Introduction

Emerging Trends in Corporate White Collar Criminal and Regulatory Law—An Overview

A generation ago, corporations, even in regulated industries, allocated scant resources to legal compliance. There were few treatises or seminars to guide an attorney whose corporate client suspected wrongdoing by an officer or employee. There were no U.S. Department of Justice policy statements or amnesty programs from which to judge the risks and benefits of voluntary disclosure of a company's violation of law. The Organizational Sentencing Guidelines lay in the future, an unheralded and unforeseen revolution in organizational sentencing philosophy.

As a general rule in those days, organizations got off lightly in criminal cases. From the corporation's perspective, a corporate guilty plea was a bargaining chip to exchange for dropping or reducing charges against the corporation's officers or employees. After all, in the 1980s, many prosecutors thought "RICO" was the name of a character played by Edward G. Robinson in *Little Caesar*. The Resource Conservation and Recovery Act was enacted in 1976, but a decade passed before its draconian penalties were wielded systematically against organizations that violated environmental laws. Antitrust fines were a fraction of the up to $100 million penalty now prescribed by statute for corporations. The False Claims and Foreign Corrupt Practices Acts were not robustly enforced. And, of course, Sarbanes-Oxley was decades away.

Today, the landscape is dramatically different. In such areas as securities fraud, antitrust, healthcare fraud and environmental law, corporate exposure to criminal and civil liability has increased geometrically. The travails of major corporations gain increasing public attention. In particular, the Enron, WorldCom, and other highly publicized company scandals in the early 2000s, and then the financial crisis of 2008, generated substantial pressure on Congress, the DOJ, the U.S. Sentencing Commission, state and local prosecutors, and judges to impose heavier corporate sentences. Corporations have paid billions to resolve FCA cases, and find themselves in the crosshairs of the SEC and DOJ regarding foreign subsidiaries' payments to foreign officials.

New theories of criminal liability proliferate. Under the "responsible corporate officer" doctrine, for example, prosecutors in some jurisdictions have succeeded in obtaining convictions under regulatory statutes, such as the Resource Conservation and Recovery Act, of organizational officials who had no actual knowledge of or causal relationship to violations, but whose positions of responsibility gave them the power to prevent the violations. A similar doctrine has developed in federal criminal antitrust prosecutions and in prosecutions of pharmaceutical executives.[1] Lately, governments have invoked state nuisance laws against companies alleged to have sold products that resulted in the nation's epidemic of opioid addiction.[2]

Likewise, some jurisdictions have adopted the "collective knowledge" doctrine in corporate prosecutions, under which the requisite knowledge need not be imputed to the corporation from a single individual, but may be established by imputing to the corporation the aggregate or collective knowledge of the employees or agents as a group. In effect, under this doctrine, a corporation can be found guilty of a crime even though no single employee has been or could have been guilty of the crime.[3]

In addition to increasing the scope of corporate liability, the trend of white collar criminal law has enhanced the power of prosecutors to punish corporate offenders or, in lieu of criminal punishment in the traditional sense, to impose onerous deferred prosecution agreements.

---

1. *See, e.g.*, United States v. Dee, 912 F.2d 741, 745 (4th Cir. 1990); *see also* discussion *infra*, chapter 12.
2. State of Oklahoma *ex rel*. Hunter v. Purdue Pharma L.P., Case No. CJ-2017-816, Judgment After Non-Jury Trial (Dist. Ct. Okla. Cleveland Cty. Aug. 26, 2019).
3. *See, e.g.*, United States v. Bank of New Eng., N.A., 821 F.2d 844, 856 (1st Cir. 1987); *see also In re* WorldCom, Inc. Sec. Litig., 352 F. Supp. 2d 472, 497 (S.D.N.Y. 2005) ("[C]ase law abounds with discussions of securities fraud by accounting firms that concentrate on the firm's collective state of mind, not that of individual partners or employees."). *See, e.g.*, State of New York v. UPS, 253 F. Supp. 3d 583 (S.D.N.Y. 2017); SEC v. Tropikgadget FZE., 146 F. Supp. 3d 270 (D. Mass. 2015). Under the False Claims Act, however, a plaintiff cannot establish scienter by aggregating the "collective knowledge" of company employees. Rather, a plaintiff must show that particular employees acted with the requisite intent. United States v. Sci. Applications Int'l Corp., 626 F.3d 1257, 1274–75 (D.C. Cir. 2010) ("the 'collective knowledge' theory allows 'a plaintiff to prove scienter by piecing together scraps of "innocent" knowledge held by various corporate officials, even if those officials never had contact with each other or knew what others were doing in connection with a claim seeking government funds.'"); *see also* discussion *infra*, chapter 11.

