

WHITE COLLAR CRIME:  
CASES, MATERIALS, AND  
PROBLEMS

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# WHITE COLLAR CRIME: CASES, MATERIALS, AND PROBLEMS

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THIRD EDITION

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MATTHEW  BENDER

# *Dedications*

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J.K.S.

To Hal, Eleanor, and Sam

S.D.J.

To Mom, Byron, Nedra and B.J.



# Preface

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## *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.

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## *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](mailto:kstrader@swlaw.edu), 213-738-6753, Southwestern Law School, 3050 Wilshire Blvd, Los Angeles, CA 90010, or Sandra D. Jordan, [emeritusprofsjordan@gmail.com](mailto:emeritusprofsjordan@gmail.com).

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\* We indicate lengthy omissions with centered asterisks, and short omissions with ellipses. We generally have not indicated 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*

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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 thank 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.



# Table of Contents

|                  |  |           |
|------------------|--|-----------|
| <b>Chapter 1</b> | <b>OVERVIEW OF WHITE COLLAR CRIME</b>                            | <b>1</b>  |
| [A]              | INTRODUCTORY NOTES   | 1         |
| [B]              | THE DEFINITION OF “WHITE COLLAR CRIME”                           | 2         |
| [1]              | The Development of the Term “White Collar Crime”                 | 2         |
| [2]              | White Collar Legal Practice                                      | 4         |
| [3]              | The Overlap between White Collar and Common Crime                | 5         |
| [4]              | Corporate Crime and White Collar Crime                           | 5         |
| [5]              | “Civil” vs. “Criminal” Cases                                     | 6         |
| [6]              | “Substantive” vs. “Procedural” White Collar Cases                | 6         |
| [C]              | RECURRING ISSUES IN WHITE COLLAR INVESTIGATIONS AND PROSECUTIONS | 6         |
| [1]              | Criminalization  | 6         |
| [a]              | Distinguishing Civil and Criminal Liability                      | 7         |
| [b]              | The Effects of Over-Criminalization                              | 8         |
| [2]              | Due Process  | 9         |
| [3]              | Prosecutorial Discretion   | 9         |
| [4]              | A Double Standard?   | 10        |
| [5]              | Enforcement Barriers   | 11        |
| [6]              | Federalism   | 12        |
| [a]              | Over-Federalization?   | 12        |
| [b]              | Jurisdiction   | 14        |
| [D]              | WHITE COLLAR CRIME AND GENERAL CRIMINAL LAW                      | 14        |
| [1]              | Mens Rea   | 14        |
| [a]              | Strict Liability   | 15        |
| [b]              | Recklessness and Negligence                                      | 15        |
| [c]              | Purpose vs. Knowledge  | 16        |
| [d]              | “Specific” vs. “General” Intent                                  | 16        |
| [e]              | “Willfulness”  | 17        |
| [2]              | Statutory Interpretation   | 18        |
| [3]              | The Rule of Lenity   | 19        |
| [E]              | THE “HARM” FROM WHITE COLLAR CRIME                               | 19        |
| <b>Chapter 2</b> | <b>CORPORATE AND INDIVIDUAL LIABILITY</b>                        | <b>21</b> |
| [A]              | INTRODUCTORY NOTES   | 21        |
|                  | A Note on Prosecutorial Discretion                               | 22        |
| [B]              | CORPORATE CRIMINAL LIABILITY                                     | 22        |
| [1]              | <i>Respondeat Superior</i>                                       | 23        |
|                  | <i>United States v. Automated Medical Laboratories, Inc.</i>     | 23        |

---

## Table of Contents

|                             |   |           |
|-----------------------------|---|-----------|
|                             | Notes and Questions                               | 27        |
|                             | <i>United States v. Hilton Hotels</i>             | 28        |
|                             | Notes and Questions                               | 30        |
|                             | Problem   | 32        |
| [2]                         | Model Penal Code                                  | 33        |
|                             | <i>Commonwealth v. Beneficial Finance Co.</i>     | 33        |
|                             | Notes and Questions                               | 38        |
|                             | <i>People v. Lessoff &amp; Berger</i>             | 39        |
|                             | Notes and Questions                               | 40        |
|                             | Problem   | 41        |
| [C]                         | CORPORATE MENS REA                                | 42        |
| [1]                         | Criminal Intent                                   | 42        |
|                             | <i>State v. Chapman Dodge Center</i>              | 42        |
|                             | Notes and Questions                               | 47        |
| [2]                         | Other Models of Corporate Criminal Liability      | 47        |
|                             | Notes and Questions                               | 48        |
| [D]                         | INDIVIDUAL LIABILITY WITHIN THE CORPORATE SETTING | 50        |
|                             | <i>United States v. Park</i>                      | 50        |
|                             | Notes and Questions                               | 57        |
|                             | Problems  | 58        |
| <b>Chapter 3 CONSPIRACY</b> |   | <b>61</b> |
| [A]                         | INTRODUCTORY NOTES                                | 61        |
| [1]                         | The Importance of a Conspiracy Charge             | 61        |
| [2]                         | Advantages of a Conspiracy Charge                 | 61        |
| [3]                         | Federal Conspiracy Statutes                       | 62        |
| [4]                         | The Elements of Conspiracy                        | 62        |
| [a]                         | Section 371                                       | 62        |
| [b]                         | The “Plurality” Requirement                       | 63        |
| [c]                         | The Overt Act Requirement                         | 63        |
| [5]                         | Sentencing  | 64        |
| [B]                         | MENS REA  | 64        |
|                             | <i>United States v. Lewis</i>                     | 65        |
|                             | Notes and Questions                               | 67        |
|                             | Problem   | 69        |
| [C]                         | THE “OFFENSE CLAUSE” AND THE “DEFRAUD CLAUSE”     | 70        |
|                             | <i>United States v. Arch Trading Co.</i>          | 70        |
|                             | Notes and Questions                               | 73        |
|                             | Problem   | 73        |
|                             | <i>United States v. Rigas</i>                     | 74        |
|                             | Notes and Questions                               | 82        |

