

Spring 5-21-2022

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### Recommended Citation

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WHITE-COLLAR CRIME: DIVERSITY AND DISCRIMINATION IN SENTENCING

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A project submitted in partial fulfillment of the requirements for the Bachelor of Arts degree in  
Honors Liberal Arts Seattle Pacific University

Presented at the SPU Honors Research Symposium

May 21, 2022

## **Abstract**

White-collar crimes cause businesses and individuals to lose billions of dollars a year. This paper discusses the criminal justice system in regard to the white-collar crime and discrimination by the basis of gender and race within sentencing. First an analysis is given on who commits white-collar crimes, by looking at the rates and motives of those committing white-collar crimes on the basis of first gender and race. An analysis through literature review compares sentencing of females and people of color compared with the rates of white males who make up the majority of those committing white-collar crimes. The findings suggest that men are imprisoned more than women for white-collar crimes, due to societal views and rates of participation, but in the case of race, people of color commit less white-collar crimes and are imprisoned at higher rates due to fines, bias, and the systems in place.

Keywords: *gender, judicial system, race, sentencing, white-collar crime*

## Introduction

White collar crime, as defined by Sutherland - who coined the phrase in his presidential address to the American Sociological Association in 1939 (Queen, n.d.) is a financial crime “committed by a person of respectability and high social status in the course of his occupation”.<sup>1</sup> Today the term typically refers to financially motivated, non-violent crimes, characterized by deceit, concealment, or violation of trust (Wheeler, Weisburd, and Bode, 1982). Some common examples of white-collar crime include money laundering, corporate fraud, insider trading, tax evasion, corruption, and economic espionage, among others.

Though nonviolent, white-collar crimes can be incredibly detrimental to the economy, through bankrupting businesses, ruining families by clearing their life savings, or costing investors billions of dollars (Federal Bureau of Investigations, 2014).<sup>2</sup> According to the Federal Bureau of Investigation, the annual cost of white-collar crime is over \$500 billion, which far exceeds the estimated cost of \$15 billion from personal property crimes. It is estimated that approximately 36% of businesses (PricewaterhouseCoopers, 2016) and approximately 25% of households (NW3C, 2010) have been victims of white-collar crimes in recent years, compared to an 8% and 1.1% rate of traditional property and violent crime, respectively (Truman & Langton, 2015). Yet there is far more attention being brought to violent crimes and robberies than there is to white-collar crime.

According to statistics and existing studies, white collar offenders are middle- or upper-class white males in their 30s or 40s, usually married and with no criminal record (Alalehto, 2005,

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<sup>1</sup> Since Sutherland’s initial white-collar crime definition, debate regarding whether white-collar crime is best defined by offender characteristics (e.g., socioeconomic status, job position), offense characteristics (e.g., context, legal statute, victim type, nature of harm), or a combination of offender and offense characteristics has flourished (Friedrichs, 2009)

<sup>2</sup> Bernie Madoff stole somewhere between \$17.5-65 billion from investors and Enron lost thousands of people their entire retirement savings by intentionally misleading shareholder

p.29). Specifically, around 80% of white-collar criminals are men (Alalehto, 2005, p.29) and 67% of the offenders in white-collar crimes are whites (U.S. Department of Justice, 1987).

Do criminals of different races or gender receive different sentences? If so, why? In this paper I will address this question by focusing on discrimination in sentencing for white-collar crime.

This research addresses the differences in gender committing white-collar crimes. Men and women have different motivators for their white-collar criminal activity, which could be part of why there is a difference in participation. Different genders are also perceived differently and have different access in the labor force, contributing to their different rates of white-collar crime involvement.

Since most white-collar criminals are also white, the discussion of racial differences in participation and their motivations will follow. Though the rates of people of color participating in white-collar crime has increased over the past couple of years, they still proportionally represent a smaller number of white-collar criminals (Barnett, 2000). Their late access to the labor market, along with income level, and psychological behaviors can explain their participation in this type of crime.

After clarifying the participation and motivation of white-collar criminals, the number of those sentenced for white-collar criminals by gender and race will be discussed. Women are sentenced less than men for their crimes, but people of color are sentenced for longer prison time more often than white people, which is what this paper will analyze in the form of a literature review. When the sentencing demographics do not match that of the demographics of those who commit the crime, then the judicial system needs to be reexamined to see if there are injustices in the systems at play.

Discrimination in sentencing is relevant because a bias judicial system goes against the foundations of the United States' law. This country's system of law is one that emphasizes equal treatment, so any discrimination under the judicial branch is therefore not simply unwarranted but unlawful (The Sentencing Project, 2005). In the United States Constitution, "the Fifth Amendment's Due Process Clause requires the United States government to practice equal protection. The Fourteenth Amendment's Equal Protection Clause requires states to practice equal protection" (Cornell Law, n.d.). Though the American judicial system might not be as explicitly discriminatory as it once was when women did not have the right to vote, and blacks and whites were handled under different laws, it does not mean the current judicial processes are perfect. Presently, "racial discrimination in sentencing today is often a more surreptitious process, manifesting itself in connection with other factors and producing racially discriminatory outcomes in certain situations" (The Sentencing Process, 2015). When systems favor one group of people, it denies access to the same knowledge and power to the other group of people. For example, once one has a criminal record they can often no longer vote (National Conference of State Legislatures, 2021). If the criminal system has discriminated against people for the color of their skin and they are sentenced more often, then they have also lost more voting power due to this discrimination. Without voting power, one no longer has any power or say to how their country is run. Discrimination in sentencing for white-collar crimes is one way people may lose access to knowledge and power, and that is why it is important to discuss through this paper's findings of when discrimination happens and why. In the future, it would be interesting to look into new policies or resources that could be implemented to prevent further discrimination under the judicial system and how to execute those.

