

# CONVENIENCE IN WHITE-COLLAR CRIME: A RESOURCE PERSPECTIVE

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## Abstract

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White-collar offenders have access to resources that make financial crime convenient. In the rare case of crime suspicion, resources are available in terms of professional attorney work, control over internal investigations, and public relations support. Hiring private investigators at an early stage of potential crime disclosure enables the organization to control the investigation mandate and influence the investigation process and the investigation output. Getting an early start on reconstruction of the past in terms of a fraud examination makes it possible for the suspect and the organization to influence what facts are relevant and how facts might be assessed in terms of possible violations of the penal code. Convenience aspects of private investigations are discussed in this article in terms of five internal investigations, two in the United States (General Motors and Lehman Brothers) and three in Norway (Telenor VimpelCom, DNB Bank, and Norwegian Football Association). The aim of this research is to contribute insights into convenience associated with internal private investigations.

**Keywords:** Resource-Based Theory, Convenience Theory, White-Collar Crime, Internal Investigation

## 1. INTRODUCTION

White-collar offenders have access to resources that make financial crime convenient. Convenient individuals are not necessarily neither bad nor lazy. On the contrary, these persons can be seen as smart and rational (Sundström and Radon, 2015). Convenience in white-collar crime relates to savings in time and effort by privileged and trusted individuals to reach goals, explore and exploit opportunities, avoid collapse and pain, and illegally benefit individuals and organizations. Convenience orientation is conceptualized as the value that individuals and organizations place on actions with inherent characteristics of saving time and effort. Mai and Olsen (2016) measured convenience orientation in terms of desire to spend as little time as possible on a task. Basic elements in convenience orientation at white-collar crime are offenders' attitudes toward the saving of time, effort and discomfort in the planning, action and achievement of goals. Generally, convenience orientation is the degree to which an offender is inclined to save time an effort to reach a goal. Examples of goals include obtaining contracts in corrupt countries, avoiding bankruptcy, and buying a private farm. A convenience-oriented person is one who seeks to accomplish a task in the shortest time with the least expenditure of human energy (Berry et al., 2002).

Convenience comes at a potential cost to the offender in terms of the likelihood of detection and future punishment. Reducing time and effort today entails a greater potential for future cost. 'Paying for convenience' is a way of phrasing this proposition (Farquhar and Rowley, 2009).

In this article, we apply resource-based theory to discuss the extent of convenience in white-collar crime. We suggest that increased access to resources makes white-collar crime more convenient. The resource-based perspective is useful in law enforcement since reduced access to resources makes white-collar crime less convenient. The conceptual research in this article is important, since white-collar crime can be detected and prevented to the extent members of the elite are precluded from resources.

The research topic in this article is convenience in private investigations. The purpose is to demonstrate convenience in several cases based on available resources. The empirical research in this article is concerned with private investigations by fraud examiners. In the organizational dimension of crime convenience, suspected white-collar offenders have access to resources. A resource available to suspects is fraud examiners who conduct internal private investigations. Five case studies are presented in this article, two in the United States and three in Norway.

## 2. RESOURCE-BASED THEORY

White-collar offenders have access to resources to commit financial crime in convenient ways. Furthermore, they have access to resources to conceal crime as well as to prevent prosecution if they are detected. Resource-based theory postulates that differences in individuals' opportunities can be explained by the extent of resource access and the ability to combine and exploit resources. A resource is an enabler that is used to satisfy human needs. A resource has utility and limited availability.

Resource-based theory applied to white-collar crime implies that executives and other members of the elite are potential white-collar offenders that are able to commit financial crime to the extent that they have access to resources that can be applied to criminal actions. Strategic resources are characterized by being valuable, unique, not imitable, not transferrable, combinable, exploitable and not substitutable:

1. *Valuable resource.* Application of the resource provides a highly appreciated outcome. For example, a supplier can be a valuable resource if the vendor is willing to participate in fictitious invoicing.

2. *Unique resource.* Very few have access to this resource, because it is exceptional and rare. For example, an outstanding attorney can be a unique asset if the counterpart has inferior legal assistance.

3. *Not imitable resource.* It is not possible to imitate or copy this resource. For example, an accounting system for subsidy fraud is difficult to copy.

4. *Not transferrable resource.* The resource cannot be released from its context or be moved in any way. For example, price fixing in a cartel is difficult to move to a different industry.

5. *Combinable resource.* The resource can be combined with other resources in such a way that it results in an even more highly appreciated outcome. For example, a frayed property appraiser can be combined with a criminal property developer to commit bank fraud.

6. *Exploitable resource.* The white-collar individual is able to apply the resource in criminal activities. For example, a corrupt son of a government minister is possible to bribe to influence his father so that the business is successful in obtaining local licenses and contracts.

7. *Not substitutable resource.* The resource cannot be replaced by another resource to achieve a correspondingly high valued result. For example, only the corrupt son of a government minister and no one else is available for corruption to successfully obtain local licenses and contracts.

Organizational opportunity to commit economic crime depends on social capital that is available to white-collar offenders. The structure and quality of social relations in hierarchical and transaction oriented relationships determine the degree of social capital that the offender can exploit. Social capital is the sum of the actual and potential social resources available in a hierarchy and in a network (Adler and Kwon, 2002). Formal as well as informal power means influence over resources that can be used for crime.

