

# **INVESTIGATING WHITE-COLLAR CRIME**

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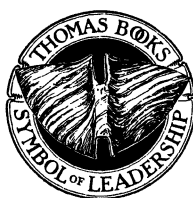
# **INVESTIGATING WHITE-COLLAR CRIME**

**Embezzlement and Financial Fraud**

*By*

**HOWARD E. WILLIAMS**

*Chief of Police  
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San Marcos, Texas*



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## PREFACE

*Experience is the name everyone gives to their mistakes.*

Oscar Wilde

*Lady Windermere's Fan*

The most important lesson I have learned about police work is that there are so many lessons to learn about police work. I have had a good career that has seen several promotions and a range of choice assignments. Each new position came with its own challenges and opportunities, and when I made detective, I learned how quickly those challenges and opportunities could mount. Patrol work had been enjoyable and rewarding, but the lure of investigations was irresistible, and as the date of that first promotion approached, the anticipation was nearly unbearable. I had heard the veteran detectives recounting their exploits and their successes, and I could imagine the excitement of high-profile cases to come.

I find it difficult to believe, now, that I did not know better. My first assignment as a detective was to the Theft Division. After only three months, the lieutenant assigned me to work white-collar cases. The detective who had investigated those cases before me was transferring, and my qualifications to succeed him were clear—I was the rookie. None of the experienced investigators wanted the job. They knew that embezzlement and fraud cases were often complicated, technical, time consuming, and difficult to investigate. They also recognized that questions often arose about whether the allegations under investigation were criminal violations or were civil disputes. They also felt that prosecutors would not vigorously pursue the case if it came to trial. I heard their concerns, but I was not easily intimidated. The department had schooled me well as a cadet, I had attended in-service training every year, and I had completed the 80-hour class required to become

a detective. I felt prepared. What I did not yet know, however, was that white-collar crimes were so different from the crimes I had investigated while on patrol.

When the first embezzlement case arrived at my desk, five boxes of business records accompanied a two-page incident report. As I reviewed the case, I experienced a startling revelation. I did not know what I was doing. I was unsure of what I was trying to prove, so, obviously, I did not know how I was going to prove embezzlement. We had never discussed the elements of embezzlement in cadet class, although we studied the elements of common street crimes *ad nauseum*, and there was never a mention of financial crimes in any in-service class. Had the case been a murder, a robbery, or an auto theft, I could have referred to the notes from the detective classes, but these cases did not fit those procedures. Despite the hours of training the department had provided, we had simply never discussed white-collar crime investigations.

Over the next few weeks, as the cases continued to arrive, I came to realize the wisdom of Oscar Wilde's words. If experience came from mistakes, I was gaining experience rapidly. I sought help from other detectives, from my supervisors, and from prosecutors at the district attorney's office, but they could offer little advice. They tried to help, of course, but few of them had any experience investigating or prosecuting white-collar crime, and they had no more training than I had.

Believing that someone had written a book on every possible topic, I turned to the library, but the books I found were largely anecdotal, retelling the story behind embezzlements and frauds, or they discussed theories of white-collar offenders. What these books did not do was explain what to prove and how to prove it. I was fortunate, ultimately, to locate financial investigation training sponsored by the Federal Bureau of Investigation and the Internal Revenue Service, and, eventually, I developed a reputation as a decent white-collar crimes investigator. Still, I felt it was unfortunate that so little literature existed explaining how to investigate white-collar crimes. That is why, a few years later, I wrote *White-Collar Crime: Embezzlement and Financial Fraud*, to help police officers avoid gaining experience in the way of Oscar Wilde.