## **Who Commits White Collar Crime?**

### *White Collar Crime and Gender*

Back in 2001, Martha Stewart's was brought up in the public eye in a negative light as she was caught with allegations of an insider-trading scandal that suggested she had sold 4,000 shares of ImClone stock after receiving private information about the firm's failure to obtain FDA approvals. Media covered this cooking show icon in court as, "a jury found Stewart guilty of obstruction of justice, conspiracy, and two counts of false statements to a federal investigator" (Dodge, 2007). Though Stewart was in the wrong, "the core aspects of the case and seriousness of the crime were relatively insignificant during a time of major corporate wrongdoing, including the collapse of Enron and WorldCom". Her case brought attention to the participation of females in white-collar crime through her popularity and media attention she received, and "gender-related characteristics clearly emerged as variables that contributed to the situation" (Dodge, 2007). Stewart, along with The Stewart case, is one of several infamous women white-collar criminals like Sherrie Gibson, Rita Cornwell, and Lea Fastow, who provide evidence of increasing female participation in the realm of white-collar crime.

Traditionally, and not surprisingly, white-collar crimes almost exclusively have been concocted and conducted by men. The primary obstacle to female involvement in elite crime is the general gendered occupational division in society where women tend to have lower-level positions than men. Friedrichs (2009) claims that men outnumber women by six to one. However, this pattern depends on the type of crime considered. If the white-collar crime is of low complexity (so-called "pink-collar" crimes such as asset misappropriation, corruption, fraudulent statements, embezzlement, etc.) then the gender ratio is more balanced compared to more complex crimes such as antitrust violations and security fraud (Benson, 2020). In Benson's sample women made

up 30% of the white-collar criminals but accounted for 52% of those who committed the white-collar crime of embezzlement (2020). Though women may embezzle more, they steal less money than their male counterparts as, according to, existing research “women steal ‘about .43 – .50 on the dollar’ when compared to men” (Paxton, 2020).

In the United States, the number of women involved in the corporate world continues to increase, despite a developing trend toward “opting out” that shows female executives are choosing to leave corporate positions for less demanding employment that is more conducive to personal freedom and family life” (Dodge, 2007)<sup>3</sup>. With the increase participation in the corporate sphere, women have also increased their participation in the white-collar crime. Specifically, while in the 1970 women did not participate in securities offences, they made up about 20% of those who commit the offender according to a recent study (Ruland & Selzer, 2020). Similarly, their participation in tax offenses and bribery was at 5% in the 1970’s, and more recently they make up 28% of those convicted for tax offenses and 20% of those who commit bribery offenses. However, women’s conviction rates for antitrust crimes have stayed consistency low (Ruhland & Selzer, 2020, p.21). With their change in workforce participation, women are presented with more opportunities to commit white-collar crimes, yet they still make up the minority gender of those who commit white-collar crimes.

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<sup>3</sup> In 2004, about 59 percent of the women in the United States were involved in the work force, though they continue to play relatively minor roles in corporate, political, and medical realms. In 2005, the U.S. Bureau of Labor Statistics reported that women represented 29 percent of the physicians and surgeons nationwide. Worldwide, political leadership remains in the hands of men with a count (as of the 1990s) of 42 women who have served as presidents or prime ministers. Upper-level positions in corporations and financial institutions also continue to be male dominated. Over the past three years, only eight women have or are holding CEO positions in Fortune 500 companies and, in 2002, just 9 of the 1,000 largest companies in the United States were headed by women. Women compose about 14 percent of board members in Fortune 500 companies and represent only 5.2 percent of the top-earning corporate officers. (Dodge, 2007)



Research has emphasized that female and male offenders do not have the same motives, opportunities, and willingness to commit white-collar crime<sup>4</sup> (Dearden & Gottschalk, 2021, p.4)<sup>5</sup>. The two factors that contributed to female involvement are mainly family, social pressures, and risk attitude.

In cases of white-collar crimes, women either had a close personal relationship with the men involved or they occupied a strategic position with access to and knowledge of financial information. When studying why women commit white-collar crimes, the main motivation for women was to aid their families financially, as about 33% of the women answered this as their top motivator for why they committed their white-collar crime. Only 10-15% of the women said financial gain was their main motivator (Daly, 1989, p.786). On the other hand, men “were just as likely to say they needed money for themselves [as] for their families” (Daly, 1989, p.787). Though family seems to be the primary reason women commit these crimes, another reason could be social pressure. As women can often be excluded in a work-place setting, they may feel a social pressure to participate in a “deviant behavior”, such as white-crimes like embezzlement or insider trading in order to survive within the organization (Gottschalk 2012, p.368).

Women might also commit lesser amounts of white-collar crimes because they take less risks than men. Gottschalk’s 2012 study found that, “women may have a greater sense of risk aversion rather than risk willingness, and women may more easily be perceived as victims of crime” (p. 371). Though some scholars believe women are more risk-adverse, and therefore less likely to participate in white-collar crimes, Steffensmeier argues that women are not necessarily more risk adverse, but rather, “their risk-taking is less likely to violate the law and more likely to be

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<sup>5</sup> Benson & Harbinson 2020; Galvin 2020; Goulette 2020; Harbinson 2020; Ndrecka 2020 cited in Dearden & Gottschalk 2021

protective of emotional commitments. Women may take greater risks to establish or sustain valued relationships, whereas men take greater risks for status, power, monetary gain, or competitive advantage” (2013 p.452). Not only do women have less desire to commit white-collar crimes, but when they do, they admit they are guilty, took responsibility for their crime, had strong justifications, and repented for their crimes more than men, suggesting women feel a deeper sense of shame than men in the case of committing crimes (Daly, 1989, p.786). When women do commit these crimes, they feel worse about it and show remorse. Their display of guilt aids them in getting off the hook for any white-collar crimes they do commit. Whether it is because they are more nurturing, seen as innocent, less risky, or care about their family more, women are the minority gender of white-collar criminals.

Koshaveliska explains how, “women, who commit crimes are faced with double conviction: according to social views and trials, they crossed not only the social boundaries but also that of gender” (2018, p.2). Not only is committing a crime a breach of social boundaries, but for a woman to commit a crime, she would no longer be in the perceived boundaries of her gender role either. Though this may be one study, it demonstrates how women can receive different treatment than men sometimes because of their softer appearance. Steffensmeier, describes how, there are social norms that disapprove of “female deviance” because they are seen as roles as nurturers and appear more cooperative in their relationships, and there is also certain female beauty, sexual, and moral virtue standards (2013, p.451). Women have these social expectations to be nurturers and virtuous, making them less perceived as criminals than men may be.

