

# Primer on Federal Criminal Investigation

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*Criminal investigations of business activities are commonly referred to as “white collar criminal investigations,” and are conducted by the federal government. State governments can also conduct such investigations, but they tend to focus on and be fully occupied with street crimes such as burglaries, robberies, auto thefts, rapes and murders. The federal government has the resources, including sophisticated investigators like the FBI, prosecutors with smaller case loads, and the appropriate criminal statutes that better equip them to take on these more complex and time-consuming cases. A feature that distinguishes white collar cases from street crimes is that a prosecutor is generally involved from the outset. These investigations almost always target individuals, but may also target businesses since corporations can be convicted of crimes.*

**T**he federal crimes that may be charged will likely seem less familiar to the average person than street crimes like robbery or rape. While some may not have a firm concept of what conduct constitutes conspiracy or mail or wire fraud, a conspiracy, for example, might be defined simply as an agreement to commit a crime. A person can commit mail fraud if he uses the mail in a scheme “to deprive another of the intangible right of honest services.”

Moreover, with street crime there is no question that a crime has been committed. For example, the liquor store was clearly robbed and the issue is frequently who did it. With white collar cases the issue is generally not who did it, since the person who signed a document alleged to be false or fraudulent is well known. Rather, the issue is generally whether what that person did is a crime. Suffice it to say that businessmen who engage in dishonest conduct such as lying, cheating or stealing while conducting their businesses, or who hide their income are vulnerable to criminal prosecution. Submitting a bill for costs that include inflated numbers, falsely claiming to have spent more hours working on a project than were actually spent and paying off a person who approves expense vouchers — this sort of conduct can lead to indictment. (An indictment is the formal charging document that leads to a trial.)

## Criminal Investigations

Criminal investigations can start in all sorts of ways and it is frequently unproductive to waste time figuring out what sparked a particular case. It could be a complaint from a business rival or

a disgruntled former employee, something an investigator read in the newspaper or just a matter of luck. It doesn't really matter why Uncle Sam decides to investigate someone. What matters is what the individual does after he learns he is under investigation.

Because white collar cases tend to involve long, complex investigations, the targets generally learn they are being watched at some point long before the investigation is completed. An investigation can have a covert stage involving the use of wire-taps, bugs or undercover informants. Many cases do not have such a stage, but the targets learn they are being investigated almost immediately upon hearing from friends or employees that federal agents have been asking questions.

At some point, unless it is abandoned, the investigation will move to the grand jury stage. Sometimes the first indication a target gets that he is under investigation is when his company receives a grand jury subpoena compelling the production of documents. A grand jury is the principal way in which these cases are investigated. It is a secret process that allows the prosecutors to compel testimony or the production of evidence through subpoenas. Once a subpoena is received, or upon learning of the investigation by less formal means, the target should obtain a lawyer.

In white collar cases, the government is generally represented by a lawyer from the start. If the target is unrepresented, he can be at a huge disadvantage. White collar defense is a specialty and not many lawyers know how to defend these cases. The majority of lawyers who specialize in this practice are former federal prosecutors. In fact, not every lawyer who handles



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criminal cases is necessarily equipped to handle white collar criminal cases. A lawyer who might be superb at defending a murder charge, handling a divorce or prosecuting a personal injury case may not have experience in white collar cases. By the same token, you probably would not want a white collar defense lawyer to represent you in a divorce.

### Legal Defense

White collar lawyers are expensive with fees ranging from \$500 - \$700 per hour. Moreover, while one lawyer can represent

multiple witnesses in a white-collar investigation, each target — defined as the persons likely to be charged — needs his own lawyer. If one lawyer represents A and B, and the government wants to make a deal with A to testify against B, the lawyer representing both of them has a conflict of interest. If he advises A to take the deal, he hurts client B. If he doesn't advise A to take the deal, he might be placing B's interest ahead of A's. Under these circumstances, he may have to withdraw from representing either, and A and B then each have to go to the expense of hiring new lawyers.