Former New Jersey Gov. Chris Christie's ex-deputy chief of staff Bridget Anne Kelly (center), her lawyer Michael Critchley (front right), and former Christie top Port Authority official Bill Baroni (far left) leave the Newark federal courthouse on November 3, 2016. Kelly and Baroni were convicted of conspiracy and fraud for conspiring to close lanes and create traffic jams on the George Washington Bridge. The U.S. Supreme Court threw out the convictions.

Richard Harbus/Polaris/Newscom

Guilty Until Proven Guilty:

The Prosecution of Public Corruption and White Collar Crime

Despite being a unanimous decision, the U.S. Supreme Court's decision *Kelly v. United States* should not surprise anyone. While it diminishes the power of federal prosecutors in their hot pursuit of corrupt officials and white collar executives, it also ensures that federal courts can no longer liberally construe the criminal code's statutory language in an effort to punish behavior that may be wrong but fails to meet the minimum threshold of criminality. As one would expect, the complete reversal of convictions stemming from corrupt behavior was not well received. "Once again, the Supreme Court has thrown out federal criminal convictions of public officials who, by their own admission, abused their power for corrupt and illegitimate purposes," stated Steve Vladeck, CNN Supreme Court analyst and law professor at the University of Texas.[1] The Court's decision not only reversed a Third Circuit ruling affirming the convictions, but also the district court jury that heard the evidence and reached a verdict finding defendants guilty on all counts. The Bridgegate Scandal, as it grew to be called, was a complete debacle that spawned from political power, greed, and revenge and culminated in a failed potential presidential campaign and complete deterioration of public trust. All these things were true, but the actions the defendants were arrested for simply were not criminal.

The Facts Surrounding Bridgegate

The underlying facts are simple. The Port Authority of New York and New Jersey operates, among other things, New York-area bridges. The George Washington Bridge, one of the largest and busiest bridges in the world, connects Fort Lee, New Jersey, with New York City. The bridge has 12 toll lanes on the upper level where cars from Fort Lee as well as other highways merge together. In an effort to alleviate the traffic from Fort Lee, three lanes were designated for Fort Lee traffic only, and had been for years, until the day of the lane closures. The closures were made as retaliation against Mark Sokolich, the Democratic mayor of Fort Lee, for his refusal to support New Jersey Gov. Chris Christie's re-election bid that year and sinking Christie's opportunity to make a run at the White House.

Following Sokolich's rebuff, Bridget Anne Kelly reached out to David Wildstein, appointed to the Port Authority by Bill Baroni, and the pair pursued their pound of flesh. The fruits of the public officials' scheme culminated with Wildstein ordering Port Authority workers to cut the lanes on the bridge from three to one under the guise that it was part of a fictitious traffic study. A leaked email from Kelly to Wildstein stating that it was "time for some traffic problems in Fort Lee" pulled back the curtain. The closures led to four days of congestion, causing a catastrophe for commuters. Later, Kelly, a former aide to then-Gov. Christie, and Baroni, a former Port Authority official appointed by Christie,

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were indicted and ultimately convicted for their role in a scheme to close lanes on the George Washington Bridge to create an epic traffic jam in Fort Lee.

Conviction and Appeals

Under federal law, fraud requires proof that someone lied or schemed *to obtain money or property*. The later element, "to obtain money or property," would become the point of contention in *Kelly*. According to federal prosecutors, the property in this case was the two lanes that were shut down, causing the congestion. In addition to the smoking gun emails, Wildstein testified as the government's star witness. Although Christie was not charged, Kelly and Baroni were fired and prosecuted for wire fraud, fraud on a federally funded program, and conspiracy. The evidence was overwhelming, and the jury unanimously convicted Kelly and Baroni on all counts. Kelly received an 18-month sentence, which was reduced to 13 months on appeal.[2] Baroni was initially sentenced to two years in prison, which was cut to 18 months by the Third Circuit.[3] Kelly was allowed to remain free while the case was on appeal. Baroni had already started his sentence, but he was subsequently released after serving three months when the Supreme Court granted certiorari.

