

Economy Bad, White-Collar Crime Good!



By Kevin Collins

What Is White-Collar Crime?

White-collar crime is an all-encompassing phrase for frauds, schemes, and financial offenses by businesspersons, public officials, and confidence men and women of all types. Simply put, it covers a wide range of non-violent offenses that have cheating as their central element. The types of different ruses can be as complex as stock market manipulation or as simple as an employee stealing from an employer. One thing all of these schemes share in common is stealing from somebody else by taking their money or property.

Historical Example

White-collar crime has existed as long as mankind itself, and a quick glance at a nearly 400-year-old English case is instructive. This little tale of devious doings is straight from the pages of the court reports of the Old Bailey,¹ London's Central Criminal Court, as related January 14, 1676:

After this a woman was indicted, for that she together with two men, not yet taken, went into a house in the city, and pretended themselves 'persons of quality,' one of the

men saying he was a Steward to a person of Honour, and the other a Gentleman newly come from Ireland; they desired lodging, and their requests were answered; and at night, it being Christmas time, they desired to play at a game of cards, for their divertisement, with their new Landlord, and he to oblige them readily complied . . . they desired him to send out for some Double Beer² for them; he stept to the next door and asked the Maid bring it in; after that they called for wine and he sent the Maid to fetch it; then a little after they desired he would fetch them some more Double Beer himself, and as soon as he was gone . . . they took from thence a silver Tankard and Money, to the value of twenty pounds, and left him only a light upon the stairs to see his losses.

This story of skullduggery still rings true today and encapsulates the essence of all white-collar crime: the cheat, the swindle, the gaining of the victim's confidence by deceit. Whether it is Newman and Redford in *The Sting*, or Ryan and Tatum O'Neal in *Paper Moon*, some form of cheating is the central element in every white-collar crime.

Modern Day White-Collar Crime

The Old Bailey story of thievery shares its roots with many stories



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straight out of today's headlines — oops — I mean websites and blogs — including Madoff,³ Enron, and many, many others. As new technologies create new opportunities for growth and wealth, so, too, are new techniques developed to cheat people out of their investments, money, and other property. I have personally defended cases involving schemes as diverse as bid-rigging, construction fraud, mortgage fraud, and employee theft in the past several years. The housing market implosion, the stock market meltdown, and the struggles of the automobile companies all point towards white-collar crime continuing as a “growth industry,”⁴ with no end in sight as to the number of schemes concocted to take other folks' money.

Disturbing as it may sound, the mantra “Economy bad, white-collar crime good” seems is all too true. I would strongly suggest that employers, whether small or large, as well as investors, small or large, be particularly careful of who has access to financial information and assets. A little bit of extra diligence could pay huge dividends for your personal and/or corporate security.

However, many modern schemes are not simple acts of thievery, but are much more complex. It is beyond the scope of the article to discuss the intricacies of aggressive government prosecutions, but corporate directors, officers, and high-level employees have to be very careful. Business practices and industry procedures that are based on value judgments can be attacked as criminal by the Department of Justice. Decisions and practices that formerly were considered civil in na-

ture have suddenly been criminalized by the federal government and even pit corporations against their own officers, and vice versa.

The Law Needs Balance

At the end of the day, there is not much new under the sun, as there have always been a certain percentage of people who are willing to lie, steal, and cheat to get other people's money. Like the “gentle persons of quality” reported in the Old Bailey case, con-nivers and grifters are ever ready to relieve trusting souls of their property. The government, on the other hand, has become so aggressive in some cases that complex securities and business decisions are being increasingly criminalized. This can stunt free enterprise and cause more harm than the activity the government seeks to prevent. A more-balanced approach is needed to ensure the innocent are not swept away with the guilty.

Just to illustrate that point,⁵ let's revisit the Old Bailey case. What happened to the men that were “not yet taken” — did they coerce or force the

woman's involvement in the scheme? Perhaps the silver tankard and money were stolen by the landlord from the gentle persons' relations, and they were merely taking them back. Maybe the landlord made the whole thing up to collect on an insurance policy. What if he had promised those things to the gentle people in return for certain favors? Perhaps his own maid took the property and framed the gentle persons. The answer is never as straightforward as it might seem. One thing for certain is that the woman's punishment was transportation by ship straight to the then penal colony of America!



Kevin Collins is a San Antonio criminal defense lawyer and a former prosecutor. He is board certified in criminal law and juvenile law by the Texas Board of Legal Specialization and is also a member of the Criminal Law Section of the San Antonio Bar Association.

For more information please visit www.criminalattorneytx.com or call 210.223.9480.

¹ URL: www.oldbaileyonline.org.

² Double Beer — an ale heavily flavored with hops. Many names were given to beer during this historical era depending on flavor and strength, including double beer, double-double-double beer, and mad-dog.

³ Interestingly pronounced “Made-Off”!

⁴ As I write this article, The *San Antonio Express-News* is reporting the story of a local lawyer who allegedly owes clients for \$600,000 in unearned fees, and a local financial broker who pled guilty to bilking clients out of over \$1,000,000.00 in investments.

⁵ I can't help it. I am a criminal defense lawyer.