Though there may be more women committing white-collar crimes than there was fifty years ago, they still have crime rate numbers much smaller than that of their male counterparts.

### *White-Collar Crime and Race*

White-collar crime has historically been committed by middle- or upper-class White men. A report issued by the U.S. Department of Justice shows that within the five different forms of white-collar crime that includes, property crime, embezzlement, counterfeiting, bribery, and fraud, white offenders made over 70% of offenders for all those crimes in 1999 (Barnett, 2000).

Using more recent data, white offenders are responsible for 69% of forgeries, 66% of fraud cases, and 61% of embezzlement cases in 2020 (Federal Bureau of Investigation, 2020). Though white-collar crime started off as predominantly white, the percentage of other races committing white-collar crimes has increased since the mid 70's. Non-White convictions have accounted for almost half of the white-collar crimes in 2015, with a noticeable increase in the percentages of Asians and Latinos (Benson et. al., 2020). This can be explained by a much more diverse population, as 39.1% of the population was non-white in 2020, compared to the 1970s when only 12.5% of the population was non-white (U.S. Census Bureau, 2021). For 2020, the population in the US accordingly breaks down to 60.1% white, 13.4% Black, 18.5% Latino, and 5.9% Asian (U.S. Census, 2021).

Several socio-economic explanations are offered as to why Blacks are underrepresented in white collar crimes. The general belief is that Blacks more often have limited access to the white-collar-type jobs that provide opportunities for white-collar crime.

According to Benson, the number of White Americans in high-level occupational positions where crimes such as antitrust and securities offenses take place is still predominant (2020, p.31). Moreover, the lack of increase in the number of Black white-collar crime offenders could be due to the excessive scrutiny Blacks are under for criminal offenses: “the general criminalization of Black men, Blacks may believe that they are under more scrutiny than Whites and would be likely

to be punished more harshly if detected, making them less inclined to pursue criminal avenues than Whites” (Benson et al., 2020, p.31).

White-collar criminals are also more likely to be steadily employed (58.4%), while only 12.7% of non-violent common criminals had steady employment. In 2020 and 2021, unemployment rates for Black and Hispanic Americans were almost double the unemployment rates for White Americans (Bureau of Labor Statistics).

**Table 1 - Differences in Education and Employment Between Common and White-Collar Criminals**

	<b>Nonviolent Common Crimes</b>	<b>White-Collar Crimes</b>	<b>General Public</b>
<b>Education</b>			
High School Graduates	45.50%	79.30%	69%
College Graduates	3.90%	27.10%	19%
<b>Employment</b>			
Unemployed	56.70%	5.70%	5.90%
Steadily Employed	12.70%	58.40%	n/a

(Wheeler & Stanton, 1988, p. 340)

Another characteristic of white-collar criminals is they tend to be homeowners. For white-collar criminals, 46% are likely to be homeowners, with only 6% of non-violent common criminals (Wheeler & Stanton, 1988, p.342). If you break the data down to type of white-collar crime, one can see that as much as 87.8% of anti-trust criminals own houses.

	<b>Antitrust</b>	<b>Securities Fraud</b>	<b>Tax</b>	<b>Bribery</b>	<b>Credit Fraud</b>	<b>False Claims</b>	<b>Mail Fraud</b>	<b>Bank Embezzlement</b>
Race (White)	99.1%	99.6%	87.1%	83.3%	71.5%	61.8%	76.8%	74.1%
Sex (Male)	99.1%	97.8%	94.1%	95.2%	84.8%	84.7%	82.1%	54.8%
Age (Mean Age)	53	44	47	45	38	39	38	31
<b>Employment</b>								
Steadily Employed	96.6%	59.4%	80.6%	68.4%	42.2%	46.7%	48.0%	36.8%
Unemployed	0.0%	0.0%	11.5%	17.8%	24.2%	24.8%	25.4%	3.0%
Owners or Officers	69.2%	74.1%	33.3%	36.8%	31.8%	16.4%	28.0%	15.9%
<b>Financial Standing</b>								
Median Assets	\$650,000	\$59,000	\$49,500	\$45,000	\$7,000	\$4,000	\$2,000	\$2,000
Median Liabilities	\$81,000	\$55,000	\$23,500	\$19,000	\$7,000	\$5,000	\$3,500	\$3,000
<b>Education</b>								
College Graduates	40%	43%	27%	27%	18%	29%	23%	13%
<b>Home Ownership</b>								
Homeowners	88%	62%	58%	57%	45%	42%	34%	31%
<b>Criminal Background</b>								
Prior Conviction	7.7%	27.6%	43.2%	25.0%	48.7%	48.7%	48.4%	24.4%
<b>N of Cases</b>	117	225	210	84	158	157	190	201

(Wheeler & Stanton, 1988, p.345)

Higher Education, steady employment, and owning a house, common traits of a white-collar criminal, are seen at lower rates for people of color. In the 2000 census, 72 percent of non-Hispanic White Americans owned homes, whereas the national average fell below at 66 percent, with Black Americans at a rate of 46 percent, Native Hawaiian and Pacific Islanders at 45 percent, and Hispanics at 46% (US Census Bureau). In 2019, 73.3% of white, non-Hispanics in the U.S. owned houses (Statista Research Department, 2021). If most homeowners are white, and most white-collar crimes are committed by homeowners, then we should expect to see more white people in prison for white-collar crimes than people of color.

The reason behind the “whiteness” of white-collar crime might not solely have to do with socio-economic status, but the psychology behind how one grows up and the level of empathy developed (Sohoni & Rorie, 2019). People within the upper and middle class who are often white Americans can live more isolated from other people, creating a lack of empathy and in return, they do not feel as much guilt when they commit an act such as fraud, embezzlement, and other white-collar crimes. Those who are white also generally grow up in a culture that promotes individuality and financial success over the community, motivating them to commit the white-collar crimes that will gain them an economic advantage (Sohoni & Rorie., 2019). The position and attitude they are surrounded with can predispose people who are white to commit white-collar crimes.

