

The Latest UNC Scandal and the Possibility of Disparate Treatment

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Tagged as : [disparity](#), [UNC](#), [white-collar crime](#)

Date : September 13, 2012

A couple of recent news stories led me to think about the possibility of a particular type of class disparity in the criminal justice system. Here are the two stories:

- Two big-time UNC fundraisers [have resigned](#). The two were dating. They went on several trips together, at university expense, to locations where one of the fundraisers' sons was playing college basketball for Notre Dame. Chancellor Holden Thorp has described the trips as "personally driven," suggesting that they were not legitimate fundraising endeavors.
- [According to auditors](#), an official with the Department of Public Instruction "claimed more than \$3,200 in unjustified travel reimbursements by padding his mileage reports." The department [apparently](#) "plan[s] to seek refunds and impose disciplinary action."

Both stories involve allegations of financial misconduct by state officials who are relatively high on the food chain. I have seen no suggestion, in reports on either matter, that criminal investigations are underway or that criminal prosecution is a possibility.

Let me emphasize that I don't know any more about these stories than I've read in the news. I don't know whether a criminal investigation, much less a criminal prosecution, is appropriate in either case. It's also possible that a criminal investigation is underway in either or both instances and that it just hasn't been reported.

Having said that, we do have laws against embezzlement and obtaining property by false pretenses. And I wonder whether a UNC bookstore worker who was suspected of fleecing the university out of thousands of dollars, or a school lunchroom worker who apparently misappropriated \$3,200, would be allowed to resign or be disciplined without facing a criminal investigation. To generalize away from these specific cases, I'm asking whether financial misconduct committed by people in white-collar jobs is treated differently than misconduct of a similar magnitude committed by people in less prominent positions.

People seem to disagree about this. Some think that it isn't treated differently, that most employees who steal from their employers are fired, but not prosecuted, regardless of the position held by the employee. In fact, [this loss prevention industry publication](#) encourages employers to consider whether "the employer's cost to prosecute [will] exceed[] the loss caused by the" employee, and suggests that many employers turn away from criminal prosecution based on cost considerations. (Of course, the decision about whether a criminal investigation and/or prosecution is appropriate isn't solely the employer's to make.)

Others think that there is a disparity, but that the reason relates to the standard of proof in criminal cases. They argue that relatively minor financial misconduct in white-collar jobs is often hard to prove beyond a reasonable doubt. For example, when an employee claims a lunch with a college friend as a business expense, the employer may be sure enough that the claimed expense is bogus to fire the employee, but a prosecutor might not be sure enough to proceed criminally. Especially where a job involves sales, networking, development, and the like, the line between personal expenses and professional ones may be inherently gray and hard to draw.

Still others think that there is a disparity, but that it is explained, and perhaps justified, by the idea that the loss of a high-profile, well-compensated position and the sully of one's professional good name are greater punishments than a court would likely impose on a first-time offender convicted of misappropriating a few thousand dollars.

And of course, others think that there's a disparity and that it stems from white-collar lawyers and white-collar judges having more sympathy with what the abuse of employment perks by white-collar suspects than they have with theft by blue-collar employees. As [this 1940 article](#) put it, "white-collar criminals are relatively immune [from prosecution] because of the class bias of the courts."

I'm genuinely interested in readers' thoughts and experiences. Are employees who misappropriate their employers' money treated differently based on the employees' position within the organization, and if so, is the disparity justifiable?