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**“WHITE COLLAR CRIME” IS A EUPHEMISM TO ABANDON**

**ANTHONY J. MEYER<sup>1\*</sup>**

In the course of their work, some lawyers have a habit of not saying what they mean. Sometimes this predilection inures to the benefit of the lawyer’s clients, and they are lauded for using language in a lawyerly way. But often lawyers are subject to ridicule for employing language to hide the truth behind a veil of half-truths, legalese, and nonsense. Any ridicule is thus earned.

This essay takes aim at one lawyerly phrase in particular: “white collar crime.” A vast majority of lawyers,<sup>2</sup> it seems, use this ubiquitous phrase. Among them are upstanding groups of lawyers like the American Bar Association,<sup>3</sup> scholars,<sup>4</sup> government enforcement agencies like the FBI,<sup>5</sup>

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<sup>2</sup> To be fair, this essay targets lawyers for propagating the euphemism at issue, even though others use the phrase, too. There are several reasons for this chosen scope. First, as a member of the profession, the author has an interest in how lawyers comport themselves and what language they use in their discourse. Second, lawyers bear a special responsibility for the impact of the phrase “white collar crime.” After all, lawyers have a duty to ensure the quality of justice in this country, to which the ABA model rules of professional conduct allude. *See* MODEL RULES OF PROFESSIONAL CONDUCT, Preamble [1] (AM. BAR ASS’N 2023). Last, though anecdotal, the author’s own experience has been that nonlawyers do not treat the phrase as the shibboleth that some lawyers do, as discussed below. Accordingly, lawyers should be the first to bring about the change this essay seeks.

<sup>3</sup> *E.g.*, White Collar Crime Division, ABA, [https://www.americanbar.org/groups/criminal\\_justice/committees/wccc/](https://www.americanbar.org/groups/criminal_justice/committees/wccc/) (last visited Nov. 29, 2023)[<https://perma.cc/X3SU-WRUQ>].

<sup>4</sup> *See generally e.g.*, MIRIAM H. BAER, MYTHS & MISUNDERSTANDINGS IN WHITE-COLLAR CRIME (Cambridge University Press, 2023).

<sup>5</sup> White Collar Crime, FBI, <https://www.fbi.gov/investigate/white-collar-crime> (last visited Nov. 29, 2023)[<https://perma.cc/VHZ6-U4ER>].

top law schools,<sup>6</sup> and prestigious law firms.<sup>7</sup> But critical attention to the phrase “white collar crime” is long overdue. Indeed, analyzing the phrase based on what it is intended to signify and what it actually signifies reveals that usage of the phrase “white collar crime” represents the worst of what the legal profession has to offer. Accordingly, lawyers should abandon this euphemism and replace it by saying what they actually mean.

### I. What is the phrase “white collar crime” meant to signify?

The phrase “white collar crime” is intended to denote a class of nonviolent criminal offenses.<sup>8</sup> Examples of “white collar crimes” include fraud, bribery, forgery, embezzlement, securities crimes, racketeering, intellectual property theft, and money laundering, among others.<sup>9</sup> The phrase “white collar crime” supposedly connotes a lack of “a physical threat to society.”<sup>10</sup>

“White collar crime” thus has been contrasted with so-called “street crime.”<sup>11</sup> More will be said below about this fallacious distinction—it is with trepidation that the author uses a phrase like “street crime” that is so easily read as racially coded. Nonetheless, what the distinction might be trying to convey is that “street crimes” are crimes of convenience resulting from interpersonal actions—that is, literally on the street. Examples may include robbery, assault, and weapons offenses, among others. By contrast, “white

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<sup>6</sup> E.g., Practice Areas: White Collar Crime, GEORGETOWN UNIVERSITY LAW CENTER, <https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/white-collar-crime/> (last visited Nov. 29, 2023)[<https://perma.cc/L4EE-LUVW>]; White Collar Crime, STANFORD LAW SCHOOL, <https://law.stanford.edu/courses/white-collar-crime/> (last visited Nov. 29, 2023)[<https://perma.cc/9ZQK-U4ZP>]; White Collar Criminal Law & Procedure, HARVARD LAW SCHOOL, <https://hls.harvard.edu/courses/white-collar-criminal-law-and-procedure-2/> (last visited Nov. 29, 2023)[<https://perma.cc/9DFA-YD8R>].