These agreements can require that a company impose remedial measures, pay a monetary penalty, admit wrongdoing, and submit to an independent compliance monitor or examiner. While the number of deferred prosecution agreements have dropped, and some courts have rejected them, they remain an important tool for prosecutors to invoke against companies. *See* chapter 9. In addition, intrusive supervision of corporate compliance activities by the government is routine for pharmaceutical companies settling healthcare fraud marketing charges.

In the 1980s, corporate criminal fines generally were capped by practice or statute at several hundred thousand dollars or less. Today, through the use of multiple-count indictments as well as the Criminal Fines Enhancement Act, which bases sentences on the amount of gain to the offender or loss to the victim, the prosecutor's ability to seek and impose criminal fines appears limited only by the net worth of the corporation.

But in tandem with the increase in prosecutorial sticks, there are ways for corporations to obtain leniency if they have engaged in vigorous self-policing and, notwithstanding that an employee broke the law, have disclosed the violation and cooperated with the government. The "Principles of Federal Prosecution of Business Organizations," which provide the criteria prosecutors must use in deciding whether to charge a company, emphasize these two considerations as have subsequent pronouncements regarding corporate cooperation such as the Yates Memorandum, remarks of Rod Rosenstein at a conference in 2018 and the FCA Cooperation Credit Guidelines issued by DOJ in May 2019.[4] As a result, the government has enlisted corporations in its battles against crime. Instead of devoting its resources exclusively to deterring and detecting law-breakers, the government now spends time and effort seeking to modify the behavior of companies to become law enforcers.

The result has been a proliferation of self-policing corporate compliance programs in almost every area of business and commerce. These programs involve auditing and monitoring efforts, employee

---

4. *See infra* chapters 1 and 2. *See* U.S. DEPARTMENT OF JUSTICE, Individual Accountability for Corporate Wrongdoing (2015), www.justice.gov/archives/dag/file/769036/download; U.S. DEPARTMENT OF JUSTICE, Deputy Attorney General Rod. J. Rosenstein Delivers Remarks at the American Conference Institute's 35th International Conference on the Foreign Corrupt Practices Act (2018), www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-0; U.S. DEPARTMENT OF JUSTICE, Department of Justice Issues Guidance on False Claims Act Matters and Updates Justice Manual (2019), www.justice.gov/opa/pr/department-justice-issues-guidance-false-claims-act-matters-and-updates-justice-manual.

"hotlines" to report suspected or actual violations of law or questionable business practices, corporate ombudsmen departments, more vigorous screening of applicants for employment, and severe discipline of employees who violate a company's compliance standards.

There are good reasons for implementing such programs even though the Organizational Sentencing Guidelines are no longer binding on the district courts as a result of Supreme Court rulings:

1. Their existence can be used to persuade prosecutors that criminal charges are inappropriate and unnecessary;
2. They may qualify the company for more lenient treatment in the event of a criminal conviction; and
3. Most importantly, they may succeed in preventing or deterring criminal conduct by employees that might otherwise ensnare the company in the legal and public relations morass often reported in the front or business pages of the newspapers.

At the same time, companies have encountered significant difficulties with their compliance programs. For example, as recommended by the Organizational Sentencing Guidelines, corporations have established hotlines for employees to report information on illegal activities. Some employees, however, have used the hotlines to make false charges against rivals. Other employees have reported suspicions of wrongdoing that, upon investigation, proved to be without merit. When some of these employees were laid off, they filed lawsuits claiming they had been retaliated against for reporting questionable activity. Companies need to be constantly vigilant in this area.

