



AMERICAN BAR ASSOCIATION

Criminal Justice Section

WHITE COLLAR CRIME COMMITTEE NEWSLETTER

SUMMER/FALL 2023

ABA CRIMINAL JUSTICE SECTION WCC Committee

MESSAGE FROM THE EDITOR

The [White Collar Crime Committee Newsletter](#) showcases content and opinion of leading experts, scholars, and practitioners through articles written by our American Bar Association [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, CLEs, and workshops.

The White Collar Crime Committee encourages you to participate year round, and also looks forward to reading your submissions for our upcoming Winter/Spring 2024 issue. If you would like to submit an article for our next edition (submission deadline: January 15, 2024) 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.



The Global White Collar Crime Institute, Buenos Aires, Argentina, March 30-3, 2023

Please note these upcoming CJS programs in 2023-2024 related to white collar crime:

- September 6-8: **The Southeastern White Collar Crime Institute**, Braselton, GA
- October 9-10: **The London White Collar Crime Institute**, London, UK
- November 2-3: **The CJS Fall Institute**, Washington, DC (Includes *The WCC Town Hall*)
- March 6-8, 2024: **National White Collar Crime Institute**, San Francisco, CA

See the complete CJS Calendar of Events at www.ambar.org/cjsevents

[Cybersecurity Challenges and the False Claims Act: Insights from the SuperValu Decision](#)

By Amanda Santella, Sid Mody, and Hannah Dunham

On June 1, 2023, the Supreme Court rejected a key defense to knowledge under the False Claims Act (FCA) in *United States ex rel. Schutte v. SuperValu Inc.*, U.S., Nos. 21-1326, 22-111 (June 1, 2023), exposing government contractors to increased litigation risk and potential liability for their objectively reasonable interpretations of ambiguous regulatory requirements. That risk had already been growing more acute, even before this recent decision, for government contractors and sub-contractors subject to federal cybersecurity requirements, given the increased focus on FCA enforcement in that area.

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[The Declining Need for General Deterrence in Insider Trading Sentencing](#)

By David Oliwenstein and John Van Son

An important objective of both criminal and civil enforcement of the federal securities laws is to promote trust, confidence, and fairness in the financial markets. While financial fraud takes many forms, insider trading stands out, among many types of common misconduct, as creating a sense that the markets are rigged against ordinary mom-and-pop investors in favor of well-connected corporate insiders and Wall Street elites. For those reasons, regulators, prosecutors, and courts regard insider trading as a serious crime.

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[When Past Is Prologue: Why the Justice Department's Revised Corporate Enforcement Policies May Create More Problems Than They Solve](#)

By Sharon L. McCarthy and Christopher M. Ferguson

We are all familiar with the aphorism that those who forget history are condemned to repeat it. The Department of Justice's ("DOJ" or the "Department") recent amendments to its corporate criminal enforcement policies, contained in two successive memoranda issued by Deputy Attorney General ("DAG") Lisa Monaco in October 2021 ("Monaco I") and September 2022 ("Monaco II") (together, the "Monaco Memos"), suggest that the Department has forgotten history.

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[U.S. Supreme Court's Dismissal of In re Grand Jury Leaves a Circuit Split on When to Apply the Attorney-Client Privilege to Dual-Purpose Communications](#)

By Victoria Weatherford and Tera N. Coleman

The attorney-client privilege is a foundational principle of the legal profession, yet too often lawyers take its protections for granted. "Dual-Purpose" communications—communications in which both legal and nonlegal advice is sought or provided—create a particularly thorny bramble that can easily ensnare the unwary into unintentional privilege waivers. A three-way circuit split on the proper legal test to apply to claims of attorney-client privilege for dual-purpose

communications appeared to be at an end, when the U.S. Supreme Court granted certiorari in *In re Grand Jury*—a case out of the Ninth Circuit involving a criminal grand jury subpoena of a law firm’s client records—in its 2022-2023 Term. But on January 23, 2023, after hearing oral argument, the U.S. Supreme Court dismissed *In re Grand Jury*, stating the Court improvidently granted certiorari. Therefore, the tripartite status quo and its resulting confusion remains.

