Corporations in Financial Crime: Convenience for White-Collar Criminals

PhD seminar at the University of Oslo
Wednesday, October 12, 2016
Professor Petter Gottschalk
White-Collar Crime

Financial crime for profit by members of the elite in society who have organizational opportunity in their professions to commit and conceal offenses by abusing trust and relationships.

Edwin Sutherland’s «White Collar Crime»: The thesis of this book is that persons of the upper socioeconomic class engage in much criminal behavior; and that this criminal behavior differs from the criminal behavior of the lower socioeconomic class.
White-Collar Criminal

- The person has high social status and considerable influence, enjoying respect and trust, and belongs to the elite.
- The elite have generally more knowledge, money and prestige, and occupy higher positions than others in the population.
- Privileges and authority by the elite are often not visible or transparent, but nevertheless known to everybody.
- The elite can be found in business, public administration, politics, congregations and many other sectors in society.
- Elite is a minority that behaves as an authority towards others.
- The person is often wealthy and does not really need crime income to live a good life.
- The person is typically well educated and connects to important networks of partners and friends.
- The person exploits his or her position to commit financial crime.
- The person does not look at himself or herself as a criminal, but rather as a community builder who applies personal rules for own behavior.
- The person may be in a position that makes the police reluctant to initiate a crime investigation.
- The person has access to resources that enable involvement of top defense attorneys, and can behave in court in a manner that creates sympathy among the general public, partly because the defendant belongs to the upper class similar to the judge, the prosecutor and the attorney.
White-Collar Criminals

- 375 men and 30 women.
- Average age 44 years when crime committed.
- Average age 49 years when convicted.
- Average amount 45 million Norwegian kroner ($6 million).
- Fraud 42%, manipulation 35%, corruption 19%, theft 4%.
- Detected by journalists 25%, victims 13%, bankruptcy 11%, internal auditors 11%, tax authority 6%, banks 4%, external auditors 4%, police 2%, stock exchange 1%, others 23%.
Fred A. Ingebrigtsen, CEO, Acta Capital, 9 years.

Henry Amundsen, CEO, Taxi Accounting, 8 years.

Alain Angelil, CEO, Eltek Components, 8 years.

Ivar T. Henriksen, CEO, Romerike Water Supply, 8 years.

Frank Murud, Property Manager, Oslo City School Buildings, 7 years.
Jeffrey K. Skilling, CEO, Enron Corporation, 24 years.

Bernard J. Ebbers, CEO, WorldCom, 25 years.

Bernard L. Madoff, CEO, Madoff Investment Securities, 150 years.

Jeffrey K. Skilling, CEO, Enron Corporation, 24 years.
FROM JAILER TO JAILED
MY JOURNEY FROM CORRECTION AND POLICE COMMISSIONER TO INMATE #84888-054

NEW YORK TIMES BESTSELLING AUTHOR

BERNARD B. KERIK
FORMER NEW YORK CITY POLICE COMMISSIONER

FULL CIRCLE
A memoir of leaning in too far and the journey back

ERIN CALLAN MONTELLA

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NORWEGIAN BUSINESS SCHOOL
Convenience

Convenience is a concept that was theoretically mainly associated with efficiency in time savings. Today, convenience is associated with a number of other characteristics, such as reduced effort and reduced pain. Convenience is associated with terms such as fast, easy, and safe. Convenience says something about attractiveness and accessibility. A convenient individual is not necessarily neither bad nor lazy. On the contrary, the person can be seen as smart and rational (Sundström and Radon, 2015).
Theory

A theory is a systematic explanation of a phenomenon in reality. A theory is assumptions about relationships in practice. A theory combines insights from observations, previous research, hypotheses and own reasoning. A theory emerges by abstraction, relationships, selection, simplification, and generalization.
Convenience Theory

Convenience theory is a systematic explanation of the white-collar crime phenomenon. The theory makes assumptions about relationships between three dimensions in practice. The theory combines insights from observations, previous research, hypotheses and own reasoning. The theory emerges by abstraction, relationships, selection, simplification, and generalization.
Convenience Theory

A. Economical Dimension: Financial motive for crime (Why)

B. Organizational Dimension: Professional opportunity for crime (How)

C. Behavioral Dimension: Deviant personality for crime (Who)
Economical Dimension

• Financial motive for crime (why)
• Avoid threats (bankruptcy / divorce)
• Exploit opportunities (contracts / boat)
• Compensate for weaknesses (bad products / achieve goals)
• Leverage strengths (cartel / embezzlement)
• Satisfy greed (never enough)