Another potential obstacle to effective compliance programs arises from government programs rewarding whistleblowers. The FCA, for example, provides bounties of up to 30% of the government's recovery to private parties who bring allegations of fraud to the government. The SEC has similar rules awarding whistleblowers up to 30% of the monetary penalties recovered in a successful judicial or administrative action for violation of federal securities laws. The potential for large monetary awards may incentivize corporate employees to report information to the government before they utilize internal reporting procedures. The SEC, recognizing the potential harm to corporate compliance programs, included provisions designed to discourage whistleblowers from bypassing internal reporting procedures while at the same time preserving a whistleblower's eligibility for an award. The FCA, however, imposes no such requirement. Both the FCA statute and Dodd-Frank protect whistleblowers from retaliation, and the SEC cautions companies against entering into severance agreements with employees that impede them from contacting the government about improprieties. *See* chapter 6.

The longstanding compliance tool of internal investigations has both benefits and disadvantages. On the positive side, they are an effective means for management to learn quickly the facts about potential illegal conduct by employees and to formulate an appropriate legal strategy. An internal investigation can reassure the public, stockholders, creditors and enforcement agencies that the company is addressing its problems. An internal investigation can identify and recommend internal controls, monitoring procedures, and audit strategies to prevent a similar occurrence even though, as pointed out above, the organizational sentencing guidelines are no longer binding on the district courts as a result of Supreme Court rulings.

But the risks of internal investigations must be recognized. Both for the company and the investigator, it can be likened to running an obstacle course on a minefield. Some investigations have uncovered wrongdoing that was not originally targeted, sent frantic employees into the arms of prosecutors, tarnished the reputations of the internal investigators, and proved more controversial than the events that prompted them in the first place. More than one internal investigation has uncovered evidence that later was used to convict the corporation, which had not disclosed the violation voluntarily to government agencies. Indeed, in one famous example the prosecution's trial exhibits included the "confidential" and "privileged" report of the investigation, questionnaires filled out by employees concerning their knowledge of bribes and slush funds, and notes taken by attorneys during interviews of company employees.[5]

An internal investigation that uncovers criminal violations by corporate employees—not yet known to enforcement agencies—leaves a company with a difficult choice if there is no statute or regulation requiring disclosure of the violation. If the company opts for disclosure of an employee's violation of law for which the company can be criminally prosecuted, it will be handing to the prosecutor the evidence of its guilt. But voluntary disclosure may avoid criminal charges, result in a reduced fine or result in regulatory leniency.

Taken together, these trends have transformed the practice of corporate criminal representation for both inside and outside counsel. In today's new enforcement climate, every action by a company in dealing with suspected criminal conduct by its employees, implementing a compliance program or responding to a grand jury subpoena can set in motion a chain of events that may determine its ultimate fate at the hands of a prosecutor, jury or judge.

---

5. *See* United States v. Southland Corp., 760 F.2d 1366, 1371–72, 1375–77 (2d Cir. 1985).

As an example, in conducting an internal investigation, the company's attorneys must advise employees whom they interview that the attorneys represent only the company, who will ultimately determine whether to maintain confidentiality or to disclose the information to a third party (typically, law enforcement agencies). The failure to give such advice could result in creation of an attorney-client relationship between the investigating attorneys and the employee, and courts have criticized incomplete warnings in this regard.[6] In turn, that relationship could limit the company's ability to disclose voluntarily the employee's violations of law to law enforcement agencies.

White collar defense counsel maximize the opportunity to obtain leniency for, or even avoid prosecution of, their corporate and individual clients by strong advocacy of factual and legal defenses available in the event of a trial. Put another way, the defense counsel should consider openly and persuasively identifying for the prosecutor the weaknesses in his or her legal and factual theories. Ultimately, this tactic requires balancing risks and rewards. On the one hand, such disclosure of defenses well in advance of trial may give the prosecutor an opportunity to fill holes in its case. On the other, identifying flaws in the prosecutor's case may be the only means for defense counsel to obtain sufficient leverage to obtain a plea or deferred prosecution agreement, or even avoid charges altogether. Even when deployed, this tactic will succeed only to the extent that such weaknesses exist; therefore, from the outset defense counsel must thoroughly and creatively develop aggressive defenses that will at least shake a prosecutor's confidence in his or her case. Even if unsuccessful at deterring a prosecution, such defenses certainly will be needed for a trial.

