

**EXPLORATIONS OF INVESTOR
FRAUD
IN THE
LEGAL ACADEMY**

James D. Cox

Brainerd Curie Professor of Law

Duke University

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OVERVIEW

THE LEGAL ACADEMY

JD Education Ingrains Process Orientation

Case Method Predominates with Emphasis on Doctrine

Quantitative Methods and Orientation in Classroom is Remedial

Influx of Ph.D.s into Academy is Dispersed Across Curriculum

Currency in Realm = Not High Theory Alone, so...

Tech Up

Partner

Be a Ph. D.

CLASSIC HIGH-THEORY APPROACH

Buell, What is Securities Fraud, 61 Duke L.J. 511 (2011).

Gulati, Rachlinski, & Langevoort, Fraud by Hindsight, 98 Nw. U. L. Rev. 723 (2004).

Klass, Meaning, Purpose and Cause in the Law of Deception, 100 Georgetown L. Rev. 449 (2012)

Goldberg & Zipursky, The Fraud-on-the-Market Tort, 66 Vand. L. Rev. 1755 (2013)

EVALUATING EFFICACY OF ENFORCEMENT SYSTEMS PRIVATE-I

Brav & Heaton, Event Studies in Securities Litigation: Low Power, Confounding Effects, and Bias, __ Wash. U. L. Q. __ (2016)(critical analysis of problems inherent with use of event studies in securities litigation).

Cox & Thomas, Letting Billions Slip Through Your Fingers: Empirical Evidence and Legal Implications of the Failure of Financial Institutions to Participate in Securities Class Action Settlements, 58 Stan. L. Rev. 411 (2005)(72 percent of institutions within settled class actions failed to file a claim) .

Baker, Perino & Silver, Is the Price Right?, 115 Colum. L. Rev. 1371 (2015)(competition to be the lead plaintiff in 71 percent of the cases, but in only 11 percent of those instances was the existence of an ex ante fee agreement discussed by the court in making the appointment; fees are lower (as a percentage of the settlement) when there was an ex ante fee agreement between the lead plaintiff and class counsel, and public pension funds are more likely to negotiate ex ante fee agreements).

EVALUATING EFFICACY OF ENFORCEMENT SYSTEMS PRIVATE-2

Choi, Fisch & Pritchard, Do Institutions Matter? The Impact of the Lead Plaintiff Provision in the Private Securities Litigation Reform Act, 83 Wash. U. L.Q. 869 (2005)(financial institutions and particularly pension and labor funds associated with larger recoveries).

Cox, Thomas and Kiku, Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions, 106 Colum. L. Rev. 1587 (2006)(larger percentage of “provable losses” recovered when financial institution is lead plaintiff).

Cox, Thomas & Bai, There Are Plaintiffs andThere Are Plaintiffs:An Empirical Analysis of Securities Class Action Settlements, 61 Vand. L. Rev. 355 (2008)(full study of impact of various types of plaintiffs with separate attention given to analysis to profile of settlements below \$2 million).

Choi, Johnson-Skinner & Pritchard, The Price to Pay to Play in Securities Class Actions, 8 J. Legal Studies 650 (2011)(reporting practice of political contributions on the part of certain financial institutions).

Bai, Cox & Thomas, Lying and Getting Caught:An Empirical Study of the Effect of Securities Class Action Settlements on Targeted Funds, 158 U. Penn. L. Rev. 1877 (2010)(reduced operating efficiency during law suit; post settlement firms tended to experience liquidity and worsening Altman Z-scores).

EVALUATING EFFICACY OF ENFORCEMENT SYSTEMS MISSING LINK

Prior to PSLRA of 1995 did we have a system of Type I or Type II Errors?

After the PSLRA, do we have a system of Type I or Type II Errors?

EVALUATING EFFICACY OF ENFORCEMENT SYSTEMS SECURITIES AND EXCHANGE COMMISSION

Choi & Pritchard, SEC Investigations and Securities Class Actions: An Empirical Comparison, 13 J. Legal Studies 27 (2016) (class action attorneys target disclosure violations more precisely than the SEC and they produce more resignations of senior officers likely connected to the violation than do SEC initiated suits that are not accompanied by any private actions).

Cox, Thomas & Kiku, SEC Enforcement Heuristics: An Empirical Inquiry, 53 Duke L. J. 731 (2003) (only 15 percent overlap with more and larger recoveries in private suits, with SEC targeting smaller firms suffering financial distress).

Velinkonja, Reporting Agency Performance: Behind the SEC's Enforcement Statistics, 101 Cornell L. Rev. 901 (2016) (setting forth a variety of misstatements in the SEC's annual enforcement statistics)

EVALUATING EFFICACY OF ENFORCEMENT SYSTEMS WHO SHOULD ENFORCE

Grundfest, Why Disimply?, 108 Harv. L. Rev. 727 (1995) (private litigation currently negatively impacts capital formation and SEC can better reform contours of private suit through its rulemaking than can Congress or courts).

Bratton & Wachter, The Political Economy of Fraud on the Market, 160 U. Pa. L. Rev. 69 (2011) (arguing that SEC enforcement is more efficient than private suits)..

Rose, Reforming Securities Litigation: Restructuring the Relationship Between Public and Private Enforcement of Rule 10b-5, 108 Colum. L. Rev. 1301 (2008) (suggesting an intermediate approach of interjecting the SEC into an oversight role for private suits so that the agency's approval would be a precondition to the suit proceeding).

Park, Rules, Principles, and the Competition to Enforce the Securities Laws, 100 Cal. L. Rev. 115 (2012) (defending the status quo, reasoning there are benefits of melding SEC enforcement with politically and socially inspired enforcement by state attorney generals and entrepreneurial class action lawyers).

SLIPPAGE WITHIN THE SEC REGULATORY NET

Arnold, Erwin, Nail & Nixon, Do Options Markets Substitute for Stock Markets? Evidence from Trading on Anticipated Tender Offer Announcements, 15 Int'l Rev. Fin. Analysis 247 (2006)(evidence that of gains exploited in derivatives markets in advance of market-moving announcements).

Henderson, Insider Trading and CEO Pay, 64 Vand. L. Rev. 505(2011)(collection data gains garnered via insider trading are traded off for other forms of compensation).

Cohen, Jackson & Mitts, The 8-K Trading Gap, Columbia working paper (2015)(reflecting gains harvested by insiders during the 4-day grace period between significant event and its required disclosure on Form 8-K)

Cox, Ferri, Honigsberg & Thomas, Quieting the Shareholders Voice: Empirical Evidence of Pervasive Bundling in Proxy Solicitations, __ U.S.C. L. Rev. __ (forthcoming 2016).

Bliss, Partnoy & Furchtgott, Information Bundling and Securities Litigation, working paper (2016)(reporting on the frequency and impact on litigation settlements of artful releases of additional information when disclosing an earnings restatement)

SURVEY ARTICLES

Choi, The Evidence of Securities Class Actions, SSRN 528145 Working Paper (2004)

Cox & Thomas, Mapping the American Shareholder Litigation Experience: A Survey of Empirical Studies of the Enforcement of the U.S. Securities Law, 2 ECFR 1 (2009)