Access to resources in the organizational dimension makes it more relevant and attractive to

explore possibilities and avoid threats using financial crime. The willingness to exploit a resource possession for white-collar crime increases when it is perceived as convenient. The legal management of key personnel and other resources are important so that the white-collar offender has the ability to commit economic crime by virtue of position in a comfortable way. The resource-based theory implies that the difference between success and failure for white-collar offenders can be explained by the efficient or inefficient ability to leverage strategic resources.

Not only do white-collar offenders have access to resources to carry out financial crime, they also have access to resources to cover criminal acts. Criminal acts are easily hidden in a multitude of legal transactions in different contexts in different locations performed by different people. The organizational affiliation makes crime look like ordinary business. Economic crime is easily concealed among apparently legal activity. Offenders leverage resources that make it convenient to conceal crime among regular business transactions. Especially businesses that practice secrecy enable convenient concealment of financial crime. For example, many multinational companies do not disclose what they pay in taxes in various countries. This kind of secrecy makes it easy to conceal economic crime such as corruption, since regular financial statements are not accessible. Secrecy combined with sloppy and opportunistic accounting can make financial crime even more attractive. Accounting is no mathematical discipline. Rather, the value of accounts receivable, business contracts and warehouse stocks are subject to personal judgments. Auditors are often criticized in the aftermath when financial crime is disclosed.

Chasing profits leaves people more creative in finding ways to make more legal as well as illegal profits for themselves as well as the organization, and people become more creative in concealing crime in various ways (Füss and Hecker, 2008). Crime is carried out so that the risk of detection is minimal and even microscopic (Pratt and Cullen, 2005).

In the rare case of detection of potential crime, the possible offender has access to strategic resources like few others. Available resources include better defense, private investigations, and presentation in the media. The suspected offender can hire the best attorneys paid by the organization or personally. The best attorneys do not limit their efforts to substance defense, where legal issues are at stake. The best defense lawyers also conduct information control and symbolic defense. Information control is concerned with the flow of damaging information about the client. A defense attorney will attempt to prevent police from exploring and exploiting various sources of information collection. Information control implies taking control over information sources that are most likely to be contacted by the police. The police have many information sources when they investigate a case, and these sources can, to a varying extent, be influenced by a defense attorney.

Information is the raw material in all police work. The relative importance of and benefits from pieces of information are dependent on the relevance to a specific crime case, the quality of

information, and the timeliness of information. Information value in police work is determined by information adaptability to police tasks in an investigation. A smart defense lawyer can reduce information value by lowering its fitness for policing purposes. Information quality can be reduced in terms of accuracy, relevance, completeness, conciseness, and lack of scope.

In addition to substance defense and information control, a white-collar defense lawyer is typically involved in symbolic defense as well. A symbol is an object or phrase that represents an idea, belief, or action. Symbols take the form of words, sounds, gestures, or visual images. Symbolic defense is concerned with activities that represent defense, but in themselves are no defense. It is an alternative and supplement to substance defense. Substance and symbolic defense are different arenas where the white-collar attorney can work actively to try to make the police close the case, to make the court dismiss the case, and to enable reopening of a case make the client plead not guilty. The purpose of symbolic defense is to communicate information and legal opinions by means of symbols. Examples of attorney opinions are concerns about unacceptable delays in police investigations, low-quality police work, or other issues related to police and prosecution work. Complaining about delays in police investigations is not substance defense, as the complaint is not expressing a meaning about the crime and possible punishment. Complaining is symbolic defense, where the objective is to mobilize sympathy for the white-collar client.

In the rare case of detection of possible crime, the potential offender has access not only to better defense as a strategic resources, but also often access to an alternative avenue of private investigation. When suspicion of misconduct and crime emerges, then the organization may hire a fraud examiner to conduct a private investigation into the matter. The enterprise takes control of suspicions by implementing an internal investigation. An external law firm or auditing firm is engaged to reconstruct past events and sequence of events. Typically, the resulting investigation report points to misconduct, while at the same time concluding that there have been no criminal offenses. The police will monitor the internal investigation and await its conclusion. When the conclusion states that there may be misconduct, but no crime, then the police and prosecution tend to settle down with it.

In addition to better defense and private investigation as available resources in case of detection of possible crime, the potential offender can also hire public relations consultants. These consultants help tell a story to the media where the potential offender is presented as a victim of unfortunate circumstances.

Furthermore, a white-collar defendant may behave in court so that he or she often gets more sympathy and milder sentence than other defendants, partly because the person belongs to the same segment in society as the judge, prosecutor and attorney. Finally, a convicted offender has the expertise and network to hide criminal profits and protect himself against confiscation, so that the

government will be unsuccessful in its attempts at asset recovery.

If a white-collar criminal should end up in jail, defense attorneys work hard to make prison life as easy as possible for the client. Attorneys argue that it is much worse for a member of the elite to end up in prison than for other people. After a short while, the white-collar offender typically gets most of his freedom back in an imprisonment setting to avoid too much damage. However, research indicates that it is easier for a white-collar criminal than for a street criminal to spend time in prison. White-collar offenders tend to find new friends more convenient, and they are able to sleep all night, while most other inmates may have trouble sleeping and making friends in prison (Dhami, 2007; Stadler et al., 2013).

