

# Understanding White Collar Crime

## CAROLINA ACADEMIC PRESS UNDERSTANDING SERIES

- Understanding Administrative Law,  
Seventh Edition  
Kristen E. Hickman
- Understanding Alternative Dispute Resolution  
Kristen M. Blankley and Maureen A. Weston
- Understanding Animal Law  
Adam Karp
- Understanding Antitrust and Its Economic Implications, Seventh Edition  
E. Thomas Sullivan and Jeffrey L. Harrison
- Understanding Bankruptcy, Fourth Edition  
Jeffrey Ferriell and Edward J. Janger
- Understanding California Community Property Law, Second Edition  
Jo Carrillo
- Understanding Capital Punishment Law, Fourth Edition  
Linda E. Carter, Ellen S. Kreitzberg, and Scott W. Howe
- Understanding Civil Procedure, Sixth Edition  
Gene R. Shreve, Peter Raven-Hansen, and Charles Gardner Geyh
- Understanding Civil Procedure: The California Edition  
Walter W. Heiser, Gene R. Shreve, Peter Raven-Hansen, and Charles Gardner Geyh
- Understanding Civil Rights Litigation, Second Edition  
Howard M. Wasserman
- Understanding Conflict of Laws, Fourth Edition  
William M. Richman, William L. Reynolds, and Chris A. Whytock
- Understanding Constitutional Law, Fifth Edition  
William D. Araiza
- Understanding Contracts, Fifth Edition  
Jeffrey Ferriell
- Understanding Copyright Law, Seventh Edition  
Marshall A. Leaffer
- Understanding Corporate Law, Fifth Edition  
Arthur R. Pinto and Douglas M. Branson
- Understanding Corporate Taxation, Fourth Edition  
Leandra Lederman and Michelle Kwon
- Understanding Criminal Law, Ninth Edition  
Joshua Dressler
- Understanding Criminal Procedure: Vol. 1: Investigation, Eighth Edition  
Joshua Dressler, Alan C. Michaels, and Ric Simmons
- Understanding Criminal Procedure: Vol. 2: Adjudication, Fourth Edition  
Joshua Dressler and Alan C. Michaels
- Understanding Disability Law, Third Edition  
Mark C. Weber
- Understanding Election Law and Voting Rights  
Michael R. Dimino, Sr., Bradley A. Smith, and Michael E. Solimine
- Understanding Employee Benefits Law, Second Edition  
Kathryn L. Moore
- Understanding Employment Discrimination Law, Third Edition  
Thomas R. Haggard and Bruce N. Cameron
- Understanding Employment Law, Third Edition  
Paul M. Secunda, Richard A. Bales, and Jeffrey M. Hirsch
- Understanding Environmental Law, Fourth Edition  
Kevin A. Reilly and Philip Weinberg
- Understanding Estate and Gift Taxation, Second Edition  
Brant J. Hellwig and Robert T. Danforth
- Understanding Evidence, Fifth Edition  
Paul C. Giannelli
- Understanding Family Law, Fourth Edition  
John Gregory, Peter N. Swisher, and Robin Wilson
- Understanding Federal and California Evidence  
Paul C. Giannelli
- Understanding Federal Courts and Jurisdiction, Second Edition  
Linda Mullenix, Martin H. Redish, and Georgene Vairo
- Understanding Federal Income Taxation, Seventh Edition  
J. Martin Burke and Michael K. Friel
- Understanding the First Amendment, Seventh Edition  
Russell L. Weaver

- Understanding Immigration Law, Third Edition**  
Kevin R. Johnson, Raquel Aldana, Bill Ong Hing, Leticia M. Saucedo, and Enid Trucios-Haynes
- Understanding Insurance Law, Sixth Edition**  
Robert H. Jerry, II and Douglas Richmond
- Understanding Intellectual Property Law, Fourth Edition**  
Tyler T. Ochoa, Shubha Ghosh, and Mary LaFrance
- Understanding International Business and Financial Transactions, Fourth Edition**  
Jerold A. Friedland
- Understanding International Criminal Law, Fourth Edition**  
Ellen S. Podgor, Roger S. Clark, and Lucian E. Dervan
- Understanding International Law, Third Edition**  
Stephen C. McCaffrey
- Understanding Jewish Law, Second Edition**  
Steven H. Resnicoff
- Understanding Juvenile Law, Fifth Edition**  
Martin Gardner
- Understanding Labor Law, Fifth Edition**  
Douglas E. Ray, Calvin William Sharpe, and Robert N. Strassfeld
- Understanding the Law of Terrorism, Second Edition**  
Erik Luna and Wayne McCormack
- Understanding the Law of Zoning and Land Use Controls, Third Edition**  
Barlow Burke
- Understanding Lawyers' Ethics, Fifth Edition**  
Monroe H. Freedman and Abbe Smith
- Understanding Local Government, Second Edition**  
Sandra Stevenson
- Understanding Modern Real Estate Transactions, Fourth Edition**  
Alex M. Johnson, Jr.
- Understanding Negotiable Instruments and Payment Systems, Second Edition**  
William H. Lawrence
- Understanding Nonprofit and Tax Exempt Organizations, Third Edition**  
Nicholas P. Cafardi and Jaclyn Fabean Cherry
- Understanding Partnership and LLC Taxation, Fifth Edition**  
Jerold A. Friedland
- Understanding Patent Law, Third Edition**  
Amy L. Landers
- Understanding Products Liability Law, Second Edition**  
Bruce L. Ottley, Rogelio A. Lasso, and Terrence F. Kiely
- Understanding Property Law, Fifth Edition**  
John G. Sprankling
- Understanding Remedies, Fourth Edition**  
James M. Fischer
- Understanding Sales and Leases of Goods, Third Edition**  
William H. Henning, William H. Lawrence, and Henry Deeb Gabriel
- Understanding Secured Transactions, Fifth Edition**  
William H. Lawrence, William H. Henning, and R. Wilson Freyermuth
- Understanding Securities Law, Seventh Edition**  
Marc I. Steinberg
- Understanding Sports Law**  
Timothy Davis and N. Jeremi Duru
- Understanding Taxation of Business Entities, Second Edition**  
Walter D. Schwidetzky and Fred B. Brown
- Understanding Torts, Sixth Edition**  
John L. Diamond, Lawrence C. Levine, and Anita Bernstein
- Understanding Trade Secret Law**  
John G. Sprankling and Thomas G. Sprankling
- Understanding Trademark Law, Fourth Edition**  
Mary LaFrance
- Understanding Trusts and Estates, Seventh Edition**  
Roger W. Andersen and Susan Gary
- Understanding White Collar Crime, Fifth Edition**  
J. Kelly Strader and Todd Haugh