The Underlying Statutes

The defendants could not deny what they had done, but whether their actions satisfied the elements of the statutes at issue was another story. The government charged Kelly and Baroni under 18 U.S.C. § 1343 and 18 U.S.C. § 666, wire fraud and theft or bribery concerning programs receiving federal funds, respectively. Under 18 U.S.C. § 1343, it is a crime to devise any scheme or artifice to defraud, or *for obtaining money or property* by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice. Similarly, under 18 U.S.C. § 666, it is prohibited for an agent of the government to embezzle, steal, or obtain by fraud, *property* that is owned or under the case, custody, or control of that government. The portion of the statutes that the Supreme Court focused on and which led to the reversal of the convictions was "obtaining money or property."

To secure a mail or wire fraud conviction, the government was required to prove:

1. the defendant knowingly devised or participated in a scheme to defraud another out of money or property;
2. the defendant did so with the intent to defraud;
3. the scheme to defraud involved a materially false or fraudulent pretense or promise; and
4. that for the purpose of carrying out the scheme or attempting to do so, the defendant caused interstate wire communications to take place in the manner charged in the particular count.[4]

Conversely, to a secure a conviction under § 666, the government was required to prove:

1. the defendant was an agent of a government agency;
2. the defendant knowingly and without authority converted use of property to someone other than the rightful owner, or intentionally misapplied property;
3. that the property was owned by, or was under the care, custody, and control of the government agency;
4. the property had a value of $5,000 or more;
5. that the government agency, in a one-year period, received benefits of more than $10,000 under any Federal program involving a grant, contract subsidy, loan, guarantee, insurance or other assistance.[5]

A Brief History of White Collar Prosecutions

To have more of an appreciation for the *Kelly* decision, it is important to review the backstory of white collar practice as well as the Court's strict interpretation of the white collar criminal statutes.

As far as the law is concerned, white collar criminal defense is a relatively new practice area. In his book *The Chickenshit Club: Why the Justice Department Fails to Prosecute Executives*, journalist and Pulitzer Prize winner Jesse Eisinger describes the history and origins of white collar criminal defense and its exponential growth at some of the country's most prestigious law firms. He writes that prior to the 1970s large law firms did not represent criminal defendants because the high-hat attorneys at those firms viewed such a practice as beneath them.[6]

That notion has not necessarily changed when it comes to violent or drug crimes. The "elite" firms still do not handle such cases. However, over time, unlike its blue collar counterpart, the perception of white collar criminal defense did change. As businesses were more regulated, as fiduciary duties grew more stringent, and as technological advances allowed for more sophisticated schemes like securities fraud, corporate criminal investigations increased. As top corporate officers became investigated by the Securities and Exchange Commission or the Department of Justice, white collar criminal practices were born. Once viewed as a lowbrow industry, white collar criminal defense practices would grow at renowned firms that represented rich, powerful, household names.

Initially, prosecutors only charged individuals with criminal offenses. However, over time, prosecutors started focusing on a higher class of criminal, and corporations started facing criminal liability. Then, in an effort to be proactive, corporations started policing themselves.[7] Big Law realized that the government was investigating some of their tonier clients, and the law firms saw it as an opportunity. While representing executives in criminal cases can be lucrative, such cases were few and far between, so attorneys set their sights on the internal investigations, which would drive consistent revenue to the firm. Companies would hire law firms to conduct internal investigations, resulting in hefty legal fees.[8] Law firms representing corporations could not represent individual executives from those same corporations due to conflict, which paved the way for other law firms getting involved in representing the conglomerate's C-suite employees charged as co-defendants.