With respects to race, most white-collar criminals in the United States have always been overwhelmingly white. In more recent years those numbers have changed to be closer to be more representative of our population today. As it was for gender, part of the reason white-collar crimes was mostly committed by white people was because people of color did not have the same opportunities to have jobs where they could commit white-collar crimes. Now, people of color still do not make up proportionally the same amount as their population in the corporate world, but it has increased. With that increase in the labor force, we see increases in Asian and Hispanic participation in white-collar crimes, but Black participation is still at a much lower rate. Part of the lack of participation of people of color in white-collar crime may be due to income level. Those who commit white-collar crimes are usually steadily employed, homeowners, and have higher education, which Blacks and Hispanics have lower rates of. White Americans are also more isolated and individualistic, which can cause them to lack empathy and be more likely to commit white-collar crimes like fraud and embezzlement.

## **White collar crime and sentencing**

The criminal justice system has been criticized for furthering inequalities, especially when it comes to leniency and not holding white-collar criminals accountable for their crimes. Some scholars argue that white-collar criminals are cleared because of their “social status, lack of a criminal record, and the non-violent nature of their offenses” (Ruhland & Selzer, 2020, p.17). Black men in America receive 19.1% longer sentences than white men for similar crimes, according to a recent US Sentencing Commission report (US Sentencing Commission 2017). The Commission also found that judges are more likely to use their discretion to cut an offender's sentence if the offender is white.

The Sentencing Reform Act of 1984 (SRA) and the Federal Sentencing Guidelines were created from a desire to eliminate unwarranted sentencing disparity among judges<sup>6</sup>. The guidelines prohibit the consideration of race, sex, and national origin in sentencing decisions. However, studies of sentencing disparities consistently find unexplained racial and sex disparities disfavoring men, blacks, and Hispanics (Mustard, 2001).

Do criminals of different races, gender, or socio-economic status receive different sentences? If so, why? In the next section I will examine gender and racial disparities in white collar criminal sentencing.

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<sup>6</sup> The Sentencing Commission is a bipartisan, independent agency within the judicial branch, and charged it with "promulgating detailed guidelines prescribing the appropriate sentences for federal offenders.

## *Sentencing and Gender Disparities*

Male white-collar criminals are going to prison more often than women, and when women do go to prison, it is usually for shorter periods of time (Hagan et al., 2019). Female offenders who are sentenced by male judges receive the most lenient sentences, while male offenders are punished the harshest regardless of the gender of the sentencing judge or type of crime (Van Slyke & Bales, 2013).

With the gender disparity in sentencing that favors women, “some scholars have interpreted that a paternalistic or chivalrous bias exists among judges” (Schanzenbach, 2005)<sup>7</sup>. Others, however, have argued that the available evidence points toward the blameworthiness of the defendant and motherhood status as driving gender disparities (Schanzenbach, 2005).<sup>8</sup> In one case, a Norway newspaper reported the story of a female research director in a medical company who issued a statement that a new vaccine would not work. The share price dropped. Then, 2 weeks later, she issued a new public statement that the vaccine did indeed work. The stock price rose by 200%. In between times, her two daughters and associated sons –in-law bought stocks very cheap which evidenced an obvious case of inside trading. Contrary to male cases, Norwegian financial newspapers never published her name or picture. Rather, newspaper reports treated the mother, her daughters and sons-in-law as naive victims who did not know what they were doing. Because of the more innocent social perception of women and the media displaying them as victims, women may avoid white-collar crime punishment more frequently than men (Gottschalk & Smith, 2015).

Another potential explanation is accomplice status. Men have been shown to be involved in more serious white-collar crimes. If women are often accomplices in crimes, and if they are

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<sup>7</sup> Belknap 2001; Edwards 1989 cited in Schanzenbach, 2005

<sup>8</sup> Steffensmeier, Kramer, and Streifel 1993; Steffensmeier, Ulmer, and Kramer 1998 cited in Schanzenbach, 2005



accomplices in a manner that the guidelines do not fully account for, it is possible that this explains the lower rate of incarceration.

### *Sentencing and Race Disparities*

Historically, males who are young and Black or Hispanic, receive harsher punishments for their crimes and are disadvantaged in the legal processes (The Sentencing Project, 2005, p.2). Even though most white-collar crimes are committed by people who are white, people of color are incarcerated more frequently and for longer: “African American adults are 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely” (The Sentencing Project, 2018, p.1). The most common punishments for white-collar crime are fines, home-arrest, prosecution charges, supervised releases, forfeitures, restitutions, and finally, imprisonment (Cornell Law School, n.d.). Often people who commit white-collar crimes are not imprisoned for their crime, as the Bureau of Justice Statistics reports, “about 40 percent of those convicted were incarcerated, a rate lower than that for other offenders; they received shorter average sentences than other offenders. Compared to other offenders, white-collar offenders were more likely to be put on probation or fined” (U.S. Department of Justice, 1987). If white-collar crime offenders can pay a fine for the crime they have committed, that leaves minorities at a disadvantage.

Schanzenbach and Yaeger (2000) found in his studies that after controlling for many relevant characteristics as possible “Blacks and Hispanics receive longer prison sentences than whites... a large portion (up to one third) of the estimated disparity is driven by the ability to pay a fine” Chibe, citing Schanzenbach and Yaegers work, argues that the judiciary's reliance upon fines could drive further discrepancies between the sentencing of whites and minorities in white-collar proceedings (2006, p.395). White individuals are often able to pay the fines or afford more

expensive defense teams that can help them get out of going to prison. More people of color are imprisoned simply because they do not have the means to pay the fines for their crimes, not because they are more frequently committing these crimes. There is a larger systemic problem at hand, the Sentencing Project describes as, “two distinct criminal justice systems: one for wealthy people and another for poor people and people of color” (2018, p.1)”. As high as, “seventy percent of pretrial releases require money bond”, which can be difficult to pay for offenders who have lower incomes, which has historically been people of color in the U.S. (The Sentencing Project, 2018, p.6). Blacks and Latinos are at a significant disadvantage, as they are less likely to be given bail, which could be because they have higher bonds to pay and they could “be detained because they cannot pay their bond” (The Sentencing Project, 2018, p.6). Blacks and Hispanics are also more often, “assessed to be higher safety and flight risks because they are more likely to experience socioeconomic disadvantage and to have criminal records” (The Sentencing Project, 2018, p.6).