---

## Table of Contents

|                  |   |            |
|------------------|---|------------|
|                  | Problem . . . . .   | 82         |
| [D]              | SCOPE OF THE CONSPIRACY . . . . .                               | 83         |
|                  | <i>Kotteakos v. United States</i> . . . . .                     | 83         |
|                  | Notes and Questions . . . . .                                   | 88         |
|                  | Problem . . . . .   | 89         |
| [E]              | DURATION AND WITHDRAWAL . . . . .                               | 90         |
| [1]              | Defining the Termination Point . . . . .                        | 90         |
|                  | <i>United States v. Jimenez Recio</i> . . . . .                 | 90         |
|                  | Notes and Questions . . . . .                                   | 92         |
| [2]              | The Implications of Termination . . . . .                       | 92         |
|                  | <i>Krulewitch v. United States</i> . . . . .                    | 93         |
|                  | Notes and Questions . . . . .                                   | 97         |
| [3]              | Withdrawal . . . . .  | 98         |
|                  | <i>Smith v. United States</i> . . . . .                         | 99         |
|                  | Notes and Questions . . . . .                                   | 102        |
|                  | Problem . . . . .   | 103        |
| [F]              | VICARIOUS LIABILITY . . . . .                                   | 104        |
|                  | <i>Pinkerton v. United States</i> . . . . .                     | 105        |
|                  | Notes and Questions . . . . .                                   | 108        |
|                  | Problem . . . . .   | 108        |
| <b>Chapter 4</b> | <b>MAIL FRAUD, WIRE FRAUD, AND RELATED<br/>CRIMES . . . . .</b> | <b>109</b> |
| [A]              | INTRODUCTORY NOTES . . . . .                                    | 109        |
| [1]              | Breadth of the Mail and Wire Fraud Statutes . . . . .           | 109        |
| [2]              | The Statutory Elements . . . . .                                | 110        |
| [3]              | Jurisdiction . . . . .  | 110        |
| [B]              | INTENT TO DEFRAUD . . . . .                                     | 112        |
|                  | <i>United States v. Regent Office Supply Co.</i> . . . . .      | 112        |
|                  | Notes and Questions . . . . .                                   | 114        |
|                  | Problems . . . . .  | 116        |
| [C]              | DEPRIVATION OF MONEY, PROPERTY, OR HONEST SERVICES . . . . .    | 118        |
| [1]              | The <i>McNally</i> Decision . . . . .                           | 118        |
|                  | <i>McNally v. United States</i> . . . . .                       | 118        |
|                  | Notes and Questions . . . . .                                   | 124        |
| [2]              | Intangible Property Rights . . . . .                            | 125        |
|                  | <i>Carpenter v. United States</i> . . . . .                     | 125        |
|                  | Notes and Questions . . . . .                                   | 128        |
|                  | <i>Cleveland v. United States</i> . . . . .                     | 129        |
|                  | Notes and Questions . . . . .                                   | 134        |
|                  | Problems . . . . .  | 134        |

---

## Table of Contents

|                  |   |            |
|------------------|---|------------|
| [3]              | Honest Services . . . . .                             | 137        |
|                  | <i>Skilling v. United States</i> . . . . .            | 138        |
|                  | Notes and Questions . . . . .                         | 146        |
|                  | <i>United States v. Milovanovic</i> . . . . .         | 149        |
|                  | Notes and Questions . . . . .                         | 157        |
|                  | Problems . . . . .                                    | 159        |
| [D]              | THE USE OF THE MAILS AND WIRES . . . . .              | 163        |
| [1]              | The “In Furtherance” Requirement . . . . .            | 163        |
|                  | <i>Schmuck v. United States</i> . . . . .             | 164        |
|                  | Notes and Questions . . . . .                         | 168        |
|                  | Problem . . . . .                                     | 169        |
| [2]              | The Causation Requirement . . . . .                   | 170        |
|                  | <i>United States v. Walters</i> . . . . .             | 170        |
|                  | Notes and Questions . . . . .                         | 174        |
|                  | Problems . . . . .                                    | 174        |
| [E]              | RELATED CRIMES . . . . .                              | 177        |
| [1]              | Computer Fraud . . . . .                              | 177        |
|                  | [a] Scope of Computer Crimes . . . . .                | 177        |
|                  | [b] Computer Crimes Statutes . . . . .                | 178        |
|                  | [c] Proving the Elements of Computer Crimes . . . . . | 180        |
|                  | <i>United States v. Czubinski</i> . . . . .           | 181        |
|                  | Notes and Questions . . . . .                         | 182        |
| [2]              | Bank Fraud . . . . .                                  | 183        |
|                  | [a] Statutory Overview . . . . .                      | 183        |
|                  | [b] Defining the Elements . . . . .                   | 184        |
|                  | <i>Loughrin v. United States</i> . . . . .            | 184        |
|                  | Notes and Question . . . . .                          | 189        |
| <b>Chapter 5</b> | <b>SECURITIES FRAUD . . . . .</b>                     | <b>191</b> |
| [A]              | INTRODUCTORY NOTES . . . . .                          | 191        |
| [1]              | The Quintessential White Collar Crime? . . . . .      | 191        |
| [2]              | Civil and Criminal Enforcement . . . . .              | 192        |
| [3]              | The Federal Securities Regulation Scheme . . . . .    | 192        |
| [4]              | Elements of Securities Fraud . . . . .                | 193        |
| [B]              | INSIDER TRADING . . . . .                             | 194        |
| [1]              | The Elements of Insider Trading . . . . .             | 195        |
| [2]              | The Traditional Theory . . . . .                      | 195        |
|                  | <i>Chiarella v. United States</i> . . . . .           | 195        |
|                  | Notes and Questions . . . . .                         | 202        |
| [3]              | The Misappropriation Theory . . . . .                 | 203        |
|                  | <i>United States v. O’Hagan</i> . . . . .             | 203        |