Adding to the divide between white collar criminal lawyers and the rest of the criminal bar was the fact that the white collar *defendants* also viewed themselves differently from other defendants. An indicted CFO of a publicly traded company or a state legislator under investigation for a bribery scheme will not want to be represented by an attorney who also represents those accused of domestic abuse, drug offens-

es, and sexual assault. As prosecutions increased, there was a demand for lawyers with not only the particularized knowledge of white collar criminal law, but also the cachet of only representing people like them.

According to Eisinger, the increase in regulation also contributed to the increase in white collar prosecutions. After the stock market crash of 1929, Congress increased regulation and created the Securities and Exchange Commission in 1934.[9] As powerful as the SEC became, it could not bring criminal charges. Its primary purpose is to enforce federal securities laws. It can charge civil cases but can also refer cases to the Department of Justice when a securities law violation turns into a criminal act. The SEC worked with the Southern District of New York to go after top law firms, accounting firms, and executives who committed corporate frauds.[10] Since 2001, more than 250 federal prosecutions have involved large corporations such as AIG, Google, Pfizer, and JP Morgan Chase, just to name a few.[11]

White Collar Defendants Deprived of Due Process

The term "white collar crime" was coined by sociologist Edwin Sutherland in his 1939 presidential address to the American Sociological Association, who defined crime based on the perpetrator's class, rather than the actual offense committed. Per Sutherland, "White collar crime is crime committed by a person of respectability and high social status in the course of his occupation."[12] Until then, law enforcement focused primarily on "street crimes" and the consensus was that poverty and socioeconomic class were contributing factors. According to the Justice Department, white collar offenses are made up of nonviolent illegal activities that involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention. But with this broad definition, many offenses falling under it would be small and insignificant. Government prosecutions are far more likely to indict the high ranking executives and businessmen instead of a middle class, midlevel employee involved in a minor fraud.

Here are just a few examples of executives, public officials, and other household names charged with white collar criminal offenses: Martha Stewart, Wesley Snipes, Jeffrey Skilling, Rod Blagojevich, George Ryan, Bernie Madoff, and FIFA executives across the country. A survey of people defining a white collar defendant will evoke thoughts of a business titan or renowned politician, and also will likely evoke feelings of anger at the temerity displayed by the accused, with any thought of a presumption of innocence being fleeting and remote. This fleeting presumption of innocence is already recognized as a significantly problematic characteristic of the justice system.

Many people feel that the justice system is unfair due to the seemingly historic bias that juries wield against "likely" defendants. If a jury presumes that a typical white collar defendant is rich, a cheater, or achieved success through dishonest means, then — regardless of the true nature of the individual on trial — the jury will presume that the defendant is guilty. Certainly, the erosion of any defendant's presumption of innocence poses a critical threat to the right to a fair trial. Also adding to the furor is the lack of corporate accountability. From 2002 to 2016, the Justice Department entered into 419 deferred prosecution and nonprosecution agreements with corporations, while there had been only 18 such agreements in the prior decade.[13] In short, what the public sees is rich, powerful

individuals being represented by expensive lawyers at elite law firms that have the resources to litigate a case all the way to the U.S. Supreme Court.

Statutory History of Wire Fraud and Honest Services Fraud

The development of wire fraud statutes began as a way for the government to punish those involved in deceptive or dishonest practices to acquire incredible personal benefits. As described in a 2019 Congressional Research Service report, "the mail fraud statute emerged in the late 19th century as a means of preventing 'city slickers' from using the mail to cheat guileless 'country folks.'"[14] The difference between mail and wire fraud statutes comes down to the method used to deceive — "the mail in the case of mail fraud and wire communication in the case of wire fraud."[15]

The history of the development of the honest services fraud statute is not linear; this history is often described as a longstanding tug-o-war between Congress and the courts.[16] Initially, federal courts were in the practice of broadly interpreting the provisions of the federal fraud statute, eventually interpreting the statute as providing for an intangible right to "honest services," including services provided by public officials.[17] Notwithstanding this seemingly popular trend, the Supreme Court took on the issue of defining honest services and the overall scope of the federal fraud statute in *McNally v. United States*.[18] In *McNally*, the Supreme Court declined to uphold the decisions of the lower federal courts that had interpreted the federal fraud statute as including a prohibition against "honest services fraud," instead holding that "the intangible right of *honest services* was too ambiguous to give rise to fraud liability. …"[19]

