INVESTIGATING WHITE-COLLAR CRIME

ABOUT THE AUTHOR

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INVESTIGATING WHITE-COLLAR CRIME

Embezzlement and Financial Fraud

By

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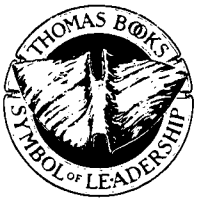
Austin, Texas



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PREFACE

> The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.
>
> Jacques-Anatole-François Thibauld
> *Les Lys Rouge*

Thibauld, a 19th century French polemic, reflected the animosity prevalent in his day toward the inequities in the law and the legal system. He believed that criminal laws were repressive, prejudicing the poor while safeguarding the privileges of the rich. Thibauld was not alone in that opinion, and he developed a large following. Such criticisms were not unique to France, but extended worldwide. Eventually, because of the appeal of the masses, it became expedient for the political powers to accord ordinary people protection from the abuses of the upper class. In time, these principles spawned the concept of white-collar criminality. Yet, even today, criticism rages over the inequalities in the enforcement of criminal laws.

In my experience as a police officer, I have had the good fortune to become a white-collar crime investigator. The term unfortunately suggests a degree of expertise and specialization believed uncommon to most property crime investigators. Some investigators have confided to me that cases involving embezzlement or fraud are too complicated or too technical for them to understand or to investigate properly. They know that such investigations are incredibly time consuming. The average investigator is usually responsible for a case load that does not allow sufficient time to investigate complex cases. Questions often arise about whether the allegations under investigation are criminal violations or are civil disputes. There is the additional frustration that investigators waste time investigating white-collar crimes because prosecutors do not vigorously pursue the matter if the case comes to trial.

These fears are not totally warranted. It is true that 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 white-collar criminal activity. Police supervisors and administrators must consider some special qualities, however, when deciding who should investigate such allegations. Some working knowledge of bookkeeping, accounting, financing, and general business principles is beneficial. Organizational skills and a propensity for logical deduction are important. Patience and painstaking attention to detail are vital. The investigator must realize that he cannot rush such investigations. He must stand prepared to understand and contend with the special legal, political, and sometimes social problems inherent in investigating white-collar criminal offenses. Police supervisors and administrators must accept the devotion of man hours and incidental expenses necessary to complete the investigation.

A major problem of enforcing white-collar criminal statutes is that there are elements of proof peculiar to those offenses. The basic investigative technique is, therefore, different from most property crimes. Embezzlement and fraud schemes often extend over a prolonged period. Consequently, the investigator must locate and amass large quantities of documentation. Coordinating and organizing the mass of documents and information is time consuming and difficult. Additionally, it may be difficult to write a report on the investigation presenting all the information concisely and comprehensibly. Such documentation and the organization of those documents are invaluable in presenting a case for prosecution.

The investigator must often research law with which he may not be familiar. Many criminal offenses, particularly white-collar offenses, exist outside the penal codes. The investigator must be prepared to seek advice from experts in whatever field he is investigating. Often, the distinctions between criminal and civil violations of law are nebulous, and victims may be reluctant to accept that criminal law enforcement officials are unable to involve themselves in civil disputes.

In the following chapters we shall briefly review the history of white-collar crime, seeking a working definition of the term, and briefly examining various white-collar offenses. We shall see why it is in the interest of the public generally, and the police service specifically, to pursue and prosecute white-collar criminals. We shall discuss the economic consequences of embezzlement, explain what drives a person to embezzle, and explore why there are rarely prosecutions for embezzlement. We shall define what elements are necessary to prove the offense of

embezzlement, outlining techniques to simplify an otherwise difficult and cumbersome investigation. We shall discuss the complexity of fraud, uncovering the multitude of offenses covered by the term and seeking a common definition. We shall define the elements necessary to prove fraud, outlining techniques to simplify the investigation.

We shall discuss the importance of interviews with victims, witnesses, and suspects, highlighting techniques to help the investigator become a more effective interviewer in white-collar criminal cases. We shall note the differences in the primary and secondary stages of the investigation. We shall discover the importance of careful case preparation and of a well written and documented report of the facts. We shall preview some special problems inherent in investigating and prosecuting white-collar crime, discussing ways to avoid and cope with these problems.