# **Understanding White Collar Crime**

FIFTH EDITION

**J. Kelly Strader**

IRWIN R. BUCHALTER PROFESSOR OF LAW  
SOUTHWESTERN LAW SCHOOL

**Todd Haugh**

ASSOCIATE PROFESSOR OF BUSINESS LAW AND ETHICS  
ARTHUR M. WEIMER FACULTY FELLOW IN BUSINESS LAW  
KELLEY SCHOOL OF BUSINESS, INDIANA UNIVERSITY



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2023  
Carolina Academic Press, LLC  
All Rights Reserved

**Library of Congress Cataloging-in-Publication Data**

Names: Strader, J. Kelly, author. | Haugh, Todd, author.  
Title: Understanding white collar crime / by J. Kelly Strader, Todd Haugh.  
Description: Fifth edition. | Durham, North Carolina : Carolina Academic  
Press, LLC, 2022. | Series: Understanding series | Includes index.  
Identifiers: LCCN 2022019613 (print) | LCCN 2022019614 (ebook) |  
ISBN 9781531011383 (paperback) | ISBN 9781531011390 (ebook)  
Classification: LCC KF9350 .S77 2022 (print) | LCC KF9350 (ebook) |  
DDC 345.73/0268—dc23/eng/20220801  
LC record available at <https://lccn.loc.gov/2022019613>  
LC ebook record available at <https://lccn.loc.gov/2022019614>

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

*JKS*

*For Hal, Eleanor, and Sam*

*TJH*

*For Cara, Lyla, and Mabel*



# Contents

---

Preface	xxvii
Acknowledgments	xxix
<b>Chapter 1 · Introduction to White Collar Crime</b>	3
§ 1.01 The Nature of “White Collar Crime”	3
[A] Defining White Collar Crime	3
[B] Categorizing White Collar Statutes	5
[1] The Scope of Relevant Statutes	5
[2] Civil Judicial Decisions that Apply to Criminal Offenses	6
[3] Federal and State Statutes	6
§ 1.02 Issues of Federalism in White Collar Prosecutions	6
[A] Federal and State Overlap	6
[B] Federal Jurisdiction	7
[C] The Debate Concerning the Federalization of Crimes	8
§ 1.03 Recurring Issues in White Collar Investigations and Prosecutions	9
[A] The Harm Caused by White Collar Crime	9
[B] Difficulties in Enforcing White Collar Statutes	11
§ 1.04 Parallel Civil and Administrative Proceedings	11
§ 1.05 Issues of Prosecutorial Discretion in White Collar Crime	12
§ 1.06 White Collar Crime and the General Criminal Law	14
[A] Mens Rea	14
[1] Purpose, Knowledge, and Willful Blindness	15
[2] Willfulness	16
[3] Recklessness and Negligence	17
[4] Strict Liability	17
[B] Statutory Construction	17
[C] Vicarious Liability	18
[D] Inchoate Crimes	18
§ 1.07 Application of Criminal Procedure Principles to White Collar Crime	19
<b>Chapter 2 · Corporate and Individual Liability</b>	21
§ 2.01 Introduction	21
§ 2.02 The Development of Corporate Criminal Liability	22
§ 2.03 Standards for Imputing Liability to Corporations	23
[A] Respondeat Superior	23
[1] Application in the Federal System	23
[2] Elements of Respondeat Superior	23

[3] Agents Whose Liability May Be Imputed to the Corporation	24
[4] Liability of Successor and Non-Existent Corporations	24
[B] Model Penal Code	25
[C] Comparing <i>Respondeat Superior</i> and § 2.07	25
[D] The Debate over Corporate Criminal Liability	26
[E] DOJ Guidelines	26
§ 2.04 Issues Arising under the Model Penal Code	27
[A] Legislative Intent to Impose Liability	27
[B] Approval by High Managerial Agent	28
§ 2.05 Acting on Behalf of the Corporation	29
[A] Model Penal Code versus <i>Respondeat Superior</i>	29
[B] Corporate Compliance Programs and Actions Contrary to Corporate Policy	30
§ 2.06 Acting to Benefit the Corporation	32
§ 2.07 Corporate Mens Rea	33
[A] Managerial Approval of Criminal Conduct	33
[B] Collective Knowledge	34
§ 2.08 Liability of Corporate Officers and Agents	36
[A] Scope of Individual Wrongdoers' Liability	36
[B] Strict Liability of Management for Subordinates' Acts	37
<b>Chapter 3 · Conspiracy</b>	43
§ 3.01 Introduction	43
[A] Nature of Conspiracy Charges	43
[B] Policy Bases	44
§ 3.02 The Federal Conspiracy Statutes	44
[A] Types of Federal Conspiracy Statutes	44
[B] The Elements of the General Conspiracy Statute—§ 371	45
[C] The Overt Act	46
[D] The Unlawful Object	47
§ 3.03 The Advantage of a Conspiracy Charge	48
[A] Joinder	48
[B] Venue	48
[C] Evidence	49
[D] Vicarious Liability—The <i>Pinkerton</i> Rule	49
[E] Multiple Punishments	49
[F] Statute of Limitations	50
§ 3.04 The Agreement	50
[A] The Nature of the Agreement	50
[B] The Plurality Requirement	51
[1] Bilateral versus Multilateral Approaches	51
[2] Government Agents as Co-Conspirators	52
[3] Plurality in the Corporate Context	52
[4] Wharton's Rule	53