In direct response to the Supreme Court's limitation, Congress added a subsequent provision to the federal fraud statute by defining the term "scheme or artifice to defraud" as inclusive of "a scheme or artifice to deprive another of the intangible right of honest services."[20] This new definition incorporated into the federal fraud statute effectively reversed the decision of the Supreme Court in *McNally*, and demonstrated a strong, publicly held sentiment that people can in fact be fraudulently deprived of honest services.

Rather than laying the question to rest, however, the revisions included in 18 U.S.C. § 1346 led to a circuit split amongst the federal courts turned on the issue of *vagueness* of the statute. The Supreme Court resolved this circuit split in *Skilling v. United States*, which — once again — limited the breadth of the "honest services" language.[21] Specifically, in *Skilling*, the Supreme Court limited the scope of "honest services" fraud to those cases that deal with bribes and kickbacks.[22] In order to arrive at this conclusion, the Supreme Court was forced to consider any reasonable construction of the statute that would survive a challenge of unconstitutionality.[23] In fact, the Supreme Court's majority opinion specifically reasoned that "Congress' reversal of *McNally* and reinstatement of the honest services doctrine, we conclude, can and should be salvaged by confining its scope to the core pre-*McNally* applications."[24] Through its own examination of the pre-*McNally* case law, the Supreme Court determined that most cases concerning "honest services" fraud dealt with bribes and kickbacks, and so held that limiting the honest services fraud statute to such dealings was necessary.[25]

Notwithstanding the highest court's limitation in the prosecution of public officials for "honest services," prosecutors have recently been able to successfully utilize the honest services fraud statute for the prosecution of self-benefiting individuals. In 2019, for example, federal prosecutors took aim at the practice of parents paying brides to colleges and universities to get their otherwise underqualified children through the admissions process. In a single day, federal prosecutors charged "33 parents and 13 coaches with engaging in a long-running scheme to get children into colleges by gaming the admissions process."[26] What perhaps aided the nationwide attention to this scandal were the high-profile names associated with the charges, including famous Hollywood celebrities Lori Loughlin and Felicity Huffman.[27]

While the college admission scandal had nothing to do with "honest services" provided by public officials, the prosecutions certainly focused their aim at the fraudulently acquired "intangible right" to honest services, namely the right to a fair college admissions process for all applicants. In a sharp contrast to precedent regarding the "intangible right" of citizens to "honest" political practices, the courts seem to have allowed prosecutors the ability to charge nonpublic officials performing nonpublic acts for the acquisition of *privately held* intangible rights or "property" as violators of the federal fraud statute, including the prosecution of "a scheme or artifice to deprive another of the intangible right of honest services."[28] The recent prosecution of these private individuals has proved that the prohibition against fraudulently obtaining "honest services" continues to give the government reliable ammunition in the prosecution of private individuals (thus far, as litigation is still pending for many of the defendants).

From *McNally* to *McDonnell* and Everything in Between

Despite the reversal in *Kelly*, the Supreme Court spared no words, calling the defendants' behavior deceptive and corrupt, and saying they abused the power of their office.[29] The Supreme Court relied on two cases in particular, *McNally* (1987) and *McDonnell* (2016).

