

# **PEELING THE ORANGE**



**PEELING THE ORANGE**  
**WHITE COLLAR CRIME**  
**TRIAL PROBLEM**

**Lucian E. Dervan**  
**Associate Professor of Law**  
**Director of Faculty Development**  
**Southern Illinois University School of Law**

**Ellen S. Podgor**  
**Gary R. Trombley Family White-Collar Crime Research Professor**  
**Professor of Law**  
**Stetson University College of Law**

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2016  
Carolina Academic Press  
All Rights Reserved

ISBN: 978-1-61163-881-3  
LCCN: 2015955094

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Phone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

For Anne, who has made this and all my projects a reality.

LED

For Jake Klausman.

ESP



# Table of Contents

Preface .....ix  
 Acknowledgments .....xi

## White Collar Crime Trial Problem

I. Introduction to a White Collar Case ..... 3  
 II. Retaining Counsel and Accompanying Ethical Issues ..... 6  
 III. Handling the Search..... 7  
 IV. Investigating the Case and Accompanying Ethical Issues ..... 7  
 V. Grand Jury Subpoenas ..... 8  
 VI. Parallel Proceedings ..... 9  
 VII. Making Presentations to the Government & Proffers ..... 9  
 VIII. Plea Offers, Deferred Prosecution Agreement,  
 and Non-Prosecution Agreement..... 9  
 IX. Client Charged and Bail ..... 10  
 X. Trial Preparation, Hiring Experts, and Discovery ..... 11  
 XI. Pre-Trial Motions, Jury Selection, Opening Statements,  
 and New Discovery ..... 11  
 XII. Cross-Examination of Government Witnesses..... 12  
 XIII. Direct Examination..... 13  
 XIV. Jury Instructions and Closing Argument ..... 13  
 XV. Sentencing, Prison Preparation, and Collateral Consequences ..... 14

Cast of Characters..... 15

## Trial Problem Exhibits

Attachment A Corporate Compliance Investigation File Prepared and Assembled by Lynn Smith (includes interview notes from speaking with Walter Logan, Ashley Alden, Chris Smart, Jess Henley, and Dr. Sami Myers; it also includes a list of documents that had been in the file, which included the AOA test results prior to Cory Campbell shredding them)

Attachment B Civil Complaint Filed by Logan Walter

Attachment C Newspaper Story Written by Ali Angelo Describing the Contents of the Complaint Filed by Logan Walter

Attachment D Affidavit in Support of Warrant Application Attachment

Attachment E Search Warrant for Tampa and Gulfport Offices

Attachment F Corporate Bylaws

Attachment G	Employment Agreement between Dr. Sami Myers and CFC
Attachment H	Interview Notes Taken by Tomi Bell of the Interview with Jamie Tate
Attachment I	Interview Memoranda Prepared by Tomi Bell from the Notes of the Interview with Jamie Tate
Attachment J	CFC Document Retention Memoranda
Attachment K	CFC Document Search Memoranda
Attachment L	Grand Jury Subpoena for Documents from CFC
Attachment M	Grand Jury Subpoenas for Documents and Testimony to Alden, Smart, Henley, and Dr. Myers
Attachment N	Request for Production in Civil Retaliation Case
Attachment O	Request for Depositions in Civil Retaliation Case
Attachment P	SEC Request for Documents
Attachment Q	U.S. Attorney's Office for the Southern District of New York Request for Documents
Attachment R	New York Attorney General's Office Request for Documents
Attachment S	Emails between Cory Campbell and CEO Jody Murray
Attachment T	Copies of the Awards and Bonuses that CEO Jody Murray Gave to Alden, Smart, and Henley for Their Loyalty to CFC
Attachment U	Deferred Prosecution Agreement Offered to CFC
Attachment V	Plea Agreement Offered to Myers
Attachment W	Indictment of Murray, Campbell, Myers, Henley, Alden, and Smart
Attachment X	Joint Defense Agreement
Attachment Y	Discovery Motion
Attachment Z	Letter Hiring Mickey Miller
Attachment AA	Letter Hiring Amari Andersen