We shall examine these problems, concepts, and theories neither as criminologists, nor as sociologists, nor as lawyers, but from the practical view of an investigator who confronts the problems daily. Because of the multitude of acts and omissions covered by the term "white-collar crime," we shall not attempt to discuss details of specific statutes. No one book could address all the legislation, which varies from jurisdiction to jurisdiction, nor could it address the difficulties inherent in investigating each of them separately. Additionally, it is not my intent to divulge specific details of the mechanics of a scheme that may serve only to educate the public in how to perpetrate or conceal certain criminal acts. Instead, we shall discuss principles of investigation specific to embezzlement and fraud, but pertinent to most white-collar criminal activity. By applying these skills, investigators in both law enforcement and private industry will gain a better understanding in detecting, investigating, prosecuting, and preventing white-collar crime.

I have worded many statements in the text 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. An investigator should direct any questions regarding his legal authority, interpretation of law, or admissibility and sufficiency of evidence to an attorney.

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INVESTIGATING WHITE-COLLAR CRIME

Chapter 1

WHITE-COLLAR CRIME

Pardon one offense, and you encourage the commission of many.

Publilius Syrus
Maxim 750

Pardoning, excusing, and ignoring white-collar criminal offenses because investigations are too complicated, too time consuming, or too expensive are unacceptable to the modern professional law enforcement organization. A lack of appropriate enforcement action against white-collar criminals fosters an environment that breeds additional activity and more flagrant violations. Where there is no indication that law enforcement authorities within a given geographic or political region are willing to investigate white-collar offenses and to prosecute offenders, a laissez-faire attitude prevails. Conversely, the most potent weapon in the law enforcement arsenal to prevent white-collar criminal activity is an attitude pervasive within society that it will not tolerate such crime. Concrete examples of enforcement action reinforce this attitude.

No investigator can control the course of all legal action during an investigation or prosecution. A prosecutor must consider many factors before bringing a case to trial. Any investigator, however, courageous enough to work a high profile or heavily publicized white-collar case will greatly affect the reputation of his department.

Admittedly, white-collar criminal investigations may be extraordinarily complicated and time consuming. Taking weeks or months to conclude an investigation is usual as investigators research the legal questions involved, subpoena records, and pour over documents of all kinds: letters, contracts, depositions, accounting journals, checks, and bank statements. An investigator may need a great deal of time to find, interview, and take statements from reluctant victims and witnesses. As the investigator obtains more information, it becomes more difficult to organize the documentation. It also becomes more difficult to construct a report of the incident so that it contains all the pertinent information in a concise, logical, and easily understandable form. An investigator may spend

much time finding the best way to convey the information to those who will prosecute the case. He spends many hours copying and indexing documents, writing reports, and organizing files. Police administrators and investigators may exploit these complications as convenient excuses not to pursue certain inquiries. With proper training and a proper outlook, however, the investigator will realize these perceived liabilities as true benefits.

Except the Federal Bureau of Investigation and the Internal Revenue Service, few law enforcement agencies have established formal in-house courses or seminars for training white-collar crime investigators. Private sector training programs can be expensive. Smaller law enforcement agencies may not place a high priority on such matters. Administrations may not believe the expenditures to be cost effective. Many police administrators hold to the historic but antiquated idea that police officers should deal with crime on the streets. They believe that regulatory agencies or federal authorities should investigate crimes in the suites. Even in larger departments where funds may be available, owing to the complexities of white-collar crimes investigations, comprehensive training may not be readily available. Thus, investigators may receive training sporadically, attending schools or lectures with limited scope or instruction. Consequently, many investigators are reluctant to attempt or to participate in white-collar crimes investigations. Identifying measures and procedures to simplify these arduous investigations without lengthy and costly training is, therefore, important.

Due to the diverse violations encompassed in the generic classification of white-collar crime, defining techniques and procedures unique to each is not feasible. Such an undertaking would require an encyclopedic effort. The practical alternative, then, is to develop functional outlines that are applicable to the investigation of a variety of offenses.