<sup>7</sup> E.g., White Collar Defense & Investigations, LATHAM & WATKINS LLP, <https://www.lw.com/en/practices/white-collar-defense-and-investigations> (last visited Nov. 29, 2023)[<https://perma.cc/P9PY-BX39>]; White Collar Defense & Investigations: White Collar Crime, K&L GATES LLP, <https://www.klgates.com/White-Collar-CrimeCriminal-Defense-Practices> (last visited Nov. 29, 2023)[<https://perma.cc/G9CH-V7N7>].

<sup>8</sup> *White-Collar Crime*, BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>9</sup> See White Collar Crime, FBI, *supra* note 4.

<sup>10</sup> Ellen S. Podgor, *The Challenge of White Collar Sentencing*, 97 J. CRIM. L. & CRIMINOLOGY 731, 731 (2007).

<sup>11</sup> See, e.g., Pamela H. Bucy, *White Collar Crime and the Role of Defense Counsel*, 50 ALA.LAW. 226, 226-27 (1989).

collar crimes” are crimes that could be committed (nowadays) from behind a keyboard, like cybercrimes or wire fraud.

The origins of the phrase “white collar crime” are easily traced. The Oxford English Dictionary finds the earliest usage of the phrase in 1940 in *American Sociological Review*.<sup>12</sup> Sociologist Edwin Sutherland originally coined the term “white collar crime” and defined it as a “crime committed by a person of respectability and high social status in the course of his occupation.”<sup>13</sup> This categorization has evolved, and now “white collar crime” is used to describe both crimes that are “white collar” in and of themselves—for example, securities crimes—and generic crimes used to prosecute criminal “white collar” conduct—for example, perjury.<sup>14</sup>

Aside from these norms, the law of sentencing has changed with the rise and fall of societal perceptions of “white collar crimes.” Whereas defendants convicted of “white collar crimes” had previously enjoyed leniency in sentencing (perhaps attributable to their social status), there was a reactionary period of greater sentencing in the ought’s.<sup>15</sup> More stringent sentencing guidelines intended “to eliminate disparities between white-collar sentences and sentences for other crimes” were part of the reason for this change.<sup>16</sup>

The phrase “white collar crime” has achieved a degree of permanence in the legal lexicon. For instance, *Black’s Law Dictionary* has stamped its imprimatur on the phrase, defining it as “A nonviolent crime ... involving cheating or dishonesty in commercial matters” and providing examples to include “fraud, embezzlement, bribery, and insider trading.”<sup>17</sup> And as part of the phrase’s permanence, cultural norms have coalesced around it. “White collar” criminals enjoy the upper-class bias the phrase implies: they are intelligent, crafty, and well-funded, and they will

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<sup>12</sup> *White Collar Crime*, OXFORD ENGLISH DICTIONARY, [https://www.oed.com/dictionary/white-collar-crime\\_n?tab=factsheet#9914377669](https://www.oed.com/dictionary/white-collar-crime_n?tab=factsheet#9914377669) (last visited No. 29, 2023)[<https://perma.cc/WPB5-6QFW>].

<sup>13</sup> Lucian E. Dervan & Ellen S. Podgor, “*White-Collar Crime*”: *Still Hazy After All These Years*, 50 GA. L. REV. 709, 711 n.2 (2016) (quoting EDWIN H. SUTHERLAND, *WHITE COLLAR CRIME* 9 (1949)).

<sup>14</sup> *See Id.* at 723–29.

<sup>15</sup> *See* Podgor, *supra* note 9, at 731–32.

<sup>16</sup> *See United States v. Musgrave*, 761 F.3d 602, 609 (6th Cir. 2014).

<sup>17</sup> *White-Collar Crime*, BLACK’S LAW DICTIONARY (11th ed. 2019).

supposedly leave less direct evidence of their crimes behind.<sup>18</sup> There is also the enduring perception that “white collar crimes” are a lesser threat to an ordered society than violent crimes.<sup>19</sup>

Finally, apart from these definitional issues, lawyers self-apply the term, identifying themselves as “white collar” criminal defense attorneys. And boutique practice areas have developed—and are advertised as such—as a result.<sup>20</sup>

Nevertheless, there is a grave disconnect between what speakers of the euphemism “white collar crime” is intended to signify and the meaning it actually conveys to the listener. In short, the phrase “white collar crime” is deeply problematic.

## II. What does the phrase “white collar crime” actually do?

As intended, the phrase “white collar crime” creates a distinction among various types of criminal conduct. This distinction, however, is legally irrelevant. Consider, for instance, that the strategies a lawyer might employ to provide a defense are not necessarily a function of the crime charged. Or that the constitutional provisions related to criminal defense do not create such an arbitrary hierarchy of crimes. Thus, there is nothing inherently *legal* about the classification of some crimes—but not others—as “white collar.” Instead, the reasons to employ the phrase “white collar crime” boil down to social signaling and reinforcement of upper-class and racial biases.