Attachment BB	FBI 302s
Attachment CC	Ashley Alden's Plea Agreement
Attachment DD	Grand Jury Testimony of Government Witness Lee Laser
Attachment EE	Report of Defense Witness Professor Amari Andersen
Attachment FF	Direct Examination of Lee Laser
Attachment GG	Direct Examination of Ashley Alden
Attachment HH	Government's Proposed Jury Instruction on Willful Blindness
Attachment II	Defense and Court Instruction on Willful Blindness
Attachment JJ	Honest Services Instruction, Definition of Knowingly and Willfully, and Reasonable and Good Faith Defense



# Preface

Thank you for selecting *Peeling the Orange: White Collar Crime Trial Problem*. In creating this complex hypothetical situation, we have drawn on our collective years in practice and the academy to create a realistic problem that introduces the reader to fundamental aspects of white collar criminal law and real-life practical challenges encountered by practitioners during these matters.

The book begins with a narrative description of the events at issue. This narrative takes the reader from the early moments of the alleged criminal scheme through the investigation and eventual prosecution of the matter. Along the way, the reader will see reference to documents that are contained in the second half of the book. These documents should be carefully examined in tandem with the narrative reading to present the most comprehensive, detailed, and realistic view of the case. These documents also reflect what an actual practitioner retained in this matter might encounter.

As would be true in a real case, this trial problem contains purposefully included errors, including errors in judgment by individuals, errors in the application of the law, and errors in the drafting of documents. These are inserted into the problem to challenge the reader to consider each action and document carefully. Is this the decision you would have made in this situation? Can you challenge this document in court? Is this how you would have prepared this document? As the reader considers these questions, the reader should also think about the larger issues presented in this case regarding white collar crime and the complexities of this ever changing field of law.

Practitioners who have worked through this problem, some of whom are the leading white collar advocates in the country, have told us that this problem looks and feels like a real case with real world challenges and lessons. We hope you will enjoy this unique journey into the heart of a hypothetical white collar crime, investigation, and prosecution. Remember, fact is often stranger than fiction, especially in the world of white collar and corporate crime.

Lucian E. Dervan  
Ellen S. Podgor  
2015



# Acknowledgements

Our sincerest thanks to all who have helped us in creating this problem, including our colleagues at Southern Illinois University School of Law and Stetson University College of Law.

Special thanks to the National Association of Criminal Defense Attorneys and Stetson University College of Law for their support of the NACDL White Collar Criminal Defense College at Stetson, which proved to be an exceptional forum to work through this problem with the country's leading white collar practitioners.

The authors also thank the following students from the White Collar Advocacy Class at Stetson University College of Law who contributed in the preparation of documents for this problem: Kate Susan Atkinson, Frank John Bane, Rachel Marie Batten, Adam Robert Bugg, Jamie Combee, Marisol Dusek Gomez, Daniel Scott Hartpence, Sabsina Nasim Karimi, Joshua Kohlman Luria, Andrew Dean Reder, Laura Anne Rose, Michael Anthony Scanio, Lauren Renee Senninger, Garrett Scott Severson, Walter Sowa, Jessie Marie Weissman, Amanda Marie Whitt, and others who have used prior versions of this advocacy problem. The authors also thank Stetson University College of Law faculty support, with special thanks to Shannon Edgar, Jessica Fehr and Derrick Morse.

The authors also thank Henry W. Asbill and JonesDay for reading and commenting on the initial draft of this problem and the Advisory Committee for the NACDL White Collar Criminal Defense College at Stetson for the members' helpful comments.

All characters, corporations, and incidents appearing in this work are fictitious. Any resemblance to real corporations or persons, living or dead, is purely coincidental.