Nevertheless, defense lawyers apply the special sensitivity hypothesis, which claims that white-collar offenders are ill-equipped to adjust to the rigors of prison life (Stadler et al., 2013: 2):

*Termed the "special sensitivity hypothesis", the claim is made that white-collar offenders experience the pains of imprisonment to a greater degree than traditional street offenders. Upon incarceration, they enter a world that is foreign to them. In the society of captives, status hierarchies found in the larger community are upended, as those with more physical prowess and criminal connections "rule the joint". White-collar offenders discover that they are no longer in the majority in a domain populated largely by poor and minority group members - in fact, prison is a place that a researcher suggests is the functional equivalent of an urban ghetto.*

Furthermore, Stadler et al. (2013) found that research investigating the sentencing of white-collar offenders has revealed that federal judges often base their decisions not to impose a prison sentence for white-collar offending on a belief that prison is both unnecessary for and unduly harsh on white-collar offenders.

The essence of resource-based theory lies in its emphasis on the internal resources available to privileged individuals in the elite, rather than on external forces. Resources are available to conveniently commit crime, conceal crime, and avoid consequences in case of detection. According to the resource-based theory, performance differences can be attributed to the variance in individuals' and firms' resources and capabilities. Firms are considered to be highly heterogeneous, and the bundles of resources available to each firm are different. This is both because firms have different initial resource endowments and because managerial decisions affect resource accumulation and the direction of firm development as well as resource utilization.

Resource-based theory rests on two key points. First, resources are the determinants of individual and firm performance. Second, resources are only available to a few. Individuals and firms must continually enhance their resources and capabilities to take advantage of changing conditions.

Increased access to resources makes white-collar crime more convenient. Opposite, reduced access to resources makes white-collar crime less convenient. In a law enforcement perspective, white-collar crime can be detected and prevented to the extent members of the elite are precluded from resources.

### 3. CONVENIENT INTERNAL INVESTIGATIONS

In the organizational dimension of convenience theory (Gottschalk, 2016b), suspected white-collar offenders have access to resources. A resource available to suspects is fraud examiners who conduct internal private investigations. Hiring private investigators at an early stage of potential crime disclosure enables the organization to control the investigation mandate and influence the investigation process and the investigation output. Getting an early start on reconstruction of the past in terms of an investigation makes it possible for the suspect and the organization to influence what facts are relevant and how facts might be assessed in terms of possible violations of the penal code.

Since law enforcement has scarce resources, they sometimes welcome private investigations as a source for fact finding. While the internal investigation is going on, many police departments will be reluctant to look into the matter. When an internal investigation concludes that no penal code has been violated, many police departments are reluctant to open a criminal case. They trust private investigators both out of necessity and professionalism.

Therefore, the theory of strategic resources in the economical dimension of convenience theory can shed light on the role of fraud examiners in private internal investigations. This chapter presents some investigation cases in the United States and Norway that demonstrate the role of internal investigations as strategic resources.

It is important to emphasize that none of the cases described in this chapter involve white-collar crime prosecution or conviction. There were only suspicions of misconduct and crime. The convenience of internal investigations can be found in an attempt to prevent law enforcement to get interested in the cases. The convenience can be found in preventing police investigations.

### 4. VALUKAS INVESTIGATION AT GENERAL MOTORS

Mary Barra was chief executive officer at General Motors in the United States. She hired fraud examiner Anton Valukas at law firm Jenner & Block to investigate the circumstances that led up to the recall of the Cobalt and other cars due to a flawed ignition switch. Valukas concluded that Barra had done nothing wrong. Instead he pointed at others in the organization for misconduct and potential crime. As a consequence, Barra was never investigated or prosecuted by law enforcement.

The report of investigation by Valukas (2014) is 325 pages long. The report says on page 227:

*As part of Jenner's engagement, we were asked to prioritize our review of the involvement, if any, of these three current senior leaders in the events that led to the belated ignition switch recall.*

One of the three senior leaders was Mary Barra who had been part of top management at General Motors for many years. The internal investigation report acquitted Barra by emphasizing that (Valukas, 2014: 228):

*"Based on that experience and others she believed that recall issues were addressed with appropriate urgency and that the recall decision-making process worked well".*

*"Barra first began to learn of some aspect of the Cobalt's Ignition Switch issue in December 2013, when she was told by Calabrese that the company was working on an analysis that might lead to a decision to recall the Cobalt. She did not learn more about the matter until shortly after the EFACD made the recall decision on January 31, 2014."*

The ignition switch failure was ignored by GM management for many years. Finally, GM had to recall nearly 30 million cars worldwide and pay compensation for 124 deaths. The ignition switch could not shut off the engine during driving and thereby prevent the airbags from inflating. As part of a deferred prosecution agreement, GM agreed to pay a fine of \$900 million to the United States (Korosec, 2015).

But CEO Barra was never investigated or prosecuted by law enforcement in the United States. By not knowing, she was not responsible for what had happened, according to private investigator Valukas (2014).

