WHITE COLLAR CRIME:
CASES, MATERIALS, AND
PROBLEMS
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WHITE COLLAR CRIME: CASES, MATERIALS, AND PROBLEMS

THIRD EDITION

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2015
Dedications

J.K.S.
To Hal, Eleanor, and Sam

S.D.J.
To Mom, Byron, Nedra and B.J.
Preface

Our background and goals

With this book, we hope to put to good use our many years of practicing in the area of white collar crime and of teaching and writing about the subject. Professor Jordan served for nearly 10 years as an Assistant United States Attorney for the Western District of Pennsylvania, eventually heading the White Collar Crimes Unit of the United States Attorney’s Office. From 1988 to 1991, she was a member of the prosecution team in the Iran-Contra investigation, one of the most significant tests of executive powers and congressional immunity in recent times. Professor Strader has practiced white collar criminal defense since his days with the New York City law firm of Morvillo, Abramowitz, Grand, Iason, and Anello, P.C. His cases include major Wall Street prosecutions in areas such as securities fraud, mail and wire fraud, RICO, perjury, obstruction of justice, and tax fraud.

Based upon our academic and practice experiences, we have endeavored to write a problem-based casebook that provides a topical, informative, and thought-provoking perspective on this rapidly evolving area of the law. We also believe that the study of white collar law and practice raises unique issues of criminal law and justice policy, and serves as an excellent vehicle for deepening our understanding of criminal justice issues in general. For the third edition, we have continued to emphasize the text’s focus on practice problems. We have substantially increased the number of these exercises, and hope that they prove both fun and useful for students and teachers alike.

We also welcome two contributors to the third edition. Both bring substantial expertise to the topics they cover. We are very grateful to Katrice Bridges Copeland, Professor of Law, Penn State Law, for authoring Chapter Six, Health Care Fraud and Abuse, our new chapter on this increasingly important topic. Professor Copeland practiced law at Sidley Austin LLP in Washington, D.C., focusing on white collar criminal defense and constitutional litigation. As part of her white collar crime practice, she represented pharmaceutical companies in health care fraud and abuse prosecutions. We are also very grateful to Steven L. Chanenson, Professor of Law, Villanova University School of Law, who is the principal author of our revised Chapter 19, Sentencing, a topic of rapid evolution. Before teaching law, Professor Chanenson served as Assistant U.S. Attorney assigned to the Criminal Division in Chicago. He is the Director of the Villanova Sentencing Workshop and frequently writes and speaks on issues of criminal sentencing. We would also like to thank Professor Chanenson for his contribution to the Foreign Corrupt Practices Act section of Chapter Seven, Bribery and Gratuities, and for his extremely helpful editorial suggestions on a number of other chapters.

Coverage

This casebook focuses on the substance and procedure of federal white collar and corporate crime. The book is intended for use in two-, three-, or four-unit courses in White Collar Crime, Federal Criminal Law, Corporate Crime, and related subjects. The book is organized as follows:

• Chapters 1 and 2 (Introduction and Corporate and Individual Liability) introduce themes and concepts discussed throughout the text.
Preface

- Chapters 3–14 cover the substantive law of white collar and corporate crime. Chapters 3 and 4 address at length the crimes of conspiracy, mail and wire fraud, and related crimes, the building blocks of many white collar crime prosecutions. Chapters 5–14 address specific types of fraud (securities fraud, health care fraud, and tax fraud), political corruption (bribery, gratuities, and extortion), the cover-up crimes (false statements, perjury, and obstruction of justice), financial crimes (tax crimes and currency transaction reporting and money laundering), and the RICO statute.

- Chapters 15–17 (Internal Investigations and Compliance Programs, Grand Juries, and Self-Incrimination), cover the principal practical and procedural issues that arise in white collar investigations and prosecutions.

- Chapters 18–20 address the consequences of white collar offenses: civil fines, criminal penalties, and forfeitures.

Selection of materials

Throughout the text, our goal has been to provide the leading cases in each area, focusing where possible on United States Supreme Court opinions. This goal is challenging, given the lightening speed at which this area of the law changes. The rapid evolution of federal sentencing law is only the most recent example of how quickly the law in this area changes. We have done our best to provide both foundational cases and the most recent significant cases.

In the introductory materials to each of the substantive crime chapters, we have included an overview of the law and the statutory elements. Because our goal is to teach principally through the study of the cases, we have tried to edit the cases judiciously* and to keep the case notes to a minimum. We also include a number of concurring and dissenting opinions, both because these opinions help elucidate the issues and because in close cases today’s dissent may be tomorrow’s majority.

Finally, we intersperse practice problems throughout the casebook. The problems focus on substantive law, procedural issues, and ethical dilemmas that arise in white collar practice. The text is designed to be used flexibly, and thus lends itself both to comprehensive study of the black letter law and to a problem-based approach.

A special request

Any book of this length will contain errors. If you find any errors, or have any comments or suggestions, kindly let us know. Please contact Kelly Strader, kstrader@swlaw.edu, 213-738-6753, Southwestern Law School, 3050 Wilshire Blvd, Los Angeles, CA 90010), or Sandra D. Jordan, emeritusprofsjordan@gmail.com.

* We indicate lengthy omissions with centered asterisks, and short omissions with ellipses. We generally have not indicted the omission of citations and footnotes. With respect to footnotes, we have retained the cases’ original note numbers. The footnotes that we have written are indicated by letters rather than numbers.
Acknowledgments

J.K.S.

This book would not have been possible without the support of Dean Susan Westerberg Prager and Southwestern Law School’s Faculty Development Program. I would also like to thanks my many colleagues who gave generously of their time to read various of the book’s chapters; my mentors at Morvillo, Abramowitz, Grand, Iason, and Anello; my research assistants, especially Mary (“Nikki”) Kaasa; and my family for their patience. Also thanks to the many adopters who made extremely helpful comments and suggestions for the third edition of the book.

S.D.J.

This project is the end result of many months of effort, thought and revision. Several of my colleagues generously offered their suggestions, support and vast legal experience as they read through some of the earlier drafts of the chapters. Thanks to my current and former colleagues who had a role in this publication. Robert B. Harper, Browne C. Lewis, and Robert J. Bondi spent time reviewing drafts, making suggestions or offering valuable insight into the substance of our topics. Thanks also to Nate O’Neil, Sonya Murphy, Andrea Patterson, LaTonia Bills, and Shernika Smith who offered their research assistance on this project.
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