

THE CONCEPT OF “WHITE - COLLAR” CRIME

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ABSTRACT

The term “white-collar” crime is synonymous with the full range of frauds committed by business and government professionals. These crimes are characterized by deceit, concealment, or violation of trust and are not dependent on the application or threat of physical force or violence.

Within the “white-collar” crime included all forms of economic and financial crime, such as bribery, tax evasion, falsification of tax books, fake bankruptcies, etc, that is, a group of crimes that can be committed by privileged perpetrators by exploiting their own position, reputation, power, and influence.

The motives behind the commission of “white-collar” crimes primarily are the wish for control in society, fear and anxiety of dwindling from the social status, lack of social consciousness and integrity, weak and ineffective internal controls of organizations and departments, greed and hunger of wealth, monetary and financial gains and ineffective and ineffectual corporate culture in economy.

Keywords: crime, white-collar crime, criminal activities, organizations, corporations.



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INTRODUCTION

Many writers have defined crime as anti-social, immoral or sinful behavior. However, according to the legal definition crime is any form of conduct which is declared to be socially harmful in a state and as such forbidden by law under pain of some punishment. The crime can be defined as an act or omission, which is unlawful, illegal or infringes provisions of law and which is punishable by law.

“White-collar” crime is a nonviolent crime committed for financial gain. These crimes are characterized by deceit, concealment, or violation of trust. The motivation for these crimes is “to obtain or avoid losing money, property, or services or to secure a personal or business advantage.”¹ Examples of white-collar crimes include securities fraud, embezzlement, corporate fraud, and money laundering.

“White-collar” crime is not victimless crime. A single scam can destroy a company, devastate families by wiping out their life savings, or cost investors billions of dollars (or even all three). Today’s fraud schemes are more sophisticated than ever.

Lack of accountability, opportunity to commit crime, peer support, greed, and loopholes in legal structures, lack of reporting and staying in competition are some of the factors with which most of the experts agreed to be the causes of “white-collar” crimes. White-collar crimes are generally detected through internal monitoring, audits, or reporting systems. Informants in corporate and international companies report internal irregularities via e-mail and telephone and initiate an internal investigation process.

The work against “white-collar” crime integrates the analysis of intelligence with its investigations of criminal activities such as public corruption, money laundering, corporate fraud, securities and commodities fraud, mortgage fraud, financial institution fraud, bank fraud and embezzlement, fraud against the government, election law violations, mass marketing fraud, and health care fraud. That generally focuses on complex investigations, often with a nexus to organized crime activities, that are international, national, or regional in scope, where can bring to

¹ <https://www.fbi.gov/investigate/white-collar-crime>

bear unique expertise or capabilities that increase the likelihood of successful investigations.

1. “White-collar” crime

In 1934 Morris drew attention to the necessity of a change in emphasis regarding crime. He asserted that anti-social activities of persons of high status committed in course of their profession must be brought within the category of crime and should be made punishable.

Concept of “white-collar” crime was first introduced in the social sciences by American criminologist Edwin Sutherland in a 1939 presidential address to the American Sociological Association. Sutherland later published a book titled “White Collar Crime”, which concentrated almost exclusively on corporate crime. In his landmark definition of “white collar” crime he offered these categories of crime: (O’Grady: 2011)

- Misrepresentation in financial statements of corporations;
- Manipulation in the stock market;
- Commercial bribery;
- Bribery of public officials directly or indirectly;
- Misrepresentation in advertisement and salesmanship;
- Embezzlement and misappropriation of funds;
- Misapplication of funds in receiverships and bankruptcies.

According Sutherland, “white-collar” crime is a crime committed by a person of respectability and high social status in the course of his occupation. Focusing on the powerful as well as the downcast, such a concept represented a radical reorientation in theoretical views of the nature of criminality. His penetrating work in this area focused the attention of criminologists on its demoralizing effects on the total crime picture.

