

## Preface to the Second Edition

Critical themes of our first edition were the historically contingent nature of federal enforcement institutional interactions and the constant evolution of federal criminal law itself—courtesy of courts, prosecutors, and sometimes even Congress. It therefore seems like we waited a long time—a whole four years—to write a second edition of this casebook, and not surprising that we’ve made some significant changes. Among the more significant of those changes are the following:

- In Chapter 2, some reorganization of the domestic Commerce Clause section, and exploration of the Supreme Court’s aborted engagement with the Treaty Power, in *Bond v. United States*, 134 S. Ct. 2077 (2014).
- In Chapter 3, inclusion of the Court’s most recent deployment of the “rule of lenity,” in *Yates v. United States*, 135 S. Ct. 1074, 1078 (2015) (the “tangible” fish case), and reorganization of the *mens rea* section, with an assist from *Elonis v. United States*, 135 S. Ct. 2001 (2015).
- In Chapter 4, revisions to highlight the growing tension between the cases precluding mail fraud liability for deceit that “merely” causes the victim to enter into a transaction and those permitting liability an intangible property “right to control” theory.
- In Chapter 6, considerable revision to the “under color of official right” extortion sections to accommodate *McDonnell v. United States*, 136 S. Ct. 2355 (2016), and lower court efforts to apply it. We also found *Ocasio v. United States*, 136 S. Ct. 1423 (2016), a useful vehicle for exploring the interaction between “under color of official right” complicity and victim status in “fear of economic loss” extortion. And even though it is still pending on appeal in the Third Circuit, *United States v. Baroni* (D.N.J. 2017) (the “Bridgagate Case”), offers an interesting use of the “misapplication” prong of section 666.

- In Chapter 7, the “Bridgewater Case” returns as a civil rights prosecution. And we cover some of the cases finally emerging from the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009 (18 U.S.C. § 249), including the prosecution of Dylan Roof, and *United States v. Miller*, 767 F.3d 585 (6th Cir. 2014).
- In Chapter 8, the Aiding and Abetting discussion now includes *Rosemond v. United States*, 134 S. Ct. 1246 (2014). We also added a section on Accessory after the Fact and Misprision of Felony liability, with an interesting case out of the Ninth Circuit, *United States v. Olson*, 856 F.3d 1216 (9th Cir. 2017). The Material Support of Terrorism section has been substantially changed, with new cases and analysis.
- Chapter 9 required quite a few significant changes. We cover the Opioid Crisis and enforcement responses to it. We explore the Court’s analysis of analogue prosecutions in *McFadden v. United States*, 135 S. Ct. 2298 (2015), and added substantial matter on “marijuana prosecutions in changing times.” Extensive attention is given to Congress’s use of its appropriations power to limit the federal prosecution of medicinal marijuana cases in states that allow such use (even as Congress has refused to change the sweeping federal marijuana prohibition), and to *United States v. Kleinman*, 880 F.3d 1020 (9th Cir. 2017), interpreting that provision. We’ve also added *United States v. Campbell*, 743 F.3d 802 (11th Cir. 2014), a case about the Maritime Drug Law Enforcement Act, which is an increasing source of business for federal courts. In the narcotics sentencing section, we added a unit on prior felony informations and their use for plea bargaining leverage, as discussed in *United States v. Kupa*, 976 F. Supp. 417 (E.D.N.Y. 2013). And we added discussions of the charging policies of Attorneys General Holder and Sessions, and of disparate judicial analyses of the purposes behind narcotics mandatory minimums.
- Chapter 10 extends our exploration of the post-*Booker* world to 2018.
- Chapter 11 extends our discussion of corporate liability to include the most recent judicial efforts to oversee deferred prosecution agreements, and the Justice Department’s newly asserted interest in prosecuting individuals rather than firms.
- Chapter 12 has been reorganized, with more attention given to the emerging clash between *Chevron* deference and the rule of lenity—a clash in which a growing number of Justices have taken considerable interest, and which may be in play next Term.

But the biggest change is that this casebook is free for those who download it as an e-book. We are grateful to Joe Terry, the Legal Education

Publisher at Wolters Kluwer Legal & Regulatory U.S., for not just allowing us to do this but for his enthusiastic support of the project. We are grateful to Wolters Kluwer as well, for an act of pure service to law students, law teachers, and those in the broader legal community. Indeed, we are quite looking forward to seeing how our efforts to make sense of federal criminal law get used in the world where it effectively gets made.

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