

ARE YOU COMMITTING A FEDERAL CRIME BY PLAYING FANTASY SPORTS?



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Prominent white collar criminal attorney Mark J. O'Brien, whose law firm has successfully represented former NFL players Jeremy Stevens and John Wilson along with current Texas Ranger infielder Rougned Odor, is now concerned that federal prosecutors will soon begin cracking down on fantasy sports gambling by treating it as white collar crime. This could expose companies like DraftKings and FanDuel — as well as their millions of customers — to potential criminal liability in federal court.



Mark J. O'Brien

"Decades of over-criminalization by Congress resulted in the creation of thousands of federal crimes that are often redundant and thus unnecessary. Unfortunately I fear criminalizing fantasy sports is the next illogical step," Mr. O'Brien stated during a recent interview.



Is It Gambling?

Unlike traditional fantasy sports, which unfold slowly over the course of a full season, daily fantasy sports use a much shorter timetable. Companies like DraftKings and FanDuel allow users to draft players for fantasy sports teams on a daily basis, competing for prize money based on the performance of those athletes in their real-life competitions that same day. Although the industry itself is only a few years old, each of those two companies are expected to pay out over \$1 billion dollars in cash prizes this year.

Federal and state laws place tight restrictions on many types of gambling, including sports gambling and Internet gambling. However, fantasy sports gambling falls into a legal gray area that has recently begun attracting the attention of federal prosecutors in Florida and beyond.

Industry giants like DraftKings and FanDuel maintain that daily fantasy sports is not a form of illegal gambling but instead is a legal game of skill, which is permissible by law.

Still, not everyone is convinced. In Nevada, for instance, state regulators recently ordered the companies to stop operating in the state, after determining that the services they provide do constitute gambling as defined by state law. In order to resume operations there, state officials say the companies must first acquire gambling licenses. A handful of other states have also passed legislation prohibiting fantasy sports. In Florida, federal prosecutors are investigating the Fantasy Sports Trade Association, which was recently issued a grand jury subpoena for its business records.



White Collar Crime Is More Than You Might Think

As the fantasy sports investigation illustrates, federal white collar crime covers a lot more area than many people would guess. Often, the phrase “white collar crime” calls to mind images of corporate fraud, pyramid schemes and complex criminal conspiracies. To most people, those images may seem fairly remote. However, many types of federal white collar crime arise out of everyday circumstances that may be familiar to people in many different occupations and walks of life. You may be surprised to learn that some of those circumstances are even familiar in your own life.

White collar crime is an umbrella term that is used to describe a wide range of non-violent, financially motivated crimes. Often, no matter where they occur, white collar crimes can be prosecuted as federal crimes rather than state-level offenses.

In recent years, particularly in the aftermath of the 2008 financial crisis, the federal government has been cracking down hard on white collar crime.

Since 2009, the federal government has filed more than
46,000
white collar crime cases.¹



Fantasy sports is far from the only area that has caught the attention of federal prosecutors and law enforcement in their recent efforts to stamp out white collar crime. They are also taking aim at a variety of well-established offenses such as identity theft, tax fraud, organized crime and many other types of federal white collar crime.

Using Someone Else's Information

Identity theft is a type federal white collar crime that involves illegally obtaining someone else's personal information and using that information to commit acts of theft or fraud. Often, but not always, these crimes are financial in nature.

Common examples of identity theft involve using someone else's credit card information to make a purchase, posing as someone else to collect Social Security benefits or opening a financial account in someone else's name. Other types of identity theft can involve providing false information to police during an arrest or traffic stop or using someone else's identity for immigration or employment purposes.

Identity Theft Can Involve The Use Of Many Different Types Of Personal Information, Such As:



Names



Dates Of Birth



**Phone Numbers And
Addresses**



Social Security Numbers



Bank Account Information



Credit Card Numbers



**Passport And Driver's License
Numbers**



Birth And Death Certificates



**Internet Passwords And
Answers To Security Questions**



**Medicare And Health Insurance
Information**



Telephone Numbers

In some cases, even biometric information such as fingerprints and eye scans can be used to commit identity theft.

In recent years, as more and more information is being stored and exchanged online, where it is vulnerable to hacking, phishing and other security threats, federal prosecutors have become more and more concerned with identity theft. In an effort to address those concerns and discourage would-be identity thieves, Congress passed a law called the Identity Theft Penalty Enhancement Act in 2004.² That law creates sentence enhancements for people convicted of using someone else's identity to commit a federal felony. Judges are required to add two additional years onto the sentence of anyone convicted under that law, in addition to the already steep penalties that they may be facing for the underlying offense. These types of prosecutions are very real.

