Women Lead the Way in White-Collar Law

STEIN MITCHELL MUSE CIPOLLONE & BEATO OF COUNSEL ATTORNEY JULIE O’SULLIVAN MENTIONED AND QUOTED AS A LEADING WHITE COLLAR ATTORNEY

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It’s still a man’s world in many sectors of the legal profession, as it is in much of corporate America. It’s true for prosecutors, for white-collar defense partners at major firms and in executive suites. But when it comes to researching and being an authoritative voice of study about white-collar crime, women are taking the lead.

The roster of faculty members who have written the books and articles establishing white-collar crime as an important field of study is made up largely of women who combine substantial legal practice experience with strong academic credentials. Among the notable women in the field:

- Kathleen F. Brickey of Washington University in St. Louis, the dean of the field, having written the first law school text on the subject and later a multivolume treatise that came out long before corporate criminal liability became a topic of public debate.
- Sara Sun Beale of Duke University, who has written extensively on federal criminal law and federal grand jury practice, a crucial component in any white-collar crime investigation.
- Sandra D. Jordan of the Charlotte School of Law, who brings a decade of experience as a federal prosecutor to her work as a teacher and a co-author.
- Julie Rose O’Sullivan of Georgetown, who clerked for Justice Sandra Day O’Connor and worked for the leading New York law firm Davis Polk before joining the United States attorney’s office in Manhattan, after which she published her own book for students who study white-collar crime.
- Pamela Bucy Pierson, whose experience as a federal prosecutor before she joined the University of Alabama has helped her write many influential publications on health care fraud and corporate criminal liability.
- Ellen S. Podgor of Stetson University, a former state prosecutor who has since become a leader in the defense bar and co-author of numerous works on white-collar crime and international criminal law (I am a co-author of several books with Ms. Podgor).
The story of these women’s career paths is intertwined with how white-collar crime evolved into a major practice area over the last 20 years. They attended law school when the number of female students was expanding significantly.

“The enrollment of women in law schools shot up rapidly” in the 1970s, Ms. Beale said. Her class “was 10 percent women for the first time ever at Michigan, and the trend of more women increased thereafter.”

When they graduated, many started out as federal prosecutors. Ms. Jordan, for example, was the second woman to work in the United States attorney’s office in Pittsburgh, and later headed its white-collar prosecution unit. Ms. Beale, who worked in the office of legal counsel at the Department of Justice said, “As the number of women coming out of law school rose, D.O.J. became relatively open to hiring women.”

Working for the government has a significant benefit for any young lawyer, who is typically given responsibility for cases from the first day. Thus, being a prosecutor brought training and experience that might not have been available in private practice.

In the 1970s and early 1980s, few large law firms had robust criminal defense practices. Ms. Podgor points out that this was “an era when the large law firms did not want to mention the word and instead either referred the cases elsewhere or chose to call their sections ‘special matters.’”

In today’s era of corporate fraud, bribery and other financial misdeeds, the opposite is true. Many white-shoe firms generate outsize billable hours paid by client companies that are having to address a multitude of internal and external inquiries.

But 30 years ago, women found that they could be trailblazers in the field of white-collar crime.

“Guns and drugs were a lot more exciting and got much higher priority at D.O.J.,” Ms. Pierson said of the seven years she was a prosecutor, starting in 1980. “So, as the low person on the totem pole, the white-collar stuff came to me.”

The work proved to be fascinating to her.

“It was like being an investigative reporter — you never knew where in the world the fraud was going to end,” Ms. Pierson said.

When many of these women moved to teaching, white-collar crime was still largely considered to be a minor subset of criminal law. They set about to change that.

In 1989, when she started teaching a white-collar crime class, Ms. Jordan said that only eight or so law schools even offered a course in such crimes.
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Many of the women wrote the pioneering articles and books about corporate criminal liability, grand jury practice and the differences between corporate managers who are defendants and ordinary street criminals.

Unlike robberies or murders, which usually involve eyewitnesses and forensic evidence, white-collar cases are about documents and piecing together circumstantial evidence of criminal intent. Until the 1990s, these were issues that had received scant attention in the legal literature.

Because white-collar crime didn’t really exist as an area of study when they started teaching and writing, the women had no glass ceiling to break through. Instead, they set the standard, and their influence on the white-collar bar continues to be significant.

Nothing defines an area of study in law schools like a casebook, or the legal texts involving court rulings on cases. Each of these women has published books aimed at instructing law students, and their students have gone on to fill the ranks of prosecutors and defense counsel now involved in white-collar cases.

At a judicial conference in 2011, Chief Justice John G. Roberts Jr. said about law reviews that “the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something, which I’m sure was of great interest to the academic that wrote it, but isn’t of much help to the bar.”

That criticism could not be further from the truth about the writings from the leading white-collar academics.

Many are continuing to wield influence. Ms. Beale serves as the reporter for the committee that updates the Federal Rules of Criminal Procedure, while Ms. Jordan headed the Pennsylvania Supreme Court committee responsible for the state’s evidence rules.

Ms. Pierson wrote a leading treatise on health care fraud, and Ms. Podgor started an intensive training program described as a “boot camp” for defense practitioners. Ms. O’Sullivan has worked with the United States Sentencing Commission and the American Bar Association on projects related to corporate sentencing and guilty pleas.

Studying and practicing in the white-collar field has been appealing to them because of the high stakes in the cases.

Ms. O’Sullivan said, “If I was going to be redacting documents at 2 a.m. on a Sunday night, if I was going to miss Thanksgiving to write a brief, I wanted it to truly matter to someone.”

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