

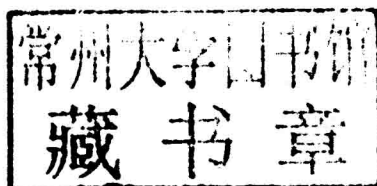
THE PROSECUTION AND DEFENSE OF PUBLIC CORRUPTION

The Law and Legal Strategies

Peter J. Henning

with Lee Radek, Original Co-Author

2014 Edition



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MATTHEW  BENDER

Dedication

*To Karen, first and foremost, and Grace, Alexandra, and Molly,
who make it all worthwhile. And to Lee, whose wise counsel I will miss.*

About the Author

PETER J. HENNING joined the Wayne State University Law School faculty in 1994, where he is a Professor of Law. He is a magna cum laude graduate of Georgetown University Law Center. His teaching focuses on criminal and corporate law, with a specialization in white collar crime. Before entering law teaching, he was a senior attorney in the Division of Enforcement at the U.S. Securities and Exchange Commission, from 1987 to 1991, and a trial attorney in the Criminal Division of the U.S. Department of Justice, from 1991 to 1994. Professor Henning is a co-author of casebooks and student treatises on criminal law, criminal procedure, and white collar crime and three volumes of the *Federal Practice and Procedure* treatise (with the late Professor Charles Alan Wright) on the Federal Rules of Criminal Procedure.

Preface

“No people will tamely surrender their liberties, nor can any be easily subdued, when knowledge is diffused and virtue is preserved. On the contrary, when people are universally ignorant and debauched in their manners, they will sink under their own weight without the aid of foreign invaders.”

Samuel Adams

While the notion of the “consent of the governed” is a foundational principle for a democracy, such consent must be informed and given for a proper purpose. When those who exercise public authority act for their own benefit, rather than the good of the community, that consent can break down and government becomes something to be feared or despised. There is, perhaps, no greater internal threat to a democracy than the cynicism that arises from the perception of favoritism, that decisions are swayed by officials working to line their own pockets, rather than working for the greater good. Similarly, a perception that the will of the people is being subverted by an executive that abuses its power by prosecuting innocent officials also results in a loss of faith in government.

This book focuses on the many and varied ways that the federal government seeks to prevent and punish corruption at all levels of government. Over the past forty years, the prosecution of public corruption has been a priority of the U.S. Department of Justice. There has been no shortage of cases, from prosecutions of members of Congress, to governors and state legislators, to local officials throughout the country. Since the first edition of this book appeared, charges have been pursued against a former governor of Virginia and his wife, and the former mayors of Detroit and New Orleans were convicted for accepting bribes. Compared to other nations, the United States is certainly not one in which corruption is pervasive, but it still occurs far too often and has a negative impact on the public perception of government.

The co-author of the first edition of this book was Lee J. Radek, one of the founding attorneys and later chief of the Public Integrity Section of the U.S. Department of Justice. He died in February 2013, long before he should have been taken from this earth. The dedication Lee wrote for that book was as kind and touching as I have ever seen: “To Jill, Megan, Matt, and Caitlin, my wonderful wife and perfect children, for their patience and inspiration.” He was devoted to his family and enjoyed life to the fullest, especially on the golf course. Lee’s loss is felt by many who were far closer than I ever got the chance to be.

When Lee and I set out to write this book, we wanted to provide a thorough legal analysis concentrating primarily on the federal laws applied to prosecute public corruption. The book surveys the wide range of federal statutes that authorize prosecution for the misuse of public authority and the protection of government officials from corrupting influences, covering bribery and unlawful gratuities, conflicts of interest, campaign finance, and federal employment practices restrictions. This book analyzes both the substantive provisions and related topics that can come up in any case, such as venue and sentencing.

The focus is on how these laws work at a practical level, identifying the important issues and leading cases that provide the foundation for understanding how the case will unfold. There is no other work providing a systematic treatment of the federal law of public corruption. For those interested in broader history and social implications of the subject, two leading works are *Bribes*, by Judge John T. Noonan, Jr., and *The Pursuit of Absolute Integrity*, by Professors Frank Anechiarico and James B. Jacobs.

Preface

My hope is that this book fills a gap in the legal literature by providing practicing lawyers and those interested in how public corruption cases proceed with a comprehensive guide to how the law works and the issues under a particular provision. The aim is to give a thorough treatment of the main legal issues in the wide range of federal laws that affect the exercise of governmental authority and the actions of public officials at all levels of government. I also hope that, in some small way, this may contribute to the effectiveness of the system of justice that, if administered properly and effectively, is the best hope to maintain the confidence of the citizenry in its government.

A work of this scope involves the assistance of a number of people. Joshua Hochberg, a former deputy chief in the Public Integrity Section of the Criminal Division of the Department of Justice who later became Chief of the Fraud Section, was kind enough to introduce me to Lee and then send us on our way. The first edition of the book was aided immeasurably by the research assistance of Bob Rogosich (Wayne Law 2011) and the proofing and editing skills of my daughter, Molly M. Henning (Alma College 2011). Viswanath Prasanna provided outstanding editorial assistance. For the 2014 edition, the research assistance of Allison Bars (Wayne Law 2014) was invaluable. And the linchpin of my writing is my assistant, Olive A. Hyman, who corrects my many errors and keeps me on the straight and narrow.

In a work of this type, there are bound to be errors and omissions, for which I am completely responsible. I am grateful for any assistance readers can provide in making this work better by sharing your thoughts, comments, and criticisms. I can be reached at peter.henning@wayne.edu.

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