
Securities Crimes

Marvin G. Pickholz

Securities Law Series

Securities Crimes

by Marvin G. Pickholz

Volume 21



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As a subscriber to Clark Boardman Callaghan's Securities Law Series, you are receiving this important new volume for your inspection. *Securities Crimes* by Marvin G. Pickholz is being published at a point of dramatic change in the enforcement of the federal securities laws. No longer is the result of a securities law violation a choice of a civil injunction or an administrative proceeding with the occasional criminal case. Criminal prosecutions, with their attendant fines, penalties, and asset forfeitures, commenced simultaneously within federal, state, and foreign jurisdictions, are becoming the norm.

Outlining and clarifying the key factors in a federal securities criminal case, this treatise includes coverage of the enforcement powers of the SEC, types of SEC investigations, the types of criminal statutes frequently charged in securities cases, and the extraterritorial application of federal securities laws. In addition, there are over 50 appendixes with a wealth of primary source material.

- Chapter 1 provides a review of the SEC's enforcement powers and the agency's structure.
- Chapter 2 describes the different types of formal and informal SEC investigations in order for practitioners to represent clients effectively in these proceedings.
- Chapter 3 discusses the specific problems related to parallel proceedings, including expert guidance for representing clients under investigation by multiple agencies.
- Chapter 4 analyzes the international application of U.S. securities laws, including Mutual Legal Assistance Treaties, Memoranda of Understanding, and extradition—key information for practitioners with foreign clients, domestic clients charged with securities law violations, or client companies active in international capital markets.
- Chapter 5 reviews the major statutes charged in federal securities criminal cases, including RICO, money laundering, conspiracy, mail and wire fraud, perjury, and obstruction of justice.

(over)

- Chapter 6 gives a complete historical treatment of the major SEC criminal securities case law as it relates to critical points of law in securities criminal prosecutions.
- Chapter 7 concerns federal sentencing guidelines, their applicability, calculation for individuals, organizational structure, and departures from those guidelines.
- There are also over 50 appendixes, many of which are not available in any other source, containing valuable primary source material, including background on relevant law and procedure.

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Dedication

**To my parents, Irving and Rae, whose vision and sacrifices
made it all possible.**

About the Author

Marvin G. Pickholz received his A.B., L.L.B., and L.L.M. from New York University in 1963, 1966, and 1968, respectively. He presently practices law in Washington, D.C., and New York City. He has served in various positions within the Securities and Exchange Commission's Division of Enforcement and its New York Regional Office, the last of these positions was as Assistant Director of the Division of Enforcement. His career at the SEC took him from the minor roles assigned to young lawyers in cases, such as the criminal prosecution of financier Louis Wolfson and the landmark *Texas Gulf Sulfur* case, to the lead attorney's position in the seminal parallel proceedings case involving *Dresser Industries*, and suits against such entities and individuals as United States Steel Corporation, Howard R. Hughes, and William F. Buckley, Jr. As an Assistant Director, he oversaw ground breaking cases involving banking and insurance fraud, environmental violations, tender offers and takeovers, and foreign corrupt practices. In private practice, Mr. Pickholz has been involved in major civil and criminal cases. He represented Agency-Rent-A-Car in a case referred to as the leading decision for the proposition that no private right of action exists under Section 13(d); he has defended professionals, corporations, and individuals in such prominent matters as the *Wall Street* grand jury investigations, and the *Ivan F. Boesky* and *Lincoln Savings & Loan Association* securities litigations. Mr. Pickholz has taught litigation. He has served in leadership positions of the Sections of Criminal Justice and Business Law of the American Bar Association and the National Association of Criminal Defense Lawyers. A frequent lecturer before business and professional groups, he has authored more than a score of articles and was co-editor of the *Guide to White Collar Crime*.

Preface

When I was first invited to write this book, ego propelled me to accept. Little did I realize how much the law would change before the project was finished or how significant a role international agreements and memoranda of understandings between governments would play with respect to the issues lawyers must now face and choices clients must make. This work comes at a point of dramatic change in the enforcement of the federal securities laws. No longer is it a choice of a civil injunction or an administrative proceeding with the occasional criminal case. Criminal prosecutions, with their attendant fines, penalties, and asset forfeitures commenced simultaneously within federal, state, and foreign jurisdictions, are becoming the norm. The dilemmas and problems facing lawyers who fearlessly step into this arena to provide the time honored assistance of counsel to corporations and individuals are too great to recount. Hopefully, they are not so great as to have avoided capture in this treatise.

A word of caution to the reader: Like every work of this kind, this book is dependent principally upon appellate decisions for its presentation of the law. Most often, these decisions represent affirmations of convictions or of government positions because rarely does a successful trial court defense in a criminal case lead to an appeal. I have attempted to include references to cases that resulted in favorable decisions for defendants in order to avoid conveying a sense of hopelessness. But, the reader should be aware that, frequently, the best defense work is done before an indictment and is never reported. Indeed, from personal experience, I can attest that success in convincing government officials that a case should not be prosecuted is not infrequent. It is dependent not so much on eloquence but on credibility and on a strong presentation of facts and the law. If this book assists the reader in that endeavor, my efforts

will be rewarded and my desire to make a meaningful contribution to the law will be fulfilled.

No venture of this type is completed without the assistance of others. Grateful appreciation goes to my partner, Edward B. Horahan, for his assistance and counsel, as well as summer associates, Tracey Kline Friedlander, Elissa Shendalman, Rebecca Faulkner, Kathleen Bartlett, and James McLaughlin, to my new colleagues Jeanne Schmid and Michele Kershaw, and, especially, to my partners at Stroock & Stroock & Lavan who made the ultimate sacrifice, billable hours, to allow me to pursue a dream. Words do not magically arrive on paper. Skilled professionals type our thoughts, often crazed by the poor handwriting of lawyers and our peculiar habits of writing along sides of pages and having inserts to inserts. To the following people I owe a debt of gratitude: my secretary Lisa Green, for her tremendous effort, and to the other secretaries in our office, Nancy Carroll, Mary Dingle, Linda Hartman, Emilie Madden, Janet Moses, Vicki Stokes, Juanita Swann, and Faye Lynch.

A special debt of gratitude goes to my family, and, in particular, to my son Jason, a law student at the New York University School of Law who completed a summer internship position and then sacrificed his remaining vacation to supply the discipline and assistance needed to complete this project.

Finally, but not least, to John Duxbury, my editor at Clark Boardman Callaghan who tolerated the delays and mistakes with unusual good cheer and, firmly but gently, prodded me to the completion of this book.

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