Today, there are two categories into which a corporation whose employees have violated criminal law will fall. The first category includes companies that, because they did not cooperate or (more common) failed to cooperate in a timely and thorough manner, receive severe and painful punishment at the hands of prosecutors armed with the variety of law enforcement tools summarized above. The second category, which companies increasingly seek to join, includes companies that receive lenient treatment, including amnesty or a declination of prosecution, for comparable offenses because they have adopted defensive measures, such as compliance programs to deter and detect criminal violations, and have responded swiftly and carefully to such violations. Into which camp a corporation falls will depend greatly upon how the corporation conducts internal investigations.

• • •

6. *See, e.g.*, *In re* Grand Jury Subpoena, 415 F.3d 333, 340 (4th Cir. 2005).

As never before, in giving advice on corporate criminal and regulatory issues, a company's in-house counsel must have at least a working knowledge of the many issues that surround modern criminal and regulatory practice. The Arnold & Porter Kaye Scholer LLP *Deskbook on Internal Investigations, Corporate Compliance, and White Collar Issues* represents the *beginning* of the process of reaching that level of understanding. It can never be a substitute for the advice of experienced white collar law practitioners.

The Deskbook is divided into two parts. Part I addresses "process" issues, including corporate compliance, internal investigations, and government leniency programs. Part II addresses "substance," that is, selected, specific white collar substantive law issues, such as pharmaceutical drug offenses, the False Claims Act, the Foreign Corrupt Practices Act, criminal antitrust, perjury statutes and money laundering.

Table of Contents

PART I: PROCESS

Chapter 1 Internal Investigation of Suspected Wrongdoing by Corporate Employees

Chapter 2 The Attorney-Client Privilege, Work-Product Protection, and Self-Critical Privilege in Internal Investigations

Chapter 3 Responding to Searches and Seizures

Chapter 4 Grand Jury Investigations and Multiple Representations of Witnesses

Chapter 5 Advising Witnesses in Light of Perjury Statutes

Chapter 6 Representing Companies and Individuals in SEC Investigations and Parallel Proceedings

Chapter 7 Corporate Compliance Programs Under the Organizational Sentencing Guidelines

Chapter 8 Reserved

Chapter 9 Deferred Prosecution Agreements

PART II: SELECTED SUBSTANTIVE WHITE COLLAR CRIMINAL & REGULATORY ISSUES

Chapter 10 Representing the Drug or Medical Device Manufacturer in an Investigation

Chapter 11 Government Investigations Under the False Claims Act and Its Qui Tam Provisions

Chapter 12 Representation of Companies in Criminal Antitrust Investigations

Chapter 13 Asset Forfeiture and Debarment

Chapter 14 Money Laundering and Financial Institutions

Chapter 15 The Foreign Corrupt Practices Act and the International Conventions on Bribery

Chapter 16 Prosecutions for Violations of U.S. Export Controls and Trade Sanctions

About the Contributors

Each contributor listed below is a member of ARNOLD & PORTER KAYE SCHOLER LLP'S WHITE COLLAR DEFENSE PRACTICE GROUP*

John N. Nassikas *(Co-Chair, Arnold & Porter Kaye Scholer LLP's White Collar Defense Practice Group)* is a former Assistant U.S. Attorney for the Eastern District of Virginia. He advises and defends companies and individuals in federal and state criminal investigations and prosecutions, particularly in the areas of financial, healthcare, and government contracts fraud, global anti-corruption, antitrust, and SEC enforcement. He concentrates on complex parallel criminal and civil litigations, trials, and internal corporate investigations.

Michael A. Rogoff *(Co-Chair, Arnold & Porter Kaye Scholer LLP's White Collar Defense Practice Group)* is a former Assistant U.S. Attorney for the Southern District of New York and recipient of the Director's Award for Superior Performance as an Assistant U.S. Attorney. He has represented numerous companies, directors, and senior executives in internal investigations, regulatory proceedings, and grand jury investigations and litigations involving securities and accounting fraud, antitrust violations, and healthcare fraud.

