
CONTENTS

<i>Preface</i>	xxv
<i>Acknowledgments</i>	xxvii
CHAPTER 1	
Corporate Criminal Liability	1
I. Introduction	1
A. Corporate Criminal Liability	1
<i>New York Central & Hudson River Railroad v. United States</i>	1
Notes and Questions	3
Francis T. Cullen, Gray Cavender, William J. Maakestad & Michael L. Benson, Corporate Crime Under Attack: Corporate Criminals or Criminal Corporations? The Rise of Organizational Liability	4
Notes and Questions	6
Ellen Podgor, Symposium Introduction, White-Collar Crime: The Past, Present & Future	6
B. Corporate Prosecution Policy	7
Kathleen F. Brickey, Enron's Legacy	7
Notes and Questions	10
Attorney General Eric Holder, Testimony Before the Senate Judiciary Committee	12
A Message from Attorney General Eric Holder, Video Posted on Justice Department Website	12
Deputy Attorney General Sally Quillian Yates, Remarks at New York University School of Law Announcing New Policy on Individual Liability in Matters of Corporate Wrongdoing	13
Deputy Attorney General Lisa O. Monaco, Remarks at New York University on Corporate Criminal Enforcement	15
The Justice Manual (Formerly Known as the United States Attorneys' Manual) Title 9, Principles of Federal Prosecution of Business Organizations	16
Notes and Questions	30
Samuel Buell, Capital Offenses: Business Crime and Punishment in America's Corporate Age	30
Jennifer Taub, Big Dirty Money: The Shocking Injustice and Unseen Cost of White Collar Crime	31
C. Deferred Prosecution and Non-Prosecution Agreements	32
Anthony S. Barkow & Rachel E. Barkow, Prosecutors in the Boardroom: Using Criminal Law to Regulate Corporate Conduct	33
Brandon Garrett, Declining Corporation Prosecutions	33
<i>United States v. Fokker Services B.V.</i>	34

Deputy Attorney General Lisa O. Monaco, Remarks at New York University on Corporate Criminal Enforcement	35
II. The Respondeat Superior Rule	36
A. Criminal Acts	36
<i>Commonwealth v. Beneficial Finance Co.</i>	36
Notes and Questions	39
<i>Commonwealth v. L.A.L. Corporation</i>	41
<i>Commonwealth v. Angela Todesca Corporation</i>	41
Note	42
<i>People of the State of Michigan v. Hock Shop, Inc.</i>	42
Note on the Respondeat Superior Rule	46
Notes and Questions	47
<i>People v. Lessoff & Berger</i>	47
Notes and Questions	49
<i>United States v. Hilton Hotels Corp.</i>	49
Notes and Questions	51
B. Criminal Intent	52
<i>United States v. Bank of New England, N.A.</i>	52
Notes and Questions	56
<i>United States v. Pacific Gas and Electric Company</i>	56
Notes and Questions	59
III. The Model Penal Code Rule	60
<i>State v. Chapman Dodge Center, Inc.</i>	61
Notes and Questions	64
CHAPTER 2	
Personal Liability in an Organizational Setting	65
I. Introduction	65
II. Direct Participants	65
Notes and Questions	66
Sanford H. Kadish, Some Observations on the Use of Criminal Sanctions in Enforcing Economic Regulations	66
Notes and Questions	66
Deputy Attorney General Sally Quillian Yates, Remarks at New York University School of Law Announcing New Policy on Individual Liability in Matters of Corporate Wrongdoing	67
The Justice Manual, Title 9, Principles of Federal Prosecution of Business Organizations	68
Deputy Attorney General Rod Rosenstein, Remarks at the American Conference Institute's 35th International Conference on the Foreign Corrupt Practices Act	68
Deputy Attorney General Lisa O. Monaco, Remarks at New York University on Corporate Criminal Enforcement	69
Jesse Eisinger, The Chickenshit Club: Why the Justice Department Fails to Prosecute Executives	70
Note on Accomplice Liability	71
Problem 2-1	71