## Table of Contents

|  |  |            |
|--|--|------------|
|  | Notes and Questions                                      | 210        |
|  | Note on <i>United States v. Chestman</i> and Rule 10B5-2 | 212        |
|  | Problems   | 213        |
| [4]  | Tipper/Tippee Liability                                  | 214        |
|  | <i>Dirks v. Securities and Exchange Commission</i>       | 215        |
|  | Notes and Questions                                      | 220        |
|  | Note on <i>United States v. Newman</i>                   | 221        |
|  | Note on Rule 10B5-1                                      | 223        |
|  | Problems   | 224        |
| [C]  | PROOF OF WILLFULNESS                                     | 227        |
|  | <i>United States v. Tarallo</i>                          | 227        |
|  | Notes and Questions                                      | 233        |
|  | <i>United States v. Stewart</i>                          | 235        |
|  | Notes and Questions                                      | 240        |
|  | Ethical Exercise   | 241        |
| [D]  | MATERIALITY  | 242        |
|  | <i>Tsc Industries v. Northway, Inc.</i>                  | 243        |
|  | Notes and Questions                                      | 245        |
|  | <i>Basic Inc. v. Levinson</i>                            | 246        |
|  | Notes and Questions                                      | 250        |
|  | Note on <i>Matrixx Initiatives, Inc. v. Siracusano</i>   | 250        |
|  | Problems   | 250        |
| <b>Chapter 6 HEALTH CARE FRAUD AND ABUSE</b> |  | <b>253</b> |
| [A]  | INTRODUCTORY NOTES                                       | 253        |
| [B]  | THE FEDERAL ANTI-KICKBACK STATUTE                        | 254        |
| [1]  | The Elements of the Anti-Kickback Statute                | 254        |
| [a]  | The Mens Rea Requirement                                 | 255        |
| [b]  | The Any Remuneration Requirement                         | 255        |
| [c]  | The Inducement Requirement                               | 255        |
|  | <i>United States v. Greber</i>                           | 255        |
|  | Notes and Questions                                      | 258        |
| [d]  | The Referral Requirement                                 | 259        |
|  | <i>United States v. Shoemaker</i>                        | 260        |
|  | Notes and Questions                                      | 264        |
|  | Problem  | 264        |
| [2]  | Statutory Exceptions and Safe Harbors                    | 265        |
| [a]  | The Employment Exception and Safe Harbor                 | 265        |
|  | <i>United States v. Borrasi</i>                          | 266        |
|  | Notes and Questions                                      | 270        |
|  | Problem  | 270        |

---

## Table of Contents

|                  |  |            |
|------------------|--|------------|
| [b]              | The Personal Services and Management Contract Safe Harbor . . . . .  | 271        |
|                  | Problems . . . . .   | 272        |
| [3]              | The Use of the AKS as a Basis for FCA Cases . . . . .  | 273        |
| [C]              | ADMINISTRATIVE SANCTIONS: CIVIL MONETARY PENALTIES,<br>CORPORATE INTEGRITY AGREEMENTS, & EXCLUSION . . . . . | 274        |
| [1]              | Civil Money Penalties — 42 U.S.C. § 1320a-7a . . . . .   | 274        |
| [2]              | Exclusion . . . . .  | 274        |
| [3]              | Corporate Integrity Agreements . . . . .   | 275        |
|                  | Notes and Questions . . . . .  | 276        |
| <b>Chapter 7</b> | <b>BRIBERY AND GRATUITIES . . . . .</b>  | <b>279</b> |
| [A]              | INTRODUCTORY NOTES . . . . .   | 279        |
| [B]              | SECTION 201 . . . . .  | 279        |
| [1]              | Section 201 — Statutory Elements . . . . .   | 279        |
| [2]              | Public Official . . . . .  | 280        |
|                  | <i>Dixson v. United States</i> . . . . .   | 281        |
|                  | Notes and Questions . . . . .  | 287        |
|                  | Problem . . . . .  | 289        |
| [3]              | Mens Rea . . . . .   | 289        |
|                  | <i>United States v. Sun-Diamond Growers of California</i> . . . . .  | 289        |
|                  | Notes and Questions . . . . .  | 294        |
|                  | Problems . . . . .   | 295        |
| [C]              | FEDERAL PROGRAM BRIBERY — § 666 . . . . .  | 297        |
| [1]              | Statutory Elements . . . . .   | 297        |
| [2]              | The Reach of the Statute . . . . .   | 298        |
|                  | <i>Sabri v. United States</i> . . . . .  | 298        |
|                  | Notes and Questions . . . . .  | 301        |
|                  | Problem . . . . .  | 305        |
| [D]              | FOREIGN CORRUPT PRACTICES ACT . . . . .  | 305        |
| [1]              | Background . . . . .   | 305        |
| [2]              | The FCPA in Action . . . . .   | 307        |
|                  | <i>United States v. Kay</i> . . . . .  | 307        |
|                  | Notes and Questions . . . . .  | 312        |
|                  | Problems . . . . .   | 316        |
| <b>Chapter 8</b> | <b>EXTORTION . . . . .</b>   | <b>319</b> |
| [A]              | INTRODUCTORY NOTES . . . . .   | 319        |
| [1]              | The Breadth of the Federal Extortion Statute . . . . .   | 319        |
| [2]              | Statutory Elements and Definitions . . . . .   | 319        |
| [3]              | Jurisdiction . . . . .   | 320        |
| [B]              | THE PROPERTY REQUIREMENT . . . . .   | 320        |



