Table of Contents

Volume 1

CHAPTER 1. SCOPE AND INTRODUCTION

§ 1:1 Generally
§ 1:2 Forms
§ 1:3 Civil practitioners and corporate counsel
§ 1:4 Summary of chapters
§ 1:5 Updates and new chapters

CHAPTER 2. GRAND JURY

I. PREINDICTMENT RELIEF

§ 2:1 Introduction
§ 2:2 Hypothetical
§ 2:3 Determining status
§ 2:4 Venue and jurisdiction
§ 2:5 Supervisory powers of the courts
§ 2:6 —Conduct of grand jury proceedings
§ 2:7 —Court's role in reviewing grand jury testimony
§ 2:8 —Secrecy of proceedings
§ 2:9 —Subpoenas
§ 2:10 — —Unreasonable and oppressive, and/or vague and overbroad
§ 2:11 — —Handwriting exemplars
§ 2:12 — —Fifth Amendment concerns regarding testimony and document production
§ 2:13 — — —Individuals
§ 2:14 — — —Private papers
§ 2:15 — — —Foreign prosecution
§ 2:16 — — —Custodians
§ 2:17 — — —Act of production protection: History and development
§ 2:18 — —Attorney-client privilege regarding testimony and document production

§ 2:19 — — —Crime-fraud exception
§ 2:20 — —Work product doctrine
§ 2:21 —Pending civil proceedings
§ 2:22 Speech or debate clause
§ 2:23 Selection and jurisdiction

II. POSTINDICTMENT RELIEF

§ 2:24 Generally
§ 2:25 Disclosure of grand jury instructions
§ 2:26 Disclosure of grand jury testimony
§ 2:27 —Particularized need
§ 2:28 —Evidence for motion to dismiss
§ 2:29 Grand jury misconduct
§ 2:30 —Bias and prejudice of grand jury
§ 2:31 —Prejudicial publicity
§ 2:32 —False testimony
§ 2:33 —Exculpatory evidence
§ 2:34 —Hearsay testimony
§ 2:35 —Target warnings
§ 2:36 —Improper selection process
§ 2:37 —Appeals-jurisdiction
§ 2:38 —*Mechanik* analysis
§ 2:39 —*Midland Asphalt* analysis
§ 2:40 Conclusion

III. SAMPLE MATERIALS

§ 2:41 Form target letter
§ 2:42 Form subpoena
§ 2:43 Form advise of rights
§ 2:44 Letter to witness explaining grand jury
§ 2:45 Petition for court order for arrest warrant for failure to appear
§ 2:46 Order for warrant
§ 2:47 Motion to enforce grand jury subpoena and to request a court order to show cause for not honoring a subpoena duces tecum
§ 2:48 Order to show cause
§ 2:49 Judgment and commitment for contempt
§ 2:50 Petition for court order directing witness to answer questions
§ 2:51 Order to answer questions

§ 2:52 Petition for court order directing witness to furnish handwriting exemplars and fingerprints
§ 2:53 Judgment and commitment for contempt of court for refusing to provide exemplars and prints
§ 2:54 Motion for court order prohibiting notification of service of grand jury subpoenas duces tecum
§ 2:55 Court order prohibiting notification of service of grand jury subpoenas duces tecum
§ 2:56 Motion to seal indictment
§ 2:57 Application for ex parte order to disclosure returns and return information
§ 2:58 Order for disclosure of returns and return information
§ 2:59 Motion to quash grand jury subpoena with legal authorities in support
§ 2:60 Agreed order
§ 2:61 Motion to quash grand jury subpoena
§ 2:62 Agreed order
§ 2:63 Motion to quash grand jury subpoena (filed under seal) (health law regulations, psychotherapist-patient privilege, vagueness/overbreadth, costs of reproduction, Fifth Amendment privilege regarding documents)
§ 2:64 Motion to quash grand jury subpoenas
§ 2:65 Order granting motion to quash grand jury subpoenas
§ 2:66 Motion for injunctive relief prohibiting the grand jury from further investigation, or, in the alternative, prohibiting the United States Department of Justice from interfering with defense investigation with legal authorities in support
§ 2:67 Petitioner's request for relief and memorandum of law in support of motion for injunctive relief, or, in the alternative, in camera review of grand jury transcripts
§ 2:68 Order
§ 2:69 Defendant's motion for disclosure of grand jury testimony with legal authorities in support
§ 2:70 Order
§ 2:71 Defendant's motion to dismiss indictment based on misconduct and failure of the government to disclose exculpatory evidence to the grand jury with legal authorities in support
§ 2:72 Brief for appellants (appeal of denial of motion to

dismiss indictment based on misconduct and failure of the government to disclose exculpatory evidence to the grand jury)
§ 2:73 Motion to enjoin grand jury investigation, or, in the alternative, to quash the grand jury subpoena (handwriting exemplars)
§ 2:74 Motion for expedited hearing
§ 2:75 Order
§ 2:76 Expedited motion for return of seized property and to compel full copy of search warrant
§ 2:77 Opposition to request for disclosure of grand jury materials
§ 2:78 Motion to unseal affidavits in support of search warrants
§ 2:79 Motion for disclosure of documents turned over to the grand jury
§ 2:80 Order
§ 2:81 Memorandum of the United States in opposition to motion for access to government documents
§ 2:82 Order
§ 2:83 Letter regarding retention of future documents outside subpoena period
§ 2:84 Motion for protective order regarding costs of reproduction of subpoenaed documents
§ 2:85 Protective order
§ 2:86 Order denying grand jury materials in civil case after criminal case concluded
§ 2:87 Motion for in camera review and denial of disclosure pursuant to Rule 6 of the Federal Rules of Criminal Procedure
§ 2:88 Order

CHAPTER 3. CORPORATE VULNERABILITY, INQUIRY, AND RESPONSIBILITY

I. VULNERABILITY

A. PRELIMINARY INFORMATION

§ 3:1 Generally
§ 3:2 Reporting responsibilities

B. DIRECT AND COLLATERAL CONSEQUENCES

§ 3:3 Direct consequences
§ 3:4 Collateral consequences

C. CRIMINAL LIABILITIES OF THE CORPORATION

1. Generally

§ 3:5 Criminal liability of the corporation

2. Scope of Employment Requirement

§ 3:6 The employee must be acting within the scope of employment
§ 3:7 Violation of corporate policy or instructions

3. Benefit of the Corporation

§ 3:8 The employee's conduct must occur for the benefit of the corporation

4. Breach of Fiduciary Duty Defense

§ 3:9 Breach of fiduciary duty as a defense

5. Corporation Knowledge

§ 3:10 Collective knowledge doctrine
§ 3:11 Wilful blindness doctrine

6. Who can Criminally Bind a Corporation

§ 3:12 Who can criminally bind a corporation
§ 3:13 —Executive officers and directors
§ 3:14 —Non-executive managers and supervisors
§ 3:15 —Low-level employees
§ 3:16 —Independent contractors
§ 3:17 —Foreign employees

7. Buying a Business Under Investigation

§ 3:18 Purchasing entities

8. Corporate Compliance Agreements

§ 3:19 Corporate compliance agreements
§ 3:20 Corporate criminal liability: corporate compliance plans as an affirmative defense

9. Conclusion

§ 3:21 Conclusion

D. PERSONAL LIABILITY OF EMPLOYEES

§ 3:22 Personal liability of employees
§ 3:23 —Corporate employees who directly commit criminal violations
§ 3:24 —Employees may be convicted under an accomplice theory
§ 3:25 —Employees who engage in a conspiracy will be criminally liable
§ 3:26 —Criminal liability for corporate officers who are in a responsible position
§ 3:27 — —Environmental implications of the RCO doctrine
§ 3:28 —Conclusion

E. CORPORATE LIABILITY—JURY INSTRUCTIONS

§ 3:29 Corporate liability—Jury instructions

II. INQUIRY

A. INTERNAL INVESTIGATIONS

§ 3:30 Initial considerations
§ 3:31 Special counsel

B. PRIVILEGES AND WAIVERS

1. Attorney-Client and Work Product Doctrine

§ 3:32 Attorney-client privilege
§ 3:33 Confidentiality of witness interviews
§ 3:34 Work product doctrine
§ 3:35 Protecting internal investigation search terms as work-product
§ 3:36 Joint defense agreements and waiver

2. Waiver

§ 3:37 Attorney-client
§ 3:38 Work product

§ 3:39 Cooperating with government
§ 3:40 SEC investigations

C. CONDUCTING INTERVIEWS

§ 3:41 Interviews with corporate employees
§ 3:42 —Company interviews with current employees
§ 3:43 — —Attorney-corporate client privilege
§ 3:44 — —ABA disciplinary rules
§ 3:45 — —Potential employee liability for false statements
§ 3:46 —Company interviews with former employees
§ 3:47 —Government interviews with current and former employees

III. ANCILLARY PROBLEMS DURING INVESTIGATIONS

§ 3:48 Multiple representation
§ 3:49 Parallel criminal and civil proceedings
§ 3:50 Prevention
§ 3:51 Discrimination complaints by whistleblowers
§ 3:52 Moderating the press and media
§ 3:53 Discrimination complaints by whistleblowers—Commenting on internal investigations: when and how
§ 3:54 —Social media

IV. SEARCH WARRANT AND RULE 41(G)

§ 3:55 What to do when a search warrant is served
§ 3:56 Procedures to obtain return of records
§ 3:57 Practical considerations
§ 3:58 Conclusion

V. FEDERAL PROSECUTION OF BUSINESS ORGANIZATIONS

§ 3:59 Department of Justice guidelines for the prosecution of business organizations
§ 3:60 Justice Department guidance on prosecutions of business organizations (2006)
§ 3:61 Justice department guidance on prosecutions of business organizations (2003)
§ 3:62 Justice department guidance on prosecutions of corporations (1999)

§ 3:62.10 Justice department policy—Corporate compliance
§ 3:62.20 Justice department pilot whistleblower awards program
§ 3:62.30 Justice department national policy on Voluntary self-disclosure and Pilot Program on Executive Compensation
§ 3:62.40 Justice department pilot program on artificial intelligence compliance
§ 3:62.50 Justice department Task Force on Health Care Monopolies and Collusion
§ 3:62.60 Justice department merger and acquisition safe harbor
§ 3:62.70 Justice department pilot program on voluntary self-disclosure for individuals
§ 3:62.80 Fraud enforcement has combined new institutional capacity with data-driven investigations and coordinated criminal and civil remedies
§ 3:62.90 Principles of federal prosecution of business organizations

VI. COMPLIANCE AGREEMENTS

§ 3:63 Drafting compliance agreements
§ 3:64 Political and lobbying activities

VII. SAMPLE MATERIALS

§ 3:65 Joint defense agreement
§ 3:66 XYZ, Inc.'s internal and governmental criminal investigation procedures
§ 3:67 Petition to unseal affidavit in support of search warrant
§ 3:68 Joint petition to unseal affidavits in support of search warrant and for return of property
§ 3:69 Order granting joint petition to unseal affidavits and for return of property
§ 3:70 Petition to unseal affidavits in support of search warrants and wiretaps and petition for return of property
§ 3:71 Petition to unseal affidavit in support of search warrant, quash third party summons and summons on petitioner, and for return of seized property

§ 3:72 Order granting petition to unseal affidavit in support of search warrant, quash third party summons and summons on petitioner, and for return of seized property
§ 3:73 Agreed motion for continuance of scheduling order and trial
§ 3:74 Order (motion for continuance)
§ 3:75 Form letter of notice to examinee/employee requesting employee polygraph examination
§ 3:76 Appendix A to form letter of notice to examinee/employee requesting employee polygraph examination
§ 3:77 Motion for the return of seized items and requesting a Franks v. Delaware hearing to set aside a search warrant procured by falsehoods and material omissions
§ 3:78 Joint petition to unseal affidavits in support of search warrant and for return of property
§ 3:79 Petition to unseal affidavits in support of search warrants and wiretaps and petition for return of property
§ 3:80 Petition to unseal affidavit in support of search warrant, quash third party summons and summons on petitioner, and for return of seized property
§ 3:81 Joint defense agreement
§ 3:82 Corporate integrity agreement
§ 3:83 Separation agreement and undertaking
§ 3:84 Corporate compliance program
§ 3:85 Undertaking
§ 3:86 Deferred prosecution agreement
§ 3:87 Joint defense and confidential information sharing agreement
§ 3:88 Confidentiality agreement regarding disclosure of information
§ 3:89 Letter to department of justice regarding investigation of shipowner
§ 3:90 Jury instructions on criminal responsibility for acts of employees
§ 3:91 Post-trial instruction—Corporate criminal liability

CHAPTER 4. MITIGATING CRIMINAL EXPOSURE IN BANKRUPTCY COURT

I. CONSTITUTIONAL CONSIDERATIONS AND PARALLEL PROCEEDINGS

§ 4:1 Introduction
§ 4:2 Fifth Amendment
§ 4:3 —Scope
§ 4:4 — —Schedules
§ 4:5 — —Document production
§ 4:6 — —Property production
§ 4:7 — —Creditor's meeting
§ 4:8 —Waiver
§ 4:9 — —Same proceedings
§ 4:10 — —Different proceedings
§ 4:11 —Sanctions
§ 4:12 — —Denial of discharge
§ 4:13 — —Dismissal of bankruptcy
§ 4:14 — —Contempt
§ 4:15 — — —Civil
§ 4:16 — — —Criminal
§ 4:17 — — —Appeals
§ 4:18 — — —Avoiding waiver
§ 4:19 Immunity
§ 4:20 Parallel proceedings
§ 4:21 —Stay of adversary litigation
§ 4:22 —Stay of state criminal proceedings
§ 4:23 —Adverse inference
§ 4:24 —Appeals
§ 4:25 —Special problems
§ 4:26 —Effect of bankruptcy on criminal restitution obligations
§ 4:27 Attorney-client privilege
§ 4:28 Conclusion

II. SAMPLE MATERIALS

§ 4:29 Motion requesting issuance of confidential protective order with legal authorities in support
§ 4:30 Granting protective order
§ 4:31 Consent for disclosure of confidential information
§ 4:32 Petition to prohibit the government from turning

over grand jury documents and motion to dissolve bankruptcy court order
§ 4:33 Order dissolving bankruptcy court order and prohibiting the government from turning over grand jury documents
§ 4:34 Government's response to petition to prohibit government from turning over documents and to dissolve bankruptcy court order
§ 4:35 Trustee's response to petition to prohibit the government from turning over grand jury documents and motion to dissolve bankruptcy court order

CHAPTER 5. PRIVILEGES

I. ATTORNEY-CLIENT PRIVILEGE

§ 5:1 Attorney-client privilege
§ 5:2 —Individual-corporate privilege
§ 5:3 Attorney-client privilege and defendant's Sixth Amendment right
§ 5:4 Attorney-client privilege—Parent-subsidiary privilege
§ 5:5 —The crime-fraud exception
§ 5:6 —Waiver of the attorney-client privilege
§ 5:7 —Employee's ability to waive corporation's privilege
§ 5:8 —Disclosure to third parties
§ 5:9 —Waiver by former in-house counsel
§ 5:10 —Waiver through e-mail communications
§ 5:11 —Waiver of the privilege—Voluntary disclosure to government
§ 5:12 —Joint defense agreements
§ 5:13 —Fiduciary exception
§ 5:14 Selective waiver
§ 5:14.10 Taint teams

II. OTHER PRIVILEGES

§ 5:15 Marital privilege
§ 5:16 Tax return privilege
§ 5:17 Fifth Amendment privilege
§ 5:18 Informer's privilege
§ 5:19 Clergy communications

§ 5:20 Accountant-client privilege
§ 5:21 Psychotherapist/patient privilege
§ 5:22 Reporter's privilege
§ 5:23 New technology
§ 5:24 Attorney work-product privilege
§ 5:25 Investigatory privilege
§ 5:26 Protective function privilege
§ 5:27 Self-critical privilege
§ 5:28 Appealing privilege rulings

III. SAMPLE MATERIALS

§ 5:29 Motion for protective order to prevent disclosure of documents protected under the work product doctrine and attorney-client privilege with legal authorities in support
§ 5:30 Order
§ 5:31 Defendant's opposition to the government's Rule 17 motion to compel production of documents and testimony
§ 5:32 Memorandum of law regarding waiver of Fifth Amendment rights
§ 5:33 Memorandum of law regarding Fifth Amendment: Waiver and contempt as a sanction
§ 5:34 Government's notice of intent to call witnesses, including prior defense counsel, and motion for hearing to determine admissibility of evidence
§ 5:35 Motion to file documents under seal
§ 5:36 Order granting motion to file documents under seal
§ 5:37 Motion to quash grand jury subpoena with respect to documents covered by the attorney-client privilege with legal authorities in support
§ 5:38 Order quashing subpoena
§ 5:39 Government's response to motion to quash grand jury subpoena with respect to documents covered by attorney-client privilege
§ 5:40 Motion to quash trial subpoena of defendant
§ 5:41 Order
§ 5:42 Motion to quash grand jury subpoena
§ 5:43 Government's response to motion to quash and request for an expedited determination
§ 5:44 Order sealing government's response to motion to quash sealing all ex parte submissions, and authorizing redacted copies

§ 5:45 Government's motion for show cause hearing
§ 5:46 Order to show cause
§ 5:47 Defendant's motion for severance based on marital privilege
§ 5:48 Motion to suppress evidence—Violation of attorney-client privilege, with statement of authorities
§ 5:49 Defendant's response to motion for return of privileged documents and memorandum of law
§ 5:50 Consent directive
§ 5:51 Confidentiality agreement
§ 5:52 Letter placing accountant or non-attorney under attorney-client privilege
§ 5:53 Memorandum of law regarding application of attorney-client privilege
§ 5:54 Joint Defense Agreement
§ 5:55 Memorandum in support of motion to determine applicability of crime-fraud exception to attorney-client privilege for documents and testimony of attorney
§ 5:56 Memorandum in re Taking the Fifth and Breaching the Duty to Cooperate

CHAPTER 6. IMMUNITY

I. TYPES OF IMMUNITY

§ 6:1 Compulsion and immunity
§ 6:2 Transactional immunity
§ 6:3 Use and derivative use immunity
§ 6:4 Scope of immunity

II. OBTAINING IMMUNITY

§ 6:5 Procedures to obtain immunity
§ 6:6 Proffer
§ 6:7 —Advantages
§ 6:8 —Disadvantages
§ 6:9 —Informal (letter or pocket) immunity
§ 6:10 — —Advantages
§ 6:11 — —Disadvantages
§ 6:12 —Formal immunity
§ 6:13 — —Civil contempt for failing to comply
§ 6:14 — —Criminal contempt

§ 6:15 — — —Elements of 18 U.S.C.A. § 401(3)
§ 6:16 — —Shillitani doctrine
§ 6:17 — —Miscellaneous
§ 6:18 Non-prosecution agreements
§ 6:19 Subsequent prosecution
§ 6:20 Immunity and threat of foreign prosecution
§ 6:21 Court-ordered use immunity

III. SAMPLE MATERIALS

§ 6:22 Sample authorization letter
§ 6:23 Motion to compel testimony pursuant to 18 U.S.C.A. § 6003
§ 6:24 Order compelling testimony
§ 6:25 Judgment and commitment for contempt
§ 6:26 Sample letter from U.S. attorney re: testimonial immunity
§ 6:27 Sample letter from U.S. attorney re: "off-the-record" discussion
§ 6:28 Defendant's joint motion to dismiss indictment and incorporated memorandum of law
§ 6:29 Order setting hearing on motion to dismiss

CHAPTER 7. PARALLEL PROCEEDINGS

I. PARALLEL INVESTIGATIONS

§ 7:1 Simultaneous or successive civil and criminal proceedings
§ 7:2 *United States v. Kordel*
§ 7:3 *United States v. LaSalle Nat'l Bank*
§ 7:4 Parallel investigations after *Kordel* and *LaSalle*

II. STAY OF PROCEEDINGS

§ 7:5 In the interests of justice
§ 7:6 Consideration of discovery rules
§ 7:7 Obtaining a stay of proceedings

III. PROTECTIVE ORDERS

§ 7:8 Protective orders and grand jury subpoenas

IV. OTHER CONSIDERATIONS

§ 7:9 Double jeopardy

§ 7:10 Penalties
§ 7:11 —United States circuit court cases
§ 7:12 —Earlier United States federal district court cases
§ 7:13 —*Hudson v. United States*
§ 7:14 —Forfeitures
§ 7:15 Collateral estoppel
§ 7:16 Eighth Amendment considerations
§ 7:17 Prosecutorial discretion
§ 7:18 Fifth Amendment privilege against self-incrimination considerations

