

Bribery, forgery and fraud: the murky world of economic crime

Dr Jennifer Quaid

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Bribery, forgery and fraud: the murky world of economic crime

Catching an individual who has committed theft poses challenges, but forensics and CCTV make it easier for law enforcement to do so. However, pinning down complex, large-scale cases of fraud, money laundering or corruption can be very difficult, and charging an organisation with an economic crime can sometimes cause a whole cascade of negative effects on innocent parties. At the **University of Ottawa** in Canada, **Dr Jennifer Quaid** studies the law around economic crime and corruption, and how it can be best used to catch and charge those who manipulate systems illegally for financial gain.



Dr Jennifer Quaid

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Professor, Civil Law Section, Faculty of Law,
University of Ottawa, Canada

Fields of research

Criminal law; economic crime; corporate criminal law; competition law; business regulation; AI governance

Research project

Studying the effectiveness of a new tool (the remediation agreement) added to Canada's Criminal Code on economic crime and corruption enforcement, including comparing Canada's approach to those used in France and Switzerland

Funders

Social Sciences and Humanities Research Council of Canada (SSHRC); Civil Law Section, University of Ottawa; Foundation for Legal Research; Quebec Bar Foundation

doi: 10.33424/FUTURUM680

An economic crime is any illegal behaviour done with the intention of financial gain. "Such crimes may include fraud, corruption, bribery, bid-rigging, money laundering, tax evasion, forgery and theft," says Dr Jennifer Quaid, a professor in the University of Ottawa's Faculty of Law. "It's a broad term!" The tactics used by economic criminals also vary hugely –

Talk like a ...

criminal law researcher

Charge – the accusation made against someone, claiming they violated the law

Corruption – dishonest conduct by those in power, usually involving bribery

Economic crime – illegal acts committed to obtain a financial advantage

Enforcement – ensuring compliance with a law or rule

Prosecution – conducting

legal proceedings against someone following the charge

Remediation agreement (RA) – in Canadian law, an agreement between an accused organisation and a prosecutor to not pursue criminal charges if the accused fulfils certain terms. (RAs are similar to other non-trial resolution mechanisms in other countries, such as a deferred prosecution agreement, or DPA, in the UK and a convention judiciaire d'intérêt public in France.)

beyond simple theft, they may employ deception, manipulation, abuse of trust or power, and other sophisticated strategies. "Many of these strategies make it hard to spot what is really happening," says Jennifer. "Victims may include individuals, organisations, governments or society at large."

Because many economic crimes are complex and well-disguised, many victims may not immediately realise they have been targeted. "Economic crimes committed by businesses are more challenging to bring to justice because the evidence can be buried

within mountains of documents and private transactions," explains Jennifer. "Unlike other types of crime, there's no specific event that signals that a crime has happened, so investigators are always playing catch-up." This lack of a single or obvious criminal incident does not make economic crimes any less serious – often, quite the opposite. "There are often consequences beyond simple financial loss," says Jennifer. "Economic crimes may involve violence, human rights violations, environmental damage, or threats to democracy itself."



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Corruption in Canada

One particular aspect of economic crime is especially damaging for a democratic society: corruption. “At its most basic, corruption occurs when one party gives an unfair advantage to another party in exchange for something of value, often money,” explains Jennifer. “A good example is when a public official accepts a bribe in exchange for selecting a certain supplier for a government contract.” Corruption undermines public confidence in the government and encourages injustice. “Our understanding of democracy is underpinned by the idea of equality,” says Jennifer. “Corruption damages this – imperilling democracy and, sometimes, ushering in or maintaining authoritarian regimes.”

Laws are highly specific to individual countries. “Canada has not brought a lot of prosecutions in corruption matters,” says Jennifer. “Some say this indicates that Canada is weak on enforcement – but the number of prosecutions is not necessarily the best measure of good enforcement.” This prosecution rate is low for varied reasons, one being that Canada’s legislation dictates that it has to be demonstrated that the people involved in the corruption case did it knowingly, which is not always easy. “Many experts believe that Canada should create a different kind of offence that focuses on lack of diligence more than active criminal guilt,” says Jennifer. “The case would become more regulatory, rather than a truly criminal matter.”

Remediation agreements

A significant issue with economic crime is an organisation’s willingness to address it through the law. If a company realises they

are at risk of corruption, or even have staff committing corruption, harsh laws may incentivise them to hide it rather than take action. Criminal convictions for economic crimes can doom a company, in particular by massively restricting its ability to apply for public contracts.

