

FEDERAL WHITE COLLAR CRIME CASES AND MATERIALS

Third Edition

By

Julie R. O'Sullivan

Professor of Law

Georgetown University Law Center

AMERICAN CASEBOOK SERIES®

THOMSON

WEST

Thomson/West have created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson/West are not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

American Casebook Series and West Group are trademarks registered in the U.S. Patent and Trademark Office.

© West, a Thomson business, 2001, 2003
© 2007 Thomson/West
610 Opperman Drive
St. Paul, MN 55123
1-800-328-9352

Printed in the United States of America

ISBN: 978-0-314-16778-1



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



West's Law School Advisory Board

JESSE H. CHOPER

Professor of Law,
University of California, Berkeley

DAVID P. CURRIE

Professor of Law, University of Chicago

YALE KAMISAR

Professor of Law, University of San Diego
Professor of Law, University of Michigan

MARY KAY KANE

Professor of Law, Chancellor and Dean Emeritus,
University of California,
Hastings College of the Law

LARRY D. KRAMER

Dean and Professor of Law, Stanford Law School

WAYNE R. LaFAVE

Professor of Law, University of Illinois

JONATHAN R. MACEY

Professor of Law, Yale Law School

ARTHUR R. MILLER

Professor of Law, Harvard University

GRANT S. NELSON

Professor of Law,
University of California, Los Angeles

JAMES J. WHITE

Professor of Law, University of Michigan

This book is dedicated to
my Mother,
Rosemary Elizabeth O'Sullivan,
to the memory of my Father, Daniel Edward O'Sullivan,
and to the apple of my eye,
Daniel Atticus (Sarastro) O'Sullivan

*

Preface

This book should be used in conjunction with the website developed to support it: <<http://www.federalwhitecollarcrime.org>> (that is .ORG, not .COM!)

In previous editions, I have asked students to purchase a statutory appendix prepared to accompany the casebook. I will no longer be generating such a volume—all the statutory (and other primary sources) students will need to read will be on the above-cited website. I chose not to include the text of relevant statutes, rules, and sentencing guidelines in the casebook itself for two principal reasons. First, I thought that readers would like ready access to the texts of these sources while reading the casebook—so they do not have to endlessly flip back and forth as they make their way through the cases and notes. Second, a separate compilation of the primary legal texts is obviously easier to keep current.

I have cited extensively to the U.S. Attorney's Manual and DOJ Criminal Resource Memos throughout the book. The Manual may be easily referenced through the U.S. Department of Justice webpage, available at <<http://www.usdoj.gov>>. A link from [federalwhitecollarcrime.org](http://www.federalwhitecollarcrime.org) will be provided to the DOJ manual and website.

I also cite the Guidelines Manual throughout. When writing, I was working with the Nov. 2006 Guidelines. Students may not wish to buy a guidelines manual because the manuals tend to be rendered obsolete by amendments every 6 months or so. Instead, students may access the latest versions of the guidelines on-line to complete the assigned guidelines exercises (<<http://www.ussc.gov>>). A link will be provided from [federalwhitecollarcrime.org](http://www.federalwhitecollarcrime.org) to the latest version of the guidelines, and a guidelines worksheet will be posted for downloading.

On the recommendation of my publisher, I take this opportunity to explain my methodology in editing and citing sources. I, and my very able research assistants, have attempted to make the following materials as accurate as possible. Those consulting this text should realize, however, that the materials have been edited—sometimes extensively. In particular, readers should be aware I have often omitted citations and subject headings from excerpted texts without indicating such omissions (as I am assured is standard practice). Obviously, before such materials are used or cited for practical use, the original sources should be consulted. Where I have inserted a footnote in an excerpted article, case, or other source, I have used an asterisk (*) superscript to indicate that the footnote is an editor's footnote and is not original; otherwise, I have maintained the original source's footnote numbering. As suggested by the Bluebook, I have omitted denials of certiorari or similar discretionary appeals or applications unless the decision is less than two years old (post-2001) or the denial is particularly relevant.