The public concern can also have an influence on who is incarcerated for white-collar crimes. Marston and Walsh found that, “the public are generally less concerned about specific white-collar crimes against the state such as taxation fraud than they are about welfare fraud. This is despite the crimes producing the same outcome and impacting on the same victims (the state and society as a whole)” (Marriott, 2020, p. 489)<sup>9</sup>. When looking at the statistics of those on government welfare programs, 52.1% of Black Americans are on welfare, 56% of Hispanics are on welfare, whereas only 32.4% of whites are on welfare (U.S. Bureau of Census, 2022). If there is more concern on welfare fraud as opposed to other white dominated crimes, then there appears to be a bias against crimes specifically connected to people of color. In a study where one offender was described as “a rich enough man” and the other was “currently on a benefit” and had applied

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<sup>9</sup> Marston and Walsh, 2008; Smith et al., 2011 found in Marriott, 2020

for bankruptcy, the “rich enough” offender was granted six months off his sentence, so the one who could offer reparations is at an advantage within the judicial system (Marriott, 2020, p. 494). Those who appear to be able to buy their way out, do not always receive prison time, leading to people of lower socio-economic status in prison at higher rates than those with higher status. In 2019, poverty rates for black and Hispanic Americans were over double what they were for white Americans<sup>10</sup>. If generally we are seeing larger portions of people of color with lower socioeconomic status, then a sentencing system within white-collar that benefits people of higher socioeconomic status is not only a socioeconomic problem but a race problem as well.

As shown by existing studies, the more complex the crime, the more likely the defendant is to receive a plea deal and receive a shorter prison sentence. Albonetti’s research found that African Americans are not as often charge with *complex* white-collar crimes, and through what he calls “the joint intervening effect of case complexity and pleading guilty”, African Americans in turn, have longer prison sentences for their crimes (Albonetti, 1998, p.370). Albonetti claims case complexity is, “the largest component of the indirect effect of defendant's race on length of imprisonment” (Albonetti, 1998, p.370). The reasons one can be acquitted easier with complex cases is because of the cost and the arduous process it takes to prosecute these cases, and rather than the prosecutor having the upper hand, the power moves to the defendant and, “the increased uncertainty of successfully obtaining a trial conviction in these *complex* white-collar crimes increases the value to the prosecuting attorney of obtaining a guilty plea” (Albonetti, 1998, p. 374). The complexity of the white-collar crimes that those who are white and of higher socio-economic status cause, aides them to escape longer prison sentences that those of lower socio-economic status may face due to their smaller white-collar crimes.

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<sup>10</sup> Black Poverty rate: 18.8%, Hispanic Poverty rate: 15.7%, White Poverty rate: 7.8%, according to the U.S. Census Bureau.

The rich, typically white, individuals of higher economic status, have several benefits. First, they can afford to retain expensive and good lawyers. It is a constitutional right to have a lawyer, but generally these public defenders are not as advanced as the lawyers with several years of experience who can make close to \$5 million a year. Better lawyers and the presence that high status white-collar criminals may bring to the court, can influence the trial in their favor and reach a favorable ruling easier. Money can also repay what the white-collar criminal has stolen to help put things into “a similar position to prior the offending”. Those with money are easily able to make restitutions, which then they receive reduced sentences for (Marriott, 2020, p. 495). There is also a perception that the lawmakers and prosecutors are more relaxed with criminals of high status, and that is one reason why white-collar crimes might not be reported as often (Kane & Wall, 2005). One solution to the leniency is, “tougher sanctions [that] might therefore deter corporate offenders, encourage whistle-blowers and reaffirm the democratic promise that nobody stands above the law” (Michel, 2021). In the United States there is a large wealth gap by race. According to the Federal Reserve, “the average Black and Hispanic or Latino households earn about half as much as the average White household and own only about 15 to 20 percent as much net wealth” (Aladangady & Forde, 2021). If in the United States, most of the wealth is held by white individuals, it is most plausible that the wealthy elite parties affording expensive lawyers and receiving leniency are white. If the judicial system is favoring a certain race because they have the economic means to afford better service in court, then there needs to be a reexamination of how the judicial system runs to stop favoring one party over another.

Not only are fines and lawyer expenses posing a threat to racial equity in terms of white-collar crime punishments, but unfair homogeneous juries can be an issue. A study done in North Carolina show that juries with more than one Black male member were more likely to acquit

defendants, while white juries were found to convict Black defendants more often in cases with White victims. Offit shows how, “the American jury system is plagued by a cruel irony: While poor people appear disproportionately as defendants in jury trials, they are also disproportionately excluded from jury service” (2021, pg. 615). This is largely due to the disparity in pay distribution that leaves those with lower paying jobs with more hardships caused by participation in jury duty.

There is also the point that, “scholars have also highlighted instances in which reliance on racial stereotypes about jurors’ likely sympathies when empaneling jurors of color have been unfounded and prejudicial in and of themselves” (Offit, 2021 p.633).

Some studies concluded that, “perceived association of crime with minority group members (i.e., “racial threat” or “racial typification of crime”) leads to more punitive attitudes toward the perpetrators of crimes” (Van Slyke, 2009, p.3). If juries were to perceive a Black white-collar crime defendant as a “racial threat” they could give him or her more punishment simply based on his or her race than he or she deserves, and that is unjust.