Marcus A. Asner *(Co-Chair, Arnold & Porter Kaye Scholer LLP's Anti-Corruption Practice Group)* is a former Assistant U.S. Attorney for the Southern District of New York, where he was Chief of the Major Crimes and Computer Hacking/Intellectual Property (now known as Complex Frauds) unit for two years, and served in the

---

* Arnold & Porter Kaye Scholer LLP is a 1,000-plus lawyer firm with sophisticated litigation and transactional capabilities, renowned regulatory experience, and market-leading multidisciplinary practices in the life sciences and financial services industries. Our lawyers practice across more than forty practice areas, including white collar defense, litigation, corporate finance, intellectual property, real estate, tax, and bankruptcy, to help clients with complex needs, stay ahead of the global market, anticipate opportunities, and address issues that impact the very value of their businesses. From thirteen offices around the globe, we offer clients forward-looking, results-oriented solutions that resolve their U.S., international, and cross-border legal needs. Additional information is available on the firm's website, www.apks.com.

Public Corruption unit. He has extensive experience with investigations and prosecutions involving alleged violations of the Foreign Corrupt Practices Act, and cases involving allegations of public corruption, healthcare fraud, financial fraud, money laundering, cybercrime, tax fraud, and environmental crime.

John Barker is a former official of the U.S. Department of State, having served as Deputy Assistant Secretary for Nonproliferation Controls and, prior to that, as Deputy Assistant Secretary for Export Controls. He focuses his practice on national security matters including export controls and trade sanctions administered by the U.S. Department of State under the International Traffic in Arms Regulations (ITAR), the U.S. Department of Commerce under the Export Administration Regulations (EAR), the Office of Foreign Assets Control at the U.S. Department of the Treasury (OFAC), and compliance with the Foreign Corrupt Practices Act (FCPA). He helps companies and institutions establish compliance plans and obtain export authorizations, and provides representation in enforcement proceedings. He also represents companies before the Committee on Foreign Investment in the United States (CFIUS) in reviews required under the U.S. Exon-Florio statute.

Andrew Bauer is a former Assistant U.S. Attorney for the Southern District of New York, where he investigated and prosecuted cases involving a wide variety of financial crimes and healthcare fraud offenses. As a member of the Securities and Commodities Fraud Task Force, he focused primarily on securities fraud, insider trading, investment adviser fraud, market manipulation, and Foreign Corrupt Practices Act violations, among others. In addition, he handled pharmaceutical fraud cases involving allegations of off-label promotion and violations of the Anti-Kickback Statute. He has tried numerous criminal cases and briefed and argued dozens of appeals.

Mark D. Colley has substantial experience investigating and defending complex False Claims Act matters in multiple federal district and appellate courts, including qui tam proceedings and multidistrict litigation. His clients have encompassed government contractors in the aerospace, defense, IT, telecommunications, professional services, energy and healthcare sectors, as well as firms serving the intelligence community on classified programs. He helps clients navigate suspension and debarment proceedings that often arise in connection with False Claims Act cases. He also handles other government contract related court litigation and bid protests. He is a past Chair of the ABA Section of Public Contract Law.

James W. Cooper served as a senior Department of Justice attorney and Assistant U.S. Attorney for the District of Columbia, where he was the Deputy Chief of the Criminal Division and Acting Chief of the National Security Section. His practice includes the representation of business organizations and individuals through counseling, investigation, and criminal defense, including trial. His experience includes internal investigation and crisis management involving government enforcement threats, and he advises clients on alleged violations of the antitrust cartel prohibitions, the Foreign Corrupt Practices Act, export control laws, Bank Secrecy Act and anti-money laundering requirements, government fraud, environmental crime prohibitions, and others.

Sean Curran focuses his practice on the representation of companies and individuals in complex criminal cases involving a wide range of industries and backgrounds. He is experienced in defending allegations against executives or professionals of public or international fraud, bribery and corruption, including those involving senior-level journalists accused of phone hacking damages. Mr. Curran is also experienced in respect of post-conviction matters relating to confiscation, company fines, and enforcement under the provisions of the Proceeds of Crime Act 2002.

Douglas F. Curtis is an experienced trial lawyer who has also worked in-house at two global organizations overseeing ethics, compliance and investigations. He represents clients from the media, technology and financial services sectors, and has led responses to federal and state criminal and enforcement investigations. Mr. Curtis has extensive experience assisting clients in conducting legal risk assessments and implementing comprehensive compliance programs that effectively address clients' specific risk profiles.