Preface to the Third Edition

My object in this edition was both to update and to winnow. First, the updating. The most significant change between the second and third editions was the Supreme Court's decision in *United States v. Booker* holding the mandatory Federal Sentencing Guidelines unconstitutional. This decision required extensive revisions throughout the book, most particularly in Chapter 3 (devoted to the Guidelines), Chapter 4 (Entity Liability; containing a discussion of the guidelines applicable to organizations), and Chapter 19 (Plea Bargaining and Cooperation Agreements). I purposely waited for 2 years to revise the book in response to *Booker*, hoping to see what the fall-out of that decision would be. To the extent that I was able to find data indicating what sentencing courts are doing in the *advisory* guidelines era, I have provided it throughout.

The Department of Justice has also updated its policy for charging organizations in criminal cases, and that new policy (a/k/a the "McNulty Memo") has been reproduced in Chapter 4, along with an explanation of the forces that drove the DOJ to revise its policy. Given the amount of attention paid in the practice community to the DOJ's "cooperation" policy, and in particular to its "compelled-voluntary" privilege waiver "requests," much more attention has been paid to these subjects in this edition. Relatedly, I have also included a more in-depth discussion of the reasons for, and the conduct of, internal corporate investigations. Finally, the U.S. Sentencing Commission overhauled the organizational guidelines in important respects since the last edition. I have highlighted, in particular, the Commission's revised definition of an "effective" compliance program. Reference to various of Judge Kaplan's decisions in *United States v. Stein* are also discussed, as appropriate, throughout.

Another chapter that required a substantial overhaul was Chapter 6, dealing with obstruction of justice. The Supreme Court handed down its decision in *Arthur Andersen LLP v. United States*, and Congress has been busy making the obstruction code even more confusing post-Enron/Andersen. Discussion of new statutes (18 U.S.C. §§ 1512(c), 1519, 1520) and some interesting new cases (*e.g.*, the Computer Associates and *Singleton* prosecutions) seemed advisable. I also included charts to assist students in comparing and contrasting the overlapping statutes in this area. The Arthur Andersen case study, formerly included in text at the end of the obstruction chapter, is now available on the website where, I am assured, some of the materials (*e.g.*, the trial exhibits) will be easier to read than the print edition permitted.

Chapter 7, dealing with mail and wire fraud, required updating to keep current with a Supreme Court decision (*Pasquantino v. United States*), and the explosion of litigation in the "honest services" fraud area. The Second Circuit's en banc decision in *United States v. Rybicki*, and the Seventh Circuit's offering in *United States v. Thompson*, are included to illustrate the confusion among the circuits in defining the reach of § 1346 in private-sector "honest services" prosecutions.

In Chapter 8, Public Corruption, I decided to try to "internationalize" as

well as update. Accordingly, I have added a section on the Foreign Corrupt Practice Act in an effort to expose students to transnational corruption. I have also, in the “domestic” bribery sections, added discussion of the D.C. Circuit’s en banc decision in *Valdes v. United States*, the Supreme Court’s Hobbs Act decision in *Scheidler v. NOW* (as analyzed in *United States v. Gotti*), and the Court’s section 666 decision in *Sabri v. United States*.

I decided to omit entirely what was Chapter 9—Computer Crime—because this is a subject that I understand is generally taught as a stand-alone topic, generally in a seminar. I believe this may be appropriate, as it was exceedingly difficult to present the subject-matter in a digestible form in one chapter.

In recognition of the recent epidemic of securities fraud cases concerning financial and/or accounting misrepresentations, I have included a discrete section on accounting fraud in Chapter 9, Securities Fraud. Note, also, that an article discussing the deferred prosecution agreement in an accounting fraud case is included in a new section in Chapter 19, Cooperation and Plea Bargaining, relating to developments in corporate cooperation and dispositions.

Chapter 12, Money Laundering, formerly had an “international” section, dealing mostly with jurisdictional issues. I determined that the materials I was using were too fragmented. Accordingly, I eliminated them—for now.

I have updated my discussion of (and sample agreements regarding) proffers (Chapter 15), cooperation agreements (Chapter 19), and non-criminal dispositions in corporate crime cases (both deferred prosecutions and non-prosecution agreements, Chapter 19), to take account of apparent changes in DOJ policies and practices. Developments in appeal and *Brady* waivers (Chapter 19) are also discussed. The Supreme Court’s decisions in *Mickens v. Taylor* and *United States v. Gonzalez-Lopez* are discussed in Chapter 18, “Representation Issues,” as are recent significant decisions in the lower courts regarding the permissible terms of joint defense agreements. Chapter 20, Parallel Proceedings, includes discussion of recent lower-court decisions finding improper the government’s misuse of agency civil powers to further its criminal investigations.