In *McNally*, the defendants (a former Kentucky official, a former chairman of the Commonwealth's Democratic Party, and another individual) faced charges of violating the federal mail fraud statute, 18 U.S.C. § 1341. In that case, like many before it, the prosecution advanced a theory that "a public official owes a fiduciary duty to the public, and misuse of his office for private gain is a fraud."[30] Under the same logic, "an individual without formal office may be held to be a public fiduciary if others rely on him 'because of a special relationship in the government' and he in fact makes governmental decisions."[31]

Under the arguments advanced by the prosecution, a conviction would (and in fact did, at both the district and circuit court levels) stand if the prosecution could prove that the defendants "devised a scheme … to defraud the citizens and government of Kentucky of their right to have the Commonwealth's affairs conducted honestly. …"[32] Notwithstanding the upheld convictions, the U.S. Supreme Court reversed the lower court decisions and held that while "[t]he mail fraud statute clearly protects property rights, [it] does not refer to the intangible right of the citizenry to good government."[33]

As the Supreme Court acknowledges in *Kelly v. United States,* however, "Congress responded to [*McNally v. United States*] by enacting a law barring fraudulent schemes 'to deprive another of the intangible right of honest services' — regardless of whether the scheme sought to divest the victim of any property."[34] This legislative change enacted by Congress echoed Justice Stevens' dissent in *McNally*, which

understood the language of the federal fraud statute as providing for three distinct and wholly separate prohibitions:

> [1] any scheme or artifice to defraud, [2] or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, [3] or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article. …[35]

Justice Stevens went on to explain:

> Every court to consider the matter had so held. Yet, today, the Court, for all practical purposes, rejects this long-standing construction of the statute by imposing a requirement that a scheme or artifice to defraud does not violate the statute unless its purpose is to defraud someone of money or property. I am at a loss to understand the source or justification for this holding.[36]

In *McDonnell*, the former governor of Virginia was convicted in the U.S. district court of conspiracy to commit honest services fraud, honest services wire fraud, and Hobbs Act extortion in relation to his acceptance of $175,000 in loans, gifts, and other benefits.[37] To sustain a conviction in *McDonnell*, the government was required to show that McDonnell committed or agreed to commit an "official act" in exchange for the loans and gifts.[38] Pursuant to 18 U.S.C. § 201(a)(3), an official act is "any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit."

The decision by the Supreme Court in *McDonnell* was one that left the Court content with a limitation on the term "official act" because, in the eyes of the Court, the ruling nonetheless left "ample room for prosecuting corruption, while comporting with the text of the statute and the precedent of this Court."[39] In fact, in *McDonnell*, the Court concluded that "[a] jury could, for example, conclude that an agreement was reached if the evidence shows that the public official received *a thing of value* knowing that it was given with the expectation that the official would perform an 'official act' in return."[40] Importantly, this interpretation of the federal bribes statute does not require that the official actually commit an "official act," as long as there is sufficient evidence that there existed an understanding that the official would commit an "official act."[41]

In between *McDonnell* and *Kelly,* lower courts decided several notable cases. Preet Bharara referenced a few examples in his book *Doing Justice.*

Sheldon Silver and Dean Skelos made up two of the three most powerful political leaders in New York State.[42] Silver was the Democratic Assembly Speaker and Skelos was the Republican senate majority leader.[43] In 2016, Silver was convicted of accepting illegal bribes in violation of the mail and wire fraud statutes.[44] As permitted by New York law,[45] Silver worked part time as an attorney during his tenure as Assembly Speaker, and according to the government, Silver was part of two schemes.[46] One such scheme was the receipt of referral fees from lawyers in exchange for taking official actions, and in the other, Silver performed official acts beneficial to two real estate developers who hired a firm that paid referral fees to Silver.[47] He was sentenced to 12 years in prison, seven weeks before the U.S. Supreme Court decision in *McDonnell*. Relying on *McDonnell,* the Second Circuit reversed Silver's convictions and remanded the case for retrial.

Similarly, Dean Skelos was convicted in 2015 of using his position with the State to help his son Adam get no-show jobs or payments. In exchange, Skelos would help those businesses with legislation they needed passed in the New York State senate. Both Adam and Dean were convicted. Dean was sentenced to five years in prison, and Adam to six and a half. Like Silver, they challenged the sufficiency of the jury instructions given regarding official acts, and like Silver, both their convictions were vacated in their entirety. While these rulings were not a surprise in light of *McDonnell*, they only added to the public perception of white collar fraudsters and corrupt public officials: that they were above the law.