III. Responsible Corporate Officers	71
<i>United States v. Park</i>	72
Notes and Questions	78
Problem 2-2	78
Problem 2-3	78
Problem 2-4	79
<i>United States v. DeCoster</i>	79
Notes and Questions	85
<i>United States v. Jorgensen</i>	85
Notes and Questions	87
<i>United States v. Iverson</i>	88
Notes and Questions	90
Note on Fines and Indemnification	91
Notes and Questions	91
CHAPTER 3	
Conspiracy	93
I. Introduction	93
II. The Plurality Requirement	94
<i>United States v. Stevens</i>	94
Notes and Questions	96
Note on Inconsistent Verdicts	97
Note on Scope of Conspiracy	98
III. The Object Offense	99
A. The “Offense” and “Defraud” Clauses	99
<i>United States v. Arch Trading Co.</i>	99
Notes and Questions	101
B. Constitutionality of the “Defraud” Clause	102
<i>United States v. Scott Phillip Flynn</i>	102
C. Mens Rea	103
<i>United States v. Licciardi</i>	103
Notes and Questions	107
Special Counsel Robert S. Mueller, III, Report on the Investigation into Russian Interference in the 2016 Presidential Election, Vol. I of II	107
D. Vicarious Liability	108
<i>Pinkerton v. United States</i>	108
Notes and Questions	110
Note on Overt Acts	110
E. Conspiring with the “Victim” of the Underlying Offense	111
<i>Ocasio v. United States</i>	111
Notes and Questions	114
IV. Withdrawal and Termination	114
<i>Smith v. United States</i>	115
Problem 3-1	118
<i>United States v. Jimenez Recio</i>	118
Notes and Questions	120

CHAPTER 4	
Mail Fraud	121
I. Introduction	121
II. Schemes to Defraud	122
A. Intent to Defraud	122
<i>United States v. Hawkey</i>	122
Notes and Questions	123
Note on Fraud and False Pretenses	124
Problem 4-1	124
Note on Materiality	125
<i>Lustiger v. United States</i>	125
Notes and Questions	127
B. Protected Interests	128
1. Intangible Rights Theory	128
<i>United States v. George</i>	128
Notes and Questions	131
2. Money or Property Requirement	131
<i>Carpenter v. United States</i>	131
Notes and Questions	134
<i>Cleveland v. United States</i>	135
Notes and Questions	139
<i>Pasquantino v. United States</i>	140
Notes and Questions	143
a. Intent to Deprive	144
<i>United States v. Czubinski</i>	144
Notes and Questions	148
3. Honest Services Theory	149
<i>Skilling v. United States</i>	149
Notes and Questions	156
<i>Kelly v. United States</i>	157
<i>Pereco v. United States</i>	160
<i>Ciminelli v. United States</i>	165
III. Use of the Mails	168
<i>Schmuck v. United States</i>	169
Notes and Questions	172
<i>United States v. Sampson</i>	173
Notes and Questions	174
Note on Proof of Mailing	174
IV. Mail and Wire Fraud Affecting a Financial Institution	175
<i>United States v. Bouyea</i>	175
Notes and Questions	177
V. Mail and Wire Fraud in the Context of a Contract	177
<i>United States ex rel. O'Donnell v. Bank of America</i>	177
Notes and Questions	182
VI. Bank Fraud	183
<i>United States v. Doke</i>	183
Notes and Questions	185
<i>United States v. Reaume</i>	186
Notes and Questions	188

CHAPTER 5	
Securities Fraud	189
I. Introduction	189
II. Willfulness	190
<i>United States v. Tarallo</i>	191
Notes and Questions	195
Note on the “No Knowledge” Proviso	195
Notes and Questions	196
III. Insider Trading	197
A. The Evolving Doctrinal Rules	198
1. Classical Theory	198
<i>Chiarella v. United States</i>	198
Notes and Questions	203
2. Misappropriation Theory	203
<i>United States v. O’Hagan</i>	203
Notes and Questions	207
3. Tipper/Tippee Theory	208
<i>Dirks v. Securities and Exchange Commission</i>	208
Notes and Questions	212
Problem 5-1	212
Problem 5-2	213
<i>United States v. Chestman</i>	213
Notes and Questions	218
Note on Rule 10b5-2	218
Notes and Questions	219
<i>Salman v. United States</i>	219
Notes and Questions	222
4. Knowing Possession	223
<i>United States v. Teicher</i>	223
Notes and Questions	225
Note on Rule 10b5-1	226
Notes and Questions	227
Problem 5-3	227
5. Materiality	228
Notes and Questions	228
B. The Human Dimension of the Wall Street Insider Trading Scandal	228
1. Wall Street’s Army of Insiders	229
IV. Misrepresentation and Concealment	229
<i>Case Study: United States v. Stewart</i>	229
Notes and Questions	231
V. Securities Fraud Prosecutions Under the Sarbanes-Oxley Act	231
Notes and Questions	232
VI. The Stop Trading on Congressional Knowledge Act	232
Tyler Gellasch, I Helped Write the STOCK Act. It Didn’t Go Far Enough.	233
CHAPTER 6	
False Statements	235
I. Introduction	235
II. Jurisdiction	235

