


February 2016

Introduction: Examining White Collar Crime With Trifocals

Ellen S. Podgor

Stetson University College of Law

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>

 Part of the [Business Organizations Law Commons](#), [Criminal Law Commons](#), [Jurisprudence Commons](#), and the [Legislation Commons](#)

Recommended Citation

Ellen S. Podgor, *Introduction: Examining White Collar Crime With Trifocals*, 39 Fordham Urb. L.J. 299 (2011).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol39/iss2/7>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

INTRODUCTION: EXAMINING WHITE COLLAR CRIME WITH TRIFOCALS

*Ellen S. Podgor**

I. Legislative Drafting	303
II. The Ubiquitous Nature of White Collar Crime	305
III. Public Perception	307
IV. Trifocals	308

“White collar crime,” a term coined by sociologist Edwin Sutherland in 1939,¹ is one of the hottest legal topics in the news.² One finds discussion in the media of cases of corporate criminal liability,³ financial fraud,⁴ ponzi schemes,⁵ environmental crimes,⁶ public corruption,⁷

* Gary R. Trombley Family White-Collar Crime Research Professor and Professor of Law, Stetson University College of Law. The author thanks Professor Bruce Green and research assistant Rachel M. Batten.

1. Edwin H. Sutherland, *White-Collar Criminality*, 5 AM. SOC. REV. 1, 2 (1940). Sutherland’s Article was based on his speech to the American Sociological Society. *Id.* In his later work, Sutherland further defined “white-collar crime” as a crime that is “committed by a person of respectability and high social status in the course of his occupation.” EDWIN H. SUTHERLAND, *WHITE COLLAR CRIME: THE UN-CUT VERSION* 7 (1983).

2. See, e.g., Jason Grant, *Massive Insider Trading Case Reveals New Focus by U.S. Attorney’s Office on White Collar Crime*, STAR-LEDGER (June 25, 2011), http://www.nj.com/news/index.ssf/2011/06/massive_nj_insider_training_ca.html (discussing the district’s focus on white collar crime); Justin Scheck, *U.S. Attorney Targets White-Collar Crime*, WALL ST. J. (Nov. 5, 2009), <http://online.wsj.com/article/SB125737053982328969.html> (discussing an increased focus on white collar crime).

3. See, e.g., Charles V. Bagli, *Construction Company Indicted in Kickback Scheme*, N.Y. TIMES BLOG (Jan. 27, 2010), <http://cityroom.blogs.nytimes.com/2010/01/27/construction-company-indicted-in-kickback-scheme/> (reporting on the indictment of a construction management company); *Nexus Technologies Inc. and Three Employees Plead Guilty to Paying Bribes to Vietnamese Officials*, PR NEWSWIRE, <http://www.prnewswire.com/news-releases/nexus-technologies-inc-and-three-employees-plead-guilty-to-paying-bribes-to-vietnamese-officials-87854842.html> (last visited Jan. 23, 2012) (discussing the indictment and plea of a company for violation of the Foreign Corrupt Practices Act).

4. See, e.g., Azam Ahmed, *Another Guilty Plea to Insider Trading is Disclosed*, N.Y. TIMES (May 18, 2011), www.dealbook.nytimes.com/2011/05/18/ex-diamondback-manager-pleaded-guilty-to-insider-trading/ (discussing the guilty plea in an insider trading case); Larry Neumeister & Tom Hayes, *7 Charged in \$78M Record-Setting*

and a host of other non-violent economic criminal acts.⁸ Large law firms that once shied away from representing criminal matters, or buried them within the firm under titles like “special matters,” now advertise their skill and expertise in handling corporate and individual clients facing possible indictment.⁹ Whether it is the Savings and

Inside Trade Case, ASSOCIATED PRESS (Jan. 19, 2012), <http://www.foxnews.com/us/2012/01/18/7-charged-in-61m-single-trade-stock-fraud-case/> (reporting that a hedge fund founder would be charged in the largest transaction ever prosecuted in Manhattan for a scheme revolving around inside tips from companies such as Dell, Inc.).