---

## Table of Contents

|                  |   |            |
|------------------|---|------------|
|                  | <i>Scheidler v. National Organization for Women</i> . . . . .         | 320        |
|                  | Notes and Questions . . . . .   | 324        |
|                  | Problem . . . . .   | 325        |
| [C]              | THE COLOR OF OFFICIAL RIGHT THEORY . . . . .                          | 326        |
|                  | <i>Mccormick v. United States</i> . . . . .                           | 326        |
|                  | Notes and Questions . . . . .   | 331        |
|                  | <i>Evans v. United States</i> . . . . .                               | 332        |
|                  | Notes and Questions . . . . .   | 339        |
|                  | Problems . . . . .  | 340        |
| [D]              | THE USE OF FEAR THEORY . . . . .                                      | 341        |
|                  | <i>United States v. Garcia</i> . . . . .                              | 341        |
|                  | Notes and Questions . . . . .   | 347        |
|                  | Problems . . . . .  | 348        |
| <b>Chapter 9</b> | <b>FALSE STATEMENTS . . . . .</b>                                     | <b>351</b> |
| [A]              | INTRODUCTORY NOTES . . . . .  | 351        |
| [B]              | ELEMENTS OF FALSE STATEMENTS STATUTE . . . . .                        | 351        |
| [C]              | JURISDICTION . . . . .  | 352        |
|                  | <i>United States v. Rodgers</i> . . . . .                             | 352        |
|                  | Notes and Questions . . . . .   | 355        |
|                  | Problems . . . . .  | 357        |
| [D]              | THE “FALSE STATEMENT” . . . . .                                       | 358        |
| [1]              | The “Exculpatory ‘No’ ” Doctrine . . . . .                            | 359        |
|                  | <i>Brogan v. United States</i> . . . . .                              | 359        |
|                  | Notes and Questions . . . . .   | 364        |
| [2]              | Implied False Statements — <i>United States v. Williams</i> . . . . . | 365        |
|                  | Problem . . . . .   | 366        |
| [E]              | CONCEALMENT . . . . .   | 366        |
|                  | <i>United States v. Safavian</i> . . . . .                            | 366        |
|                  | Notes and Questions . . . . .   | 373        |
| [F]              | MENS REA . . . . .  | 374        |
|                  | Note on <i>United States v. Yermian</i> . . . . .                     | 374        |
|                  | Notes and Questions . . . . .   | 375        |
|                  | Problems . . . . .  | 377        |
| [G]              | MATERIALITY . . . . .   | 377        |
|                  | Problem . . . . .   | 378        |
| [H]              | DOUBLE JEOPARDY AND RELATED ISSUES . . . . .                          | 378        |
|                  | <i>United States v. Woodward</i> . . . . .                            | 378        |
|                  | Notes and Questions . . . . .   | 380        |
|                  | Problems . . . . .  | 381        |

---

## Table of Contents

|                   |  |            |
|-------------------|--|------------|
| <b>Chapter 10</b> | <b>PERJURY AND FALSE DECLARATIONS</b>        | <b>383</b> |
| [A]               | INTRODUCTORY NOTES                           | 383        |
| [1]               | The Federal Perjury Statutes                 | 383        |
| [2]               | Overview and Elements of §§ 1621 and 1623    | 384        |
| [a]               | Coverage                                     | 384        |
| [b]               | The elements                                 | 384        |
| [c]               | Differences between §§ 1621 and 1623         | 385        |
| [B]               | TRIBUNALS AND PROCEEDINGS                    | 385        |
|                   | <i>Dunn v. United States</i>                 | 385        |
|                   | Notes and Questions                          | 390        |
|                   | Problem                                      | 390        |
| [C]               | FALSITY                                      | 391        |
|                   | <i>Bronston v. United States</i>             | 391        |
|                   | Notes and Questions                          | 396        |
|                   | Problems                                     | 399        |
| [D]               | THE TWO-WITNESS RULE                         | 400        |
|                   | <i>United States v. Chestman</i>             | 400        |
|                   | Notes and Questions                          | 402        |
|                   | Problems                                     | 403        |
| [E]               | THE RECANTATION DEFENSE                      | 404        |
|                   | <i>United States v. Smith</i>                | 404        |
|                   | Notes and Questions                          | 407        |
| [F]               | ETHICAL CONSIDERATIONS                       | 408        |
|                   | American Bar Association                     | 408        |
|                   | United States Attorneys' Manual              | 410        |
|                   | Notes and Questions                          | 411        |
|                   | Problem                                      | 412        |
| <b>Chapter 11</b> | <b>OBSTRUCTION OF JUSTICE</b>                | <b>415</b> |
| [A]               | INTRODUCTORY NOTES                           | 415        |
| [1]               | Statutory Scheme                             | 415        |
| [2]               | Statutory Overview and Elements              | 416        |
| [a]               | Sections 1503 and 1505                       | 416        |
| [b]               | Section 1512                                 | 416        |
| [c]               | Sections 1519 and 1520                       | 417        |
| [B]               | THE "NEXUS" REQUIREMENT                      | 418        |
|                   | <i>United States v. Aguilar</i>              | 418        |
|                   | Notes and Questions                          | 423        |
|                   | Note on Materiality and the Barry Bonds Case | 425        |
|                   | Notes and Questions                          | 427        |
| [C]               | THE "PROCEEDING" ELEMENT                     | 427        |