The above reflects some of the winnowing that I have done in the third edition. I decided that I was due for a heartless and thorough cutting because the book had just become too large and difficult for students and teachers alike to work with efficiently. I eliminated what I thought was unnecessary or distracting (including much of what I added in the second edition!). I also tried to condense and clarify where appropriate. Finally, I tried to cut many questions from the notes because students seem to find them infuriating, even if I think them helpful in foreshadowing what will be discussed in class.

My object in future will be to expand discussion throughout the book of the increasingly transnational nature of the practice. Coverage of the FCPA is one step in that direction. I welcome your thoughts and suggestions on this mission, as on all else that relates to the content of the book, now and in future.

Acknowledgments

I am indebted to many family members, friends, and colleagues for their assistance and encouragement during this project. I am particularly in the debt of my emergency babysitter and all-around mainstay, Rosemary E. O'Sullivan, and of the person who constantly challenges me to think harder and be better (and laugh while I'm doing it), Danny O'Sullivan. Lily O'Sullivan's confidence that I run a well-ordered universe is much appreciated. As is the constant moral support of (and cupcakes supplied by) the rest of "THE cousins," Aedan Rose, Eamon, and Hugh Collins, Clare O'Sullivan, and Tess Phinney (and their parents, of course).

I would like to express my gratitude to the research assistants who have helped me over the years in researching many of the issues discussed in these pages. Special thanks go to my former research assistant, Margaret E. Whitney, without whose dedicated efforts this volume would *never* have reached the publisher, and my Deans, Judith Areen and Alex Aleinikoff, who gave me the time and the resources to complete the project. Thanks, too, to my friends and colleagues who practice and teach in this area for their advice, insights, corrections and the like.

I also appreciate the unflagging help and support of the Georgetown University Law Center library and administrative staff, particularly Faculty Manuscript Editor Anna Selden. This third edition was produced in print-ready format, meaning that Anna Selden worked for months getting it just right. As I hope you will agree, Anna ROCKS. As always, many thanks to Michele Roberts and Bob Muse, without whose subtle and nimble minds this work would have been much impoverished. And I would be remiss if I did not acknowledge the inspiration I receive from Seck Barry, Jose Payero, and their amazing families; when I am tired and tempted to compromise my standards, their work ethic and commitment to excellence never fail to move me to try, try again.

Finally, I would like to thank the following authors, publishers, and copyright holders for their permission to reproduce excerpts from their works in the many different editions of this casebook, including:

TASK FORCE ON FEDERALIZATION OF CRIMINAL LAW, AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE SECTION, THE FEDERALIZATION OF CRIMINAL LAW (1998), Copyright 1998: American Bar Association, Criminal Justice Section. Reprinted with the permission of the American Bar Association.

ABA Task Force Opposes Requiring Lawyers to Report Suspicious Financial Transactions, 71 CRIM. L. REP. (BNA) 648 (Sept. 11, 2002). Reproduced with permission from the American Bar Association and the Bureau of National Affairs, Inc. (BNA). Reproduced with permission from ABA/BNA's *Lawyers' Manual on Professional Conduct*, Vol 18, No. 19, pp. 559-560 (Sept. 11, 2002).

Elkan Abramowitz & Barry Bohrer, *Andersen Jury Instructions: A New Collective Corporate Liability?*, N.Y. L.J. (July 2, 2002). This article is reprinted with the

