
Corporate and White Collar Crime

Cases and Materials

Second Edition

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Preface

White collar crime has come to be viewed as the growth industry of the 1990s. As federal prosecutors have continued their pursuit of white collar criminals, Congress, administrative agencies, and the courts have all contributed in significant ways to this evolving body of law.

Some of the issues with which the Supreme Court has dealt are highly charged—the applicability of RICO to abortion protesters, for example. Others, while lower in profile, will profoundly affect the enforcement of the law—for example, a decision holding that a taxpayer who operates under a good faith, but highly unreasonable, belief that income is not taxable does not willfully evade a tax on the amount by not reporting it on his return. Still others invite congressional response—for example, a holding that restricts a recently enacted anti-structuring provision of the Currency and Foreign Transactions Reporting Act by construing it to mean that to commit a structuring offense, the actor must know that structuring is illegal.

In the meantime, the lower courts have been struggling with such weighty issues as whether unissued government licenses constitute “property” under the mail fraud statute, whether making false statements to the FBI constitutes obstruction of justice, and when it is appropriate to impose a “corporate death sentence” under the federal sentencing guidelines for organizations.

Congress has also played an important role. Enactment of the antistructuring statute to prohibit commonplace evasion of the currency reporting law was a milestone. In a parallel administrative move, the IRS expanded the §6050I currency reporting requirements to apply to designated transactions involving monetary instruments of *less* than \$10,000, thus effectively closing the loop on money laundering.

This fledgling field of study has also begun to blossom in law school curricula. Courses and seminars on white collar crime are now widely offered throughout the country.

The first edition of this book endeavored to provide a theoretical and policy framework for considering institutional and individual responsibility for white collar crime, relying principally on federal cases and on problems and case studies to illustrate how criminal law issues arise in a business setting.

Although the second edition retains the same basic framework and coverage, it contains some organizational modifications and shifts in emphasis.

The chapters on institutional and individual liability remain intact but introduce the issue of partnerships' exposure to criminal prosecution. The conspiracy chapter is substantially restructured to provide more comprehensive coverage of the general federal conspiracy statute, including conspiracy to defraud the United States. The material on antitrust conspiracies has been condensed into a brief textual discussion of the distinctions between antitrust and other conspiracy theories.

The mail and securities fraud chapters retain their original structure but incorporate recent case law developments, including cases that strive to articulate when a fiduciary duty arises under the securities laws and that explore the interplay between the advice of counsel defense and the attorney-client privilege.

The materials on perjury, false statements, and obstruction of justice include new cases that cover the jurisdictional elements more efficiently and explore issues that were on the periphery of the original material, and the bribery chapter includes recent cases construing the Foreign Corrupt Practices Act.

Since the publication of the first edition, RICO cases have proliferated at an astonishing rate. This edition includes four significant new Supreme Court decisions construing critical elements of RICO liability and imposing constitutional limits on criminal forfeitures. The chapter on tax and currency reporting violations similarly includes four important Supreme Court opinions delineating the culpability requirements under the tax fraud and currency reporting statutes and imposing constitutional limits on civil forfeitures.

Coverage of environmental crimes is expanded to more fully round out the picture of the environmental universe in which federal prosecutors work. And recent developments incorporated in the remaining two chapters include the first use of the "corporate death penalty" under the sentencing guidelines.

As was true of the first edition, for the sake of brevity some footnotes and citations and most parallel citations have been omitted without indication. Footnotes that were not omitted are renumbered consecutively throughout each chapter. Footnotes that I have added to cases and other quoted materials are identified by the legend "—Ed." Unless otherwise specified, citations to the United States Code that I have supplied are citations to the current Code.

Kathleen F. Brickey

January 1995

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