

## 30 DENYING THE GUILTY MIND

### *Accounting for Involvement in a White-Collar Crime*

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In this 1985 article, Michael Benson reports on the results of conversations he had with thirty men convicted of white-collar crime. The term *white-collar crime* was coined by criminologist Edwin Sutherland in 1949 to refer to any "crime committed by a person of respectability and high social status in the course of his occupation."

Benson encouraged each convict to talk about how he felt about his involvement with the justice system. One interesting finding: None of the men said he felt he was a "criminal."

#### **Denying the Guilty Mind**

Adjudication as a criminal is, to use Garfinkel's (1956) classic term, a degradation ceremony.<sup>1</sup> The focus of this article is on how offenders attempt to defeat the success of this ceremony and deny their own criminality through the use of accounts. However, in the interest of showing in as much detail as possible all sides of the experience undergone by these offenders, it is necessary to treat first the guilt and inner anguish that is felt by many white-collar offenders even though they deny being criminals. This is best accomplished by beginning with a description of a unique feature of the prosecution of white-collar crimes.

In white-collar criminal cases, the issue is likely to be *why* something was done, rather than *who* did it (Edelhertz 1970, 47). There is often relatively little disagreement as to what happened. In the words of one Assistant U.S. Attorney interviewed for the study:

If you actually had a movie playing, neither side would dispute that a person moved in this way and handled this piece of paper, etc. What it comes down to is, did they have the criminal intent?

If the prosecution is to proceed past the investigatory stages, the prosecutor must infer from the pattern of events that conscious criminal intent was present and believe that sufficient evidence exists to convince a jury of this interpretation of the situation. As Katz (1979, 445-446) has noted, making this inference can be difficult because of the way in which white-collar illegalities are integrated into ordinary occupational routines. Thus, prosecutors in conducting trials, grand jury hearings, or plea negotiations spend a great

<sup>1</sup>A degradation ceremony is a public ritual in which the individual is stripped of his or her identity as a member of respectable society and formally labeled as an outsider or even as something less than human.—Ed.

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deal of effort establishing that the defendant did indeed have the necessary criminal intent. By concentrating on the offender's motives, the prosecutor attacks the very essence of the white-collar offender's public and personal image as an upstanding member of the community. The offender is portrayed as someone with a guilty mind.

Not surprisingly, therefore, the most consistent and recurrent pattern in the interviews, though not present in all of them, was denial of criminal intent, as opposed to the outright denial of any criminal behavior whatsoever. Most offenders acknowledged that their behavior probably could be construed as falling within the conduct proscribed by statute, but they uniformly denied that their actions were motivated by a guilty mind. This is not to say, however, that offenders *felt* no guilt or shame as a result of conviction. On the contrary, indictment, prosecution, and conviction provoke a variety of emotions among offenders.

The enormous reality of the offender's lived emotion (Denzin 1984) in admitting guilt is perhaps best illustrated by one offender's description of his feelings during the hearing at which he pled guilty.

You know (the plea's) what really hurt. I didn't even know I had feet. I felt numb. My head was just floating. There was no feeling, except a state of suspended animation. . . . For a brief moment, I almost hesitated. I almost said not guilty. If I had been alone, I would have fought, but my family. . . .

The traumatic nature of this moment lies, in part, in the offender's feeling that only one aspect of his life is being considered. From the offender's point of view his crime represents only one small part of his life. It does not typify his inner self, and to judge him solely on the basis of this one event seems an atrocious injustice to the offender.

For some the memory of the event is so painful that they want to obliterate it entirely, as the two following quotations illustrate.

I want quiet. I want to forget. I want to cut with the past.

I've already divorced myself from the problem. I don't even want to hear the names of certain people ever again. It brings me pain.

For others, rage rather than embarrassment seemed to be the dominant emotion.

I never really felt any embarrassment over the whole thing. I felt rage and it wasn't false or self-serving. It was really (something) to see this thing in action and recognize what the whole legal system has come to through its development, and the abuse of the grand jury system and the abuse of the indictment system. . . .

The role of the news media in the process of punishment and stigmatization should not be overlooked. All offenders whose cases were reported on by the news media were either embarrassed or embittered or both by the public exposure.

The only one I am bitter at is the newspapers, as many people are. They are unfair because you can't get even. They can say things that are untrue, and let me say this to you. They wrote an article on me that was so blasphemous, that was so horrible. They painted me as an insidious miserable creature, wringing out the last penny. . . .