	<i>United States v. Rodgers</i>	235
	<i>United States v. Wright</i>	238
	Notes and Questions	240
	<i>United States v. Steiner Plastics Manufacturing Co.</i>	240
	Notes and Questions	241
III.	Department or Agency	241
	<i>United States v. McNeil</i>	242
	Notes and Questions	244
	<i>United States v. Pickett</i>	245
	Notes and Questions	246
IV.	False Statements	247
A.	False Promises	247
	<i>United States v. Shah</i>	247
	Notes and Questions	250
B.	The “Exculpatory No” Doctrine	251
	<i>Brogan v. United States</i>	251
	Notes and Questions	254
C.	Materiality	255
	Problem 6-1	255
D.	Concealment	256
	<i>United States v. White Eagle</i>	256
	Notes and Questions	258
V.	Culpable Mental State	258
	<i>United States v. Yermian</i>	258
	<i>United States v. Green</i>	261
	Notes and Questions	263
	<i>United States v. Natale</i> , Brief for the United States in Opposition	263
	Notes and Questions	266
VI.	Multiple Punishment	266
	<i>United States v. Ramos</i>	266
	Notes and Questions	268
VII.	Related Theories of Liability	268
A.	Procurement Fraud	268
	<i>United States v. Brooks</i>	268
	Notes and Questions	271
	<i>United States v. Sain</i>	271
	Notes and Questions	272
B.	False Claims	273
	<i>United States v. Maher</i>	273
	Notes and Questions	275
C.	Certification of Corporate Financial Reports	276
	Notes and Questions	276
CHAPTER 7		
Perjury and False Declarations		279
I.	Introduction	279
II.	Making Material False Statements	279
	<i>Bronston v. United States</i>	279
	Notes and Questions	282

Problem 7-1	283
<i>United States v. Walsler</i>	283
Notes and Questions	287
<i>United States v. Strohm</i>	287
Notes and Questions	292
III. The Two-Witness Rule	292
<i>United States v. Davis</i>	293
Notes and Questions	295
Note on Inconsistent Declarations	295
Problem 7-2	296
IV. The Recantation Defense	296
<i>United States v. Sherman</i>	297
Notes and Questions	302
<i>United States v. Wiggan</i>	304
Notes and Questions	306
Note on Competent Tribunals and Ancillary Proceedings	306
V. Immunized Testimony	307
<i>United States v. Apfelbaum</i>	307
Notes and Questions	310
VI. Perjury by Government Witnesses	311
Notes and Questions	312
CHAPTER 8	
Obstruction of Justice	313
I. Introduction	313
II. Pending Judicial Proceedings	313
<i>United States v. Simmons</i>	314
Notes and Questions	316
<i>United States v. Lundwall</i>	318
Notes and Questions	320
III. Endeavoring to Influence or Impede	321
<i>United States v. Collis</i>	321
Notes and Questions	324
<i>United States v. Griffin</i>	324
Notes and Questions	327
Problem 8-1	327
<i>United States v. Aguilar</i>	328
Notes and Questions	332
<i>Marinello v. United States</i>	332
<i>United States v. Cintolo</i>	335
Notes and Questions	338
Problem 8-2	338
Note on Lawyer Liability	339
Notes and Questions	340
IV. The Victim and Witness Protection Act	341
A. Noncoercive Witness Tampering	341
1. Section 1503: The Omnibus Clause	341
<i>United States v. Lester</i>	341
Notes and Questions	344