(Corporate crime / Occupational crime)
Pyramid of needs for white-collar offenders adapted from Maslow
Economical Dimension

- Theory of profit-driven crime
- Theory of goal orientation
- Theory of strain and struggle
- Theory of rational self-interest
Convenience in White-Collar Crime: Introducing a Core Concept

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ABSTRACT

This article is concerned with white-collar criminals and considers the role of convenience in explaining crime occurrence. The article puts forward convenience as a theoretical concept that underlies existing theories and research on white-collar crime. Convenience seems present in all three dimensions of crime: economic dimension, organizational dimension, and behavioral dimension. Convenience in white-collar crime implies savings in time and effort by privileged and trusted individuals to solve a problem, where alternatives seem less attractive, and future threats of detection and punishment are minimal. The proposed theory of convenience in white-collar crime emerges as an integrated explanation in need of more theoretical work as well as empirical study.

Introduction

Extracting the concept from marketing theory (Farquhar and Rowley 2009), convenience in white-collar crime relates to savings in time and effort by privileged and trusted individuals to reach a goal. Convenience is here an attribute of an illegal action. Convenience comes at a potential cost to the offender in terms of the likelihood of detection and future punishment. In other words, reducing time and effort now entails a greater potential for future cost. "Paying for convenience" is a way of phrasing this proposition.

Convenience is the perceived savings in time and effort required to find and to facilitate the use of a solution to a problem or to exploit favorable circumstances. Convenience directly relates to the amount of time and effort that is required to accomplish a task. Convenience addresses the time and effort exerted before, during, and after an activity. Convenience represents a time and effort component related to the complete illegal transaction process or processes (Collier and Kimes 2012).

People differ in their temporal orientation, including perceived time scarcity, the degree to which they value time, and their sensitivity to time-related issues. Facing strain, greed, or other situations, an illegal activity can represent a convenient solution to a problem that the individual or the organization otherwise find difficult or even impossible to solve. The desire for convenience varies among people. Convenience orientation is a term that refers to a person's general preference for convenient solutions to problems. A convenience-oriented individual is one who seeks to accomplish a task in the shortest time with the least expenditure of human energy (Farquhar and Rowley 2009).

Three main dimensions to explain white-collar crime have emerged. All of them link to convenience. The first dimension is concerned with economic aspects, where convenience implies that the illegal financial gain is a convenient option for the decision maker to cover needs. The second dimension is concerned with organizational aspects, where convenience implies that the offender has convenient access to premises and convenient ability to hide illegal transactions among legal transactions. The third dimension is concerned with behavioral aspects, where convenience implies that the offender finds convenient justification.
Organizational Dimension

• Professional opportunity for crime (how)
• Access to resources (people and systems)
• Power and influence (formal and informal (CEO fraud))
• Concealment of crime (tax havens, subsidiaries)
• Concealment of crime (among legal transactions)
• Hide crime, not criminal (white-collar versus street crime)

(Corporate crime / Occupational crime)
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**Erstatningskrav på 18,8 millioner kroner
Organizational Dimension

- Theory of crime opportunities
- Theory of principals and agents
- Theory of social disorganization
- Theory of strategic resources
- Theory of institutional collapse
- Theory of social conflicts
- Theory of transaction costs
Behavioral Dimension