Offenders whose cases were not reported on by the news media expressed relief at having avoided that kind of embarrassment, sometimes saying that greater publicity would have been worse than any sentence they could have received.

In court, defense lawyers are fond of presenting white-collar offenders as having suffered enough by virtue of the humiliation of public adjudication as criminals. On the other hand, prosecutors present them as cavalier individuals who arrogantly ignore the law and brush off its weak efforts to stigmatize them as criminals. Neither of these stereotypes is entirely accurate. The subjective

effects of conviction on white-collar offenders are varied and complex. One suspects that this is true of all offenders, not only white-collar offenders.

The emotional responses of offenders to conviction have not been the subject of extensive research. However, insofar as an individual's emotional response to adjudication may influence the deterrent or crime-reinforcing impact of punishment on him or her, further study might reveal why some offenders stop their criminal behavior while others go on to careers in crime (Casper 1978, 80).

Although the offenders displayed a variety of different emotions with respect to their experiences, they were nearly unanimous in denying basic criminality. To see how white-collar offenders justify and excuse their crimes, we turn to their accounts. The small number of cases rules out the use of any elaborate classification techniques. Nonetheless, it is useful to group offenders by offense when presenting their interpretations.

### ANTITRUST VIOLATORS<sup>2</sup>

Four of the offenders have been convicted of antitrust violations, all in the same case involving the building and contracting industry. Four major themes characterized their accounts. First, antitrust offenders focused on the everyday character and historical continuity of their offenses.

*It was a way of doing business before we even got into the business. So it was like why do you brush your teeth in the morning or something. . . . It was part of the everyday. . . . It was a method of survival.*

The offenders argued that they were merely following established and necessary industry practices. These practices were presented as being necessary for the well-being of the industry as a whole, not to mention their own companies. Further, they argued that cooperation among competitors was either allowed or actively promoted by the government in other industries and professions.

The second theme emphasized by the offenders was the characterization of their actions as blameless. They admitted talking to competitors and admitted submitting intentionally noncompetitive bids. However, they presented these practices as being done not for the purpose of rigging prices nor to make exorbitant profits. Rather, the everyday practices of the industry required them to occasionally submit bids on projects they really did not want to have. To avoid the effort and expense of preparing full-fledged bids, they would call a competitor to get a price to use. Such a situation might arise, for example, when a company already had enough work for the time being, but was asked by a valued customer to submit a bid anyway.

*All you want to do is show a bid, so that in some cases it was for as small a reason as getting your deposit back on the plans and specs. So you just simply have no interest in getting the job and just call to see if you can find someone to give you a price to use, so that you didn't have to go through the expense of an entire bid preparation. Now that is looked on very unfavorably, and it is a technical violation, but it was strictly an opportunity to keep your name in front of a desired customer. Or you may find yourself in a situation where somebody is doing work for a customer, has done work for many, many years and is totally acceptable, totally fair. There is no problem. But suddenly they (the customer) get an idea that they ought to have a few tentative figures, and you're called in, and you are in a moral dilemma. There's really no reason for you to attempt to compete in that circumstance. And so there was a way to back out.*

<sup>2</sup>Antitrust laws date back to the end of the nineteenth century. They are intended to promote fair business practices. For example, it is a violation of antitrust laws for business leaders to get together (or "collude") to fix consumer prices at artificially high levels.—Ed.

Managed in this way, an action that appears on the surface to be a straightforward and conscious violation of antitrust regulations becomes merely a harmless business practice that happens to be a "technical violation." The offender can then refer to his personal history to verify his claim that, despite technical violations, he is in reality a law-abiding person. In the words of one offender, "Having been in the business for 33 years, you don't just automatically become a criminal overnight."

Third, offenders were very critical of the motives and tactics of prosecutors. Prosecutors were accused of being motivated solely by the opportunity for personal advancement presented by winning a big case. Further, they were accused of employing prosecution selectively and using tactics that allowed the most culpable offenders to go free. The Department of Justice was painted as using antitrust prosecutions for political purposes.

The fourth theme emphasized by the antitrust offenders involved a comparison between their crimes and the crimes of street criminals. Antitrust offenses differ in their mechanics from street crimes in that they are not committed in one place and at one time. Rather, they are spatially and temporally diffuse and are intermingled with legitimate behavior. In addition, the victims of antitrust offenses tend not to be identifiable individuals, as is the case with most street crimes. These characteristics are used by antitrust violators to contrast their own behavior with that of common stereotypes of criminality. Real crimes are pictured as discrete events that have beginnings and ends and involve individuals who directly and purposely victimize someone else in a particular place and at a particular time.