2. Section 1512: Corrupt Persuasion	345
<i>Arthur Andersen LLP v. United States</i>	345
Notes and Questions	349
<i>Michigan State Bar Committee on Professional and Judicial Ethics,</i> <i>Informal Opinion RI-345</i>	351
Notes and Questions	353
Note on Evidence Tampering and Document Destruction	353
<i>Yates v. United States</i>	354
Notes and Questions	361
<i>Fischer v. United States</i>	361
3. Section 1512: Misleading Conduct	366
<i>United States v. Gabriel</i>	366
Notes and Questions	370
<i>Fowler v. United States</i>	370
4. Section 1512: Harassment	374
<i>United States v. Wilson</i>	374
Notes and Questions	375
5. Tampering with Records or Otherwise Impeding an Official Proceeding	375
Notes and Questions	376
B. Threats and Intimidation	376
<i>United States v. Willard</i>	376
Notes and Questions	377
<i>United States v. Miller</i>	377
Notes and Questions	379
Note on Retaliation Against Witnesses and Informants	379
Notes and Questions	379
V. The Fifth Amendment Privilege	380
A. The Act of Production Doctrine	380
Notes and Questions	382
B. The Enron Investigation	383
Case Study: <i>SEC v. Lay</i>	383
VI. The President of the United States and Alleged Obstruction	386
Special Counsel Robert S. Mueller, III, Report on the Investigation into Russian Interference in the 2016 Presidential Election, Vol. II of II	386
 CHAPTER 9	
Bribery of Public Officials	395
I. Introduction	395
II. Bribery of Public Officials	395
A. Official Acts	396
<i>United States v. Parker</i>	396
Notes and Questions	398
<i>United States v. Arroyo</i>	398
Notes and Questions	400
<i>McDonnell v. United States</i>	401
Notes and Questions	407
B. Motive and Intent	407
<i>United States v. Sun-Diamond Growers of California</i>	407
Notes and Questions	411

<i>United States v. Anderson</i>	411
Notes and Questions	413
C. Thing of Value	414
<i>United States v. Williams</i>	414
Notes and Questions	415
D. Public Officials	415
1. Appointed Officials	415
<i>Dixson v. United States</i>	415
Notes and Questions	419
2. Elected Officials	419
<i>United States v. Brewster</i>	419
Notes and Questions	424
E. Cooperating Witnesses	424
<i>United States v. Ware</i>	424
Notes and Questions	428
<i>United States v. Ihnatenko</i>	428
Notes and Questions	430
III. Federal Program Bribery	430
<i>Salinas v. United States</i>	430
Notes and Questions	432
<i>Snyder v. United States</i>	433
Notes and Questions	441
<i>United States v. DeLaurentis</i>	442
Notes and Questions	443
<i>Sabri v. United States</i>	444
Notes and Questions	446
<i>United States v. Copeland</i>	447
Notes and Questions	449
CHAPTER 10	
RICO	451
I. Introduction	451
II. The Enterprise	451
<i>United States v. Turkette</i>	451
Notes and Questions	454
<i>Boyle v. United States</i>	454
Notes and Questions	458
Problem 10-1	458
<i>National Organization for Women v. Scheidler</i>	458
Notes and Questions	461
Note on the Interstate Commerce Requirement	462
III. Pattern of Racketeering Activity	463
A. The Pattern Requirement	463
<i>H.J., Inc. v. Northwestern Bell Telephone</i>	463
Notes and Questions	468
B. State Predicate Crimes	469
<i>United States v. Garner</i>	469
Notes and Questions	472
Problem 10-2	472
Note on the Dual Sovereignty Doctrine	473