Several studies have indicated that racial prejudice certainly still exists against members of the black community, and that can greatly impact the criminal justice system leading to “harsher criminal sentencing, the death penalty, police use of excessive force, and police stops and searches of suspicious individuals” (Barkan & Cohn, 2005, p.311). Cruel preconceptions of one based on the color of their skin can be incredibly harmful to these individuals, and certainly exists in the realm of white-collar crime as well. There was a study done with hypothetical situations of a white embezzler and black burglars (Gordan et al. 1988 p.191). The results showed that, when someone expects a person to commit a certain type of crime because of preconceived biases, then they are more likely to charge them, but when they did not see it as a typically crime for a person to be

doing then they would not charge them as harshly and provide the criminal with more leniency in sentencing (Gordan et al., 1988, p.192).

Since the early 2000's, when numerous business scandals emerged such as Enron, WorldCom, and Madoff, there has been increased public awareness and demand of punishment of these crimes. However, the perceived leniency of the sentences is sometimes met with disbelief and outrage by the legal community and experts. The leniency of white-collar crime punishment can be attributed to several reasons including lack of public demand, infrequent reporting, and similar background. Conklin states, "because businessmen, lawmakers, and judges come from similar social backgrounds, are of similar age, have often been educated at the same universities, associate with the same people, have similar outlooks on the world, it is not surprising that legislators and judges are unwilling to treat business offenders harshly. Common backgrounds are sometimes exploited" (1977, p. 112). In a BBC article, "The [U.S. Sentencing] Commission also found that judges are more likely to use their discretion to cut an offender's sentence if the offender is white...race and class both inform how a defendant is treated" (Pierpont, 2019). Not punishing a criminal because of their similar background to yourself is blatant discrimination, and that is a problem that needs to be addressed and fixed so that people of color are not sentenced to longer times in prison simply due to the color of their skin.

### *The Sentencing Guidelines*

The Sentencing Reform Act of 1984 established what the United States Sentencing Commission called, "perhaps the most dramatic change in sentencing law and practice in our Nation's history" (United States Sentencing Commission, n.d.). This Act gave a guideline for judges to use when determining sentence lengths for convicted defendants. One of the primary

reasons the Sentencing Reform Act was developed was to, “address the seemingly intractable problem of unwarranted sentencing disparity and enhance crime control by creating an independent, expert sentencing commission to devise and update periodically a system of mandatory sentencing guidelines” (United States Sentencing Commission, n.d.). With the system in place, people hoped to see an elimination of unfair sentences due to problems like racial discrimination. Unfortunately, this is not entirely the case. Schanzenbach reports that, “the Guidelines were implemented primarily to reduce unwarranted sentencing disparities. However, post-Guidelines studies find that irrelevant factors such as race and gender continue to affect sentencing” (Schanzenbach, & Yaeger, p.766). Part of this still existing disparity is due to the issue of fines. Another problem is that judges are allowed to deviate from the Sentencing Table when, “there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines”<sup>11</sup>. Because a judge has the power to determine when a situation is, “aggravating or mitigating”, it leaves the opportunity for their possible racial bias to factor in their decided sentence for the defendant. Another study by Mustard found that, “unexplained race, gender, and income disparities in length of prison sentence exist even after accounting for an offender's position in the Guidelines sentencing grid (explained in greater detail below), offense type, education, and age” (2001, p.285). Though most of the racial disparity took place when judges deviated from the guidelines, Mustard’s found that even when the guidelines were used, Blacks faced longer sentences than average by around two months longer than whites who had committed similar crimes (Mustard, 2001, p.285). These studies so far were done on all crimes, not just white-collar, but they also found that, “in white-collar cases, when sentences are conditioned on final offense levels,

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<sup>11</sup> United States Sentencing Guideline

nonwhites were both more likely to be incarcerated and more likely to receive longer sentences than whites” (Schanzenbach & Yaeger, 2006, p.790). We want the judicial system to be fair to everyone and not discriminate based on race, one of the reasons the Sentencing Reform Act was developed, yet there are still ways to get around the act’s grids and guidelines, leaving room for racial bias to infiltrate.

People of color, specifically Blacks and Hispanics in the United States, make up a disproportional amount of those imprisoned for white-collar crimes. The justice system is set up in a way that those with money have an advantage by affording better lawyers and high bail amounts. When people of color are also disproportionately of lower income, this can lead to them not being able to pay the fines that White white-collar criminals can pay to avoid long sentences. The public perception and biases can also disadvantage people of color in the case of white-collar crimes when they are more concerned with crimes like welfare fraud that are more commonly committed by Black citizens. Blacks and Hispanics have lower cases of complex white-collar crimes as well that lead to plea deals and shorter sentences. White people with high status can also influence their sentences and unjustly hold an advantage. Juries also often lack diversity which can impact the outcome of a trial. Even with the addition of the Sentencing Reform Act of 1984, judges can stray from the guidelines and people of color still face biases that lead to longer sentences from their white-collar crimes.



## **Conclusion**

Over 70% of white-collar crimes are committed by people who are white (U.S. Department of Justice, 1987), yet the numbers show higher rates of people of color being incarcerated for white-collar crimes (Yaeger, 2006). After observing diversity in gender and race, in regards to white-collar crime and its associated punishment sentences, the disproportionate punishment for people of color who commit white-collar crimes less frequently needs to be more widely addressed by the justice system in order to verify if one race is being exploited by the system.

It is a problem that there are higher rates of white-collar crimes committed by white men, yet people of color have longer prison sentences, just because white men are generally financially privileged and able to pay the fines to get themselves out of prison sooner, or because the judges relate to them more and let them off the hook because of shared commonalities. Over the past couple of years, more attention has been brought to the injustices and discrimination that happens today in America. As one could see through the protesting after the unjust death of George Floyd in 2020, as “half a million people turned out in nearly 550 places” (Buchanan et. al., 2020). Our job is not to solely call out the problems with discrimination one can see but bring attention in cases where it might go more unnoticed like the case of white-collar crimes. Especially when this is a problem that costs, somewhere in the range of \$300 billion to \$800 billion (Stewart, 2020). Within the justice system one must make sure they are not favoring or letting people off the hook simply because they are similar in certain aspects to the criminal. Rita Crundwell committed a huge white-collar crime that went on for 20 years. In the end, she ended up getting caught and serving 19 years and 7 months in prison (YouTube Movies, 2019). She is in the minority of white-collar criminals who served a long sentence for her punishment. Many others serve short sentences for a few months, pay a fine, and then are free. It seems like having money can help some get out

of jail, leaving those without money stuck. This is an unfair area that needs to be addressed within the justice system.