Beyond the business itself, it is also important to consider the innocent people that may depend on it, such as employees, shareholders, communities, creditors and governments. A criminal conviction within the business could damage these innocent parties through financial and livelihood losses – a punishment that they have done nothing to deserve.

To address this, Canada recently introduced a new type of legislation, called a remediation agreement (RA). “An RA is similar to a plea deal,” says Jennifer. “It allows settlements of charges for a business’s economic crimes without the need for criminal conviction.” Under an RA, the accused organisation has to publicly admit engagement in economic crimes, and fulfil certain terms – financial penalties, independent monitoring or victim compensation, for instance – typically within three years.

A shaky start

Despite vocal support from businesses when RAs were first considered, they have not been widely used since they were rolled out in 2018. “The new RA regime got off to a bad start due to disagreements between prosecutors and a big Canadian multinational organisation over its use, which culminated in politicians improperly pressuring the country’s Attorney General to intervene,”

explains Jennifer. “This generated a major political scandal which cast a shadow on RAs for years.”

Improvements to the RA regime might help rebuild its reputation. “There is still limited information about how the negotiation process works, so setting this out more clearly would help,” says Jennifer. “RAs also need to be more transparent and made public once approved.” Additionally, non-government organisations and civil society groups are lobbying for more established benefits for victims, including those who have been victims of corruption in other countries due to the actions of Canadian organisations.

The future of economic crimefighting

RAs do not cover all economic crimes – far from it. “Right now, there’s a lot of attention on economic crimes connected to large criminal organisations and terrorist groups,” says Jennifer. “These would never be eligible for an RA but are an important enforcement priority for Canadian law to focus on.”

The Canadian federal government has announced an array of new measures to tackle the most serious economic crimes. “This includes a National Anti-Fraud Strategy, which will increase capacity to address mass market fraud, including how criminals use data and algorithms to deceive and defraud,” says Jennifer. “Canada is also creating a Financial Crimes Agency, which will support expertise in dealing with sophisticated financial crimes such as major money laundering schemes and cyber-attacks.”



About *criminal law*

The field of criminal law is wide and often varies a lot between countries. “Law is a dynamic field,” Jennifer says. “As the world changes, so must the law. Every year there is new legislation, new cases and new policy.” As the ‘world order’ appears to be reshaping, this may create a more unpredictable global environment, and we will need good legal experts to navigate it. “We’ll be needed as new rules are developed, especially if we move to a system of multiple alliances. For example, if different countries worked together under new trade agreements, laws would be affected,” says Jennifer.

Jennifer is a legal researcher, which means she spends a lot of time

analysing legal sources. “This includes documents, laws, regulations and court decisions,” she says. “I also read articles and books by other legal researchers.” Much of Jennifer’s research involves watching how real-world cases use and challenge legal rules. She also spends a lot of time in conversation with different people. “Journalists ask for my opinion on stories related to my areas of research,” she says. “This also gives me some great ideas for new research questions.” Additionally, Jennifer talks to people involved in law enforcement and in legal cases. She also collaborates with researchers from different countries to share insights and research tools.

For Jennifer, her work often feels like untangling a logic puzzle. “I enjoy the challenge of digging into the details of a legal problem to figure out how to apply a set of legal rules, and explaining this to others in straightforward ways,” she says. “These little nuggets help me see patterns or connections to other problems.” She also believes that it is important to strive for better laws and legal practices. “I believe that our role as researchers is to search for evidence to help make the world a better place,” she says. “It might be through small and incremental contributions, but I find being part of a bigger collective effort so rewarding.”

Pathway from school to *criminal law*

Jennifer says that reading comprehension and writing proficiency are essential, as is a strong knowledge of history, which provides the context for laws. She adds that speaking several languages is an asset, as is a strong capacity for critical thinking. At school, subjects that can develop these skills include law, English, history, political science, sociology and foreign languages.

At university, there are many law degrees and variants. Adjacent fields that can lead to a career in legal research include many social sciences, such as criminology, sociology, psychology and public policy.

