

This file was downloaded from BI Brage,
the institutional repository (open access) at BI Norwegian Business School
<http://brage.bibsys.no/bi>

Petter Gottschalk

BI Norwegian Business School

**Policing Financial Crime:
Challenges in White-Collar Defense Lawyer Strategies**

This is the original article as published in

Pakistan Journal of Criminology 2014 Vol. 6 (1) pp 1 -19

The publisher Pakistan Society of Criminology
has kindly given their permission to deposit the article open access in BI Brage.

Publisher's website: <http://www.pakistansocietyofcriminology.com/index.php>

Policing Financial Crime: Challenges in White-Collar Defense Lawyer Strategies

Petter Gottschalk

Abstract

White-collar crime lawyer defense strategies represent challenges in policing financial crime. The white-collar crime attorney is a lawyer who is competent in general legal principles and in the substantive and procedural aspects of the law related to upper-class financial crime. The lawyer applies three defense strategies: substance defense strategy, information control strategy, and symbolic defense strategy. To meet this challenge, the police have to apply four policing strategies: information management strategy, knowledge management strategy, information systems strategy, and value shop configuration strategy. Based on a sample of 310 convicted white-collar criminals and their defense lawyers, this paper presents results from statistical analysis of relationships between crime characteristics and defense characteristics.

Keywords

Financial Crime, Defense Lawyer, Statistics, White-collar Crime, Police Strategy, Knowledge Management.

Introduction

Baitar et al. (2012) argue that the only responsibility of a lawyer in the Western legal tradition is to maximize the interests of his or her own client without regard to the impact on the client's opponent or on law enforcement. When white-collar criminals are suspected of and prosecuted for financial crime, they typically hire defense lawyers at a very early stage. Lawyers try to hinder and stop the investigation based on their defense strategies. White-collar lawyers are experts in defense of powerful and rich clients. They are often well-paid by their clients, either by a wealthy individual client or by a corporate client. White-collar lawyer defense strategies represent challenges to traditional policing, which is more used to street crime than financial crime.

In his classic book on «Defending White-Collar Crime: A Portrait of Attorneys at Work», Kenneth Mann (1985: 5) wrote about the differences in guilt issues in crime:

The white-collar crime defense attorney, like his counterpart handling street crime, typically assumes that his client is guilty. Certainly that assumption held in every case I describe in this book. But unlike the street-crime defense attorney – and this is a critical difference – the white-collar defense attorney does not assume that the government has the evidence to

convict his client. Instead, he starts with the assumption that, though his client is guilty, he may be able to keep the government from knowing this or from concluding that it has a strong enough case to prove it. Though in the end he may have to advise his client to plead guilty and bargain, he often starts his case with the expectation of avoiding compromise.

The guilt assumption as well as the lack of proof assumption leads white-collar attorneys to select defense approaches depending on the situation. They apply a contingent approach to the defense work.

White-collar crime is defined both in terms of the offence and in terms of the offender. The offence is typically financial crime such as fraud, tax evasion, corruption and insider trading. The offender is typically a person of respectability and high social status, who commits crime in the course of his occupation (Sutherland, 1940, 1949, 1983). Sutherland's (1949) theory of white-collar crime has served as a catalyst for an area of research that continues today (e.g., Alalehto and Larsson, 2009; Benson and Simpson, 2009; Blicke et al., 2006; Goldstraw-White, 2012; Robb, 2006).

The purpose of this article is to link four policing strategies to three defense strategies. When defense lawyers apply substance defense, information control, and symbolic defense during investigation, prosecution and court procedures, the police needs to apply information management, knowledge management, information systems and value shop configuration.

Characteristics of White-Collar Criminals

In Sutherland's definition of white-collar crime, a white-collar criminal is a person of respectability and high social status who commits crime in the course of his occupation. This excludes many crimes of the upper class, such as most of their cases of murder, adultery, and intoxication, since these are not customarily a part of their procedures (Benson and Simpson, 2009). It also excludes lower class criminals committing financial crime, as pointed out by Brightman (2009).

What Sutherland meant by respectable and high social status individuals are not quite clear, but in today's business world we can assume he meant to refer to business managers and executives. They are for the most part individuals with power and influence that is associated with respectability and high social status. Part of the standard view of white-collar offenders is that they are mainstream, law-abiding individuals. They are assumed to be irregular offenders, not people who engage in crime on a regular basis (Benson and Simpson, 2009: 39):

Unlike the run-of-the-mill common street criminal who usually has had repeated contacts with the criminal justice system, white-collar offenders are thought not to have prior criminal records.

When white-collar criminals appear before their sentencing judges, they often claim to be first-time offenders. However, some have extensive histories with the legal system. They are typically wealthy, highly educated, and socially connected. They are mostly elite individuals, according to the description and attitudes of white-collar criminals as suggested by Sutherland.

Therefore, it seems that very few white-collar criminals are put on trial, and even fewer upper class criminals are sentenced to imprisonment. This is in contrast to most financial crime sentences, where financial criminals appear in the justice system without being wealthy, highly educated, or socially connected.

White-collar criminals are not necessarily entrenched in criminal lifestyles as common street criminals. They belong to the elite in society, and they are typically individuals employed by and in legitimate organizations.

