

**INCARCERATING WHITE-COLLAR
OFFENDERS**

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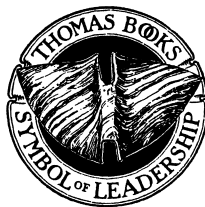
INCARCERATING WHITE-COLLAR OFFENDERS

The Prison Experience
and Beyond

By

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Dedicated to Kathleen and Chloe

FOREWORD

Television shows such as “CSI” (crime scene investigators) and “COPS” provide good visuals. If there were such a show as “FOA” (Follow the Auditor), I doubt that it would generate the same excitement. It is easy for us as academics and media writers to focus on the episodic “crime waves” associated with the street criminal. We see muggers and burglars prey on other private citizens. Because we see ourselves primarily as individuals, and when many individuals “go bad”—a street crime wave—we believe they are collectively harming our social fabric. Legislators feel aware, knowledgeable, and comfortable when they enhance law enforcement and prosecution resources and efforts to combat individual street crime. As citizens we feel safer when we hear about increases in the severity of punishment through longer sentences and the construction of penal institutions with higher levels of security (maxi-maxi prisons). When legislators, criminal justice professionals, or citizens focus on the individual criminal, strategies for protecting ourselves from these “street criminals” follow a fairly predictable set of responses.

White-collar crime is not so simple. As the new millennium begins, the Enron scandal draws public attention to a seemingly continuous crime wave that hardly ever receives any public attention. Public discussions of Enron in various legislative and investigative Congressional committees and on various “business” television channels have betrayed a confusion and unease in dealing with the “white-collar crime waves” that may be reflection less of individuals “gone bad” than of a continuing “way of doing business.” Faith in the “truthfulness” and “accuracy” and “accountability” on which the corporate–capitalist–system rely, and which Enron threatens to erode, is a true component of the social fabric.

Harm resulting from breaches of this public trust and faith is truly

a social harm having effects far beyond that of the actions of any individual street criminal. In an individualistic society we are comfortable and used to discussing the individual crime and punishment that the street criminal represents. However, when it comes to crimes and practices associated with life in the offices of corporations and boardrooms, we are less aware, less knowledgeable, less comfortable and, unfortunately, less concerned.

Throughout *Incarcerating White-Collar Offenders: The Prison Experience and Beyond*, we confront the substance of white-collar crime, the thinking of white-collar criminals, and our criminological understanding of them. Here we come face to face with white-collar criminals and their motivations. Here we see that the forms of language white-collar criminals use to explain their action is more in tune with the language of the legislators, criminal justice professionals, lawyers, and academics. This makes them seem more like “one of us.” And we are often less harsh in judging the behaviors of people like us. However, on further reflection, the substance of language of the white-collar criminal Payne provides lets us see the similarity with the street criminal who is normally placed outside and marginalized from us “good members” of society.

Brian Payne explores the reactions and interactions of various segments of the criminal justice system: prosecutors, courts, prisons, and community supervision, to the white-collar criminal. In exploring these reactions we begin to see the difficulties and philosophical quandaries associated with our feelings toward and responses to “upper-class” criminals. In putting all of these perspectives together, Payne gives us an opportunity to understand white-collar crime, criminals, and the punishments they receive systematically. By providing this breadth of coverage, *Incarcerating White-Collar Offenders: The Prison Experience and Beyond* gives students, teachers, and scholars an opportunity to engage in the comparative study of how we understand and react to street crime and white-collar crime.

Brian Payne’s *Incarcerating White-Collar Offenders: The Prison Experience and Beyond* is also a timely book. As the millennium starts we see the growth of a global economy with open trade policies and the prospect of multinational corporations seemingly gaining primacy over nation–state governments. As these developments proceed, it is more important than ever that we develop frameworks and baseline data to access and understand unintended consequences and

social harm (crime) that is likely to be produced. It is also important that we think about the impacts on motivations and the opportunities provided for potential white-collar criminals by the structures and rules that support the global business environment. It is also essential that we start to plan for the complex investigation, prosecution, and correction of the new era of white-collar crimes likely to emerge. Dr. Payne's review of our knowledge base in these areas is a good place to start.

Lucien X. Lombardo
Old Dominion University
March 6, 2002

PREFACE

White-collar crime has been a focus of a great deal of attention since Edwin Sutherland first created this concept over 60 years ago. Most of the recent attention has focused on the types of white-collar offending and the explanations for this misconduct. Much less research has considered the way the justice system responds to white-collar crime. Specifically, the incarceration experience of white-collar offenders has, with the exception of research by one scholar and his associates (see Benson, 1982; Benson & Cullen, 1988; Benson & Moore, 1992), been virtually ignored. This book fills that void in the literature by considering the way white-collar offenders experience incarceration, strategies for effectively managing institutionalized white-collar offenders, and implications for supervising white-collar offenders in the community.