Nearly a decade has passed since the first edition, and I have moved on to other assignments. Fortunately, things are changing for investigators of white-collar crime. Many police departments across the

country have established their own white-collar crimes investigation units, and state of the art training is available from the National White Collar Crime Center, including courses on identity theft, elder fraud, disaster fraud, and money laundering. I still hear detectives complaining of the complexities and difficulties of investigating white-collar crime, but I remain convinced that officers can, and must, investigate white-collar crime because the costs are too staggering to ignore. Each generation has its infamous examples of white-collar crimes, and recent events have proven, again, how damaging white-collar can be: Enron Corporation; WorldCom, Inc.; Tyco International Ltd.; and Imclone Systems, Inc. are just a few examples. The need to train and educate new investigators continues.

As we noted in the first edition, white-collar criminal investigations pose unique problems for law enforcement officers, but expensive and highly specialized training and education are not necessary to prepare an officer to investigate most white-collar criminal activity. A working knowledge of bookkeeping, accounting, financing, and general business principles is beneficial; organizational skills and a propensity for logical deduction are important; and attention to detail is vital. More importantly, the elements of proof peculiar to white-collar crime force the investigator to use techniques that differ from most property crimes. The investigator must learn to research unfamiliar law because many criminal offenses, particularly white collar offenses, exist outside the penal codes.

*White-Collar Crime: Embezzlement and Financial Fraud, Second Edition* comes with some *caveats*. First, I advise any student looking to discover why someone turns to a life of white-collar crime to look elsewhere. Scholars and social scientists, who are far more experienced and schooled than I am, have written many books and articles on that topic. Although I encourage students of criminal justice to study white-collar crime theory, that is not the purpose of this book. Consequently, we mention briefly only a few of the better-known criminological theories that purport to explain white-collar crime in the hopes that investigators will find the information useful during their investigations.

Second, I have worded many statements with such phrases as “may have,” “possibly,” or “could have.” I have been purposefully vague at such times. Laws vary from jurisdiction to jurisdiction, and laws that apply in one state may not apply in another. Case law citations herein serve only to illustrate a point. I do not purport to be an authority on

law, and this book is not a legal treatise. Investigators should direct any questions regarding legal authority, interpretation of law, or admissibility and sufficiency of evidence to an attorney.

To David O. Friedrichs, Arthur L. Bowker, and Ronald J. Durkin, who published reviews of the first edition, I offer my sincere thanks. I trust that I have learned from your expertise and advice, and I hope that the second edition proves worthy of your consideration. Additionally, I am grateful to Michael Thomas, my publisher, who gave me a chance by publishing my first book, and who encouraged me to write the second edition of *White-Collar Crime*. Your confidence has been inspiring.

H.E.W.



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# **INVESTIGATING WHITE-COLLAR CRIME**





## Chapter 1

### WHITE-COLLAR CRIME

*Crime is terribly revealing. Try and vary your methods as you will, your tastes, your habits, your attitude of mind, and your soul is revealed by your actions.*

Agatha Christie  
*The ABC Murders*

Sociologists and criminologists have debated the phenomena known as white-collar crime for more than 65 years. Journalists use the term regularly in news articles and stories, and politicians campaign against the abuses. Many American law schools teach courses on the subject, and a few attorneys claim expertise in prosecuting or defending white-collar cases. Some private security companies advertise services investigating and preventing such offenses. Yet, despite broad acceptance in the lexicon of academia, politics, and journalism, the phrase “white-collar crime” appears rarely in substantive criminal law.<sup>1</sup>

Each generation seems to endure its own examples of criminal activity. In the 1990s, the savings and loan crisis filled the headlines. As the new millennium unfolds, white-collar crime is again in vogue. Media reports are rife with the names of Ken Lay and Andrew Fastow at Enron Corporation; Bernard Ebbers of WorldCom, Inc.; John Rigas at Adelphia Communications Corp.; Martha Stewart and Sam Waksal of ImClone Systems, Inc.; Richard Scrushy of HealthSouth Corp., and Dennis Kozlowski and Mark Swartz of Tyco International, Ltd. The losses and financial damages related to these corporate scandals totaled in the billions of dollars, but the public neither cried for local law enforcement to investigate, nor questioned why they did not. It seems that the public expects federal authorities to deal with such cases, and local law enforcement is too often content with that arrangement.