What Podgor (2007) found to be the most interesting aspect of Sutherland's work is that a scholar needed to proclaim that crimes of the "upper socioeconomic class" were in fact crimes that should be prosecuted. It is apparent that prior to the coining of the term "white-collar crime," wealth and power allowed some persons to escape criminal liability.

The research field of white-collar criminals has now got beyond Sutherland. Although Sutherland's observations are not inaccurate, research illustrates that white-collar crime is a broad category, including high-level corporate misconduct such as corruption, occupational fraud schemes such as insider trading, and technology abuse such as computer fraud. Recently, scholars in the accounting and financial field who write about white-collar criminals have begun to incorporate psychological perspectives, such as psychological trait theory in terms of narcissism and psychopathy (Perri, 2013).

Characteristics of White-Collar Defense Strategies

Three themes are particularly noteworthy when distinguishing white-collar crime defense strategies from other defense strategies for lawyers. First, the role of white-collar criminal lawyers is radically different from the typical criminal lawyer who defends persons charged with street crime. For instance, the former spend far more time on each case, both in terms of work load and in terms of calendar time. This implies that a white-collar crime lawyer works on fewer cases in parallel. The white-collar lawyer gets the case much earlier and is far more likely to keep charges from being filed. Second, information control is at the center of the attorney's work. The lawyer is concerned with acquisition of crucial information and keeps damaging information out of the hands of government investigators and prosecutors. A third theme centers round a major dilemma of these lawyers: how to vigorously defend the client without thereby becoming a party to the criminal act (Kiser, 1986).

In line with these themes, three specific strategies applied by white-collar crime attorneys can be identified. First, substance defense strategy is concerned with when and how an attorney decides to defend the client in a substantive way. Often, the substantive defense starts at a much earlier stage than in a street crime case. Second, information control strategy is concerned with what and how crucial information is controlled to make it difficult, and sometimes impossible, for the police and prosecution to get the complete picture. Often, information control defense is able to keep secrets and to claim that pieces of information are irrelevant. In police investigations, there are normally a number of information sources, often more than a dozen, as we shall see in this chapter. Controlling and limiting some source can cause the crime puzzle never to be solved in police investigations. Third, symbolic defense strategy addresses all other means that the attorney can apply to divert attention away from legal issues. An example is to portray the offender as a victim in the press.

The counterpart for an attorney in crime cases are the authorities, which decide whether a suspect shall be prosecuted or not. To avoid and prevent a prosecution decision, the defense lawyer will try to convince the police and prosecution that the client has done nothing that justifies court proceedings. The strategic issue for the attorney is how to succeed in stopping the state prosecutor from advancing the investigation and case from suspicion to prosecution in court. While very different from other crime cases, an attorney's active defense work often starts in the initial phases of a police investigation, when there are only rumors of wrongdoing that may or may not be relevant for criminal law. It does not matter for the attorney whether the client has done something wrong or not, as long as rumors may develop into accusations from colleagues, subordinates, management, customers, suppliers, journalists or authorities.

If a white-collar attorney would behave in a white-collar case as in a street-crime case, then the attorney would wait for evidence presented against the client. Then the attorney will react to the evidence. A street-crime lawyer will mainly be reactive, while a white-collar lawyer will be proactive. A street-crime lawyer will wait for evidence, and then make up his or her mind what to do. Typically, the lawyer will argue that the evidence is not sufficient to prove guilt, because presented evidence does not document in an adequate and convincing manner that the client has done something which can lead to a prison sentence for the client.

Defense lawyers in white-collar crime cases tend to take charge over information control at an early stage. Instead of being at the receiving end of documents from the police and prosecution, the attorney is in a position where the flow of information can be monitored. Of particular interest to the attorney is crucial

information that can harm the client's case. The flow of harmful pieces of facts, insights and knowledge of causes and effects, that might become legal evidence in the police, is restricted and stopped by the lawyer. Know-what, know-how and know-why that is damaging for the client, is controlled by the lawyer.

Strategic substance defense is not necessarily the first defense strategy applied by the attorney in a white-collar case. The defense lawyer's very first goal can be to prevent that the police obtains evidence that is harmful to the client and prevent that information is applied by police detectives to define and justify a formal charge for crime.

At this stage, it is not laws and verdicts that are of concern to the lawyer. At this stage, all the lawyer is worried about is the flow of information that is transformed into evidence in police investigations. It is all about preventing the police from acquiring evidence, and making it difficult or even impossible for the police to understand pieces of information that they have obtained. It is all about stopping the investigation at an early stage, so that the case is closed. This is the defense lawyer's information control strategy.

Third and final defense strategy is symbolic defense. A symbol is an object or phrase that represents, stands for, or suggests an idea, belief, or action. Symbols take the form of words, sounds, gestures, or visual images and are used to convey ideas and beliefs. Symbolic defense is concerned with activities that represent and stand for defense, but in itself is no defense. Symbolic defense is an alternative and a 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 to enable the client to plead not guilty.