Unlike the *McDonnell* decision, however, the Supreme Court decided to take a much narrower approach to the federal fraud statute, limiting its use to instances of property fraud or "bribes and kickbacks."[48] This limiting interpretation does not leave the same "ample room for prosecuting corruption" that the Court preserved in the federal bribe statute in *McDonell*, although this was apparently intentional. According to the Court's unanimous decision in *Kelly*, "The upshot is that federal fraud law leaves much public corruption to the States (or their electorates) to rectify."[49]

Conclusion

While the Supreme Court was divided in its 1987 construction of the law, the Court held *unanimously* in 2020 that the current interpretation of the federal fraud statute remains proper. Although the prosecution in *Kelly* argued that "the officials sought to both 'commandeer' the bridge's access lanes and to divert the wage labor of the Port Authority employees used in that effort," the Supreme Court disagreed.[50] Instead, the Court held that "the realignment of the toll lanes was an exercise of regulatory power. . . ."[51]

> Contrary to the government's view, the two defendants did not "commandeer" the bridge's access lanes (supposing that word bears its normal meaning). They (of course) did not walk away with the lanes; nor did they take the lanes from the government by converting them to a nonpublic use. Rather, Baroni and Kelly regulated use of the lanes, as officials responsible for roadways so often do — allocating lanes as between different groups of drivers.

Despite the Supreme Court's words condemning the behavior exhibited by Baroni and Kelly, its unanimous decision in this case and the *McDonnell* case four years earlier demonstrates that the Court's application of criminal fraud statutes and its stringent requirement of "obtaining money or property" to be the specific focus of the scheme will not change anytime soon. All justices, regardless of political leanings, agreed that the government failed to meet the requirement of the statute, essentially limiting the prosecution's reach in public corruption cases.

Clearly, a decision acquitting public officials who abused their position

of trust and power will not sit well with anyone. In an interview with journalist Eisinger, he commented that this was a clear case of intentional misuse of government authority for personal purposes. To him, it seems that over the years courts have systematically stripped tools and weapons from prosecutors on white collar crime and public corruption. He finds it extremely worrisome to construe these laws as narrowly as the courts have been because it opens doors to all sorts of abuses. His hypothesis for the court rulings over the years is that the judiciary thought the wave of prosecutions in the wake of the NASDAQ bubble bursting was an overreach. Mr. Eisinger disagrees, saying that the prosecutors were simply aggressive and used the statutes available to them in an imaginative way.

But from a strictly legal perspective, the court's decision should be applauded as a strict interpretation of a criminal statute that will not stand for prosecutorial overreach or an antagonistic jury's proclivity to convict. The historical analysis of white collar criminal defense demonstrates that by the very nature of a defendant's alleged acts and personal characteristics (wealthy, powerful, famous), it is very unlikely that a jury of a defendant's peers will strictly interpret a criminal statute and will more likely punish someone for actions they view as deplorable. *Kelly* puts a stop to this behavior. The Supreme Court said that while white collar crimes can be prosecuted, it is important not to get carried away. While this gives rise to potential abuse of power and can embolden future fraudsters, it places limits on the government's ability to overreach and charge defendants with inapplicable statutes.

Special thanks to Jesse Eisinger for his thoughts and contributions to this article.

Notes

1. Adriane de Vogue & Jamie Ehrlich, *Supreme Court Throws Out Convictions of New Jersey Officials in Bridgegate Scandal*, CNN (May 7, 2020), https://www.cnn.com/2020/05/07/politics/supreme-court-bridgegate-new-jersey-opinion/index.html.

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3. *Id.*

4. Pattern Criminal Jury Instructions of the Seventh Circuit §§ 18 U.S.C. 1341, 1343 (2012).

5. 18 U.S.C. § 666(a)(1)(A).