---

## Table of Contents

|  |   |            |
|--|---|------------|
|  | <i>United States v. Fulbright</i> . . . . .                 | 428        |
|  | Notes and Questions . . . . .                               | 431        |
|  | Problems . . . . .  | 433        |
| [D]                                    | MENS REA . . . . .  | 434        |
|  | <i>Arthur Andersen, Llp v. United States</i> . . . . .      | 434        |
|  | Notes and Questions . . . . .                               | 440        |
|  | Problem . . . . .   | 442        |
| [E]                                    | SECTION 1519: THE “ANTI-SHREDDING” STATUTE . . . . .        | 443        |
|  | <i>United States v. Kernell</i> . . . . .                   | 444        |
|  | Notes and Questions . . . . .                               | 448        |
|  | <i>Yates v. United States</i> . . . . .                     | 449        |
|  | Notes and Questions . . . . .                               | 455        |
| [F]                                    | LEGAL AND ETHICAL CONSIDERATIONS FOR ATTORNEYS . . . . .    | 456        |
|  | Problem . . . . .   | 459        |
| <b>Chapter 12 TAX CRIMES . . . . .</b> |   | <b>461</b> |
| [A]                                    | INTRODUCTORY NOTES . . . . .                                | 461        |
|  | [1] Types of Tax Prosecutions . . . . .                     | 461        |
|  | [2] Voluntary Compliance and Deterrence . . . . .           | 462        |
|  | [3] The Process of Tax Investigations . . . . .             | 462        |
|  | [4] Statutory Overview . . . . .                            | 462        |
|  | [a] Elements of Tax Evasion — § 7201 . . . . .              | 462        |
|  | [b] Elements of Filing False Tax Returns — § 7206 . . . . . | 463        |
|  | [c] Elements of Failure to File — § 7203 . . . . .          | 463        |
| [B]                                    | TAX EVASION AND FAILURE TO FILE — §§ 7201 & 7203 . . . . .  | 464        |
|  | <i>Spies v. United States</i> . . . . .                     | 464        |
|  | Notes and Questions . . . . .                               | 467        |
|  | Problems . . . . .  | 468        |
| [C]                                    | FILING A FALSE RETURN — § 7206 . . . . .                    | 470        |
|  | <i>United States v. Shortt Accountancy Corp.</i> . . . . .  | 470        |
|  | Notes and Questions . . . . .                               | 473        |
|  | Problem . . . . .   | 474        |
| [D]                                    | MENS REA . . . . .  | 474        |
|  | [1] Defining “Willfulness” in Criminal Tax Cases . . . . .  | 474        |
|  | <i>Cheek v. United States</i> . . . . .                     | 475        |
|  | Note and Questions . . . . .                                | 481        |
|  | [2] Defenses . . . . .                                      | 483        |
|  | <i>United States v. Regan</i> . . . . .                     | 483        |
|  | Notes and Questions . . . . .                               | 487        |
|  | Problems . . . . .  | 488        |
| [E]                                    | METHODS OF PROOF . . . . .                                  | 491        |

---

## Table of Contents

|                   |   |            |
|-------------------|---|------------|
|                   | <i>United States v. Black</i> .....   | 491        |
|                   | Notes and Questions .....   | 493        |
|                   | Problem .....   | 495        |
| <b>Chapter 13</b> | <b>MONEY LAUNDERING AND RELATED FINANCIAL<br/>CRIMES .....</b>                    | <b>499</b> |
| [A]               | INTRODUCTORY NOTES .....  | 499        |
| [B]               | THE CURRENCY TRANSACTION REPORTING, CASH REPORTING,<br>AND STRUCTURING LAWS ..... | 500        |
| [1]               | Statutory Overview .....  | 500        |
| [a]               | The Currency Transaction and Cash Reporting Laws .....                            | 501        |
| [b]               | The Structuring Statutes .....  | 502        |
| [2]               | Mens Rea — The Anti-Structuring Statute (31 U.S.C. § 5324) .....                  | 503        |
|                   | <i>United States v. Macpherson</i> .....  | 503        |
|                   | Notes and Questions .....   | 510        |
|                   | Problems .....  | 512        |
| [C]               | MONEY LAUNDERING .....  | 514        |
| [1]               | Statutory Overview and Elements .....   | 514        |
| [a]               | Section 1956 .....  | 515        |
| [b]               | Section 1957 .....  | 516        |
| [c]               | A Comparison of § 1956 and § 1957 .....   | 517        |
| [2]               | Mens Rea — § 1956 .....   | 517        |
| [a]               | Concealment Money Laundering .....  | 518        |
|                   | <i>United States v. Corchado-Peralta</i> .....                                    | 518        |
|                   | Notes and Questions .....   | 521        |
|                   | Note on Transportation Money Laundering and the <i>Cuellar</i><br>Decision .....  | 523        |
|                   | Problems .....  | 524        |
| [b]               | Promotion Money Laundering .....  | 524        |
|                   | <i>United States v. Brown</i> .....   | 525        |
|                   | Notes and Questions .....   | 528        |
|                   | Problems .....  | 529        |
| [3]               | Criminally derived property .....   | 530        |
| [a]               | Proceeds .....  | 530        |
|                   | Note on the Definition of “Proceeds” .....  | 530        |
|                   | Notes and Questions .....   | 532        |
| [b]               | Timing .....  | 533        |
|                   | Note on Timing .....  | 533        |
| [c]               | Commingling .....   | 534        |
|                   | <i>United States v. Rutgard</i> .....   | 534        |
|                   | Notes and Questions .....   | 538        |

