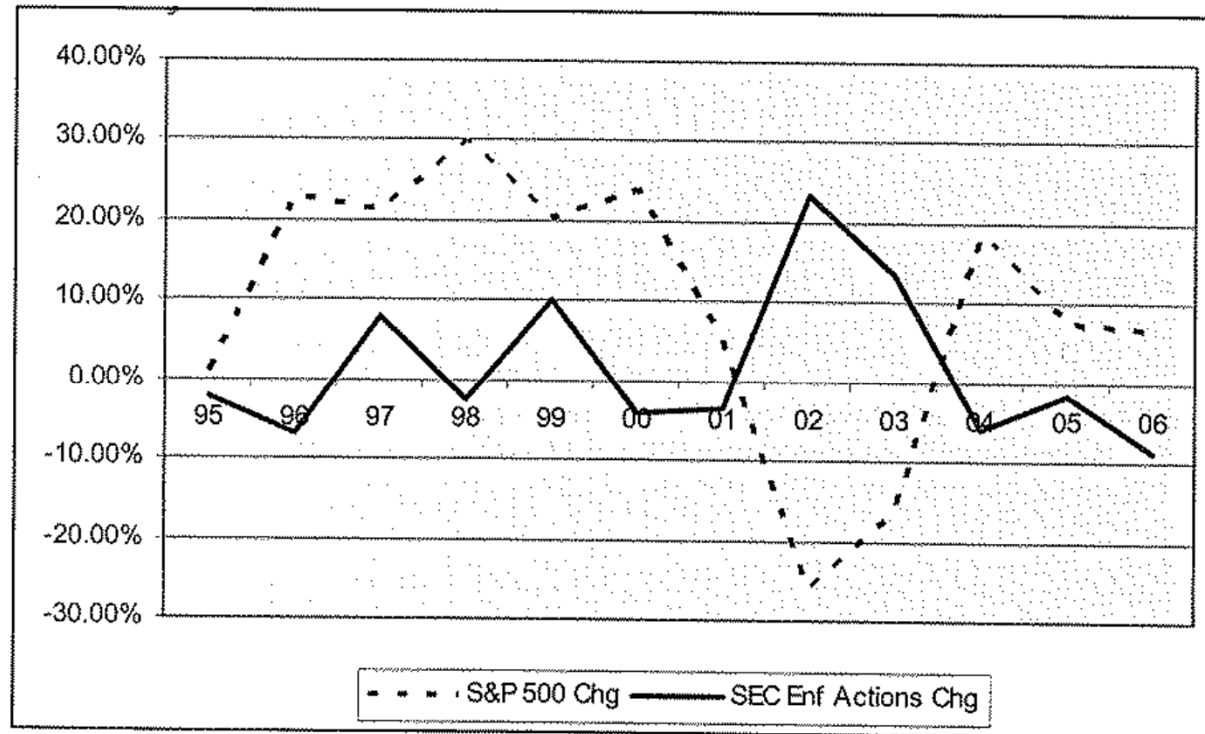
- **CEO scams**
- **Your CEO is asking for money urgently; make sure the email is legitimate!**
- In a typical "CEO scam," fraudsters will impersonate a senior company executive, either by gaining access to their email address or by imitating one. They will send realistic-looking emails that try to trick you into wiring money to a third party.



Risk



Why Risks are Higher in Times of Economic Downturn

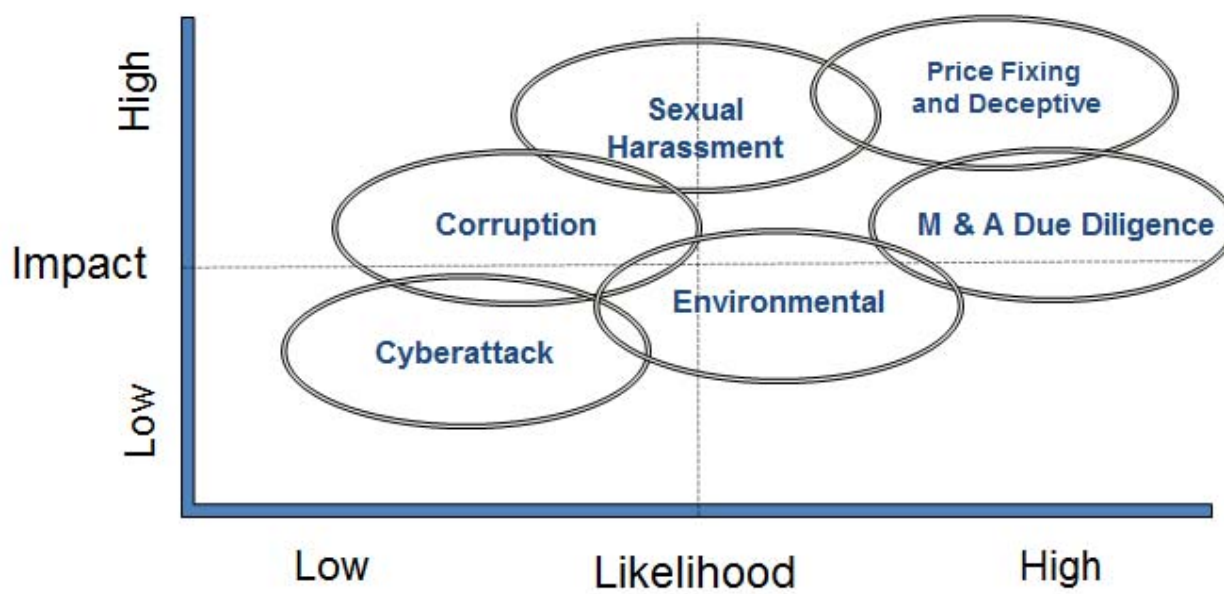


Risk Management

The decision in *Olan* was recognition of risk management, before the term became popular. The exposure of a person's money or property to a higher risk without their consent and without a compensating higher rate of return is wrong, even if the end result is not an actual loss. The reasoning is simple. There are risky endeavors that pay higher yields and if one's money is exposed to higher risk, one should be entitled to the higher yield that would result.

