

## **Assignment #1**

### **(WCC in Your Hometown)**

Stuart Green wrote a book about White Collar Crime (WCC) called "Lying, Cheating and Stealing." WCC is so pervasive these days that we can all tell a tale from almost anywhere.

**YOUR ASSIGNMENT:** Go to your hometown, or some other geographic location familiar to you, and scan the news for a recent or noteworthy WCC matter.

(\*Remember that the last "C" in WCC stands for "Crime" - so make sure that one has been, or will be, alleged, committed or tried. Let some other course worry about mere civil matters).

Identify a WCC from your geographic area and report to the class in a posting **on TWEN's Forums**. Your assignment is to post on the WCC in terms of *lying, cheating and/or stealing*. This posting should be no more than 2 paragraphs, with the 1st paragraph devoted to the background and the players and the 2nd paragraph devoted to *your take* about how your WCC matter dovetails with the lying, cheating and/or stealing mantra, or not.



## **Assignment #4**

### **(WCC Investigative Tools)**

Are we a bit ahead of ourselves? We discussed WCC from our hometown before our first class meeting. We read indictments and guilty plea memoranda in our first reading. Before our second class, we discussed prosecutorial misconduct, “over-criminalization” and sentencing on TWEN. It seems that the course has been highly litigation focused (it is as if you have a former prosecutor as a professor?!?). What happened to the investigation? You know, the horse that comes before the cart?

What else is out there for investigatory tools in WCC cases? What are the other *investigatory tools* available to us as we look into potentially criminal behavior that could apply to WCC? Sounds like a discussion topic to me.

**YOUR ASSIGNMENT:** Let's discuss **on TWEN's Forums** the investigatory tools used in WCC investigations. You can post about it from either side – describe the tool itself, discuss problems with some tools, discuss the use of these tools in specific cases, etc.

Why do I mean by investigatory tools, you ask? *Think: anything investigators do to further an investigation in a WCC case before an indictment.*

For starters, look into . . .

- grand jury subpoenas, administrative subpoenas, informal letter requests . . .
- mail covers, wire taps, pen registers, ISP information, cell tower records...
- search warrants, recorded conversations, ruses, undercover (UC) work...
- informal interviews, proffer sessions, cooperating witnesses...
- and publically available info (ahhh, "The Agent Who Googled" and lived to tell about it)

and there is more – do feel free to research and offer your own contributions!

## **(Memorandum of Interview – “MOI”)**

We will interview a key witness in our simulated WCC fact pattern in class. As you might imagine, you plan for a witness interview by carefully reviewing the existing evidence and outlining your questions. If you represent the witness, then you will “pre-interview” and prepare the witness for the interview. We will work on some of these skills during this course.

This assignment, however, focuses on another skill – your work after a witness interview. For instance, during the interview you take detailed notes, isolate follow up questions, create to-do lists for the witness and you, identify other witnesses and important documents and evaluate the witness’ personality, credibility, knowledge and relative expertise. You will do this during the witness interview *in class*. Most importantly, your work above will culminate with a memorandum of interview or a “MOI.” The MOI is both a comprehensive recitation of facts provided by the witness and your “mental impressions” of the witness (*see* Attorney Work Product Doctrine). In some ways, the MOI is a memo to yourself or others on your team about the witness and the witness’ contributions to the case.

**YOUR ASSIGNMENT:** Draft a memorandum of interview of the witness interviewed during class and file the MOI on **TWEN’s Assignment Drop Box** by the deadline on the syllabus.

*\*\*More information and instructions will be provided before this assignment is due.*

## **Assignment #10**

### **(Explain Your Case: Prosecution/Client Memoranda)**

At some point(s) during a WCC investigation, you must synthesize the evidence – the prospective testimony and documents – against the applicable law. As a WCC prosecutor, a U.S. Attorney’s Office policy will require that you organize a WCC investigation this way before indictment – this is often called a “prosecution memorandum.” On the other side, similarly, you will draft memoranda for your client (or for the “file” to assist with your representation of, and consultation with, your client). Organizing the factual evidence and the legal standards is a key skill in WCC practice.

**YOUR ASSIGNMENT:** The class will be divided into two groups – government attorneys and defense attorneys. You will prepare a prosecution or client memorandum with the facts available to you as of the deadline of the assignment.

**On TWEN’s Assignment Box by the deadline,** one group will file a prosecution memorandum and the other group will file a client outline as a defense attorney.

*\*\*More information and instructions will be provided before this assignment is due.*

## Assignment #12

### (Exploring Sentencing in WCC Cases)

We are discussing the negotiations and sentencing results in WCC cases. In the next few weeks, we will be entering into discussions with opposing counsel. For those discussion to be well-informed, we need to know the points of negotiation and as much as we can about the "end game" in WCC - sentencing results. Sentencing outcomes drive the earliest conversations in WCC cases and the decisions to speak to the government about a defendant's conduct, enter into a proffer agreement, plead guilty and cooperate with the government. Please post about these discussions/negotiations between the attorneys and the outcomes that drive them.

**YOUR ASSIGNMENT:** Select a WCC case from research (or in the news) that speaks to an aspect of the attorneys' discussion/negotiations in a WCC or the potential outcomes that could inform those negotiations – post **on TWEN's forums** one paragraph about a takeaway that could assist in our discussions/negotiations in our WCC cases. For example, post about a case that involved the following:

- proffers: letters, sessions, bias on cross examination . . .
- violations of a proffer: knowing the defendant has not provided a missing detail (*see* the 60 minutes piece about the cooperator in the UBS case [here](#))
- non-prosecution and deferred prosecution agreements
- charge bargaining: lobbying to be charged with lesser offense
- attorney proffers: attorney describes offense conduct that a defendant would be willing to share/cooperate
- Plea negotiations: plea agreements, cooperation, appellate waivers, [FRCrP 11\(c\)](#)
- Pre-sentencing: US probation, Presentence Report (PSR), objections to PSR,
- Sentencing: guidelines, variances, *US v. Booker* -"advisory guidelines" . . .
- sentencing recommendations: or agreements; guidelines, [FRCrP Rule 11\(c\)](#)
- [18 USC 3553\(a\)](#) considerations by the court (and argued by attorneys)
- Cooperation: "substantial assistance to the government," [USSG 5K1.1](#),
- collateral consequences: to pleading guilty/cooperating (licensing, job, etc.)

*\*\*More information and instructions will be provided before this assignment is due.*



## **(Your Bargaining Position- Sentencing Memoranda)**

In a WCC case, you must understand the potential outcomes for well-informed negotiations. As a WCC prosecutor, a U.S. Attorney's Office policy will require that you to outline prospective outcomes before indictment. Defense attorneys, similarly, will outline a client's "exposure" continually throughout a WCC case. Evaluating outcomes and possible sentencing exposure is another key skill in WCC practice that drives many discussions and negotiations between WCC attorneys.

**YOUR ASSIGNMENT:** The class will be divided into two groups – government attorneys and defense attorneys. You will prepare an internal and confidential sentencing memorandum with the facts available to you as of the deadline of the assignment.

**On TWEN's Assignment Box by the deadline,** one group will file an internal sentencing memorandum as a prosecutor to supervisors in the U.S. Attorney's Office and the other group will file an internal sentencing memorandum as a defense attorney to your client.

*\*\*More information and instructions will be provided before this assignment is due.*