5. See, e.g., Devlin Barrett, *Billionaire Stanford Indicted in Alleged \$7B Fraud*, ASSOCIATED PRESS (June 19, 2009), <http://www.foxnews.com/story/0,2933,527510,00.html> (summarizing the charges and claims made against Stanford who allegedly built his international banking empire on a Ponzi scheme amounting to a seven billion dollar swindle); David Glovin, David Voreacos & Patricia Hurtado, *Madoff Tells Judge He's Guilty in Ponzi Scheme (Update 3)*, BLOOMBERG (Mar. 12, 2009), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a.10r18mYAgM> (describing Madoff's guilty plea to the largest Ponzi scheme in history, one that defrauded thousands of clients out of billions of dollars).

6. See, e.g., Bill Singer, *The Great Kentucky Caviar Criminal Caper Comes to an End in Ohio*, FORBES (Jan. 18, 2012), <http://www.forbes.com/sites/billsinger/2012/01/18/the-great-kentucky-caviar-criminal-caper-comes-to-an-end-in-ohio/> (discussing a plea to a Lacey Act charge); *US Fines South Korean Shipper for Hawaii Oil Dump*, BLOOMBERG BUSINESSWEEK (Jan. 11, 2012), <http://www.businessweek.com/ap/financialnews/D9S6TOCG0.htm> (reporting that a South Korean shipping company was ordered to pay a criminal penalty of \$1.15 million for dumping oil into the waters off of Hawaii and then trying to cover up the dumping by falsifying records and obstructing justice).

7. See, e.g., Andrew Hains, *Blagojevich's 14-Year Sentence Should Deter Corruption*, FITZGERALD SAYS, BLOOMBERG (Dec. 8, 2011), <http://www.bloomberg.com/news/2011-12-07/ex-illinois-governor-bлагоjevich-gets-14-year-sentence-in-corruption-case.html> (discussing the sentence received by former Illinois governor Rod Blagojevich); Tom Howell, Jr., *Another Guilty Plea in D.C. Public Corruption Case*, WASH. TIMES (Jan. 17, 2012), <http://www.washingtontimes.com/news/2012/jan/17/another-guilty-plea-dc-public-corruption-case/> (reporting on the charging of James Garvin for serving as a pass-through for public funds that former council member Harry Thomas, Jr. stole for his personal use).

8. Today, the definition of white collar crime has shifted from focusing on the offender, to focusing on the offense. See JEROLD H. ISRAEL, ELLEN S. PODGOR, PAUL D. BORMAN & PETER J. HENNING, *WHITE COLLAR CRIME: LAW AND PRACTICE* 4–5 (3d ed. 2009). For example, Herbert Edelhertz defined white collar crime as a crime that includes concealment and reliance on the ignorance or carelessness of the victim. See HERBERT EDELHERTZ, *THE NATURE, IMPACT AND PROSECUTION OF WHITE-COLLAR CRIME* 3, 12 (1970). White collar crime can take the form of any number of specific activities including bankruptcy crimes, environmental crimes, and computer crimes. See ELLEN S. PODGOR & JEROLD H. ISRAEL, *WHITE COLLAR CRIME IN A NUTSHELL* 204, 213, 225 (4th ed. 2009).

9. See Charles D. Weisselberg & Su Li, *Big Law's Sixth Amendment: The Rise of Corporate White-Collar Practices in Large U.S. Law Firms*, 53 ARIZ. L. REV. 1221, 1225–35 (2011) (discussing the change in law firm practice to include white collar crime firms).