The excuses for leaving such complex cases to federal authorities are legion: white-collar criminal investigations are too complicated, time consuming, or expensive for local authorities; state laws do not contain sufficient prohibitions against such activity; federal authorities have better training and equipment to discover, investigate, and prosecute such crimes. Unfortunately, lack of enforcement action against white-collar criminals promotes an environment that breeds violations that are more flagrant. The most potent weapon in the law enforcement arsenal to prevent white-collar crime is concrete enforcement action. However, only a few local law enforcement agencies have specialized units to investigate white-collar crime. Because few agencies train to investigate such offenses, many security experts advise security managers to plan internal fraud investigations on the assumption that they will receive no assistance from local law enforcement,<sup>2</sup> and some experts suggest that companies should employ internal or contracted resources to investigate offenses before approaching the police.<sup>3</sup>

The Enron and WorldCom cases involve complicated accounting issues, but such complex cases are not typical. Most white-collar crimes occur on a smaller scale, but the issues in less well-known and less complex cases are the same. A Harris and Associates' survey, conducted in the late 1980s, found that almost one in three Americans had been defrauded in some manner. Fewer than a third of the victims had reported the incidents, and nearly two-thirds said they did not know to whom they should report the crimes.<sup>4</sup> A 1990s survey revealed that approximately 36 percent of American households reported having been victims of white-collar crime, but only about 7 percent had reported the incident to law enforcement authorities.<sup>5</sup>

Of course, investigations often reveal suspects and criminal activities of which even the victim is unaware. No investigator can know at the onset how many victims there are, how large the losses are, where all the evidence is, or how many legal impediments he must overcome. However, any investigator courageous and dedicated enough to work a high profile or heavily publicized white-collar case can positively affect the reputation of his department. Admittedly, white-collar criminal investigations are complicated and time-consuming. Investigators may need weeks or months to conclude an investigation. Detectives must research the legal questions involved, subpoena records, analyze statements, and review documents of all kinds: letters,

contracts, depositions, accounting journals, checks, and bank statements. An investigator may need months or years to identify, locate, and interview victims and witnesses, many of whom may be reluctant to cooperate. As the investigation progresses, it becomes more difficult to organize documents and write a report that concisely and completely presents the information. Even when the investigation is completed, an investigator may spend hours copying and indexing documents, organizing files, and preparing the case for prosecution. Police administrators and investigators may use such complications as convenient excuses to avoid certain inquiries, but with proper training and a proper attitude, investigators will realize these perceived liabilities as true benefits.

Local law enforcement authorities are not alone when learning to deal with white-collar crime investigations. Some federal agencies, such as the Federal Bureau of Investigation (FBI), the Internal Revenue Service, and the Secret Service, have large and well-trained white-collar investigation units, and their personnel can provide training and other assistance. The National white-collar Crime Center is a federally funded, non-profit corporation whose membership primarily comprises law enforcement agencies, state regulatory bodies with criminal investigative authority, and state and local prosecution offices. The Center's mission is to help law enforcement agencies better understand and utilize tools to combat economic and high-tech crime.

Few local law enforcement agencies have formal in house courses or seminars for training white-collar investigators, and private sector training programs can be expensive. Law enforcement agencies with limited budgets often place a low priority on such training because executives believe that such expenditures are not cost effective. Even in departments where training funds are available, owing to the complexities of white-collar crime investigations, comprehensive training is seldom available. Many administrators hold to the historic but antiquated idea that police officers should deal with crime on the streets, and that regulatory agencies or federal authorities should investigate crime in the suites. Thus, investigators may receive training only sporadically, attending schools or lectures with limited scope and instruction. Consequently, many investigators are reluctant to attempt white-collar investigations.

The costs of white-collar crime are staggering. Although it is difficult precisely to measure the financial losses attributable to white-collar