Sutherland pointed out that besides the traditional crimes such as assault, robbery, murder, rape, kidnapping, and other acts involving violence, there are certain anti-social activities which the persons of upper strata carry on in course of their occupation of business. He emphasized that these “upper world” crimes which are committed by persons of upper

socio-economic groups in course of their occupation violating the trust should be termed as “white-collar” crimes so as to be distinguished from traditional crimes which he called “blue-collar” crimes.

While “crime in the streets” captured the newspaper headlines, “crime in the suites” continued unnoticed (Sutherland:1949). “White-collar” crime was far more costly than street crime and most cases were not even covered under criminal law but were treated as civil or administrative violations.

Herbert Edelhertz has given another definition of white-collar crime. His definition of “white-collar” crime was as “an illegal act or series of illegal acts committed by non-physical means and by concealment or astuteness, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage” (Herbert:1970).

Despite Sutherland’s pioneering study, little attention was focused on the “white-collar” variety until the first large-scale, comprehensive investigation of corporate crime, by American criminologists Marshall Clinard and Peter Yeager, titled *Illegal Corporate Behavior* (1979).

Many of the same patterns that were discovered by Sutherland still exist. In the decades since, the range of “white-collar” crimes has vastly expanded as new technology and new financial products and arrangements have inspired a host of new offenses, facilitated by the internet today.

“White-collar” crime is commonly subdivided into two broad, general sub-categories:

- 1) Individual crimes and
- 2) Corporate crimes.

1.1. Corporate crime - a sub-category of “white-collar crime”

Corporate criminality is a global and relatively new phenomenon in the world which leaves deep impact on the lives of the individuals and the society at large. This necessitates the dissection of this concept to come with findings to deal with corporate crimes. It poses potential

challenge to the criminal justice system in many ways. Corporate crime is crimes committed by or for corporations or businesses which act to further their interests and have a serious physical or economic impact on employees, consumers and the general public.

The corporate crime has grown rapidly the last thirty years, with an increasing number of corporations participating in economic and public life. Particularly came to the notion that corporations within their core business can act against the law, causing damage to the country, but also to society as a whole.

Corporate powers are not confined within a particular territory; multinational corporations function in different countries and thus spread crimes worldwide. But corporate crimes, being different from the ordinary crimes, are not easily detectable. Hence, punishment of the corporate criminals appears to be a big challenge for the government, especially of the developing countries which are the most vulnerable to, and affected by, the corporate crimes.

The problem of how to hold a company criminally accountable for the harm produced in the course of its business activity continues to vex the judiciary. In criminology, corporate crime refers to crimes committed either by a corporation (i.e., a business entity having a separate legal personality from the natural persons that manage its activities), or by individuals acting on behalf of a corporation or other business entity (see vicarious liability and corporate liability). For the worst corporate crimes, corporations may face judicial dissolution, sometimes called the "corporate death penalty", which is a legal procedure in which a corporation is forced to dissolve or cease to exist.

Corporate crime overlaps with:

- "white-collar" crime, because the majority of individuals who may act as or represent the interests of the corporation are white-collar professionals;
- organized crime, because criminals may set up corporations either for the purposes of crime or as vehicles for laundering the proceeds of crime. The world's gross criminal product has been estimated at 20 percent of world trade. (de Brie 2000); and

- state-corporate crime because, in many contexts, the opportunity to commit crime emerges from the relationship between the corporation and the state.

Often have a lack of differentiation of these criminal phenomena, which affect the study of corporate crime. Although by doing some of their activities the corporation performs specific criminal offenses, criminal liability of legal persons for a long time has no provisions for that under national law, especially the European countries from which corporation is coming. Therefore, many countries have joined the facelift for the criminal law, and to provide accountability and punishment of legal persons for criminal offenses (either directly, or indirectly to). Bearing in mind the European directive and other international standards, it is expected that this issue will be aligned in the European countries in a way that will make the offenses responsible corporation, which will cause the development of corporate criminal law (Šikman: 2013).