6. Jesse Eisinger, The Chickenshit Club: Why the Justice Department Fails to Prosecute Executives 91 (2017). Jesse Eisinger is a senior reporter at *ProPublica*. He also writes regularly for the *New York Times*. In 2011 he won the Pulitzer Prize for National Reporting for a series of stories on Wall Street practices.

7. *Id.* at 92.

8. *Id.*

9. *Id.* at xv.

10. *Id.* at xv.

11. *Id.* at xviii.

12. Edwin H. Sutherland, White Collar Crime: The Uncut Version (1985).

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14. Charles Doyle, *Mail and Wire Fraud: A Brief Overview of Federal Criminal Law*, Congressional Research Service [hereinafter CRS] at 1 (2019) (quoting *McNally v. United States*, 483 U.S. 350, 356 (1987), quoting 43 Cong. Globe 35 (1870) (remarks of Representative Farmsworth).

15. *Id.*

16. See Robert J. Anello & Miriam L. Glaser, *White Collar Crime*, 85 Fordham L. Rev. 39 (2016).

17. See *Bribery, Kickbacks, & Self-Dealing: Honest Services Fraud and Issues for Congress*, CRS at 6.

18. *McNally v. United States*, 483 U.S. 350 (1987).

19. Anello & Glaser, *supra* note 16, at 44.

20. 18 U.S.C. § 1346.

21. See *Skilling v. United States*, 561 U.S. 358 (2010).

22. *Id.*

23. *Id.*

24. *Id.*, citing *McNally v. United States*, 483 U.S. 350 (1987).

25. *Id.*

26. Peter J. Henning, *Why Paying Bribes to Get Your Child into College Is a Crime*, N.Y. Times (Mar. 14, 2019), https://www.nytimes.com/2019/03/14/business/dealbook/college-admissions-bribes.html.

27. *Id.*

28. 18 U.S.C. § 1346.

29. *Kelly v. United States*, 140 S. Ct. 1565 (2020).

30. *McNally*, 483 U.S. at 354.

31. *Id.* (quoting *United States v. Gray*, 790 F.2d 1290, 1296 (6th Cir. 1986)).

32. *Id.* at 353.

33. *Id.* at 356.

34. *Kelly*, 140 S. Ct. at 1571 (quoting 18 U.S.C. § 1346).

35. *McNally*, 483 U.S. at 364-65 (Stevens, J., dissenting) (quoting 18 U.S.C. § 1341).

36. *Id.* at 365.

37. *McDonnell v. United States*, 136 S. Ct. 2355 (2016).

38. *Id.*

39. *Id.* at 2375.

40. *Id.* at 2371, *citing Evans v. United States*, 504 U.S. 255 (1992) (emphasis added).

41. *Id.*

42. Preet Bharara, Doing Justice: A Prosecutor's Thoughts on Crime, Punishment, and the Rule of Law 147 (2019).

43. *Id.* at 148.

44. *United States v. Silver*, 948 F.3d 538, 545 (2d Cir. 2020).

45. N.Y. Pub. Off. Law § 74(3)(a).

46. *Silver*, 948 F.3d at 564-65.

47. *Id.*

48. *Kelly v. United States*, 140 S. Ct. 1565, 1571-72 (2020).

49. *Id.* at 1571 (citing N. J. Stat. Ann. § 2C:30-2 (West 2016)).

50. *Id.* at 1568.

51. *Id.* at 1568-69. ■

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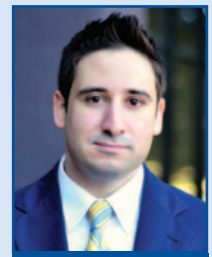

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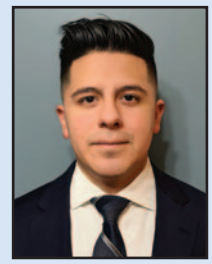

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