John M. Fietkiewicz is former Counsel to the United States Attorney for the District of New Jersey, where he handled all aspects of federal white-collar investigations and prosecutions from the grand jury stage through trial or other resolution. He has also served as a Deputy Chief and Senior Litigation Counsel during his tenure at the U.S. Attorney's Office. With more than three decades of experience, Mr. Fietkiewicz has handled, both personally and as a supervisor, white collar matters involving securities fraud, corporate fraud, healthcare fraud, official corruption, bank fraud, tax fraud, cybercrime, the FCPA, defense contracting, environmental crimes, civil rights, and money laundering, as well as blue collar cases involving narcotics distribution, property crimes, and violent crimes.

Paul J. Fishman *(Head of Arnold & Porter Kaye Scholer LLP's Crisis Management and Strategic Response Team)* is a former United States Attorney for the District of New Jersey, where he was responsible for all criminal and civil matters in which the federal government was involved. Those matters included healthcare fraud; cybercrime; national security; political corruption; securities, corporate, and bank fraud; the FCPA; defense contracting; environmental crimes; tax evasion; civil rights; money laundering; and gang violence and narcotics distribution. He now counsels executives and boards of directors on complex and sensitive issues, and handles internal and government investigations, white collar criminal defense, commercial litigation, corporate compliance and governance, and appellate advocacy.

Jonathan E. Green is a former Assistant U.S. Attorney for the Eastern District of New York, where he investigated and prosecuted securities fraud and mortgage fraud and served as deputy chief of the office's General Crimes Section. He has received the Director's Award for Superior Performance by a Litigative Team and twice has been awarded the Excellence in Criminal Litigation Award. Mr. Green also served as a staff attorney and senior counsel in the New York Office of the SEC's Division of Enforcement, where he investigated and prosecuted cases involving insider trading, market manipulation, and accounting improprieties, among others.

Kathleen Harris *(Co-Chair of Arnold & Porter Kaye Scholer LLP's Anti-Corruption Practice Group)* served as a Senior Civil Servant Heading the Fraud Business Group and Head of Policy at the Serious Fraud Office (SFO), Senior Strategic Policy Adviser in the Attorney General's Office, and held positions in HM Revenue & Customs and The Revenue and Customs Prosecutions Office in the United Kingdom. She has extensive knowledge of and experience in matters involving internal and external investigations and prosecutions under the full range of potential criminal offences and sanctions. Ms. Harris is also the lead criminal adviser to GSK in the United Kingdom in the ongoing investigation by the SFO.

Daniel M. Hawke served as the Director of the SEC's Philadelphia Regional Office and as the first chief of the Division of Enforcement's Market Abuse Unit. Over the course of his sixteen years in the Enforcement Division, Mr. Hawke led numerous significant SEC enforcement investigations and worked closely with federal criminal law enforcement authorities in many high-profile parallel proceedings. He represents public companies, investment advisers, broker-dealers, and other financial institutions in responding to regulatory and enforcement inquiries, conducting internal investigations, and answering corporate governance, internal control, whistleblower, and compliance questions.

Ronald K. Henry has extensive experience across all regulatory regimes, including ITAR, EAR, and OFAC, in developing compliance programs; assisting clients with internal investigations and audits; evaluating compliance and preparing risk mitigation plans in M&A transactions; preparing voluntary and directed disclosures; defending against allegations of violations; and implementing remediation plans. Mr. Henry's clients include a wide range of corporations and individuals in the defense contracting, aerospace, and commercial sectors.

David Hibey is a former trial attorney in the National Courts Section of the U.S. Department of Justice. He is an experienced first chair trial and appellate lawyer. His experience at the Department of Justice focused upon defending the United States in more than fifty different lawsuits brought by government contractors, as well as bid protests involving contracts worth hundreds of millions dollars. In addition to his courtroom experience, Mr. Hibey has participated in numerous internal investigations for white collar clients and made presentations to prosecutors in the Criminal Fraud and Antitrust Divisions of the U.S. Department of Justice on behalf of white collar clients being investigated for criminal violations of the Sherman Act, the Foreign Corrupt Practices Act, and the Anti-Kickback Statute.