• Deviant personality for crime (who)
• Learning in association with those who find behavior favorable and in isolation from those who find behavior unfavorable
• Lack of self-control
• Need to control others
• Slippery slope to reach goals
• No guilt feeling by neutralization techniques
<table>
<thead>
<tr>
<th>#</th>
<th>Neutralization Technique</th>
<th>Yes/No</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rejects responsibility for the crime and disclaims leadership role in the action.</td>
<td>Yes</td>
<td>He blames others and says he only tried to help some friends. “It is not my responsibility” (Bjørndal and Kleppe, 2013).</td>
</tr>
<tr>
<td>2</td>
<td>Denies injury from the crime and refuses that harm has occurred.</td>
<td>No</td>
<td>There is no sign of this neutralization technique.</td>
</tr>
<tr>
<td>3</td>
<td>Dismisses victims of the crime and rejects that anyone has suffered harm.</td>
<td>No</td>
<td>There is no sign of this neutralization technique. However, he seems to consider himself as the main victim of the crime. “I have let myself be used by others” (Bjørndal and Kleppe, 2013).</td>
</tr>
<tr>
<td>4</td>
<td>Condemns the condemners and is skeptical of those who criticize his action.</td>
<td>Yes</td>
<td>He feels that he has been a victim of a witch-hunt by Økokrim for more than ten years, and he condemns investigators and prosecutors at Økokrim. “I choose to call the whole process for a witch hunt” (Hultgren, 2012). “People say it is the crock that cheated all the old people” (Kleppe, 2015).</td>
</tr>
<tr>
<td>5</td>
<td>Invokes appeal to higher loyalties as a reason for his action.</td>
<td>Yes</td>
<td>He had to do it for his friends and acquaintances. “I have helped friends and acquaintances” (NTB, 2015).</td>
</tr>
<tr>
<td>6</td>
<td>Alleges normality of action and argues that action is quite common.</td>
<td>Yes</td>
<td>“When someone hears the word ‘straw man’, it sounds scary, but to me it is like an assistant” (Meldalen, 2015).</td>
</tr>
<tr>
<td>7</td>
<td>Claims entitlement to action because of the situation.</td>
<td>No</td>
<td>There is no sign of this neutralization technique.</td>
</tr>
<tr>
<td>8</td>
<td>Notes legal mistake and considers infringement irrelevant because of error in the law.</td>
<td>Yes</td>
<td>“In my head it is not illegal to do business with others” (Kleppe, 2015).</td>
</tr>
<tr>
<td>9</td>
<td>Feels entitled to make mistakes and argues action is within acceptable mistake quota.</td>
<td>Yes</td>
<td>Since he once was a police informant, he feels entitled to do business his own way. “I was shot at work for Oslo police” (Dahle, 2011).</td>
</tr>
<tr>
<td>10</td>
<td>Presents dilemma tradeoff by weighting various concerns with conclusion of committing the act.</td>
<td>No</td>
<td>There is no sign of this neutralization technique.</td>
</tr>
</tbody>
</table>
1. **Denial of responsibility.** “My accountants made mistakes” (page 11). “I had called my accountant and told him that I wanted to pay the payroll tax” (page 153). “I let him” pay the renovation bill for me (page 157).

2. **Denial of injury.** There is no sign of this neutralization technique, while at the same time there is no confirmation of injury in the book.

3. **Denial of victim.** There is no sign of this neutralization technique, while at the same time there is no confirmation of victim in the book.

4. **Condemnation of the condemners.** “Accusing me of having connections to organized crime” and “I thought were downright preposterous” (page 149). “If this is how the members of the House and Senate want to apply their scrutiny, then more than half of them should step down and go find another job, because they certainly wouldn’t make it through the process intact” (page 151). “Prosecutors too often overcriminalize, overreach, and overpunish” (page 195). Kerik goes on condemning government prosecutors: “They can distort and exaggerate their justifications to lock up your property, bank accounts, and other assets. They can drain you and your family of everything you’ve ever worked for; rip you in the court of public opinion; destroy your family’s financial future; and do everything in their power to prevent you from being able to pay for your own defense” (page 232). On page 239, Kerik develops a conspiracy theory involving a number of powerful people named in the book, suggesting that they all took part in “continually bashing Giuliani and me in the press”. The conspiracy theory centers on him as a republican versus others who were democrats. “Was it general political ill will, or were these men boosting their careers on my conviction?” (page 240).

5. **Appeal to higher loyalties.** There is no sign of this neutralization technique related to his crime. However, there is a strong message about his loyalty to the nation in serving his country.

6. **Normality of action.** “The indictment criminalized minor ethical issues and accounting errors” (page 194). “I understand that ‘But everybody’s doing it’ is rarely a winning argument – even if it is in large part true” (page 201).

7. **Claim to entitlement.** Kerik claims a very stressful work situation for many years.

8. **Legal mistake.** “I was prosecuted criminally for what are essentially civil violations” (page 12). “Everything I was charged with – tax fraud; false statements – could have been handled ethically or civilly, without criminal charges” (page 241). “There are tens of thousands of nonviolent, first-time, white-collar offenders and drug offenders in prison today serving draconian sentences, individuals who could have been punished with alternatives to incarceration, such as fines and restitution, home confinement or house arrest, and community service” (page 243). “I do believe that a fair, objective look reveals my case and prosecution to have been selective and political. I don’t feel that it was justice” (page 270).

