

JD919 A1: WHISTLEBLOWER LAW & PRACTICE**Fall 2020****Instructor Information****Instructor:** Robert M. Thomas, Jr. (“Bob”)**Email:****Phone:**

Office Hours: My commitment is to be as available to you as needed and as my circumstances permit. I will let you know of “Group Office Hours” which will be a set time when students can convene on ZOOM to ask me or each other anything on your mind. In addition, I invite any student to set up individual appointments, simply by asking for one. Of necessity during the Pandemic, these will also be on ZOOM.

Course Information: There will be a Reading List posted on Blackboard. This will be updated periodically. There is not a textbook. We will use original materials, statutes and regulations, and excerpts from several books on whistleblowing.

Meetings: Thursdays 2:10-4:10

Location:

Course Description (excerpted from Catalog Description):

This course will explore the rapidly developing body of law concerning whistleblowing activity in its many diverse forms. These federal (and state) laws protect and incentivize whistleblowers to provide information and assist in the enforcement of laws prohibiting fraud and misfeasance in both the public and private sectors.

There are, in general, two types of whistleblower laws and the seminar will cover them both: **1)** laws which protect whistleblowers inside and outside of government from retaliation by employers for having engaged in protected activity (e.g., the government employee who filed the anonymous complaint that led to President Trump's impeachment) and **2)** laws which provide financial incentives to whistleblowers for reporting fraud against the government, or fraud in the securities and commodities markets.

Each student will write a paper based on a personal interview with one or more whistleblowers who have gone through the experience and/or whistleblower attorneys who have a substantial practice in this area, or another topic approved by the professor. They will also be asked to record a short video presentation on this topic.

The course will be taught predominantly through simulated problems, based on composites of actual cases, after reviewing the applicable laws. By using these simulated problems, students will gain professional practice skills, including drafting, negotiating, and client representation.

Note: A student who does not attend the initial meeting of a seminar (designated by an (S) in the title), or to obtain permission to be absent from either the instructor or the Registrar, may be administratively dropped from the seminar. Students who are on a wait list for a seminar are required to attend the first seminar meeting to be considered for enrollment.

Prerequisites: None

Credit Hours: 3

Course Materials

Most of the weekly readings will be from original sources posted on the Blackboard site.

Required Reading Books:

1. Whistleblowers: Honesty in America from Washington to Trump, by Allison Stanger, ISBN # 978-0-300-18688-8, published in 2019.
2. Whistleblowers: Exposing Corruption in Government & Industry, by Myron Peretz Glazer and Penina Migdal Glazer, ISBN # 9780465091737, published in 1989.

Not Required Additional Resources:

3. Crisis of Conscience: Whistleblowing in an Age of Fraud, by Tom Mueller, ISBN # 9781594634437, published in 2019.
4. The Corporate Whistleblower's Survival Guide, by Tom Devine and Tarek Maassarani, available at <https://whistleblower.org/> or on Amazon at <https://amzn.to/3gsBluJ>.

Course Objectives:

OBJECTIVES	ASSESSMENTS
Upon successful completion of this course, students should be able to:	Students will be assessed on these learning objectives through:
Identify which whistleblower law or program might apply to a situation.	In-class discussions; break out rooms.
Understand the distinction between the anti-retaliation provisions of the laws and the financial reward scenarios.	In-class discussions; break out rooms.
Analyze the strengths and/or weaknesses of	In-class discussions; break out rooms.

a potential whistleblower claim.	
Identify strategic lawyering responses to whistleblower inquiries – from different perspectives.	Written assignments prior to class; break out room exercises.
Understand the personal journey of one or more whistleblowers.	Research paper and video presentation.

Exams/Assignments and Grading

- i. Short written assignments prior to class. (These will be quick and informal.)
- ii. A research paper and video presentation of the paper. (A longer, in-depth, study, to be approved by the professor).
- iii. Presentations and participation in class discussions and breakout rooms.

Grades will be given based 50% on the paper and video presentation and 50% on engagement and participation in class. (This is not meant to encourage extroverts to dominate the discussion. It means engaging with each other and with me in a respectful and thoughtful way.)

Course Policies

Remote students will of course need their laptop computers in order to use ZOOM. For in class students, you should not bring open your laptops or phones unless you have an approved medical or educational need.

Attendance and Participation: The seminar is scheduled to meet 13 times over the semester. You should attend and be prepared for no fewer than 11 classes. Attendance and participation in the class will be significant portions of your grade, so please take seriously the requirement to show up ready to go. I will note absences through a sign-in sheet, and through timely submission of any written projects due at the time of class. If you must miss a class, please let me know in advance if at all possible.

Preparation and Class Discussion: If you come to class having read and thought about the materials, you will learn more and find the seminar more interesting (and your grade will be higher). If you are unprepared, I prefer that you come to class nonetheless, but I would appreciate your telling me in advance that you have not been able to prepare, either by email or by phone. I do not expect to do all the talking in the class, so come prepared to discuss the materials, and to answer questions from me or from any other participant in the seminar.

I will occasionally be assigning short writing assignments (like a young lawyer would be asked to do for a more senior lawyer) to help focus your work. These will not be onerous or lengthy, but you should pay careful attention to the instructions with respect to timeliness, length, and scope (most of these will be short and time-sensitive, as they would be in your future practices). If we're successful, these short assignments should be fun as well as substantive.

Course Outline (Note: Readings are posted separately on Blackboard):

Week or date	Topic	Objective or Question Posed
1	Introduction to the Policy Questions The Ellsberg Case	Framing the Course – What is this about?
2	Alternate Views of Whistleblowing: Dissent or Treason? The Personal Journeys of Whistleblowers	On What Does One's Views of Whistleblowing Depend?
3	Anti-Retaliation Protections in the Government Context	What does Retaliation Look Like, and What Can Be Done About It?
4	Sarbanes Oxley and Department of Labor Enforcement of 20 Different Whistleblower Protection Laws	Understanding the "SOX" whistleblowing process.
5	Role of Inspectors General	Why Are IG's Important?
6	Impeachment Complaint as a Case Study	Why Did This Just Happen? How Did It Happen? Why Does It Matter?
7	False Claims Act 101. The basics. FCA as both substantive and procedural tool. How it works.	Understanding the basics of the Government's Primary Anti-Fraud Tool.
8	False Claims Act 201: Case studies, and special issues of the FCA	Understanding the nuance of the FCA.
9	U.S. Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) Whistleblower Programs	Understanding Dodd Frank and how the SEC and CFTC Whistleblower Programs are Different from the FCA.
10	Other Whistleblower Programs and Incentive	Identifying What Else is Out There

11	Retaliation, Remedies, and Releases	Learning Some Tricks of the Trade
12	Lawyering Tips: Representing Whistleblowers, Defending Against Whistleblower Complaints; Handling Whistleblower Complaints from an Internal Compliance Perspective	Triangulation: How Do The Experts in this Field View These Questions?
13	Wrap Up: Putting it all together	Ending with a Sense of the Big Picture.