
The *White Collar Crime Committee Newsletter* showcases content and opinion of leading experts, scholars, and practitioners through articles written by our *Criminal Justice Section* members. The *White Collar Crime Committee* seeks your participation in its 20 regional committees and 20 substantive committees; and encourages your attendance at its national and international conferences, CLE, and workshops.

The White Collar Crime Committee encourages you to participate year round, and also looks forward to reading your submissions for our upcoming Summer/Fall 2017 issue. If you would like to submit an article for our next edition or have ideas on a subject for a topical Newsletter, please contact the WCCC Newsletter Subcommittee Chair, *Salma S. Safiedine* at S.Safiedine@SPartnersLaw.com.

Please note these upcoming programs related to white collar crime:

**31st Annual White Collar Crime National Institute**: March 8-10, Miami Beach, FL

**Second Global White Collar Crime Institute**: June 7-8, São Paulo, Brazil

4th Annual **Southeastern White Collar Crime Institute**: Sept. 7-8, Braselton, GA (near Atlanta)


**Featured Articles**

**One Year Later: Yates Memo Remains a Threat to the Privileged Status of Internal Investigations**

By Nathan Huff

It has been over a year since the Deputy Attorney General Sally Quillan Yates published her internal Department of Justice memorandum entitled “Individual Accountability for Corporate Wrongdoing” (the “Yates Memo”), and most members of the white collar defense bar (myself included) have now published their respective blog entries and client updates describing and predicting its impact. Looking back on this past year, it is clear the defense bar remains concerned about how the Yates Memo’s six “key steps,” aimed at strengthening the Department of Justice’s (the “Department”) pursuit of corporate officials, will impact corporate counsels’ ability to conduct effective internal investigations. **READ MORE**
**Friends Without (Financial) Benefits: The Effects of the Supreme Court’s Decision in *Salman v. United States* On Insider Trading Enforcement**

By Michael R. MacPhail and Daniel R. Kelley

After the Second Circuit’s December 2014 decision in *United States v. Newman*, making it harder for the government to convict “tippees” for insider trading, defendants and practitioners rushed to take advantage of the holding, while the SEC dropped some federal court cases in favor of an arguably more friendly administrative forum. But following the Supreme Court’s recent decision in *United States v. Salman*, the tables seem to have turned once again. How does *Salman* change the insider-trading landscape, and what can practitioners expect from the SEC enforcement division under President Donald J. Trump? In this article, we offer answers to those questions. **READ MORE**

**Tippee Insider Trading after Newman and Salman: Why Knowledge Is Not Always Your Friend**

By Ronak V. Patel and Toby M. Galloway

Establishing the white-collar crime of insider trading is very nuanced. Many of us can advise clients to take the cautious route when trading in possession of any information from a corporate insider. But the prohibition is founded on trading on the basis of “material, non-public information.” Determining whether information is non-public and if it is “material” can be an intricate analysis by itself. **READ MORE**

**If You've Fooled Me Once, You've Fooled Me a Thousand Times: The Due Process Concerns of Extrapolating FCA Liability**

By Anthony A. Joseph, R. Harrison Smith, III, Thomas W.H. Buck, Jr. and Stewart Alvis

Your client, Willy, is a door-to-door insurance salesman. Willy spent the last month visiting every single one of the 500 households in Greenacre County. The police, suspecting that Willy sometimes stole jewelry from the homes he visited, randomly choose 50 Greenacre County households to investigate. Following the investigation, the police had probable cause to believe that Willy stole jewelry from 10 households, and Willy is charged and prosecuted. At trial, though it is stipulated that Willy visited all 500 households in Greenacre County, the only evidence submitted to the court pertains to the aforementioned 10 homes. Nevertheless, the District Attorney submits that if Willy stole jewelry from 20 percent of the households investigated by the police, it should follow that he stole jewelry from 20 percent of the 500 households he visited in Greenacre County. Therefore, argues the district attorney, if Willy is found guilty of stealing from 10 homes, he should be found guilty of – and punished for – stealing from 100 homes. **READ MORE**
White Collar, Blue Collar, Dog Collar: Prosecuting Animal Abusers as White-Collar Criminals