Characteristics of Policing Strategies

Police financial crime requires appropriate strategies that are put into action. Four important policing strategies are presented in the following: information management strategy, knowledge management strategy, information systems strategy, and value shop configuration strategy. In general, police strategy is concerned with choices to reach law enforcement goals (Ortmeier and Davis, 2012: 29):

A policing strategy is an approach to delivering police services based on specific assumptions about matters such as how police and community residents should interact, what causes crime to worsen, and how technology might be leveraged. Each strategy has unique advantages and disadvantages. Some strategies are mutually exclusive, while others complement or support one another.

An information management strategy is concerned with issues such as sources of information and quality of information in police work. A knowledge management strategy is concerned with personnel and their knowledge areas. An information systems strategy is concerned with information and communication technology to store and retrieve electronic information. A value configuration strategy is concerned with the choice between value chain, value shop and value network, and how to apply the chosen value shop configuration strategy to police work. These strategies may be partly mutually exclusive as well as partially compliment and support one another.

Information management strategy is one of several strategies that law enforcement organizations develop and implement to improve white-collar crime detection and prevention. Police intelligence is an important element of the strategy. An information management strategy defines management approaches to the organization, control and application of police information resources through coordination of people and technology resources in order to support policing strategy and processes. While knowledge management strategy focuses on personnel resources, and information systems strategy focuses on technology resources, information management strategy focuses on the identification, retrieval, storage and application of information resources. Important issues in this strategy are information relevance and timeliness (Chaffey and White, 2011).

In policing, performance risk and execution risk reflect the knowledge deficits impeding process performance. Where knowledge deficits exist, incomplete information and know-how give rise to uncertainties that obscure prediction and execution. Performance risk and execution risk are lowered through knowledge transfer mechanisms developed to avoid and handle uncertainties. Such knowledge transfer permits knowledge reuse, and the recombination of existing knowledge is an important antecedent of uncertainty resolution (Mitchell, 2006). Knowledge management strategy focuses on personnel resources, where the knowledge of each police officer as well as the combined knowledge in the police represents resources that are to be explored and exploited for better police work. The knowledge management strategy process include developing a working definition of knowledge, developing a working definition of knowledge management, doing a knowledge audit, defining knowledge management objectives and strategy approaches, and implementing strategy with quality measures (Chaffey and White, 2011).

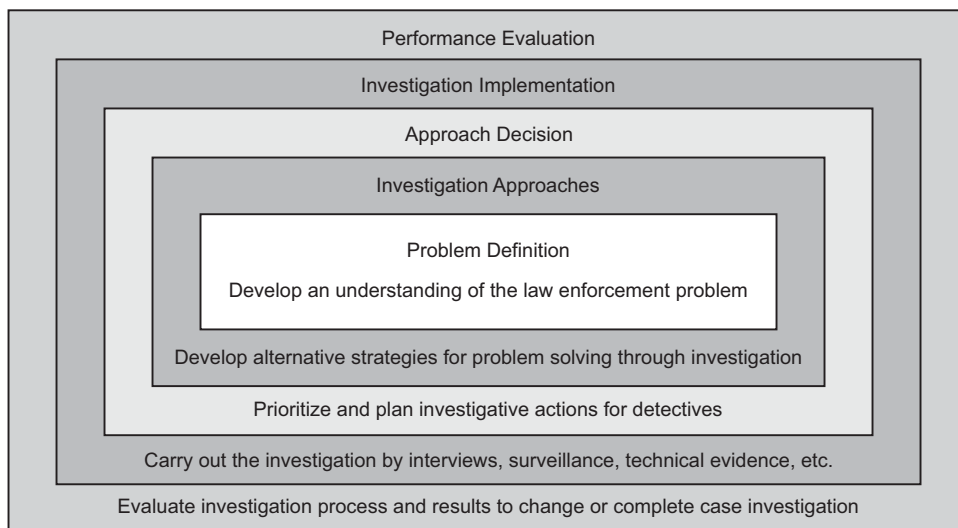
Information systems are needed to support investigation and prevention of white-collar crime. Information technology is applied to organize intelligence and analyses in electronic format, and to enable easy retrieval, combination and sharing among executives and colleagues.

Information technology is identified as an effective enabler in promoting information sharing and knowledge management in organizations. Information systems strategy is concerned with defining how information systems will be used to support and impact police work. It is a portfolio of computer-based applications to be implemented. It brings together the business aims of the police, and understanding of the information needed to support those aims, and the implementation of computer systems to provide that information. The emphasis is on delivering an applications portfolio of appropriate software tools and systems to support the future direction of an organization in general and knowledge work within the police in particular. Information technology can play an important role in leveraging knowledge resources in organizations. Organizations often implement information systems that are specifically designed to support various aspects of knowledge management in organizations. These systems include features such as intranets, search engines, document repositories, and collaboration tools that allow virtual communities of practice to be organized (Choi et al., 2010).

Fourth and final policing strategy is the value shop configuration. Investigation and prevention of white-collar crime has the value configuration of a value shop. As can be seen in Figure 1, the five activities of a value shop are interlocking and, although they follow a logical sequence (much like the management of any project), the difference from a knowledge management perspective arises in terms of the manner in which knowledge is used as a resource to create value in terms of results for the organization. Hence, the logic of the five interlocking value shop activities in this example pertains to a policing unit and the manner in which it carries out its core business of conducting reactive and proactive investigations.