---

## Table of Contents

|                   |  |            |
|-------------------|--|------------|
|                   | Problem . . . . .  | 539        |
| [D]               | THE USA PATRIOT ACT . . . . .  | 540        |
| [E]               | ATTORNEY-CLIENT ISSUES . . . . .                                     | 541        |
| [1]               | Cash Transaction Reporting by Attorneys . . . . .                    | 541        |
| [2]               | Attorney-Client Privilege Issues . . . . .                           | 541        |
|                   | <i>United States v. Gertner</i> . . . . .                            | 542        |
|                   | Notes and Questions . . . . .  | 547        |
|                   | Problem . . . . .  | 548        |
| <b>Chapter 14</b> |  |            |
|                   | <b>RICO . . . . .</b>  | <b>551</b> |
| [A]               | INTRODUCTORY NOTES . . . . .   | 551        |
| [1]               | History and Scope of the RICO Statute . . . . .                      | 551        |
| [2]               | Statutory Elements . . . . .   | 552        |
| [3]               | Jurisdiction . . . . .   | 553        |
| [4]               | Criminal and Civil Sanctions . . . . .                               | 553        |
| [B]               | THE ENTERPRISE . . . . .   | 553        |
| [1]               | The Nature of the Enterprise . . . . .                               | 553        |
|                   | <i>United States v. Turkette</i> . . . . .                           | 553        |
|                   | Notes and Questions . . . . .  | 558        |
|                   | <i>National Organization for Women v. Scheidler</i> . . . . .        | 559        |
|                   | Notes and Questions . . . . .  | 561        |
| [2]               | Proving an Association-in-Fact Enterprise . . . . .                  | 563        |
|                   | <i>Boyle v. United States</i> . . . . .                              | 563        |
|                   | Notes and Questions . . . . .  | 569        |
| [3]               | The Relationship Between the “Person” and the “Enterprise” . . . . . | 569        |
|                   | <i>Cedric Kushner Promotions v. King</i> . . . . .                   | 569        |
|                   | Notes and Questions . . . . .  | 572        |
| [4]               | Required Proof for the “Conduct” Element . . . . .                   | 573        |
|                   | <i>Reves v. Ernst &amp; Young</i> . . . . .                          | 573        |
|                   | Notes and Questions . . . . .  | 577        |
|                   | <i>Handeen v. Lemaire</i> . . . . .                                  | 577        |
|                   | Notes and Questions . . . . .  | 582        |
|                   | Problems . . . . .   | 582        |
| [C]               | THE RACKETEERING ACTIVITY . . . . .                                  | 585        |
| [1]               | State Crimes . . . . .   | 585        |
|                   | <i>United States v. Genova</i> . . . . .                             | 586        |
|                   | Notes and Questions . . . . .  | 588        |
| [2]               | Federal Crimes . . . . .   | 589        |
|                   | <i>United States v. Eisen</i> . . . . .                              | 589        |
|                   | Notes and Questions . . . . .  | 591        |
|                   | Problem . . . . .  | 591        |

---

## Table of Contents

|     |   |     |
|-----|---|-----|
| [D] | THE PATTERN REQUIREMENT . . . . .                                       | 593 |
|     | <i>H.J. Inc. v. Northwestern Bell Telephone Co.</i> . . . . .           | 593 |
|     | Notes and Questions . . . . .   | 602 |
|     | <i>Libertad v. Welch</i> . . . . .                                      | 602 |
|     | Notes and Questions . . . . .   | 606 |
|     | Problems . . . . .  | 606 |
| [E] | RICO CONSPIRACY . . . . .   | 608 |
|     | <i>Salinas v. United States</i> . . . . .                               | 609 |
|     | Notes and Questions . . . . .   | 611 |
| [F] | CIVIL RICO . . . . .  | 611 |
| [1] | Breadth of Civil RICO . . . . .   | 611 |
|     | <i>Sedima, S.P.R.L. v. Imrex Co.</i> . . . . .                          | 611 |
|     | Notes and Questions . . . . .   | 616 |
| [2] | Standing . . . . .  | 617 |
|     | Note on <i>Holmes v. Securities Investor Protection Corp.</i> . . . . . | 617 |
|     | Notes and Questions . . . . .   | 618 |
|     | Problem . . . . .   | 619 |

---

|                   |  |            |
|-------------------|--|------------|
| <b>Chapter 15</b> | <b>INTERNAL INVESTIGATIONS, COMPLIANCE<br/>PROGRAMS, AND DEFERRED AND NON-PROSECUTION<br/>AGREEMENTS . . . . .</b> | <b>621</b> |
|-------------------|--|------------|

---

|     |   |     |
|-----|---|-----|
| [A] | INTRODUCTORY NOTES . . . . .  | 621 |
| [B] | INTERNAL INVESTIGATIONS . . . . .   | 621 |
| [1] | Determining Whether and How to Investigate . . . . .  | 621 |
| [2] | Privilege and Related Issues . . . . .  | 622 |
|     | <i>In re: Kellogg Brown &amp; Root, Inc., et al., Petitioners on Writ of<br/>Mandamus</i> . . . . . | 623 |
|     | Notes and Questions . . . . .   | 629 |
|     | Problems . . . . .  | 632 |
|     | Note on the <i>Bergonzi</i> Case: Confidentiality Agreements and Common<br>Interests . . . . .      | 633 |
|     | Notes and Questions . . . . .   | 634 |
|     | Problem . . . . .   | 639 |
|     | <i>United States v. Lecroy</i> . . . . .  | 639 |
|     | Notes and Questions . . . . .   | 645 |
|     | Problem . . . . .   | 646 |
| [C] | COMPLIANCE PROGRAMS . . . . .   | 646 |
| [1] | Sarbanes-Oxley Act of 2002 . . . . .  | 646 |
| [2] | Department of Justice Policies . . . . .  | 647 |
| [3] | Critical Aspects of Effective Compliance Programs . . . . .   | 648 |
|     | Notes and Questions . . . . .   | 650 |