How does the phrase “white collar crime” accomplish these ends? The first way is that the phrase mollifies the perception of certain types of criminal conduct, downplaying the impact that conduct has on society. This phenomenon is well-explained by the writer Cory Doctorow. He contends corporations commit crimes at a rate 20 times higher than individuals, but because there is no individual criminal to prosecute for these crimes, they

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<sup>18</sup> See, e.g., “White-Collar” Crimes, BUSINESS LITIGATION IN FLORIDA, BL FL-CLE 22-1 (Fla. B. 2022).

<sup>19</sup> See, e.g., Podgor, *supra* note 9, at 731.

<sup>20</sup> White Collar Crime Division, ABA, *supra* note 2; LATHAM & WATKINS LLP, K&L GATES LLP *supra* note 6.

are uncovered only about 5 percent of the time.<sup>21</sup> Instead, he observes how the press, the corporate bar, and law schools use various euphemisms like “white collar crime” to “magic” corporate crime out of existence:

The WSJ calls it “Risk & Compliance.” The NYT calls it “white collar crime”—a favorite euphemism also used by the ABA. As a euphemism, white collar crime has a huge advantage, in that it equates a bank teller who steals from a bank with a bank—like Wells Fargo—that steals from millions of its customers.

Big Law uses the “white collar” euphemism (Gibson Dunn), but also “Government, Regulatory & Internal Investigations” (Kirkland and Ellis). Skadden casts a wide net with “Government Enforcement and White Collar Crime.”

The DoJ bends over backwards not to call corporate crime “crime.” When a firm like Purdue Pharma or Boeing settles a claim, the cops on the corporate beat put out press releases celebrating their “agreement to pay” a fine. Mokhiber: “Look how agreeable they are.” Settlements like Boeing’s—for the death of 346 people—don’t include a corporate guilty plea. There are no charges laid against execs. No manslaughter charges are laid. And yet the DoJ says they’re “holding Boeing accountable.”<sup>22</sup>

There is no reason why these types of crimes should be thought of as less culpable than other crimes. In fact, it is hardly a stretch to argue the opposite is true. The victims of “white collar” crimes will find the personal suffering wrought from them no less harrowing for their nonviolent nature. Nor will

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<sup>21</sup> Cory Doctorow, *A Lexicon of Euphemisms for “Corporate Crime,”* MEDIUM (Dec. 7, 2021), <https://doctorow.medium.com/a-lexicon-of-euphemisms-for-corporate-crime-b089536c14ad>[<https://perma.cc/C96H-N2NL>].

<sup>22</sup> *Id.*

the cost extracted from society be any less. Consider the embezzler who steals millions compared to the mugger who takes a phone and wallet. How can we—and lawyers in particular—compare these crimes? The answer is that the crimes are incomparable. Lawyers who believe in the rule of law should not acquiesce to the categorical downplaying based on social constructs of certain types of criminal conduct over others.

The second way the phrase “white collar crime” works as a social signal is to denigrate certain other types of criminal conduct. These are the so-called “street crimes.” In other words, “white collar crimes” are deserving of their upper-class status because they are not committed on the street. Relying on the etymology and cultural norms surrounding “white collar” work, those who would self-apply this phrase to their legal practice attempt to privilege themselves over those who work with street criminals. Lawyers who believe in equal justice under the law should not acquiesce to this effect of the phrase.

Finally, and most troubling, is the fact that the phrase “white collar crime” expressly invokes “whiteness.” Consider the stereotyped whiteness of those who may be likely to work in corporate environments and, by extension, those who may be more likely to be charged with “white collar crimes.” This invocation of whiteness, thus, seems not unintentional. Indeed, this invocation of whiteness in the phrase “white collar crime” acts to ratify implicit racial assumptions regarding criminal conduct. Indeed, it is telling that the lexical counterpart to “white collar crime” is *not*—and has never been— “blue collar crime,” or some other collar-color of crime. Lawyers who believe in racial equality should not acquiesce to this implicit metaphor in the phrase.