§ 3.05 The Breadth of the Agreement	53
[A] Overview	53
[B] Advantages of a Single Trial	54
[C] Single Conspiracy versus Multiple Conspiracies	54
[1] Joinder Issues	54
[2] The Showing of Prejudice	57
[3] Double Jeopardy Issues	58
§ 3.06 The “Offense” Clause and the “Defraud” Clause	59
[A] The “Offense” Clause	59
[B] The “Defraud” Clause	60
[1] Breadth of the Defraud Clause	60
[2] The Federal Government as Victim	61
[C] Relationship between the Offense Clause and the Defraud Clause	61
§ 3.07 Required Mental State	63
[A] Specific Intent	63
[B] “Knowledge” versus “Specific Intent”	65
[C] Conscious Avoidance	66
[D] Mens Rea and Federal Jurisdiction	67
§ 3.08 Proof of Guilt in a Conspiracy Case	68
[A] Level of Required Proof	68
[B] Co-Conspirators’ Exception to the Hearsay Rule	68
§ 3.09 The Victim as a Co-Conspirator	70
§ 3.10 Duration and Withdrawal	70
[A] Duration of a Conspiracy	70
[B] Withdrawal from a Conspiracy	71
§ 3.11 Vicarious Liability—The <i>Pinkerton</i> Doctrine	72
[A] The <i>Pinkerton</i> Decision	72
[B] The Policy Debate	72
[C] Application to White Collar Crimes	73
§ 3.12 Inconsistent Verdicts	73
§ 3.13 Duration	74
§ 3.14 Withdrawal	76
 <b>Chapter 4 · Mail Fraud, Wire Fraud, and Related Offenses</b>	79
§ 4.01 Breadth of the Mail and Wire Fraud Statutes	79
[A] The Statutes’ Appeal to Prosecutors	79
[B] Courts’ Interpretations of the Statutes	81
§ 4.02 Statutory Overview	81
[A] Sections 1341 and 1343	81
[B] The Elements	82
[C] The Inchoate Nature of Mail and Wire Fraud	82
[D] Federal Jurisdiction	82
[1] Jurisdictional Bases	82
[2] Federalism Issues	84

§4.03 The Scheme to Defraud	85
[A] Intent to Defraud	85
[1] The <i>Durland</i> Decision	85
[2] Deception Relating to the Economic Bargain	85
[3] Literally True and Misleading Statements	87
[4] Omissions and Concealment	87
[5] Good Faith and Reliance on Counsel Defenses	88
[B] Materiality	88
[1] The <i>Neder</i> Decision	88
[2] The “Reasonable Reliance” Issue	89
§4.04 The Use of the Mails and Wires	90
[A] The “In Furtherance” Requirement	90
[1] The <i>Schmuck</i> Rule	90
[2] The “Lulling” Rule	93
[B] The “Causation” Requirement	94
§4.05 Deprivation of Money, Property, or Honest Services	96
[A] The “Money or Property” Requirement	96
[1] The <i>McNally</i> Decision	96
[2] Intangible Property Rights	97
[a] Secret Business Information	97
[b] Licenses and Permits	99
[c] The Right to Control Property Interests	99
[3] Property Interests of Foreign Governments	101
[4] Aim of the Deception	101
[5] The “Convergence” Requirement	102
[B] Section 1346 and the Deprivation of “Honest Services”	104
[1] The Adoption and Interpretation of § 1346	104
[2] The <i>Skilling</i> Decision	105
[3] Questions Post- <i>Skilling</i>	106
§4.06 Related Statutes and Crimes	108
[A] Bank Fraud	108
[1] Statutory Overview	108
[2] Statutory Reach	109
[B] Bankruptcy Fraud	111
[C] Health Care Fraud	111
[D] False Government Claims and Procurement Fraud	111
[1] False Claims	112
[2] Procurement Fraud	112
<b>Chapter 5 · Securities Fraud</b>	115
§5.01 Introduction	115
§5.02 Statutory Overview and Definitions	116
[A] Introduction	116
[B] The 1933 and 1934 Acts	117
[1] The Statutory Scheme	117

[2] The Definition of “Security”	117
[3] Secondary Liability	117
§ 5.03 Civil Enforcement of the Securities Laws	118
[A] The Statutory Provisions	118
[B] The Elements	119
§ 5.04 Criminal Enforcement of the Securities Laws	119
[A] The Statutory Scheme	119
[B] The Elements	120
[C] The “Willfulness” Requirement	120
[1] Definition	120
[2] The Level of Proof	121
[3] The “Good Faith” Defense and Reliance on Counsel	123
[D] The “No Knowledge” Proviso	124
§ 5.05 The Sarbanes-Oxley Act of 2002	125
§ 5.06 The Civil/Criminal Overlap	126
§ 5.07 Insider Trading	126
[A] Introduction	126
[B] Policy Bases	128
[C] Insider Trading Defined	128
[1] Insider Trading Theories	128
[2] Elements of Insider Trading	129
[D] The Evolution of the Misappropriation Theory	130
[1] The Supreme Court Cases	130
[2] The Boundaries of Fiduciary Duties	133
[a] Pre- <i>O’Hagan</i> Case Law	133
[b] The SEC’s Attempt to Extend the Boundaries of Fiduciary Duties—Rule 10b5-2	134
[3] The “On the Basis of” Requirement	135
[a] The Circuit Split	135
[b] SEC Adoption of the “Knowing Possession” Standard— Rule 10b5-1	136
[E] Tippee Liability	136
[1] The <i>Dirks</i> Decision	137
[2] The Elements of Tippee Liability	138
[a] Proof of Willfulness	138
[b] Defining the Benefit	139
[c] Intent to Benefit—Misappropriation Theory	141
[F] Trading in Connection with a Tender Offer	142
§ 5.08 The “In Connection With” Requirement	144
§ 5.09 Materiality	145
§ 5.10 Other Offenses	148
[A] Stock Parking	148
[B] Proxy Statements	149
§ 5.11 Professionals’ Liability	149