Valukas (2014) addresses in the report the role of senior leadership and board in the scandal. Investigators reviewed a large number of documents collected from numerous custodians, including potentially relevant e-mails any of the senior leaders sent or received at pertinent times. They interviewed GM employees in the top leaders' respective chain of reporting who might have discussed Cobalt-related issues with them. All of the evidence that investigators reviewed corroborated the conclusion that none of the senior executives had knowledge of the problems with the Cobalt ignition switch or non-deployment of airbags in the Cobalt until December 2013 at the earliest.

Before becoming the CEO at GM in January 2014, Mary Barra had served for the preceding three years as a senior vice president for global product development. Barra became well acquainted with the recall process when the issue involving the Chevrolet Volt's lithium battery arose in 2011. Based on that experience and others she believed that recall issues were addressed with appropriate urgency, and that the recall decision-making process worked well (Valukas, 2014).

Investigators provided opportunities to witnesses to contradict. For example, Raymond DeGorgio, an engineer who allegedly approved the faulty switch and later replaced it with a better one without notifying anyone, just refused the allegations and stated during the interview that he knew nothing. While reading the report (especially ignition switch portion), one can find that the report from the very beginning is leading to one suspect, DeGorgio. The testimonies from Delphi mechatronics directly incriminate him for his negligence and persistence to use flawed switches. After publication of the report, engineer DeGorgio alongside many other engineers were terminated from their positions.

Not only engineers at GM were blamed, while top executives were acquitted. Also legal staff was criticized in the report. Legal staff did not provide specific guidance concerning the types of issues that could become relevant in terms of safety problems and unresolved safety challenges. In-house counsel was not aware of the expectation that they should respond appropriately if they became aware of any threatened ongoing or past violation of a federal, state or local law or regulation, a breach of fiduciary

duty, or violation of GM policy. After Valukas (2014) released his report, GM fired 15 low and middle-level managers from its engineering and legal staff and disciplined five others.

Jones (2014) is critical to the investigation and consequences of the investigation:

*While the Valukas report outlines what can be best described as corporate criminality, it attributes GM's refusal to issue a recall to "errors" or "failure to connect the dots". This is an obvious whitewash. In reality the lives of scores if not hundreds of mostly young people were sacrificed on the altar of corporate profits.*

*This is not just the product of the willful actions of executives, though GM officials should be held to criminal account. It above all expresses the incompatibility of the capitalist mode of production based on production for private profit with basic social needs. Corporations driven by the demands of Wall Street for ever-higher returns on investment are bound to ignore safety for the sake of cutting costs.*

Newspapers reported in the fall of 2014 that Megan Phillips, 17, was behind the wheel of the 2005 Chevy Cobalt when the ignition switch led the car to lose power steering, power braking and the airbag's ability to deploy. Her friend Amy Rademaker was in the front seat and died one week before her 16<sup>th</sup> birthday.

Federal prosecutors started in the fall of 2014 to investigate GM's legal department for possible criminal liability in the way it handled the company's deadly ignition switch problem. The lawyers came under federal criminal investigation by the FBI for allegedly concealing ignition switch evidence. U.S. officials investigating the matter were seeking to determine whether lawyers working for GM, both internally and externally, concealed knowledge and evidence of the ignition switch defects. The police investigation was triggered by the internal Valukas (2014) report. GM had by then fired 15 employees, including several in its legal department. However, the head of GM's legal department, Michael Milliken, a 37-year veteran at the company, "has kept his position within the company, a circumstance that has drawn harsh disapproval and outrage from critics" (Niland, 2014).

Attorney Anton Valukas at law firm Jenner & Block is a well-known fraud examiner in the United States. He has managed a number of internal investigations in major organizations such as General Motors and Lehman Brothers. Valukas was the United States attorney for the northern district of Illinois from 1985 to 1989. The most notable event of Valukas' four-year term was Operation Greylord which was an investigation into judicial corruption in Cook County in Illinois that ultimately resulted in the indictment of 92 people, including 17 judges. Valukas returned to Chicago law firm Jenner & Block, where his practice focused on white-collar criminal defense. He became the chairman of Jenner & Block in 2007, in which capacity he gained notoriety in 2009, when he was appointed bankruptcy examiner in the bankruptcy of Lehman Brothers.

Jenner & Block is a law firm of approximately 450 attorneys with offices in Chicago, New York, Los Angeles, and Washington, DC in the United States. The firm works on litigation cases involving anti-trust and competition law, bankruptcy, copyright, intellectual property, media and first amendment, privacy and information governance, real estate and

construction, and white-collar defense and investigations. The firm does also work in transactional areas such corporate finance, employee benefits, mergers and acquisitions, real estate, and tax practices (www.jenner.com).

## 5. VALUKAS INVESTIGATION AT LEHMAN BROTHERS

Valukas (2010) bankruptcy report on Lehman Brothers consists of 9 volumes of a total of 2,300 pages. The table of contents alone is 45 pages. It is long, but judge James M. Peck of the U.S. Bankruptcy Court in Manhattan said the released report on the causes for the Lehman Brothers Holdings bankruptcy reads like a "best seller" (Corkery, 2010). Financial services firm Lehman Brothers filed for bankruptcy protection in 2008. The filing was the largest bankruptcy filing in U.S. history, with Lehman holdings of over \$600 billion in assets.