It certainly wasn't a premeditated type of thing in our cases as far as I can see. . . . To me it's different than—and I sitting down and we plan, well, we're going to rob this bank tomorrow and premeditatedly go in there. . . . That wasn't the case at all. . . . It wasn't like sitting down

and planning I'm going to rob this bank type of thing. . . . It was just a common everyday way of doing business and surviving.

A consistent thread running through all of the interviews was the necessity for antitrust-like practices, given the realities of the business world. Offenders seemed to define the situation in such a manner that two sets of rules could be seen to apply. On the one hand, there are the legislatively determined rules—laws—which govern how one is to conduct one's business affairs. On the other hand, there is a higher set of rules based on the concepts of profit and survival, which are taken to define what it means to be in business in a capitalistic society. These rules do not just regulate behavior; rather, they constitute or create the behavior in question. If one is not trying to make a profit or trying to keep one's business going, then one is not really "in business." Following Searle (1969, 33-41), the former type of rule can be called a regulative rule and the latter type a constitutive rule. In certain situations, one may have to violate a regulative rule in order to conform to the more basic constitutive rule of the activity in which one is engaged.

This point can best be illustrated through the use of an analogy involving competitive games. Trying to win is a constitutive rule of competitive games in the sense that if one is not trying to win, one is not really playing the game. In competitive games, situations may arise where a player deliberately breaks the rules even though he knows or expects he will be caught. In the game of basketball, for example, a player may deliberately foul an opponent to prevent him from making a sure basket. In this instance, one would understand that the foul was trying to win by gambling that the opponent would not make the free throws. The player violates the rule against fouling in order to follow the higher rule of trying to win.

Trying to make a profit or survive in business can be thought of as a constitutive rule

of capitalist economies. The laws that govern how one is allowed to make a profit are regulatory rules, which can understandably be subordinated to the rules of trying to survive and profit. From the offender's point of view, he is doing what businessmen in our society are supposed to do—that is, stay in business and make a profit. Thus, an individual who violates society's laws or regulations in certain situations may actually conceive of himself as thereby acting more in accord with the central ethos of his society than if he had been a strict observer of its law. One might suggest, following Denzin (1977), that for businessmen in the building and contracting industry, an informal structure exists below the articulated legal structure, one which frequently supersedes the legal structure. The informal structure may define as moral and "legal" certain actions that the formal legal structure defines as immoral and "illegal."

#### TAX VIOLATORS

Six of the offenders interviewed were convicted of income tax violations. Like antitrust violators, tax violators can rely upon the complexity of the tax laws and an historical tradition in which cheating on taxes is not really criminal. Tax offenders would claim that everybody cheats somehow on their taxes and present themselves as victims of an unlucky break, because they got caught.

Everybody cheats on their income tax, 95% of the people. Even if it's for ten dollars it's the same principle. I didn't cheat. I just didn't know how to report it.

The widespread belief that cheating on taxes is endemic helps to lend credence to the offender's claim to have been singled out and to be no more guilty than most people.

Tax offenders were more likely to have acted as individuals rather than as part of a group and, as a result, were more prone to

account for their offenses by referring to them as either mistakes or the product of special circumstances. Violations were presented as simple errors which resulted from ignorance and poor recordkeeping. Deliberate intention to steal from the government for personal benefit was denied.

I didn't take the money. I have no bank account to show for all this money, where all this money is at that I was supposed to have. They never found the money, ever. There is no Swiss bank account, believe me.

My records were strictly one big mess. That's all it was. If only I had an accountant, this wouldn't even of happened. No way in God's creation would this ever have happened.

Other offenders would justify their actions by admitting that they were wrong while painting their motives as altruistic rather than criminal. Criminality was denied because they did not set out to deliberately cheat the government for their own personal gain. Like the antitrust offenders discussed above, one tax violator distinguished between his own crime and the crimes of real criminals.

I'm not a criminal. That is, I'm not a criminal from the standpoint of taking a gun and doing this and that. I'm a criminal from the standpoint of making a mistake, a serious mistake. . . . The thing that really got me involved in it is my feeling for the employees here, certain employees that are my right hand. In order to save them a certain amount of taxes and things like that, I'd extend money to them in cash, and the money came from these sources that I took it from. You know, cash sales and things of that nature, but practically all of it was turned over to the employees, because of my feeling for them.