By Sarah K. Hanneken

When people think of white-collar criminals, the faces of high-profile figures such as Bernie Madoff, Martha Stewart, and Enron executives initially come to mind. Indeed, the term white-collar crime implies wrongdoing by “a person of respectability and high social status,” not by a poorly educated, third-generation poodle breeder in rural Pennsylvania or a roadside zoo operator in Iowa. However, since sociologist Edwin Hardin Sutherland first coined the term in 1949, the category of white-collar crime has come to include offenses capable of commission by persons of any socioeconomic class and in any industry—including animal industries. This article describes how animal dealers, breeders, and exhibitors regularly commit a federal white-collar offense that has, until now, gone largely undetected. READ MORE

Criminal Prosecution of Environmental and Workplace Safety Incidents Through DOJ’s New Worker Endangerment Initiative

By Steven P. Solow, Lily N. Chinn and Anne M. Carpenter

In December 2015, Deputy Attorney General (“DAG”) Sally Yates announced a Worker Endangerment Initiative that formalizes the trend toward “criminalization” of major environmental and workplace accidents. The Department of Justice (“DOJ”) memorandum shifts authority for the prosecution of workplace safety violations to the Environmental Crimes Section (“ECS”) of DOJ’s Environment and Natural Resources Division (“ENRD”), or to any of the 93 United States Attorneys’ Offices, and guides all federal prosecutors to leverage environmental criminal statutes and Title 18 along with relevant worker protection statutes to address workplace safety. The accompanying Memorandum of Understanding with the Department of Labor sets forth how the two agencies will cooperate to investigate and prosecute worker endangerment violations, including both information sharing and cross-training of inspectors from the Environmental Protection Agency (“EPA”) and the Occupational Health and Safety Administration (“OSHA”). At the same time, DOJ announced it would strengthen its civil enforcement of worker safety violations under environmental statutes in an effort to protect workers tasked with handling dangerous chemicals, cleaning up spills and responding to hazardous releases. READ MORE

Changing the Legal Department Paradigm

By Anthony DeSantis, Christopher Beahn and Rudolph Mayer

Corporate legal departments everywhere are being asked to transform their role from one primarily focused on risk mitigation to a broader one, balancing operational efficiency and strategic advising. Yet as many in Legal are discovering, this can be a daunting task. From people and practices to processes and technology, such a change often requires a significant overhaul, pulling highly trained lawyers and staff out of their professional comfort zone. As this article discusses, the way forward is to step back: take a holistic view of Legal, and adopt a strategic approach that aligns with the larger enterprise. READ MORE

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**CJS Upcoming Events**

**White Collar Crime National Institute**: March 8-10, Miami Beach, FL

**Global Investigations and Compliance: From Regulatory Trends to Leveraging Innovation and Technology**: April 5, Hong Kong

**CJS Spring Meeting and Program**: May 4-7, Jackson Hole, WY

27th Annual **National Institute on Health Care Fraud**: May 17-19, Ft. Lauderdale, FL

8th Annual **Prescription for Criminal Justice Forensics**: June 2, New York, NY

**SECOND GLOBAL WHITE COLLAR CRIME INSTITUTE**: June 7-8, São Paulo, Brazil

**Third False Claims Act Trial Institute**: June 14-16, Washington, DC

**CJS Annual Meetings at the ABA Annual Meeting**: Aug. 10-13, New York, NY

4th Annual **Southeastern White Collar Crime Institute**: Sept. 7-8, Braselton, GA (near Atlanta)


10th Annual **CJS Fall Institute and Council & Committee Meetings**: Nov. 2-5, Washington, DC

See the complete calendar at [http://www.ambar.org/cjsevents](http://www.ambar.org/cjsevents)

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**NEW CJS Publications**

**ABA Standards for Criminal Justice: Fair Trial and Public Discourse**

Available for purchase in print and e-book format.

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