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# BOOK REVIEW

*Cardiac Arrest* is the autobiographical tale of a man who made that irrational choice. Except that while Rakoff focused on common street crimes, *Cardiac Arrest* is about white collar crime (specifically, off-label marketing) and is told by a defendant who had the money to hire experienced teams of lawyers to defend him.

Howard Root and the company he owned at the time, Vascular Solutions Inc., were accused of marketing their Vari-Lase product for the treatment of a specific type of blood vessel called a “perforator vein” without FDA approval. If convicted, Root and his company faced potentially ruinous consequences. For Root, a conviction might mean a decades-long prison sentence. And for him and his company, financial catastrophe was all but guaranteed.

The alternative was to cut a deal. Root could avoid prison altogether, and his company could quickly get back to business, by simply accepting the government’s offer of pleading guilty to a misdemeanor.

Under these circumstances, no matter how weak the government’s case, the rational thing to do is say “forget principle,” take the plea, and rebuild. But Root and his company just could not do it. Believing strongly enough that they had done nothing wrong (seemingly, with justification), Root and Vascular Solutions refused to cut a deal, dared the government to try the case, and pulled off the rarest of trial upsets.

*Cardiac Arrest* is a personal play-by-play of Root’s ordeal, appropriately subtitled *Five Heart-Stopping Years as a CEO on the Feds’ Hit-List*. Written and self-published by Root and Steven Saltarelli, one of the lawyers from his trial team, it is not just any old trial war story. Root and Saltarelli’s remarkable storytelling is a window into what criminal defendants think. It unmutes the inner monologue of a smart, suc-

cessful executive (with a J.D.) frustrated by the drip-torture and relentless illogic of the criminal judicial process. It does so using Root’s unfiltered descriptions of the prosecutors and his own defense counsel, including a jarring anecdote about his reaction (and the physical injuries suffered) after losing a motion to dismiss the indictment.

Through Root’s eyes, we see cooperating witnesses who, thinking they did nothing wrong, are nevertheless bent to the government’s narrative through threats of decades in prison, missing their children’s upbringing, and professional and financial ruin.

Root recounts trial testimony about witnesses reviewing secret grand jury transcripts, leaving the impression that this system of justice is not an even match. In Root’s words, this conduct is a symptom of a “disease” infecting the justice system — “trophy-hunting prosecutors with nearly unlimited power, operating in a system that’s ill-equipped to act as a check on that power.”

We see the usual plays on class resentment — the constant insinuation that the defendants must be criminals because (gasp!) they made money running their business.

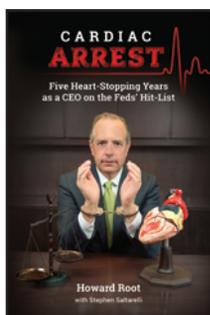
We see federal investigators seemingly impervious to exculpatory facts, such as the fact that the FDA *had* apparently approved Vari-Lase for treatment of “varicose veins,” which include perforator veins. Surely, one cannot be guilty of off-label marketing a device for an *on*-label indication? Not at all — Root’s jury was out for two days. He could easily have lost.

And, through it all, we see Root’s unvarnished thoughts on his lawyers. Those thoughts boil down to a simple need to feel in sync, and to know that his advocates understand and share his priorities. Root’s story is the perfect reminder that defense counsel must be first to put aside assumptions that the government must know what it is talking about.

## Cardiac Arrest

Five Heart-Stopping Years as a CEO on the Feds’ Hit-List

By Howard Root with Stephen Saltarelli  
BookBaby (2017)  
Reviewed by Andrew George and Kyle Clark



Judge Jed Rakoff made waves a few years ago with an article cataloging the coercive forces in our criminal justice system that drive people to plead guilty to crimes they did not commit.<sup>1</sup> With

the stakes so high and the power dynamic between prosecutor and defendant so lopsided, Rakoff showed that admitting guilt was often the rational choice for an innocent criminal defendant. Given the potential consequences, the irrational, even reckless thing to do was put the government to its proof at trial.

We are mindful that *Cardiac Arrest* is a self-published work. And Root's prosecutors probably will not have the chance to publicly rebut his account.

But Root's story rings true. It is consistent with our experience in representing clients just like him in cases just like his. We expect it will also ring true to the narrow band of American corporate executives unlucky enough to have come under criminal scrutiny, and to the lawyers who represent them. For some, the experience may be a relived trauma. For others, it may be cathartic.

But there are lessons here for all participants in white collar criminal cases. Defense counsel can better appreciate what the world looks like to their clients — the sheer bewilderment of the process and confusion as to basic things like what a grand jury room looks like or what to do if yelled at. It reminds us all how alone a person can feel in a room filled with people when they are targeted, or even questioned, by prosecutors.

Prosecutors can better appreciate the toll of just an indictment, or even the threat of indictment, on a person's psyche or a company's business. As President Reagan's Labor Secretary Ray Donovan famously put it after his acquittal for fraud and grand larceny, "Which office do I go to to get my reputation back?" Letting the jury sort it out is not the answer to exculpatory evidence. It's an abdication.

Finally, clients can read Root's story of his irrational choice to stand on principle as an inspiration, even if it falls somewhere between the satisfying, yet unrealistic, superhero-style tale of good overcoming evil (for most clients) and a "how-to" guide (for the most daring).

## Note

1. Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. Rev. Books (Nov. 20, 2014). ■

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*The opinions expressed in reviews are those of the reviewers and do not necessarily reflect the opinion of NACDL.*

## WHITE COLLAR CRIME POLICY

(Continued from page 69)

39. *Id.* at 221.

40. See *United States v. Grainger*, 346 U.S. 235, 243 (1953).

41. Brief of Amicus Curiae National Association of Criminal Defense Lawyers, *United States v. Newland*, 3:17-cr-00623-JLS (S.D. Cal. Jan. 14, 2019), ECF No. 219.

42. See generally Craig Whitlock & Kevin Uhrmacher, *Prostitutes, Vacations and Cash: The Navy Officials 'Fat Leonard' Took Down*, WASH. POST, updated Sept. 20, 2018, <https://www.washingtonpost.com/graphics/investigations/seducing-the-seventh-fleet/>.

43. *United States v. Newland*, Minute Entry (S.D. Cal. May 23, 2019), ECF No. 274. ■

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