V. INFORMERS IN CRIMINAL/CIVIL CASES

§ 7:19 Generally
§ 7:20 The identity of informer privilege in civil cases
§ 7:21 Identity of informer privilege in criminal cases
§ 7:22 Law enforcement privilege
§ 7:23 Invoking the privilege
§ 7:24 —Private litigant invoking privilege
§ 7:25 —Government invoking privilege
§ 7:26 Compelling production of information sought
§ 7:27 Resisting disclosure
§ 7:28 —Scope of protective order
§ 7:29 —Relevance of information sought
§ 7:30 Conclusion

VI. FIFTH AMENDMENT PRIVILEGE

§ 7:31 Generally

VII. SAMPLE MATERIALS

§ 7:32 Motion to stay proceedings as to debtor with legal authorities in support [bankruptcy]
§ 7:33 Brief for appellant [appeal of denial of motion to stay]
§ 7:34 Motion to stay with legal authorities in support [civil]
§ 7:35 Motion of the United States for limited intervention under Rule 24
§ 7:36 Memorandum of law in support of motion of the United States for limited intervention under Rule 24
§ 7:37 Order

§ 7:38 Motion of government for leave to file affidavit under seal for in camera review and supporting memorandum
§ 7:39 Order
§ 7:40 Response to United States' motion for intervention
§ 7:41 Order
§ 7:42 Motion of the United States for stay of discovery
§ 7:43 Memorandum of law in support of motion of the United States for stay of discovery
§ 7:44 Response to United States' motion to stay discovery and motion for sanctions with legal authorities in support
§ 7:45 Order
§ 7:46 Exhibit "A" (emergency motion to vacate temporary restraining order and set aside sanctions)
§ 7:47 Exhibit "B" (memorandum in support of the United States' motion for protective order)
§ 7:48 Motion requesting issuance of confidential protective order with legal authorities in support
§ 7:49 Order
§ 7:50 Subpoena duces tecum for the production of documents and appearance for testimony
§ 7:51 Claimants' emergency motion under Rule 60(b), Fed. R. Civ. P for relief from misconduct of adverse party
§ 7:52 United States of America's response to claimant' emergency motion under Rule 60(b), Fed. R. Civ. P. for relief from misconduct of adverse party
§ 7:53 Order
§ 7:54 Affidavit
§ 7:55 Statement of interest of the United States of America
§ 7:56 Memorandum and order granting stay of bankruptcy adversary proceeding [unpublished opinion]
§ 7:57 Motion to dismiss based on the double jeopardy clause of the Fifth Amendment and the excessive fines clause of the Eighth Amendment
§ 7:58 Order granting motion to dismiss
§ 7:59 Supplemental motion to dismiss based on the double jeopardy clause of the Fifth Amendment and the excessive fines clause of the Eighth Amendment

§ 7:60 Order granting supplemental motion to dismiss
§ 7:61 Response of the United States to defendant's motion to dismiss based on the double jeopardy clause of the Fifth Amendment and the excessive fines clause of the Eighth Amendment
§ 7:62 [Defendant name] reply to government responses to his/her motion to dismiss based on the double jeopardy clause of the Fifth Amendment and the excessive fines clause of the Eighth Amendment
§ 7:63 Defendant's response to government's motion for finding that jeopardy did not attach by interlocutory judgment regarding [property]
§ 7:64 Order denying defendant's response to government motion for finding that jeopardy did not attach by interlocutory judgment regarding [property]
§ 7:65 Defendant's request for written findings regarding motion to dismiss and for stay of proceeding with legal authorities in support thereof
§ 7:66 Order [defendant's request for written findings regarding motion to dismiss and for stay of proceeding with legal authorities in support thereof]
§ 7:67 Defendant's proposed written findings regarding motion for double jeopardy
§ 7:68 Notice of appeal
§ 7:69 Emergency motion for stay pending appeal
§ 7:70 Order granting emergency motion for stay pending appeal
§ 7:71 Motion for reconsideration of stay
§ 7:72 Motion for confessions of judgment and order of forfeiture [for creation of double jeopardy claim]
§ 7:73 Judgment and order of forfeiture
§ 7:74 Order granting motion to stay civil proceedings
§ 7:75 Motion to postpone answer
§ 7:76 Order on motion to postpone answer
§ 7:77 Order to stay discovery and answer
§ 7:78 Postpone discovery during criminal proceeding
§ 7:79 Order reconsidering the stay of discovery
§ 7:80 Intervene/for limited stay of depositions
§ 7:81 U.S. Stay civil proceedings pending criminal investigation
§ 7:82 Defendant's reply to the SEC Opposition

§ 7:83 Joint Defense Agreement
§ 7:84 United States' petition in intervention & motion to stay discovery (Securities Case)

Volume 2

CHAPTER 8. SUBSTANTIVE LAW: MAIL FRAUD, WIRE FRAUD

I. FRAUD STATUTES

§ 8:1 Federal mail and wire fraud statutes
§ 8:2 Elements of mail and wire fraud
§ 8:3 —Intent to defraud
§ 8:4 —Scheme or artifice to defraud
§ 8:5 —Use of mail or wires to execute scheme to defraud
§ 8:6 —Materiality
§ 8:7 —Unreasonable reliance
§ 8:8 Theories of convictions
§ 8:9 —Honest services
§ 8:10 — —Public sector
§ 8:11 — —Private sector
§ 8:12 —Conspiracy to commit mail/wire fraud
§ 8:13 —Attempted mail/wire fraud
§ 8:14 —General business transactions
§ 8:15 Relation to securities fraud

II. SAMPLE MATERIALS

§ 8:16 Fines and penalties
§ 8:17 Trial brief of the United States of America
§ 8:18 Motion in limine
§ 8:19 Order granting defendant's motion in limine
§ 8:20 Government's motion in limine
§ 8:21 Order on government's motion in limine
§ 8:22 Government's second motion in limine with supporting memorandum of law
§ 8:23 Order on government's second motion in limine with supporting memorandum of law
§ 8:24 Defendant's motion to dismiss (condonation theory)

§ 8:25 Motion to dismiss with legal authorities in support
§ 8:26 Order of dismissal
§ 8:27 Defendant's brief regarding the relevance of evidence of investors' background and extent of their investigation
§ 8:28 Motion for judgment of acquittal with legal authorities in support
§ 8:29 Order granting motion for judgment of acquittal with legal authorities in support
§ 8:30 Motion for judgment of acquittal
§ 8:31 Order granting motion for judgment of acquittal
§ 8:32 Motion for theory of defense instruction
§ 8:33 Order granting defendant's motion for theory of defense instruction
§ 8:34 Jury instructions: mail fraud
§ 8:35 Jury instructions: wire fraud
§ 8:36 Post trial motion for judgment of acquittal
§ 8:37 Appellant's brief regarding mail and wire fraud and money laundering conviction (sufficiency of evidence, extraneous act evidence, prior consistent statements, sentencing guidelines, honest service theory)
§ 8:38 Defendant's trial brief regarding use of the mail
§ 8:39 Post trial motion for judgment of acquittal (mail fraud, money laundering and conspiracy)
§ 8:40 Motion for acquittal under Rule 29, or in the alternative for new trial, or in the alternative for bond pending appeal

CHAPTER 9. SUBSTANTIVE CRIMES: OBSTRUCTION OF JUSTICE

I. OBSTRUCTION OF JUSTICE (18 U.S.C.A. § 1503)

§ 9:1 Prerequisites
§ 9:2 Proceedings covered
§ 9:3 Notice and knowledge of proceedings
§ 9:4 Corruptly
§ 9:5 Endeavor
§ 9:6 Threat or force
§ 9:7 Specific intent

§ 9:8 Closing avenues of inquiry
§ 9:9 Defenses

II. OBSTRUCTION OF CRIMINAL INVESTIGATIONS (18 U.S.C.A. § 1510)

§ 9:10 Violations of 18 U.S.C.A. § 1510

III. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING (18 U.S.C.A. § 1512)

§ 9:11 Violations of 18 U.S.C.A. § 1512

IV. RETALIATION AGAINST INFORMANTS (18 U.S.C.A. § 1513(E))

§ 9:12 Violations of 18 U.S.C.A. § 1513(e)

V. DESTRUCTION, ALTERATION, OR FALSIFICATION OF RECORDS IN FEDERAL INVESTIGATION AND BANKRUPTCY (18 U.S.C.A. § 1519)

§ 9:13 Violations of 18 U.S.C.A. § 1519

VI. DESTRUCTION OF CORPORATE AUDIT RECORDS (18 U.S.C.A. § 1520)

§ 9:14 Violations of 18 U.S.C.A. § 1520

VII. FINES AND PENALTIES

§ 9:15 United States Sentencing Guidelines and 18 U.S.C.A. § 3571 application

VIII. SAMPLE MATERIALS

§ 9:16 Motion for judgment of acquittal with legal authorities in support
§ 9:17 Jury instructions: Tampering with a juror (18 U.S.C.A. § 1503)
§ 9:18 Jury instructions: Tampering with a witness (18 U.S.C.A. § 1512(b))
§ 9:19 Indictment
§ 9:20 Government's proposed jury instructions

CHAPTER 10. SUBSTANTIVE CRIMES: BANK SECRECY ACT

I. HISTORY OF THE BANK SECRECY ACT

§ 10:1 Hypothetical
§ 10:2 History

II. BANK SECRECY ACT: THE FIRST ATTACK

§ 10:3 Currency transaction reports
§ 10:4 Problems with the statute and regulations
§ 10:5 Judicial response

III. AMENDED REGULATIONS: THE SECOND ATTACK

§ 10:6 Closing the loophole

IV. ANTI-SMURFING STATUTE: THE THIRD ATTACK

§ 10:7 Adoption of 31 U.S.C.A. § 5324
§ 10:8 —Liability for causing a bank's failure to report
§ 10:9 —Liability for causing or attempting to cause a bank to file a report containing a material omission or misstatement
§ 10:10 —Liability for structuring or attempting to structure transactions to avoid reporting requirements
§ 10:11 Defenses
§ 10:12 —Specific intent
§ 10:13 —Participants
§ 10:14 —Individuals
§ 10:15 —Due process/lenity
§ 10:16 —Double jeopardy
§ 10:17 —Fourth Amendment: Legitimate expectation of privacy
§ 10:18 —Fifth Amendment
§ 10:19 —Lack of notice and comment
§ 10:20 —Multiplicity
§ 10:21 Institutional inquiries
§ 10:22 Depositor assistance

V. THE RELATIONSHIP OF THE ANTI-SMURFING STATUTE TO OTHER FEDERAL CRIMES

§ 10:23 Deception: 18 U.S.C.A. § 1001
§ 10:24 Conspiracy: 18 U.S.C.A. § 371
§ 10:25 RICO: 18 U.S.C.A. §§ 1961 et seq.
§ 10:26 Statutes relating to attorneys
§ 10:27 Import/export
§ 10:28 $3,000 requirement

VI. FINES AND PENALTIES

§ 10:29 Basic penalties
§ 10:30 Civil penalties for institutions
§ 10:31 Civil penalties for individuals

VII. SAMPLE MATERIALS

§ 10:32 Sample indictment
§ 10:33 Motion for bill of particulars
§ 10:34 Motion to dismiss with legal authorities in support
§ 10:35 Supplemental memorandum and response to the government's opposition to defendant's motion to dismiss
§ 10:36 Post–trial jury instructions of defendant
§ 10:37 Post-trial jury instructions of defendant on co-conspirator hearsay
§ 10:38 Post-trial jury instructions of defendant on structuring of financial transaction
§ 10:39 IRS Form 8300-Report of cash payments over $10,000 received in a trade or business
§ 10:40 Suspicious activity report

CHAPTER 11. SUBSTANTIVE CRIMES: BANK CRIMES

I. EMBEZZLEMENT, MISAPPLICATION (18 U.S.C.A. §§ 656, 657)

§ 11:1 Generally
§ 11:2 Elements
§ 11:3 —Official capacity

§ 11:4 —Intent to defraud
§ 11:5 —Financial institution/regulators
§ 11:6 Defenses
§ 11:7 —Restitution
§ 11:8 —Good faith
§ 11:9 —Harm
§ 11:10 —Knowledge and consent
§ 11:11 Examples of misconduct
§ 11:12 —Preferential rates
§ 11:13 —Credit risks
§ 11:14 —Collusion
§ 11:15 —Lending limits
§ 11:16 —Nominees
§ 11:17 Examples of legal conduct (but not recommended)
§ 11:18 —Accommodation loans
§ 11:19 —Regular practices
§ 11:20 —Conflicts
§ 11:21 —Nominees
§ 11:22 —Violation of operating policies or regulations
§ 11:23 —Cash for trash transactions

II. FALSE ENTRIES (18 U.S.C.A. §§ 1005, 1006)

§ 11:24 Generally
§ 11:25 Elements
§ 11:26 Defenses
§ 11:27 —Accurate reporting
§ 11:28 —Materiality
§ 11:29 —Omissions and ambiguities
§ 11:30 Types of conduct
§ 11:31 —Generally
§ 11:32 —Misconduct
§ 11:33 —Legal conduct (but not recommended)

III. FALSE FINANCIAL STATEMENTS (18 U.S.C.A. § 1014)

§ 11:34 Generally
§ 11:35 Elements
§ 11:36 —Obtaining a conviction
§ 11:37 —Intent to influence institution
§ 11:38 —Materiality

§ 11:39 —Reliance
§ 11:40 Defenses
§ 11:41 —Knowledge
§ 11:42 —Literal truth
§ 11:43 —Repayment
§ 11:44 —Timing
§ 11:45 —Knowledge by bank official
§ 11:46 —Specific intent
§ 11:47 —Advice of professional
§ 11:48 Restitution

IV. FRAUD (18 U.S.C.A. § 1344)

§ 11:49 Elements
§ 11:50 —Knowledge
§ 11:51 —Scheme
§ 11:52 —Materiality
§ 11:53 Defenses
§ 11:54 *[Reserved]*
§ 11:55 Types of conduct—Misconduct
§ 11:56 —Legal conduct (but not recommended)

V. BRIBERY (18 U.S.C.A. § 215)

§ 11:57 Elements
§ 11:58 *[Reserved]*
§ 11:59 Types of conduct—Misconduct
§ 11:60 —Legal conduct (but not recommended)

VI. FINANCIAL PRIVACY ACT (12 U.S.C.A. §§ 3401 TO 3422)

§ 11:61 Generally
§ 11:62 Transfers of information
§ 11:63 Exceptions
§ 11:64 Criminal charges

VII. FINANCIAL INSTITUTIONS REFORM, RECOVERY, & ENFORCEMENT ACT (FIRREA)

§ 11:65 Generally
§ 11:66 The Financial Institutions Reform, Recovery, and Enforcement Act—Statute of limitations

§ 11:67 —Civil and criminal penalties
§ 11:68 —Obstruction of justice
§ 11:69 —RICO amendment
§ 11:70 —Use of grand jury information
§ 11:71 —Protection for whistle-blowers and rewards
§ 11:72 —Criminal and civil forfeiture

VIII. COMPREHENSIVE THRIFT & BANK FRAUD PROSECUTION & TAXPAYER RECOVERY ACT

§ 11:73 Generally
§ 11:74 Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act—Concealment of assets from the FDIC, RTC, or NCUA Board (18 U.S.C.A. § 1032)
§ 11:75 —Prohibition on control of or participation in depository insurance institutions by certain convicted felons (12 U.S.C.A. § 1829(a))
§ 11:76 —Obstructing an examiner (18 U.S.C.A. § 1517)
§ 11:77 —Increasing bank fraud related penalties
§ 11:78 —Financial institution RICO offenses/statutes of limitations (18 U.S.C.A. § 3293)
§ 11:79 —Banking crimes and money laundering (18 U.S.C.A. § 1956(c)(7))
§ 11:80 *[Deleted]*
§ 11:81 Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act—Restoration of property for victims of bank fraud (18 U.S.C.A. § 981(e))
§ 11:82 —Enhancement provisions to order restitution in banking fraud cases (18 U.S.C.A. § 3663(a))
§ 11:83 —The "Kingpin" statute (18 U.S.C.A. § 225)
§ 11:84 —Prejudgment attachments/injunctions
§ 11:85 —Bankruptcy amendments
§ 11:86 —Civil forfeiture changes (18 U.S.C.A. § 981)

IX. MORTGAGE LOAN FRAUD

§ 11:87 Generally

X. UNLICENSED MONEY TRANSMITTING BUSINESSES (18 U.S.C.A. § 1960)

§ 11:88 Generally

§ 11:89 Cryptocurrency and digital currency.

XI. SAMPLE MATERIALS

§ 11:90 Complaint of forfeiture (18 U.S.C.A. §§ 657, 981)
§ 11:91 Declaration
§ 11:92 Notice of intent to forfeit
§ 11:93 Motion for judgment of acquittal regarding issue of false statement to bank with legal authorities in support (18 U.S.C.A. § 1014)
§ 11:94 Order
§ 11:95 Motion for judgment of acquittal regarding issue of literal truth with legal authorities in support (18 U.S.C.A. § 1014)
§ 11:96 Order
§ 11:97 Motion for judgment of acquittal regarding issue of materiality to bank with legal authorities in support (18 U.S.C.A. § 1014)
§ 11:98 Order
§ 11:99 Motion for judgment of acquittal regarding issue of truth and falsity with legal authorities in support (18 U.S.C.A. § 1014)
§ 11:100 Order
§ 11:101 Motion for judgment of acquittal with legal authorities in support (18 U.S.C.A. §§ 657, 1006)
§ 11:102 Order granting defendant's motion for judgment of acquittal
§ 11:103 Defendant's motion in limine concerning testimony of bank officer
§ 11:104 Order
§ 11:105 Defendant's motion in limine regarding arguments of government
§ 11:106 Order
§ 11:107 Defendant's motion for judgment of acquittal with legal authorities in support (18 U.S.C.A. §§ 656, 1005)
§ 11:108 Order
§ 11:109 Defendant's motion to dismiss with legal authorities in support (18 U.S.C.A. § 1005)
§ 11:110 Order
§ 11:111 Motion to dismiss with legal authorities in support (18 U.S.C.A. § 656)

§ 11:112 Order granting motion to dismiss
§ 11:113 Indictment (18 U.S.C.A. §§ 657, 1006)
§ 11:114 Defendant's proposed jury charge (18 U.S.C.A. §§ 657, 1006)
§ 11:115 Specific instructions: Theft or embezzlement by bank officer or employee (18 U.S.C.A. § 656)
§ 11:116 Specific instructions: False statement in bank records
§ 11:117 Specific instructions: False statement to a bank
§ 11:118 Motion for bill of particulars with legal authorities in support
§ 11:119 Order
§ 11:120 Motion in limine regarding homeowner's testimony
§ 11:121 Order
§ 11:122 Motion in limine regarding alleged extraneous acts
§ 11:123 Order granting motion in limine
§ 11:124 Motion in limine regarding other criminal offenses and to prohibit government from amending indictment
§ 11:125 Order
§ 11:126 Defendant's motion in limine regarding expert's testimony
§ 11:127 Order granting motion in limine
§ 11:128 Defendant's motion in limine
§ 11:129 Order granting motion in limine
§ 11:130 Defendant's motion in limine
§ 11:131 Defendant's motion in limine regarding lay opinion testimony
§ 11:132 Order granting motion in limine regarding lay opinion testimony
§ 11:133 Defendant's proposed jury charge (18 U.S.C.A. §§ 657, 1006)
§ 11:134 Government's requested jury instruction
§ 11:135 Defendant's proposed voir dire questions
§ 11:136 Government's proposed voir dire questions
§ 11:137 Defendant's motion for issuance of subpoena
§ 11:138 Order for issuance of subpoena
§ 11:139 Motion for rehearing, or in the alternative, motion for protective order
§ 11:140 Stipulation and protective order
§ 11:141 Defendant's objections to government's

requested charge regarding deliberate ignorance
§ 11:142 Motion for judgment of acquittal (18 U.S.C.A. §§ 656, 1005, 1344, 1956)
§ 11:143 Order granting motion for judgment of acquittal (18 U.S.C.A. §§ 656, 1005, 1344, 1956)
§ 11:144 Proposed jury instructions regarding losses at __ and examiner's opinion of knowledge
§ 11:145 Court's instruction to the jury—Violations of civil regulations or statutes
§ 11:146 Defendant's proposed jury charge on regulatory violations
§ 11:147 Motion for judgment of acquittal with legal authorities in support (18 U.S.C.A. §§ 1014, 1344)
§ 11:148 Order granting defendant's motion for judgment of acquittal
§ 11:149 Motion to dismiss and for election among multiplicitous counts of the indictment (18 U.S.C.A. §§ 1014, 1344)
§ 11:150 Order
§ 11:151 Motion to dismiss and for election among multiplicitous counts ____ through ____ of the indictment (18 U.S.C.A. § 1344)
§ 11:152 Order
§ 11:153 Defendant's motion to dismiss count two of the indictment (18 U.S.C.A. § 1014)
§ 11:154 Order granting defendant's motion to dismiss count two of the indictment
§ 11:155 Reply to the government's response to motion to dismiss count two (18 U.S.C.A. § 1014)
§ 11:156 Motion to dismiss counts 14 through 24 (18 U.S.C.A. § 1032)
§ 11:157 Order granting defendant's motion to dismiss counts 14 through 24 of the indictment
§ 11:158 Reply to the government's response to defendant's motion to dismiss counts 14 through 24 (18 U.S.C.A. § 1032)
§ 11:159 Defendant's motion to dismiss and for election among multiplicitous counts two and three of the indictment (18 U.S.C.A. § 1344)
§ 11:160 Order
§ 11:161 Motion for judgment of acquittal [altering theory of prosecution]