2. Classification and types of “white-collar” crimes

Theoretically, various “white-collar” crimes may broadly be classified into four major categories as follows:

- 1) Ad hoc crimes: they are also known as personal crimes because in this category of “white-collar” crimes, the offender pursues his own individual objective having no face to face contact with the victim.
- 2) “White-collar” crimes involving a breach of trust or breach of faith bestowed by an individual or institution on the perpetrator.
- 3) Individuals occupying high positions or status who commit crime incidental to, and in furtherance of their organizational operations constitute this category of “white-collar” crimes. People occupying high position commit such crime, not because it is their central purpose, but because they individually find an opportunity in the course of their employment to earn quick money or gain undue advantages by using their power or influence.
- 4) “White-collar” crimes may also be committed as a part of the business itself. Violation of trademarks or copyrights, patent law

or competition law, etc. the violation of domain name and other corporate crimes are also “white-collar” crimes of this type.

“White-collar” crime encompasses a wide range of offenses, including the following:

- Fraud - a broad term that encompasses several different schemes used to defraud people of their money.
- Insider trading - trading done with the benefit of the trader possessing material, non-public information that gives him or her an advantage in the financial markets.
- Ponzi scheme - named after Charles Ponzi, the original perpetrator of such a scheme, is an investment scam that offers investors extremely high returns. It pays such returns to the initial investors with the newly deposited funds of new investors. When the scammer is no longer able to attract a sufficient number of new clients to pay off the old ones, the scheme collapses like a house of cards, leaving many investors with huge losses.
- Identity theft and other cybercrimes - identity theft and computer system “hacking” are two of the most widespread computer crimes.
- Embezzlement - a crime of theft, or larceny, that can range from an employee taking a few dollars out of a cash drawer to a complex scheme to transfer millions from a company’s accounts to the embezzler’s accounts.
- Counterfeiting - the money has become more colorful and expanded in detail because it had to in order to combat counterfeiting. With today’s computers and advanced laser printers, the old currency was just too easy to copy.
- Money laundering - a service essential to the needs of criminals who deal with large amounts of cash. It involves funneling the cash through several accounts and eventually into legitimate businesses, where it becomes intermingled with the genuine revenues of the legitimate business and is no longer identifiable as having originally come from the commission of a crime.

3. World famous “white-collar” crimes

Here are the most famous “white-collar” crimes that shocked the world.

- **Bernie Madoff - Ponzi Scheme**

Bernie Madoff is famous for committing one of the most famous “white-collar” crimes this century. It’s certainly one of the largest in terms of monetary value. Bernie ran a Ponzi scheme from around 1991 until he was finally arrested in December 2008 after a lengthy investigation. During this time it’s estimated he scammed around \$65 billion from thousands of investors.

A Ponzi scheme is essentially a form of fraud whereby the person creating the scheme lures investors to hand over money on the promise of receiving high returns. They are able to pay money out to investors that complain or want their money back early on using the funds from other investors. In the long run, however, they do not invest the money and end up in a position where they can’t pay everyone back. It’s a fairly common white-collar crime. What was unusual in Berne’s case was how long he’d been running his scheme, and how much he’d conned. Bernie Madoff received the maximum sentence of 150-years in federal prison to reflect the severity of his crimes.

- **WorldCom - Accounting Fraud**

In the 1990s WorldCom was the fastest growing telecom company in the United States. They bought more than sixty other telecom businesses and was handling more than 50% of internet traffic worldwide. Towards the end of the 90s, revenue growth started to slow. As a result, WorldCom’s stock price started to fall. Their expenses to profit ratio also started to fall, and the company started to unwind financially.

To counter this drop in share price, the CEO at WorldCom decided to reduce the amount of money held on reserve. He also started to classify operating expenses as long-term capital investment. These are fraudulent accounting practices that effectively turned WorldCom’s losses into profits.

