

How to Avoid Becoming (Inadvertently) A White-Collar Criminal

Stuart L. Gasner
Keker & Van Nest LLP
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White Collar 101

- Prosecutors are lawyers...with attitude
- Agents are cops
- Good guys and bad guys
- Prosecutors and agents make decisions by putting people/companies into cubbyholes
- Indicting the ham sandwich
- Possible to become a criminal inadvertently

“White Collar Crime”



Lying, cheating, and stealing.

That's white-collar crime in a nutshell. The term—reportedly coined in 1939—is now synonymous with the full range of frauds committed by business and government professionals.

It's not a victimless crime. A single scam can destroy a company, devastate families by wiping out their life savings, or cost investors billions of dollars (or even all three, as in the Enron case). Today's fraud schemes are more sophisticated than ever, and we are dedicated to using our skills to track down the culprits and stop scams before they start.

Rule 1

Have a real business.

Rule 1 – Have a real business

- The “more real” the better...widgets ideal
- Live by the sword of “accounting”
- Many prosecutors have trouble telling a complicated deal from a fraud
- Enron should have stuck with the pipeline business
- KPMG tax shelter cases

Rule 2

Know your customers and partners.

Rule 2 – Know your customers and partners

- Experts in the “expert network” insider trading cases
- Software companies on “innocent” side of revenue recognition swaps....”aiding and abetting”? Conspiracy?
- Need a good nose for use in “smell test”

Disaster + Disgruntled Employee =
Trouble

Rule 3 – Disaster + Disgruntled E'ee = Trouble

- A disgruntled employee is at the heart of almost any white collar case
- Odwalla and the e:coli h7:157 apple juice
- Hard to avoid unless you're perfect and don't fire anyone

Be careful with e-mails.

Rule 4 – Be careful with e-mails

- Writing them -- Quattrone case
- Deleting them -- Recent biotech case
- Failing to look hard enough for them -- Zebulake

Read “Bonfire of the Vanities”
by Tom Wolfe.

Rule 5 – Bonfire of the Vanities

- Wrong place, wrong time + political interest = trouble
- Rupert Murdoch and cellphone hacking
- Options backdating and WSJ's Pulitzer
- 2008 Credit Crisis

Rein in your corporate aggression.

Rule 6 – Corporate aggression

- Tough talk looks bad poster-sized
- Especially in antitrust and securities cases
- Civics class competition the goal

Think twice about
“clearing your name.”

Rule 7 – “Clearing your name”

- Roger Clemens
- The early statements are the ones that haunt you
- The “irony factor”
- Let things blow over
- Good PR and bad PR

Avoid bumper sticker behavior.

Rule 8 – Avoid bumper sticker behavior

- “Put profits over safety”
- “Lined pockets at shareholder expense”
- “Turned a blind eye”
- “Ignored red flags”
- The split screen poster problem

The cover-up is worse than the crime.

Rule 9 – Coverup worse than the crime

- Easier to prove than the crime
- Tempting with electronic evidence
- A single email deletion enough
- The Watergate 18-minute gap

Being lucky helps.

Rule 10 – Luck plays a role

- “I’d rather be lucky than smart”
- Being on the compensation committee during the options backdating years
- The Strauss-Kahn housekeeper



Stuart Gasner centers his practice in the areas of white collar criminal and securities defense, intellectual property litigation and complex corporate disputes.

A former federal prosecutor, Mr. Gasner has tried more than 20 cases to verdict before juries across the United States.

P: 415-676-2209

E: sgasner@kvn.com