§ 11:162 Government's trial memorandum
§ 11:163 Government's trial brief
§ 11:164 Government's requested jury instructions
§ 11:165 Government trial memorandum of law regarding banking statutes [18 U.S.C.A. §§ 2, 371, 657 and 1006]
§ 11:166 Defendant's motion for judgment of acquittal under Fed. R. Crim. P. 29(A) and accompanying memorandum of law
§ 11:167 Motion for leave to file amicus curiae brief
§ 11:168 Order on motion for leave to file amicus curiae brief
§ 11:169 Brief of amici curiae in support of motion of judgment of acquittal based on the business judgment rule and improper retroactive standards
§ 11:170 Defendant's letter to probation officer stating why sentencing guidelines do not apply (with legal authorities)
§ 11:171 Appellant brief regarding bank fraud conviction (co-conspirator hearsay, extraneous act evidence, jury instructions, insufficient evidence, and expert witness)
§ 11:172 Appellant brief regarding bank fraud conviction (co-conspirator hearsay, extraneous act evidence, jury instructions, insufficient evidence, and expert witness)
§ 11:173 Doe's motion in limine regarding expert testimony
§ 11:174 Order granting motion in limine regarding expert testimony
§ 11:175 Trial brief of the United States
§ 11:176 Defendant John Doe's motion in limine
§ 11:177 Order granting defendants motion in limine
§ 11:178 Government's proposed forfeiture instructions and special verdict form
§ 11:179 Special verdict form
§ 11:180 John Doe's supplemental posttrial instructions
§ 11:181 John Does's motion for judgment of acquittal with legal authorities in support
§ 11:182 Order granting defendant's motion for judgment of acquittal
§ 11:183 Brief for appellant

CHAPTER 12. SECURITIES AND COMMODITIES FRAUD

I. FACTORS TO CONSIDER IN ADVISING ON SECURITIES AND COMMODITIES FRAUD MATTERS

§ 12:1 Hypothetical
§ 12:2 Handling investigations
§ 12:3 Factors to consider in determining whether to advise your client to assert the Fifth Amendment
§ 12:4 Application of the law to the facts—Strategic considerations

II. CRIMINAL PROCEEDINGS

§ 12:5 General fraud issues
§ 12:6 Insider trading
§ 12:7 Securities fraud (18 U.S.C.A. § 1348)
§ 12:8 Material Misstatements and Omissions
§ 12:9 False Reports under the Commodities Exchange Act (7 U.S.C.A. § 13)
§ 12:10 Failure of corporate officers to certify financial reports (18 U.S.C.A. § 1350)
§ 12:11 Employee benefit plans
§ 12:12 Destruction, alteration, or falsification of records
§ 12:13 Pump and dump schemes
§ 12:14 Attorney considerations
§ 12:15 Use of subpoenas in criminal SEC proceedings
§ 12:16 Fines and penalties

III. SECURITIES FRAUD (SEC CIVIL INJUNCTIVE PROCEEDINGS)

§ 12:17 Civil Securities fraud
§ 12:18 Civil injunctive proceedings
§ 12:19 —Jurisdiction and venue
§ 12:20 —Elements of a cause of action
§ 12:21 — —Material omissions and misrepresentations in connection with offers of purchase or sale of securities
§ 12:22 — —Scienter
§ 12:23 — —Liability

§ 12:24 — — —Agency
§ 12:25 — — —Aiding and abetting
§ 12:26 — — —Conspiracy
§ 12:27 —Defenses
§ 12:28 — —Reliance on advice of counsel
§ 12:29 — —Withdrawal
§ 12:30 — —Good faith
§ 12:31 — —Statute of limitations

IIIA. COMMODITIES FRAUD

§ 12:32 7 U.S.C.A. § 6b—Contracts designed to defraud or mislead
§ 12:33 7 U.S.C.A. § 6h—False self-representation as registered entity member
§ 12:34 7 U.S.C.A. § 6o—Fraud and misrepresentation by commodity trading advisors and commodity pool operators
§ 12:35 7 U.S.C.A. § 9—Manipulation
§ 12:36 Additional felonies

IV. SHAREHOLDER SUITS

§ 12:37 Federal Securities Law-Section 10(b) and Rule 10b-5, Securities and Exchange Act of 1934
§ 12:38 —Manipulation
§ 12:39 —Material misstatements and omissions
§ 12:40 —Scienter
§ 12:41 —In connection with the purpose or the sale of security
§ 12:42 —Reliance
§ 12:43 —Causation
§ 12:44 —Pleading
§ 12:45 —Central Bank and secondary actors
§ 12:46 —Bright line test
§ 12:47 —Substantial participation or creator test
§ 12:48 —Heightened pleading requirements
§ 12:49 —Liability for false security registration statement—Section 11 of the 1934 Securities Exchange Act
§ 12:50 —Section 12 of the 1933 Securities Exchange Act
§ 12:51 —Controlling person liability
§ 12:52 Defenses—Rule 10b5-1 affirmative defenses

V. OTHER SECURITIES AND COMMODITIES FRAUD ISSUES

§ 12:53 Parking
§ 12:54 Penny stock
§ 12:55 Churning
§ 12:56 Internet fraud
§ 12:57 Market timing and late trading
§ 12:58 Back-dating stock options
§ 12:59 "Spoofing"
§ 12:60 Cryptocurrency issues

VI. SAMPLE MATERIALS

§ 12:61 Order directing private investigation and designating officers to take testimony
§ 12:62 Subpoena cover-letter from SEC
§ 12:63 Affidavit
§ 12:64 Wells submission letter
§ 12:65 Attorney-client memorandum concerning consequences of permanent injunction
§ 12:66 Complaint for permanent injunction and other equitable relief
§ 12:67 Final judgment of permanent injunction
§ 12:68 Formal consent of defendant (general appearance & jurisdiction)
§ 12:69 Defendant's memorandum of law in support of motion for stay of civil proceedings
§ 12:70 Motion to dismiss for lack of personal jurisdiction, improper venue, failure to state a claim, failure to plead fraud with particularity, or, in the alternative, for more definite statement, or, alternatively, motion to stay or transfer
§ 12:71 Defendant's memorandum of law in support of motion to dismiss for lack of personal jurisdiction and improper venue
§ 12:72 Defendant's memorandum of law in support of motion to dismiss for failure to state a claim
§ 12:73 Defendant's memorandum of law in support of motion to dismiss for failure to plead fraud with particularity, or, in the alternative, motion for more definite statement
§ 12:74 Jury charge
§ 12:75 Complaint for violation of the federal securities laws

§ 12:76 Memorandum of points and authorities in support of ex parte application by plaintiff securities and exchange commission for temporary restraining order and orders: (1) freezing assets; (2) prohibiting the destruction of documents; (3) granting expedited discovery; (4) for accountings; and (5) order to show cause re preliminary injunction

§ 12:77 Temporary restraining order and orders: (1) freezing assets; (2) orders prohibiting the destruction of documents; (3) granting expedited discovery; (4) for accountings; and order to show cause regarding preliminary injunction

§ 12:78 Memorandum of points and authorities of plaintiff securities and exchange commission in support of its application for preliminary injunction and other relief

§ 12:79 Memorandum of points and authorities of Doe defendants in support of their opposition to plaintiff's application for preliminary injunction

§ 12:80 Supplemental memorandum of points and authorities of plaintiff securities and exchange commission in support of its application for preliminary injunction and other relief against the Doe defendants

§ 12:81 Order granting plaintiff's application for preliminary injunction against defendants [list names]

§ 12:82 Motion of the secondary actor bank defendants for section 1292(B) certification for immediate appeal of the December 20, 2002, order and brief in support

§ 12:83 [Proposed] Order amending December 20, 2002, memorandum and order re secondary actors' motions to dismiss to provide for certification pursuant to 28 U.S.C.A. § 1292(b)

§ 12:84 Memorandum of law in support of defendant ABC bank's motion to dismiss

§ 12:85 Motion of securities and exchange commission for leave, as *Amicus Curiae,* to submit briefs pertinent to certain legal issues raised by motions to dismiss

§ 12:86 Memorandum of points and authorities in support of application by plaintiff securities and exchange commission for preliminary injunction and other relief against defendants

§ 12:87 Brief in support of conviction
§ 12:88 Motion to transfer venue
§ 12:89 Motion to dismiss class action
§ 12:90 Violation of section 10(b)
§ 12:91 9(b) and 12(b)(6) complaint
§ 12:92 Failure to plead with particularity
§ 12:93 Lack of personal jurisdiction/improper venue
§ 12:94 Motion to vacate preliminary injunctions
§ 12:95 Memorandum in support of preliminary injunctions
§ 12:96 Motion to compel production of SEC transcripts

CHAPTER 13. SUBSTANTIVE CRIMES: RICO

I. HOW TO DEFEND CIVIL AND CRIMINAL RICO

§ 13:1 Hypothetical
§ 13:2 Similarities between civil and criminal RICO
§ 13:3 Know the differences between civil and criminal RICO
§ 13:4 —Civil remedies
§ 13:5 —Criminal penalties
§ 13:6 Know the differences between 18 U.S.C.A. § 1962(a), (b), (c), and (d), the prohibited activities of both civil RICO and criminal RICO
§ 13:7 Foreign predicate acts
§ 13:8 Analyze the elements of the prohibited activity with which your client has been charged
§ 13:9 —Person
§ 13:10 —Employed by or associated with
§ 13:11 —Enterprise: Scope and function
§ 13:12 — —Dual role: Corporate or individual defendant as the enterprise
§ 13:13 — —Financial purpose
§ 13:14 —Interstate commerce
§ 13:15 —Conduct or participate in the conduct of the enterprise's affairs
§ 13:16 —Through a pattern of racketeering activity
§ 13:17 Understand the concepts of RICO conspiracy
§ 13:18 —Scope and membership
§ 13:19 —Fatal variance

§ 13:20 — —Multiple conspiracies
§ 13:21 — —Multiple enterprises
§ 13:22 —General or personal agreement to commit
§ 13:23 —Intracorporate conspiracies
§ 13:24 —Request a unanimous agreement instruction on predicate acts
§ 13:25 Determine if there is an issue regarding the statute of limitations
§ 13:26 —Criminal cases
§ 13:27 —Civil cases
§ 13:28 Move for specificity of charges
§ 13:29 Double jeopardy
§ 13:30 Conclusion

II. SAMPLE MATERIALS

§ 13:31 Brief in support of motion to dismiss and for sanctions
§ 13:32 Criminal jury instructions

Volume 3

CHAPTER 14. SUBSTANTIVE CRIMES: ANTITRUST OFFENSES

I. ORGANIZATION OF THE ANTITRUST DIVISION

§ 14:1 Generally

II. ANTITRUST INVESTIGATIONS

§ 14:2 Scope
§ 14:3 Proof of conspiracy
§ 14:4 Intracorporate conspiracy doctrine
§ 14:5 What does not constitute sufficient proof of a Sherman Act conspiracy
§ 14:6 Existence of "plus factors"
§ 14:7 The concept of interdependence
§ 14:8 Exchange of price information
§ 14:9 Evidence of meetings or other communications
§ 14:10 Possession of competitors' price information
§ 14:11 Pricing announcement practices

§ 14:12 Criminal aspects of antitrust investigation
§ 14:13 Criminal leniency program
§ 14:14 Distinctions between per se and rule of reason violations
§ 14:15 —Per se violations
§ 14:16 — —Legal significance of per se rule
§ 14:17 — —Price fixing
§ 14:18 — —Defenses to price fixing—Generally
§ 14:19 — —Bid rigging
§ 14:20 — —Market allocations/production controls
§ 14:21 — —Basing-point pricing
§ 14:22 —Rule of reason violations
§ 14:23 Defenses to price fixing, bid rigging charges
§ 14:24 Civil aspects of an antitrust conviction
§ 14:25 Fines and penalties

III. SAMPLE MATERIALS

§ 14:26 Sample indictment
§ 14:27 Antitrust jury charges
§ 14:28 Motion to dismiss and brief in support
§ 14:29 Government's response to motion to dismiss indictment
§ 14:30 Reply to the response of the government to the motion to dismiss and brief in support
§ 14:31 Government's motion and memorandum of law to preclude defendants from offering evidence of reasonableness, economic, or other justification or lack of intent to violate the law or restrain trade
§ 14:32 Government's motion in limine
§ 14:33 Memorandum in support of government's motion in limine
§ 14:34 Order
§ 14:35 Defendant's response to government's motion in limine
§ 14:36 Government's reply to the defendant's response to government's motion in limine
§ 14:37 Defendant Jones' pre-trial memorandum of law
§ 14:38 United States' pre-trial memorandum of law
§ 14:39 Defendant's motion to dismiss count one
§ 14:40 Government's response to defendant's motion to dismiss count one of the indictment
§ 14:41 Order

§ 14:42 Defendant's proposed supplemental instruction
§ 14:43 Court's instructions to the jury at the conclusion of trial
§ 14:44 Defendant's motion for arrest of judgment
§ 14:45 Order
§ 14:46 Government's response in opposition to defendant's motion for arrest of judgment
§ 14:47 Order
§ 14:48 Amnesty letter
§ 14:49 Corporate cooperation agreement letter from Antitrust Division
§ 14:50 Dual investigations corporate agreement letter from Antitrust Division
§ 14:51 Individual cooperation agreement letter from Antitrust Division
§ 14:52 Notification of leniency agreement from Antitrust Division

CHAPTER 15. SUBSTANTIVE CRIMES: CONTINUING CRIMINAL ENTERPRISE

I. CONTINUING CRIMINAL ENTERPRISE DEFINED

§ 15:1 21 U.S.C.A. § 848
§ 15:2 Position of management

II. DURATION OF CRIME AND RESULTING PUNISHMENT

§ 15:3 Statute of limitations on enterprise
§ 15:4 Fines and penalties

CHAPTER 16. SUBSTANTIVE CRIMES: HOBBS ACT

I. HOBBS ACT (RACKETEERING) (18 U.S.C.A. § 1951)

§ 16:1 Hypothetical
§ 16:2 The Act (18 U.S.C.A. § 1951)
§ 16:3 Induced to part with property
§ 16:4 Extortion

§ 16:5 —Public officials
§ 16:6 Conspiracy
§ 16:7 Interstate commerce
§ 16:8 Scope
§ 16:9 Defenses
§ 16:10 Hypothetical application

II. FINES AND PENALTIES

§ 16:11 Application of guidelines

III. SAMPLE MATERIALS

§ 16:12 Sample indictment
§ 16:13 Sample jury instructions

CHAPTER 17. SUBSTANTIVE CRIMES: TRAVEL ACT

I. TRAVEL ACT (RACKETEERING)

§ 17:1 18 U.S.C.A. § 1952
§ 17:2 Interstate commerce
§ 17:3 Specific intent
§ 17:4 Unlawful activity
§ 17:5 Overt act
§ 17:6 Distinction between Hobbs and Travel Acts
§ 17:7 Bribery and extortion-not mutually exclusive
§ 17:8 Conspiracy to commit violations of the Hobbs and Travel Acts
§ 17:9 Multiple prosecutions
§ 17:10 Aiding and abetting substantive and conspiratorial violations
§ 17:11 Additional problems
§ 17:12 Defenses
§ 17:13 Fines and penalties

II. SAMPLE MATERIALS

§ 17:14 Motion to dismiss count ____ of the indictment as to defendant with legal authorities in support
§ 17:15 Specific instructions: Travel Act (18 U.S.C.A. § 1952(a)(3) and (b)(1))

CHAPTER 18. SUBSTANTIVE CRIMES: NATIONAL STOLEN PROPERTY ACT

I. NATIONAL STOLEN PROPERTY ACT

§ 18:1 18 U.S.C.A. § 2314
§ 18:2 Interstate commerce
§ 18:3 Conspiracy
§ 18:4 Defenses
§ 18:5 Fines and penalties

II. SAMPLE MATERIALS

§ 18:6 Trial brief on the United States of America
§ 18:7 Specific instructions: Interstate transportation of stolen goods (18 U.S.C.A. § 2314)

CHAPTER 19. SUBSTANTIVE CRIMES: TAX CRIMES

I. INTRODUCTION

§ 19:1 Authority
§ 19:2 Origin of cases
§ 19:3 Civil investigations
§ 19:4 Civil collection procedures
§ 19:5 —Previously assessed liabilities
§ 19:6 —Jeopardy assessment

II. THE ADMINISTRATIVE SUMMONS

§ 19:7 Issuance of a summons
§ 19:8 —Requirements
§ 19:9 —To whom summons may be issued
§ 19:10 — —Shareholders
§ 19:11 — —Tax exempt organizations
§ 19:12 — —Parties doing business with a taxpayer
§ 19:13 — —Taxpayer's accountant
§ 19:14 — —Taxpayer's attorney
§ 19:15 —Special procedures for third-party record keeper summons
§ 19:16 — —Notice
§ 19:17 — —The right to intervene and the right to proceedings to quash

§ 19:18 —Restrictions on inquiries and examinations concerning churches
§ 19:19 —Obtaining evidence from foreign countries
§ 19:20 —What may be examined
§ 19:21 — —Non-liable tax years
§ 19:22 — —Accountant's work papers
§ 19:23 — —Bank records
§ 19:24 — —Corporate records
§ 19:25 — —Handwriting samples
§ 19:26 Enforcement of summons
§ 19:27 —Jurisdiction
§ 19:28 —The rules of procedure

III. THE EVIDENTIARY HEARING

§ 19:29 Right to a hearing
§ 19:30 Discovery
§ 19:31 Intervention
§ 19:32 Burden of proof
§ 19:33 —Government
§ 19:34 —Taxpayer
§ 19:35 Defenses
§ 19:36 —Self-incrimination
§ 19:37 — —Officer of a corporation
§ 19:38 — — —Other organizations
§ 19:39 — —Specific questions vs. blanket refusal
§ 19:40 — —Waiver
§ 19:41 — —Third-party records
§ 19:42 — — —Sphere of privilege
§ 19:43 — — —In the possession of an accountant
§ 19:44 — — —IRS immunity
§ 19:45 —Other constitutional defenses
§ 19:46 —Privileged communications
§ 19:47 —Other defenses
§ 19:48 Contempt
§ 19:49 Appeals

IV. THE EXAMINATION PROCESS

§ 19:50 Generally
§ 19:51 When applicable
§ 19:52 Notice of re-examination
§ 19:53 Definition of re-examination

§ 19:54 Unnecessary examinations
§ 19:55 Contesting re-examination

V. SEARCH WARRANTS

§ 19:56 Authority
§ 19:57 Constitutional considerations

VI. CRIMINAL TAX CONFERENCES

§ 19:58 IRS Investigations department
§ 19:59 —Criminal investigations unit
§ 19:60 —Conference letter
§ 19:61 —Statements
§ 19:62 Conferences with the Justice Department

VII. GRAND JURY INVESTIGATIONS

§ 19:63 Generally

VIII. SUBSTANTIVE LAWS

§ 19:64 Statute of limitations
§ 19:65 Application of the statute
§ 19:66 Venue
§ 19:67 Duplicative charges
§ 19:68 Jury list
§ 19:69 Mens rea
§ 19:70 —Expert testimony
§ 19:71 Special discovery issues
§ 19:72 Tax evasion (I.R.C. § 7201)
§ 19:73 Actions constituting an offense
§ 19:74 Persons liable
§ 19:75 —Accountant
§ 19:76 —Corporation
§ 19:77 —Third parties
§ 19:78 —Willfulness
§ 19:79 —Methods of reconstructing income
§ 19:80 — —Net worth method
§ 19:81 Deposits and expenditures method
§ 19:82 Specific item method
§ 19:83 Defenses
§ 19:84 —Voluntary disclosure
§ 19:85 —Double jeopardy