9. **Acceptable mistake.** “Feds were taking honest mistakes by me and my accountants and alleging they were crimes” (page 194).

10. **Dilemma tradeoff.** “This was one of those ethical moments that any person in public office faces repeatedly”, about not stopping the extra renovation work paid by others (page 157).

11. **Victim of crime.** “They would subpoena and harass my friends, family, colleagues, and just about everyone I knew” (page 156). “Investigators ripped my life to shreds, harassing and intimidating my friends, family, and colleagues” (page 158).

12. **Role in society.** “I had defended, worked, fought, and nearly died for our country many times in the past thirty years and was now being jailed” (page 201).
Behavioral Dimension

- Theory of differential association
- Theory of self-control and controlling
- Theory of slippery slope
- Theory of neutralization
- Theory of dark sides of leadership
Crime Investigation Projects

Reconstruct past events

• Know-what: What happened or did not happen?
• Know-how: How did it happen or not happen?
• Know-why: Why did it happen or not happen?
• Know-who: Who did what to make it happen or not happen?
What kind of knowledge is needed at FBI to investigate corruption at FIFA?
What kind of knowledge is needed at Bundeskriminalamt to investigate pollution fraud at Volkswagen?
INFORMATION MANAGEMENT STRATEGY

- Interviews by means of interrogation
- Network by means of informants
- Documents studied following confiscation
- Observation by anonymous presence
- Action by provocation
- Surveillance by video cameras
- Communication control
- Physical material like fingerprints
- Internet as open source (facebook)
- Police computer systems
- Accusations and claims
- Tips and whistle-blowing
- Other government authorities
UNDERSTANDING
What happened?
What might happen?
Know-what
Know-how
Know-how

ALTERNATIVE ACTIONS
What can we do?
How can we do it?
Why should we do it?
Know-how

DECISION
What criteria do we use?
How do we put weight on criteria?
What alternatives seem optimal?
Know-what
Know-how

IMPLEMENTATION
Activate information sources
Carry out investigations
Analyze and summarize
Know-what
Know-how
Know-why

EVALUATION
Did we solve the case?
Is the solution acceptable?
How much resources did we spend?
Know-what
Private policing of financial crime: 
Fraud examiners in white-collar crime investigations

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Abstract
Fraud examiners in white-collar crime investigations represent the private policing of financial crime. Examiners in crime investigations reconstruct the past to create an account of who did what to make it happen or let it happen. This article addresses the following research question: What is the contribution of fraud examiners in private investigative policing of white-collar crime? Contributions are considered to be the benefits resulting from an investigation. To make private policing a profitable investment, benefits should exceed costs. Based on an analysis of five U.S. and eight Norwegian cases, private policing does not seem profitable.

Keywords
private policing, financial crime, white-collar crime, investigation reports, fraud examinations

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Introduction
When suspicions of misconduct and crime emerge in business and public organizations, private investigators are often hired to reconstruct the past. Private investigators are typically fraud examiners from major accounting and law firms. Examiners are hired to conduct a goal-oriented procedure of creating an account of what has happened, how it happened, why it happened, and who did what to make it happen or let it happen (Gottschalk, 2015). When examiners move to the question of who did what to make it happen or let it happen, then the examination resembles a criminal investigation normally conducted by law enforcement officers in the local or national police (Osterburg and Ward, 2014).

Private policing by fraud examinations represents a privatization of law enforcement. Often, the results of reports by private investigations are not communicated to the police, even when fraud examiners have collected solid evidence of law violations. There are many reasons for secrecy (Gottschalk, 2016a), particularly when top executives, investors and others from the elite are investigated for potential white-collar crime; in such cases, organizations tend to avoid public attention.

As a result, reports of investigations into suspicions of financial crime are hard to find, especially in cases of white-collar crime, which makes evaluating the quality of private policing difficult. After two years of searching, it was possible to obtain 13 reports from the USA and 40 reports from Norway. Five of the 13 fraud examinations in the USA and 8 of the 40 fraud examinations in Norway can be linked to white-collar crime.

In this article, five U.S. and eight Norwegian reports of investigations by fraud examiners are evaluated to answer the following research question: What is the contribution from fraud examiners in private investigative policing of white-collar crime?

Reports of investigations
Fraud examiners conduct private inquiries into suspicions of white-collar crime. There is a small but growing body of

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Thank You For Your Attention