IV. Relationship Between Person and Enterprise	473
<i>Reves v. Ernst & Young</i>	473
Notes and Questions	475
Problem 10-3	476
Problem 10-4	476
<i>McCullough v. Suter</i>	476
Note on Relational Elements	477
V. Rico Conspiracies	478
<i>Salinas v. United States</i>	478
Notes and Questions	480
VI. Civil Liability	481
A. Injury to Business or Property	481
<i>Sedima, S.P.R.L. v. Imrex Co.</i>	481
Notes and Questions	485
Note on RICO Reform	485
Notes and Questions	486
<i>Libertad v. Welch</i>	486
Notes and Questions	489
B. Causation	489
<i>Commercial Cleaning Services, LLC v. Colin Service Systems, Inc.</i>	489
Notes and Questions	493
<i>Anza v. Ideal Steel Supply Corp.</i>	494
Notes and Questions	496
<i>Williams v. Mohawk Industries, Inc.</i>	497
Notes and Questions	500
<i>Hemi Group, LLC v. City of New York, NY</i>	500
Notes and Questions	502
VII. Extraterritorial Application	502
<i>RJR Nabisco, Inc. v. European Community</i>	502
Notes and Questions	507
VIII. Asset Forfeiture	507
A. Forfeitable Interests	507
Notes and Questions	508
B. Third-Party Interests	508
C. Attorneys' Fees	509
<i>Luis v. United States</i>	509
Notes and Questions	513
D. Constitutional Limits	514
1. Alexander I	514
2. Alexander II	515
Notes and Questions	515
3. Alexander III	515
Notes and Questions	516
CHAPTER 11	
Tax Fraud	517
I. Introduction	517
II. Willfulness	517
A. Proof of Culpability	518
<i>United States v. Guidry</i>	518

Notes and Questions	520
<i>United States v. Olbres</i>	521
Notes and Questions	524
B. Ignorance or Mistake	524
<i>Cheek v. United States</i>	524
Notes and Questions	529
<i>United States v. Cohen</i>	531
Notes and Questions	534
C. Reliance on Professional Advice	535
<i>Bursten v. United States</i>	535
Notes and Questions	537
Problem 11-1	537
III. Tax Evasion	538
A. Attempt to Evade or Defeat	538
<i>United States v. Eaken</i>	538
Notes and Questions	541
B. Methods of Proof	541
1. Net Worth Method	542
<i>United States v. Bencs</i>	542
Notes and Questions	544
2. Bank Deposits and Cash Expenditures Method	544
<i>United States v. Abodeely</i>	545
Notes and Questions	548
IV. False Declarations	548
A. Material Matters	548
<i>United States v. DiVarco</i>	548
<i>United States v. Greenberg</i>	549
Notes and Questions	551
B. True and Correct	551
<i>Siravo v. United States</i>	551
Notes and Questions	552
V. Policy Considerations	553
Senator Ron Wyden, Statement on the Lowest IRS Audit Rates in 40 Years	553
CHAPTER 12	
Currency Reporting Crimes and Money Laundering	555
I. Introduction	555
II. Currency Reporting Crimes	555
A. The Bank Secrecy Act	556
1. Transporting Monetary Instruments	556
<i>United States v. Forty-Seven Thousand Nine Hundred Eighty Dollars</i> <i>(\$47,980) in Canadian Currency</i>	557
Notes and Questions	560
Note on Forfeitures as “Excessive Fines”	560
Notes and Questions	564
2. Domestic Currency Transactions	564
<i>Ratzlaf v. United States</i>	565
Notes and Questions	569
<i>United States v. Sperrazza</i>	570
Notes and Questions	573

3. Enhanced Penalties	573
<i>United States v. St. Michael's Credit Union</i>	573
Notes and Questions	577
B. Section 6050I	577
1. Attorney-Client Privilege	577
<i>United States v. Goldberger & Dubin, P.C.</i>	577
Notes and Questions	581
<i>Lefcourt v. United States</i>	582
Notes and Questions	584
2. Designated Reporting Transactions	585
Problem 12-1	585
Problem 12-2	585
Problem 12-3	585
III. Money Laundering	585
<i>United States v. Tencer</i>	586
Notes and Questions	588
<i>United States v. Campbell</i>	588
Notes and Questions	592
<i>United States v. Johnson</i>	593
Notes and Questions	597
<i>United States v. Kennedy</i>	599
Notes and Questions	601
Note on the Meaning of "Proceeds"	601
CHAPTER 13	
Environmental Crimes	603
I. Introduction	603
II. Water Pollution: The Clean Water Act	603
A. Discharge from a Point Source	604
1. Point Source	604
<i>United States v. Plaza Health Laboratories, Inc.</i>	604
Notes and Questions	609
2. Navigable Waters	609
Paul Boudreaux, A New Clean Water Act	610
<i>Sackett v. EPA</i>	611
B. Permit Requirement	619
<i>United States v. Frezzo Brothers, Inc.</i>	619
Notes and Questions	621
C. Knowing Violations	621
<i>United States v. Ahmad</i>	621
Notes and Questions	625
<i>United States v. Sinskey</i>	625
Notes and Questions	628
D. Responsible Corporate Officer Doctrine	630
<i>United States v. Hong</i>	630
Notes and Questions	632
Note on the BP Gulf Spill	632
E. Knowing Endangerment	634
<i>United States v. Borowski</i>	634
Notes and Questions	638

