

Lunch Ladies and Pink-Collar Crime: The Gender Stereotype That Costs Companies Millions

*Emily Azzarito**

Abstract:

Women can be good at anything. Why not crime? High-ranking CEOs and billionaires with lush stock portfolios seem deserving of healthy suspicion and investigation, but what about PTA moms, lunch ladies, secretaries, and grandmas stealing six figures from their employers? Pink-collar crime describes the criminal activity of low- to mid-level employees in historically female-dominated jobs—bookkeepers, secretaries, clerks—who steal money from their employers. Grounded in difference theory, this Note asks whether women who commit pink-collar crimes should be held to a different standard than men and whether experiencing the world as a woman makes their criminal activity more or less culpable. It also asks business leaders to look inward and assess how their stereotyping of women as inherently trustworthy caretakers may be tacitly permitting pink-collar crime to go unnoticed.

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I. INTRODUCTION

They really were such sweet lunch ladies. They certainly never looked like criminals to me. Rather, they looked more like your wizened Italian aunts who always insist you eat more. Understandably, they never seemed too thrilled to put up with the hordes of noisy, hungry high school kids of New Canaan, Connecticut who rarely said thank you. Joanne Pascarelli and Marie Wilson were there to keep you moving, toss a warm chocolate chip cookie onto your tray, and ring up your tab before you dashed off to third period.¹ I was a high schooler among their clientele who often took them up on their warm cookie offers.

Like many, I was surprised and oddly proud when the news broke. Over the course of 15 years, the two sisters had stolen nearly half a million dollars

¹ Sarah Mervosh, *Cafeteria Workers Stole Nearly \$500,000 in Lunch Money from Schools, Police Say*, N.Y. TIMES (Aug. 14, 2018), <https://www.nytimes.com/2018/08/14/nyregion/connecticut-school-cafeteria-theft.html> [<https://perma.cc/57DP-TJBH>].

of students' lunch money after it was paid to the school.² After each school day, they would count the cash in the drawer and report to the school that they made just a little bit less that day than was true.³

Before they both pleaded guilty, one sister painted the other as harmless, if not selfless: "the only thing she is guilty of is feeding a child who had no money or giving somebody a cookie."⁴ Ms. Pascarelli and Ms. Wilson were certainly not the only financial fraudsters in town. In fact, New Canaan attracts many white-collar criminals.⁵ Perhaps the lunch ladies were just trying to fit in with their surroundings.

To this day, I cannot put a finger on why I feel such strange pride for my former lunch ladies. Yes, they did a bad thing, but they also defied a serious stereotype that only men commit financial crimes.⁶ Despite the odds, there are more women like them. Martha Stewart, a celebrity homemaker known for her pies and slow-cooker recipes, was charged with securities fraud,⁷ and Theranos Founder Elizabeth Holmes was found guilty for over \$140 million worth of investor fraud.⁸

I wonder what motivates women like Ms. Stewart, Ms. Holmes, Ms. Pascarelli, and Ms. Wilson, what gender-based factors potentially made the commission of their crimes easier, and what socioeconomic barriers preclude

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Press Release, U.S. Dep't of Just., Jury Convicts Two Former Wall Street Bank Traders of Wire Fraud (Aug. 5, 2021), <https://www.justice.gov/opa/pr/jury-convicts-two-former-wall-street-bank-traders-wire-fraud-0> [<https://perma.cc/Y9ZG-QJCU>] ("Edward Bases, 59, of New Canaan, Connecticut . . . fraudulently pushed market prices up or down by routinely placing large 'spoof' orders in the precious metals futures markets."); see also Amanda Cantrell, *Surviving Prison as a Wall Street Convict*, INSTITUTIONAL INV. (Dec. 13, 2018), <https://www.institutionalinvestor.com/article/b18b7g0qjk5pwb/Surviving-Prison-as-a-Wall-Street-Convict> [<https://perma.cc/938G-J8DP>] ("Then there's FrontPoint's Skowron, a surgeon turned hedge fund wunderkind who was co-managing a big health-care portfolio and driving an Aston Martin around New Canaan, Connecticut, before he was busted by the feds . . .").

⁶ Bruce Weinstein, *Pink-Collar Crime: What It Is and How to Avoid Becoming a Target*, FORBES MAG. (July 8, 2020, 10:12 AM), <https://www.forbes.com/sites/bruceweinstein/2020/07/08/pink-collar-crime-what-it-is-and-how-to-avoid-becoming-a-target/?sh=773401840f23> [<https://perma.cc/DJU5-QS98>] ("We aren't raise[d] to say 'bad women.' We are raised with the concept of 'bad guys.'").

⁷ LEYLA BAYKAL ET AL., *MARTHA STEWART'S INSIDER TRADING SCANDAL 1* (2011).