The investigation report by financial crime specialist Valukas on Lehman Brothers was by the press coined the "Valukas Report" and universally applauded for its clarity and usefulness in determining what brought about the demise of the bank. Chambers USA named Valukas one of the country's leading litigation lawyers for eight consecutive years, and in 2009, Chicago Lawyer named him Person of the Year. He has been appointed to a number of special investigative roles and served on task forces on financial crime.

Valukas (2010) concluded in the private investigation report that Lehman failed because it was unable to retain the confidence of its lenders and counterparties, and because it did not have sufficient liquidity to meet its current obligations. Lehman was unable to maintain confidence because a series of business decisions had left it with heavy concentration of illiquid assets with deteriorating values such as residential and commercial real estate. Confidence was further eroded when it became public that attempts to form strategic partnerships to bolster its stability had failed.

The investigation report begins with a discussion of the business decisions that Lehman made well before the bankruptcy and the risk management issues raised by those business decisions. Ultimately, investigators conclude that while certain Lehman's risk decisions can be described in retrospect as poor judgment, they were within the business judgment rule and do not give rise to colorable claims. But those judgments, and the facts related to them, provide important context for the other subjects on which investigators found colorable claims. For example, after saddling itself with an enormous volume of illiquid assets that it could not readily sell, Lehman increasingly turned to deviant acts to manage its balance sheet and reduce its reported net leverage (Valukas, 2010).

The time allotted to the examiner, Anton R. Valukas, was reduced compared to other large investigations due to the rapid functions necessary in a bankruptcy proceeding. The examiner began his investigation by requesting access to Lehman Brothers records, both online and physical files stored within their office. Once his request was granted he used key search terms to sort through approximately three-hundred and fifty billion pages

of online data sheets and client information sheets. (Valukas, 2010).

Valukas then requested hard copy files of other companies whose records corresponded with Lehman Brothers. Valukas looked specifically at companies such as JP Morgan, Ernst & Young, and S & P among records from sources such as The Federal Reserve. Over five million records from these sources were maintained in an online database cataloging them by company and then by relevance. (Valukas, 2010).

The examiner was able to gain access to ninety of Lehman Brother's operating, financial, valuation, accounting, trading and other data systems. Much of the software was unorganized and outdated which only slowed down the process. Valukas enlisted the help of numerous attorneys in scouring through the endless databases and documents searching through the use of key terms and essential events which could point to misconduct. (Valukas, 2010).

Valukas then continued his investigation by speaking with examiners from other large bankruptcy cases such as WorldCom, Refco and SemCrude in order to obtain advice from them as to the best practices for successful investigation report. Valukas used some of the other attorneys and examiners in the next step of his investigation, the interview stage. Valukas used a set of informal interviews with two attorneys present during each to take precise notes and make sure all laws were followed. (Valukas, 2010).

The interviews' main goals were to gain a better perspective on where everyone stood opinionwise on the filing for bankruptcy, why they thought Lehman Brothers failed and other essential questions that could lead to evidence of misconduct or point to new information. The examiner gave the person to be interviewed advanced notification of the topics to be discussed and the documents they would be asked to interpret. Valukas was met with great cooperation from all two hundred and fifty people he and the other attorneys interviewed.

Valukas (2010) concluded his investigation as follows:

1. *The examiner does not find colorable claims that Lehman's senior officers breached their fiduciary duty of care by failing to observe Lehman's risk management policies and procedures.*

2. *The examiner does not find colorable claims that Lehman's senior officers breached their fiduciary duty to inform the board of directors concerning the level of risk Lehman had assumed.*

3. *The examiner does not find colorable claims that Lehman's directors breached their fiduciary duty by failing to monitor Lehman's risk-taking activities.*

Valukas (2010) created an impression of having planned the investigation strategy with the goal of finding the presence of white-collar criminal activity, however, found no evidence of such a crime. When investigators were unable to find evidence of any misdeed regarding Repo 105 transactions that had taken place, the investigation abruptly finished because investigators were seemingly unable to readjust their view point to look at other forms of transactions that had taken place.

Chairman and chief executive at Lehman Brothers was Richard S. Fuld. He received a bonus of \$20 million dollars in 2007. Fuld was never investigated or prosecuted by law enforcement in the United States.

Lehman Brothers Holdings Inc. was a global financial services firm. Before declaring bankruptcy in 2008, Lehman was the fourth-largest investment bank in the United States with more than twenty thousand employees. They all lost their jobs because of misconduct and potential crime by chief executives. Bankruptcy was declared following the massive disappearance of its clients, drastic losses in its stock, and devaluation of assets by credit rating agency. The collapse was largely sparked by Lehman's involvement in the subprime mortgage crisis and subsequent allegations of negligence and malfeasance. Lehman was a financial event with long-lasting geopolitical consequences (Irwin, 2016).

Although Valukas (2010) indicated that Lehman executives regularly used cosmetic accounting gimmicks at the end of each quarter to make its finances appear less shaky than they really were, no executives became subject to law enforcement attention.

