

Moral Lapse Versus the Psychopathic Fraudster: Implications for Our Justice System

Yvette Frusciante, CPA, CFF

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Past research and theory indicate that most occupational fraud (asset misappropriation) is committed by individuals who face certain situational pressures or motivations that result in “one-hit wonder” crimes. They are not always seen as criminals, and often receive what is perceived as lenient treatment in the justice system. A different offender, however, whose character is in complete contrast to that which the public has come to know as the typical “white-collar” criminal, has emerged. This sub-classification is known as psychopathic fraudsters. In some instances, the personality traits present in this type of offender have led to violent crimes as they attempt to conceal their fraudulent behavior. Unfortunately, those same personality traits allow these individuals to conceal their true nature. The public and the justice system often have difficulty distinguishing the psychopathic fraudster, and as a result, they are classed with, and receive the same sanctions as, the typical occupational offender.

The Typical Offender in an Occupational Fraud

The term white-collar crime was coined by Edwin H. Sutherland in 1939, and was defined as “criminal acts of corporations and individuals acting in their corporate capacity” (Wells, 2008, p. 12). Since then, the term has been expanded to include any financial crime. Much of today’s literature and theory on the subject, however, are based on the early studies conducted by Sutherland’s student, Donald R. Cressey. Unlike Sutherland, Cressey’s studies concentrated solely on embezzlers and the circumstances that resulted in their offenses; he termed these criminals “trust violators” (Wells, p. 13). His resulting hypothesis is known as the “fraud triangle” and has become the model of the typical occupational offender. Cressey explains:

Trusted persons become trust violators when they conceive of themselves as having a financial problem which is non-shareable, are aware this problem can be secretly resolved by violations of the position of financial trust, and are able to apply to their own conduct in that situation verbalizations which enable them to adjust their conceptions of themselves as trusted persons with their conceptions of themselves as users of the entrusted funds or property (as cited in Wells, p. 13).

The three legs of the fraud triangle, therefore, are (a) a non-shareable financial need, (b) a perceived opportunity, and (c) rationalization (Wells, p.13). All three must be present or an occupational fraud will not occur. For instance, the potential offender may have a perceived non-shareable financial need and an opportunity to commit fraud. Without the ability to rationalize his actions, however, he will not be able to maintain his self-concept as a non-criminal and “trusted person,” which is a necessary factor (Wells, pp. 14-18). What is considered a non-shareable need to one person may not necessarily be non-shareable to another. These range from true financial problems to problems that are viewed as being solvable through financial means. Cressey’s study revealed that these non-shareable financial needs typically

arise as a result of a desire by the potential offender either to achieve a higher status, or simply to maintain the one they have (Wells, p. 14).

According to the Association of Certified Fraud Examiners' (ACFE) *2008 Report to the Nation on Occupational Fraud and Abuse*, the typical occupational offender is over the age of forty and a long-term employee of the organization (greater than five years), holding a position with an annual salary of less than \$50,000. In greater than 80% of the cases surveyed, the offender had a clean employment and criminal record with respect to fraud or abuse (pp. 48-61). It therefore stands to reason that the typical occupational offender is seen as one who experiences a moral lapse in response to certain pressures in life. As a result, the public perception is often one of pity and, on some level, identification. These offenders are seen as more rational than other criminals, almost innocuous. This "public sentiment" is greatest when the offense is committed to feed a family, to care for a sick loved one, or to pay a mortgage to keep from going into foreclosure. Although recent high profile financial crimes have resulted in greater public condemnation and outrage against white-collar criminals in general, the "middle-class" occupational offender is still seen as genuinely sympathetic.

A Wolf in Sheep's Clothing

The majority of society wants to believe that people are inherently good. That is why many identify with, and make excuses for, the "guy next door" who commits the once-in-a-lifetime crime of moral turpitude. Unfortunately, this is exactly what makes people and their businesses easy prey for what has come to be known as the psychopathic fraudster. In stark contrast to the prevailing image of the "typical" occupational offender, the psychopathic fraudster is a social predator who often takes a position in an organization for the sole purpose of committing fraud. It is in these cases that Cressey's fraud triangle needs only one side; there is no perceived pressure or requisite rationalization – there is only a perceived opportunity.