⁸ Press Release, U.S. Dep't of Just., Theranos Founder Elizabeth Holmes Found Guilty of Investor Fraud (Jan. 4, 2022), <https://www.justice.gov/usao-ndca/pr/theranos-founder-elizabeth-holmes-found-guilty-investor-fraud> [<https://perma.cc/H235-UNAB>].

more women from committing mid- to high-level financial crimes. Grounded in difference theory, this Note asks whether women who commit pink-collar crimes should be held to a different standard than men and whether experiencing the world as a woman makes their criminal activity more or less culpable.⁹ It also asks business leaders to look inward and assess how their stereotyping of women as inherently trustworthy caretakers may be tacitly permitting women's criminal activity to go unnoticed.

II. BACKGROUND

Subject mostly to prosecution by the federal government, “[w]hite collar crime refers to those offenses that are designed to produce financial gain using some form of deception.”¹⁰ Scholar Edwin H. Sutherland first introduced the term in 1940.¹¹ Originally, his use of the term depended predominantly on the identity or status of the offender, defining white-collar crime as “a crime committed by a person of respectability and high social status in the course of his occupation.”¹²

Within this traditional definition, the white collared shirts, suits, and positions of authority give these offenders an air of legitimacy which in part assuages suspicion from the onlooker and enables the illicit behavior to go unnoticed.¹³ Although largely unsettled by academics to this day, different definitions of white-collar crime tend either to emphasize the identity of the offender or the type of offense. One definition which attempts to combine the two classifies white-collar crime as “illegal or unethical acts that violate fiduciary responsibility or public trust, committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain.”¹⁴

⁹ Amanda Gouws, *Beyond Equality and Difference: The Politics of Women's Citizenship*, 40 *AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY* 54, 55–56 (1999).

¹⁰ *White Collar Crime*, GEORGETOWN L., <https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/white-collar-crime> [<https://perma.cc/EHD5-9WJD>] (defining the practice area).

¹¹ Edwin H. Sutherland, *White-Collar Criminality*, 5 *AM. SOC. REV.* 1, 1 (1940).

¹² Lynne M. Vieraitis et al., *Do Women and Men Differ in Their Neutralizations of Corporate Crime?*, 37 *CRIM. JUST. REV.* 478, 489 n.1 (2012) (quoting EDWIN H. SUTHERLAND, *WHITE COLLAR CRIME: THE UNCUT VERSION* 7 (1983)).

¹³ Sutherland, *supra* note 11.

¹⁴ Tracy Sohoni & Melissa Rorie, *The Whiteness of White-Collar Crime in the United States: Examining the Role of Race in a Culture of Elite White-Collar Offending*, 25 *THEORETICAL CRIMINOLOGY* 66, 68 (2019) (quoting Dick Johnston, Dir. of the Nat'l White Collar Crime Ctr., Closing Remarks at West Virginia University Academic Workshop: Definitional Dilemma: Can and Should There Be a Universal Definition of White Collar Crime? (June 22,

This Note will use the more recent definition put forth by the Federal Bureau of Investigation in 2000 which emphasizes the type of offense, rather than the type of offender. The Bureau has defined white-collar crime as “those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence.”¹⁵ Embezzlement, wire and tax fraud, and misappropriation of funds all fall under the umbrella of white-collar crime.¹⁶

A. Gender and White-Collar Crime

The concept of women participating in white-collar crime began in 1975 with work by Freda Adler and Rita James Simon.¹⁷ Prior to 1975, “women who committed crime [in general] were ignored or viewed as deviant, male-like, and manipulative.”¹⁸ Adler’s book, *Sisters in Crime: The Rise of the New Female Criminal*, argues that increased opportunity will increase crime committed by women.¹⁹

Unsurprisingly, Adler’s work received significant backlash from feminists contemporaneously fighting for equal rights in America.²⁰ To these feminists, any portrayal of women as deviant or evil seemed like a step backwards. Adler and her peers noted, however, that gender had little to do with the ability to commit white-collar crimes. Women were just as intelligent and capable as their male criminal counterparts, they insisted. Women’s commission of white-collar crimes depended not on their ability but on their opportunity to do so, which historically women have lacked.²¹ On its face, *The Rise of the New Female Criminal* appeared to be an affront to rising feminism, but beneath its surface, it articulated an opportunity gap among genders with a new level of nuance. For the first time in history, feminists

1996) (<https://www.ojp.gov/pdffiles1/Digitization/166244NCJRS.pdf> [<https://perma.cc/72FT-D8XW>]).