All of the tax violators pointed out that they had no intention of deliberately victimizing the government. None of them denied the legitimacy of the tax laws, nor did they claim that they cheated because the government is not representative of the people

(Conklin 1977, 99). Rather, as a result of ignorance or for altruistic reasons, they made decisions which turned out to be criminal when viewed from the perspective of the law. While they acknowledged the technical criminality of their actions, they tried to show that what they did was not criminally motivated.

### VIOLATIONS OF FINANCIAL TRUST

Four offenders were involved in violations of financial trust. Three were banking officers who embezzled or misappropriated funds, and the fourth was a union official who embezzled from a union pension fund.<sup>3</sup> Perhaps because embezzlement is one crime in this sample that can be considered *mala in se*, these offenders were much more forthright about their crimes. Like the other offenders, the embezzlers would not go so far as to say "I am a criminal," but they did say "What I did was wrong, was criminal, and I knew it was." Thus, the embezzlers were unusual in that they explicitly admitted responsibility for their crimes. . . .

Unlike tax evasion, which can be excused by reference to the complex nature of tax regulations or antitrust violations, which can be justified as for the good of the organization as a whole, embezzlement requires deliberate action on the part of the offender and is almost inevitably committed for personal reasons. The crime of embezzlement, therefore, cannot be accounted for by using the same techniques that tax violators or antitrust violators do. The act itself can only be explained by showing that one was under extraordinary circumstances which explain one's uncharacteristic behavior. Three of the

offenders referred explicitly to extraordinary circumstances and presented the offense as an aberration in their life history. For example, one offender described his situation in this manner:

As a kid, I never even—you know kids will sometimes shoplift from the dime store—I never even did that. I had never stolen a thing in my life and that was what was so unbelievable about the whole thing, but there were some psychological and personal questions that I wasn't dealing with very well. I wasn't terribly happily married. I was married to a very strong-willed woman and it just wasn't working out.

The offender in this instance goes on to explain how, in an effort to impress his wife, he lived beyond his means and fell into debt.

A structural characteristic of embezzlement also helps the offender demonstrate his essential lack of criminality. Embezzlement is integrated into ordinary occupational routines. The illegal action does not stand out clearly against the surrounding set of legal actions. Rather, there is a high degree of surface correspondence, the offender must exercise some restraint when committing his crime. The embezzler must be discreet in his stealing; he cannot take all of the money available to him without at the same time revealing crime. Once exposed, the offender can point to this restraint on his part as evidence that he is not really a criminal. That is, he can compare what happened with what could have happened in order to show how much more serious the offense could have been if he was really a criminal at heart.

What I could have done if I had truly had a devious criminal mind and perhaps if I had been a little smarter—and I am not saying that with any degree of pride or any degree of modesty whatever, [as] it's being smarter in a bad, an evil way—I could have pulled this off on a grander scale and I might still be doing it.

<sup>3</sup>Embezzlement is not just theft. Embezzlement is theft from someone who has entrusted his or her money or property to you.—Ed.

Even though the offender is forthright about admitting his guilt, he makes a distinction between himself and someone with a truly "devious criminal mind."

Contrary to Cressey's (1953, 57-66) findings, none of the embezzlers claimed that their offenses were justified because they were underpaid or badly treated by their employers. Rather, attention was focused on the unusual circumstances surrounding the offense and its atypical character when compared to the rest of the offender's life. This strategy is for the most part determined by the mechanics and organizational format of the offense itself. Embezzlement occurs within the organization but not for the organization. It cannot be committed accidentally or out of ignorance. It can be accounted for only by showing that the actor "was not himself" at the time of the offense or was under such extraordinary circumstances that embezzlement was an understandable response to an unfortunate situation. This may explain the finding that embezzlers tend to produce accounts that are viewed as more sufficient by the justice system than those produced by other offenders (Rothman and Gandossy 1982). The only plausible option open to a convicted embezzler trying to explain his offense is to admit responsibility while justifying the action, an approach that apparently strikes a responsive chord with judges.

#### FRAUD AND FALSE STATEMENTS

Ten offenders were convicted of some form of fraud or false statements charge. Unlike embezzlers, tax violators, or antitrust violators, these offenders were much more likely to deny committing any crime at all. Seven of the ten claimed that they, personally, were innocent of any crime, although each admitted that fraud had occurred. Typically, they claimed to have been set up by associates and to have been wrongfully convicted by the U.S. Attorney handling the case. One might call this the scapegoat strategy. Rather than

admitting technical wrongdoing and then justifying or excusing it, the offender attempts to paint himself as a victim by shifting the blame entirely to another party. Prosecutors were presented as being either ignorant or politically motivated.