The sequence of activities commences with problem understanding, moves into alternative investigation approaches, investigation decision, and investigation implementation, and ends up with criminal investigation evaluation. However, these five sequential activities tend to overlap and link back to earlier activities, especially in relation to activity 5 (control and evaluation) in policing units, when the need for control and command structures are a daily necessity due to the legal obligations that policing unit authority entails. Hence, the diagram is meant to illustrate the reiterative and cyclical nature of these five primary activities when it comes to managing the knowledge collected during, and applied to, a specific investigation in a value shop manner.

Figure 1: The Knowledge Organization of Investigation and Prevention Units as Value Shop Configuration Activities.



Furthermore, the figure illustrates the expanding domain of the knowledge work performed in financial crime investigations, starting in the center with problem understanding and ending at the periphery with evaluation of all parts of the investigation process.

The five primary activities depicted above of the value shop in relation to a financial crime investigation and prevention unit can be outlined as follows:

1. *Problem Definition.*

This involves working with parties to determine the exact nature of the crime and hence how it is to be defined. For example, depending on how responding officers perceive and/or choose to define it, a physical assault in a domestic violence situation can be either upgraded to the status of grievous bodily harm to the spousal victim or it may be downgraded to a less serious common, garden variety assault and defined as a case where a bit of rough handing took place towards the spouse. This concept of making crime, a term denoting how detectives choose to make incidents into a crime or not, is highly relevant here and accounts for why this first activity has been changed from the original problem finding term used in the business management realm to a problem definition process here in relation to policing work. Moreover, this first investigative activity involves deciding on the overall investigative approach for the case not only in terms of information acquisition but also (as indicated in

Figure 1) in terms of undertaking the key task, usually by a senior investigative officer in a serious or major incident, of forming an appropriate investigative team to handle the case.

2. *Investigation Approaches*

This second activity of identifying problem solving approaches involves the actual generation of ideas and action plans for the investigation. As such it is a key process as it establishes the direction and tone of the investigation and is very much influenced by the composition of the members of the investigative team. For example, the experience level of investigators and their preferred investigative thinking style might be a critical success factor in this second primary activity of the value shop.

3. *Approach Decision*

This solution choice activity represents the decision of choosing between alternatives generated in the second activity. Despite being the least important primary activity of the value shop in terms of time and effort, it might be the most important in terms of value. In this case, trying to ensure as far as is possible, that what is decided upon is the best option to follow to achieve an effective investigative result. A successful solution choice is dependent on two requirements. Firstly, that alternative investigation steps were identified in the problem solving approaches activity. It is important to think in terms of alternatives, otherwise, no choices can be made. Secondly, the criteria for decision-making have to be known and applied to the specific investigation.

4. *Investigation Implementation*

As the name implies, solution execution entails communicating, organizing, investigating, and implementing decisions. This is an equally important process or phase in an investigation as it involves sorting through the mass of information coming into the incident room concerning a case and directing the lines of enquiry as well as establishing the criteria used to eliminate a possible suspect from further scrutiny in the investigation. A miscalculation here can stall or even ruin the whole investigation. Most of the resources expended on an investigation are used here in this fourth activity of the value shop.

5. *Performance Evaluation*

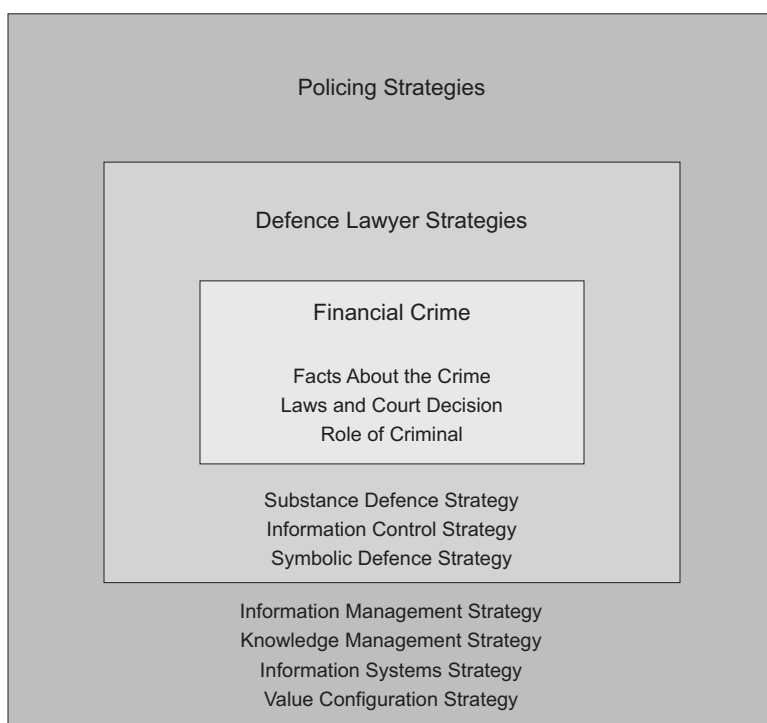
Control and evaluation involves monitoring activities and the measurement of how well the solution solved the original problem or met the original need. This is where the command and control chain of authority comes into play for investigation and prevention units and where the determination of the quality and quantity of the evidence is made in terms of whether or not to charge and prosecute an identified offender in a court of law.