<b>Chapter 6 · Computer Crime</b>	151
§ 6.01 Introduction	151
§ 6.02 Challenges to Law Enforcement	151
§ 6.03 The Computer Fraud and Abuse Act	152
[A] The Statutory Provisions	152
[1] Section (a)(1)—Knowing and Willful Theft Involving National Security	152
[2] Section (a)(2)—Intentional Theft of Protected Information	153
[3] Section (a)(3)—Intentional Gaining of Access to Government Information	154
[4] Section (a)(4)—Fraud through a Protected Computer	155
[5] Section (a)(5)(A)—Intentionally Causing Damage through a Computer Transmission	155
[6] Section (a)(5)(B)—Recklessly Causing Damage through Unauthorized Access	156
[7] Section (a)(5)(C)—Causing Damage through Unauthorized Access	156
[8] Section (a)(6)—Fraudulent Trafficking in Passwords	157
[9] Section (a)(7)—Extortion	157
[B] The Sentencing Scheme	158
§ 6.04 Prosecuting Computer Crime	158
[A] Issues in Cases Brought under the CFAA	158
[1] Determining the Required Mens Rea	158
[2] Determining the “Thing of Value”	160
[3] Defining the Term “Exceeds Authorized Access”	161
[4] Determining Covered Losses	163
[B] Issues in Wire Fraud Prosecutions of Computer Crime	164
[C] Other Applicable Statutes	164
§ 6.05 International Computer Crime	165
§ 6.06 Constitutional and Statutory Constraints	166
[A] Search and Seizure Issues	166
[B] First Amendment Issues	168
§ 6.07 Civil Actions	168
[A] Suits by Internet Service Providers	169
[B] Suits by Private Individuals	169
<b>Chapter 7 · Health Care Fraud</b>	171
§ 7.01 Overview	171
§ 7.02 The Anti-Kickback Statute	171
[A] The Elements of the Anti-Kickback Statute	171
[1] The Mens Rea Requirement	172
[2] The Any Remuneration Requirement	172
[3] The Inducement Requirement	172
[4] The Referral Requirement	173

[B] Statutory Exceptions and Safe Harbors	173
[1] The Employment Exception and Safe Harbor	173
[2] The Personal Services and Management Contract Safe Harbor	174
[C] The Use of the AKS as a Basis for FCA Cases	175
§ 7.03 Administrative Sanctions: Civil Monetary Penalties, Corporate Integrity Agreements, and Exclusion	175
[A] Civil Money Penalties—42 U.S.C. § 1320a-7a	176
[B] Exclusion	176
[C] Corporate Integrity Agreements	176
<b>Chapter 8 • Environmental Crimes</b>	177
§ 8.01 Introduction	177
§ 8.02 Common Issues in Environmental Prosecutions	179
[A] Corporate Liability	179
[B] Individual Liability and the Responsible Corporate Officer Doctrine	179
[C] Mental State	180
[D] Overlap of Civil and Criminal Liability	181
§ 8.03 Hazardous Waste—The Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)	182
[A] The Statutory Provisions	182
[B] Knowing Violations	182
[1] Applicability of the Responsible Corporate Officer Doctrine	182
[2] Knowledge of Permit Status	183
[3] Knowledge of the Nature of the Waste	185
[C] Knowing Endangerment	185
[D] Individual Liability	186
[E] Corporate Parent Liability	187
§ 8.04 Water Pollution—The Clean Water Act (CWA) and the Refuse Act	188
[A] Statutory Scheme	188
[B] Discharge from a Point Source under the CWA	188
[C] Discharge under the Refuse Act	190
[D] Required Mental State under the CWA and the Refuse Act	190
[1] Negligent Acts under the CWA	191
[2] Mistake of Law under the CWA	191
[3] Mistake of Fact under the CWA	192
[4] Strict Liability under the Refuse Act	193
[5] Applicability of the Responsible Corporate Officer Doctrine	194
[E] The CWA Permit Requirement	195
[F] Knowing Endangerment	195
§ 8.05 Air Pollution—The Clean Air Act (CAA)	196
[A] Overview of the CAA	196
[B] Definition of “Knowledge”	196
[C] Judicial Review	197
[D] Double Jeopardy Issues	198