According to Cohan (2016), CEO Fuld was nicknamed the Gorilla. Joe Gregory was president at Lehman Brothers, while Erin Callan was chief financial officer (CFO). CFO Callan wrote later a book that describes her ruthless ambition, which left behind trusting colleagues, boyfriends and a former husband for whom she steadfastly refused to make time as she focused on her successful career. The book entitled "Full Circle" traces her experiences to the highest-ranking woman on Wall Street during the financial crisis as CFO of Lehman Brothers (Montella, 2016).

## 6. DELOITTE INVESTIGATION AT TELENOR VIMPELCOM

When top executives at Norwegian telecommunications company Telenor were suspected of involvement in VimpelCom's corruption in Uzbekistan, the board at Telenor hired fraud examiners at law firm Deloitte to conduct an internal investigation. Telenor sought to control damage from bribery allegations (Hovland and Gauthier-Villars, 2015). The report of investigation concludes that misconduct has occurred, but there was no evidence of white-collar crime (Deloitte, 2016). Based on this conclusion, the Norwegian national authority for investigation and prosecution of economic crime (Økokrim) decided not to investigate the case.

VimpelCom headquartered in Amsterdam in the Netherlands is one of the world's largest telecommunications services operators providing voice and data services. VimpelCom is registered on the U.S. stock exchange. VimpelCom entered into a deferred prosecution agreement with the United States Department of Justice and with the prosecution service in the Netherlands in 2016, where the company paid \$835 million to the U.S. Securities and Exchange Commission and to the public prosecution service of the Netherlands. According to the Statements of Facts for the agreement, the bribe related to the acquisition of 3G frequencies in 2007 was falsely recorded in VimpelCom's consolidated books and records as the acquisition of an intangible asset, namely 3G frequencies, and as consulting expenses.

Telenor was a substantial shareholder in VimpelCom with an economic and voting interest of

33% in the company. A number of top executives at Telenor had over the years been on the board of VimpelCom. The internal investigation case in Norway was concerned with the role of these individuals. Deloitte (2016) investigated the matter.

Jon Fredrik Baksaas had been the CEO at Telenor from 2002 to 2015. He had been a member of the board at VimpelCom since 2011. Nevertheless, fraud examiners Anne Helsingeng and Ingebret Hisdal excluded in their report that the corruption concerns “did not come to the attention of Baksaas before March 2014” (Deloitte, 2016: 7).

A middle manager at Telenor was a whistleblower on VimpelCom corruption already in 2011. He blew the whistle by reporting suspected wrongdoing to top executives at Telenor, but CEO Baksaas was not informed (Deloitte, 2016: 7 and 26 and 28):

*The fact that Baksaas was a board member of the VimpelCom Supervisory Board, has in our view also affected how individuals have handled the 2011 concerns internally at Telenor. Complicated confidentiality, and in certain cases legal privilege issues, have also affected the internal handling at Telenor (...)*

*We have been informed that when Baksaas became a Telenor nominee in December 2011, he was not informed either by the outgoing or by the two incumbent Telenor nominees about the concerns raised in Employee A's e-mail of 4 October 2011. According to Nominee C he cannot recollect one way or the other whether he discussed with Baksaas Employee A's concerns at the time Baksaas re-entered the VimpelCom supervisory board. According to Baksaas, he did not become aware of the reported concerns before March 2014, when he was interviewed as a witness in relation to the VimpelCom investigation. Executive D has informed us that he made Baksaas aware of the concerns, prior to Baksaas being interviewed. Since Baksaas was a member of VimpelCom's Supervisory Board of Directors since December 2011, we have therefore assumed that the concerns were not raised as an issue at VimpelCom board level by the nominees that had knowledge of the concerns, or discussed with Baksaas in his capacity as Telenor nominee before he received the information in March 2014 (...)*

*Executive E has also explained to us that the reason for not informing Baksaas at this stage was also based on the assumption that Baksaas already had been informed in his capacity as Telenor nominee to the VimpelCom Supervisory Board and/or through the various processes initiated by Telenor to try to get a better understanding of VimpelCom's investments in Uzbekistan (...)*

*We have not been presented with any evidence indicating that the concerns expressed by Employee A were escalated internally at Telenor to Baksaas.*

The acquittal of Baksaas as a suspect by private Deloitte (2016) investigators caused Økokrim not to look into the matter. Instead, Økokrim helped prosecutors in the Netherlands and Switzerland to collect intelligence on the VimpelCom corruption. Also, Økokrim charged former CEO at VimpelCom, Jo Lunder, a Norwegian who was not included in the Deloitte investigation (Hovland and Gauthier-Villars, 2015).

While Telenor owned a substantial share of VimpelCom, the Norwegian government was a majority shareholder of Telenor. Therefore, Telenor engaged in a dialogue with its majority owner, the Norwegian government, to discuss Telenor's role and responsibility in VimpelCom. Svein Aaser was at that time chairman of the board at Telenor. As later

became public, Aaser did not disclose everything to the minister in the fall of 2014. Industry minister Monica Mæland therefore said in a statement that she did not trust Aaser, and he had to leave the chairman position as a consequence.