- permission from the July 2, 2002 edition of the New York Law Journal. (c) 2002 NLP IP Company. All rights reserved. Further duplication without permission is prohibited.
- Sara Sun Beale, *Comparing the Scope of the Federal Government's Authority to Prosecute Federal Corruption and State and Local Corruption: Some Surprising Conclusions and a Proposal*, 51 HASTINGS L.J. 699 (2000), Copyright © 2000 Hastings College of the Law; Sara Sun Beale. Reprinted from the Hastings Law Journal, Vol. 51, No. 4, pp. 699, by permission of the publisher and the author.
- Frank O. Bowman III, *Departing is Such Sweet Sorrow: A Year of Judicial Revolt on Substantial Assistance Departures Follows a Decade of Prosecutorial Indiscipline*, 29 STETSON L. REV. 7 (1999), Copyright © Frank O. Bowman, III, 1999. All Rights Reserved. Reprinted with the permission of the Stetson Law Review and the author.
- Stacy L. Brainin & David B. Reece, *From Thornburgh to McDade-Ex Parte Contacts with Corporate Employees During Government Investigations*, in ABA WHITE COLLAR CRIME 2000, Copyright © 2000 American Bar Association. All Rights Reserved. Reprinted by permission of the American Bar Association and the authors.
- H. Lowell Brown, *Vicarious Criminal Liability of Corporations for the Acts of Their Employees and Agents*, 41 LOY. L. REV. 279 (1995), Copyright © 1995 by the Loyola University Loyola Law Review; H. Lowell Brown. Reprinted with the permission of the Loyola Law Review and the author.
- Steven D. Clymer, *Unequal Justice: The Federalization of Criminal Law*, 70 S. CAL. L. REV. 643 (1997), Copyright © 1997 University of Southern California; Steven D. Clymer. Reprinted with the permission of the Southern California Law Review and the author.
- John Coffee, *"No Soul to Damn: No Body to Kick": An Unscandalized Inquiry Into the Problem of Corporate Punishment*, 79 MICH. L. REV. 386 (1981), Copyright © 1980 John C. Coffee, Jr. Reprinted with the permission of the author.
- Lance Cole, *The Fifth Amendment and Compelled Production of Personal Documents After United States v. Hubbell-New Protection for Private Papers?*, 29 AM. J. CRIM. L. 123 (2002)
- Christopher J. Christie & Robert M. Hanna, *A Push Down the Road of Good Corporate Citizenship: The Deferred Prosecution Agreement Between the U.S. Attorney for the District of New Jersey and Bristol-Myers Squibb Co.*, 43 Am. Crim. L. Rev. 1043 (2006).
- ETHICAL IMPLICATIONS OF JOINT DEFENSE/COMMON INTEREST AGREEMENTS, COMMITTEE ON PROFESSIONAL RESPONSIBILITY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK (1996). Reprinted with the permission of the Association of the Bar of the City of New York.
- Sharon L. Davies, *The Jurisprudence of Willfulness: An Evolving Theory of Excusable Ignorance*, 48 DUKE L.J. 341 (1998), Copyright © 1998 Duke Law Journal; Sharon L. Davies. Reprinted with the permission of the Duke Law Journal and the author.
- Robert Fabrikant & Glenn E. Solomon, *Application of the Federal False Claims Act to Regulatory Compliance Issues in the Health Care Industry*, 51 ALA. L. REV. 105 (1999), Copyright © 1999 University of Alabama; Robert Fabrikant, Glenn E. Solomon. Reprinted with the permission of the Alabama Law Review and the authors.