Perhaps the most difficult task of outlining such investigative procedures lies in defining the scope of white-collar crime. White-collar crimes include violations of ethics laws, purchasing regulations, voting laws, banking codes, insurance regulations, labor relations laws, pure food and drug laws, consumer protection laws, commerce codes, and a host of others. The concept encompasses many state and federal statutes and regulations. Such laws and regulations vary from jurisdiction to jurisdiction. Government bodies tailor these statutes to meet particular social or economic needs. The need for such diversity is obvious. Regula-

tions concerning working conditions in West Virginia coal mines would hardly be necessary or applicable in the state of Florida.

Consequently, any analysis of investigative technique must begin, not by listing pertinent legislation, but by developing a workable definition of the concept. Even this most basic approach is difficult since there exists no uniform definition of white-collar crime.[1] Criminologists and the public have expressed differing opinions on what to include in the definition. In the debate over white-collar crime, much discussion is had over whether to include noncriminal acts within the definition. For the criminal investigator, this argument is merely an academic exercise. Whether an act or omission should be criminal instead of civil or administrative is irrelevant. Unless a law exists making specific acts or omissions a criminal violation, no crime exists. Consequently, no criminal investigation is necessary.

The concept of white-collar crime is not static. In an evolving society the perceptions of what should be criminal activity changes. Abortion, which was until recently forbidden in many states within the United States, since the celebrated Supreme Court decision in Roe v. Wade, is now legally acceptable within defined limits. Even so, public debate on the issue still rages. During World War II, the government closely regulated typical daily business transactions such as the selling of butter, meat, and shoes. Violations of such controls were subject to severe sanction. Such were the necessities in a nation at war. As technology progresses, and as economic and social conditions change, so do the laws and regulations that govern. Thus, over time, changing social and legal standards have refined the definition of white-collar crime.

The problems of white-collar crime are not new. The 19th century French polemic Jacques-Anatole-François Thibauld recognized that law protected the business dealings of the upper class at the expense of the less fortunate. Witness the exploitations of labor and consumers by the "robber barons" of the late 19th century American railroad and steel industries.[2] In 1931, the *New York Times* reported four cases of embezzlement in the United States where losses exceeded $1 million each. The total loss in the four cases was more than $9 million.[3] In 1938 the men listed as one through six on the Federal Bureau of Investigation's Most Wanted list derived $130,000.00 through criminal activity, mostly burglary and robbery. By comparison, during the 1930s, Swedish financier and promoter Ivar Krueger defrauded some $250 million from investors in Sweden, France, and the United States.[4]

Defining White-Collar Crime

In the 1930s, the prevailing view of American sociologists was that criminal behavior was essentially the result of cultural conflicts, the weakening of the forces of the privileged upon the less privileged members of a society. They viewed the consequential social disorientation as a struggle between contradictory moral and ethical standards. Coupling of such conditions with concomitant materialistic values, they believed, led individuals, particularly those of lower intelligence or those who were mentally or emotionally unstable, to satisfy their needs or desires by criminal or otherwise deviant or antisocial behavior.[5]

Edwin H. Sutherland contended that contemporary theories of criminality were insufficient. He noted that criminologists based such theories on data from studies of individuals imprisoned for some offense. Sutherland contended that these data excluded from consideration professional people, business and industrial leaders, and corporations who rarely, if ever, faced criminal sanctions and imprisonment. Consequently, Sutherland argued, theories based on socioeconomic deprivation, low intelligence, or psychopathic states were incomplete and did not address the full gambit of criminal activity.[6]

Sutherland first introduced the term "white-collar crime" in a presidential address to the American Sociological Society in 1939. Later, he formally defined it as "a crime committed by a person of respectability and high social status in the course of his occupation."[7] Sutherland noted that, because members of the upper socioeconomic classes committed these crimes while doing business, they caused serious injury to society by undermining public confidence in the economic and financial institutions of that society. He also contended that such lack of confidence and trust created low morale and social disorganization. Consequently, Sutherland's definition included acts violating any law or regulation, criminal or civil, he felt were harmful to society.[8] "Sutherland concluded that such crime existed because of differential association, a process whereby behavior is learned in association with those defining the behavior favorably and in isolation from those defining it unfavorably."[9] He argued that corporate crime would become self-propagating as corporate officers defined their own limits of acceptable behavior.[10]