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## **Appendix - Symposium Presentation Paper**

I am currently continuing my international business studies from Barcelona, Spain, hence the virtual presentation today. Our panel, together with Nathan Judd and Chloe Wesson, will discuss how the policing of bodies through institutions can prevent access of knowledge and power. In the case of my research, I look into the differences in white-collar crime cases on the basis of sex and race, how sentencing differs, and why. My findings show that men of color, though committing less white-collar crimes, are sentenced for longer than their white counterparts. This creates issues because the more people of color that are criminalized unjustly, the more they lose their rights, like voting power.

White collar crime, as first defined by Sutherland - who coined the phrase in his presidential address to the American Sociological Association in 1939 - is a financial crime “committed by a person of respectability and high social status in the course of his occupation”. Currently there is debate to whether the definition should use offender characteristics such as socioeconomic state or offense characteristics such as the nature and harm of the crime. Today the term typically refers to financially motivated, non-violent crimes, characterized by deceit, concealment, or violation of trust (Wheeler, Weisburd, and Bode, 1982). Some common examples of white-collar crime include money laundering, corporate fraud, insider trading, tax evasion, corruption, and economic espionage, among others.

Though nonviolent, white-collar crimes can be incredibly detrimental to the economy, through bankrupting businesses, ruining families by clearing their life savings, or costing investors billions of dollars (Federal Bureau of Investigations, 2014). The infamous Bernie Madoff stole somewhere between \$17.5-65 billion from investors, and Enron lost thousands of people their entire retirement savings by intentionally misleading shareholders. According to the



Federal Bureau of Investigation, the annual cost of white-collar crime is over \$500 billion, which far exceeds the estimated cost of \$15 billion from personal property crimes. It is estimated that approximately 36% of businesses and approximately 25% of households have been victims of white-collar crimes in recent years, compared to an 8% and 1.1% rate of traditional property and violent crime, respectively. Yet there is far more attention being brought to violent crimes and robberies than there is to white-collar crime.

According to statistics and existing studies, white collar offenders are middle- or upper-class white males in their 30s or 40s, usually married and with no criminal record. Specifically, around 80% of white-collar criminals are men and 67% of the offenders in white-collar crimes are white.

For the case of gender, though there may be more women committing white-collar crimes than there was fifty years ago, they still have crime rates that are much smaller than that of their male counterparts. Still stuck with less executive powers and more lower-level jobs in the corporate world, women have been given their own form of white-collar labelled “pink-collar crime”. They still have access and pressure to commit some white-collar crimes, just not the same opportunities to commit as many higher power crimes, like insider trader and falsified financial information. Embezzlement is the white-collar crime we see women most frequently committing. Women are often used in their relationships and for their utility to commit white-collar crimes. They are more motivated for their families’ sake rather than their own personal financial gain, as men are. As the labor force continues to change to include more women, it is possible to see increased participation of higher-level white-collar crimes. Even with women in more prominent corporate positions though, social pressures, natural behaviors, virtue standards,

and smarter risk taking may be the reason we do not see women as often as offenders for white-collar crime.

With respects to race, the majority of white-collar criminals in the United States has always been overwhelmingly white. In more recent years those numbers have changed to be closer to be more representative of our population today. As it was for gender, part of the reason white-collar crimes were mostly committed by white people was because people of color did not have the same opportunities to have jobs where they could commit white-collar crimes. Now, people of color still do not make up proportionally the same amount as their population in the corporate world, but it has increased. With that increase in the labor force, we see increases in Asian and Hispanic participation in white-collar crimes, but Black participation is still at a much lower rate. Part of the lack of participation of people of color in white-collar crime may be due to income level. Those who commit white-collar crimes are usually steadily employed, homeowners, and have higher education, which Blacks and Hispanics have lower rates of in the U.S. Studies also show White Americans to be more isolated and individualistic, which can cause them to lack empathy and be more likely to commit white-collar crimes like fraud and embezzlement.

Here we see a study done on a number of popular of white-collar crimes committed such as antitrust, securities fraud, tax, bribery and more. As we can see the majority of all of these crimes are committed by white men who are middle aged. Most white-collar criminals are employed and hardly any were unemployed. They have high home ownership rates and college education compared to violent and petty criminals, and they have low rates of prior convictions. It should be noted however, that this data was collected in the late 80s. In the late 80s and early 90s, there was a number of data collected on white-collar crime. Today there is a high need to

have more studies done on the current information of white-collar criminals and their characteristics. Here is another graph that shows similar information from ten years later, and we still see white men making up the majority of criminals for a variety of white-collar crimes. In data from 2015, Non-White convictions have accounted for almost half of the white-collar crimes, with a noticeable increase in the percentages of Asians and Latinos, but only a slight increase in Black white-collar criminals. The increase of people of color is seen in the lower level white-collar crimes like embezzlement, rather than the higher-level crimes such as insider-trading, due to the majority of those with higher level access still being white-males.

Sentencing is a large issue when it comes to looking at white-collar crime. Some scholars such as Sutherland argue that white-collar criminals are let off the hook because of their, “social status, lack of a criminal record, and the non-violent nature of their offenses” (Ruhland & Selzer, 2020, p.17). After the Sentencing Reform Act of 1984 (SRA) and the Federal Sentencing Guidelines were created, the previous statement by Sutherland is not as accurate as it once was. The guidelines set in place to eradicate discrimination in sentencing decisions do not work perfectly though. Compared to street crimes, white-collar crime punishment seems of lesser importance, even though white-collar crimes result in higher monetary losses.