§ 19:86 —Self-incrimination
§ 19:87 —Good faith lack of knowledge
§ 19:88 —Good faith reliance
§ 19:89 —Selective prosecution
§ 19:90 —Failure to sign return
§ 19:91 —Amount of tax
§ 19:92 —Advice of counsel
§ 19:93 —Excessive Fines Clause
§ 19:94 Willful failure to collect or pay over tax (I.R.C. § 7202)
§ 19:95 Willful failure to file return, pay tax or supply information (I.R.C. § 7203)
§ 19:96 —Constitutional defenses
§ 19:97 —Other defenses
§ 19:98 Fraudulent statement or failure to make statement to employee (I.R.C. § 7204)
§ 19:99 Fraudulent withholding exemption certificate or failure to supply (I.R.C. § 7205)
§ 19:100 Fraud and false statements (I.R.C. § 7206)
§ 19:101 —Elements
§ 19:102 —Privilege defense
§ 19:103 —Lack of knowledge defense
§ 19:104 —Aiding or assisting in false statements
§ 19:105 — —Persons liable
§ 19:106 — — —Tax advisor
§ 19:107 — — —Accountant
§ 19:108 — — —Suppliers of false information
§ 19:109 — — —Corporations
§ 19:110 Fraudulent returns, statements or other documents (I.R.C. § 7207)
§ 19:111 Counterfeiting, mutilation or reuse (I.R.C. § 7208)
§ 19:112 Unauthorized use or sale of stamps (I.R.C. § 7209)
§ 19:113 Failure to obey summons (I.R.C. § 7210)
§ 19:114 False statements to purchasers or lessees relating to tax (I.R.C. § 7211)
§ 19:115 Attempts to interfere with the administration of the internal revenue laws (I.R.C. § 7212)
§ 19:116 Unauthorized disclosure of information (I.R.C. § 7213)
§ 19:117 Offenses by officers and employees of the United States (I.R.C. § 7214)

§ 19:118 Offenses with respect to collected taxes (I.R.C. § 7215)
§ 19:119 Disclosure or use of information by tax return preparers (I.R.C. § 7216)
§ 19:120 Conspiracy to impede and impair IRS (18 U.S.C.A. § 371)
§ 19:121 Tax related mail fraud charges

IX. FINES AND PENALTIES

§ 19:122 Generally

X. SAMPLE MATERIALS

§ 19:123 Summons—Department of the treasury
§ 19:124 Verified petition for return of property illegally seized
§ 19:125 Application for a preliminary and permanent injunction
§ 19:126 Memorandum of law in support of application for preliminary injunction
§ 19:127 Preliminary injunction
§ 19:128 Memorandum in opposition to defendant's motion to dismiss for mootness
§ 19:129 Motion to unseal documents
§ 19:130 Order
§ 19:131 Motion for summary judgment with legal authorities in support
§ 19:132 Plaintiffs' complaint for return of documents voluntarily produced to internal revenue service
§ 19:133 Findings of fact and conclusions of law
§ 19:134 Order granting attorney's fees and expenses
§ 19:135 Plaintiffs' request for interest on attorney's fees
§ 19:136 Order denying post-judgment interest
§ 19:137 Defendant's brief submitted on behalf of taxpayers to IRS district counsel
§ 19:138 Complaint for wrongful disclosure
§ 19:139 Application of the United States to enter premises to effect levy
§ 19:140 Order for entry on premises to effect levy
§ 19:141 Specific instructions: tax evasion (26 U.S.C.A. § 7201)
§ 19:142 Specific instructions: failure to file income tax return (26 U.S.C.A. § 7203)

§ 19:143 Specific instructions: false statement on income tax return (26 U.S.C.A. § 7206)

CHAPTER 20. SUBSTANTIVE CRIMES: PERJURY

I. PERJURY STATUTES

A. ELEMENTS

§ 20:1 18 U.S.C.A. § 1621
§ 20:2 18 U.S.C.A. § 1623
§ 20:3 Similarities and differences
§ 20:4 18 U.S.C.A. § 1622

B. DEFENSES

§ 20:5 The Measure of Truth
§ 20:6 Recantation
§ 20:7 Defects in the indictment
§ 20:8 Selective prosecution
§ 20:9 Perjury trap
§ 20:10 Vindictiveness
§ 20:11 Collateral estoppel

II. CLIENT PERJURY

§ 20:12 Options of the defense attorney
§ 20:13 Model rules and ethical opinions

III. FINES AND PENALTIES

§ 20:14 Application of the sentencing guidelines

IV. SAMPLE MATERIALS

§ 20:15 Specific Instructions: false statement before a grand jury (18 U.S.C.A. § 1623)

CHAPTER 21. SUBSTANTIVE CRIMES: FRAUD AGAINST THE GOVERNMENT

I. INTRODUCTION

§ 21:1 Generally

II. FALSE CLAIMS

§ 21:2 18 U.S.C.A. § 287
§ 21:2.10 Expanded remedies of Revised Program Fraud Civil Remedies Act
§ 21:3 Fines and penalties for false claims convictions

III. CONSPIRACY

§ 21:4 18 U.S.C.A. § 371
§ 21:5 Fines and penalties for conspiracy convictions

IV. FALSE STATEMENTS

§ 21:6 18 U.S.C.A. § 1001
§ 21:7 Elements
§ 21:8 Defenses
§ 21:9 —Good faith
§ 21:10 —Exculpatory no
§ 21:11 —First Amendment
§ 21:12 Government contract fraud
§ 21:13 Fines and penalties for false statement conviction

V. MAJOR FRAUD AGAINST THE GOVERNMENT

§ 21:14 18 U.S.C.A. § 1031
§ 21:15 Fines and penalties
§ 21:16 False Claims Act—Overview
§ 21:17 —Collateral consequences of false claims
§ 21:18 —Qui tam actions
§ 21:19 —History and background
§ 21:20 —Amendments to the False Claims Act
§ 21:21 —What do you do?—Filing the complaint
§ 21:22 —Government intervention
§ 21:23 —The government declines to intervene
§ 21:24 —What do you have to prove?
§ 21:25 —Determining whether a "claim" has been submitted to the government
§ 21:26 —Definition of "knowingly"
§ 21:27 —Determining whether a claim is "false" or "fraudulent"
§ 21:28 —What are the pitfalls?
§ 21:29 —Statutory problems

§ 21:30 —Constitutional issues
§ 21:31 —Typical types of qui tam cases
§ 21:32 —Materiality
§ 21:33 Summary of qui tam issues
§ 21:34 Theft or bribery concerning programs receiving federal funds (18 U.S.C.A. § 666)

VI. SAMPLE MATERIALS

§ 21:35 Sample indictment
§ 21:36 Defendant's motion to dismiss indictment
§ 21:37 Defendant Jones' pre-trial memorandum of law
§ 21:38 Government's trial brief
§ 21:39 Specific instructions: False statement to a federal agency (18 U.S.C.A. § 1001)
§ 21:40 Selected jury instructions (false statements and claims, good faith, ambiguity)
§ 21:41 Motion in limine to exclude extrinsic evidence of uncharged cost report submissions and timekeeping entries
§ 21:42 Motion in limine (government contractor's suspension by government agency)

CHAPTER 22. SUBSTANTIVE CRIMES: MONEY LAUNDERING ACT

I. HYPOTHETICAL

§ 22:1 Generally

II. THE MONEY LAUNDERING CRIMES ACT OF 1986

§ 22:2 General background
§ 22:3 Laundering of monetary instruments 18 U.S.C.A. § 1956
§ 22:4 —§ 1956(a)(1)
§ 22:5 —§ 1956(a)(2)
§ 22:6 —§ 1956(a)(3)
§ 22:7 —Penalties and forfeiture
§ 22:8 —Venue
§ 22:9 —§ 1956(H)-Conspiracy
§ 22:10 Laundering of monetary instruments 18 U.S.C.A. § 1956—Terrorism

§ 22:11 Engaging in monetary transactions in property derived from specified unlawful activity § 1957
§ 22:12 Bulk cash smuggling into and out of the United States 18 U.S.C.A. § 5332
§ 22:13 Cryptocurrency

III. SAMPLE MATERIALS

§ 22:14 Sample indictment
§ 22:15 Defendant's motion to dismiss counts ____ of the indictment based on unconstitutionality of 18 U.S.C.A. § 1956 (a)(1)(B) as applied
§ 22:16 Order
§ 22:17 Defendant's motion to dismiss or for judgment of acquittal as to count [number] of the indictment
§ 22:18 Order
§ 22:19 Motion to dismiss counts 25 through 31 of the indictment
§ 22:20 Order granting motion to dismiss counts 25 through 31 of the indictment
§ 22:21 Trial brief of the United States of America
§ 22:22 Government's requested jury instructions
§ 22:23 Court's instructions to the jury
§ 22:24 Post-trial instruction #1 ("money laundering; 18 U.S.C.A. § 1956(a)(1)(A)(i)")
§ 22:25 Post-trial instruction #2 ("laundering monetary instructions; 18 U.S.C.A. § 1956(1)(B))"
§ 22:26 Notice of seizure of property by government

CHAPTER 23. SUBSTANTIVE CRIMES: BANKRUPTCY CRIMES

I. 18 U.S.C.A. § 152: FRAUDULENT CONCEALMENT OR TRANSFER

§ 23:1 Text of statute
§ 23:2 Criminal intent: Knowingly and fraudulently
§ 23:3 Property
§ 23:4 Conceals or transfers
§ 23:5 False oath or account
§ 23:6 False claims
§ 23:7 Fraudulent treatment of documents
§ 23:8 Withholding documents

§ 23:9 Defenses
§ 23:10 Fines and penalties: 18 U.S.C.A. § 152

II. 18 U.S.C.A. § 153: EMBEZZLEMENT BY CUSTODIAN

§ 23:11 Text of statute
§ 23:12 Custodian or other officer of the court
§ 23:13 Property
§ 23:14 Fines and penalties: 18 U.S.C.A. § 153

III. 18 U.S.C.A. § 154: PURCHASE OF ASSETS BY CUSTODIAN

§ 23:15 Text of statute

IV. 18 U.S.C.A. § 155: FEE AGREEMENTS

§ 23:16 Text of the statute

V. MISCELLANEOUS BANKRUPTCY-RELATED STATUTES

§ 23:17 18 U.S.C.A. § 371: Conspiracy
§ 23:18 18 U.S.C.A. § 2: Aiding and abetting
§ 23:19 —Purchasers of property
§ 23:20 18 U.S.C.A. § 1503: Influencing and intimidating officers
§ 23:21 18 U.S.C.A. § 1910: Nepotism
§ 23:22 18 U.S.C.A. § 1911: Mismanagement
§ 23:23 18 U.S.C.A. § 3057: Bankruptcy investigations
§ 23:24 —Duty to disclose
§ 23:25 —Obstruction of Justice, 18 U.S.C.A. § 1519
§ 23:26 Destructive offenses
§ 23:27 Assaultive offenses
§ 23:28 18 U.S.C.A. § 505: Forgery
§ 23:29 18 U.S.C.A. § 3282: Statutes of limitations
§ 23:30 18 U.S.C.A. § 3284: Concealment of bankrupt's assets

VI. BANKRUPTCY FRAUD

§ 23:31 18 U.S.C.A. § 157: Bankruptcy fraud

VII. SAMPLE MATERIALS

§ 23:32 Indictment

§ 23:33 Motion to dismiss and for election among multiplicitous counts of the indictment (18 U.S.C.A. §§ 153, 645)
§ 23:34 Order
§ 23:35 Motion to dismiss or for election among multiplicitous counts three through thirteen
§ 23:36 Order granting motion to dismiss counts three through thirteen of the indictment
§ 23:37 Motion to dismiss counts five through thirteen of the indictment
§ 23:38 Order granting motion to dismiss counts five through thirteen of the indictment
§ 23:39 Motion to dismiss regarding issues of fraudulent transfers and concealment
§ 23:40 Defendant's reply to government's response to her motion to dismiss or for election among multiplicitous counts three through thirteen
§ 23:41 Defendant Mary Brown's reply to the government's response to her motion to dismiss counts five through thirteen
§ 23:42 Defendant's reply to government's responses to pre-trial motions
§ 23:43 Joe Brown's motion for judgment of acquittal
§ 23:44 Order granting Joe Brown's motion for judgment of acquittal
§ 23:45 Government's trial brief
§ 23:46 Government's requested jury instructions
§ 23:47 Special instructions: bribery—Essential elements
§ 23:48 Specific instructions: Destruction of records, false entries—Essential elements
§ 23:49 Specific instructions: Withholding records—Essential elements
§ 23:50 Defendant's requested post-trial instruction
§ 23:51 Defendant's requested post-trial instruction
§ 23:52 Post-trial instructions
§ 23:53 Debtor's post trial memorandum regarding false oaths

CHAPTER 24. SUBSTANTIVE CRIMES: IMPORT VIOLATIONS

I. ENTRY OF GOODS

§ 24:1 False classifications (18 U.S.C.A. § 541)

§ 24:2 False statements (18 U.S.C.A. § 542)
§ 24:3 —Elements
§ 24:4 —Defenses
§ 24:5 Entry for less than legal duty (18 U.S.C.A. § 543)
§ 24:6 Relanding of goods (18 U.S.C.A. § 544)
§ 24:7 Fines and penalties

II. SMUGGLING AND ILLEGAL IMPORTATION

§ 24:8 Smuggling goods into the United States (18 U.S.C.A. § 545)
§ 24:9 —Elements
§ 24:10 —Defenses
§ 24:11 Smuggling goods into foreign countries (18 U.S.C.A. § 546)
§ 24:12 Fines and penalties

III. OTHER OFFENSES

§ 24:13 Buildings on boundaries (18 U.S.C.A. § 547)
§ 24:14 Removing or repacking goods (18 U.S.C.A. § 548)
§ 24:15 Removing goods from customs custody (18 U.S.C.A. § 549)
§ 24:16 False claim for refund (18 U.S.C.A. § 550)
§ 24:17 Concealing or destroying invoices (18 U.S.C.A. § 551)
§ 24:18 Aiding importation of obscene and treasonous material (18 U.S.C.A. § 552)
§ 24:19 Importation or exportation of stolen vehicles (18 U.S.C.A. § 553)
§ 24:20 Fines and penalties
§ 24:21 Importation of goods made with forced labor

IV. IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS ("ITSR")

§ 24:22 Generally

V. SAMPLE MATERIALS

§ 24:23 Sample indictment
§ 24:24 Special instructions: Smuggling (18 U.S.C.A. § 545)
§ 24:25 Motion for judgment of acquittal
§ 24:26 Order

§ 24:27 Motion to dismiss
§ 24:28 Order
§ 24:29 Motion to dismiss counts ____ with legal authorities in support
§ 24:30 Order
§ 24:31 Post-trial instruction: Entry of goods by means of false statements; 18 U.S.C.A. § 542

CHAPTER 25. SUBSTANTIVE CRIMES: EXPORT OFFENSES

I. EXPORT ADMINISTRATION ACT

§ 25:1 Elements
§ 25:2 Defenses
§ 25:3 —Criminal intent
§ 25:4 —Licensing requirements
§ 25:5 —Normal commercial use exception
§ 25:6 Additional governmental authority in enforcement
§§ 25:7 *[Reserved]*

III. SANCTIONS

§ 25:8 Criminal
§ 25:9 —Violations of Export Administration Act
§ 25:10 — —Willful violations
§ 25:11 —Violations of 18 U.S.C.A. § 1001
§ 25:12 International Emergency Economic Power Act *[Deleted]*
§ 25:13 Arms Export Control Act *[Deleted]*
§ 25:14 Administrative
§ 25:15 —penalties under the Export Administration Act
§ 25:16 —Exclusion from practice
§§ 25:17 *[Reserved]*

IV. INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

§ 25:18 Generally
§ 25:19 Jurisdiction

V. ARMS EXPORT CONTROL ACT

§ 25:20 Arms Export Control Act

VI. IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS ("ITSR")

§ 25:21 Generally

VII. CONCLUSION

§ 25:22 Generally

VIII. SAMPLE MATERIALS

§ 25:23 Letter requesting records from U.S. Department of Commerce
§ 25:24 U.S. Department of Commerce's response to request for records
§ 25:25 Sample indictment
§ 25:26 Joint defendants' motion to compel *Brady* materials
§ 25:27 Defendants' motion to dismiss indictment
§ 25:28 Motion to dismiss indictment with argument and authorities
§ 25:29 Motion for disclosure of FISA applications, orders and related materials
§ 25:30 Order dismissing indictment
§ 25:31 Motion to suppress evidence obtained under FISA and the fruits of such evidence
§ 25:32 Brief in support of motion to suppress evidence obtained under FISA and the fruits of such evidence
§ 25:33 Motion to dismiss (sanctions violations)
§ 25:34 Government's memorandum concerning the International Emergency Economic Powers Act
§ 25:35 Motion to dismiss based on regulations exceeding IEEPA'S authority
§ 25:36 Specific instructions: Export offenses (18 U.S.C.A. § 371) (50 U.S.C.A., Appendix, § 2410(a))
§ 25:37 Specific instructions: False statement to federal agency (18 U.S.C.A. § 1001)

CHAPTER 26. SUBSTANTIVE CRIMES: ENVIRONMENTAL CRIMES

I. INTRODUCTION

§ 26:1 Criminal cases

§ 26:2 Summary of statutes
§ 26:3 Common issues
§ 26:4 —Corporate liability
§ 26:5 —Individual liability
§ 26:6 —The knowledge requirement
§ 26:7 —Constitutional defenses
§ 26:8 —Other defenses
§ 26:9 —Jurisdictional issues
§ 26:10 —Criminal Victims' Rights Act

II. SUBSTANTIVE PROVISIONS

§ 26:11 Clean Water Act
§ 26:12 —Knowing endangerment (33 U.S.C.A. § 1319(c)(3))
§ 26:13 —False statements (33 U.S.C.A. § 1319(c)(4))
§ 26:14 —Elements
§ 26:15 —Defenses
§ 26:16 — —Res judicata
§ 26:17 — —Compliance
§ 26:18 — —Equitable estoppel
§ 26:19 — —Necessity
§ 26:20 —Civil penalties
§ 26:21 —Failure to notify (33 U.S.C.A. § 1321(b)(5))
§ 26:22 — —Fines and penalties
§ 26:23 — —Standing
§ 26:24 Clean Air Act-Knowing violation of the Act (42 U.S.C.A. § 7413(c)(1))
§ 26:25 —False statements (42 U.S.C.A. § 7413(c)(2))
§ 26:26 —Release of pollutants (42 U.S.C.A. §§ 7413(c)(4) and (5))
§ 26:27 —Fines and penalties
§ 26:28 —Following orders defense
§ 26:29 —Amendments
§ 26:30 Toxic Substances Control Act (15 U.S.C.A. § 2615)
§ 26:31 —Defenses
§ 26:32 —Fines and penalties
§ 26:33 Resource Conservation and Recovery Act
§ 26:34 —Knowing transport to unpermitted facility (42 U.S.C.A. § 6928(d)(1))
§ 26:35 —Dealing with hazardous waste without permit (42 U.S.C.A. § 6928(d)(2))

§ 26:36 —False statements (42 U.S.C.A. § 6928(d)(3)
§ 26:37 —Destroying records (42 U.S.C.A. § 6928(d)(4)
§ 26:38 —Transporting hazardous waste without manifest (42 U.S.C.A. § 6928(d)(5))
§ 26:39 —Exporting hazardous waste (42 U.S.C.A. § 6928(d)(6))
§ 26:40 —Knowing endangerment (42 U.S.C.A. § 6928(e))
§ 26:41 —Elements
§ 26:42 —Electronic waste
§ 26:43 —Defenses
§ 26:44 —Fines and penalties
§ 26:45 Superfund/Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. §§ 9601 to 9675)
§ 26:46 —Fines and penalties
§ 26:47 —Retroactive application
§ 26:48 Insecticide, Fungicide and Rodenticide Act (7 U.S.C.A. § 136 et seq.)
§ 26:49 —Fines and penalties
§ 26:50 The Act to Prevent Pollution from Ships (APPS)—Fines and penalties
§ 26:51 Sentencing

III. PROCEDURAL ISSUES

§ 26:52 Generally
§ 26:53 Administrative proceedings by the EPA
§ 26:54 Deferred Prosecution Agreements

IV. PROSECUTION GUIDELINES

§ 26:55 Generally
§ 26:56 Factors to be considered
§ 26:57 Nature of Department of Justice guidance

V. ENVIRONMENTAL AUDITS

§ 26:58 Generally
§ 26:59 Benefits
§ 26:60 Risks
§ 26:61 The positions of the EPA and DOJ concerning voluntary environmental audits
§ 26:62 —The environmental auditing policy of the EPA

§ 26:63 —The DOJ's statement concerning environmental audits
§ 26:64 The disclosure of environmental audit results under the environmental statutes and the danger of parallel civil and criminal proceedings
§ 26:65 The privileges available to prevent the discovery of environmental audits
§ 26:66 —The attorney-client privilege
§ 26:67 —The work product doctrine
§ 26:68 —The self-evaluative privilege
§ 26:69 Proposal and conclusion