Knowledge Competition Challenge

When policing strategies are applied to financial crime, the police are trying to establish the facts about the crime, evaluate what laws and previous court decisions are relevant in the case, and what role the prosecuted individual played in the crime. This is the core of police work as illustrated in Figure 2. To succeed, the police apply information management strategy, knowledge management strategy, information systems strategy, and value shop investigation strategy.

The police task is made difficult and challenging because of defense lawyer strategies, as illustrated in Figure 2. Defense attorneys apply substance defense strategy, information control strategy, and symbolic defense strategy for his or her client.

Figure 2: Knowledge Rivalry between Police and Defense in Crime Investigation

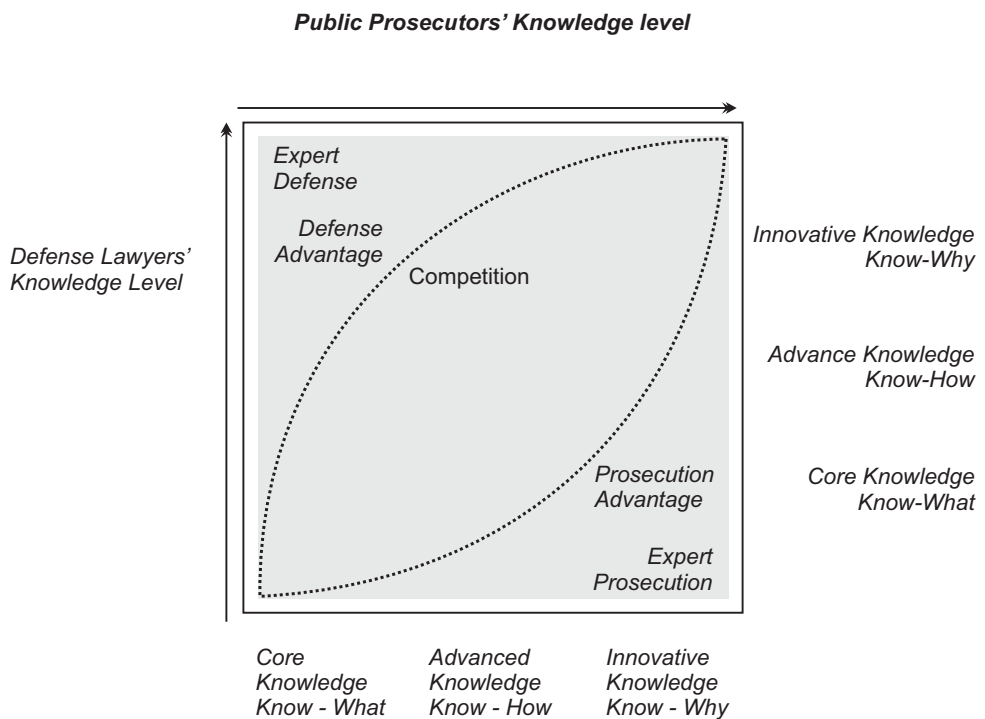


The purpose of symbolic defense is to communicate meaning and opinions by means of symbols. Examples of meaning are delays in police investigations, low police work quality or other issues related to police and prosecution work. Complaining about delays in police investigations is not substance defense, as the

complaint is not expressing a meaning about the crime and possible punishment. Complaining is symbolic defense, where the goal is to mobilize sympathy for the white-collar client.

From a legal perspective, a court situation is characterized by efforts to conclude whether the charged persons and company are guilty or not guilty. From a knowledge perspective, this situation is characterized by a competition as illustrated in Figure 3.

Figure 3: Knowledge Rivalries between the Prosecution and the Defense in Court



Depending on the relative knowledge levels of prosecution and defense, a knowledge rivalry with three alternative situations might exist as illustrated in Figure 3:

1. Defense lawyers are experts, while prosecutors are not experts in areas such as international tax regulations, tax havens, global company operations, and management of international operations. Defense lawyers have innovative knowledge (know-why), while prosecutors have core knowledge (know-what).

2. Prosecutors are experts, while defense lawyers are not experts in Norwegian laws and regulations. Defense lawyers have core knowledge (know-what), while prosecutors have innovative knowledge (know-why).
3. Both parties are at about the same knowledge level, leading to a real knowledge competition in court between the defense lawyers and prosecutors.

While street criminals such as burglars and rapists seldom can afford several top defense lawyers for weeks and months in court, white-collar criminals often can afford it. This discrepancy emphasizes the importance of Sutherland's (1949) seminal work on white-collar crime. The most economically disadvantaged members of society are not the only ones committing crime. Members of the privileged socioeconomic class are also engaged in criminal behavior (Brightman, 2009) and the types of crime may differ from those of the lower classes. Some examples of the former are business executives bribing public officials to obtain contracts, chief accountants manipulating balance sheets to avoid taxes, procurement managers approving fake invoices for personal gain (Simpson and Weisburd, 2009).