The whistleblower had informed two executives at Telenor in 2011, labelled Executive D and Executive E respectively in the report of investigation by Deloitte (2016). Executives D and E lost the blame game (Gottschalk, 2016a). Executive D was head of legal and compliance at Telenor, while Executive E was chief financial officer. Both executives had to leave Telenor when the report of investigation by Deloitte was published. They got the blame for not having told CEO Baksaas about the corruption scandal at VimpelCom, which they learned about from the whistleblower Employee A in 2011 (Deloitte, 2016: 31):

*In our opinion, Executive D, as Head of Legal and Compliance at Telenor, has had a responsibility to escalate the concerns expressed by Employee A internally at Telenor. In our view, this responsibility is embedded in his role (...)*

*(Executive E) should subsequent the 12 February 2013 board meeting have informed Baksaas that he was uncertain whether the VimpelCom 2011 transactions and the related concerns expressed by Employee A was disclosed.*

Both executives D and E disagreed with investigator assessments (Deloitte, 2016: 32):

*(Executive E) disagrees with our assessment as laid out in the third paragraph above. Executive E has further stated that given his role which is clearly outside VimpelCom, the strict personal confidentiality undertakings, and other actions and reasonable assumptions Executive E has taken in this matter, his own consideration is that he also on this occasion acted correctly and according to good leadership.*

Several experts were skeptical of the Deloitte report. The president of the Norwegian lawyer association, Curt A. Lie, expressed concern about internal investigation reports, especially when there is an issue of whether or not crime has occurred (Ekeberg, 2016).

It was disclosed in the media that Pål Wien Espen was executive D while Richard Olav Aa was executive E. Pål A a few months after their resignation from Telenor; Richard Olav Aa was hired for a similar CFO position in the Fred. Olsen Group, while it was expected that Pål Wien Espen would join a Norwegian law firm as a partner (Trumpy, 2016).

Jon Fredrik Baksaas retired as CEO at Telenor in 2015, and Sigve Brekke took over the position. Brekke was not interested in expanding the internal investigation to other parts of Telenor business. It was suggested that possible corruption in India, Thailand and Myanmar had occurred and might be investigated, since Telenor had obtained telecom rights in those corrupt countries. Before becoming the CEO, Brekke was based in Bangkok and responsible for Telenor business in all Asian markets (Hustadnes, 2015).

Per Olaf Lundteigen, a member of Norwegian parliament “Stortinget”, wrote the following statement after a public hearing about Telenor's involvement in VimpelCom in June 2016 ([www.stortinget.no](http://www.stortinget.no)):

*This member would point out that the size of the fine, the disturbing Deloitte report as well as the risk of new corruption surprises makes it necessary for the ministry to initiate a new investigation. This is to get a*



*total review of all Telenor business abroad, especially in Eastern Europe, Thailand, India, and Myanmar to clarify how zero tolerance of corruption is being practiced.*

But nothing happened.

## 7. HJORT INVESTIGATION AT DNB BANK

When Norwegian bank DNB was accused of fraud and corruption in connection with media leaks from the Panama Papers, corporate management immediately implemented a preliminary internal investigation to clear themselves. After only three days, attorneys at law firm Hjort concluded that no violations of Norwegian penal code had occurred among executives at DNB Bank. At the press conference, Rune Bjerke, chief executive in the bank, could announce that an independent law firm (Hjort) had concluded that there was no evidence of crime. By claiming that the law firm had already examined suspicions of crime, Bjerke may have prevented investigation and prosecution by Norwegian law enforcement agency Økokrim (Langset et al., 2016).

Reactions were loud and swift after Oslo newspaper "Aftenposten" revealed how Norway's biggest bank, DNB, made it possible for wealthy customers to avoid taxes by hiding assets in tax havens through DNB in Luxembourg and Panama. DNB's chief executive Rune Bjerke, who has close ties to the Labor Party - the largest political party in Norway - was facing calls for his resignation (Brustad and Hustadnes, 2016). Customers said they were disgusted and angry, government officials and state authorities expressed a sense of betrayal, and newspapers were editorializing that DNB had violated the confidence of politicians, taxpayers as well as customers who supported the bank during the financial crisis less than a decade ago.

The ministry of trade, industry and fisheries owned 34 % of DNB bank. This large ownership fraction occurred as a consequence of the collapse of the financial sector during the financial crisis. When Panama Papers were leaked and evidence of DNB involvement occurred, DNB called the press conference and at the same time submitted a written statement to the minister, Monica Mæland. She was, however, not happy with the explanations in the statement and returned a number of questions to the chairperson at the bank, Anne Carine Tanum.

Again, chairperson Tanum hired attorney Kristin Veierød at law firm Hjort to reply to the minister's questions, although law firm Hjort already very promptly had concluded that there were no traces of corporate crime.

Law firm Hjort was to carry out a fraud examination of DNB's knowledge of and involvement in tax havens such as the Seychelles. The investigation was to answer questions from the minister concerning possible violations of internal guidelines at DNB Luxembourg, concerning governance structure in DNB, concerning corporate culture, concerning audit functions, concerning whistle-blowing routines, and the need for future investigations.

Law firm Hjort was hired in April 2016 to carry out this investigation, and they were expected to complete the work by June. However, they were still not done in July, and chairperson Tanum was thus unable to provide answers to minister Mæland in August.