Approximately 1% of the population has psychopathic traits (Babiak, 2008, p. 1). Although varying in degrees of severity along the spectrum of non-violent to violent, they are all socially destructive. This personality disorder is defined by specific traits and characteristics that can be grouped into the four main characteristics of the psychopath. The first group of traits defines the psychopath's interpersonal interactions which characterize the impression that psychopaths make on others. Upon first meeting, one may find them to be charming, charismatic, humorous, knowledgeable, and articulate. All of this is simply a façade, which requires great skill and energy on the part of the psychopath to maintain. They are successful because they constantly tailor their façade to their immediate targets, winning over their targets' trust through lies (Babiak, 2008, p. 1). The second main trait is emotional poverty. Other than anger and frustration, psychopaths lack empathy, sympathy or remorse. They refuse to accept responsibility for their own actions, and blame others for anything that goes wrong. The closest they come to normal human emotions is in mimicking them to manipulate their targets (Babiak, 2008, p. 1). The third main trait characterizes the psychopaths' daily life, which is irresponsible, impulsive, and lavish. Although their resumes are chock full of successes and achievements, their real life is the complete opposite. They are easily bored by details and often neglect important work. In fact, they lack goals and do not extend themselves in any way to achieve anything of significance. They act without thinking of, or caring about, the consequences of their actions on others. Although they are unwilling to achieve success on their own, they are

more than willing to take credit for someone else's (Babiak, 2008, p. 2). The final main trait of psychopaths is a history of antisocial behavior, including fraud in adulthood. This antisocial behavior is often the result of the interaction and culmination of the other main traits of psychopaths. Their emotional poverty and impulsive life create a belief system that enables them to take what they want, when they want, without remorse, guilt or fear, leading to a life of crime (Babiak, 2008, p. 2).

The corporate or compensated psychopaths have these same main traits, albeit less severe. The difference lies in the corporate psychopaths' ability to maintain a more consistent façade of normalcy. Their interpersonal interactions are geared toward keeping with organizational expectations in order to advance quickly up the corporate ladder. They gain status and responsibility simply to position themselves where they need to be to commit fraud. Their targets are co-workers and upper management, whom they spend a great deal of time convincing they are perfect, loyal, hardworking, and ambitious employees. They manipulate "useful" people based on what they need from them; these people become pawns, patrons, or patsies. The pawn is anyone the psychopath perceives has power or access to some desired corporate resource. The patron is anyone with key power who serves to protect and defend the psychopath when needed. After the pawn or patron's utility is used up, their power and influence are neutralized by the psychopath and they become the patsy (Carozza, 2008, p. 41). The game corporate psychopaths play is somewhat akin to a game of chess, moving players around the board all the while staving off a "checkmate." The psychopaths' fraud will continue to be successful as long as their manipulations and lies are successful. If the fraud is discovered, they will simply move on to the next organization and begin again. If an organization decides to prosecute, the psychopathic fraudster will use charm and pathologic lies to appear as if they were the typical offender, even feigning remorse. If successful, it is possible that psychopaths can escape the severe sanctions they truly deserve.

Justice for Some But Not for All

A common complaint heard from those who investigate fraud is that there is not enough done to punish occupational fraud and other white-collar offenders. According to the ACFE's *2006 Report to the Nation on Occupational Fraud and Abuse*, the most common employment action taken against alleged offenders was termination, followed by restitution. While nearly three-quarters of the cases surveyed were reported to the police, frauds with lower median losses were less likely to be reported. Of the cases that were prosecuted, the most common result was a "guilty" or "no contest" plea. Even withstanding prosecution, the main goal of an organization which has become a victim of fraud is to seek restitution. Unfortunately, nearly half never see a dime (Wells, 2008, pp. 40-44).