---

## Table of Contents

|                   |   |            |
|-------------------|---|------------|
|                   | Problems . . . . .  | 650        |
| [D]               | DEFERRED AND NON-PROSECUTION AGREEMENTS . . . . .                                   | 651        |
|                   | Notes and Questions . . . . .   | 654        |
|                   | Problems . . . . .  | 654        |
| <b>Chapter 16</b> | <b>THE GRAND JURY . . . . .</b>   | <b>657</b> |
| [A]               | INTRODUCTORY NOTES . . . . .  | 657        |
| [B]               | SCOPE OF THE GRAND JURY’S INVESTIGATION . . . . .                                   | 659        |
| [1]               | Relevancy, Admissibility, and Specificity . . . . .                                 | 659        |
|                   | <i>United States v. R. Enterprises</i> . . . . .                                    | 659        |
|                   | Notes and Questions . . . . .   | 664        |
| [2]               | Exculpatory Evidence . . . . .  | 665        |
|                   | <i>United States v. Williams</i> . . . . .  | 665        |
|                   | Notes and Questions . . . . .   | 673        |
| [3]               | Irregularities and Abuse . . . . .  | 675        |
|                   | <i>United States v. Arthur Andersen, L.L.P.</i> . . . . .                           | 675        |
|                   | Notes and Questions . . . . .   | 677        |
|                   | Problem . . . . .   | 678        |
| [C]               | GRAND JURY SECRECY AND RELATED ISSUES . . . . .                                     | 679        |
| [1]               | Leaks . . . . .   | 680        |
|                   | <i>In re Sealed Case No. 99-3091</i> . . . . .                                      | 680        |
|                   | Notes and Questions . . . . .   | 683        |
|                   | Problem . . . . .   | 685        |
| [2]               | Disclosure to Government Attorneys . . . . .  | 686        |
|                   | Problems . . . . .  | 687        |
| <b>Chapter 17</b> | <b>SELF-INCRIMINATION — WITNESS TESTIMONY AND<br/>DOCUMENT PRODUCTION . . . . .</b> | <b>691</b> |
| [A]               | INTRODUCTORY NOTES . . . . .  | 691        |
| [B]               | TESTIMONY . . . . .   | 692        |
| [1]               | Witnesses, Subjects, and Targets . . . . .  | 692        |
|                   | Note . . . . .  | 692        |
| [2]               | Immunity . . . . .  | 693        |
| [3]               | Prosecuting the Immunized Witness . . . . .   | 694        |
|                   | <i>United States v. North</i> . . . . .   | 695        |
|                   | Notes and Questions . . . . .   | 700        |
|                   | Problems . . . . .  | 701        |
| [C]               | DOCUMENTS . . . . .   | 703        |
|                   | <i>United States v. Doe (Doe I)</i> . . . . .                                       | 704        |
|                   | Notes and Questions . . . . .   | 707        |
|                   | Problems . . . . .  | 709        |

---

## Table of Contents

|                   |  |            |
|-------------------|--|------------|
|                   | <i>United States v. Hubbell</i> .....  | 710        |
|                   | Notes and Questions .....  | 715        |
|                   | Problems .....   | 717        |
| <b>Chapter 18</b> | <b>CIVIL ACTIONS, CIVIL PENALTIES, AND PARALLEL PROCEEDINGS .....</b>                | <b>719</b> |
| [A]               | INTRODUCTORY NOTES .....   | 719        |
| [1]               | Issues in Parallel Proceedings .....   | 719        |
| [2]               | Civil and Agency Investigations .....  | 719        |
| [3]               | Deferred Prosecution .....   | 720        |
| [B]               | CIVIL REMEDIES .....   | 720        |
| [1]               | Fines .....  | 720        |
|                   | <i>Hudson v. United States</i> .....   | 721        |
|                   | Notes and Questions .....  | 725        |
|                   | Problem .....  | 725        |
| [2]               | Qui Tam Actions .....  | 726        |
|                   | <i>Vermont Agency of Natural Resources v. United States ex rel. Stevens</i><br>..... | 726        |
|                   | Notes and Questions .....  | 729        |
| [C]               | PARALLEL PROCEEDINGS .....   | 732        |
| [1]               | Fifth Amendment Risks .....  | 733        |
|                   | <i>United States v. Kordel</i> .....   | 733        |
|                   | Notes and Questions .....  | 736        |
| [2]               | Immunized Evidence .....   | 737        |
|                   | <i>Pillsbury Co. v. Conboy</i> .....   | 737        |
|                   | Notes and Questions .....  | 741        |
| [3]               | Grand Jury Risks .....   | 741        |
|                   | <i>Douglas Oil Co. v. Petrol Stops Northwest</i> .....                               | 741        |
|                   | Notes and Questions .....  | 747        |
| [4]               | Timing of Parallel Proceedings .....   | 748        |
|                   | <i>United States v. Stringer</i> .....   | 748        |
|                   | Notes and Questions .....  | 753        |
|                   | Notes on Recurring Issues .....  | 754        |
|                   | Problem .....  | 755        |
| <b>Chapter 19</b> | <b>SENTENCING .....</b>  | <b>757</b> |
| [A]               | INTRODUCTORY NOTES .....   | 757        |
| [1]               | Overview .....   | 757        |
| [2]               | The United States Sentencing Commission .....  | 758        |
| [3]               | The Federal Sentencing Guidelines Framework .....                                    | 758        |
|                   | Notes and Questions .....  | 761        |