¹⁵ CYNTHIA BARNETT, DEP’T OF JUST., THE MEASUREMENT OF WHITE-COLLAR CRIME USING UNIFORM CRIME REPORTING (UCR) DATA 1 (2002), https://ucr.fbi.gov/nibrs/nibrs_wcc.pdf [<https://perma.cc/5UHE-BPMQ>] (quoting William S. Sessions, *A Message from the Director, in* U.S. DEP’T OF JUST., FED. BUREAU INVESTIGATION, WHITE COLLAR CRIME: A REPORT TO THE PUBLIC 3, 3 (1989)).

¹⁶ *Id.* at 7.

¹⁷ Mary Dodge, *Women and White-Collar Crime*, OXFORD BIBLIOGRAPHIES (July 29, 2020) <https://www.oxfordbibliographies.com/display/document/obo-9780195396607/obo-9780195396607-0283.xml> [<https://perma.cc/62FR-2ZL3>].

¹⁸ *Id.*

¹⁹ FRED A ADLER, SISTERS IN CRIME: THE RISE OF THE NEW FEMALE CRIMINAL 1–3 (1975).

²⁰ Dodge, *supra* note 17.

²¹ *Id.*

pondered, “Women can be good at anything. Why not crime?”

Persisting into the 1990s, “the academic community largely ignored the speculations that women might engage in white-collar crime, though the debates over if and how women committed occupation or corporate crime continued.”²² It was not until 2015 that women’s involvement in financial crimes was taken seriously.

A seminal 2015 article “finding that a higher number of females compared to men were involved in non-occupational offending that included shoplifting, writing bad checks, and defrauding welfare or government benefits” alerted academics to the idea that women may actually be up to something.²³ Today, notable scholars like Mary Dodge focus their work on the scarcely studied topic of gender in white-collar crime, investigating several factors that “explain the lack of attention on women who commit white-collar crime [such as] patterns of victimization.”²⁴

B. Defining “Pink-Collar Crime”

The term “pink-collar crime” is relatively new on the scene. Most folks nod their head when they hear about white-collar crime, but pink-collar is less widely known. The term was coined in the 1970s and has since been popularized in the U.S. by legal experts Mary Dodge,²⁵ Kelly Paxton,²⁶ and Kathleen Daly.²⁷ Defined in Daly’s 1989 criminology article, pink-collar crime “refers to female office workers in low- to mid-level positions—bookkeepers, managers, clerks—who steal money from their employers.”²⁸

More modern definitions emphasize that “[p]ink-collar jobs are careers that have historically been female-dominated. This is not strictly the case anymore, and many jobs that are considered pink-collar can be done by any gender.”²⁹ Pink-collar crime considers the “influences of gender, class, and

²² *Id.*

²³ *Id.* (citing Darrell Steffensmeier et al., *Gender and Arrests for Larceny, Fraud, Forgery, and Embezzlement: Conventional or Occupational Property Crime Offenders?*, 43 J. CRIM. JUST. 205, 205 (2015)).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Kelly Paxton, *About Kelly*, PINK COLLAR CRIME (2020), <https://pinkcollarcrime.com/about-kelly> [<https://perma.cc/9J9H-X7KA>].

²⁷ Kathleen Daly, *Gender and Varieties of White-Collar Crime*, 27 CRIMINOLOGY 769, 790 (1989).

²⁸ Krysta Huber, *The 4-1-1 on Pink-Collar Crime*, PINK-COLLAR CRIME (May 18, 2015), <https://pinkcrime.academic.wlu.edu/category/the-4-1-1/defining-pink-collar-crime> [<https://perma.cc/L7X6-CMMH>] (citing *id.*).

²⁹ *What Is a Pink-Collar Job? (With Job Examples and Salaries)*, INDEED (Nov. 23, 2022), <https://ca.indeed.com/career-advice/finding-a-job/what-is-pink-collar-job> [<https://perma.cc/7M3S-UYXJ>].

race relations, both within and outside work organizations and occupations,” that impact and motivate women’s criminal behavior.³⁰ Kathleen Daly extols those who study the subject to defy the temptation to use men’s white-collar crime as the norm to which we compare.³¹ Instead, she insists, “[w]omen’s illegalities should be explored on their own terms.”³²

To narrow the scope, this Note will look at pink-collar crimes committed by women, mostly occupational fraud, that often fly under the radar. Occupational fraud occurs when an agent of an organization—an employee, officer, or manager—deceives the organization itself via behaviors like “embezzlement, cheating on taxes, and lying to investors and shareholders.”³³ The U.S. Supreme Court defines embezzlement as “the fraudulent appropriation of property by a person to whom such property has been entrusted, or into whose hands it has lawfully come.”³⁴

High ranking CEOs and billionaires with lush stock portfolios seem obviously deserving of healthy suspicion and investigation, but what about PTA moms, lunch ladies, secretaries, and grandmas stealing five or six figures worth of money? Stories as old as *Adam and Eve* encourage us to blame women for “falling from grace,”³⁵ so why does it seem so natural to view women in lower or mid-level positions of financial power as harmless, well intentioned, morally upright, and pure?

