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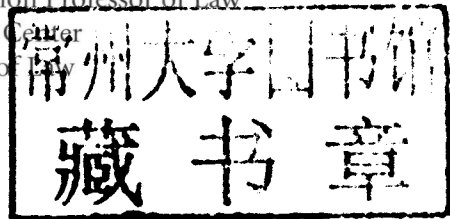
White Collar Crime Law, Procedure, Theory, Practice

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Preface

The twenty-first century has been rocked time and again by unprecedented white collar scandals, from Enron's collapse, to Bernard Madoff's \$50 billion Ponzi scheme, to, most recently, the fraud (and bad practices) in the real estate investment market that brought the entire U.S. economy to its knees. The federal government has reacted by devoting an ever-increasing quantity of resources to the problem through agencies that include the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Securities and Exchange Commission. At this point, there can be no doubt that the investigation and prosecution of white collar crime is a permanent fixture in our society.

Accordingly, the study of white collar crime will be a staple in U.S. law schools for the foreseeable future. Such courses are relevant not only to those students interested in a career in criminal law, but to the much larger body of students who are interested in working in the corporate environment. The line between regulatory infractions and criminal acts in the white collar world is very thin; every competent corporate lawyer needs to understand just where the courts have drawn it. Thus, a course in White Collar Crime is as much a successor in the curriculum to Corporations and Securities Regulation as it is to Criminal Law and Procedure.

Goals of this Text

This book is designed to accomplish a number of objectives simultaneously. First, it reflects the *present* state of white collar criminal prosecution, not the past. For instance, the book discards some topics traditionally found in other books on the subject—such as the study of racketeering and money laundering—because white collar prosecutors no longer make wide-scale use of these crimes. On the other hand, the book features an extensive chapter on securities fraud and separate chapters on bank fraud, sentencing, and parallel proceedings—because these are critical areas where most of the real-life action is taking place today. It contains also a far-reaching discussion of “honest services fraud,” a very hot topic addressed (but not resolved) by the U.S. Supreme Court in its 2009-2010 term. Additionally, the book integrates the recent Sarbanes-Oxley and Dodd-Frank Acts into the text and materials.

Second, as its title suggests, the book puts an emphasis on white collar theory, most of which comes from writings in sociology, economics, and law. The book asks the big questions, including:

- (1) What is white collar crime anyway?
- (2) What motivates white collar criminals?
- (3) How does society best deter white collar crime, and is it appropriate to use the criminal law to do so?
- (4) Do white collar defendants receive better treatment in the criminal justice system compared to their blue collar counterparts and, if so, why?

Third, the book is written from a practical and strategic point of view. Learning the law is not enough; rather, effective lawyers must learn how to use the law to their advantage. Many of the notes and questions that follow the excerpted materials reflect this practical bent.

Fourth, the book features a unique balance between law and procedure. Some white collar casebooks contain no procedure whatsoever; others feature so much procedure that these materials dwarf the books' presentation of criminal law doctrine. This book is carefully balanced. Although it is weighted in favor of white collar criminal law, two chapters (Chapters 11 and 12) are devoted to procedural issues—one written from the prosecutor's perspective and the other from the defense point of view. In concert with the book's practical orientation, these chapters focus on how lawyers on both sides of the isle use procedure as both a shield and a sword to the extent the law allows. Neither is intended to be comprehensive, as in-depth criminal procedure is the subject of other courses in the typical law school curriculum.

Pedagogy

This volume provides a multifaceted approach to the teaching of white collar crime. To a large degree, it features the time-honored format of presenting excerpts from cases and other sources followed by two or more notes or questions designed to provide additional context and intellectual stimulation. The cases vary from old chestnuts to recent holdings; many of the latter involve defendants with whom students should be familiar. All of the cases have been edited to preserve enough factual material to enhance students' understanding of the business world—which is critical to their understanding of white collar crime. Fruitful and interesting classes could be centered on this material alone. However, the book also accommodates those who prefer to teach using a problem-oriented approach. Each chapter contains one or more problems that are designed to facilitate coverage of most, if not all, of the key material in that chapter or unit. Many of these problems are based on real cases, which connects students to reality and provides them with the ability to check their reasoning against that of a sitting judge.

Personal Acknowledgments

A project of this magnitude cannot be undertaken and completed by one person. Thus, I would like to thank the many individuals who provided me with essential support and assistance. At the top of the list are my many wonderful research assistants from the University of Florida Levin College of Law, set out in alphabetical order. First, thanks go to Senior Research Assistants Tiffany Cummins, Kathryn Kimball, Allison Sirica, and Alicia Taylor; next, to Research Assistants Elizabeth Manno, Nell Robinson, Chelsea Shea, Leigh Anne Siddle, Niklas Stubbendorf, Kara Wick, Jennifer White, and Jennie Zilner. I also offer my gratitude to Aspen Publisher Carol McGeehan, for believing in the proposal of a first-time casebook author; Aspen Managing Editor John Devins, for graciously shepherding me and my work through the publication process; Troy Froebe, for editing the copy; Stetson University College of Law student Morgan Vasigh for some freelance proofreading; and Mary (Meg) Daniels, for creating the Index and Table of Statutes. Any errors that remain are mine alone.

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