---

## Table of Contents

|   |  |            |
|---|--|------------|
| [4]                                     | The Guidelines Revolution . . . . .  | 763        |
|   | Steven L. Chanenson Booker <i>on Crack: Sentencing's Latest Gordian Knot</i> . . . . . | 763        |
|   | Notes and Questions . . . . .  | 765        |
| [B]                                     | SENTENCING'S CONSTITUTIONAL EARTHQUAKES . . . . .                                      | 765        |
|   | Steven L. Chanenson Booker <i>on Crack: Sentencing's Latest Gordian Knot</i> . . . . . | 766        |
|   | Notes and Questions . . . . .  | 767        |
|   | Note on the <i>Scooter Libby</i> Sentence . . . . .                                    | 768        |
| [C]                                     | MODERN FEDERAL APPELLATE REVIEW IN ACTION . . . . .                                    | 770        |
|   | <i>United States v. Cavera</i> . . . . .   | 770        |
|   | Notes and Questions . . . . .  | 777        |
| [D]                                     | ECONOMIC OFFENSES . . . . .  | 778        |
| [1]                                     | Overview . . . . .   | 778        |
|   | Notes and Questions . . . . .  | 779        |
| [2]                                     | SENTENCING DISCRETION IN FRAUD CASES . . . . .   | 780        |
|   | <i>United States v. Adelson</i> . . . . .  | 780        |
|   | Notes and Questions . . . . .  | 788        |
|   | <i>United States v. Peppel</i> . . . . .   | 789        |
|   | Notes and Questions . . . . .  | 798        |
|   | Problems . . . . .   | 798        |
| [3]                                     | FRAUD GUIDELINES: CONTROVERSY AND POTENTIAL REFORM . . . . .                           | 801        |
|   | <i>United States v. Corsey</i> . . . . .   | 801        |
|   | Notes and Questions . . . . .  | 805        |
|   | Problems . . . . .   | 806        |
| [E]                                     | ORGANIZATIONAL SENTENCING GUIDELINES . . . . .   | 807        |
| [1]                                     | Overview . . . . .   | 807        |
| [2]                                     | Compliance Programs . . . . .  | 808        |
| <b>Chapter 20 FORFEITURES . . . . .</b> |  | <b>813</b> |
| [A]                                     | INTRODUCTORY NOTES . . . . .   | 813        |
| [1]                                     | The Policy Tension . . . . .   | 813        |
| [2]                                     | The Statutory Provisions . . . . .   | 814        |
| [a]                                     | Overview . . . . .   | 814        |
| [b]                                     | Civil Forfeitures . . . . .  | 814        |
| [c]                                     | Criminal Forfeitures . . . . .   | 815        |
| [B]                                     | THE SCOPE OF FORFEITABLE PROPERTY . . . . .  | 816        |
| [1]                                     | Statutory Scope . . . . .  | 816        |
| [a]                                     | Civil Forfeitures . . . . .  | 816        |
|   | <i>United States v. One 1998 Tractor</i> . . . . .                                     | 816        |

---

## Table of Contents

|     |   |     |
|-----|---|-----|
|     | <i>United States v. \$185,336.07 United States Currency</i> . . . . . | 820 |
|     | Notes and Questions . . . . .   | 824 |
| [b] | Criminal Forfeitures . . . . .  | 825 |
|     | <i>United States v. Hall</i> . . . . .                                | 825 |
|     | Notes and Questions . . . . .   | 827 |
|     | Problems . . . . .  | 828 |
| [2] | Constitutional Limitations . . . . .                                  | 829 |
| [a] | Civil Forfeitures . . . . .   | 829 |
|     | <i>Austin v. United States</i> . . . . .                              | 830 |
|     | Notes and Questions . . . . .   | 833 |
| [b] | Criminal Forfeitures . . . . .  | 835 |
|     | <i>United States v. Bajakajian</i> . . . . .                          | 835 |
|     | Notes and Questions . . . . .   | 842 |
|     | Problems . . . . .  | 845 |
| [C] | THIRD-PARTY INTERESTS . . . . .                                       | 846 |
| [1] | Civil Forfeitures . . . . .   | 846 |
|     | Note on <i>United States v. 92 Buena Vista Avenue</i> . . . . .       | 846 |
|     | Notes and Questions . . . . .   | 847 |
|     | <i>Bennis v. Michigan</i> . . . . .                                   | 848 |
|     | Notes and Questions . . . . .   | 852 |
|     | Problem . . . . .   | 853 |
| [2] | Criminal Forfeitures . . . . .  | 854 |
| [D] | THE SIXTH AMENDMENT . . . . .   | 854 |
|     | <i>Caplin &amp; Drysdale v. United States</i> . . . . .               | 854 |
|     | Notes and Questions . . . . .   | 858 |
| [E] | PROCEDURAL DUE PROCESS . . . . .                                      | 859 |
| [1] | Restraints on Real Property . . . . .                                 | 859 |
|     | Note on <i>James Daniel Good Real Property</i> . . . . .              | 859 |
|     | Notes and Questions . . . . .   | 860 |
| [2] | Pre-Trial Seizures and Attorneys' Fees . . . . .                      | 860 |
|     | <i>Kaley v. United States</i> . . . . .                               | 860 |
|     | Notes and Questions . . . . .   | 870 |
|     | Problems . . . . .  | 871 |

|                                 |             |
|---------------------------------|-------------|
| <b>TABLE OF CASES</b> . . . . . | <b>TC-1</b> |
|---------------------------------|-------------|

---

|                                    |             |
|------------------------------------|-------------|
| <b>TABLE OF STATUTES</b> . . . . . | <b>TS-1</b> |
|------------------------------------|-------------|

---

|                        |            |
|------------------------|------------|
| <b>INDEX</b> . . . . . | <b>I-1</b> |
|------------------------|------------|

---