Loan fiasco,¹⁰ the Enron debacle,¹¹ or more recently the financial fraud crisis,¹² legislation and prosecution of white collar crime is a subject of growing concern.¹³

Yet, despite the growing use of the term “white collar crime,” statistical monitoring of this form of criminality proves challenging. Bureau of Justice statistical reporting does not have a designated category called white collar crime. Many offenses, such as embezzlement, fraud, and forgery, come under property crimes.¹⁴ But one also finds public-order offenses and a category called “other” that houses some crimes that appear to be what a lay person would perceive as white collar offenses.¹⁵ For example, newer offenses such as cybercrime and identity theft are often found as distinct categories for statistical reporting.¹⁶

The difficulties encompassed in reporting and categorizing crimes as pertaining to white collar ones can be seen by examining crimes prosecuted under the Racketeer Influenced and Corrupt Organization Act (“RICO”).¹⁷ The RICO Act presents unique issues for categorization as the statutes allow for conduct that clearly falls within street crimes, while also providing a basis for many white collar prosecutions.¹⁸ When a RICO case involves organized crime killings, it is

10. In response to the Savings and Loan scandal, Congress passed the Financial Institutions Reform, Recovery and Enforcement Act of 1989 to address many of the issues raised in the scandal’s aftermath. 12 U.S.C.A. § 1821 (1989).

11. The Enron debacle exposed many of the holes in the Federal accounting and corporate accountability regimes. To prevent another Enron from occurring, Congress passed the Sarbanes-Oxley Act of 2002 which, among other things, broadened obstruction prohibitions and increased document retention responsibilities for accounting firms. 15 U.S.C.A. § 7201 (2002).

12. See, e.g., *President Barack Obama’s Financial Fraud Enforcement Task Force*, STOPFRAUD.GOV, <http://www.stopfraud.gov/> (last visited Jan. 22, 2011).

13. See, e.g., Exec. Order No. 13271, 67 Fed. Reg. 46091, 46091–92 (2002) (representing President George W. Bush’s creation of the Corporate Fraud Task Force. This task force was later renamed the Financial Fraud Task Force by President Barack Obama in 2009. Exec. Order No. 13519, 74 Fed. Reg. 60123 (2009)).

14. See *Federal Justice Statistics 2009 Statistical Tables*, BUREAU JUSTICE STATISTICS, <http://bjs.ojp.usdoj.gov/content/pub/pdf/fjs09st.pdf> (last visited Jan. 23, 2012).

15. *Id.* Public order offenses include regulatory offenses like antitrust and food and drug offenses. Under the bribery category, one finds perjury, obstruction of justice, and environment offenses—crimes that are likely to be considered white collar. Many non-white collar offenses, however, such as national defense, gambling, and nonviolent sex offenses are also present. *Id.*

16. See *generally Crime Type*, BUREAU JUSTICE STATISTICS, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=3> (last visited Jan. 23, 2012).

17. 18 U.S.C. § 1961 (2006).

18. See Ellen S. Podgor, *White-Collar Crime and the Recession: Was the Chicken or Egg First?*, 2010 U. CHI. LEGAL F. 205, n.20 (2010).

easy to say that this is not white collar crime. Yet, when the RICO predicate is mail fraud,¹⁹ or involves public corruption activities, the white collar category may seem well suited.

Who should prosecute this form of criminality is also uncertain. What was once limited to the federal arena, has now moved beyond United States Attorneys' Offices and the Manhattan District Attorney's Office, with local entities and states now prosecuting white collar crimes.²⁰ Prosecutions are also not limited to conduct within the United States. For example, on the federal level, one finds the prosecution of international activities with statutes such as the Foreign Corrupt Practices Act,²¹ a crime of bribery that fits neatly within the white collar rubric.

Also noteworthy in demonstrating the huge terrain covered by white collar criminality is the fact that it is common to see celebrities as the subject of a white collar crime prosecution. Parading celebrity cases before the media offers a front-page advertisement for general and specific deterrence.²²

19. 18 U.S.C. § 1961.