In reading this book, it is my intent that four themes come across. First, white-collar crime is massive in its consequences. I finished this book right around the same time that the Enron collapse occurred. As I watched the Congressional hearings where Enron executives testified about their role, or lack of role, in the collapse, I was reminded of the fact that the response to white-collar misconduct is truly different from the response to street offenses. Imagine a Congressional hearing to determine whether drug offenders had done anything wrong. Whether the Enron collapse was due to criminal misconduct remains to be seen. What is clear is that our political system tends to afford opportunities to some white-collar offenders that are not afforded to street criminals.

Second, when I discuss ways that white-collar offenders experience punishment differently than street offenders, it is not my intent to suggest that they should be given preferential treatment. Instead, my aim is to illustrate that one size does not fit all insofar as correc-

tional supervision is concerned. Different supervision strategies for white-collar offenders may be needed to ensure the efficiency and safety of institutional routines.

Third, I do not believe that white-collar offenders who are sentenced to prison or jail are getting off lightly. One often hears comments about white-collar offenders being sentenced to prison for too short of a time, or to prisons that are supposedly akin to paradise. There is no such thing as a nice prison for white-collar offenders. It is imperative that individuals understand that all types of prisons, from minimum security to “super max” prisons, are places that separate individuals from society. As such, the separation from society is meant to be the punishment, not the events occurring in prison.

Try a simple exercise. Think of a vacation you took where you just couldn’t wait to get away from your job, home, and responsibilities. Now think of how much you looked forward to getting back to your normal routine at the end of the vacation. Imagine being stuck on that vacation for an extended period of time without any control over the time that your vacation ends. Does that sound like a vacation you want to take?

Fourth, simply because I see incarceration as a severe type of punishment for white-collar offenders does not mean that I am some bleeding heart liberal who doesn’t support institutionalization of white-collar offenders. I believe that sanctions given to white-collar offenders should be proportionate to sanctions given to street offenders who committed similar offenses. Within this punitive framework, however, the justice system could do a better job in meeting the needs of individual victims and the community by focusing on ways to restore the community rather than simply looking for ways to harm offenders.

This book is intended for criminal justice professionals, academics, and researchers who want to better understand the role of the criminal justice system in punishing all types of offenders. It is also intended for use in criminal justice, corrections, sociology, and white-collar-crime courses exploring the punishment of elite offenders. Through promoting understanding about this aspect of the response to white-collar misconduct, what is needed to improve the whole justice system’s response to these offenses will become evident.

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Chapter 1

WHITE-COLLAR CRIME AND WHITE-COLLAR TIME

INTRODUCTION

A tough judge nicknamed Iron Mike for his stiff sentences once stated the following in imposing a white-collar criminal's sentence: "We must shed ourselves of the perception that white-collar criminals are 'good guys' who are too good to be in jail" (Coleman, 1996: 1). Not long after this admonishment, the same judge pleaded guilty to tax evasion, was forced to quit his job, and was sent to prison for two months. In a similar case, a judge was sentenced to thirteen months in a medium security prison in which he met many individuals who were previously in his court. Some of the offenders with whom he was incarcerated actually had legal papers with the judge's name on it (McCarthy, 1996). Imagine how tough it would be to serve time with inmates whose sentences you imposed. Certainly, the protection of at-risk incarcerated white-collar criminals is one of the serious challenges jail and prison administrators face.

During the summer of 2000, 68-year-old Jai Coehlo was jailed in Rio de Janeiro pending the outcome of fraud and racketeering charges filed against him. What makes his case especially interesting is the nature of the charges. In particular, it was alleged that Coehlo, whose company supplied all prison food in Rio de Janeiro, committed fraudulent activities in fulfilling his contract to feed the prisoners covered under the contract. Reportedly, prison officials and prisoners alike complained about the horrible quality of the food. To protect the "fraudulent food man" from the inmates he had

previously starved, Coehlo was segregated with older offenders who were not considered violent (Reuters, 2000).

A number of highly profiled white-collar crime cases resulting in incarceration have been the focus of a great deal of media attention. Consider, for instance, the following cases:

- In November 1990, Michael Milken was sentenced to ten years in prison and ordered to pay \$600 million in restitution and fines for fraudulent securities trading, conspiracy, and the junk bond operations he oversaw.
- In October 1989, Jim Bakker was sentenced to 45 years in prison and given a \$500,000 fine after the evangelist defrauded his followers by diverting over \$3.7 million from his ministry.
- Jake Butcher, former chairperson of United American Bank was sentenced to 20 years in prison after he plead guilty to fraud, income tax evasion, and conspiracy (Cohen, 1990).

