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## Teaching the Methods of White-Collar Criminal Practice: Investigations

Roger A. Fairfax, Jr.\*

When I joined the George Washington University Law School [GW] faculty after practice as a federal prosecutor and white-collar criminal defense attorney, I quickly learned that a GW law student interested in exploring white-collar crime had a great many courses from which to choose. Several of my full-time colleagues teach courses that cover various topics relevant to white-collar crime, including a computer crimes course, a course in criminal tax litigation, and courses on anti-corruption in government contracting and the Foreign Corrupt Practices Act [FCPA]. GW is also fortunate to have a dedicated and talented adjunct faculty, which includes a former senior federal white-collar prosecutor who teaches a very popular white-collar crime survey course, and two of my former colleagues from the Justice Department's Public Integrity Section, who co-teach a seminar on public corruption. There is also a terrific seminar on congressional investigations taught by a sitting federal district judge with experience as both a full-time law professor and an investigative lawyer on the Hill, and a federal sentencing seminar taught by a sitting federal district judge who also is vice-chair of the U.S. Sentencing Commission.<sup>1</sup>

Given GW's robust white-collar crime curriculum, over the years I have sought to figure out how I might make a unique contribution. With my white-collar practice background, I tend to integrate white-collar topics into the traditional criminal law and procedure courses I teach. For example, in criminal law, I sometimes weave white-collar fact patterns and hypotheticals into class discussions, skills exercises, and even examination questions. In my grand jury seminar, we explore how the grand jury is a potent investigative tool in the context of white-collar cases and discuss the various issues raised when a corporation and corporate officers are the subjects of grand jury scrutiny. In my adjudicatory criminal procedure (or "bail to jail") course, we explore how the Constitution, statutes, and Federal Rules of Criminal Procedure govern the adjudication of a criminal case using a hypothetical federal case (which typically includes a number of white-collar criminal charges) that the students litigate from arrest through

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\* Professor of Law, George Washington University Law School. I would like to thank Professor Ellen Podgor, the organizer of the discussion group on white-collar pedagogy held at the 2013 Annual Meeting of the Southeastern Association of Law Schools.

<sup>1</sup> Another popular course with a white-collar crime emphasis is the role of the federal prosecutor joint-enrollment course taught by Justice Department lawyers to law students at GW, Howard University School of Law, American University Washington College of Law, Georgetown University Law Center, and Catholic University of America Columbus School of Law.

sentencing. Likewise, in criminal litigation—a short, writing-intensive skills course—I use a fact pattern focused on alleged FCPA offenses.<sup>2</sup>

Despite the rich white-collar crime content throughout the curriculum, however, I recognized several years ago that something was missing. The trends evident in white-collar practice across the profession made clear that many students who would engage in private white-collar practice in the early part of their careers would be working primarily on corporate internal investigations rather than the representation of individuals charged with white-collar offenses. Additionally, for the students who would go on to positions with prosecutors' offices and other government enforcement agencies, an understanding of grand jury, inspector general, legislative, and other investigative functions would be tremendously valuable. Nevertheless, GW had very few offerings that emphasized the various investigative roles played by lawyers in the white-collar crime context.<sup>3</sup> Therefore, I decided to design and teach a seminar on white-collar investigations.

The two-credit seminar I designed covers a number of topics, including grand jury investigations, corporate internal investigations, congressional investigations, regulatory investigations, the role of the Inspector General, private investigations, and various professionalism, ethical, and strategic issues related to defending individuals, agencies, and corporate entities subjected to investigation. Each of the weekly two-hour class sessions features class discussion of the required readings on the law, ethics, and strategy related to that session's topic.<sup>4</sup> In addition, the students engage in simulations designed to examine the various functions lawyers perform in the context of investigations. The capstone exercise involves students studying and then playing the roles of lawyers working on a white-collar case from the earliest stages of investigation. Some of the roles played by students include the General Counsel of the corporation, counsel retained by the Board of Directors to conduct an internal investigation of alleged wrongdoing by senior officers of the corporation, lawyers retained by individual employees, state and federal prosecutors, state and federal regulatory enforcement counsel, and private lawyers seeking to discover investigative findings for use in private lawsuits on behalf of shareholders.

Finally, each of the students writes a 20–25-page paper on a topic related to white-collar investigations. With my encouragement and assistance, the students generate their paper topics and develop an abstract and annotated outline as the

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<sup>2</sup> See 15 U.S.C. § 78dd-1 *et seq.*

<sup>3</sup> To be sure, my grand jury seminar spent some time on the investigative use of the grand jury, and the aforementioned congressional investigation seminar offered perspective in that particular context. Also, other courses examined investigative issues here and there, but I was aware of no courses broadly dedicated to white-collar investigations.

<sup>4</sup> For a number of the sessions, I take advantage of our access to the large and active white-collar bar in Washington, D.C., and bring in as guest speakers practicing attorneys engaged in the types of investigative activity we study in the seminar. For example, when studying inter-branch government investigations, I have brought in a former chief counsel of the Senate Permanent Subcommittee on Investigations and a former Deputy White House Counsel.

semester progresses. Recent representative paper topics include an examination of multinational collaborative investigation under the FCPA and U.K. Bribery Act, and proposals for protecting the confidentiality of corporate internal investigations in third-party lawsuits. During the last two sessions of the seminar there is a research symposium during which students present their research to the class.

The seminar has been very successful from the perspective of both student engagement and enthusiasm during the semester, and positive student assessment in the course evaluations. Indeed, I have been able to make adjustments to the course using feedback from students. For example, after teaching the course for the first time, I better calibrated the balance between abstract discussion of the seminar readings and the exploration of core concepts in the context of simulations and hypotheticals. Students seem to appreciate the opportunity to apply their learning in the context of concrete problems they likely will encounter in practice. Furthermore, hiring attorneys in both the private and government sectors tell me that such exposure to this focused skills training helps to distinguish students seeking legal employment in the white-collar criminal practice area. All of this, I believe, militates in favor of the conclusion that a course focused on investigative activity in the context of white-collar crime can serve as a worthy complement to the substantive white-collar crime law survey courses often found in the traditional law school curriculum.