20. See, e.g., *Prosecution*, OHIO ATTORNEY GENERAL MIKE DEWINE, available at <http://www.ohioattorneygeneral.gov/enforcement/prosecution.aspx/?from=nav> (including white collar crime as one of the crimes prosecuted in the special prosecutions unit) (last visited Jan. 23, 2012); see also Ellen S. Podgor, *Another State Highlighting White Collar Crime*, WHITE COLLAR CRIME PROF BLOG (Dec. 24, 2009), http://lawprofessors.typepad.com/whitecollarcrime_blog/2009/12/another-state-highlighting-white-collar-crime.html (discussing state prosecutions in Indiana for white collar crime).

21. 15 U.S.C. §§ 78dd–78dd-3 (2006). Congress enacted the Foreign Corrupt Practices Act in 1977 after widespread bribery of foreign officials by U.S. businesses was discovered. See *United States v. Kay*, 359 F.3d 738, 746 (5th Cir. 2004). These bribes were causing foreign policy problems for the U.S. and were morally and economically suspect. *Id.*

22. Some examples of prominent celebrities that have been charged and, in some cases, convicted of white collar offenses include Martha Stewart, Roger Clemens, Jack Abramoff, John Edwards, Wesley Snipes, Leona Helmsley, and Conrad Black. See Associated Press, *Helmsley Now a Convicted Felon*, MILWAUKEE J., Dec. 13, 1989, at 6A (stating that Helmsley was convicted for evading \$1.2 million in taxes); Greg Farrell, *Conrad Black Is Sentenced to 6 ½ Years in Prison*, USA TODAY (Dec. 10, 2007), http://www.usatoday.com/money/media/2007-12-10-black-sentencing_N.htm (reporting that former newspaper mogul Black was sentenced after being convicted of honest services fraud); Kenneth N. Gilpin, *Martha Stewart Indicted on Criminal Charges*, N.Y. TIMES (June 4, 2003), <http://www.nytimes.com/2003/06/04/business/04CND-MARTHA.html> (discussing charges lodged against Stewart); Brody Mullins, *Republican Backer Abramoff Indicted*, WALL ST. J. (Aug. 12, 2005), http://online.wsj.com/article/0,,SB112378647142711085,00.html?mod=home_whats_new_us (listing the charges contained in the indictment against Jack Abramoff a key lobbyist); Rich Phillips, *Snipes Gets the Max—3 Years—in Tax Case*, CNN.COM (Apr. 24, 2008), <http://www.cnn.com/2008/CRIME/04/24/snipes.sentencing/index.html>

It is obvious from this preview that the study of white collar crime covers a vast breadth of conduct, people, places, and forms of criminality. The wealth of available material related to white collar crime, therefore, makes this symposium particularly important. Clearly, many different and important topics could and should be considered in reflecting on white collar crime.

The Articles by the six authors in this Book highlight three important and consistent themes relevant to white collar crime. First is that there are many challenges faced in the legislative drafting of white collar crime statutes.²³ Second is that when one studies white collar crime, it is important to think beyond the courtroom and even beyond the United States.²⁴ Finally, public perception plays a crucial role in white collar crime discussions.²⁵

I. LEGISLATIVE DRAFTING

Both Professors J. Kelly Strader and Julie Rose O'Sullivan's Articles consider fraud, one of the most common areas in the white collar context.²⁶ Specifically, they focus on the "honest services" provision,²⁷ a twenty-eight-word definition statute enacted to counteract

(stating that Snipes was sentenced to three years in prison for three counts of failing to file tax returns); Fredreka Schouten, *John Edwards Indicted, Pleads Not Guilty in Affair Cover Up*, USA TODAY (June 6, 2011), http://www.usatoday.com/news/washington/2011-06-03-john-edwards-indictment_n.htm (reporting the indictment of former presidential candidate John Edwards—who as of this writing has not been convicted of any crimes); Dave Sheinin & Spencer S. Hsu, *Pitching Legend Roger Clemens Is Indicted on Charges of Lying to a Congressional Committee*, WASH. POST (Aug. 20, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/19/AR2010081904125.html> (reporting that Clemens was indicted on one count of obstruction of Congress, three counts of making false statements, and two counts of perjury).