- Stanley Z. Fisher, *In Search of the Virtuous Prosecutor: A Conceptual Framework*, 15 AM. J. CRIM. L. 197 (1988), Copyright © 1988 The University of Texas School of Law. Reprinted with the permission of the American Journal of Criminal Law and the author.
- Brent Fisse, *Reconstructing Corporate Criminal Law: Deterrence, Retribution, Fault, and Sanctions*, 56 S. CAL. L. REV. 1141 (1982), Copyright © 1982 by Brent Fisse. Reprinted with the permission of the Southern California Law Review and the author.
- Robert J. Giuffra, Jr., *E-Mail: The Prosecutor's New Best Friend*, 10 No. 6 Bus. Crimes Bull. 1 (July 2003) Reproduced with the permission of the publisher. Published by Law Journal Press, a division of ALM. © Copyright ALM Properties, Inc. All rights reserved. Copies of the complete work may be ordered from Law Journal Press, Book Fulfillment Department, 105 Madison Avenue, New York, New York 10016 or at www.lawcatalog.com or by calling 800-537-2128, ext. 9300.
- John Stewart Geer, *Representation of Multiple Criminal Defendants: Conflicts of Interests and the Professional Responsibilities of the Defense Attorney*, 62 MINN. L. REV. 119 (1978), Copyright © 1978 by the Minnesota Law Review Foundation. Reprinted with the permission of the University of Minnesota Law School.
- Hon. John Gleeson, *Supervising Criminal Investigations: The Proper Scope of the Supervisory Power of Federal Judges*, 5 J.L. & POL'Y 423 (1997), Copyright © 1997 Brooklyn Law School, Brooklyn, New York. Reprinted with the permission of the Journal of Law and Policy and the author.
- Jack L. Goldsmith, *The Internet and the Legitimacy of Remote Cross-Border Searches*, 2001 U. CHI. LEGAL F. 103. Reprinted with the permission of the University of Chicago Law School Legal Forum.
- Howard W. Goldstein, *'Vinyard' Raises Issues Regarding Mail Fraud, Private Employment: Tort or Crime?*, BUSINESS CRIMES BULLETIN 3 (Dec. 2001) Reprinted with the permission of the author. Reproduced with the permission of the publisher. Published by Law Journal Press, a division of ALM. © Copyright ALM Properties, Inc. All rights reserved. Copies of the complete work may be ordered from Law Journal Press, Book Fulfillment Department, 105 Madison Avenue, New York, New York 10016 or at www.lawcatalog.com or by calling 800-537-2128, ext. 9300.
- Peter Henning, *Defense Discovery in White Collar Criminal Prosecutions*, 15 GA. ST. U. L. REV. 601 (1999), Copyright © 1999 Georgia State University Law Review; Peter J. Henning. Reprinted with the permission of the Georgia State University Law Review and the author.
- Graham Hughes, *Agreements for Cooperation in Criminal Cases*, 45 VAND.L.REV. 1, 29-40 (1992), Copyright © 1992 Vanderbilt Law Review, Vanderbilt University School of Law; Graham Hughes. Reprinted with the permission of the Vanderbilt Law Review and the author.
- William H. Jeffress, *The New Federal Witness Tampering Statute*, 22 AM. CRIM. L. REV. 1 (1984), Copyright © 1984 by the American Bar Association; William H. Jeffries, Jr. Reprinted with the permission of the American Bar Association and the author.
- John Calvin Jeffries, Jr., *Legality, Vagueness, and the Construction of Penal Statutes*, 71 VA. L. REV. 189 (1985), Copyright © 1985 by the Virginia Law Review

- Association; John Calvin Jeffries, Jr. Reprinted with the permission of the Virginia Law Review Association and the author.
- John C. Jeffries, Jr., and Hon. John Gleeson, *The Federalization of Organized Crime: Advantages of Federal Prosecution*, 46 HASTINGS L.J. 1095 (1995), Copyright © 1995 by University of California, Hastings College of the Law; John C. Jeffries, Jr., John Gleeson. Reprinted from Hastings Law Journal Vol. 46, p. 1095, by permission of the publisher and the authors.
- Dan M. Kahan, *Ignorance of Law is an Excuse--But Only for the Virtuous*, 96 MICH. L. REV. 127 (1997), Copyright © 1997 Michigan Law Review Association; Dan M. Kahan. Reprinted with the permission of the Michigan Law Review Association and the author.
- Dan M. Kahan, *Is Chevron Relevant to Federal Criminal Law?*, 110 HARV. L. REV. 469 (1996), Copyright © 1996 Harvard Law Review Association; Dan M. Kahan. Reprinted with the permission of the Harvard Law Review Association and the author.
- Neal Kumar Katyal, *Conspiracy Theory*, 112 YALE L.J. 101 (2003). Reprinted by permission of the author and The Yale Journal Company and William S. Hein Company from The Yale Law Journal Vol. 112, pages 101-192.
- WAYNE R. LAFAYE, CRIMINAL LAW (West 2000), Copyright © 2000 by West Group. All rights reserved. Reprinted with the permission of the West Group and the author.
- DONALD C. LANGEVOORT, INSIDER TRADING: REGULATION, ENFORCEMENT, AND PREVENTION (West Group 1999), Copyright © 1999 by West Group. All Rights Reserved. Reprinted with the permission of the publisher and the author.
- Richard J. Lazarus, *Meeting the Demands of Integration in the Evolution of Environmental Law: Reforming Environmental Law*, 83 GEO. L.J. 2407 (1995), Copyright © 1995 by the Georgetown Law Review Association; Richard J. Lazarus. Reprinted with the permission of Georgetown University Law Center and the author.
- Laurie L. Levenson, *Good Faith Defenses: Reshaping Strict Liability Crimes*, 78 CORNELL L. REV. 401 (1993), Copyright © 1993 by the Cornell University; Laurie L. Levenson. Reprinted with the permission of the Cornell Law Review and the author.
- David Luban, *The Publicity of Law and the Regulatory State*, 10 J. OF POL. PHIL. 296 (2002). Reprinted with the permission of the author and by Blackwell Publishing.
- Hon. Gerard E. Lynch, *Our Administrative System of Criminal Justice*, 66 FORDHAM L. REV. 2117 (1998), Copyright © 1998 Fordham Law Review; Gerard E. Lynch. Reprinted with the permission of Fordham Law Review and the author.
- Hon. Gerard E. Lynch, *RICO: The Crime of Being Criminal, Parts I & II*, 87 COLUM. L. REV. 661 (1987), Copyright © 1987 by the Directors of The Columbia Law Review Association, Inc.; Gerard E. Lynch. Reprinted with the permission of the Columbia Law Review Association and the author.
- Hon. Gerard E. Lynch, *RICO: The Crime of Being Criminal, Parts III & IV*, 87 COLUM. L. REV. 920 (1987), Copyright © 1987 by the Directors of The Columbia Law Review Association, Inc.; Gerard E. Lynch. Reprinted with the permission of the Columbia Law Review Association and the author.
- KENNETH MANN, DEFENDING WHITE-COLLAR CRIME: A PORTRAIT OF

