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Ellen S. Podgor

With a seventy-five year history of sociological and later legal roots, the term "white collar crime" remains an ambiguous concept that academics, policy makers, law enforcement personnel and defense counsel are unable to adequately define. Yet the use of the term "white collar crime" skews statistical reporting and sentencing for this conduct. This Article provides a historical overview of its linear progression and then a methodology for a new architecture in examining this conduct. It separates statutes into clear-cut white collar offenses and hybrid statutory offenses, and then applies this approach with an empirical study that dissects cases prosecuted under hybrid white collar statutes of perjury, false statements, obstruction of justice, and RICO. The empirical analysis suggests the need for an individualized multivariate approach to categorizing white collar crime to guard against broad federal statutes providing either under-inclusive or over-inclusive examination of this form of criminality.

The Enduring Legacy of Modern Efficient Market
Theory After *Halliburton v. John*.....*Mark Klock* 769

In 1988 the U.S. Supreme Court approved the fraud on the market theory for securities trading in an efficient market thus enabling securities class action plaintiffs to

establish their required reliance element of the case through a rebuttable presumption. Basic v. Levinson *held that efficient markets incorporate publicly disseminated information and investors who purchased or sold securities in an efficient market therefore relied on any publicly disseminated misinformation. For more than a quarter century since* Basic, *the efficient market theory has sustained a barrage of assaults from commentators who object to the use of economic theory in legal decisionmaking and who have drawn unsubstantiated inferences from pieces of economic literature taken out of context. In the recently decided case of* Halliburton v. John, *the Court affirmed its commitment to efficient market theory; however, Justices Alito Scalia, and Thomas reject the efficient market theory in reliance on legal scholars who have misstated the consensus of economists. This Article examines the misplaced hostility to efficient market theory.*

What Is (And Isn't) Healthism? ..... *Jessica L. Roberts* 833
Elizabeth Weeks Leonard

What does it mean to discriminate on the basis of health status? Health can, of course, speak to a number of things, such as the length of our lives, our ability to perform mentally and physically, our need for health care, and our risk of injury and incapacity. But the mere relevance of a particular attribute does not mean that considering it should be legally permissible. This Article explores when differentiating on the basis of health is acceptable—perhaps even desirable—and, by contrast, when it is normatively problematic. While we acknowledge that differentiations on the basis of health status can be both economically rational and socially beneficial, we recognize that health-based distinctions can also generate their own independent class of antidiscrimination wrongs. We therefore propose two complementary frameworks designed to separate sound public and private policies from socially damaging healthism

NOTES

Schools Are Employers Too: Rethinking the Institutional Liability Standard in Title IX Teacher-on-Student Sexual Harassment Suits ..... *Kathleen Mary Elaine Mayer* 909

To be entitled to any remedy under Title IX, students bringing private causes of action must show that their schools acted with actual knowledge and deliberate indifference. That liability standard is applied to both teacher-on-student and peer-on-peer harassment claims, without regard for an educational institution's relative control over the conduct of its employees versus its students. Schools should be held to a stricter standard in teacher-on-student cases than in peer-on-peer cases for numerous reasons of both law and policy.

Considering that Title VII standards of liability do turn on relative control, a quirky imbalance results whereby a school is more likely to face liability when an employee in a supervisory capacity such as a principal harasses a teacher than when the same principal harasses a student. Eight of the nine justices involved in fixing Title IX liability standards in the 1990s agreed that a stricter standard should be applied in teacher-on-student cases than in peer-on-peer cases. Yet due to one shifting swing vote in two separate 5-4 decisions, the Court ultimately established the same standard in both.

Over the last five years, Title IX complains have grown dramatically in number, and both the executive and legislative branches are presently prioritizing the highly publicized issue of sexual assault on college campuses. Together, the current political climate and the parallels between Title VII and IX jurisprudential logic compel a reexamination of the defendant-friendly liability standard applied to teacher-on-student Title IX claims.

You've Got Legal Mail: Applying Constitutional Protections to Attorney–Inmate E-mail Communications ..... *Gregory R. Steele* 947

Several U.S. Attorney's offices have begun to read e-mails between defense attorneys and their inmate-clients sent through the Bureau of Prisons TRULINCS system. District courts have been split on how they address the issue. This Note argues that the practice of reading attorney-inmate e-mails violates the Sixth Amendment. It specifically argues

that the legal mail doctrine should be applied to invalidate this practice. It then argues the Bureau of Prisons should promulgate new regulations for legal e-mail that ensure compliance with the constitutional requirements of the newly applied legal e-mail doctrine.

The Motor City Needs Oil (On Canvas):
An Argument in Support of Detroit's
"Grand Bargain" ..... *Jonathan A. Weeks* 985

Now the largest municipality in the history of the United States to go bankrupt, Detroit very nearly lost its famous art collection to its creditors. To protect its collection, Detroit proposed what is now often referred to as the "grand bargain," which involved creating a corporation that paid $816 million for the entire art collection provided that the amount paid was earmarked for pension holders in Detroit. The deal resulted in realizing two goals: keeping the art collection in Detroit and protecting pensioners who faced a huge loss in the wake of the bankruptcy. Critics of the grand bargain claim that it is inconsistent with the principles of bankruptcy law, describing it as a fraudulent transfer, as failing to satisfy the "best interests" test, and as unfairly discriminating against some creditors. This Note argues against those criticisms, and makes the case that, not only was the grand bargain consistent with bankruptcy law, it was a model to be emulated by other municipalities facing bankruptcy.

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