VI. SAMPLE MATERIALS

§ 26:70 Designation of authorized representatives
§ 26:71 Notice of violation
§ 26:72 What to do when the regulator's visit is a criminal investigation
§ 26:73 Sample indictment
§ 26:74 Government's amended requested jury instructions
§ 26:75 Court's instruction to the jury
§ 26:76 Additional jury instructions
§ 26:77 Jury instruction—Hazardous waste defined
§ 26:78 —Reactivity defined
§ 26:79 Supplemental instructions
§ 26:80 Criminal information
§ 26:81 Judgment in a criminal case for organizational defendants
§ 26:82 Plea agreement
§ 26:83 Motion to waive presentence investigation report
§ 26:84 Background information prepared by the defense (confidential–to be filed under seal)
§ 26:85 Joint emergency motion for return of witness' travel documents
§ 26:86 Government's response to joint emergency motion for return of travel documents
§ 26:87 Defendant's motion to dismiss false statements and obstruction of justice counts
§ 26:88 Motion to strike surplusage from indictment
§ 26:89 Order granting motion to strike surplusage from indictment

CHAPTER 27. SUBSTANTIVE CRIMES: TRADEMARK VIOLATIONS

I. ELEMENTS OF TRADEMARK VIOLATIONS

§ 27:1 The Trademark Counterfeiting Act of 1984
§ 27:2 Elements
§ 27:3 Defenses

II. PROSECUTIONS AND PENALTIES

§ 27:4 Prosecution policy
§ 27:5 Fines and penalties
§ 27:6 Inviting criminal charges from the government
§ 27:7 Government considerations prior to filing criminal charges

CHAPTER 28. SUBSTANTIVE CRIMES: COPYRIGHT VIOLATIONS

I. CRIMINAL VIOLATIONS OF COPYRIGHT

§ 28:1 Generally

II. ELEMENTS OF COPYRIGHT INFRINGEMENT

§ 28:2 Valid copyright
§ 28:3 Infringement
§ 28:4 Willfulness
§ 28:5 Commercial purpose or financial gain
§ 28:6 Counterfeit goods or services

III. ADDITIONAL CRIMINAL VIOLATIONS OF COPYRIGHT LAW

§ 28:7 Other violations under Section 506
§ 28:8 Anti-Counterfeiting Amendments Act of 2004
§ 28:9 Digital Millennium Copyright Act of 1998
§ 28:10 18 U.S.C.A. § 2319A

IV. DEFENSES

§ 28:11 Generally

§ 28:12 First sale doctrine
§ 28:13 Fair use doctrine
§ 28:14 —Reverse engineering

V. FINES AND PENALTIES

§ 28:15 Penalties for violations of § 506(a)
§ 28:16 Penalties for other copyright violations
§ 28:17 Forfeiture

VI. CRIMINAL CASE DEVELOPMENT

§ 28:18 Requesting the government to file criminal charges
§ 28:19 Government considerations before filing criminal charges

CHAPTER 29. SUBSTANTIVE CRIMES: FORGERY

I. FORGED ENDORSEMENTS ON GOVERNMENT OBLIGATIONS AND SECURITIES

§ 29:1 General statutory prohibitions

II. VIOLATIONS OF 18 U.S.C.A. § 495

§ 29:2 Offenses
§ 29:3 Fines and penalties

III. VIOLATIONS OF 18 U.S.C.A. § 510

§ 29:4 Offenses
§ 29:5 Fines and penalties

IV. COMPARISON OF STATUTES AND CHOICE OF LAW

§ 29:6 Similarities and differences
§ 29:7 Choice of law
§ 29:8 Prosecution policy regarding the charging of 18 U.S.C.A. § § 495 or 510

V. SAMPLE MATERIALS

§ 29:9 Sample indictment

§ 29:10 Specific instructions: Forgery (18 U.S.C.A. § 495)
§ 29:11 Motion for judgment of acquittal
§ 29:12 Order

Volume 4

CHAPTER 30. FORFEITURE

I. INTRODUCTION

§ 30:1 Definition of forfeiture
§ 30:2 Ability of government to forfeit property
§ 30:3 Methods of forfeiture—Civil
§ 30:4 —Criminal
§ 30:5 —Parallel forfeiture proceedings-simultaneous proceedings
§ 30:6 — —Subsequent civil proceedings
§ 30:7 Proceeds of forfeiture

II. CIVIL FORFEITURES

A. DRUG RELATED ITEMS SUBJECT TO FORFEITURE

§ 30:8 Drug related items subject to forfeiture
§ 30:9 —Controlled substances
§ 30:10 —Equipment
§ 30:11 —Cars, boats, and conveyances
§ 30:12 —Books, records, etc
§ 30:13 —Other personal property
§ 30:14 —Real property
§ 30:15 —Chemicals and drug manufacturing equipment

B. NON-DRUG RELATED ITEMS SUBJECT TO FORFEITURE

§ 30:16 Nondrug related items subject to forfeiture-motor vehicles
§ 30:17 —Convict made goods, wares, or merchandise
§ 30:18 —Property used in gambling
§ 30:19 —Sexual exploitation of children
§ 30:20 —Interception of wire and oral communications
§ 30:21 —Copyright violations

§ 30:22 —Gambling devices
§ 30:23 —Illegal exportation of war materials
§ 30:24 —Bank secrecy and money laundering
§ 30:25 —Banking violations
§ 30:26 —Mail fraud violations
§ 30:27 Nondrug related items subject to forfeiture—Assets belonging to supporters of terrorism
§ 30:28 Procedural rules
§ 30:29 Seizure-methods-pursuant to the Fourth Amendment warrant
§ 30:30 —Warrant of arrest in rem
§ 30:31 —Without a warrant
§ 30:32 —By adoption
§ 30:33 Special considerations-real property
§ 30:34 —Cash
§ 30:35 Nonjudicial forfeiture proceedings-summary forfeiture
§ 30:36 —Administrative forfeiture-generally
§ 30:37 — —Initiation of proceedings
§ 30:38 — —Claim and bond
§ 30:39 Judicial forfeiture proceedings-pretrial-statute of limitations
§ 30:40 —Promptness
§ 30:41 —Jurisdiction and venue
§ 30:42 —Complaint
§ 30:43 —Notice
§ 30:44 —Unanswered complaint
§ 30:45 —Answered complaint-requirement of an answer
§ 30:46 — —Standing
§ 30:47 — —Motion to strike claim
§ 30:48 — —Discovery-methods
§ 30:49 — — —Motions
§ 30:50 — —Summary judgment
§ 30:51 — —Claimant's motion to suppress
§ 30:52 — —Jury trial
§ 30:53 — —Trial-burden of proof
§ 30:54 — — —Government's case-burden at trial
§ 30:55 — — — —Methods of meeting the burden of proof
§ 30:56 — — —Claimant's case-methods of meeting the burden of proof
§ 30:57 — — — —Affirmative defenses-alternative source

§ 30:58 — — — — —Unreasonable delay
§ 30:59 — — — — —Exceptionally innocent "Calero Toledo" defense
§ 30:60 — — — —Statutory defenses
§ 30:61 — — — —Constitutional defenses
§ 30:62 — — — —Acquittal
§ 30:63 — — — —Delay
§ 30:64 — —Judgment
§ 30:65 — —Settlement, dismissal, or discontinuance-administrative proceedings
§ 30:66 — — —Judicial proceedings
§ 30:67 — —Judicial review-appeal of judgment
§ 30:68 — — —Constitutional challenges
§ 30:69 Disposition of property
§ 30:70 Double jeopardy and Eighth Amendment issues
§ 30:71 Sovereign immunity
§ 30:72 Fugitive disentitlement
§ 30:73 Forfeiture actions and attorney's fees

III. CRIMINAL FORFEITURE

§ 30:74 Substantive statutes: property subject to forfeiture
§ 30:75 —RICO (18 U.S.C.A. § 1963)
§ 30:76 —Controlled substances (21 U.S.C.A. § 853)
§ 30:77 —Obscene materials (18 U.S.C.A. § 1467)
§ 30:78 —Sexual exploitation of children (18 U.S.C.A. § 2253)
§ 30:79 —Copyrights (17 U.S.C.A. § 506(b))
§ 30:80 —Counterfeit labels (18 U.S.C.A. § 2318(d))
§ 30:81 —Defense information (18 U.S.C.A. §§ 794(d) and 793(h))
§ 30:82 —Defense information (Sixth Amendment)
§ 30:83 —Bank secrecy and money laundering (18 U.S.C.A. § 982(a)(1))
§ 30:84 —Banking violations (18 U.S.C.A. § 982(a)(2))
§ 30:85 Procedural statutes
§ 30:86 Criminal forfeiture proceedings
§ 30:87 —Jurisdiction
§ 30:88 —Indictment
§ 30:89 —Notice
§ 30:90 Pretrial restraining orders-hypothetical
§ 30:91 —Due process requirements

§ 30:92 —Nonliquid assets including real estate and equipment
§ 30:93 —Liquid assets or cash
§ 30:94 —Legal fees
§ 30:95 —Appeals
§ 30:96 Posttrial forfeiture
§ 30:97 —Restraining orders
§ 30:98 —Warrants of seizure
§ 30:99 Trial-third parties
§ 30:100 —Burden of proof
§ 30:101 —Special verdict
§ 30:102 —Order
§ 30:103 Post forfeiture
§ 30:104 Petition for remission or mitigation
§ 30:105 Remission or restoration to victims
§ 30:106 Disposition of property
§ 30:107 Protecting attorneys' fees from forfeiture
§ 30:108 International Emergency Economic Powers Act (IEEPA) (50 U.S.C.A. §§ 1701 to 1707)
§ 30:109 Money judgments
§ 30:110 Substitute property

IV. SAMPLE MATERIALS

§ 30:111 Response to government's motion to strike claims and request for sanctions pursuant to 18 U.S.C.A. § 1963(c)
§ 30:112 Reply of the United States to claimants' response to motion to strike claims and opposition to request for Rule 11 sanctions
§ 30:113 Motion to dismiss
§ 30:114 Order
§ 30:115 Motion for protective order
§ 30:116 Protective order
§ 30:117 Motion of claimant, Smith, to dismiss for failure to state a claim upon which relief can be granted (limitations); to dismiss for lack of pleading particularity, or, in the alternative, motion for more definite statement
§ 30:118 Order on motion of claimant, Andrews, to dismiss for failure to state a claim upon which relief can be granted (limitations); to dismiss for lack of pleading particularity, or, in the alternative, motion for more definite statement

§ 30:119 Plaintiff's response to claimant's motion to dismiss, or, in the alternative, motion for more definite statement
§ 30:120 Motion for probable cause hearing (attorney's fees)
§ 30:121 Response of the United States of America to defendant's motion for probable cause hearing
§ 30:122 Claimant's reply to the United States's response to claimant's motion for probable cause hearing
§ 30:123 Claimant's motion for summary judgment (Forfeiture: Form 4789 (CTR) v. 8300 Form)
§ 30:124 (USA) Motion for summary judgment
§ 30:125 Claimants Bruce Butler and Bonnie Butler's opposition to United States's motion for summary judgment
§ 30:126 Supplement to claimants' opposition to United States's motion for summary judgment
§ 30:127 Plaintiff's motion for reconsideration of its motion for summary judgment
§ 30:128 Notice of seizure
§ 30:129 Claim for seized property
§ 30:130 Notice of intent to forfeit
§ 30:131 Complaint for forfeiture in rem
§ 30:132 Claim for possession
§ 30:133 Answer
§ 30:134 Claimant's memorandum of law in support of motion for summary judgment
§ 30:135 Joint motion to deposit seized currency
§ 30:136 Agreed order
§ 30:137 Verified complaint for civil forfeiture in rem
§ 30:138 Government's ex parte motion to seal affidavit
§ 30:139 Notice of intent to forfeit
§ 30:140 Notice of arrest in rem
§ 30:141 Warrant of arrest in rem
§ 30:142 Verified motion for return of property illegally seized
§ 30:143 Defendant's claim for seized property
§ 30:144 Claimant's answer
§ 30:145 Motion to consolidate forfeiture proceedings
§ 30:146 Motion to dismiss, or, in the alternative, motion for more definite statement, including the unsealing of the affidavit
§ 30:147 Order

§ 30:148 Motion to suppress, or, in the alternative, motion to unseal the affidavits for search warrants and request for expedited hearing
§ 30:149 Response of the United States of America to claimants' motion to suppress, or, in the alternative, to unseal affidavit used to obtain criminal search warrants
§ 30:150 Reply to government response regarding motion to suppress
§ 30:151 Motion for reconsideration of denial of motion to suppress and request for hearing
§ 30:152 Opposition of the United States of America to claimants' motions for reconsideration and consolidation
§ 30:153 Motion of United States of America to strike claims, or, alternatively, for interlocutory default judgment
§ 30:154 Claimants' opposition to United States's motion for reconsideration of its motion for summary judgment
§ 30:155 Trustee's first amended answer to amended complaint for forfeiture in rem
§ 30:156 Motion to dismiss complaint for forfeiture in rem, or alternatively, to refer complaint to bankruptcy court, and claim to real property subject thereto
§ 30:157 Agreed order on trustee's motion to dismiss complaint for forfeiture in rem, or alternatively, to refer complaint to bankruptcy court
§ 30:158 Order dismissing complaint for forfeiture in rem
§ 30:159 Answer
§ 30:160 Government's trial brief
§ 30:161 Government's first amended proposed forfeiture instructions and special verdict form
§ 30:162 Preliminary order of forfeiture
§ 30:163 Motion for summary judgment of the United States
§ 30:164 Order
§ 30:165 Response to United States's motion for summary judgment
§ 30:166 Reply of the United States to response to motion for summary judgment
§ 30:167 Stipulation and agreed order establishing claim of [claimant]

§ 30:168 Stipulation, agreed order, and agreed final judgment
§ 30:169 Supplemental verified motion of the United States to tax costs and forfeit cost bonds posted by defendants
§ 30:170 Motion for entry of interlocutory default judgment of forfeiture as to any claim to the defendant property by trustee
§ 30:171 Memorandum of law in support of plaintiff's motion for entry of interlocutory default judgment of forfeiture
§ 30:172 Motion to unseal the affidavits for search warrants
§ 30:173 Order
§ 30:174 United States' response to motion to unseal affidavits
§ 30:175 Order
§ 30:176 Martha's reply to government's response to her motion to unseal
§ 30:177 Indictment
§ 30:178 Government's requested jury instructions
§ 30:179 Claimant's memorandum of law on the issues of standing and waiver of the Fifth Amendment
§ 30:180 United States' memorandum of law on the issues of standing and waiver of the Fifth Amendment
§ 30:181 Defendant's motion for stay regarding forfeiture issues
§ 30:182 United States' reply regarding forfeiture issues
§ 30:183 Defendant's supplemental motion for stay regarding forfeiture issues
§ 30:184 Order
§ 30:185 Defendant's motion for reconsideration of denial of stay of restitution and criminal forfeiture
§ 30:186 Order granting defendant's motion for reconsideration of stay of execution
§ 30:187 Motion to dismiss forfeiture

CHAPTER 31. PROCEDURAL ATTACKS

I. CHARGES AND INDICTMENT

§ 31:1 Multiplicity

§ 31:2 Due process and notice
§ 31:3 Specificity of charges
§ 31:4 Selective prosecution
§ 31:5 Outrageous government conduct
§ 31:6 —Attorney-client interference

II. TRIAL ISSUES

§ 31:7 Federal competency statute
§ 31:8 Preindictment delay
§ 31:9 Speedy trial
§ 31:10 Unanimous verdicts
§ 31:11 Mandatory severance
§ 31:12 Discretionary severance—-Prejudicial joinder
§ 31:13 —Prejudicial joinder—Antagonistic defenses
§ 31:14 — —Spillover or cumulation
§ 31:15 — —Necessity of co-defendants' testimony
§ 31:16 — —Potential Bruton problem
§ 31:17 — —Mega-trials
§ 31:18 Untimely evidence
§ 31:19 Government witnesses
§ 31:20 Confidential informants
§ 31:21 Counsel as an "unsworn witness"
§ 31:22 Entrapment defenses
§ 31:23 Presentation of false evidence
§ 31:24 "Mandatory judge recusal"

III. SUPPRESSION OF STATEMENTS

§ 31:25 Custodial interrogation
§ 31:26 Request for counsel
§ 31:27 Ambiguous request for counsel
§ 31:28 Statements made after a request for counsel
§ 31:29 Involuntary confessions
§ 31:30 Hearsay
§ 31:31 Statements made to jailhouse snitches
§ 31:32 Pre-*Miranda* silence

IV. DISCOVERY

§ 31:33 Statement of the defendant
§ 31:34 Statements alleged to be admissible under the co-conspirator's exception to the hearsay rule
§ 31:35 Criminal record of defendant

§ 31:36 Tangible objects
§ 31:37 Statements of co-defendants
§ 31:38 Persons having knowledge of case
§ 31:39 Criminal records of government witnesses
§ 31:40 Statement of individuals who will not be government witnesses
§ 31:41 Identity of informant
§ 31:42 Examinations, tests and experiments
§ 31:43 Transcript of grand jury testimony
§ 31:44 Exculpatory evidence
§ 31:45 Promises to co-defendants, unindicted co-conspirators or other witnesses
§ 31:46 Expert witnesses
§ 31:47 Discovery abroad
§ 31:48 Reasonable reliance
§ 31:49 Pleas

V. SUBPOENAS

§ 31:50 Generally
§ 31:51 Government officials
§ 31:52 —Substance
§ 31:53 —Procedure
§ 31:54 —Authority
§ 31:55 —Procedure when the United States is not a party
§ 31:56 —Procedure when the United States is a party
§ 31:57 —Considerations in determining whether production or disclosure should be made pursuant to a demand
§ 31:58 —Procedure in the event of an adverse ruling

VI. SEARCH WARRANTS

§ 31:59 Generally
§ 31:60 Search warrant v. subpoena duces tecum
§ 31:61 Non-compliance with Rule 41

VII. WARRANTLESS SEARCHES

§ 31:62 Generally
§ 31:63 Court supervision
§ 31:64 Search incident to arrest
§ 31:65 Inventory

§ 31:66 Vehicle searches
§ 31:67 Exigent circumstances
§ 31:68 Students in public schools
§ 31:69 Airlines passengers
§ 31:70 Border search doctrine
§ 31:71 General and overly broad warrants
§ 31:72 "Private searches"

VIII. DOUBLE JEOPARDY

§ 31:73 Generally

IX. VENUE

§ 31:74 Generally

X. CITIZEN PROTECTION ACT

§ 31:75 Generally

XI. SAMPLE MATERIALS

§ 31:76 Motion to dismiss counts ____ as to defendant with legal authorities in support
§ 31:77 Order
§ 31:78 Motion to dismiss the indictment
§ 31:79 Order
§ 31:80 Motion to dismiss for preindictment delay with legal authorities in support
§ 31:81 Order
§ 31:82 Motion to dismiss on grounds of selective prosecution and abuse of process
§ 31:83 Order
§ 31:84 Motion to dismiss and request for hearing
§ 31:85 Order
§ 31:86 Motion for severance with legal authorities in support (general case)
§ 31:87 Order
§ 31:88 Motion for severance with legal authorities in support (money laundering case)
§ 31:89 Order
§ 31:90 Motion to suppress involuntary oral statements with legal authorities in support thereof
§ 31:91 Order
§ 31:92 Memorandum in support of motion to suppress statements

§ 31:93 Motion for discovery and inspection
§ 31:94 Order
§ 31:95 Memorandum of authorities in support of motion for discovery and inspection
§ 31:96 Motion for discovery of exculpatory evidence
§ 31:97 Order
§ 31:98 *Ex parte* application and memorandum by defendant for issuance of early return subpoenas under rule 17(c)
§ 31:99 Memorandum in support of motion for discovery of exculpatory evidence
§ 31:100 Motion for individual voir dire examination with legal authorities in support
§ 31:101 Order
§ 31:102 Motion to dismiss based upon double jeopardy with legal authorities in support
§ 31:103 Order
§ 31:104 Defendant's request for written findings regarding motion to dismiss with legal authorities in support
§ 31:105 Order
§ 31:106 Motion for specific performance of plea bargain agreement with legal authorities in support
§ 31:107 Order
§ 31:108 Motion to dismiss, or, for judgment of acquittal on counts __ through __ of the indictment on the grounds that they fail to charge an offense against defendant
§ 31:109 Order
§ 31:110 Motion to file ex parte application under seal
§ 31:111 Order
§ 31:112 Ex parte application for writ of habeas corpus and ad testificandum
§ 31:113 Writ of habeas corpus ad testificandum
§ 31:114 Motion for disclosure of grand jury testimony with legal authorities in support
§ 31:115 Order
§ 31:116 Motion for production of Jencks material with legal authorities in support
§ 31:117 Order
§ 31:118 Motion for disclosure of promises of leniency or other agreements between the government and its witnesses
§ 31:119 Order