Explore careers in criminal law

Jennifer emphasises that law is highly jurisdiction-specific, meaning that learning the legal landscape of one country may not be applicable to others – so it is important to think about where you want to work before you begin your studies and find appropriate resources to help your decision. For Canada, this page from Canadian Lawyer can help this process: canadianlawyermag.com/resources/legal-education/how-to-start-studying-law-in-canada-law-school-enrollment-guide/392938

Jennifer's work as a criminal law researcher often involves talking to the media and explaining the legal background and/or implications of well-known legal cases. Watch these interviews with Jennifer to gain an insight into the cases and issues work in her field can involve (the first two are in English and the third in French):

- ▶ youtube.com/watch?v=SyWuflGwG8c
- ▶ youtube.com/watch?v=iPRegg3qetg&t
- ▶ youtube.com/watch?v=xiAJVRa6_B8

In this video, Jennifer discusses corporate criminal liability (in French and with English subtitles):

- ▶ youtube.com/watch?v=U5SAedNN1DE

The Faculty of Law at the University of Ottawa runs the Jurivision project, which highlights the work of legal researchers and practitioners in Canada and around the world: ▶ youtube.com/@jurivision



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Meet Jennifer

I was first drawn to law by the idea of 'fighting the good fight' in court. In high school, I liked debating and public speaking, which I thought meant I'd be good at law. The truth is much more nuanced as many lawyers never even go to court. Even those that do spend a lot more time preparing, reading, writing and thinking than they do in court.

I practised as a lawyer before I was a researcher. Oral communication and advocacy skills were essential, and not just in court. The work of a lawyer involves a lot of interaction with colleagues, clients and public officials. Working closely with clients was a highlight of my time in private practice.

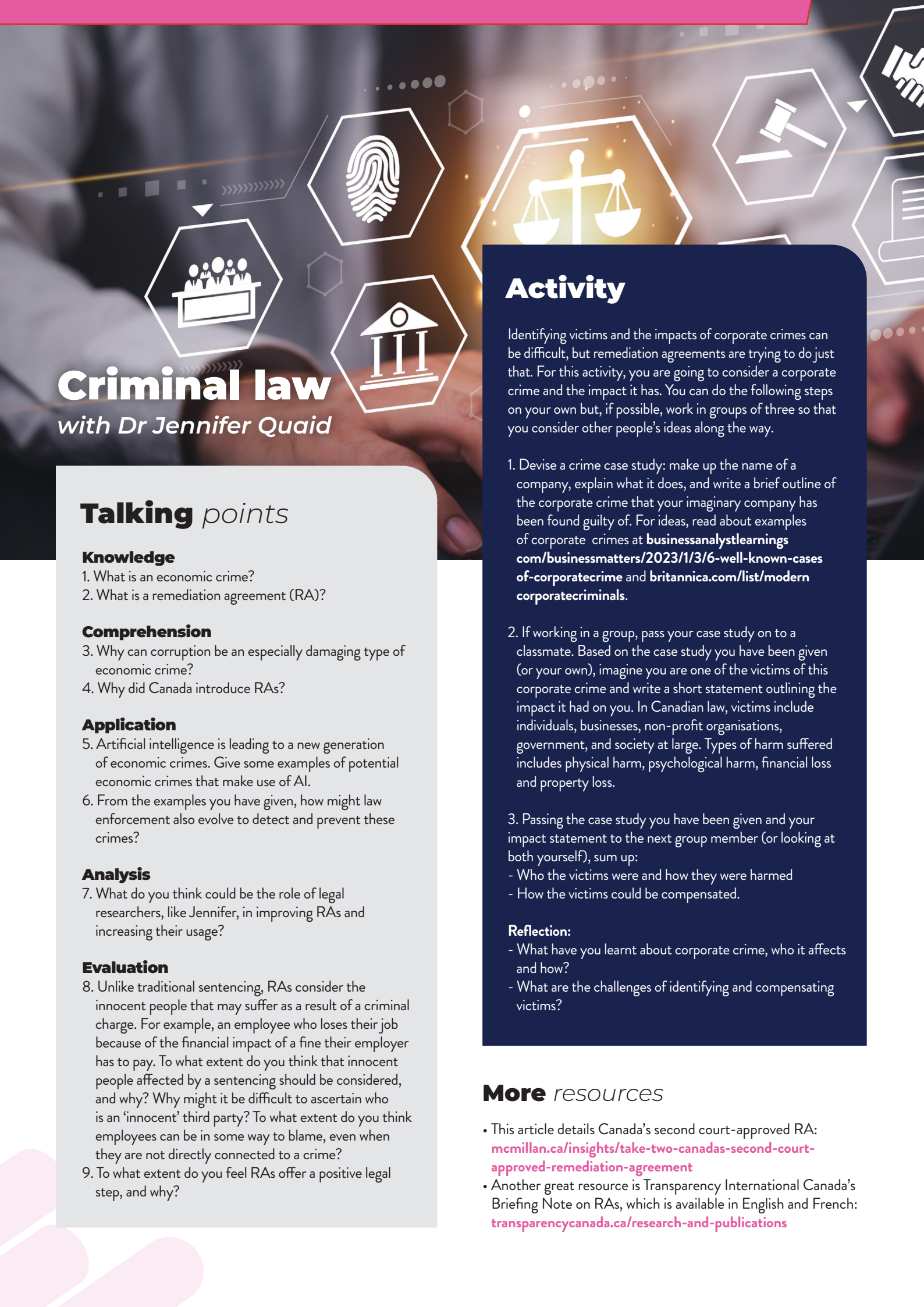
I have had some extraordinary luck in my career. My research expertise has proven relevant to several significant events in Canada and the wider world, which has enabled me to contribute to important public policy debates.