§ 8.06 Enforcement Issues	199
[A] Enforcement Bodies	199
[B] Parallel Proceedings	199
[C] Fourth Amendment Issues	200
<b>Chapter 9 · Bribery and Gratuities</b>	<b>203</b>
§ 9.01 Introduction	203
§ 9.02 Section 201—Statutory Overview	204
[A] Bribery	204
[B] Gratuity	205
[C] Statutory Definitions	205
§ 9.03 Elements of Bribery and Gratuity under § 201	206
[A] Bribery	206
[B] Gratuity	206
[C] Sentencing	207
[D] Comparison of Bribery and Gratuity	207
[1] The <i>Sun-Diamond</i> Decision	207
[2] Intent and Quid Pro Quo	208
[3] Intent and Timing	208
§ 9.04 Definition of “Something of Value” under § 201	209
§ 9.05 Definition of Federal “Public Officials” under § 201	210
[A] Employees of Entities Other than the Federal Government	210
[B] Participants in the Legislative Process	211
§ 9.06 Definition of “Official Act” under § 201	212
[A] Defining the “Official Act”—The McDonnell Decision	213
[B] The Parties’ Intent	213
[C] The Scope of the Public Official’s Duties	214
§ 9.07 Definition of Criminal Intent under § 201	215
[A] Bribery	215
[B] Gratuity	217
§ 9.08 Federal Program Bribery	217
[A] Statutory Overview	217
[B] Elements of § 666	218
[C] Scope of § 666	219
[1] The Connection between the Bribe and Federal Funds	219
[2] Bribes and Gratuities	220
[3] The Meaning of Federal “Benefits”	222
[4] The Meaning of “Agent”	222
[5] The Meaning of “Misapplies”	223
[6] The Definition of “Official Act”	223
§ 9.09 The Foreign Corrupt Practices Act	224
[A] Statutory Overview and Elements	224
[B] Purpose to Obtain or Retain Business	225
[C] Defining “Foreign Official”	225

[D] Mens Rea	226
[E] International Anti-Bribery Efforts	227
<b>Chapter 10 · Extortion</b>	229
§ 10.01 Introduction	229
§ 10.02 Statutory Overview	230
[A] Statutory Background and Definitions	230
[B] Elements of Extortion	231
[C] Extortion as an Inchoate Crime	231
§ 10.03 Effect on Interstate Commerce	231
§ 10.04 Obtaining Property from Another	233
§ 10.05 The Required Mens Rea	234
§ 10.06 Extortion by the Use of Fear	234
§ 10.07 Extortion under Color of Official Right	238
[A] “Inducement” in Extortion under Color of Official Right	238
[B] The Distinction between Bribery and Extortion under Color of Official Right	240
[C] Distinguishing “Extortion” from Legitimate Campaign Fundraising	241
[D] The Quid Pro Quo Requirement	242
[1] Does the Quid Pro Quo Requirement Apply Outside the Campaign Contribution Context?	242
[2] Is an Explicit Quid Pro Quo Required, or Is an Implicit Quid Pro Quo Sufficient?	243
§ 10.08 The Travel Act	244
<b>Chapter 11 · False Statements</b>	247
§ 11.01 Introduction	247
§ 11.02 Statutory Overview	248
§ 11.03 The Required Mens Rea	249
[A] Knowledge of Falsity	249
[B] Knowledge of Facts Giving Rise to Federal Jurisdiction	249
[C] Willfulness and the Intent to Deceive	250
§ 11.04 The Meaning of “Statement”	251
[A] The Scope of § 1001	251
[1] Silence	251
[2] Implied Statements	252
[B] The “Exculpatory ‘No’” Doctrine	252
[C] The Judicial Proceeding Exception	254
§ 11.05 Falsity and Concealment	255
[A] Implied Falsity and Concealment	255
[B] Literally True or Ambiguous Statements	255
[C] Statements Concerning Future Actions	256
[D] Documents	257

§ 11.06 Materiality	257
§ 11.07 Jurisdiction	258
[A] Statements Made to the Federal Government	258
[B] The Definition of “Jurisdiction”	259
[C] Statements Made to State and Local Agencies and to Private Parties	260
§ 11.08 Section 1001 and Other Offenses	263
 <b>Chapter 12 · Perjury and False Declarations</b>	 265
§ 12.01 Introduction	265
§ 12.02 The Statutory Provisions	266
[A] Introduction	266
[B] Elements of § 1621	266
[C] Elements of § 1623	267
[D] Key Differences between § 1621 and § 1623	267
§ 12.03 The Elements of a Perjury Case	268
[A] Oath	268
[B] Tribunals and Proceedings	268
[C] Falsity	269
[1] Literally True or Non-Responsive Answers	269
[2] Ambiguous Questions and Answers	270
[3] Inconsistent Statements	271
[D] Mens Rea	272
[1] Knowledge of Falsity	272
[2] Willfulness	272
[E] Materiality	272
[F] The “Two-Witness” Rule	273
§ 12.04 The Recantation Defense	276
[A] A Comparison of § 1623 and § 1621	276
[B] Elements of the Recantation Defense	277
[C] Must a Defendant Prove Both Elements to Prevail?	277
§ 12.05 Immunity	279
§ 12.06 Vicarious Liability	280
[A] Aiding and Abetting	280
[B] Subornation of Perjury	280
 <b>Chapter 13 · Obstruction of Justice</b>	 283
§ 13.01 Introduction	283
§ 13.02 A Comparison of §§ 1503, 1505, 1510, and 1512	284
§ 13.03 The Elements of Obstruction of Justice under §§ 1503–1505—	
The Omnibus Clauses	286
[A] Actus Reus—The “Endeavor”	286
[1] The Breadth of the “Endeavor” to Obstruct	287
[a] Interfering with the Production of Documents	287
[b] Giving or Encouraging False Testimony	288