23. See Julie Rose O'Sullivan, *Skilling: More Blind Monks Examining the Elephant*, 39 FORDHAM URB. L.J. 343, 351–60 (2011); J. Kelly Strader, *Skilling Reconsidered: The Legislative-Judicial Dynamic, Honest Services Fraud, and the Ill-Conceived "Clean Up Government Act,"* 39 FORDHAM URB. L.J. 309, 318–19 (2011).

24. See Katrice Bridges Copeland, *In-House Counsel Beware!*, 39 FORDHAM URB. L.J. 391 (2011); Lucian E. Dervan, *International White Collar Crime and the Globalization of Internal Investigations*, 39 FORDHAM URB. L.J. 361 (2011).

25. See Stuart P. Green & Matthew B. Kugler, *When Is It Wrong to Trade Stocks on the Basis of Non-Public Information? Public Views of the Morality of Insider Trading*, 39 FORDHAM URB. L.J. 445 (2011); Sandra D. Jordan, *Victimization on Main Street: Occupy Wall Street and the Mortgage Fraud Crisis*, 39 FORDHAM URB. L.J. 485 (2011).

26. There are many fraud statutes in the federal code. See, e.g., 18 U.S.C. §§ 157, 371, 1030, 1343, 1347 (2006) (representing bankruptcy fraud, conspiracy to defraud, computer fraud, wire fraud, and healthcare fraud respectively).

27. 18 U.S.C. § 1346 (2006).

the Supreme Court's decision in *McNally v. United States*.²⁸ Most recently in *United States v. Skilling*,²⁹ the Supreme Court limited the statute to "bribery and kickbacks."³⁰

In his Article, *Skilling Reconsidered: Honest Services Fraud and the Legislative-Judicial Dynamic*, Professor Strader places the *Skilling* decision in the context of overcriminalization.³¹ He dissects the Court's opinion, noting how long it took for the Court to accept a case that would finally limit the honest services provision. Although he "provides a soft defense of the *Skilling* decision,"³² he does offer a critique of Congress' proposed response to the decision in the *Clean Up Government Act of 2011*.³³

Professor O'Sullivan, in her piece, *Skilling: More Blind Monks Examining the Elephant*,³⁴ uses *Skilling* to examine the broader issue prevalent in white collar cases: the role of the judiciary in the statutory process. She is chagrined with the process, irrespective of the result, and states that *Skilling* "presents a wonderful example of how criminal law ought *not* be made, whether viewed from an institutional, societal, or individual standpoint."³⁵

Professors Strader and O'Sullivan both highlight a crucial and recurring issue in the study of white collar crime—how best to draft a statute that will encompass all conduct that should be considered criminal, while also providing a statute that is specific enough to offer sufficient guidance of what is to be considered illegal.³⁶ Honest services fraud has been the ping-pong ball between the legislature and judiciary, and as noted by both Professors Strader and O'Sullivan, the game has been played very slowly.³⁷

28. *Id.*; see also *McNally v. United States*, 483 U.S. 350 (1987).

29. 130 S. Ct. 2896 (2010).

30. *Id.* at 2907.

31. Strader, *supra* note 23, at 311.

32. *Id.* at 313.

33. *Id.* at 334–35.

34. O'Sullivan, *supra* note 23.

35. *Id.* at 345.

36. O'Sullivan, *supra* note 23, at 351–60; Strader, *supra* note 23, at 315–16; see also Ellen S. Podgor, *Do We Need a "Beanie Baby" Fraud Statute?*, 49 AM. U. L. REV. 1031 (2000) (discussing the balance between the need for specific statutes and the problem of overcriminalization).