- ATTORNEYS AT WORK (Yale Univ. Press 1985), Copyright © 1985 by Yale University Press. All rights reserved. Reprinted with the permission of the Yale University Press and the author.
- Money Laundering: Through the wringer*, THE ECONOMIST 64-66 April 14, 2001. (c) 2001 The Economist Newspaper Ltd. All rights reserved. Reprinted with permission. Further reproduction prohibited. www.economist.com.
- Jennifer Moore, *Corporate Culpability Under the Federal Sentencing Guidelines*, 34 ARIZ. L.REV. 743 (1992), Copyright © 1992 by the Arizona Board of Regents; Jennifer Moore. Reprinted with the permission of the author and the Arizona Board of Regents. Reprinted by permission.
- Ilene H. Nagel & Winthrop M. Swenson, *The Federal Sentencing Guidelines for Corporations: Their Development, Theoretical Underpinnings, and Some Thoughts About Their Future*, 71 WASH. U. L.Q. 205 (1993), Copyright © 1993 by the Washington University; Ilene H. Nagel and Winthrop M. Swenson. Reprinted with the permission of the Washington University Law Quarterly and the authors.
- Julie Rose O'Sullivan, *Professional Discipline for Law Firms? A Response to Professor Schneyer's Proposal*, 16 GEO. J. LEGAL ETHICS 1 (2002).
- Julie R. O'Sullivan, *In Defense of the U.S. Sentencing Guidelines' Modified Real-Offense System*, 91 NW. U. L. REV. 1342 (1997), Copyright © 1997 by Northwestern University, School of Law, Northwestern Law Review. Reprinted with the permission of the Northwestern University School of Law and the author.
- Julie R. O'Sullivan, *The Federal Criminal "Code" Is a Disgrace: Obstruction Statutes as Case Study*, 96 J. Crim. L. & Criminology 643 (2006).
- Julie R. O'Sullivan, *The Last Straw: DOJ's Privilege Waiver Policy and the Death of Adversarial Justice in Criminal Investigations of Corporations*, - DePaul L. Rev. - (forthcoming 2007)
- Julie R. O'Sullivan, *Does the DOJ's Compelled-Voluntary Privilege Waivers Policy Threaten the Rationales Underlying the Attorney-Client Privilege or the Work Product Doctrine? A Preliminary "No"*, 60 Stanford L. Rev. ____ (forthcoming Oct. 2007).
- Ellen S. Podgor, *Criminal Discovery of Jencks Witness Statements: Timing Makes a Difference*, 15 GA. ST. U. L. REV. 651 (1999), Copyright © 1999 Georgia State University Law Review; Ellen S. Podgor. Reprinted with the permission of the Georgia State University Law Review and the author.
- Ellen S. Podgor, *International Computer Fraud: A Paradigm for Limiting National Jurisdiction*, 35 U.C. DAVIS L. REV. 267 (2002). This work, copyright 2002 by Ellen S. Podgor, was originally published in 35 U.C. Davis L. Rev. 267 (2002), copyright 2002 by the Regents of the University of California. Reprinted with permission.
- Harvey L. Pitt & Karl A. Groskaufmanis, *Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct*, 78 GEO. L.J. 1559 (1990), Copyright © 1990 by the Georgetown Law Journal Association; Harvey L. Pitt and Karl A. Groskaufmanis. Reprinted with the permission of the publisher, Georgetown University and Georgetown Law Journal. © 1990, and the authors.
- Hon. Jed Rakoff, *The Federal Mail Fraud Statute (Part I)*, 18 DUQ. L. REV. 771 (1980). Reprinted with the permission of the author.
- Daniel C. Richman, *Grand Jury Secrecy: Plugging the Leaks in an Empty Bucket*, 36 AM.