[c] Making False Statements to Government Agents	289
[d] Encouraging a Witness to Assert the Fifth Amendment or Attorney-Client Privilege	289
[e] Threatening Jurors or Court Officers	291
[2] The “Nexus” Requirement	292
[3] A Deceptive Promise to Commit an Endeavor	293
[4] Materiality	293
[B] The Pending Proceeding under §§ 1503 and 1505	294
[1] Court Proceedings	295
[2] Grand Jury Proceedings	296
[3] Agency and Legislative Proceedings	296
[C] Mens Rea	297
[1] The Knowledge Requirement	297
[2] “Corrupt” Intent	297
§ 13.04 The Relationship between Obstruction and Perjury	300
§ 13.05 Sections 1519 & 1520	301
[A] Section 1519—Destruction of Records in Federal Investigations and Bankruptcy	301
[B] Section 1520—Destruction of Audit Records	303
§ 13.06 Section 1512—The Witness Tampering Statute	304
[A] The Statutory Provision and Elements	304
[B] Section 1512(b)—Corrupt Persuasion	306
[C] The Misleading Conduct Provision	308
[D] Section 1512(c)	309
[E] The “Proceeding” Element	309
[F] The Nexus Requirement	310
[G] Section 1512(a)	310
[H] The Relationship between the Obstruction Statutes and the Witness Tampering Statute	311
§ 13.07 Obstruction of Justice and the Mueller Report	311
<b>Chapter 14 . Tax Crimes</b>	313
§ 14.01 Introduction	313
§ 14.02 Tax Evasion	314
[A] Statutory Overview and Elements	314
[B] Underpayment	314
[C] Affirmative Act of Evasion	315
§ 14.03 False Returns	316
[A] Statutory Overview and Elements	316
[B] Tax Filer and Preparer Liability	317
[C] Falsity	318
[D] Materiality	319
§ 14.04 Failure to File a Return or Pay Taxes—Statutory Overview and Elements	320

§ 14.05 Mens Rea—Willfulness	321
[A] Definition of Willfulness	321
[B] Proof of Willfulness	322
[C] Defenses	323
[1] Good Faith	323
[2] Legal Uncertainty	325
[3] Reliance on Professional Advice	327
§ 14.06 Methods of Proof	329
[A] Direct or Specific Items Method	329
[B] Indirect Methods	330
§ 14.07 The Process of Tax Investigations and Prosecutions	331
§ 14.08 Charges Brought in Criminal Tax Cases	332
 <b>Chapter 15 · Currency Transaction Reporting Crimes</b>	335
§ 15.01 Introduction	335
§ 15.02 Statutory Overview	335
[A] Introduction	335
[B] Section 5313(a)—Filing of CTRs by Domestic Financial Institutions	336
[1] The Statute	336
[2] The Elements	337
[C] Section 5324(a)—Structuring and Related Crimes in Connection with Financial Institution Transactions	337
[1] The Statute	337
[2] The Elements of § 5324(a)	339
[D] Section 6050I—Cash Transactions Reporting by Businesses	339
[1] The Statute	339
[2] The Elements	341
[E] Section 5316—Transporting Monetary Instruments	341
[1] The Statute	341
[2] The Elements	342
§ 15.03 Mens Rea Issues in Currency Reporting Cases	343
[A] Knowledge of and Intent to Violate the Law	343
[B] Collective Knowledge	343
[C] Proving Mens Rea	344
§ 15.04 Attorney/Client Issues	345
[A] Introduction	345
[B] Constitutional Challenges	345
[C] Attorney-Client Privilege	346
 <b>Chapter 16 · Money Laundering</b>	349
§ 16.01 Introduction	349
§ 16.02 Statutory Overview	350
[A] Domestic Money Laundering—§ 1956(a)(1)—Statutory Elements and Definitions	351

[B] International Money Laundering—§ 1956(a)(2)	353
[1] Statutory Elements and Definitions	353
[2] Comparison of § 1956(a)(1) and § 1956(a)(2)	354
[C] Prohibited Monetary Transactions—§ 1957	354
[D] Comparison of § 1956(a)(1) and § 1957	356
§ 16.03 Proof of the Defendant’s Mental State	356
[A] Section 1956	356
[1] First Level of Mens Rea—Knowledge that the Transaction Represented Proceeds of Unlawful Activity	357
[2] Second Level of Mens Rea—Four Possible Theories	358
[a] Evidence of a Design to Conceal or Disguise Dirty Money under § 1956(a)(1)(B)(i) and 1956(a)(2)(B)(i)	359
[b] Evidence of Intent to Promote Unlawful Activity under § 1956(a)(1)(A)(i)	362
[B] Section 1957	364
[1] The Government’s Theory	364
[2] Proof of Knowledge	364
§ 16.04 Proof That the Property Was the Product of Criminal Activity	365
[A] Issues Relating to Timing	365
[1] Section 1957	365
[2] Section 1956	366
[B] Commingling	367
[1] Cases under § 1956	367
[2] Cases under § 1957	368
[C] “Proceeds”: Net Receipts or Net Profits?	369
§ 16.05 The USA Patriot Act	370
§ 16.06 The Anti-Money Laundering Act of 2020	370
 <b>Chapter 17 · RICO</b>	375
§ 17.01 Introduction	375
[A] The RICO Debate	375
[B] Department of Justice Guidelines	376
[C] Civil RICO	377
§ 17.02 Interstate Commerce	377
§ 17.03 The Structure of the RICO Statute	378
[A] Introduction	378
[B] Elements and Penalties	378
§ 17.04 Defining the RICO “Theory”	379
[A] Subsection 1962(a)	379
[B] Subsection 1962(b)	380
[C] Subsection 1962(c)	380
[D] Subsection 1962(d)—RICO Conspiracy	381
§ 17.05 The Enterprise	383
[A] Statutory Definition	383
[B] Legitimate vs. Illegitimate Enterprises	383