37. O'Sullivan, *supra* note 23, at 356–57; Strader, *supra* note 23.

White collar criminality is often complex and difficult to understand.³⁸ The very nature of these crimes requires a unique degree of sophistication. Thus, the legislature's role in drafting white collar offenses is extremely important as it serves as a gatekeeper to distinguish between conduct that may be nefarious, though not rising to a level of illegality that requires criminal punishment, and conduct that is designated as criminal and subject to punishment.³⁹

II. THE UBIQUITOUS NATURE OF WHITE COLLAR CRIME

Perhaps the most important lesson in teaching white collar criminal law is that one must think well beyond the criminal case when handling the client's matter. Parallel proceedings, debarments, exclusions, license revocations, and bankruptcy proceedings can all be tied to the white collar criminal case. One need only look at the *Arthur Andersen, LLP* case to find a company devastated despite the reversal of its conviction by the United States Supreme Court.⁴⁰ A white collar matter may be the subject of a federal prosecution, an Internal Revenue Service action, a Securities Exchange Commission proceeding, a New York Attorney General investigation, and a Manhattan District Attorney's state prosecution—all at the same time.

The Articles by Professors Katrice Bridges Copeland and Lucian E. Dervan demonstrate the breadth of what is encompassed within the white collar crime context. Both look at an often unnoticed aspect of a white collar case—the internal investigation. Corporations routinely conduct internal investigations to ascertain possible criminal conduct and to minimize the possible effects on the company.

Professor Lucian E. Dervan's Article, *International White Collar Crime and the Globalization of Internal Investigations*,⁴¹ highlights how we operate in a global economy. As industries move abroad with their business, so too has white collar criminality. Professor

38. See *Cheek v. United States*, 498 U.S. 192, 199–200 (1991) (noting the complexity of tax laws and requiring that a knowledge instruction be given to a jury when the statute has a willfulness requirement).

39. See *Ratzlaf v. United States*, 510 U.S. 135, 145–47 (1994).

40. Arthur Andersen was charged with obstructing justice in connection with the Enron scandal. The United States Supreme Court reversed and remanded the conviction. See *Arthur Andersen, LLP v. United States*, 544 U.S. 696, 698–701 (2005); see N. Craig Smith & Michelle Quirk, *From Grace to Disgrace: The Rise & Fall of Arthur Andersen*, 1 J. BUS. ETHICS EDUC. 91, 93 (2004) (discussing the fall of this accounting firm); see also Dan Ackman, *The Scapegoating of Arthur Andersen*, FORBES (Jan. 18, 2002), <http://www.forbes.com/2002/01/18/0118topnews.html>.

41. Dervan, *supra* note 24.

Dervan discusses the difficulties and considerations necessary in doing an internal investigation abroad. He stresses the need for legal counsel to recognize that the United States standard may not be the norm and how it is important to consider this “when undertaking multi-jurisdictional investigations.”⁴²

Professor Katrice Bridges Copeland, in her Article, *In-House Counsel Beware!*,⁴³ provides a case study of the recent prosecution and eventual acquittal of Lauren Stevens, the former Vice President and Associate General Counsel at GlaxoSmithKline. She places this case in the broader context of the prosecution of in-house counsel who may be conducting an internal investigation. One of the remedies she advocates for is a review mechanism to “rein in overzealous prosecutors.”⁴⁴

The focus on the internal investigation by Professors Dervan and Copeland demonstrates a major difference between white collar crime and street crime. Typically, murders, rapes, robberies, and burglaries are investigated by police and then an individual or group is arrested for the criminal conduct. In contrast, the white collar case can proceed through a long grand jury process. Prior to this grand jury investigation, or simultaneously with it, there may be a corporate internal investigation. The importance of the internal investigation is noted by the fact that corporations are apt to cooperate with the government in securing a deferred or non-prosecution agreement in return for providing evidence that can be used against employees who have committed criminal acts.⁴⁵ Acquiring evidence of criminal conduct can serve to alleviate corporate exposure.⁴⁶ Often this is at the expense of individuals within the corporation, such as executives and employees. The internal investigation, therefore, can serve an important role in determining who will be prosecuted and for what crimes. The Dervan and Copeland pieces recognize that the study of

42. *Id.* at 389.