My proudest moments are when I can help move discussions forward, to provide information and evidence to people who need it, and to encourage productive consensus. Some of these moments may not seem very remarkable in themselves – a radio interview, a classroom discussion or a published paper – but they always move the needle on understanding.

I have a big research project lined up. I will study the recent reform to Canadian competition law, exploring how its ambition can be translated into concrete action. In the longer term, I plan to write a textbook on corporate criminal liability in Canada. Economic crime will be a big part of that.

Jennifer's top tips

1. Take time to find your place professionally. Careers are long, and there will be twists and turns that might surprise you.
2. All experiences, including mistakes and obstacles, are important opportunities to learn and grow.
3. Believe in yourself. Persistence and hard work will pay off – but remember that success is state of mind, not a moment.



Criminal law

with Dr Jennifer Quaid

Talking points

Knowledge

1. What is an economic crime?
2. What is a remediation agreement (RA)?

Comprehension

3. Why can corruption be an especially damaging type of economic crime?
4. Why did Canada introduce RAs?

Application

5. Artificial intelligence is leading to a new generation of economic crimes. Give some examples of potential economic crimes that make use of AI.
6. From the examples you have given, how might law enforcement also evolve to detect and prevent these crimes?

Analysis

7. What do you think could be the role of legal researchers, like Jennifer, in improving RAs and increasing their usage?

Evaluation

8. Unlike traditional sentencing, RAs consider the innocent people that may suffer as a result of a criminal charge. For example, an employee who loses their job because of the financial impact of a fine their employer has to pay. To what extent do you think that innocent people affected by a sentencing should be considered, and why? Why might it be difficult to ascertain who is an 'innocent' third party? To what extent do you think employees can be in some way to blame, even when they are not directly connected to a crime?
9. To what extent do you feel RAs offer a positive legal step, and why?

Activity

Identifying victims and the impacts of corporate crimes can be difficult, but remediation agreements are trying to do just that. For this activity, you are going to consider a corporate crime and the impact it has. You can do the following steps on your own but, if possible, work in groups of three so that you consider other people's ideas along the way.

1. Devise a crime case study: make up the name of a company, explain what it does, and write a brief outline of the corporate crime that your imaginary company has been found guilty of. For ideas, read about examples of corporate crimes at businessanalystlearnings.com/businessmatters/2023/1/3/6-well-known-cases-of-corporate-crime and britannica.com/list/modern-corporate-criminals.
2. If working in a group, pass your case study on to a classmate. Based on the case study you have been given (or your own), imagine you are one of the victims of this corporate crime and write a short statement outlining the impact it had on you. In Canadian law, victims include individuals, businesses, non-profit organisations, government, and society at large. Types of harm suffered includes physical harm, psychological harm, financial loss and property loss.
3. Passing the case study you have been given and your impact statement to the next group member (or looking at both yourself), sum up:
 - Who the victims were and how they were harmed
 - How the victims could be compensated.

Reflection:

- What have you learnt about corporate crime, who it affects and how?
- What are the challenges of identifying and compensating victims?

More resources

- This article details Canada's second court-approved RA: mcmillan.ca/insights/take-two-canadas-second-court-approved-remediation-agreement
- Another great resource is Transparency International Canada's Briefing Note on RAs, which is available in English and French: transparencycanada.ca/research-and-publications



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Photo montage

Top: Jennifer teaching a class of law students.

Middle row: Left: Evidence of economic crime can be “buried within mountains of documents and private transactions,” says Jennifer.
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Right: Law is a dynamic field, with new legislation and policies introduced every year. © Summit Art Creations/Shutterstock.com

Bottom: Jennifer speaking in a Jurivision video about corporate criminal liability.

+44 117 909 9150
info@futurumcareers.com
www.futurumcareers.com

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