But then what explains the permanence of the phrase? What those who speak of “white collar crime” may be doing when they employ this phrase is signaling that they or their clients are white, or wealthy, or so on. In this manner, using the phrase “white collar crime” serves a strong social broadcasting function. Saying “I am a white-collar criminal defense lawyer” is the social equivalent of having a BMW parked outside the law firm office. Just as there is supposedly a rosy glow of having a “white collar” job, so do speakers use the phrase “white collar crime” to attempt paint a rosy glow around “white collar” criminal defense work.

But in all, the state of this discourse is nonsense. For the reasons above, the phrase “white collar crime” merely replicates the societal status quo. It is, thus, a euphemism to be abandoned.

### **III. Why should speakers stop using the phrase “white collar crime,” and what should speakers use instead?**

Before answering these questions, one final matter of discussion of what the phrase “white collar crime” is intended to do is necessary. Setting aside the problematic distinctions identified above, there may be salient, real, and non-prejudicial distinctions the phrase “white collar crime” is meant to convey.

Indeed, the phrase might arguably convey a message about how a lawyer obtains their clients or is paid for their services. There may be legitimate reasons for criminal defense attorneys to distinguish between paying clients and indigent<sup>23</sup> clients, whose bills are paid by the state and who obtain lawyer services by appointment. This essay does not mean to treat unlike things alike; where distinctions matter, speakers should indicate such. Nonetheless, as it is currently employed, the phrase “white collar crime”—whether intentionally or not—is used to cover up a deeper truth about perceptions of criminality, perform a social broadcasting function, and recreate and amplify false social and racial hierarchies.

There are other good reasons to stop using the phrase “white collar crime. Consider how a potential client for a lawyer’s services may view the lawyer who markets themselves as a “white collar crime” practitioner. For many who would wish to hire a private criminal defense attorney, this description could create an already greater rift between a nonlawyer client and the lawyer. And for clients who are not white, the invocation of whiteness may reinforce that the practice of law and the justice system are fundamentally “white” spaces. Accordingly, lawyers who value inclusivity should dispense with this phrase.

So, what should replace it? The phrase private criminal defense practice is a fair candidate, especially when contrasted with public criminal defense practice. So is the phrase non-violent criminal defense practice, if

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<sup>23</sup> Is “indigent” as problematic a description as “white collar crime”? Perhaps. However, the point here is that “indigent” is a statutorily created distinction to determine whether a defendant qualifies for state-subsidized legal aid, differing from “white-collar crime” which was created by social scientists and later accepted, but not codified, by the legal field.



that is what the speaker of the phrase “white collar crime” means to signify. Indeed, just as there may be a legitimate reason to distinguish among legal practices based on who is paying the bill, so too may there be a legitimate reason to distinguish among types of charges a lawyer wants or is capable of handling.

The best candidate in the author’s view, however, is corporate crime. This phrase is already used in some contexts,<sup>24</sup> and it better aligns with existing trends in this practice area. Specifically, the private firms that currently advertise themselves as “white collar” defense groups are likely to be engaged in corporate insurance defense work. They are, thus, funded by corporate insurers and employed to investigate corporate interests or provide a defense for the individuals who make up a corporation’s employees. The phrase “corporate crimes,” accordingly, signifies something important to those seeking this kind of reputation without employing any of the problematic signifiers of the phrase it is intended to replace.

Some may ask, is calling for the abandonment of the phrase “white collar crime” a mere example of woke culture or liberal virtue signaling? Is “white collar crime” to be cancelled, too? The answer to these questions is no for two reasons. First, as discussed above, this euphemism has a ubiquitous usage and crosses all ideological valences. Accordingly, this essay does not present a mere example of “woke politics” attacking the status quo. The second is that this essay means to make a greater point about the language lawyers use. Lest they wish to continue to be criticized for hiding the truth, lawyers should be critical of their language and mean what they say.<sup>25</sup> If a lawyer wishes to make a limitation in their practice area, they should do so with more precision than the phrase “white collar crime” allows.

To be sure, jettisoning this phrase from legal discourse may cause significant disruption. That is so. But because those in the legal profession

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<sup>24</sup> See, e.g., Corporate Crime, DOJ, <https://www.justice.gov/corporate-crime> (last visited Nov. 29, 2023)[<https://perma.cc/SC86-PAU2>].

<sup>25</sup> It should go without saying that the phrase that replaces “white collar crime” should also avoid being a euphemism. E.g., a phrase like “financial crimes” is not a good candidate as many crimes have financial motives.

have a “special responsibility for the quality of justice,”<sup>26</sup> this change is overdue.

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<sup>26</sup> See MODEL RULES OF PRO. CONDUCT, Preamble [1] (AM. BAR ASS’N 2023).