§ 31:120 Brief in support of motion for disclosure of promises of leniency or other agreements between government and its witnesses
§ 31:121 Motion to adopt trial objections and jury instructions of co-defendants with legal authorities in support
§ 31:122 Order
§ 31:123 Motion for preservation of rough notes and other materials with legal authorities in support
§ 31:124 Order
§ 31:125 Motion for disclosure pursuant to Federal Rules of Criminal Evidence Rule 404(b)
§ 31:126 Order
§ 31:127 Motion in limine with regard to co-conspirator hearsay
§ 31:128 Order
§ 31:129 Motion in limine with regard to co-defendant's plans to call defendant as a witness
§ 31:130 Order
§ 31:131 Government's response to defendants' motions to dismiss for preindictment delay
§ 31:132 Order denying defendants' motions to dismiss for preindictment delay
§ 31:133 Defendant's motion for reconsideration of severance
§ 31:134 Order granting defendant's motion for reconsideration of severance
§ 31:135 Affidavit to obtain severance
§ 31:136 Defendant John Doe's supplement to his motion for severance
§ 31:137 Defendant's second supplement motion for severance
§ 31:138 Government's response to defendant's motion for discovery and inspection
§ 31:139 Government's motion for protective order
§ 31:140 Memorandum of law in support of government's motion for protective order
§ 31:141 Protective order
§ 31:142 Opposition to government's motion for protective order
§ 31:143 Motion for the government to incur copying costs to reproduce documents produced pursuant to Rule 16(a)(1)(C) and memorandum of law in support

§ 31:144 Order
§ 31:145 Government's brief in opposition to defendant's request for reimbursement of defendant's photocopying costs
§ 31:146 Defendant's second motion to dismiss indictment
§ 31:147 Order
§ 31:148 Government's response in opposition to defendant's second motion to dismiss
§ 31:149 Defendant's reply to government's response in opposition to defendant's second motion to dismiss
§ 31:150 Motion to unseal
§ 31:151 Order
§ 31:152 Government's response in opposition to defendant's motion to unseal
§ 31:153 Motion for specific identification of documents with legal authorities in support
§ 31:154 Order granting motion for specific identification of documents
§ 31:155 Government's response to defendant's motion for discovery of exculpatory evidence
§ 31:156 Government's response to the defendant's motion for individual voir dire examination
§ 31:157 Motion for dismissal of indictment, or, in the alternative, for an order compelling disclosure of grand jury testimony with legal authorities in support
§ 31:158 Order
§ 31:159 Defendant's motion to compel production of grand jury transcripts
§ 31:160 Government's response to defendant's joint motion to dismiss superseding indictment and joint motion for production of grand jury transcripts
§ 31:161 Government's response to the defendant's motion for production of jencks material
§ 31:162 Government's response to defendant's motion for disclosure of promises of leniency or other agreements between the government and its witnesses and for disclosure of criminal records of its witnesses or acts of misconduct
§ 31:163 Government's response to defendant's motion for preservation of rough notes and other materials

§ 31:164 Motion for disclosure and limine pursuant to Federal Rules of Evidence Rule 404(b) with legal authorities in support
§ 31:165 Order granting motion for disclosure and limine
§ 31:166 Reply to government responses to defendant's motions in limine
§ 31:167 Government's response to defendant's motion for disclosure and limine pursuant to Federal Rules of Evidence Rule 404(b) with legal authorities in support
§ 31:168 Defendant's request for written findings regarding the admission of 404(b) evidence
§ 31:169 Motion to dismiss various counts for vindictive prosecution with legal authorities in support
§ 31:170 Order
§ 31:171 Motion to strike surplusage with legal authorities in support
§ 31:172 Order
§ 31:173 Memorandum of law on competency proceedings
§ 31:174 Motion to discharge jury based on equal protection violations with legal authorities in support
§ 31:175 Defendant's reply to government responses to defendant's pre-trial motions
§ 31:176 Defendant's reply to government response to pre-trial motions
§ 31:177 Motion for bill of particulars with legal authorities in support
§ 31:178 Order granting motion for bill of particulars
§ 31:179 Government's response to defendant's motion for bill of particulars
§ 31:180 Motion for separate hearing to determine existence of conspiracy
§ 31:181 Order granting motion for separate hearing to determine existence of conspiracy
§ 31:182 Brief of law in support of motion for separate hearing to determine existence of conspiracy
§ 31:183 Government's response to defendant's motion for separate hearing to determine existence of conspiracy
§ 31:184 Defendant's motion in limine
§ 31:185 Order granting defendant's motion in limine

§ 31:186 Defendant's motion in limine
§ 31:187 Order granting motion in limine
§ 31:188 Defendant's motion for dismissal of indictment with legal authorities in support
§ 31:189 Government's response to defendant's motion for dismissal of the indictment
§ 31:190 Defendant's reply to government's response to defendant's motion for dismissal of the indictment
§ 31:191 Order granting defendant's motion to dismiss the indictment
§ 31:192 Defendant's proposed memorandum and order in support of motion to dismiss indictment
§ 31:193 Government's proposed memorandum and order in response to the defendant's motion for dismissal of the indictment
§ 31:194 Defendant's supplement to memorandum and order in response to the government's memorandum and order
§ 31:195 Motion for reconsideration, or, in the alternative, for a stay of proceedings
§ 31:196 Supplemental motion for additional sanctions including request for costs and attorney's fees
§ 31:197 Motion for recusal of the honorable ____ from presiding over the trial of criminal cause no. ___
§ 31:198 Memorandum in support of defendant's motion for recusal of the honorable ____ from presiding over the trial of criminal cause no. ___
§ 31:199 Defendant's motion for issuance of subpoenas
§ 31:200 A. Smith, B. Smith and Smithfield Farms' motion to suppress
§ 31:201 Defendant husband's supplement to his motion to suppress evidence
§ 31:202 United States of America's memorandum regarding authority of district court to order the government to pay defendant's costs and attorney's fees
§ 31:203 Motion to dismiss for charges outside of the statute of limitations
§ 31:204 Order
§ 31:205 Jones's motion for disclosure of grand jury testimony of Marks
§ 31:206 Order

§ 31:207 Government's response in opposition to Jones's motion for disclosure of grand jury testimony of Marks
§ 31:208 Order
§ 31:209 Government's motion for continuance to seek superseding indictment
§ 31:210 Order
§ 31:211 Jones's response to government's motion for continuance to seek superseding indictment
§ 31:212 Jones's third motion to dismiss indictment for failure to turn over *Brady* material
§ 31:213 Order
§ 31:214 Motion to dismiss count two based on collateral estoppel
§ 31:215 Order granting motion to dismiss count two
§ 31:216 Government's response in opposition to defendant Crown Foods company's motion to dismiss count two based on collateral estoppel
§ 31:217 Order
§ 31:218 Petition for writ of habeas corpus pursuant to 28 U.S.C.A. § 2255 regarding mid-trial publicity and severance issues and conflicts of interest
§ 31:219 Defendant's response to United States' motion to quash subpoena
§ 31:220 Defendant's motion to suppress evidence and request for a *Franks v. Delaware* hearing
§ 31:221 Order suppressing evidence
§ 31:222 Defendant's reply to government's response in opposition to defendant's motion to suppress evidence seized pursuant to a search warrant
§ 31:223 Order
§ 31:224 Defendant's motion to enjoin government intimidation of witnesses, and request for expedited hearing
§ 31:225 Defendant's motion to dismiss based on government's conduct
§ 31:226 Order
§ 31:227 Motion and memorandum of law in support of motion to vacate, set aside or correct sentence pursuant to Title 28 U.S.C.A. § 2255
§ 31:228 Defendant's trial brief regarding co-conspirator hearsay
§ 31:229 Defendant's trial brief regarding deliberate ignorance

§ 31:230 Defendant's trial brief regarding the breadth of the conspiracy
§ 31:231 Defendant's motion for a *Kastigar* hearing, or in the alternative, to dismiss the indictment
§ 31:232 Defendant's motion in limine
§ 31:233 Order granting defendant's motion in limine
§ 31:234 Defendant's brief in support of motion in limine *[witness speculation, lay opinion, conspiracy, co-conspirator's statements, co-defendant's plea, scheme to defraud]*
§ 31:235 Defendant's trial brief regarding the admissibility of John Brown's deposition
§ 31:236 Defendant's reply to government's response to motion to suppress evidence
§ 31:237 Motion to transfer venue
§ 31:238 Defendant's motion in limine [*state of mind, rationale for acting, speculation, out of court statements, etc.*]
§ 31:239 Defendant's motion in limine precluding evidence outside the scope of the bill of particulars

Volume 5

CHAPTER 32. ETHICS

I. GENERALLY

§ 32:1 Introduction
§ 32:2 Setting and payment of fees
§ 32:3 Obstruction of justice
§ 32:4 Joint representations
§ 32:5 Trial publicity
§ 32:6 —Canon 20 and newspaper publications
§ 32:7 —Sacco & Vanzetti/Lindbergh
§ 32:8 —Due process violations
§ 32:9 —Reardon Committee
§ 32:10 —The Goodwin Committee
§ 32:11 —Gentile v. State Bar of Nevada
§ 32:12 —Rule 3.6 in response to Gentile
§ 32:13 —Gag orders
§ 32:14 —Balanced advocacy
§ 32:15 —The judiciary

§ 32:16 —The entity client
§ 32:17 —Preemptive action
§ 32:18 —Reformation of existing law
§ 32:19 —Ethical considerations
§ 32:20 —Loyalty
§ 32:21 —Client consent
§ 32:22 —Checklist
§ 32:23 — —Consent
§ 32:24 — —Who benefits
§ 32:25 — —Coverage
§ 32:26 — —Loyalty
§ 32:27 —Conclusion
§ 32:28 —Trial publicity by the Department of Justice
§ 32:29 Witnesses/third parties
§ 32:30 Conduct of opposing counsel
§ 32:31 Cybersecurity
§ 32:32 Communications between lawyers and their clients
§ 32:33 Witnesses
§ 32:34 Conflicts of interest
§ 32:35 Unpublished opinions
§ 32:36 Confidentiality

II. FORMER GOVERNMENT EMPLOYEES AS DEFENSE ATTORNEYS

§ 32:37 ABA model rules of professional conduct
§ 32:38 Screening Procedures and Rebuttable Presumptions
§ 32:39 Former government counsel as witness
§ 32:40 Summary

III. ETHICAL DILEMMAS IN THE CORPORATION

§ 32:41 Generally

IV. SAMPLE MATERIALS

§ 32:42 Defendant's opposition to government's motion to disqualify attorneys of record for conflict of interest with legal authorities in support
§ 32:43 Joint representation by counsel, waiver of conflict of interest

§ 32:44 Motion to disqualify attorneys of record for conflict of interest
§ 32:45 Government's reply to defendant's brief in opposition to motion to disqualify counsel
§ 32:46 Government's motion to disqualify counsel
§ 32:47 Order
§ 32:48 Government's motion for pre-trial hearing to resolve potential conflicts of interest
§ 32:49 Memorandum of law in support of government's motion for pre-trial hearing to resolve potential conflicts of interest
§ 32:50 Opposition to government's motion for pre-trial hearing to resolve potential conflicts of interest
§ 32:51 Government's consolidated reply to defendant's opposition to government's motion for pre-trial hearing to resolve potential conflicts of interest and response to defendant's motion to file documents under seal
§ 32:52 Government's motion to disqualify pursuant to Rule 44(c)
§ 32:53 Order
§ 32:54 Memorandum in support of government's motion to disqualify
§ 32:55 Opposition to government's motion to disqualify with memorandum of law and request for sanctions
§ 32:56 Cooper's response to the government's motion for reconsideration of its motion for Rule 44(c) Inquiry and suggestion of contempt
§ 32:57 Order
§ 32:58 Motion to disqualify the United States Attorney's Office for the _____ District of _____
§ 32:59 Order denying defendant battle's motion to disqualify the United States Attorney's Office
§ 32:60 Government's response to defendant battle's motion to disqualify the United States Attorney's Office
§ 32:61 Defendants' memorandum of law regarding a possibility of conflict of interest
§ 32:62 Motion of the United States for an inquiry and waiver hearing
§ 32:63 Order granting motion of the United States for an inquiry and waiver hearing
§ 32:64 Government's notice of a conflict of interest and request for hearing

§ 32:65 Defendant's response to government's notice of a conflict of interest

CHAPTER 33. ATTORNEY'S FEES

I. MONEY LAUNDERING

§ 33:1 Generally
§ 33:2 Bona fide fees
§ 33:3 Actual knowledge
§ 33:4 Evidence of actual knowledge
§ 33:5 Attorney's fees and seizure

II. BANKRUPTCY

§ 33:6 Pre-petition transfers for post-petition services
§ 33:7 Preferential transfers (11 U.S.C.A. § 547)
§ 33:8 —Arguments for voidance
§ 33:9 —Arguments against voidance
§ 33:10 Fraudulent transfers (11 U.S.C.A. § 548)
§ 33:11 —Arguments for voidance
§ 33:12 —Arguments against voidance
§ 33:13 Post-petition transfers for post-petition or pre-petition services
§ 33:14 —Compensable legal services
§ 33:15 —Legal services not compensable from the estate

III. ATTORNEY/CLIENT MATTERS

§ 33:16 Subpoenas and attorney-client privilege: Identity of client and fee arrangements
§ 33:17 Conflicts of interest
§ 33:18 IRS reporting requirements
§ 33:19 Recovery of attorney's fees for wrongful prosecution-The Hyde Amendment
§ 33:20 Recovery of attorney's fees after a forfeiture action
§ 33:21 "Sixth amendment implications in a forfeiture action"
§ 33:22 Jurisdiction of district courts to resolve fee disputes
§ 33:23 Paying witnesses' expenses and attorney's fees
§ 33:24 Cryptocurrency fee arrangements

IV. SAMPLE MATERIALS

§ 33:25 Statement attached to IRS Form 8300
§ 33:26 John Doe's application for attorneys' fees and expenses
§ 33:27 Order
§ 33:28 Brief in support of John Doe's application for attorneys' fees and expenses
§ 33:29 United States of America's opposition to defendant Doe's application to recover attorney's fees and litigation expenses from the justice department pursuant to "The Hyde Amendment" and memorandum of law

CHAPTER 34. SENTENCING

I. SENTENCING OF INDIVIDUALS

A. HISTORY OF SENTENCING GUIDELINES

§ 34:1 Generally
§ 34:2 Sentencing Reform Act of 1984
§ 34:3 Economic crime package
§ 34:4 Sarbanes-Oxley Act of 2002

B. HOLDING OF *UNITED STATES V. BOOKER*

§ 34:5 Generally
§ 34:6 Reasonableness review
§ 34:7 Re-sentencing as provided by *Booker*

C. IMPACT OF *BOOKER* ON SENTENCING

§ 34:8 Application of *Booker* generally
§ 34:9 Use of judicially-found facts
§ 34:10 Weight the advisory Guidelines should be given
§ 34:11 Application of the "plain-error" test
§ 34:12 Ex post facto clause
§ 34:13 Application of *Booker* to sentence modification proceedings
§ 34:14 Determination of sentence
§ 34:15 Effect on departures

D. DETERMINATION OF SENTENCE UNDER THE ADVISORY GUIDELINES

1. Effect of *Booker* on Determination of Sentence

§ 34:16 Generally

2. Total Offense Level

§ 34:17 Generally

a. Base Offense Level

§ 34:18 Generally
§ 34:19 Relevant conduct

b. Adjustments

§ 34:20 Generally
§ 34:21 Upward adjustment
§ 34:22 —Status of the victim
§ 34:23 —Number of victims
§ 34:24 —Role of defendant in the offense
§ 34:25 —Defendant's obstruction of criminal proceedings
§ 34:26 Downward adjustment
§ 34:27 Collateral consequences

c. Criminal History of Defendant

§ 34:28 Generally
§ 34:29 —Juries

3. Imposition of Sentence

§ 34:30 Generally

E. GROUPING

§ 34:31 Generally

F. DEPARTURES

§ 34:32 Generally
§ 34:33 Substantial assistance
§ 34:34 Aberrant events
§ 34:35 Other reasons for departures
§ 34:36 —Upward departures
§ 34:37 —Downward Departures

§ 34:38 Analysis of downward departures after *U.S. v. Koon*
§ 34:39 Departures in resentencing proceedings

G. RESOLUTION OF FACTUAL DISPUTES DURING SENTENCING

§ 34:40 Generally

II. SENTENCING OF ORGANIZATIONS

§ 34:41 1990 organizational sentencing guidelines
§ 34:42 Impact of Sarbanes-Oxley on organizational sentencing guidelines
§ 34:43 2004 amendments to organizational sentencing guidelines
§ 34:44 Effect of *Booker* on organizational sentencing guidelines

III. MISCELLANEOUS ISSUES

A. ADDITIONAL CONCERNS FOR NON-CITIZENS

§ 34:45 Generally

B. PRETRIAL RESOLUTIONS

1. In General

§ 34:46 Generally

2. Non-prosecution Agreements

§ 34:47 Generally

C. PLEA BARGAINS

3. Deferred Prosecution

§ 34:48 Generally

4. Plea Bargaining

§ 34:49 Generally
§ 34:50 Federal Rule of Criminal Procedure 11
§ 34:51 Criminal Victims' Rights Act
§ 34:52 Defendant's compliance with plea agreement
§ 34:53 Government's obligations

§ 34:54 Court's determination of sentence under plea bargain
§ 34:55 Package deals
§ 34:56 Waivers of right to disclosure of *Brady* material
§ 34:57 Government entities bound by plea bargain
§ 34:58 Applicability of 18 U.S.C.A. § 201(c)(2)
§ 34:59 *Booker*'s effect on plea bargaining
§ 34:60 Waivers—Fed. R. Evid. 410

D. SUPERVISED RELEASE

§ 34:61 Generally

E. PARDONS AND COMMUTATIONS OF SENTENCES

§ 34:62 Generally

F. SENTENCING ENTRAPMENT AND SENTENCING FACTOR MANIPULATION

§ 34:63 Generally

IV. RESTITUTION, FINES, ASSESSMENTS, AND FORFEITURES

A. RESTITUTION

§ 34:64 Generally
§ 34:65 Nature of restitution
§ 34:66 Prior settlement
§ 34:67 Insurance

B. FINES, ASSESSMENTS AND FORFEITURES

§ 34:68 Fines
§ 34:69 Assessments
§ 34:70 Forfeitures

V. SAMPLE MATERIALS

§ 34:71 Defendant's motion to withdraw plea of guilty
§ 34:72 Order granting defendant's motion to withdraw plea of guilty
§ 34:73 Government's response to defendant's motion to withdraw plea of guilty

§ 34:74 Order denying defendant's motion to withdraw plea of guilty
§ 34:75 Government's sentencing memorandum
§ 34:76 Defendant's motion for reconsideration of findings in presentence report
§ 34:77 Order
§ 34:78 Defendant's motion for specific performance of plea agreement, or, in the alternative, motion to withdraw plea
§ 34:79 Order
§ 34:80 Memorandum of law in support of defendant's motion for specific performance of plea agreement
§ 34:81 Defendant wife's sentencing memorandum
§ 34:82 Defendant wife's supplement to sentencing memorandum
§ 34:83 Defendant wife's second supplement to sentencing memorandum
§ 34:84 Reply of the United States to defendants' objections to pre-sentence investigation report
§ 34:85 Pre-sentence investigation report
§ 34:86 Husband's objections to the pre-sentence report
§ 34:87 Defendant's response to the government's objections to the pre-sentence report
§ 34:88 Motion for release pending appeal and for stay of execution
§ 34:89 Order
§ 34:90 Government's opposition to Defendant's motion for release pending appeal and stay of execution
§ 34:91 Defendant's objections to the pre-sentence report and request for departure
§ 34:92 Government's response to Defendant's objections to the pre-sentence report and opposition to Defendant's motion for downward departure
§ 34:93 Defendant's sentencing memorandum
§ 34:94 Defendant's sentencing memorandum
§ 34:95 Government's memorandum concerning imposition of sentence
§ 34:96 Government's sentencing memorandum
§ 34:97 Second motion for release pending appeal and for stay of execution
§ 34:98 Order