Regardless of what surveys tell us, an expectation gap exists between what the public feels is justice and what the justice system is able, or willing, to deliver (Rebovish & Kane, 2002, p. 1). Even though occupational fraud continues to cost companies billions of dollars per year, and in some cases, to force organizations into bankruptcy, these types of crimes are not a priority for law enforcement. One reason is that frauds are difficult to investigate – defendants are often difficult to identify and locate, assets disappear, investigations can require coordination across multiple jurisdictions and agencies, and juries get lost in the details. Another reason is that prosecutors have wide latitude in deciding which cases to prosecute. Cases that go to trial are

usually those that are sure winners, and since prosecutors are elected in the majority of states, a winning record means re-election (Anderson, n.d.). Addressing this problem, Kenneth Breiser wrote in the Winter 1996 issue of *Georgetown Journal of Legal Ethics*:

The real-world harm is two-fold. A prosecutor protective of a “win-loss” record has an incentive to cut constitutional and ethical corners to secure a guilty verdict in a weak case – to win at all costs. A prosecutor who counts convictions also has a countervailing incentive to drop weak cases. The prosecutor may decline, dismiss or otherwise refuse to try cases that, although supported by probable cause and sufficient evidence to convict, would nonetheless be difficult cases in which to secure convictions (Anderson, n.d.).

With such wide latitude, it is not unexpected that declination rates across jurisdictions widely vary (TRAC Reports, Inc., 2003). Where a prosecutor in one jurisdiction may take a stance on occupational fraud, a prosecutor in the next jurisdiction may not. This wide spectrum of results serves to increase the public’s frustration with the legal system and widens the expectation gap. Several surveys conducted since 2000 demonstrate an increasing public intolerance toward white-collar crime in general. In the past, the public considered fraud and other white-collar crimes to be somewhat innocuous when compared to other, violent crimes; however, that is no longer the case. In fact, according to survey results, some now view fraud as more serious than certain street crimes (Rebovish & Kane, 2002, p. 6). Given the history of white-collar crime scandals since 2000, and the resulting loss of pensions and life savings suffered by many, this reaction should not be unexpected; however, even with the Government’s response to the massive financial statements frauds that occurred in 2001 and 2002, Sarbanes-Oxley (SOX) regulations have done little with respect to the punishment of the everyday occupational offender (*i.e.* misappropriation of assets). In fact, even with these regulations and the threat of severe sanctions for the executive who commits a securities fraud, or “cooks the books,” the ACFE *2008 Report to the Nation* indicates the existence of an inverse correlation with respect to SOX requirements and the size of median losses from financial statement fraud schemes, as well as the duration to detect them (p. 41).

The wide latitude and inconsistency in punishing occupational offenders can be seen in many recent cases. A woman who admitted to embezzling in excess of \$1.2 million from a school district over a ten-year period was sentenced to a year in jail, five years probation, and ordered to pay restitution (Crawford, 2007); however, a woman convicted of embezzling nearly \$1 million from an amateur hockey organization may not see one day behind bars; the judge delayed her sentencing for a year during which she was ordered to pay restitution (Higgins, 2009). The latter case is a clear example of an instance where the organization’s goal of recovery overrides the public’s perception and expectation of “just desserts.” It is in these instances that the psychopathic fraudster benefits from conflicting goals. In sharp contrast to the above cases are two additional recent cases on the other end of the spectrum. In the first, a three-time convicted embezzler received a twenty-two year prison sentence after being found “guilty of three counts of embezzlement for stealing more than \$16,000” (Gonzalez, 2009). Meanwhile, a Hawkins County, Tennessee woman was sentenced to thirty months in prison and five years supervised release for embezzling \$105,900 from a credit union (Lane, 2009).

Much of the disparity seen above may be the result of the justice system's attempt to restore "leniency" to what may be viewed as overly strict Federal Sentencing Guidelines. Prior to the 2005 Supreme Court decision, *United States v Booker*, 543 U.S. 220 (2005), Federal Sentencing Guidelines for fraud were mandatory with sentences based on a calculation of loss; no other factors could be considered. The *Booker* decision made those Guidelines advisory, giving judges more discretion and allowing them to use a lower standard of proof. The loss table, however, still remains the starting point in any sentencing decision (Harris & Kaminska, 2008, pp. 154-155). Following *Booker*, the Supreme Court decisions in *Gall v United States*, 128 S. Ct. 586 (2007) and *Kimbrough v United States*, 128 S. Ct. 558 (2007) made further sweeping changes, as noted by Harris & Kaminska, including;

...the consideration of certain "soft" factors [under 18 U.S. §3553(a)] present in white-collar cases, such as age, post offense employment, and reputational harm—which were either discouraged or prohibited under the mandatory Guidelines—thus finally shifting the focus away from loss as a controlling factor (p. 155).