Jeffrey H. Horowitz is a former Assistant Attorney General, State of New York Office of the Attorney General. Mr. Horowitz is an experienced trial lawyer whose diverse life sciences practice includes representation of pharmaceutical manufacturers in mass tort product liability litigation and government investigations. He has extensive experience addressing a broad array of regulatory issues related to sales, marketing, and promotional practices, as well as issues related to pharmacovigilance and safety reporting. As part of his practice, Mr. Horowitz also provides compliance counseling regarding the Food, Drug and Cosmetic Act, False Claims Act, Anti-Kickback Statute, and Foreign Corrupt Practices Act, and counsels as to remediation programs.

Amy Jeffress served as the Justice Department Attaché to the U.S. Embassy in London; as Counselor to the Attorney General; and as a federal prosecutor and Chief of the National Security Section in the Attorney's Office for the District of Columbia. Ms. Jeffress represents clients in criminal defense, national security, government contracts, and compliance matters. She conducts internal investigations and advises companies and individuals on a range of white collar criminal matters, including export enforcement, FCPA, classified information, and mutual legal assistance and other international law enforcement issues, including extradition and INTERPOL notices.

Laura S. Lester represents both individual and corporate clients in global investigations and enforcement actions. She has deep experience representing pharmaceutical and medical device manufacturers and healthcare providers and has particular experience in global corruption, criminal antitrust, government contracts fraud, False Claims Act, healthcare fraud, and FDA enforcement matters.

Tirzah Lollar focuses her practice on white collar defense and government investigations, including trial work. She has defended clients in government investigations and other proceedings related to the False Claims Act, government contracts and procurement fraud, the Foreign Corrupt Practices Act, and similar global anti-corruption legislation, tax fraud, and antitrust offenses. She regularly represents clients before relevant enforcement authorities, including the Department of Justice, Securities and Exchange Commission, and Defense Criminal Investigative Service.

Craig Margolis is a former Assistant U.S. Attorney for the Eastern District of Pennsylvania, where he prosecuted Medicare/Medicaid and private payor healthcare fraud and abuse, identity theft, tax fraud, labor organization embezzlement, and environmental crime, among other areas. Mr. Margolis focuses his practice on compliance and internal investigations, with a particular emphasis on False Claims Act (FCA) claims, government contracts procurement fraud, healthcare fraud, tax and securities fraud, political corruption, and the Foreign Corrupt Practices Act across a range of industries.

Manvin S. Mayell is a former Assistant U.S. Attorney for the Southern District of New York, where he prosecuted federal False Claims Act cases, including those brought by relators alleging healthcare fraud and fraud in the financial markets. He is a recipient of the Director's Award for Superior Performance as an Assistant U.S. Attorney. Mr. Mayell has conducted numerous internal investigations involving the healthcare, defense contracting, and financial industries and has represented corporations in defending and litigating numerous False Claims Act cases, including those in the healthcare and defense contracting areas.

Aaron F. Miner has extensive experience handling white collar and regulatory litigation concerning securities and financial transactions. He has represented public companies, major financial institutions, and individuals in criminal, regulatory, and internal investigations involving alleged corruption, insider trading, market manipulation, accounting fraud, and deficient disclosures.

Evelina J. Norwinski served as an Assistant Federal Public Defender in Washington, D.C. She regularly counsels clients on corporate and regulatory compliance, internal investigations, and ethics issues and represents clients in a range of criminal and civil matters in federal and state courts and in administrative proceedings. Ms. Norwinski has particular experience assisting clients in developing and implementing strategies to address counterfeit or contraband versions of a client's products, including collaborative engagement with law enforcement agencies, litigation strategies, and longer-term regulatory or legislative strategies.

Kirk Ogrosky served as the Deputy Chief of the Fraud Section within the Criminal Division of the U.S. Department of Justice, where he managed prosecutors across the country handling False Claims Act parallel proceedings, FCPA investigations, as well as securities fraud matters. Mr. Ogrosky received the U.S. Attorney General's Award for Distinguished Service; U.S. Assistant Attorney General's Award for Special Initiative; and HHS OIG's Exceptional Achievement Award. He also served as an Assistant U.S. Attorney in the Southern District of Florida and as an Assistant Attorney General in Kentucky. He represents clients in government investigations, qui tam litigation, and trial. His clients include corporations and executives in the pharmaceutical, medical device, provider, and government contracting industries.