§ 34:99 Second motion for release pending appeal and for stay of execution
§ 34:100 Order
§ 34:101 Letter
§ 34:102 Worksheet A
§ 34:103 Defendant's objections to pre-sentence report and sentencing memorandum in the United States District Court
§ 34:104 Defendant's objections to the addendum to his/her pre-sentence report
§ 34:105 Sentencing memorandum of the United States
§ 34:106 Government's objections to pre-sentence investigation report
§ 34:107 Defendant's motion to stay sentencing
§ 34:108 Order regarding defendant's motion to stay sentencing
§ 34:109 Defendant's objections to pre-sentence report
§ 34:110 Defendant's supplemental objection to pre-sentence report
§ 34:111 Plea agreement
§ 34:112 Defendant's objections to pre-sentence report and objection to sentencing enhancement and motion for downward departure
§ 34:113 Order granting objections to pre-sentence report and downward departure and objections to sentencing enhancement
§ 34:114 Plea agreement
§ 34:115 Factual resume
§ 34:116 Objections to presentence report and motion for downward departure and objections to sentencing enhancements
§ 34:117 Order granting objections to presentence report and downward departure and objections to sentencing enhancements
§ 34:118 Government's response to defendant's objections to presentence report, motion for downward departure and objections to sentencing enhancements
§ 34:119 Supervised release revocation guidelines case judge's sentencing options worksheet
§ 34:120 Sentencing table (in months of imprisonment) criminal history category (criminal history points); 2001 edition, Federal Sentencing Guidelines Manual

§ 34:121 Government's response to defendant's motion for stay of surrender and request for hearing and order to remove detainer
§ 34:122 Order
§ 34:123 Sentencing memorandum
§ 34:124 Initial sentencing memorandum
§ 34:125 Motion for bond pending appeal
§ 34:126 Motion for bond pending appeal Circuit Court
§ 34:127 Motion for bail pending appeal
§ 34:128 Sentencing memorandum and objections to PSI
§ 34:129 Emergency application for bond and suspension of fines pending appeal
§ 34:130 Defendant's notice of appeal
§ 34:131 Defendant's sentencing memorandum
§ 34:132 Order of restitution
§ 34:133 Letter to court from defendant's attorney requesting a certain sentence
§ 34:134 Memorandum opinion & order (denying motion to quash writ of garnishment against defendant's spouse's retirement accounts)

CHAPTER 35. PRETRIAL DIVERSION

I. PRETRIAL DIVERSION

§ 35:1 Purpose of programs
§ 35:2 Use of the pretrial diversion program

II. SAMPLE MATERIALS

§ 35:3 Application for pretrial diversion program
§ 35:4 Agreement for pretrial diversion
§ 35:5 Letter to U.S. Attorney outlining pretrial diversion

CHAPTER 36. BAIL

I. DETENTION

§ 36:1 Bail Reform Act of 1984
§ 36:2 Pretrial detention
§ 36:3 Detention hearing
§ 36:4 Factors to be considered
§ 36:5 Prompt hearing

§ 36:6 Rebuttable presumptions
§ 36:7 18 U.S.C.A. 3142(e)
§ 36:8 Conclusion

II. POST CONVICTION RELEASE

§ 36:9 Voluntary surrender (unescorted commitment)
§ 36:10 Release pending appeal
§ 36:11 Flight risk post-sentencing
§ 36:12 Penalty for an offense committed while on release

III. SAMPLE MATERIALS

§ 36:13 Government's motion for *Nebbia* hearing
§ 36:14 Government's motion for revocation of order setting conditions of release
§ 36:15 Defendant's response to the government's motion for revocation of release order
§ 36:16 Motion for revocation or amendment of detention order with legal authorities in support
§ 36:17 Motion for final judgment of default and bond forfeiture
§ 36:18 Memorandum of law in support of motion for final judgment and bond forfeiture
§ 36:19 Order declaring forfeiture of the bail
§ 36:20 Final judgment of default and bond forfeiture
§ 36:21 Defendant's expedited motion for bond pending appeal under Fed. R. Crim. P. 46(c)
§ 36:22 Emergency application for release pending appeal
§ 36:23 Government's response to defendants' motions for release pending appeal
§ 36:24 Order granting release pending appeal
§ 36:25 Defendant's response to the government's motion for revocation of release order
§ 36:26 Motion for release pending appeal and for stay of execution
§ 36:27 Order denying release or bond pending appeal
§ 36:28 Motion for new trial, or in the alternative, for bond pending appeal
§ 36:29 Consolidated response to defendant's renewed motion for bond pending appeal and motion for a stay of self-surrender date

§ 36:30 Motion for reconsideration of order of detention
§ 36:31 Motion for reconsideration and to reopen hearing on government's motion for revocation of release order

Volume 6

CHAPTER 37. SUBSTANTIVE CRIMES: HEALTH CARE FRAUD

I. HISTORY OF HEALTH CARE FRAUD—THE DEVELOPMENT OF THE ANTI-KICKBACK STATUTES

§ 37:1 Federal health care programs
§ 37:2 Initial prosecutions
§ 37:3 Origination of anti-kickback statutes in 1972
§ 37:4 —Judicial interpretation of the 1972 anti-kickback statutes
§ 37:5 The amended 1977 anti-kickback statutes
§ 37:6 —Judicial interpretation of the amended 1977 anti-kickback statutes
§ 37:7 The 1987 Medicare and Medicaid anti-kickback statute (42 U.S.C.A. § 1320a-7b), Stark Law, and their amendments
§ 37:8 The safe harbor regulations
§ 37:9 —Pre-safe harbor case law: *United States v. Greber*
§ 37:10 —Creation of safe harbor regulations
§ 37:11 —Scienter and key post-safe harbor case law

II. OTHER MAJOR HEALTH CARE FRAUD LAWS

§ 37:12 Stark Amendment (42 U.S.C.A. § 1395nn)
§ 37:13 —Development of compliance programs
§ 37:14 Health Insurance Portability and Accountability Act of 1996 ("HIPAA")
§ 37:15 —Offense of health care fraud (18 U.S.C.A. § 1347)
§ 37:16 —Money laundering and forfeiture (18 U.S.C.A. §§ 1956, 1957, and 982)
§ 37:17 —Willful

§ 37:18 —Medicare Integrity Program
§ 37:19 —The privacy rule
§ 37:20 The False Claims Act ("FCA")
§ 37:21 —Claims under the FCA
§ 37:22 —*Mens rea* requirement for FCA violations
§ 37:23 —Theories of liability
§ 37:24 —Penalties and damages for FCA violations
§ 37:25 —*Qui tam* litigation
§ 37:26 — —Bars to qui tam litigation
§ 37:27 — — —First to file bar
§ 37:28 — — —Armed services bar
§ 37:29 — — —Members of legislative, judicial, or executive branches bar
§ 37:30 — — —Public disclosure bar
§ 37:31 — —Recovery in qui tam litigation
§ 37:32 —State False Claims Acts
§ 37:33 RICO and health care fraud
§ 37:34 —Other matters
§ 37:35 Food, Drug, and Cosmetic Act (21 U.S.C.A. §§ 9:1 et seq.)
§ 37:36 Other issues in health care fraud
§ 37:37 Telemedicine Fraud and Internet Pharmacies
§ 37:38 Theft or bribery concerning programs receiving federal funds (18 U.S.C.A. § 666)
§ 37:39 "Health Care Fraud Sentencing"
§ 37:40 Conclusion

III. SAMPLE MATERIALS

§ 37:41 Verified complaint and application for a temporary restraining order and a preliminary injunction with memoradum of law in support thereof
§ 37:42 United States brief on criminal forfeiture law and restraining orders

CHAPTER 38. SUBSTANTIVE CRIMES: FEDERAL CONTEMPT OF COURT

I. CONTEMPT GENERALLY

§ 38:1 Authority
§ 38:2 Defining contempt of court

§ 38:3 Inherent contempt authority

II. CLASSIFICATIONS OF CONTEMPT

§ 38:4 Distinguishing between civil and criminal contempt
§ 38:5 Direct versus indirect contempt

III. FEDERAL RULES ON CONTEMPT

§ 38:6 Statutory and judicial restraints
§ 38:7 Other applicable federal rules of civil and criminal procedure
§ 38:8 Federal rules of evidence

IV. RIGHTS AND CONSEQUENCES

§ 38:9 A summary of basic rights and safeguards
§ 38:10 Sanctions for contempt
§ 38:11 Contempt-plea agreements
§ 38:12 Appellate review
§ 38:13 Conclusion

V. SAMPLE MATERIALS

§ 38:14 Memorandum in support of motion to vacate civil contempt
§ 38:15 Motion to vacate contempt order
§ 38:16 Order vacating contempt order
§ 38:17 Application for writ of habeas corpus of John Doe
§ 38:18 Application for writ of habeas corpus
§ 38:19 Application for bond
§ 38:20 Order granting writ of habeas corpus
§ 38:21 Response to Civil Contempt

CHAPTER 39. SUBSTANTIVE CRIMES: WIRETAPPING AND ELECTRONIC SURVEILLANCE

I. INTRODUCTION AND HISTORICAL INFORMATION

§ 39:1 Introduction
§ 39:2 Historical overview

II. MODERN WIRETAPPING LAWS

§ 39:3 Berger v. New York and Katz v. United States
§ 39:4 Title III and its scope
§ 39:5 —Application for a Title III court order
§ 39:6 — —Designated offenses
§ 39:7 — —Probable cause
§ 39:8 — —Identification
§ 39:9 — —Prior applications
§ 39:10 — —Necessity
§ 39:11 — —Emergency wiretaps
§ 39:12 —Executing a Title III search
§ 39:13 — —Installation
§ 39:14 — —Minimization
§ 39:15 — —Termination
§ 39:16 — —Return
§ 39:17 — —Notice
§ 39:18 — —Sealing
§ 39:19 —Challenging a Title III search
§ 39:20 — —Timing
§ 39:21 — —Standing
§ 39:22 — —Remedies

III. SPECIAL CIRCUMSTANCES PERMITTING WIRETAPS

§ 39:23 Fugitives
§ 39:24 Prisoners
§ 39:25 Extraterritorial surveillance
§ 39:26 Attorney-client privilege
§ 39:27 Beepers, pagers, cell phones, and GPS devices
§ 39:28 Roving wiretaps
§ 39:29 States

IV. RECENT DEVELOPMENTS

§ 39:30 Encryption technology
§ 39:31 Communications assistance for law enforcement
§ 39:32 Internet considerations
§ 39:33 Electronically stored evidence
§ 39:34 Workplace monitoring and privacy concerns
§ 39:35 Personal Records Considerations
§ 39:36 Foreign Intelligence Surveillance Act

V. SAMPLE MATERIALS

§ 39:37 Defendant's response to the emergency motion of non-party abc to modify subpoena and for protective order
§ 39:38 Order
§ 39:39 Application for interception of wire and oral communication
§ 39:40 Order authorizing the interception of oral and wire communications
§ 39:41 Application for an order authorizing the interception of visual, non-verbal conduct and activities by means of closed circuit television
§ 39:42 Order authorizing the interception of visual non-verbal conduct and activities

CHAPTER 40. SUBSTANTIVE CRIMES: CRIMINAL TRADE SECRET VIOLATIONS

I. INTRODUCTION

§ 40:1 Trade secret theft and technology

II. BACKGROUND

§ 40:2 Ineffectiveness of trade secret laws prior to 1996
§ 40:3 Modern criminal trade secret legislation

III. THE ECONOMIC ESPIONAGE ACT

§ 40:4 Pertinent provisions
§ 40:5 Trade secrets defined
§ 40:6 Mens rea
§ 40:7 Penalties
§ 40:8 Applicability beyond the United States
§ 40:9 EEA limitations

IV. LEGAL ISSUES IN EEA PROSECUTIONS

§ 40:10 Tension between Section 1835 of the EEA and Rules of Criminal Procedure
§ 40:11 EEA's susceptibility to a constitutionally vague challenge
§ 40:12 Defense strategies in the face of an EEA charge

V. PREVENTATIVE MEASURES

§ 40:13 Generally

§ 40:14 Justice department factors
§ 40:15 Sentencing guidelines' recommendations

VI. PRACTICAL CONSIDERATIONS—PURSUING CIVIL OR CRIMINAL REMEDIES

§ 40:16 Proceeding with civil actions
§ 40:17 Stay of litigation
§ 40:18 Miscellaneous

CHAPTER 41. SUBSTANTIVE CRIMES: COMPUTER CRIMES

I. INTRODUCTION

§ 41:1 Hypothetical
§ 41:2 Background on computer crime
§ 41:3 Constitutional issues regarding computer crime

II. THE COMPUTER FRAUD AND ABUSE ACT

§ 41:4 General background
§ 41:5 The computer espionage statute (18 U.S.C.A. § 1030 (a)(1))
§ 41:6 Confidentiality of computer data (18 U.S.C.A. § 1030 (a)(2))
§ 41:7 Unauthorized access of government computers (18 U.S.C.A. § 1030 (a)(3))
§ 41:8 The computer fraud statute (18 U.S.C.A. § 1030 (a)(4))
§ 41:9 The virus statute (18 U.S.C.A. § 1030 (a)(5))
§ 41:10 Trafficking in passwords (18 U.S.C.A. § 1030 (a)(6))
§ 41:11 Computer extortion (18 U.S.C.A. § 1030 (a)(7))
§ 41:12 Exceeding authorized access
§ 41:13 Civil actions (18 U.S.C.A. § 1030(g))
§ 41:14 Defenses

III. PENALTIES AND FORFEITURE

§ 41:15 Generally

IV. OTHER APPLICABLE STATUTES

§ 41:16 Introduction

§ 41:17 The Economic Espionage Act (18 U.S.C.A. § 1831)
§ 41:18 The Copyright Act (17 U.S.C.A. § 506)
§ 41:19 National Stolen Property Act (18 U.S.C.A. § 2314)
§ 41:20 Mail and wire fraud statutes (18 U.S.C.A. §§ 1341, 1343)
§ 41:21 Electronic Communications Privacy Act (18 U.S.C.A. § 2511)
§ 41:22 Communications Decency Act of 1996 (18 U.S.C.A. § 223)
§ 41:23 Child Pornography Prevention Act of 1996 (18 U.S.C.A. § 2252)
§ 41:24 Coercion and Enticement (18 U.S.C.A. § 2422)
§ 41:25 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C.A. § 7701-7713 and 18 U.S.C.A § 1037)

V. COMPUTER SEARCHES

§ 41:26 Generally

CHAPTER 42. COLLATERAL CONSEQUENCES OF WHITE COLLAR CRIME

I. IMMIGRATION CONSEQUENCES OF CRIMINAL PROCEEDINGS

§ 42:1 Introduction
§ 42:2 Importance for lawyers
§ 42:3 Importance for prosecutors
§ 42:4 Statutory history
§ 42:5 Statutory process
§ 42:6 Background conviction and plea information
§ 42:7 Deportable white collar offenses and suggestions for avoidance
§ 42:8 —Aggravated felony
§ 42:9 —Crimes Involving Moral Turpitude (CIMT)
§ 42:10 —Controlled substance offenses
§ 42:11 Discretionary and/or post-conviction relief
§ 42:12 —Discretionary relief
§ 42:13 — —Cancellation of removal

§ 42:14 — —Adjustment of status
§ 42:15 — —Waivers
§ 42:16 — —Voluntary departure
§ 42:17 — —Asylum and nonrefoulement
§ 42:18 — —Judicial Recommendations Against Deportation (JRAD)
§ 42:19 —Post-conviction or post-plea alternatives
§ 42:20 Conclusion

CHAPTER 43. JURISDICTIONAL ISSUES

I. JURISDICTIONAL ISSUES

§ 43:1 Ancillary jurisdiction
§ 43:2 Extent grand jury can subpoena foreign company documents
§ 43:3 —Grand jury subpoena of foreign evidence
§ 43:4 — —Service of process
§ 43:5 — —Obtaining foreign documents—The "Control Test"
§ 43:6 — —Personal jurisdiction
§ 43:7 — — —Personal jurisdiction based on federal statute—Sherman Antitrust Act
§ 43:8 — — —Personal jurisdiction based on the stream of commerce
§ 43:9 — — —Personal jurisdiction based on doing business
§ 43:10 —Applicability of the Fourth Amendment to foreign searches and seizures
§ 43:11 —Mutual Legal Assistance Treaties (MLATs)
§ 43:12 — —The United States-Canadian MLAT
§ 43:13 — —Mexico
§ 43:14 —United States government obtaining subpoenaed information from foreign governments
§ 43:15 Rights of arrested foreign nationals under the Vienna Convention
§ 43:16 Extradition; treaty limitations on punishment
§ 43:17 Extradition; prehearing release
§ 43:18 Disentitlement doctrine
§ 43:19 "Sovereign Immunity"
§ 43:20 Diplomatic Immunity

CHAPTER 44. SUBSTANTIVE CRIMES: PUBLIC CORRUPTION

I. INTRODUCTION

§ 44:1 Public corruption: An overview

II. BRIBERY AND ILLEGAL GRATUITY INVOLVING PUBLIC OFFICIALS AND WITNESSES

§ 44:2 Elements of bribery and illegal gratuity
§ 44:3 Who is a "public official"
§ 44:4 "Gives, offers or promises": Timing of conveyance
§ 44:5 Is the benefit a "thing of value" under the statute?
§ 44:6 Intent
§ 44:7 Official acts
§ 44:8 Defenses
§ 44:9 Sentencing

III. CRIMINAL CONFLICT OF INTEREST OVERVIEW

§ 44:10 Unauthorized compensation of government employees
§ 44:11 Activities by government officers and employees while in office receiving unauthorized compensation
§ 44:12 Limitations on post-employment activities

CHAPTER 45. SUBSTANTIVE CRIMES: FEDERAL FOOD, DRUG, AND COSMETIC ACT VIOLATIONS

I. INTRODUCTION

§ 45:1 Introduction

II. STATUTORY ELEMENTS

§ 45:2 Generally
§ 45:3 "Food," "drug," "device," or "cosmetic"
§ 45:4 "Adulterated" & "misbranded"

§ 45:5 New drugs

III. INTENT

§ 45:6 Strict liability imposed for misdemeanor violations
§ 45:7 "Responsible relation" test
§ 45:8 Felony prosecutions

IV. PREEMPTION

§ 45:9 Preemption

V. ENFORCEMENT

§ 45:10 Enforcement
§ 45:11 Inspections
§ 45:12 Sentencing

VI. DEFENSES

§ 45:13 Impossibility
§ 45:14 Constitutional defenses—First Amendment
§ 45:15 —Fourth Amendment
§ 45:16 Fifth Amendment
§ 45:17 Corporate perspective: disclosure issues
§ 45:18 Constitutional defenses—First Amendment

VII. CONCLUSION

§ 45:19 Conclusion
§ 45:20 Motion to dismiss mail fraud counts
§ 45:21 Defendant's reply in support of motion to dismiss mail fraud counts
§ 45:22 Proposed post-trial jury instructions of defendant in an FDCA crimes case
§ 45:23 Memorandum in support of standard of care jury instruction

CHAPTER 46. ATTORNEY LIABILITY

I. INTRODUCTION

§ 46:1 Chapter overview

II. OBSTRUCTION OF JUSTICE

§ 46:2 Substantive overview of obstruction of justice

§ 46:3 Attorney liable for misrepresenting a fact
§ 46:4 Attorneys convicted for instructing witnesses not to testify
§ 46:5 Attorney liable for destroying evidence
§ 46:6 Attorney liable for creative tactics
§ 46:7 Attorney liable for bad advice
§ 46:8 Attorney liable for traditional lawyer activities

III. WITNESS TAMPERING

§ 46:9 Courtroom misconduct
§ 46:10 Substantive overview of witness tampering

IV. CRIMINAL FRAUD

§ 46:11 Mail fraud
§ 46:12 Bankruptcy fraud

V. CRIMINAL CONSPIRACY

§ 46:13 Substantive overview of criminal conspiracy
§ 46:14 Money-laundering

VI. CRIMINAL CONTEMPT

§ 46:15 Substantive overview of criminal contempt
§ 46:16 Requisite criminal intent required
§ 46:17 Illustrative case examples

VII. CORPORATE FRAUD

§ 46:18 Corporate fraud

CHAPTER 47. FOREIGN CORRUPT PRACTICES ACT

I. INTRODUCTION

§ 47:1 Foreign corrupt practices act: an overview

II. ANTI-BRIBERY PROVISIONS

§ 47:2 Who is covered
§ 47:3 Elements of bribery
§ 47:4 Payment
§ 47:5 Foreign officials

§ 47:6 Intermediaries
§ 47:7 Knowingly
§ 47:8 Corruptly and willfully
§ 47:9 Scope of prohibited conduct
§ 47:10 Statutory exception
§ 47:11 Affirmative defenses
§ 47:12 Public authority defense
§ 47:13 Opinion letters
§ 47:14 Conspiracy

III. RECORD-KEEPING AND INTERNAL ACCOUNTING CONTROL PROVISIONS

§ 47:15 In general
§ 47:16 Who is covered
§ 47:17 Elements of the accounting and record-keeping provisions

IV. ENFORCEMENT AND PENALTIES

§ 47:18 Enforcement
§ 47:19 Penalties and the U.S. Sentencing Guidelines

V. CORPORATE LIABILITY UNDER THE FCPA

§ 47:20 Corporate liability
§ 47:21 Joint venture liability
§ 47:22 Subsidiary liability
§ 47:23 Successor liability