Cheating On Your Taxes

Tax fraud is another example of the type of white collar criminal offense that can arise out of everyday life. If you have ever cheated on your taxes, even a little bit, you may have committed a federal white collar crime. Tax fraud, also called tax evasion, is a type of white collar crime

that involves deliberately providing false information to the IRS in order to reduce your tax payments.

Tax fraud can involve a variety of deceptive practices that can range from simple to highly complex. For instance, if you receive some of your income in cash and fail to report all of your earnings on your tax returns, that is a form of tax fraud. Similarly, you may be committing tax fraud if you deduct personal costs as business expenses, exaggerate your household size or claim deductions that you did not really take. Other examples of tax fraud involve more sophisticated measures such as:

- **Hiding assets offshore**
- **Creating false debts or business losses**
- **Keeping two sets of books**
- **Making false accounting entries**
- **Paying employees "under the table"**
- **Using payroll tax withholdings for personal use**
- **Placing assets in the names of other individuals or shell entities**

While tax fraud is a serious federal crime, it is important to understand that there is a difference between avoiding tax obligations through legal means and evading taxes through illegal measures such as those listed above. Additionally, simple mistakes and oversights are not enough to rise

to the level of criminal tax evasion, although they may still result in costly fines and penalties. In order to be considered criminal, the tax evasion must be intentional. However, please note that when the government believes tax fraud is intentional, it does not hesitate to prosecute.



Other Types Of White Collar Crime

In addition to those described above, there are also many other types of federal white-collar crimes. The list below, while not exhaustive, provides a brief introduction to several of those offenses:



Antitrust Violations: Crimes involving illegal business practices such as monopolization and price-fixing.



Bribery: Exchanging money, favors or other valuables in an effort to influence the actions of a politician, business figure or other person in a position of power.



Counterfeiting: Creating copies of money or goods (such as electronics, artwork, jewelry or clothing) without authorization and attempting to pass the copies off as the genuine article.



Embezzlement: The illegal taking of money by someone who has been entrusted with it, such as an employee, tax broker or accountant.



Environmental Crimes: Violation of environmental protection laws, such as illegal handling or disposal of hazardous materials.



Foreign Corrupt Practices Act: Bribing foreign officials in an effort to obtain a business advantage — even if the transaction is considered acceptable or customary in the location where it occurs.



Money Laundering: Financial transactions designed to conceal the source of illegally obtained money.



Ponzi and Pyramid Schemes: Fraudulent investment structures that generate returns for existing investors through the recruitment of new investors.



Public Corruption: The abuse of power or violation of public trust by a politician or government official.



Racketeering/RICO Charges: A pattern of organized criminal activity carried out to benefit a crime syndicate or other criminal business organization.

Serious Charges Require Experienced Defense

Being charged with a federal white collar crime is a serious matter, and under no circumstances should it be taken lightly. Federal prosecutions involve a different set of rules and procedures than those that take place at the state level, and the penalties are often much steeper due to federal sentencing guidelines. These can include staggering fines as well as prison time in a federal facility — which could be far away from home, friends and family.

In addition, the collateral consequences can be almost as bad for a person charged with a white collar crime. Hiring a good white collar criminal lawyer is expensive. Furthermore, a person's mental health often deteriorates under the pressure of a criminal prosecution. If you are being investigated for a white collar crime it is important to take action as quickly as possible to minimize the risk of negative consequences.

Because the stakes can be extremely high when charged with a federal white collar crime, and because the laws involved are highly complex, it is critical to get legal help from a defense attorney who is aggressive and experienced in this type of law.

Former Miami prosecutor turned nationwide and Florida criminal defense attorney Mark J. O'Brien has experience defending clients against all of the types of federal white collar crimes you have read about in this paper. Given his experience working as a criminal prosecutor in Miami, he has the knowledge necessary to defend white collar fraud prosecutions. His background as a prosecutor provided valuable insight into how the government builds its case and how to negotiate for his clients to help them obtain the best possible outcome.



White collar criminal attorney Mark J. O'Brien, who represents attorney Adam Filthaut (a former partner at the now defunct Robert Adams and Stephen Diaco-led Adams and Diaco Law Firm in Tampa, Florida) in a federal criminal investigation stemming from the Bubba "The Love Sponge" Clem versus Todd "MJO" Schnitt radio shock jock civil case, believes in aggressively defending those charged with state and federal white collar crimes. During a recent interview, a reporter asked him why and Mr. O'Brien confidently replied, "Whether you are famous, infamous or anonymous to the American public, you are important to someone and thus you are important to me. I do not judge my clients. I simply fight for them."



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¹ James B. Stewart, In Corporate Crimes, Individual Accountability is Elusive, N.Y. Times (Feb. 19, 2015), <http://www.nytimes.com/2015/02/20/business/in-corporate-crimes-individual-accountability-is-elusive.html>.

² 18 U.S.C.A. §1028A The content of this paper is provided for informational purposes only and does not constitute legal advice.

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