Gilbert Geiss criticized Sutherland's work, claiming that the major difficulty with *White Collar Crime* as criminological research was in Sutherland's inability to differentiate between the corporations and the

actions of the corporations' executive and management personnel.[11] Geiss did not fully accept Sutherland's conclusions because Sutherland asserted that corporations as individual entities could be guilty of criminal action. Geiss contended that any criminal action could only be the responsibility of the individuals directing, administrating, and managing the corporation.[12]

For the criminal investigator, including violations of civil law or administrative regulations as criminal activity is unacceptable. The criminal investigator must try to familiarize himself with the differences in criminal and civil law, but he must avoid entanglement in purely civil disputes. It is neither the investigator's duty nor his responsibility to decide who may be right or wrong in a civil dispute. It is his duty to serve as an impartial witness to the facts and to enforce the encoded criminal laws. The investigator should refer any questions regarding civil recourse or civil responsibility to proper legal practitioners. This is not to imply that law enforcement officers cannot use civil action to enhance criminal enforcement. Civil law may be a most useful supplement to criminal law, as in forfeiture proceedings or suits at common nuisance. Clearly, however, the investigator must base the action upon a criminal violation, as in civil forfeitures of the tools and proceeds of narcotics trafficking. If the investigator decides that no criminal violation has occurred, the investigator should leave any civil remedy for the injured parties to pursue.

Such shortcomings do not invalidate Sutherland's ideas. Sutherland's theories formed the basis for more extensive sociological research, and, as in any scientific research, subsequent research expanded and refined the basic theory. The need for a more restrictive definition, however, was evident. Criminologist Don C. Gibbons defined white-collar crime as an offense that represented a violation of legal rules constructed to govern business affairs and occupational practices, but only as far as those violations took place in furtherance of the conduct of regular business or occupational activities.[13] Thus, Gibbons associated white-collar crime not with the social status of the offender, but with the activities within the professions. He was mainly concerned with violations of federal regulatory statutes and regulations of administrative agencies.[14]

Gibbons' definition was more restrictive than Sutherland's, but it failed to include acts individuals commit against legitimate business such as embezzlement and insurance fraud. Thus, Gibbons' definition excluded important aspects of white-collar crime.

In their discussions, sociologists Marshall B. Clinard and Richard Quinney emphasized that the crucial point in defining white-collar crime was that the behavior included in the concept had to be directly related to those occupations regarded as legitimate in society. Thus, Clinard and Quinney defined what they termed occupational crime as violations of legal codes during activity within an otherwise legitimate occupation.[15] August Bequai added that such violations had to be committed by means of guile, deceit, or concealment.[16]

Clinard, Quinney, and Bequai raised the important points that the criminal activity had to be involved with a legitimate and legal business or occupation. They added these violations must include elements of fraud and deception. Their definitions specifically excluded acts of violence or coercion. Thus, extortion, robbery, narcotics trafficking, gambling, and vice are excluded, no matter the socioeconomic stature of the actor. The actions of a banker or lawyer who helps in laundering the proceeds of such activity, however, may be involved in white-collar crime.

In 1979, a United States Congressional Subcommittee on Crime derived what is, for the criminal investigator, perhaps the most functional definition of white-collar crime. The Subcommittee defined white-collar crime as "an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain personal or business advantage."[17]

Types of White-Collar Crime

One difficulty of the white-collar crime concept is that white-collar criminality exceeds the normal limits of traditional crime.[18] English common law recognized larceny as a criminal offense, but it had no provisions to govern complex fraud or embezzlement. Embezzlement was legally undefined in England until 1799.[19] The lack of trust that accompanied the growth of the banking profession led to the definition of criminal embezzlement.[20] This social consciousness and reaction to a perceived threat to the society's economic and social well-being are the basis for legislation defining white-collar criminal activity.

Similar problems developed with the growth of other industries and