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[Treacherous Money Laundering Procedure: A General Overview](#)

By Haala Humayun

Money laundering has not been the most prevalent crime in the world, but it's close. As stated by historian Sterling Seagrave, rich Chinese merchants laundered their money more than 2000 years ago mainly because provincial governments prohibited many types of commercial commerce. He asserts that the government views merchant businesses with considerable distrust since they are vile and selfish, and they follow separate norms. Aside from that, a significant portion of merchants' income stemmed from black marketing, extortion, and bribes. The merchants who stayed inconspicuous were able to protect their money from the constant extortions of officials. As a consequence, they adopted strategies such as changing money into easily moveable assets and transferring funds out of the jurisdiction to invest in their business. Several money launderers still utilize this strategy.

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[Is It Time for the Government’s “Moneyball” Moment? -- A May 2023 Government Accountability Office Report Highlights Data Mining and Matching to Identify Potential New Fraud Claims](#)

By Jackson Hobbs

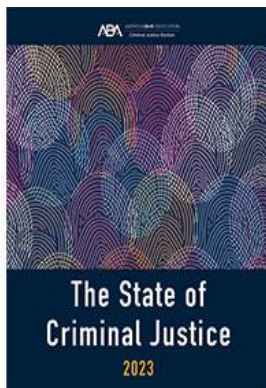
The 2011 Oscar-winning film, *Moneyball*, is a docudrama chronicling a small-market baseball team’s use of data-driven analytics to build a championship-caliber contender. Brad Pitt plays the team’s general manager. Jonah Hill plays the team’s leading data guru, who explained his use of data to find players that other teams overlooked like this:

It's about getting things down to one number. Using stats to reread them, we'll find the value of players that nobody else can see. People are overlooked for a variety of biased reasons and perceived flaws. Age, appearance, personality. Bill James and mathematics cuts straight through that. Billy, of the twenty thousand knowable players for us to consider, I believe that there is a championship team of twenty-five people that we can afford. Because everyone else in baseball under values them. Like an island of misfit toys.

While the team ultimately came up short at the end of *Moneyball*, the success of the team built on sabermetrics demonstrated a new era of baseball had begun.

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Recent Book from the ABA Criminal Justice Section:



[The State of Criminal Justice 2023](#)

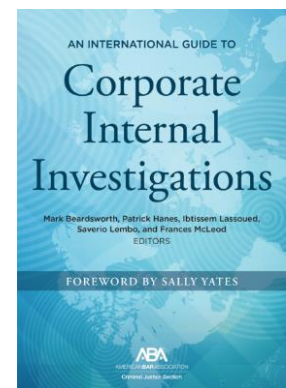
Edited by Elizabeth Kelley

This annual publication examines and reports on the major issues, trends and significant changes in the criminal justice system. Authors from across the criminal justice field provide essays on topics ranging from white collar crime to international law to juvenile justice. As one of the cornerstones of the Criminal Justice Section's work, this publication serves as an invaluable resource for policy-makers, academics, and students of the criminal justice system alike. Includes chapters on White Collar Crime. (Available August 2023)

[An International Guide to Corporate Internal Investigations](#)

Edited by Mark Beardsworth, Patrick R Hanes, Ibtissem Lassoued, Saverio Lembo, and Frances McLeod

Written by more than 40 highly skilled practitioners from 11 key jurisdictions, this book introduces readers to the complex and developing area of corporate internal investigations and uncovers a myriad of issues for additional legal consideration and advice. It considers the landscape and legal framework of the specific jurisdiction and provides a practical narration as to best practice in each.



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[The White Collar Crime Committee Newsletter](#)

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