INT:10:50 Matrix: Macro Priorities

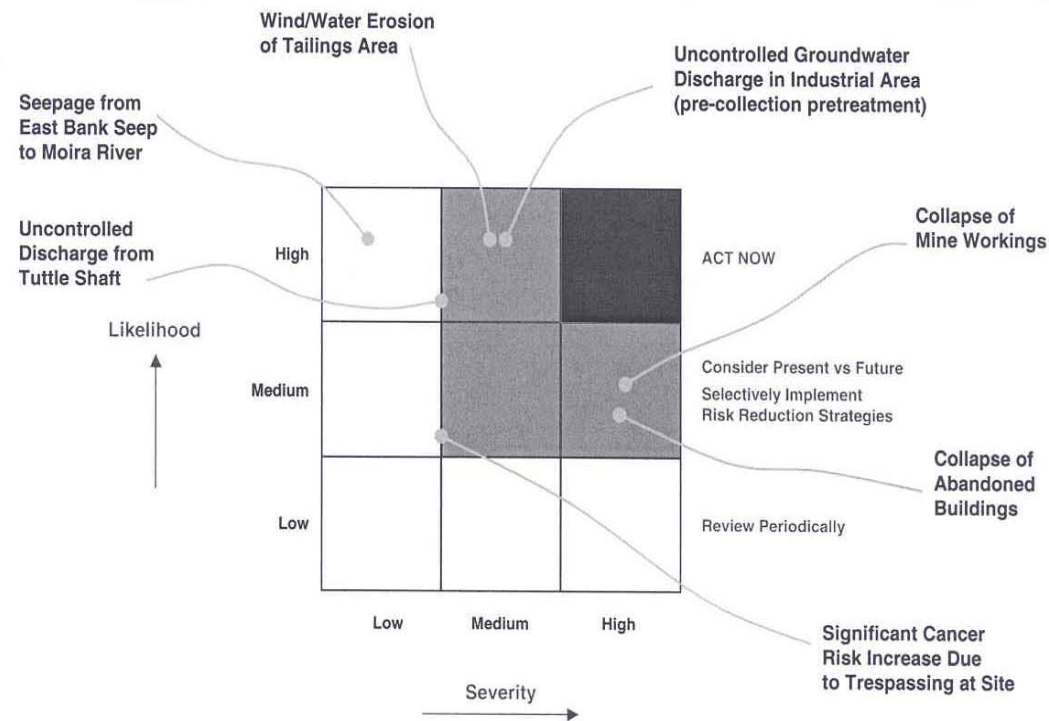




INT:10:90 Risk Matrix and Trumping Gravity of Harm over Probability

<i>Impact</i>			
<i>Significant</i>	Management effort worthwhile	Significant Management effort required	<u>Act now:</u> <u>Extensive management essential</u>
<i>Moderate</i>	Accept risks with monitoring	<u>Management effort required</u>	Significant Management effort required
<i>Minor</i>	<u>Accept risks</u>	Accept risks with monitoring	Management effort worthwhile
	<i>Low</i>	<i>Medium</i>	<i>High</i>
			<i>Likelihood</i>

FIGURE 6
RISK MANAGEMENT PRIORITIES – HISTORICAL SCENARIOS THAT HAVE BEEN MITIGATED



CFC Fridges Issue		Potential Gravity of Harm				
		Level 1	Level 2	Level 3	Level 4	Level 5
Likelihood of Compliance (compliance history/willingness and capacity to comply)	Category A (high)	Regular Internal Audits				
	Category B		Regular and Random Internal Audits			
	Category C 47% likelihood of compliance (53% risk of non-compliance)			Special Compliance Programs	X	
	Category D				External Audit - Immediate and Comprehensive Rectification	
	Category E (low)					Immediate and Comprehensive Rectification - Self-reporting to Regulator; Discipline of responsible persons;
					Moderate to High Harm	

Corporate (Non)disclosure of Climate Change

This Note cautions that corporations may be facing a heightened risk of fraud investigations or litigation, similar to those discussed above, if they continue to ignore or misrepresent the short-term and long-term effects of climate change on their operations and finances. In particular, this Note focuses on the liabilities that can arise from fraudulent disclosures under the federal securities laws.



Roshaan Wasim

Source: Columbia Law Review, Vol. 119, No. 5
(JUNE 2019), pp. 1311-1354

Jeff Cohodes, Perspective on Dodd-Frank Act, Risk Management, and the Financial Crisis of 2008 from a Former Chief Risk Officer, 50 Loy. U. Chi. L.J. 533 (2019).

- Managing risk is exceptionally difficult, and regulating it is even harder. In the wise words of Yogi Berra: "In theory, there is no difference between practice and theory, but in practice, there is."
- Four-Dimensional Governance—Use a governance framework that looks at the company's risks across four major categories: geography, risk type, legal entity, and business unit. This framework should factor in Dodd-Frank and foreign regulations.

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