[C] Economic Motive	384
[D] Formal Entities as Enterprises	384
[E] The “Association-in-Fact” Enterprise	385
[1] Interpretations of the Statutory Definition	385
[2] The Proof Required for an Association-in-Fact Enterprise	386
[F] Naming the Enterprise as a Defendant	387
[1] The Enterprise as a Defendant in Cases Brought under Subsections 1962(a) and (b)	387
[2] The Enterprise as a Defendant in Cases Brought under Subsection 1962(c)	388
[a] Distinguishing the Enterprise and the Defendant	388
[b] Sole Proprietorships as Defendants	389
[c] Corporations as Defendants	390
[3] Pleading Issues Arising from the Defendant/Enterprise Distinction	390
§ 17.06 The “Operation or Management” Test under § 1962(C)	391
[A] The <i>Reves</i> Test	392
[B] Applying <i>Reves</i> to Outside Parties	393
[C] Applying <i>Reves</i> to Inside Parties	394
§ 17.07 The “Racketeering Activity”	395
[A] Introduction	395
[B] State Crimes	396
[1] Defining the State Law Predicates	396
[2] Determining Whether the Facts Support the State Predicate Charge	397
[C] Federal Crimes	398
[D] The “Pattern” Requirement	399
[1] The Supreme Court’s Test	400
[2] Application of the Continuity Requirement	401
[3] Application of the Relatedness Requirement	404
[4] Summary of the Pattern Requirement	405
§ 17.08 Issues Unique to Civil RICO	405
[A] RICO Actions Brought by Private Plaintiffs	406
[1] Attempts to Limit Civil RICO: The <i>Sedima</i> Decision	406
[2] Standing and Causation	407
[3] Equitable Remedies	410
[4] Extraterritoriality	410
[B] Civil RICO Actions Brought by the Government	411
§ 17.09 Statute of Limitations	412
<b>Chapter 18 · Internal Investigations, Compliance Programs, and Deferred and Non-Prosecution Agreements</b>	413
§ 18.01 Introduction	413
§ 18.02 Internal Investigations	413
[A] Purpose of Internal Investigations	413

[B] Tactical Considerations	414
[C] Attorney-Client Privilege and Related Issues	414
[D] The Work Product Doctrine	417
[E] Voluntary Disclosures of Documents	418
§ 18.03 Compliance Programs	421
[A] Purpose of Compliance Programs	421
[B] The Evolution of Compliance Programs	422
[C] Department of Justice Policies	423
[D] Compliance Programs and Corporate Liability	426
§ 18.04 Deferred and Non-Prosecution Agreements	426
 <b>Chapter 19 · Grand Jury Issues</b>	 429
§ 19.01 Introduction	429
§ 19.02 Composition and Duration of the Grand Jury	430
§ 19.03 Purpose of the Grand Jury	430
§ 19.04 The Grand Jury's Investigatory Powers	431
[A] Courts' Deference to Grand Jury Determinations	431
[B] The Scope of the Investigation	432
[1] Relevancy	432
[2] Burden and Overbreadth	433
[3] Privileges	434
[4] Documents Relating to a Sitting President	434
[C] Post-Indictment Investigations	434
§ 19.05 Presentation of Exculpatory Evidence	435
§ 19.06 Grand Jury Secrecy	436
[A] Disclosure of Grand Jury Information to Government Officials	437
[B] Disclosure of Grand Jury Materials to Defendants	438
[C] Disclosure to Third Parties	438
[D] Disclosure to the Press and Public	439
[E] Disclosure to Grand Jury Witnesses	440
 <b>Chapter 20 · The Right against Compelled Self-Incrimination</b>	 441
§ 20.01 Introduction	441
§ 20.02 The Fifth Amendment Privilege against Self-Incrimination— Compelled Testimony	441
§ 20.03 The Fifth Amendment Privilege against Self-Incrimination— The Compelled Production of Documents	442
[A] The Required Records Rule	442
[B] The Collective Entity Rule	443
[C] The Act of Production Doctrine	444
§ 20.04 Immunity	446
 <b>Chapter 21 · Civil Actions, Civil Penalties, and Parallel Proceedings</b>	 449
§ 21.01 Introduction	449
§ 21.02 Parallel State and Federal Proceedings	450

§ 21.03 Parallel Agency Proceedings	450
§ 21.04 Parallel Proceedings and the Fifth Amendment	452
§ 21.05 Parallel Proceedings and Grand Juries	454
[A] Immunized Testimony	454
[B] Secrecy	455
[C] Civil Protective Orders	456
[D] Stays	457
[E] Deferred Prosecution	458
§ 21.06 Civil Fines and Disgorgement	458
§ 21.07 Qui Tam Actions	460
[A] The False Claims Act	460
[B] Qualifying as a Relator	461
[1] Direct and Independent Knowledge	461
[2] The “Original Source” Exception to the “Public Disclosure” Rule	462
[3] Standing	463
[C] Claims Made to Private Entities	463
§ 21.08 Other Sanctions	464
 <b>Chapter 22 · Sentencing</b>	467
§ 22.01 Introduction	467
§ 22.02 Overview of the United States Sentencing Commission and Sentencing Guidelines	469
[A] The Sentencing Commission	469
[B] The Guidelines	469
§ 22.03 Individual Sentencing under the Guidelines	471
[A] Base Offense Level	472
[B] Specific Offense Characteristics	472
[C] Adjustments	472
[D] Multiple Counts	473
[E] Acceptance of Responsibility	473
[F] Defendant’s Criminal History	474
[G] Relevant Conduct	474
[H] Sentencing Range	475
[I] Fines	476
[J] Departures	476
[K] Section 3553(a) Factors	477
§ 22.04 Constitutionality of the Guidelines	478
[A] Delegation of Authority and Separation of Powers	478
[B] <i>Booker</i> and the Sixth Amendment Right to a Jury Trial	479
[1] The <i>Booker</i> Decision	479
[2] Issues Created by <i>Booker</i>	481
[a] Plain Error	481
[b] Harmless Error	481