Knowledge competition can be understood in terms of three defense strategies applied by white-collar lawyers: substance defense strategy, information control strategy, and symbolic defense strategy. The counterpart for an attorney in crime cases are the authorities, which decide whether a suspect shall be prosecuted or not. To avoid and prevent a prosecution decision, the defense lawyer will try to convince the police and prosecution that the client has done nothing that justifies court proceedings. It is all about substance defense strategy at an early stage. The strategic issue for the attorney is how to succeed in stopping the state prosecutor from advancing the investigation and case from suspicion to prosecution in court. While very different from other crime cases, an attorney's active defense work often starts in the initial phases of a police investigation, when there are only rumors of wrongdoing that may or may not be relevant for criminal law.

Defense lawyers in white-collar crime cases tend to take charge over information control at an early stage, which is according to the information control strategy. Instead of being at the receiving end of documents from the police and prosecution, the attorney is in a position where the flow of information can be monitored. Of particular interest to the attorney is crucial information that can harm the client's case. The flow of harmful pieces of facts, insights and knowledge of causes and effects, that might become legal evidence in the police, is restricted and stopped by the lawyer.

Third and final defense strategy is the symbolic defense strategy. A symbol is an object or phrase that represents, stands for, or suggests an idea, belief, or action. Symbolic defense is an alternative and a 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 a case to enable the client to plead not guilty. The purpose of symbolic defense is to communicate opinions and intentions by means of symbols. Examples of meaning are publicly announced complaints about delays in police investigations, poor police work quality or other issues related to police and prosecution work.

Empirical Study of White-Collar Lawyers

Several options exist to identify a substantial sample of white-collar criminals and to collect relevant information about each criminal and his or her lawyer. However, in a small country like Norway with a population of only five million people, there are limits to available sample size. One available option would be to study court cases involving white-collar crime and criminals. A challenge here would be to identify the relevant laws and sentences that cover our definition not only of white-collar crime, but also the required characteristics of white-collar criminals. Another available option is to study newspaper articles, where the journalists already have conducted some kind of selection of higher class, white-collar individuals convicted in court because of financial crime. An advantage of this approach is that the cases are publicly known, which makes it easier to identify cases by individual white-collar names. The selective and otherwise filtered information in newspapers might be a problem in other kinds of studies, but is considered acceptable in this study. Therefore, the latter option was chosen in this research.

Out of 277 convicted white-collar criminals, 238 convicts were defended by a male lawyer and 39 convicts defended by a female lawyer. Among 277 white-collar convicts, there were 253 men and 24 women. An emerging question is whether men defend men, and women defend women. This was not the case, as 20 women were defended by men, and 4 women by women. This reflects the general gender distribution and cannot tell anything about gender preference in attorney selection. While 16.7 percent of the women selected a female lawyer, 13.8 percent of the men selected a female lawyer as well. In total, women represent 14.1 percent of the lawyers and 9 percent of the convicted criminals.

There are a total of 172 lawyers in the sample, which implies that each lawyer defended 1.6 criminals on average. The lawyer with most clients defended 20 convicts in the sample.

Average age of lawyers was 51 years, while average age of criminals was 48 years old. The youngest lawyer was 26 years, while the oldest was 83 years. Average taxable income was 200.000 US dollars (1.253.000 Norwegian Kroner), and the best earning attorney had an income of 2 Million US dollars.

Correlation analysis indicates a positive relation between the number of white-collar crime clients and lawyer taxable income. Furthermore, older lawyers have higher incomes. No relationship was found between number of clients and age of lawyer.

Some lawyers are more famous than others. How well-known a lawyer is to potential clients and in the public, might be measured in terms of media coverage. Financial newspapers represent a relevant source of fame for white-collar people. The largest Norwegian financial newspaper, Dagens Næringsliv, was searched for hits on their website. The most famous lawyer achieved 219 hits, followed by the second most famous lawyer with 112 hits on the newspaper web site.

This fame factor in terms of web site hits was correlated with other variables for the lawyers. A significant and positive relationship emerged between fame factor and number of clients, as well as between fame factor and lawyer income. Results are listed in Table I.

Table I: Correlation Analysis for White-collar Crime Lawyers

	Average	Deviation	Clients	Age	Income	Fame
Clients	1.6	1.8	1	-.059	.576**	.947**
Age	51.3	11.3		1	.185**	.002
Income	1.3	1.4			1	.608**
Fame	8.1	24.0				1

Furthermore, there is significant correlation between income and clients, as well as income and age. In the first two columns, average values and standard deviations are listed. The average number of white-collar clients for each white-collar lawyer in the sample over a three-year period is 1.6 criminals, with a standard deviation of 1.8 criminals.

White-collar criminals commit their crime in terms of a money amount. The amount of money varies from case to case, where the average in the sample is 8 million US dollars (51 million Norwegian Kroner). The largest sum of money in a single case was 200 million US dollars in a bank fraud by a large company. An

interesting issue is whether characteristics of lawyers can somehow predict money amount and jail sentence. Correlation analysis indicates that significant relationships exist between crime amount and lawyer fame (.141*), lawyer income (.234**) and lawyer age (.145**). There is no significant correlation between number of clients and crime amount.