Paula Ramer represents major pharmaceutical and medical device companies in criminal and civil government investigations involving allegations of healthcare fraud, including off-label promotion, Anti-Kickback Statute violations, False Claims Act violations, and other issues related to sales, marketing, and pricing practices. She also conducts internal investigations and litigates cases brought under the federal False Claims Act and state laws, including state false claims acts and deceptive trade practices statutes. Ms. Ramer also has developed fraud and abuse training for clients and advises companies on their compliance programs.

Debra E. Schreck represents clients in investigations and litigation related to healthcare, securities, and antitrust. She has extensive experience representing major pharmaceutical and medical device companies in criminal and civil investigations involving allegations of healthcare fraud, including violations of the Food, Drug, and Cosmetic Act, the Anti-Kickback Statute, and the False Claims Act. She also defends clients in federal and state white collar litigation, including actions brought under the qui tam provisions of the federal False Claims Act and state statutes. Ms. Schreck also advises and

assists clients in connection with large-scale internal investigations, internal training, and regulatory and compliance issues.

Sara L. Shudofsky was the Chief of the Civil Division of the U.S. Attorney's Office for the Southern District of New York. During her earlier, sixteen-year tenure in the Civil Division, Ms. Shudofsky served as Chief of the Civil Rights Unit, Deputy Chief of the Civil Division, and Chief Appellate Attorney. Her practice focuses on financial, healthcare, and contract fraud investigations, including under the False Claims Act and the Anti-Kickback Statute; environmental litigation; challenges to the design and construction of buildings under the Americans with Disabilities Act and the Fair Housing Act; and general defensive litigation.

Jonathan L. Stern is a former Chief of the Trial Division at the District of Columbia Public Defender Service. As a trial lawyer with more than thirty years of experience, he has served as lead counsel in over forty jury trials. Mr. Stern has experience representing companies and individuals in a broad range of litigation matters, including healthcare fraud, antitrust, products liability, commercial litigation, and consumer class action litigation. Mr. Stern also has substantial experience representing clients in state and federal government investigations in the areas of healthcare fraud, antitrust, product safety, and False Claims Act litigation. Mr. Stern is a Fellow of the American College of Trial Lawyers.

Michael D. Trager *(Co-Chair, Arnold & Porter Kaye Scholer LLP's Securities Enforcement and Litigation Practice Group)* previously served in the SEC's Division of Enforcement in Washington, D.C. He defends clients in investigations by the SEC, DOJ, Congress, FINRA, PCAOB, and other agencies and regulators as well as conducts internal investigations and counsels on compliance, corporate governance, crisis management, and disclosure. His clients include public companies, financial services firms, accounting and law firms, boards and their directors, executives, and professionals.

Gregory J. Wallance is a former Assistant U.S. Attorney for the Eastern District of New York; former member of the ABSCAM prosecution team, which convicted six U.S. Congressmen and a U.S. Senator of bribery; and former member of the Ad Hoc Advisory Group to the U.S. Sentencing Commission on the Organizational Sentencing Guidelines. Mr. Wallance has represented companies and individuals in grand jury and regulatory proceedings, tried numerous criminal and civil cases and arbitrations, and argued appeals in multiple state and federal appellate courts. He has testified in Congress as an expert

on corporate governance issues. He was Chief Litigation Counsel for Kidder Peabody & Co., Inc. (while a partner at Arnold & Porter Kaye Scholer LLP).

Baruch Weiss is a former Assistant U.S. Attorney for the Southern District of New York. He served thereafter as the Assistant General Counsel for Enforcement at the Department of Treasury, where, among other things, he supervised lawyers for the Office of Foreign Assets Control. From 2003 to 2006, Mr. Weiss was Acting Deputy General Counsel, supervising the agency's 1,400 attorneys, and Associate General Counsel at the Department of Homeland Security, where he was responsible for criminal, immigration, customs, transportation security, and other matters. Mr. Weiss focuses his current practice on white collar, national security, and complex civil litigation, representing clients in criminal and SEC securities fraud investigations; homeland and national security investigations; OFAC enforcement, delisting, and licensing matters; anti-kickback investigations of the pharmaceutical industry; public corruption matters; FCPA investigations; administrative and criminal immigration enforcement actions against employers; and criminal tax evasion cases.