The outright denial of any crime whatsoever is unusual compared to the other types of offenders studied here. It may result from the nature of the crime of fraud. By definition, fraud involves a conscious attempt on the part of one or more persons to mislead others. While it is theoretically possible to accidentally violate the antitrust and tax laws, or to violate them for altruistic reasons, it is difficult to imagine how one could accidentally mislead someone else for his or her own good. Furthermore, in many instances, fraud is an aggressively acquisitive crime. The offender develops a scheme to bilk other people out of money or property, and does this not because of some personal problem but because the scheme is an easy way to get rich. Stock swindles, fraudulent loan scams, and so on are often so large and complicated that they cannot possibly be excused as foolish and desperate solutions to personal problems. Thus, those involved in large-scale frauds do not have the option open to most embezzlers of presenting themselves as persons responding defensively to difficult personal circumstances.

Furthermore, because fraud involves a deliberate attempt to mislead another, the offender who fails to remove himself from the scheme runs the risk of being shown to have a guilty mind. That is, he is shown to possess the most essential element of modern conceptions of criminality: an intent to harm another. His inner self would in this case be exposed as something other than what it has been presented as, and all of his previous actions would be subject to reinterpretation in light of his new perspective. For this reason, defrauders are most prone to denying any crime at all. The cooperative and conspiratorial nature of

many fraudulent schemes makes it possible to put the blame on someone else and to present oneself as a scapegoat. Typically, this is done by claiming to have been duped by others.

Two illustrations of this strategy are presented below.

I figured I wasn't guilty, so it wouldn't be that hard to disprove it, until, as I say, I went to court and all of a sudden they start bringing in these guys out of the woodwork implicating me that I never saw. Lot of it could be proved that I never saw.

Inwardly, I personally felt that the only crime that I committed was not telling on these guys. Not that I deliberately, intentionally committed a crime against the system. My only crime was that I should have had the guts to tell on these guys, what they were doing, rather than putting up with it and then trying to gradually get out of the system without hurting them or without them thinking I was going to snitch on them.

Of the three offenders who admitted committing crimes, two acted alone and the third acted with only one other person. Their accounts were similar to the others presented earlier and tended to focus on either the harmless nature of their violations or on the unusual circumstances that drove them to commit their crimes. One claimed that his violations were only technical and that no one besides himself had been harmed.

First of all, no money was stolen or anything of that nature. The bank didn't lose any money. . . . What I did was a technical violation. I made a mistake. There's no question about that, but the bank lost no money.

Another offender who directly admitted his guilt was involved in a check-kiting scheme. In a manner similar to embezzlers, he argued that his actions were motivated by exceptional circumstances.

I was faced with the choice of all of a sudden, and I mean now, closing the doors or doing

something else to keep that business open. . . . I'm not going to tell you that this wouldn't have happened if I'd had time to think it over, because I think it probably would have. You're sitting there with a dying patient. You are going to try to keep him alive.

In the other fraud cases more individuals were involved, and it was possible and perhaps necessary for each offender to claim that he was not really the culprit.

## Discussion: Offenses, Accounts, and Degradation Ceremonies

The investigation, prosecution, and conviction of a white-collar offender involves him in a very undesirable status passage (Glaser and Strauss 1971). The entire process can be viewed as a long and drawn-out degradation ceremony with the prosecutor as the chief denouncer and the offender's family and friends as the chief witnesses. The offender is moved from the status of law-abiding citizen to that of convicted felon. Accounts are developed to defeat the process of identity transformation that is the object of a degradation ceremony. They represent the offender's attempt to diminish the effect of his legal transformation and to prevent its becoming a publicly validated label. It can be suggested that the accounts developed by white-collar offenders take the forms that they do for two reasons: (1) the forms are required to defeat the success of the degradation ceremony, and (2) the specific forms used are the ones available given the mechanics, history, and organizational context of the offenses.

Three general patterns in accounting strategies stand out in the data. Each can be characterized by the subject matter on which it focuses: the event (offense), the perpetrator (offender), or the denouncer (prosecutor). These are the natural subjects of accounts in

that to be successful, a degradation ceremony requires each of these elements to be presented in a particular manner (Garfinkel 1956). If an account giver can undermine the presentation of one or more of the elements, then the effect of the ceremony can be reduced. Although there are overlaps in the accounting strategies used by the various types of offenders, and while any given offender may use more than one strategy, it appears that accounting strategies and offenses correlate. . . .