White-collar criminals in the data base were convicted to prison sentence. Average jail sentence for 277 convicted white-collar criminals was 2.3 years. An interesting issue is whether characteristics of attorneys in any way might predict sentence length. Potential predictors include number of clients, lawyer age, lawyer income, and lawyer fame. Correlation analysis indicates no such relationships.

When disregarding characteristics of defense lawyers, the most important predictor of a jail sentence for white-collar criminal is the crime amount. With a significant and positive correlation coefficient (.249**), imprisonment increases as crime amount grows in the sample.

So far, it is established that prison sentence becomes more severe with a larger crime amount, and the crime amount is larger when a famous lawyer is defending the case. When these two factors are combined with the number of clients, some interesting results emerge from regression analysis:

A larger amount of money in the crime is positively related to a longer jail sentence.

A defense lawyer with more fame is positively related to a shorter jail sentence.

More defense lawyer clients are positively related to a longer jail sentence.

These regression results are significant and taken together amount, fame and clients can predict variation in prison sentence, as listed in Table II.

Table II: Regression analysis with jail sentence as dependent variable

	Slope	T-value	Significance
Number of white - collar clients	0.183	2.552	.011
Web site hits for lawyer fame	-0.15	-2.516	.012
Amount of money involved in crime	0.03	0.03	.000

All three factors in the table are significant from a statistical point of view ($p < .05$). The interesting minus sign in front of fame indicates that fame is related to shorter jail sentence for the client.

The Case of Attorney Stordrange

Bjørn Stordrange, a well-known white-collar lawyer in Norway, defended Acta entrepreneur Fred Anton Ingebrigtsen, who was suspected of insider trading in the Acta stock. Early on, Stordrange expressed in public his frustration with several delays in police investigations (Haakaas, 2009: 2):

When the charge was out last summer, we were told that the investigation would be completed last fall. The time limit was changed to Easter and then again to October this year. Now we are told that it might be completed by Christmas, says Stordrange.

Stordrange's many appearances in the media indicated both active substance defense in the Acta case, as well as symbolic defense, which will be discussed later in this chapter. Stordrange was extremely proactive in terms of an organized crime suspicion, where the police wanted to use the Norwegian mafia rule on the case. Stordrange succeeded in convincing the police to drop the organized crime charge against Ingebrigtsen and his crime associates.

In Norway, white-collar attorneys are typically trying to influence police investigations at Økokrim, which is the Norwegian national authority for investigation and prosecution of economic and environmental crime. Økokrim is the main source of specialist skills for the police and prosecution authorities in their combat against financial and environmental crime (www.okokrim.no). Økokrim is similar to SFO – the Serious Fraud Office in the UK. SFO is an independent government department, operating under the superintendence of the Attorney General. Its purpose is to protect society by investigating and, if appropriate, prosecuting those who commit serious or complex fraud, bribery and corruption, and pursuing them and others for the proceeds of their crime. For example on March 11, 2013, SFO charged three men in a Ponzi-style scheme, and the men appeared at City of London Magistrates Court charged with conspiracy to defraud investors in an alleged investment fraud related to electrical contracts in the hotel sector (www.sfo.gov.uk).

As defense lawyer for white-collar criminal Kjell Gunnar Finstad in Norex Group, attorney Bjørn Stordrange was upset about the elapsed time of police investigation (Vanvik, 2010: 14):

It doesn't matter what explanation the police has to give. Time speaks for itself and this case, both in terms of evidence and in terms of the law. If this case had been presented in court five years ago, it might have been another issue. But now, witnesses in the case hardly remember what happened anymore. We find it quite surprising that the police now spend so many resources on a case that is mainly history, says Stordrange.

The defense lawyer has noise as strategy, to get attention away from the core of this criminal case, said state prosecutor Harald L. Grønlien (Ravn and Schultz, 2011: 13):

Some defense lawyers have a strategy to make noise and divert attention away from the core of the case. Therefore, they bring in as many formalities into a case as possible, to cause derailing, says Grønlien.

White-Collar Lawyer Team

Some white-collar criminals do not only hire a few lawyers to defend them, they hire a complete team of lawyers and other experts to work on their defense. An example is finance acrobat Christer Tromsdal, who hired nine attorneys, an auditor, an investigator, and a data specialist in 2013. Tromsdal got his own office in well-recognized law firm Hjørt in Oslo. Among the lawyers were Skjerdal, Lyngtveit, Østgård, Aagaard and Holmen (Solem, 2013b).

Christer Tromsdal (born 1969) was in 2005 sentenced to six months in prison for having influenced a witness in a criminal investment case. In 2012, he was sentenced to six years in prison for bank fraud. However, his team of lawyers discovered that the judge in an earlier case had said something about Tromsdal that disqualified him to rule in this case. So the 6-year sentence was removed, and the prosecution had to start all over again (Borgarting, 2013c).

Two defense lawyers are paid by the state at a low standard hourly rate. All others are paid by Tromsdal. Annually it may cost him one million US dollars. He argues that the money comes from legal investment activities in property and financial markets. The prosecution is not so sure about that (Solem, 2013b).