Whether the difference is large or small, generally speaking, women typically receive shorter sentences than men for white-collar crimes, and their sentences are more lenient. Part of the reason for men receiving more time in prison is due to the larger scale of their crimes committed. A social perception of women as victims and not criminals may also aid in women escaping longer sentences for their white-collar crimes. The exclusion of women from fraudulently earned rewards also contributes to their shorter sentences. To counterargue the point that women always receive shorter sentences, there is the idea that men may get shorter

sentences due to their higher rates of complex crimes. With the complex crimes comes plea deals and shorter sentences, so that is one area men do have an advantage to women.

People of color, specifically Blacks and Hispanics in the United States, make up a disproportional amount of those imprisoned for white-collar crimes. The justice system is set up in a way that those with money have an advantage by affording better lawyers and high bail amounts. When people of color are also disproportionately of lower income, this can lead to them not being about to pay the fines that White white-collar criminals can pay to avoid long sentences. The public perception and biases can also disadvantage people of color in the case of white color crimes when they are more concerned with crimes like welfare fraud that are more commonly committed by Black citizens. Blacks and Hispanics have lower cases of complex white-collar crimes as well that lead to plea deals and shorter sentences. White people with high status can also influence their sentences and unjustly hold an advantage. Juries also often lack diversity which can impact the outcome of a trial. Even with the addition of the Sentencing Reform Act of 1984, judges can stray from the guidelines and people of color still face biases that lead to longer sentences for their white-collar crimes.

Discrimination in sentencing is relevant because a bias judicial system goes against the foundations of the United States' law. This country's system of law is one that emphasizes equal treatment, so any discrimination under the judicial branch is therefore not simply unwarranted but unlawful. In the United States Constitution, "the Fifth Amendment's Due Process Clause requires the United States government to practice equal protection. The Fourteenth Amendment's Equal Protection Clause requires states to practice equal protection". Though the American judicial system might not be as explicitly discriminatory as it once was when women did not have the right to vote, and blacks and whites were handled under different laws, it does not mean

the current judicial processes are perfect. Presently, as the Sentencing Project reports, “racial discrimination in sentencing today is often a more surreptitious process, manifesting itself in connection with other factors and producing racially discriminatory outcomes in certain situations”. When systems favor one group of people, it denies access to the same knowledge and power to the other group of people. For example, once one has a criminal record they can often no longer vote. If the criminal system has discriminated against people for the color of their skin and they are sentenced more often, then they have also lost more voting power due to this discrimination. Without voting power, one no longer has any power or say to how their country is run. Discrimination in sentencing for white-collar crimes is one way people may lose access to knowledge and power. In the future, it would be interesting to look into new policies or resources that could be implemented to prevent further discrimination under the judicial system and how to execute those.

**(Slides)**

# WHITECOLLAR CRIME: DIVERSITY AND DISCRIMINATION IN SENTENCING

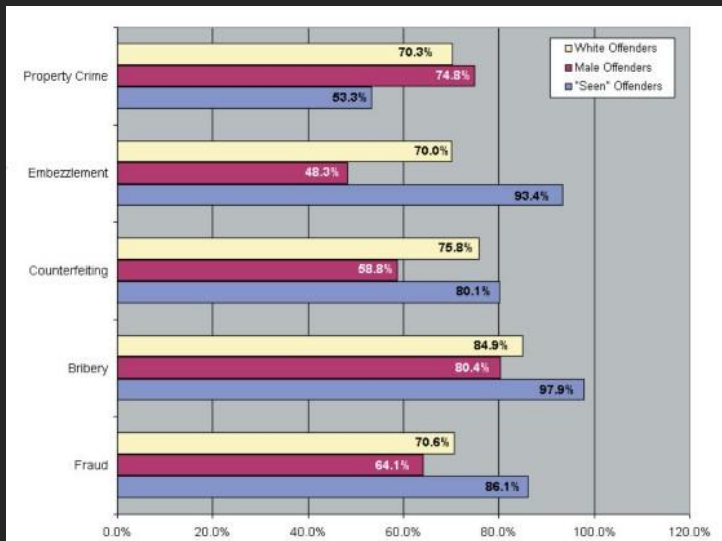
RACHEL LABRIE



	Anti-trust	Securities Fraud	Tax	Bribery	Credit Fraud	False Claims	Mail Fraud	Bank Embezzlement
Race (White)	99.1%	99.6%	87.1%	83.3%	71.5%	61.8%	76.8%	74.1%
Sex (Male)	99.1%	97.8%	94.1%	95.2%	84.8%	84.7%	82.1%	54.8%
Age (Mean Age)	53	44	47	45	38	39	38	31
<b>Employment</b>								
Steadily Employed	96.6%	59.4%	80.6%	68.4%	42.2%	46.7%	48.0%	36.8%
Unemployed	0.0%	0.0%	11.5%	17.8%	24.2%	24.8%	25.4%	3.0%
Owners or Officers	69.2%	74.1%	33.3%	36.8%	31.8%	16.4%	28.0%	15.9%
<b>Financial Standing</b>								
Median Assets	\$650,000	\$59,000	\$49,500	\$45,000	\$7,000	\$4,000	\$2,000	\$2,000
Median Liabilities	\$81,000	\$55,000	\$23,500	\$19,000	\$7,000	\$5,000	\$3,500	\$3,000
<b>Education</b>								
College Graduates	40%	43%	27%	27%	18%	29%	23%	13%
<b>Home Ownership</b>								
Homeowners	88%	62%	58%	57%	45%	42%	34%	31%
<b>Criminal Background</b>								
Prior Conviction	7.7%	27.6%	43.2%	25.0%	48.7%	48.7%	48.4%	24.4%
N of Cases	117	225	210	84	158	157	190	201

## SOCIAL AND DEMOGRAPHIC CHARACTERISTICS OF WHITECOLLAR OFFENDERS BY STATUTORY OFFENSE

(WHEELER & STANTON, 1988, P.345)



(BARNETT, 2000, P.5)

## OFFENDERS BY OFFENSE TYPE