These recent cases have instilled additional determination requirements aimed at a more fair determination of culpability, by requiring the consideration of additional factors such as the mental state and motive of the alleged offender, as well as other characteristics; however, they have also restored a significant degree of discretion to the courts as can be seen in the above cases (Harris & Kaminska, p. 157). Although these "soft factors" may result in a fair determination where the typical occupational offender experienced a moral lapse of reason, these same factors will also pave the way for a reduced sentence for the psychopathic fraudster. If he need only show community service, financial support for charities, and a remorseful mental state, he can most likely escape severe sanctions and be on his way to his next victim.

Conclusion

There is a common misconception that most occupational offenders are not *really* like other criminals. Their crimes are not ones of violence, rage or insanity, but only of moral turpitude; a slide down a slippery slope they attempted to navigate in a moment of weakness. These misconceptions help to mask the psychopathic fraudster, whose sole reason for waking up every day is to lie, cheat, steal, and manipulate those around him. He hides behind the façade he has created for himself and the misconceptions we have created for him. Once again in our judicial history, we see these misconceptions resonate through our justice system, with calls for leniency and discretion in sentencing determinations. History has shown that for punishment to be effective in any circumstance, it must be certain, severe, and swift. Regardless of the severity and swiftness called for by our regulations, if punishment is not certain, then it serves no purpose. While society's attitude toward intolerance for white-collar crime in general has changed, it seems our justice system has moved in the opposite direction. Although over the past decade we have seen more severe sanctions against those convicted of high profile fraud schemes, the everyday occupational offender continues to benefit from our sympathy and empathy for their particular situation, or for the fact that we tend to want to see the good in those around us; all emotions never to be experienced by the psychopathic offender.

References

- 18 U.S.C. § 3553 (a). Retrieved September 13, 2009 from [http://www.nacdl.org/public.nsf/2cdd02b415ea3a64852566d6000daa79/departures/\\$FILE/3553_amend.pdf](http://www.nacdl.org/public.nsf/2cdd02b415ea3a64852566d6000daa79/departures/$FILE/3553_amend.pdf)
- Amble, B. (2004, August 24). Beware the corporate psycho. In *Management-Issues*. Retrieved September 13, 2009, from <http://www.management-issues.com/2006/8/24/research/beware-the-corporate-psycho.asp>
- Anderson, D. (n.d.). Little prosecution of fraud and white-collar crime. In *Love Fraud.com*. Retrieved September 13, 2009, from http://www.lovefraud.com/06_legalSystemFailures/scant_prosecution.html
- Association of Certified Fraud Examiners. (2008). *2008 Report to the Nation on Occupational Fraud & Abuse*. Retrieved from <http://www.acfe.com/documents/2008-rttn.pdf>
- Babiak, P. (2008, July). Supply Side. *The Meeting Professional*. Retrieved from <http://www.mpiweb.org/archive/173/94.aspx>
- Carozza, D. (2008, July/August). Interview with Dr. Robert D. Hare and Dr. Paul Babiak: These men know “Snakes in Suits”: Identifying psychopathic fraudsters. *The Fraud Magazine*, 22(4). Retrieved from <http://www.acfe.com/resources/view.asp?ArticleID=785>
- Crawford, K. (2007, November 20). Montrose woman who embezzled from school district sentenced to jail, restitution. *The Flint Journal*. Retrieved from http://blog.mlive.com/flintjournal/newsnow/2007/11/montrose_woman_who_embezzled_f.html
- Federal Prosecutors: Wide variation found in handling of criminal referrals for prosecution: A TRAC special report. (2003, January 24). *TRAC Reports, Inc.* Retrieved from http://trac.syr.edu/tracreports/pros/ausa_pctdecG.html
- Gonzalez, T. (2004, August 14). Attorney asks for Sprouse sentence reduction. *NewsVirginian.com*. Retrieved from http://www2.newsvirginian.com/wnv/news/local/article/attorney_asks_for_sprouse_sentence_reduction/43988/
- Harris, M., & Kaminska, A. (2008). Defending the white-collar case at sentencing. *Federal Sentencing Reporter*, 20(3). Retrieved from http://federal sentencingreporter.com/back_issue.php
- Herlinger, C. (1992). Country club criminals. (double standards in law enforcement). *Scholastic Update*. Retrieved from http://www.accessmylibrary.com/coms2/summary_0286-9259728_ITM
- Higgins, L. (2004, August 24). Chelsea woman who stole from Ann Arbor Amateur Hockey Association given chance to pay restitution. In *Ann Arbor.com*. Retrieved from <http://www.annarbor.com/news/woman-who-stole-from-youth-hockey-group-given-chance-to-pay-restitution/>
- Holtfreter, K. (2005). Is occupational fraud “typical” white-collar crime? A comparison of individual and organizational characteristics. *Journal of Criminal Justice*, 33, 353-365. Retrieved from [http://web-5.interliant.com/fsu/cn.nsf/af07002480bfc5ea852570890064167b/\\$FILE/occupational.pdf](http://web-5.interliant.com/fsu/cn.nsf/af07002480bfc5ea852570890064167b/$FILE/occupational.pdf)
- Holtfreter, K., Piquero, N., & Piquero, A. (2008). And justice for all? Investigators’ perceptions of punishment for fraud perpetrators. *Crime, Law and Social Change*, 49(5), 397-412. Retrieved from Criminal Justice Periodicals database.
- Lane, M. (2009, March 31). Hawkins woman who embezzled more than \$100,000 from credit union gets 30-month sentence. *Kingsport Tennessee Times News*. Retrieved from <http://www.timesnews.net/article.php?id=9012850>