III. Air Pollution: The Clean Air Act	638
<i>United States v. Dipentino</i>	639
Notes and Questions	640
IV. Hazardous Waste	641
A. The Resource Conservation and Recovery Act	641
1. Treatment, Storage, or Disposal Violations	641
<i>United States v. Johnson & Towers, Inc.</i>	641
<i>United States v. Hoflin</i>	645
Notes and Questions	648
2. Transportation Violations	649
<i>United States v. Hayes International Corp.</i>	649
Notes and Questions	653
<i>United States v. Fiorillo</i>	654
Notes and Questions	658
3. Knowing Endangerment	659
B. The Comprehensive Environmental Response, Compensation, and Liability Act	659
<i>United States v. Carr</i>	660
Notes and Questions	662
CHAPTER 14	
Sanctions	665
I. Introduction	665
II. Imprisonment	666
A. Pre-Guidelines Sentencing	666
<i>United States v. Bergman</i>	666
Notes and Questions	668
<i>Browder v. United States</i>	668
Notes and Questions	669
B. Guidelines Sentencing	669
1. Sentencing Guidelines Roadmap	670
Step One: Determining the Base Offense Level	670
Step Two: Specific Offense Characteristics	671
Step Three: Chapter 3 Adjustments	671
Step Four: Multiple Counts	671
Step Five: Acceptance of Responsibility	671
Step Six: Prior Criminal History	672
Step Seven: Determining the Applicable Sentencing Range	672
2. Relevant Conduct	673
<i>United States v. Pinnick</i>	673
Notes and Questions	676
Note on Double Jeopardy	676
3. Judicial Fact Finding	677
Notes and Questions	679
<i>Gall v. United States</i>	679
Notes and Questions	684
4. <i>Post-Booker Adjustments</i>	685
<i>United States v. Ebbers</i> , Government's Memorandum of Law in Opposition to Defendant's Sentencing Motions	685
a. Enhancements	687

b. Downward Departures	688
Notes and Questions	689
<i>United States v. Martin</i>	690
Notes and Questions	695
c. Non-Guidelines Considerations	695
<i>United States v. Ebbers</i> , Government's Memorandum of Law in Opposition to Defendant's Sentencing Motions	695
Notes and Questions	698
Note on the Ebbers Sentence	699
Notes and Questions	699
III. Case Study: Theranos CEO Elizabeth Holmes	699
<i>United States v. Elizabeth Holmes</i> , Ms. Holmes' Sentencing Memorandum and Motion for Downward Departure	699
Notes and Questions	710
<i>United States v. Elizabeth Holmes</i> , United States' Sentencing Memorandum	711
Notes and Questions	731
IV. Withdrawing a Plea	732
<i>United States v. Flynn</i>	732
V. Fines	737
A. Authorized Levels	737
B. Corporate Fines	738
Notes and Questions	739
Kathleen F. Brickey, Enron's Legacy	739
Notes and Questions	740
<i>United States v. Eureka Laboratories, Inc.</i>	740
Notes and Questions	743
Note on Corporate Death Penalty	743
Notes and Questions	744
VI. Administrative Sanctions	744
A. Revocation of Corporate Charter	744
Notes and Questions	746
B. Loss of License	746
C. Case Study on the Aftermath of Corporate Conviction: <i>United States v. E. F. Hutton & Co.</i>	748
1. The Federal Investigation	748
Department of Justice Press Release	748
Statement of Stephen S. Trott	749
Notes and Questions	750
E. F. Hutton, 1985 10-K Report	751
Notes and Questions	753
2. The State Investigations	753
Still More Grief	754
 <i>Table of Principal Cases</i>	 757
<i>Table of Statutes</i>	759
<i>Index</i>	763