- CRIM. L. REV. 339 (1999), Copyright © 1999 by the Georgetown University Law Center; Daniel C. Richman. Reprinted with the permission of the publisher, Georgetown University and American Criminal Law Review © 1999 and the author.
- David A. Sklansky, *Starr, Singleton, and the Prosecutor's Role*, 26 FORDHAM URB. L.J. 509 (1999), Copyright © 1999 Fordham University School of Law; David A. Sklansky. Reprinted with the permission of Fordham Law Review and the author.
- William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1 (1997), Copyright © 1997 Yale Law Journal Company, Inc.; Williams J. Stuntz. Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Company from The Yale Law Journal, Vol. 107, pages 1-76, and the author.
- Winthrop M. Swenson, *The Organizational Guidelines' "Carrot and Stick" Philosophy, and Their Focus on "Effective" Compliance* 1-3, reprinted in U.S. SENTENCING COMMISSION, MATERIALS FOR PROGRAM ON CORPORATE CRIME IN AMERICA: STRENGTHENING THE "GOOD CITIZEN" CORPORATION (Sept. 7, 1995), reprinted with the permission of the U.S. Sentencing Commission and the author.
- Hon. Stephen S. Trott, *Words of Warning for Prosecutors Using Criminals as Witnesses*, 47 HASTINGS L.J. 1381 (1996), Copyright © 1996 Hastings College of the Law. Reprinted from 47 Hastings L.J. 1381 (1996), by permission of the publisher and the author.
- Richard H. Underwood, *Perjury! The Charges and the Defenses*, 36 DUQ. L. REV. 715 (1998), Copyright © 1998 Duquesne University; Richard H. Underwood. Reprinted with the permission of the Duquesne Law Review and the author.
- Ernest L. Ten Eyck & Laureen Ryan, *How Does Financial Statement Fraud Occur? Is Something Rotten in the Accounting Department?*, 1438 PLI/Corp. 9 (July 2004).
- James Vorenberg, *Decent Restraints in Prosecutorial Power*, 94 HARV. L. REV. 1521 (1981), Copyright © 1981 by the Harvard Law Review Association; James Vorenberg. Reprinted with the permission of the Harvard Law Review Association and Mrs. Vorenberg.
- Gregory J. Wallance, *Can You Represent Both Company & Employees After Receiving Grand Jury Subpoenas?* 6 BUSINESS CRIMES BULLETIN No. 10, at 1 (Nov.1999), Reproduced with the permission of the publisher. Published by Law Journal Press, a division of ALM. © Copyright ALM Properties, Inc. All rights reserved. Copies of the complete work may be ordered from Law Journal Press, Book Fulfillment Department, 105 Madison Avenue, New York, New York 10016 or at www.lawcatalog.com or by calling 800-537-2128, ext. 9300.
- Dan K. Webb & Steven F. Molo, *Some Practical Considerations in Developing Effective Compliance Programs: A Framework for Meeting the Requirements of the Sentencing Guidelines*, 71 WASH. U.L. Q. 375 (1993), Copyright © 1993 by the Washington University; Dan K. Webb and Steven F. Molo. Reprinted with the permission of the Washington University Law Quarterly and the authors.
- DAN K. WEBB, ROBERT W. TARUN & STEVEN F. MOLO, CORPORATE INTERNAL INVESTIGATIONS (Law Journal Press 2006), Reproduced with the permission of the publisher. Published by Law Journal Press, a division of ALM. © Copyright ALM Properties, Inc. All rights reserved. Copies of the

complete work may be ordered from Law Journal Press, Book Fulfillment Department, 105 Madison Avenue, New York, New York 10016 or at www.lawcatalog.com or by calling 800-537-2128, ext. 9300. Also reprinted with the permission of the authors.