- Mahadeo, S. (2006, January/February). FraudBasics: White collar crime demographics. Employee thieves: Who commits the most fraud? *Fraud Magazine*, 20(1). Retrieved from <http://www.acfe.com/resources/view.asp?ArticleID=502>
- Perri, F., & Lichtenwald, T. (2008). The Arrogant chameleons: exposing fraud-detection homicide. *The Forensic Examiner*, 17(1), 26-33. Retrieved from Criminal Justice Periodicals database.
- Perri, F. S., & Lichtenwald, T. (2007, Winter). A proposed addition to the FBI Criminal Classification Manual: Fraud-Detection Homicide. *The Forensic Examiner*. Retrieved from <http://ncjrs.gov/pdffiles1/225071.pdf>
- Rebovich, D. J., & Kane, J. L. (2002). An eye for an eye in the electronic age: Gauging public attitude toward white collar crime and punishment. *Journal of Economic Crime Management*, 1(2). Retrieved from <http://www.utica.edu/academic/institutes/ecii/publications/articles/BA296422-B592-E0A21050AFFB2EAB.pdf>
- Sandick, H. (2003). Gall and Kimbrough and their relevance to sentencing in white-collar cases. *Federal Sentencing Reporter*, 20(3). Retrieved from http://federalsentencingreporter.com/back_issue.php
- Socially dangerous partial psychopaths: The compensated psychopath. (n.d.). *InternetIdiot.net*. Retrieved September 13, 2009, from <http://www.internetidiot.net/socially-dangerous-psychopathy-links.htm>
- Steinberger, M. (2004, December 12). Psychopathic C.E.O.'s. *The New York Times Magazine*. Retrieved from http://www.nytimes.com/2004/12/12/magazine/12PSYCHO.html?_r=2&ex=1104642000&en=cf5b315e5
- United States Senate Committee on the Judiciary, United States Senate Cong. (2002) (testimony of The Honorable Michael Chertoff), http://judiciary.senate.gov/hearings/testimony.cfm?id=310&wit_id=66.
- Wells, J. T. (2008). *Principles of Fraud Examination*. New York: Wiley.
- Whittell, G. (2002, November 11). Snakes in suits and how to spot them. *The Times Online*. Retrieved from http://timesonline.co.uk/tol/life_and_style/article826475.ece?token=null&offset=0&page=1