It was probably convenient for DNB management to quickly respond to accusations in the Panama Papers by initiating a prompt Hjort investigation and to call a press conference as well as submit the Tanum (2016) statement to the minister. DNB management may have expected that their fast initiatives would solve the situation so that the bank could return to its business as usual. However, the loud and lasting reactions combined with the surprising new list of questions from the minister made bank management confused and silent.

From a convenience perspective, DNB chief executive Rune Bjerke argued that he did not know about the practice at their subsidiary DNB Luxembourg helping with post box companies in the Seychelles and other tax havens through a law firm in Panama. Furthermore, DNB management finds it convenient to remain convinced that this bank practice may have represented misconduct, but no crime.

When the Panama Papers disclosed DNB involvement in tax havens for their clients, DNB executives were quickly stating that this practice was not according to bank ethics and was terminated. They apologized for unethical bank practice, but claimed they were not to blame. Chairperson Tanum (2016: 13) wrote in her statement to the minister:

*It is the view of the board that DNB Luxembourg should have refrained from facilitating customers establishing companies on the Seychelles from 2006 to 2008. Not because it was illegal, or that customers necessarily have done anything wrong, but because the structures themselves could be abused for hiding assets and income from the internal revenue service. Although it is the responsibility of the customers to report to the internal revenue service, DNB Luxembourg should not have facilitated corporate structures that could be misused. In addition, the board underlines that to facilitate for customers establishing companies in low-tax countries is far from what a bank should be involved in.*

*Knowledge about DNB Luxembourg's services never reached the CEO, and it was never discussed in executive meetings or in board meetings at DNB.*

In the economical dimension of convenience theory, it seems that wealthy Norwegians are important bank clients for whom DNB provided secrecy services. In the organizational dimension, it seems that transactions could be hidden on the electronic road from DNB Luxembourg via Panama arrangements to tax havens. In the behavioral dimension of convenience theory, it seems that DNB executives think they are not to blame since they did not know about the practice.

## 8. LYNX INVESTIGATION AT FOOTBALL ASSOCIATION

Yngve Hallén was president of the Football Association of Norway (Norwegian: Norges Fotballforbund, NFF). The association organizes men's and women's national teams, as well as the Norwegian premier league. There are two thousand football clubs with four hundred thousand players in Norway, which has less than six million inhabitants. The association is the largest sports federation in Norway. Like in most other parts of the world, there is much more money involved in Norwegian football now than there was before. Elite players receive a solid salary, and clubs are into



selling and buying players. When a player is sold to the next club, previous clubs are often entitled to a transfer fee.

In 2012, there were strong rumors that Norwegian clubs cheated with transfer fees. For example, a player from Island who played for the French club Nancy, was sold from the Norwegian club Stabæk to the Norwegian club Vålerenga. Nancy was expecting a transfer fee, but the pricing of the player was such that Nancy received very little.

In this situation of rumors about fraud in Norwegian football, president Yngve Hallén initiated an internal investigation by law firm Lynx. Their mandate was to examine all recent player transfers to establish whether or not fraud was occurring. President Hallén felt confident that nothing would be found, and formulated in the mandate that the purpose of the private investigation was to help "strengthen the confidence in Norwegian football" (Lynx, 2012: 13). This mandate formulation was based on the assumption that nothing would be found. Norwegian sports associations have always believed that they were clean in all respects unlike sports federations in other countries.

However, after a while, fraud examiners at Lynx came on the track of fraud at player transfers. To collect solid evidence, they asked for more detailed information. Norwegian football clubs refused, and Hallén supported them. After a while, Hallén terminated the whole investigation. The Lynx investigation was never completed (Johnsen, 2015).

Three years later, when Hallén was up for re-election as president of the Football Association of Norway, he first launched his candidacy, but later withdrew it, because of the Lynx investigation scandal and other scandals where he had provided favors to members of the election committee (Johnsen and Melnæs, 2016).

In the economical dimension of convenience theory, Hallén struggled to become a hero within Norwegian sports. An internal investigation in the organizational dimension should provide evidence that nothing was wrong in international player transfers involving Norwegian clubs. He stopped the investigation in the behavioral dimension of convenience theory, maybe out of higher loyalty to the reputation of Norwegian sports.

## 9. CONCLUSION

This article has applied resource-based theory to study white-collar crime. Members of the elite have access to resources to commit financial crime in convenient ways. A typical example is the chief executive officer (CEO) who is the only executive at level 1 in the hierarchy of an organization. All other executives in the organization occupy lower levels. At level 2, we find the most senior executives. This article suggests that resources available to the CEO and other members of the elite should be controlled and limited to reduce the number of occurrences of white-collar crime.

The Valukas investigation at General Motors seems to protect the client paying for the investigation. The Valukas investigation at Lehman Brothers avoids making executives accountable. The Deloitte investigation at Telenor avoids making Telenor members on the VimpelCom board responsible for corruption in Uzbekistan. The Hjort

investigation at DNB bank avoids blaming executives who supposedly did not know about structures in tax havens. The Lynx investigation at football association illustrates that internal investigations are stopped when investigators ask questions that clients dislike.

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