VI. TRENDS AND PERSPECTIVES

§ 47:24 Overview
§ 47:25 Corporation's perspective—Compliance programs
§ 47:26 —Due diligence during acquisitions
§ 47:26.10 —FCPA Enforcement Policy
§ 47:26.20 —FCPA Developments in Latin America
§ 47:26.30 —FCPA Travel & Hospitality Expenses
§ 47:26.40 Corporation's perspective-Recent prosecutions of note

VII. SAMPLE MATERIALS

§ 47:27 Defendant's synopsis of anticipated expert testimony

§ 47:28 Defendant's proposed limiting instructions regarding government exhibits 12G, 15, and 16
§ 47:29 Defendant's proposed post-trial jury instructions
§ 47:30 Post-trial instruction defense—Good faith
§ 47:31 Post-trial instruction—Good faith reliance on the advice of counsel
§ 47:32 —Missing witness
§ 47:33 Post-trial instruction; affirmative defense—Legal under written laws of Mexico
§ 47:34 Defendant's proposed limiting instructions regarding government exhibits 9B, 9C, and 9D
§ 47:35 Defendant's opposed motion for sanctions for prosecutorial misconduct
§ 47:36 Defendant's opposed motion in limine regarding unindicted acts
§ 47:37 Defendant's opposed motion to strike declaration
§ 47:38 Defendant's notice of foreign law determination
§ 47:39 Defendant's objection to the government's request for judicial notice
§ 47:40 Defendant's opposed motion to dismiss counts one through seventeen of the indictment
§ 47:41 Defendant's opposed motion to dismiss indictment for failure to properly toll the statute of limitations under 18 U.S.C.A. § 3292 and for violation of *Brady v. Maryland*
§ 47:42 Order granting defendant's opposed motion for sanctions for prosecutorial misconduct
§ 47:43 Order granting defendant's motion in limine regarding unindicted acts
§ 47:44 Order granting defendant's opposed motion to strike the declaration of Clifton M. Johnson
§ 47:45 Order granting defendant's motion to dismiss indictment for failure to properly toll the statute of limitations under 18 U.S.C.A. § 3292 and for violation of *Brady v. Maryland*
§ 47:46 Defendant's reply to the response of the United States to defendant's motion to dismiss counts one through seventeen of the indictment

CHAPTER 47A. THE FEPA AND FEPTCA

§ 47A:1 Introduction
§ 47A:2 The Foreign Extortion Prevention Technical Corrections Act

CHAPTER 47B. FOREIGN AGENTS REGISTRATION ACT

§ 47B:1 Generally

CHAPTER 48. IMMIGRATION CRIMES

§ 48:1 Background of immigration laws
§ 48:2 Smuggling, transporting, or harboring aliens
§ 48:3 —Smuggling
§ 48:4 —Transporting
§ 48:5 —Harboring
§ 48:6 Hiring or continuing to employ unauthorized alien
§ 48:7 Enforcement and trends
§ 48:8 Perspectives: immigration counsel
§ 48:9 Defenses

CHAPTER 49. CONSTITUTIONAL ISSUES

§ 49:1 Introduction
§ 49:2 Defendant's right to testify
§ 49:3 Constitutional elements of an indictment
§ 49:4 Right to a speedy trial
§ 49:5 Ex Post Facto issues
§ 49:6 Plea bargains
§ 49:7 First Amendment
§ 49:8 Fourth Amendment
§ 49:9 —Probable cause
§ 49:10 —Particularity of a warrant
§ 49:11 —Exceptions to warrantless searches and seizures
§ 49:12 —Consent
§ 49:13 —Plain view doctrine
§ 49:14 —Implications in foreign search and seizure
§ 49:15 —Exclusionary rule
§ 49:16 Fifth Amendment—Due Process
§ 49:17 —Self-incrimination
§ 49:18 Right to counsel
§ 49:19 Ineffective Assistance of Counsel
§ 49:20 Sixth Amendment—Confrontation Clause
§ 49:21 Fourteenth Amendment implications
§ 49:22 Separation of Powers: Article I, § 5, cl. 2 "The Rulemaking Clause"

§ 49:23 Constitutional protections to congressional investigations

CHAPTER 50. INTERNATIONAL ISSUES

I. INTERPOL

§ 50:1 Introduction
§ 50:2 Primary purpose
§ 50:3 Principal mechanism
§ 50:4 Red Notices and Diffusions
§ 50:5 Issuance of a Red Notice or Diffusion
§ 50:6 Fourth Amendment constraints

II. EXTRADITION

§ 50:7 Generally
§ 50:8 United States request for extradition of foreign citizen
§ 50:9 Extradition treaties

III. DISCOVERY

§ 50:10 Generally
§ 50:11 Discovery threshold issues
§ 50:12 Hague Convention
§ 50:13 Blocking statutes

IV. OTHER ISSUES

§ 50:14 International double jeopardy
§ 50:15 Deferred Prosecution Agreements

CHAPTER 51. ENERGY CRIMES

I. INTRODUCTION

§ 51:1 The Federal Energy Regulatory Commission ("FERC")
§ 51:2 Non-FERC matters

II. LAWS AND REGULATIONS ENFORCED BY FERC

§ 51:3 Generally

§ 51:4 Natural gas
§ 51:5 Hyrdoelectric power
§ 51:6 Energy market manipulation (18 C.F.R. §§ 1c.1–1c.2)
§ 51:7 Open Access Same-Time Information Systems (OASIS)
§ 51:8 Transmission Provider Regulations (18 C.F.R. Part 358)

III. FERC INVESTIGATION AND ENFORCEMENT

§ 51:9 Generally
§ 51:10 Investigation process
§ 51:11 Responding to FERC investigations
§ 51:12 FERC Enforcement
§ 51:13 Compliance Recommendations

CHAPTER 52. ELECTION CRIMES

§ 52:1 Introduction
§ 52:2 Conduit statute and penalties
§ 52:3 Intent requirement
§ 52:4 —*United States v. O'Donnell*
§ 52:5 —*United States v. Whittemore*
§ 52:6 Conclusion

Volume 7

CHAPTER 53. STRATEGIES

I. CODEFENDANTS

§ 53:1 References to co-defendant's plea of guilty
§ 53:2 Request immunity for co-defendant

II. REPORTS AND DEPOSITIONS

§ 53:3 Use investigative reports and grand jury testimony against government
§ 53:4 Use of investigative reports against the defendant
§ 53:5 Depositions

III. PRETRIAL MATTERS

§ 53:6 Rule 17(c) subpoenas

IV. WITNESSES

§ 53:7 Generally
§ 53:8 Dual testimony problem
§ 53:9 Generally—Psychiatric experts
§ 53:10 —Legal experts
§ 53:11 —Other experts
§ 53:12 —Polygraph testing

V. TRIAL MATTERS

§ 53:13 Disclosure of informants
§ 53:14 Petite policy
§ 53:15 Prosecution witness asserts Fifth Amendment on cross examination
§ 53:16 Defendant's right to call witnesses who will invoke the Fifth Amendment
§ 53:17 Deliberate ignorance
§ 53:18 —Theory of defense
§ 53:19 —Missing witness charge
§ 53:20 Motion for judgment of acquittal
§ 53:21 Reading of indictment
§ 53:22 Bolstering and impeachment of witness
§ 53:23 Bill of particulars
§ 53:24 Failure of defendant to testify
§ 53:25 Right to trial by jury
§ 53:26 Willfulness for conviction
§ 53:27 Service of subpoenas: Fact witnesses
§ 53:28 Non-indigent clients
§ 53:29 Indigent clients
§ 53:30 Fact witnesses for indigent clients
§ 53:31 Expert witnesses
§ 53:32 Incarcerated witnesses
§ 53:33 Department of justice employees
§ 53:34 Witnesses abroad
§ 53:35 Government witnesses
§ 53:36 Plain error
§ 53:37 Extradition of fugitives to United States (18 U.S.C.A. § 3184)
§ 53:38 Statutory construction
§ 53:39 Judicial misconduct

VI. POST-TRIAL MATTERS

§ 53:40 Death of defendant during appeal

§ 53:41 Expungement of records
§ 53:42 Motions for acquittal

VII. SAMPLE MATERIALS

§ 53:43 Motion in limine with regard to pleas of co-defendants
§ 53:44 Motion to admit the government report, or in the alternative, for a severance
§ 53:45 Order granting motion to admit the government report, or in the alternative, for a severance
§ 53:46 Motion for leave to take depositions
§ 53:47 Order
§ 53:48 Motion for issuance of letters rogatory
§ 53:49 Letter rogatory
§ 53:50 Order granting motion for issuance of letters rogatory
§ 53:51 Motion to file ex parte motion under seal
§ 53:52 Order granting motion to file ex parte motion under seal
§ 53:53 Ex parte motion to transport witness from Mexico
§ 53:54 Order granting ex parte motion to transport witness from Mexico
§ 53:55 Doe's motion in limine regarding expert testimony
§ 53:56 Order granting motion in limine regarding expert testimony
§ 53:57 Defendant's response to government's motion in limine regarding defendant's expert witness
§ 53:58 Defendant's motion for the court to make inquiry of the undisclosed informant with respect to certain questions
§ 53:59 Defendant's motion in limine regarding proposed "CKAS" software testimony
§ 53:60 Order granting defendant's motion in limine regarding proposed "CKAS" software testimony
§ 53:61 Defendant's objections to the government's requested charge regarding deliberate ignorance
§ 53:62 Defendant's motion for mistrial based on the prosecutor's improper argument before the jury in violation of defendant's Sixth Amendment right of confrontation
§ 53:63 Motion challenging deliberate ignorance

CHAPTER 54. EVIDENTIARY ISSUES

I. ACTS AND TESTIMONY

§ 54:1 Introduction
§ 54:2 *Crawford v. Washington* and its impact
§ 54:3 Extraneous acts
§ 54:4 Admissibility of evidence, generally
§ 54:5 Summary testimony
§ 54:6 Tape recordings
§ 54:7 —Identification and authentication of recordings
§ 54:8 —Admissibility
§ 54:9 —Liability and ethical concerns
§ 54:10 Character and impeachment
§ 54:11 Co-conspirator statements
§ 54:12 Statements by party's agent
§ 54:13 Third party guilt
§ 54:14 Business records
§ 54:15 Typical scenes in court
§ 54:16 Genesis of business records exception
§ 54:17 Interpretation of Federal Rules of Evidence 803(6)
§ 54:18 Application of law to hypotheticals
§ 54:19 Former testimony
§ 54:20 Statements against interest
§ 54:21 State of mind
§ 54:22 Residual exception
§ 54:23 Admissibility of scientific evidence
§ 54:24 Public records
§ 54:25 Medical examiner's report
§ 54:26 911 telephone calls
§ 54:27 Electronically stored information
§ 54:28 Lay testimony
§ 54:29 Expert testimony
§ 54:30 Post arrest silence
§ 54:31 Plea negotiations
§ 54:32 Judge's questioning of a defendant
§ 54:33 Variance of proof/constructive amendment
§ 54:34 Polygraph
§ 54:35 Sufficiency of evidence
§ 54:36 Prior testimony against corporations
§ 54:37 Prosecutorial misconduct—Improper cross examination and vouching

§ 54:38 Social media
§ 54:39 Prosecutorial misconduct—Hearsay
§ 54:40 —Inconsistent factual positions
§ 54:41 Hearsay of foreign business records
§ 54:42 Lost or destroyed evidence
§ 54:43 Jury requests for testimony readback
§ 54:44 Judicial estoppel

II. SIXTH AMENDMENT IMPLICATIONS

§ 54:45 Right to compulsory process
§ 54:46 Witness sequestration
§ 54:47 Right to confrontation
§ 54:48 Judiciary's obligations to uphold the Sixth Amendment

III. SAMPLE MATERIALS

§ 54:49 Memorandum of law for admission of summary charts
§ 54:50 Government's brief in support of objections to introduction of tape recordings defendant
§ 54:51 Defendant's motion to exclude evidence pursuant to Rule 403, or, in the alternative, to limit the government's evidence in the presentation of its case and memorandum of law in support
§ 54:52 Order
§ 54:53 Government's response to defendant's motion to exclude evidence pursuant to Rule 403, or in the alternative, to limit the government's evidence in the presentation of its case
§ 54:54 Memorandum in support of government's second motion in limine
§ 54:55 Order
§ 54:56 Defendant's memorandum of law under Fed. R. Evid. 803(6)
§ 54:57 Memorandum in support of government's motion to allow the introduction of prior felony convictions of witness-accomplices
§ 54:58 Order
§ 54:59 Trial memorandum regarding hearsay issues
§ 54:60 Memorandum of law on admissibility of tapes and transcripts
§ 54:61 Trial brief of the United States of America

§ 54:62 Defendant's objections to the government's exhibits [bank fraud]
§ 54:63 Defendant's objections to the government's supplemental exhibits
§ 54:64 Objections to the United States' exhibits [bank fraud]
§ 54:65 Government's trial memorandum
§ 54:66 Government's trial brief
§ 54:67 Motion in limine standard of care
§ 54:68 Defendant's motion in limine to exclude evidence of medical board code
§ 54:69 Defendant's motion in limine to exclude evidence of prior trial
§ 54:70 Defendant's opposed motion in limine concerning FBI agent
§ 54:71 Defendant's final motion in limine
§ 54:72 Defendant's opposed motion in limine regarding alleged ethical issues

CHAPTER 55. PRESERVATION OF ERROR

I. PRESERVATION OF APPELLATE CONTENTIONS: AN OVERVIEW

§ 55:1 Federal Rules Evidence 103(a)
§ 55:2 Specificity
§ 55:3 Timeliness
§ 55:4 Obtaining an adverse ruling
§ 55:5 Plain error

II. VALUABLE TOOLS IN PRESERVING ERROR

§ 55:6 Continuing objections
§ 55:7 Motions in limine
§ 55:8 Offers of proof
§ 55:9 Avoiding the minefield of curative admissibility

III. VOIR DIRE

§ 55:10 The voir dire must be recorded
§ 55:11 Comments made in the presence of the panel
§ 55:12 Voir dire time limits
§ 55:13 Limitation of asking a given question

§ 55:14 Denial of a challenge for cause
§ 55:15 Granting of the government's challenge for cause
§ 55:16 Sua sponte excusal of a juror
§ 55:17 Batson claims
§ 55:18 Magistrate conducting voir dire
§ 55:19 Denial of peremptory challenge

IV. EXCLUSION OF TESTIMONY

§ 55:20 Direct examination
§ 55:21 Cross-examination
§ 55:22 Denial of the defendant's right to reopen

V. ADMISSION OF EXTRANEOUS OFFENSES

§ 55:23 Pre-trial strategies
§ 55:24 A specific trial objection is a must
§ 55:25 Objections that are specific enough to preserve error
§ 55:26 Requesting a limiting instruction
§ 55:27 Taking the sting out of Fed R Evid Rule 404(b) evidence

VI. JURY INSTRUCTIONS

§ 55:28 Requested instructions
§ 55:29 Objections to the court's charge

VII. FINAL ARGUMENT

§ 55:30 Consider filing a motion in limine
§ 55:31 Making a timely and specific objection
§ 55:32 Obtaining a ruling from the trial court
§ 55:33 Asking for a curative instruction
§ 55:34 Moving for a mistrial
§ 55:35 Renewing your objection
§ 55:36 Presenting your appellate contention

CHAPTER 56. ALTERNATIVE THEORIES OF LIABILITY

I. AIDING AND ABETTING

§ 56:1 Elements of the crime

§ 56:2 Agreement not required

II. CONSPIRACY

§ 56:3 The law of conspiracy
§ 56:4 General elements of conspiracy
§ 56:5 Establishing a conspiracy
§ 56:6 Agreement
§ 56:7 Knowledge
§ 56:8 Participation
§ 56:9 Intent
§ 56:10 Overt act
§ 56:11 Pinkerton rule; continuing conspiracies
§ 56:12 Intra-corporate conspiracy doctrine
§ 56:13 Defenses against conspiracy charges
§ 56:14 Plea agreements

III. SAMPLE MATERIALS

§ 56:15 Motion for judgment of acquittal regarding issue of insufficient evidence of conspiracy with legal authorities in support thereof
§ 56:16 Order granting acquittal for insufficient evidence of conspiracy
§ 56:17 Motion for judgment of acquittal on count one (mere presence)
§ 56:18 Order granting motion for acquittal regarding issue of mere presence
§ 56:19 John Doe's motion for judgment of acquittal with regard to count one of the indictment (circumstantial evidence)
§ 56:20 Order granting motion for judgment of acquittal with regard to count one
§ 56:21 Order regarding motion for new trial

CHAPTER 57. JURY ISSUES

I. SELECTION

§ 57:1 Voir dire
§ 57:2 —Challenges for cause
§ 57:3 —Peremptory challenges
§ 57:4 Jury questionnaires
§ 57:5 Issues presented by anonymous juries

§ 57:6 Challenging selection
§ 57:7 —Sixth Amendment
§ 57:8 Challenging closure—Sixth Amendment
§ 57:9 Challenging selection—Equal protection

II. ISSUES DURING TRIAL

§ 57:10 Arguments to the jury
§ 57:11 Jury instructions
§ 57:12 —Good faith reliance
§ 57:13 —Venue
§ 57:14 —Missing witness
§ 57:15 —Deliberate ignorance
§ 57:16 —Reviewing testimony
§ 57:17 —Allen charges
§ 57:18 Polling the jury

III. MISCELLANEOUS ISSUES

§ 57:19 Jury tampering
§ 57:20 Jury misconduct
§ 57:21 Jurors' questioning of witnesses
§ 57:22 Impaneling of multiple juries
§ 57:23 Testifying about jury deliberations
§ 57:24 Media's ability to question jurors
§ 57:25 Interactions with the Jury

IV. SAMPLE MATERIALS

§ 57:26 Motion to discharge jury based on equal protection violations with legal authorities in support
§ 57:27 Motion to limit jury argument of the government
§ 57:28 Order granting motion to limit jury argument of the government
§ 57:29 Defendant's motion for new trial and memorandum in support
§ 57:30 Defendant's motion to dismiss based on improper grand jury selection process
§ 57:31 Supplemental motion to dismiss indictment based on improper grand jury selection process with legal authorities in support
§ 57:32 Motion to compel discovery of information in possession of district clerk
§ 57:33 Order granting motion to compel discovery

§ 57:34 Second supplemental motion to dismiss indictment based on improper grand jury selection process with legal authorities in support
§ 57:35 Defendant's proposed findings of fact and conclusions of law
§ 57:36 Motion to dismiss the indictment pursuant to 28 U.S.C.A §§ 1861 et seq. and for discovery concerning jury selection pursuant to 28 U.S.C.A. § 1867(f) [with authorities]
§ 57:37 Order granting motion to dismiss and discovery concerning jury selection
§ 57:38 Affidavit concerning corrected motion to dismiss indictment
§ 57:39 Sworn supplemental memorandum in support of motion to dismiss the indictment pursuant to 28 U.S.C.A. § 1861
§ 57:40 Affidavit concerning supplemental memorandum
§ 57:41 Supplemental motion to transfer venue
§ 57:42 Order granting motion to transfer venue
§ 57:43 Memorandum in support of motion to transfer
§ 57:44 Jury instruction checklist proposed pretrial instructions of defendant
§ 57:45 Proposed pretrial jury instructions of defendant
§ 57:46 Jury instruction checklist proposed instructions to jury during trial of defendant
§ 57:47 Proposed instructions to jury during trial
§ 57:48 Jury instruction checklist proposed post-trial instructions of defendant
§ 57:49 Proposed post-trial jury instructions of defendant
§ 57:50 Juror questionnaire
§ 57:51 Memorandum of law in support of motion for attorney participation in voir dire
§ 57:52 Confidential questionnaire
§ 57:53 Juror questionnaire 2
§ 57:54 John Doe's jury instruction no. 31—Good faith reliance on the advice of counsel
§ 57:55 John Doe's jury instruction no. 32—Missing witness
§ 57:56 Jury instructions on corporate criminal responsibility for acts of employees—Instructions from the Third, Fourth, Fifth, Ninth, and Eleventh Circuit Courts of Appeals

§ 57:57 An analysis of Hispanic representation on federal grand juries and grand jury venires in the Houston-Galveston divisions of the Southern Judicial District
§ 57:58 Government's memorandum regarding defendant's motion for acquittal
§ 57:59 Sample jury instructions
§ 57:60 Memorandum in support of proposed jury instructions
§ 57:61 Defendant's motion for use of a jury questionnaire with attached questionnaire
§ 57:62 Defendant's proposed jury instructions in fraud case
§ 57:63 Defendant's reasonable doubt chart exhibit

Volume 8

APPENDIX A

APPENDIX A. Checklist, Standard Motions and Briefs

APPENDIX B

APPENDIX B. Checklist of all Forms in Treatise and Supplement

Table of Laws and Rules

Table of Cases

Index