- DAVID WEISBURD, STANTON WHEELER, ELIN WARIN & NANCY BODE, *CRIMES OF THE MIDDLE CLASSES* (Yale Univ. Press 1991), Copyright © 1991 by Yale University Press. All rights reserved. Reprinted with the permission of the Yale University Press and the authors.
- Joe D. Whitley & William H. Jordan, *Computer Crime*, 2 OTTO G. OBERMAIER & ROBERT G. MORVILLO, *WHITE COLLAR CRIME: BUSINESS AND REGULATORY OFFENSES* (Law Journal Press 2000), Copyright © 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000 NLP IP Company, Law Journal Press, a division of American Lawyer Media, Inc., New York, New York. Reprinted with the permission of the publisher from Chapter 20, "Computer Crime" by Joe D. Whitley and William H. Jordan as it appears in *White Collar Crime: Business and Regulatory Offenses* by Otto G. Obermaier and Robert G. Morvillo, published and copyrighted by Law Journal Press. All rights reserved. Future copies of the complete work may be ordered from Law Journal Press, Book Fulfillment, 345 Park Avenue South, New York, New York 10010. Also reprinted with the permission of the authors, Joe D. Whitley and William H. Jordan.
- John Shepard Wiley Jr., *Not Guilty by Reason of Blamelessness: Culpability in Federal Criminal Interpretation*, 85 VA. L. REV. 1021 (1999), Copyright © 1999 Virginia Law Review Association; John Shepard Wiley, Jr. Reprinted with the permission of the Virginia Law Review Association and the author.
- Dr. Stephan Wilske & Teresa Schiller, Esq., *International Jurisdiction in Cyberspace: Which States May Regulate the Internet?*, 50 FED. COMM. L.J. 117 (1997). Reprinted with the permission of the authors and the original source, the Federal Communications Law Journal. Copyright (c) 2002 Federal Communications Bar Association.
- Jonathan M. Winer, *How to Clean Up Dirty Money*, FINANCIAL TIMES (March 22, 2002). Reprinted with the permission of Jonathan M. Winer, Former U.S. Deputy Assistant Secretary of State for International Law Enforcement, who now practices international regulatory law at Alston & Bird LLP and who can be reached at jwiner@alston.com.
- Jonathan M. Winer, *Illicit Finance and Global Conflict*, Programme for International Cooperation and Conflict Resolution Fafo Report 380 (March 2002). Reprinted with the permission of Jonathan M. Winer, Esq., Alston & Bird LLP, jwiner@alston.com. Mr. Winer is a former U.S. Deputy Assistant Secretary of State for International Law Enforcement.
- Ellen Yaroshefsky, *Cooperation With Federal Prosecutors: Experiences of Truth Telling and Embellishment*, 68 FORDHAM L. REV. 917 (1999), Copyright © 1999 Fordham Law Review; Ellen Yaroshefsky. Reprinted with the permission of the Fordham Law Review and the author.
- Fred C. Zacharias, *Structuring the Ethics of Prosecutorial Trial Practice: Can Prosecutors Do Justice?*, 44 VAND. L. REV. 45 (1991), Copyright © 1991 by the Vanderbilt Law Review, Vanderbilt University School of Law; Fred C. Zacharias. Reprinted with the permission of the Vanderbilt Law Review and the author.

- Fred C. Zacharias & Bruce A. Green, *The Uniqueness of Federal Prosecutors*, 88 GEO. L.J. 207 (2000), Copyright © 2000 Georgetown Law Journal Association; Fred C. Zacharias and Bruce A. Green. Reprinted with permission of the authors and the publisher, Georgetown University and Georgetown Law Journal. © 2000.
- Bruce Zagaris, *Gatekeepers Initiative Seeking Middle Ground Between Client and Government*, 16 CRIMINAL JUSTICE 26 (Winter 2002). Reprinted with the permission of the author, Bruce Zagaris, a partner at Berliner, Corcoran & Rowe, Washington, D.C.; founder and editor-in-chief of the International Enforcement Law Reporter.

FEDERAL WHITE COLLAR CRIME CASES AND MATERIALS

Third Edition

*

xxxi