

White Collar Crime

This article focuses on those accused of embezzlement or grand larceny from an employer, as those offenses comprise the vast majority of white collar cases. However, a competent defense of other varieties of white collar cases requires similar preparation.

Many embezzlement investigations begin months, and often years, after the alleged offense. An organization's officer reviews bank records or employee expenditure reports and discovers that money is "missing" from their records. Frequently, an employee with responsibility for those records will become a suspect and the organization will conduct an internal investigation. Once an employee learns of such an investigation, engaging legal counsel is important, as once a criminal investigation begins, the results of the internal investigation, especially interviews with the suspected employee, will form the foundation of the criminal case. Having an attorney before the organization reports the matter to law enforcement can prevent the matter from reaching the prosecutorial stage, at which point halting the process becomes significantly more difficult. An attorney retained prior to the criminal investigation should communicate directly with the organization's investigators, while ensuring that the client does not. If conditions are favorable, the attorney may be able to close the matter entirely, or at least come to a civil settlement with the company.

If representation does not begin until after the commencement of a criminal investigation, the protective tools available to all criminal suspects are available as set out in the separate article on Criminal Defense in this website. The "document-heavy" nature of white collar cases makes the discovery process particularly important in this context. At the circuit court level, the accused is entitled to examine the documents comprising the Commonwealth's case. Many defense attorneys, for various reasons, rely heavily on the Commonwealth's representations of the content and importance of the records. This is a mistake. Although one can assume the Commonwealth's Attorney is providing reliable information, a defense attorney cannot adequately defend a white collar case without intimate familiarity with the relevant documents. For example, business records' strength as evidence stems from their presumed reliability. However, a careful examination of the records can uncover an error within a document that an attorney may use to impeach the credibility of the entire body of evidence. In other situations, records will not be able to "speak for themselves", and awareness of their ambiguity allows for a variety of effective strategies at trial.

The primary reason that pre-trial analysis of the Commonwealth's documentary evidence is imperative to a successful defense is the situation mentioned above: the most common scenario in a white collar case is one where the accused finds himself the target of a criminal investigation because his name appears on documents purporting to demonstrate a loss to the organization. While these documents may show that the accused is responsible for the loss, mere negligent handling of an organization's funds is insufficient to establish criminal liability. The innocent explanation will be near useless, however, if the defense attorney lacks the familiarity with the organization's business records to ensure the rebuttal of each allegedly incriminating document. Furthermore, in those cases where the accused was a supervisor of those actually handling the organization's funds, the documents may show that the accused was nothing more than a lax supervisor, and simply lacked awareness that his workers were causing the organization to lose money. Again, negligent supervision is not enough to create criminal liability, but a defense attorney whose initial confrontation of such documents occurs at trial will end playing catch-up rather than aggressively controlling the depiction of the Commonwealth's evidence.

White collar cases are labor intensive. Taking the time to thoroughly examine the pertinent documents will pay dividends during the investigation, and especially, the prosecution. Failure to do so can end in preventable convictions.

To make an appointment, please call 757-229-1910, or email
Gilbert A. Bartlett at gbartlett@bartlettspirn.com,
Stuart D. Spirn at stuspirn@bartlettspirn.com or
Darley Richard Twiddy at dtwiddy@bartlettspirn.com