The Securities and Exchange Commission (SEC), which is a U.S. government agency responsible for regulating the securities markets and protecting investors became suspicious and performed an audit on WorldCom. They found the accounting errors and WorldCom was forced to file for bankruptcy. The CEO and the CFO at WorldCom at the time, were both given prison sentences.

- Tyco International - Fraud

Tyco International Ltd was one of the world's largest makers of electronic components; fire protection systems, undersea telecommunications systems, and some other products. The "white-collar" crimes taking place behind the scenes at this multi-million dollar corporation has been labeled as stock fraud, securities fraud, and unauthorized bonus.

In essence, three of the company's directors were found to have unlawfully given themselves more than \$600 million. Their fraud traces back to 1995. The company directors set up very deliberate and careful systems to spend millions of the company's money on personal expenses. It wasn't until 2002 that they were finally charged.

- Enron - Accounting Fraud

Enron was a Texas-based energy-trading company. Things started out great for Enron as they were named "America's Most Innovative Company" for several years and growing at a rapid pace. Despite claiming revenues of almost \$101 billion during 2000, by the end of 2001 Enron had filed for bankruptcy. It wasn't the usual bankruptcy a company goes through as a result of economic downturn, loss of business, or any of the other common reasons though.

The reason Enron went bankrupt was due to internal accounting malpractices. Enron lied about how much profit they were making. They hid large debts and took part in numerous other shady dealings spanning decades. They were involved in so much corruption, that some of the illegal things Enron did are still not fully understood to this day. More than 4,500 people lost their jobs. In addition, when Enron filed for bankruptcy with estimated losses of \$74 billion it was the largest in American history at the time.

- Wells Fargo - Account Fraud

Wells Fargo is the fourth-largest bank in the U.S. They are currently going through a number of civil and criminal lawsuits relating to fraudulent sales practices. Under pressure to sell products and meet sales targets, staff at multiple branches created millions of fake savings and checking accounts. Not only did they set up fictitious accounts, they used real customer data to open more accounts.

This started to unravel as customers noticed transactions and new accounts attached to their names and the complaints started coming in. It's estimated this account fraud started in 2011. By 2016, regulatory agencies started investigating due to the volume of customer complaints. The fallout has put an estimated 20,000 employees jobs at risk. Wells Fargo has also been ordered to pay \$3 billion in settlements, and the future looks bleak as its reputation is irreversibly damaged.

CONCLUSION

Control of crimes is a crucial problem for criminal justice administration in each country. It is more important than ever for organizations to develop and implement effective internal controls and process to ensure compliance with often complex legal and regulatory requirements in respect of crime. This is particularly true for businesses operating in a global marketplace and interacting with many different stakeholders.

Compliance programmes that have been aligned to the organisation's goals not only help to instil good working practices, but can also provide critical protection to legal risks if and when things do go wrong. Some of the remedial measures for combating "white-collar" criminality may be stated as follows:

- creating public awareness against these crimes through the media of press, platform, and other audio-visual aids. Intensive legal literacy programs may perhaps help in reducing the incidence of white-collar criminality to a considerable extent.

- special tribunals should be constituted with power to award sentence of imprisonment;
- stringent regulatory laws and drastic punishment for “white-collar” criminals;
- a separate chapter on “white-collar” crimes and socio-economic crimes should be incorporated in the penal code;
- “white-collar” offenders should be dealt with sternly by prescribing stiffer punishments kipping in view the gravity of injury caused to society because of these crimes.

It is necessary for the institutions of the system to find a continuous way to deal with any attempt t to carry out illegal activities by individuals or organized groups aiming at gaining criminal profits and legalizing them by launching them into legal economic and financial activities in one country. In legal states in which justice will be an ultima ratio, all socially responsible actors in the state must find mechanisms to deal with the “white-collar” crime.

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