Conclusion

The difference in defense lawyers and their strategies in defending white-collar criminals compared to those who primarily defend those who commit general street crime is certainly an interesting topic in need of exploration. White-collar crime lawyers are different from other specialist lawyers because of the knowledge gap, the resource gap and the uncertainty whether or not it is a crime. Corporate financial crime cases have a tendency to be associated with great uncertainty in terms of know-what, know-how and know-why. This uncertainty makes judges – who are not necessarily familiar with international business operations – uncertain whether or not it is a crime. A situation is then created in court, where it is very much up to defense lawyers to present the case in such a manner that it seems to be outside punishable conditions. Defense lawyers can present causes and links in the case as business evidence for pleading not guilty, where judges have a hard time following the business lines, business actors and consequences in relation to Norwegian law.

Based on exploratory research, this paper has established a competitive link between police knowledge and defense knowledge. While defense lawyers carry out substance defense, information control and symbolic defense, the police have to carry out information management, knowledge management, information systems use, and work in the value shop configuration. Our findings regarding the interaction between white-collar defense attorneys, prosecutors, and law enforcement officers open up avenues for future research. For example, future research may concentrate on exploring these links in terms of relative knowledge competition between the two opposing parties in crime investigations.

References

- Alalehto, T. and Larsson, D. (2009). The Roots of Modern White-Collar Crime: Does the Modern Form of White-Collar Crime have its Foundation in the Transition from a Society Dominated by Agriculture to One Dominated by Industry, *Critical Criminology*, 17, 183-193.
- Baitar, R., Buysse, A., Brondeel, R., Mol, J. and Rober, P. (2012). Toward High-Quality Divorce Agreements: The Influence of Facilitative Professionals, *Negotiation Journal*, October, 452-473.
- Benson, M.L. and Simpson, S.S. (2009). *White-Collar Crime: An Opportunity Perspective*, *Criminology and Justice Series*, Routledge, NY: New York.
- Blickle, G., Schlegel, A., Fassbender, P. and Klein, U. (2006). Some Personality Correlates of Business White-Collar Crime, *Applied Psychology: An International Review*, 55 (2), 220-233.
- Borgarting (2013c). 12-199711AST-BORG/04, *Borgarting lagmannsrett*, (Court of appeal case) 16.09.2013.
- Brightman, H.J. (2009). *Today's White-Collar Crime: Legal, Investigative, and Theoretical Perspectives*, Routledge, Taylor & Francis Group, NY: New York.
- Chaffey, D. and White, G. (2011). *Business Information Management*, Second Edition, London, UK: Prentice Hall.
- Choi, S.Y., Lee, H. and Yoo, Y. (2010). The Impact of Information Technology and Transactive Memory Systems on Knowledge Sharing, Application, and Team Performance: A Field Study, *MIS Quarterly*, 34 (4), 855-870.
- Goldstraw-White, J. (2012). *White-Collar Crime: Accounts of Offending Behaviour*, London: Palgrave Macmillan.

- Haakaas, E. (2009). Acta-saken kan smuldre bort (Acta case can mold away), daily newspaper *Afteposten*, fredag 27. november 2009, Økonomidelen, side 2.
- Kiser, G.C. (1986). Book Review of *Defending White-Collar Crime*, *Social Science Quarterly*, 655-656.
- Mann, K. (1985). *Defending White-Collar Crime: A Game Without Rules*, Yale University Press, New Haven.
- Mitchell, V.L. (2006). Knowledge Integration and Information Technology Project Performance, *MIS Quarterly*, 30 (4), 919-939.
- Ortmeier, P.J. and Davis, J.J. (2012). *Police Administration – A Leadership Approach*, McGraw Hill, New York, NY.
- Perri, F.S. (2013). Visionaries or False Prophets, *Journal of Contemporary Criminal Justice*, 29 (3), 331-350.
- Podgor, E.S. (2007). The challenge of white collar sentencing, *Journal of Criminal Law and Criminology*, Spring, 97 (3), 1-10.
- Ravn, L.K. og Schultz, J. (2011). Tiltale sendt i retur (Prosecution returned), *Dagens Næringsliv*, mandag 15. august, side 13.
- Robb, G. (2006). Women and white-collar crime, *British Journal of Criminology*, 46, 1058-1072.
- Simpson, S.S. and Weisburd, D., editors (2009). *The Criminology of White-Collar Crime*, Springer, New York.
- Solem, L.K. (2013b). Har eget kontor hos Hjort (Has his own office at law firm Hjort), daily Norwegian business newspaper *Dagens Næringsliv*, tirsdag 24. september, side 6-7.
- Sutherland, E.H. (1940). White collar criminality, *American Sociological Review*, 5, 1-12.
- Sutherland, E.H. (1949). *White collar crime*, New York: Holt Rinehart and Winston.
- Sutherland, E.H. (1983). *White collar crime: the uncut version*, New Haven: Yale University Press.
- Vanvik, H. (2010). Har vært en heksejakt (Has been a witch hunt), *Dagens Næringsliv*, onsdag 13. oktober, page 14.

The author Mr. Petter Gottschalk is Professor of Information Systems & Knowledge Management in the Department of Leadership and Organizational Management at BI Norwegian Business School. Dr. Gottschalk has published a number of books and research articles on Crime and Policing. He has been Managing Director of several corporations, including ABB Data Cables and the Norwegian Computing Center.