Other “celebrity” white-collar inmates include G. Gordon Liddy, Jeb Magruder, former Illinois Governor Dan Walker, former Louisiana Governor Edwin Edwards, and a host of others. Along with these famous offenders, thousands of other senators, preachers, governors, doctors, and members of just about every profession imaginable have been imprisoned for misdeeds committed on the job.

However, because of difficulties defining white-collar crime and detecting these offenses, no one really knows precisely how many white-collar criminals there are. Even so, the 1980s and 1990s witnessed a significant increase in the number of white-collar offenders being sentenced to jail or prison, with the majority incarcerated in federal prisons though some are incarcerated in local jails and state prisons. As Thompson (1991: 6) notes, prior to the 1980s, white-collar offenders asked, “Can I avoid prison?” Today, white-collar offenders are asking, “Can I get the top bunk?” Reasons for this increase will be considered later in this chapter. What is important at this point to establish is that very little attention has been given to what happens to white-collar offenders once they are incarcerated. Perhaps partly because there are few incarcerated white-collar offenders (as compared to incarcerated conventional offenders) and because society has generally taken an apathetic view toward incar-

cerated offenders (out of sight, out of mind), the experiences of white-collar offenders once they are incarcerated are not well understood. In fact, a number of myths about white-collar crime limit the ability of criminal justice professionals to effectively manage and supervise white-collar offenders. A review of eight myths will shed some light on the need to understand the way incarceration is experienced by white-collar offenders.

MYTHS ABOUT WHITE-COLLAR CRIME

Myth #1—White-collar crime is not that serious. A common assumption held by some members of the public, criminal justice officials, and legislators is that white-collar crime is not a serious problem in our society (Cullen et al., 1985). The basis for this belief is that there is often no visible physical or economic harm from white-collar offenses. The fact of the matter is, however, that the consequences of white-collar offenses are equally severe to, if not more severe than, street crimes. In the 1980s, 650 savings and loans failed, most due to fraud, costing society \$500 billion (Farnham, 1990). Twelve billion a year is lost to employee theft in retail settings (Krueger, 1999). When all companies are combined, the average company loses six percent of its annual revenues to employee fraud. This amounts to a national loss of \$400 billion a year (Conley, 2000).

To further understand the seriousness of the problem, consider the following:

- The average firm in one study lost \$200,000 a year to fraud.
- In the same study, 76 percent of firms reported experiencing fraud in the previous year.
- Fraud in corporate America by employees costs \$100 billion a year.
- Offenders steal an average of \$400,000 in the typical financial statements case.
- Offenders steal an average of \$102,000 in the average corruption case.
- The median loss caused by white-collar crimes is \$81,500 (Conley, 2000; Sayre, 1998; Touby, 1994).

In contrast, consider the average amount lost in different types of

robberies:

- The average street/highway robbery entails losses of \$856.
- The average gas station robbery entails losses of \$620.
- The average convenience store robbery entails losses of \$627 (*Crime in the United States*, 2001).

Based on these enormous losses to white-collar crime, it should not be surprising that a recent survey by Pinkerton Security found white-collar crime to be one of the “top security threats facing corporate America” (Conley, 2000: 14).

Part of the reason for the large monetary losses to white-collar crime is due to the fact that thousands of victims can be ripped off in just one white-collar scheme. One fraudulent investor stole from 7,000 clients on his own, netting \$47 million. In another case, a telemarketing ring bilked millions of dollars from 12,000 victims (Ettore, 1994; Rivera, 1998). Despite the fact that clear losses stem from these offenses, some criminal justice officials refuse to see white-collar offenses as serious. Said one judge: “[Embezzling] money is obviously different than hitting someone over the head with a pipe and robbing him. Is there societal harm done [in embezzlements]? Yes. Is it the same type of societal harm as a shooting? No” (Locy, 1998: n.p.). Locy notes that the reluctance of some officials to take white-collar crime seriously has led some experts to refer to white-collar crime as the “step-child” of the criminal justice system. This refusal to see white-collar crime as serious likely stems from a misunderstanding about the violent nature of white-collar crime. This relates to a second myth.

Myth #2—White-collar crimes are not violent crimes. Edwin Sutherland is credited with introducing the concept of white-collar crime in 1939. Sutherland (1940: 1) defined white-collar crime as “a crime committed by a person of respectability and high social status in the course of his occupation.” Since then, various terms and definitions have evolved out of this definition and there has been a great deal of debate concerning the most appropriate way to define this rather broad concept. A common theme among these various concepts (e.g., occupational crime, corporate crime, elite crime, elite deviance, etc.) and definitions is that white-collar crime generally entails illegal acts of an economic nature committed during the