43. Copeland, *supra* note 24.

44. *Id.* at 396.

45. See Candace Zierdt & Ellen S. Podgor, *Corporate Deferred Prosecutions Through the Looking Glass of Contract Policing*, 96 KY. L.J. 1, 7–8 (2008) (discussing improper provisions in deferred and non-prosecution agreements if viewed under contract law); see also Brandon L. Garrett, *Structural Reform Prosecution*, 93 VA. L. REV. 853, 885–87 (2007) (discussing the DOJ obtaining cooperation from corporations).

46. See Harry First, *Branch Office of the Prosecutor: The New Role of the Corporation in Business Crime Prosecutions*, 89 N.C. L. REV. 23, 43–44 (2010) (discussing corporations' avoidance of prosecution through cooperation with the government in the prosecution of corporate individuals).

white collar crime goes well beyond the indictment and prosecution of an entity.

III. PUBLIC PERCEPTION

The final two Articles in this Book recognize the importance of the public role in examining white collar criminality. Although both speak to very different aspects of public perception, they both recognize that we cannot neglect the larger audience when examining this important area of law.

Professors Stuart P. Green and Matthew B. Kugler's Article, *Is It Wrong to Trade Stocks on the Basis of Non-Public Information?—Public Views of the Morality of Insider Trading*,⁴⁷ examines "lay views of insider trading."⁴⁸ The authors conducted several studies that produce results "suggest[ing] a high degree of correlation, across several domains, between lay attitudes concerning insider trading and current law and practice."⁴⁹ Interestingly, the authors also discern that "professionals and the lay public are united in their confusion over the rationale for prohibiting insider trading."⁵⁰

Professor Sandra D. Jordan, in her Article, *Victimization on Main Street: Occupy Wall Street and the Mortgage Fraud Crisis*,⁵¹ traces white collar history, before examining the Occupy Wall Street outcry of today.⁵² She advocates for using "criminal law standards rather than civil remedies" when it comes to mortgage fraud.⁵³ Her analysis includes a review of the modern day rhetoric, concluding that "[i]f we examine criminality viewed through the lens of victims, it is much easier to reconcile similarities between street crimes, such as drug dealing, and white collar crimes, such as mortgage frauds."⁵⁴

Looking at white collar crime from the perspective of the public adds a third dimension to this Book. In many ways this third dimension brings us full circle to where we started, as it is the voting public who elects officials and in this respect controls the discussion of the lawmakers who then draft the legislation. Likewise, it is the legislative drafting, albeit sometimes poor drafting, that may cause the pub-

47. Green & Kugler, *supra* note 25.

48. *Id.* at 446.

49. *Id.* at 484.

50. *Id.*

51. Jordan, *supra* note 25.

52. *Id.*

53. *Id.* at 486–87.

54. *Id.* at 499.

lic to be confused about what is criminal and what is acceptable conduct.

IV. TRIFOCALS

This Book is important because it reflects on the many facets of white collar crime. It focuses closely on legal drafting of statutes and Supreme Court interpretation, looking at key laws used in prosecuting white collar crime. Taking a distant view of the topic of white collar crime explores and elucidates international considerations and internal investigations not within the confines of the archetypal white collar criminal matter. Finally, a third lens is necessary, as it is important to recognize how the public's voice shapes the white collar crime discussion. Legislative drafting, non-criminal considerations such as corporate investigations, and public perception have all played a role in the development of a term, "white collar crime," that is just over seventy years old. But in reading these Articles, it is clear that this area of the law still requires substantial growth.