[c] Reasonableness	481
[d] The Standard of Review on Appeal	484
[e] Post- <i>Booker</i> Deference to the Guidelines	484
[f] Substantial Assistance	485
§ 22.05 Applying the Sentencing Guidelines Post- <i>Booker</i>	486
[A] Appellate Review	486
[B] Sentencing for Economic Offenses	488
[C] The First Step Act	490
§ 22.06 Organizational Sentencing under the Guidelines	490
[A] Overview	490
[B] Effect on Organizational Conduct	492
[C] Sanctions	493
[1] Restitution	493
[2] Community Service	493
[3] Fines	493
<b>Chapter 23 · Forfeitures</b>	497
§ 23.01 Introduction	497
§ 23.02 Civil Forfeiture Proceedings	499
[A] Federal Civil Forfeiture Statutes	499
[B] Property Seizure Procedures	500
[1] Statutory Provisions	500
[2] The Burden of Proof and Standing	500
[C] The Scope of Property Subject to Seizure and Forfeiture	501
[1] Introduction	501
[2] The Substantial Connection Test	502
[D] Third-Party Interests—The “Innocent Owner” Defense	504
[E] Assistance of Counsel	504
[F] Post-Judgment Awards of Attorneys’ Fees and Fines	505
[G] The Effect of the Vesting Provision	505
§ 23.03 Federal Criminal Statutes Providing for the Restraint and Forfeiture of Private Property	506
[A] Statutory Forfeiture Provisions	507
[B] Statutory Procedures for Restraining Property	508
[C] The Scope of Forfeitable Property	508
[1] Rule 32.2(b) and the Nexus Requirement	508
[2] The Forfeiture Theory	508
[3] Proceeds	509
[4] Substitute Assets	510
[5] Money Judgments	511
[6] Joint and Several Liability	511
[7] <i>Apprendi/Booker</i> Issues	512
[D] Rights of Innocent Third Parties	512
[E] The Effect of the Vesting Provision	514

§23.04 Constitutional Challenges	514
[A] The Eighth Amendment's Excessive Fines Clause	514
[1] Criminal Forfeitures	514
[2] Civil Forfeiture	516
[B] Procedural Due Process	517
[1] Civil Forfeitures	517
[2] Criminal Forfeitures	519
[C] Substantive Due Process—Innocent Owners	519
[D] Double Jeopardy	520
[E] Attorney's Fees	521
<b>Table of Cases</b>	525
<b>Index</b>	539

# Preface

---

## Overview of the Text

This book is primarily intended for law and business students in White Collar Crime, Federal Criminal Law, and Corporate Crime classes. The text should also prove useful to legal practitioners, judges, law clerks, and scholars, as well as business leaders in compliance and risk management, who are seeking an introduction to and an overview of the law in this area.

The bulk of this text provides a substantive overview of the principal federal white collar crimes. The book also covers the basic principles of criminal law and criminal procedure necessary to an understanding of white collar crime, and includes chapters on the process of white collar criminal investigations and prosecutions. Finally, the book covers remedies and penalties, including sentencing and forfeitures.

White collar crime is primarily based upon a complex set of statutes. This book provides the texts of the relevant statutes, along with analyses of the statutes' elements and requirements. Because many of these statutes are open to varying interpretations, the book also extensively discusses the main cases interpreting the statutes, including a large number of United States Supreme Court cases. Finally, the book discusses the significant policy issues that arise in white collar investigations and prosecutions, such as enforcement barriers and prosecutorial discretion.

Because of the complexity of the subject, a text such as this necessarily condenses a great deal of information. In addition, readers should note that this area of the law is changing rapidly. For a more extensive discussion of any particular subject, the reader may wish to refer to such sources as *White Collar Crime: Business and Regulatory Offenses* (Otto Obermaier et al., eds.) (updated annually), and the *Annual Survey of White Collar Crime*, published by the American Criminal Law Review.

## A Special Request

Any book of this length is bound to contain errors. Those errors are entirely the authors' responsibility, and we would like to know about all of them. We welcome any comments you may have. Please do not hesitate to e-mail us at [kstrader@swlaw.edu](mailto:kstrader@swlaw.edu) or [thaugh@indiana.edu](mailto:thaugh@indiana.edu).



# Acknowledgments

---

From J. Kelly Strader: This book would not have been possible without the generous support of the Southwestern Law School Faculty Development Program. I would also like to thank Professors Katrice Bridges Copeland, Sandra D. Jordan, and Steven Channesson for their contributions to Chapters 7, 21, and 22, respectively. I have received enormous help from my many research assistants. Too many pitched in to name them all, but a special thanks to Christine Chen for her invaluable assistance. And thanks to Southwestern Faculty Support Supervisor Angelique Porter and the members of the Faculty Support staff for all their help. Finally, thanks to all of you who have used this book and have provided such helpful feedback over the years. I am very grateful.

For this edition, I feel so fortunate to have Todd Haugh join me as co-author. Todd's perspective as an accomplished scholar in the white collar field, and as a person steeped in the business context that is critical to understanding this area of the law, have substantially enriched this text.

On a personal note, I would like to thank my husband, Hal, our children, Eleanor and Sam, and their moms, Helen and Marian, for their love and support.

From Todd Haugh: First and foremost, I would like to thank Kelly Strader for inviting me to co-author a text that I have long admired. It is a challenge to find materials that fit the needs of teaching white collar and corporate criminal law to undergraduate business students, MBAs, and corporate executives, all in one text. Most casebooks have too many cases and not enough blackletter law; most nutshells fail to provide enough detail for serious understanding. *Understanding White Collar Crime* has always hit that sweet spot, and I marvel at how well it is written. I am thrilled to be adding my expertise and viewpoint to a book I have enjoyed teaching from for years. Thanks again, Kelly.

The Kelley School of Business at Indiana University, and its Department of Business Law and Ethics, where I call home, is unparalleled in providing resources for its faculty, and I have benefited greatly from it. Thanks to all there. I would also like to highlight the Arthur M. Weimer Faculty Fellowship for its additional support. Many colleagues have contributed to this book, be it directly through the editing process or by simple discussion and idea sharpening. The list is long but starts with Matt Turk, Suneal Bedi, and Karen Woody. Herculean research assistance came from Wei-Chung (Lucas) Lin.

The people I need to thank the most, though, are my wife and kids—Cara, Lyla, and Mabel. Every good thing starts with you, always.