By the same token, why are the women who do manage to overcome the glass ceiling and rise to the ranks of male CEOs punished so harshly when they succumb to the same criminal temptations as men? Igniting a gender discussion among Silicon Valley tech professionals, Elizabeth Holmes’ trial has called onlookers to ask, “[w]hy have male CEOs, who promised the moon and failed, not been prosecuted?”³⁶ Perhaps it is merely a matter of degree.

Elizabeth Holmes made off with \$140 million while my high school

³⁰ Daly, *supra* note 27, at 791.

³¹ *Id.* at 790.

³² *Id.*

³³ *Fraud 101: What is Fraud?*, ASS’N OF CERTIFIED FRAUD EXAM’RS (2024), <https://www.acfe.com/fraud-resources/fraud-101-what-is-fraud> [https://perma.cc/Y2KC-3VYC].

³⁴ *Moore v. United States*, 160 U.S. 268, 269 (1895).

³⁵ Joan MacLeod Heminway, *Martha Stewart and the Forbidden Fruit: A New Story of Eve*, 2009 MICH. ST. L. REV. 1017, 1021 (2009).

³⁶ Bobby Allyn, *The Elizabeth Holmes Trial is Sparking a Gender Debate in Silicon Valley*, NPR (Sep. 24, 2021, 5:20 AM), <https://www.npr.org/2021/09/24/1040353540/the-elizabeth-holmes-trial-is-sparking-a-gender-debate> [https://perma.cc/Y38Z-LHGY].

lunch ladies only stole \$500,000. Is one more culpable than the other merely because of the number of zeros tacked onto the end, or are more insidious factors at play? Since her conviction, Holmes was sentenced in November 2022 to 11 years in federal prison, a rather mild sentence given the \$1 billion of investments she lost.³⁷ Yet, “[w]hile other Silicon Valley executives have been accused of wrongdoing, Holmes is the first CEO of a major tech firm to be criminally prosecuted and sentenced to prison.”³⁸

For many, it is unsettling when a woman steps out of the role designated to her and begins to encroach upon a traditionally masculine identity of power and dominance. It is even worse when we see her abuse that scarcely permitted power by encroaching upon another male identity: that of the criminal. It is not inconceivable that, because my lunch ladies stayed mostly within their box as loving grandma-types who care about kids, they were punished more leniently.³⁹

Because Elizabeth Holmes went too far in usurping a male domain, straying quite far from her designated box, she was treated more harshly.⁴⁰ Aptly put in Jo Freeman’s *Bitch Manifesto*, “[w]hat is disturbing about a Bitch is that she is androgynous. She incorporates within herself qualities traditionally defined as ‘masculine’ as well as ‘feminine.’ . . . She disdains the vicarious life deemed natural to women because she wants to live a life of her own.”⁴¹ What are these strict gender stereotypes that make women who defy them so maddening and where did they come from?

C. *Motivations of Pink-Collar Criminals*

Experts over the past few decades have sought to pin down what motivates women fraudsters as compared to their masculine counterparts, theorizing that “[w]omen steal differently than men.”⁴² In general, “[m]en steal to keep up appearances whereas women steal for stability and security.”⁴³ Some scholars argue back and forth about whether women are

³⁷ Bobby Allyn, *How Silicon Valley Fervor Explains Elizabeth Holmes’ 11-Year Prison Sentence*, NPR (Nov. 23, 2022, 11:39 AM), <https://www.npr.org/2022/11/23/1138477784/elizabeth-holmes-sentenced-11-years-explained> [<https://perma.cc/597H-PC3G>].

³⁸ *Id.*

³⁹ See Mervosh, *supra* note 1 (“Joanne Pascarelli, 61, and Marie Wilson, 67, turned themselves in over the weekend and were released on \$50,000 bond.”).

⁴⁰ U.S. Dep’t of Just., *supra* note 8 (“Holmes faces a maximum sentence of twenty (20) years in prison, and a fine of \$250,000, plus restitution, for the conspiracy count and each count of wire fraud.”).

⁴¹ Jo Freeman, *The Bitch Manifesto*, in *RADICAL FEMINISM: A DOCUMENTARY READER* 226, 227 (Barbara A. Crow ed., 2000).

⁴² Paxton, *supra* note 26.

⁴³ Walter Pavlo, OJ Prosecutor Marcia Clark Shares Insights on CBS’ ‘Pink Collar Crimes’,

socialized to be the ethical ones, less inclined to break the law than men.⁴⁴

Interviewing identity thieves, researchers found that while both men and women offenders were motivated by money, gender norms largely governed their justifications for stealing it.⁴⁵ “Men tended to reference their role as ‘breadwinner’ . . . while women tended to rely on their roles as ‘caretakers’ to justify their actions.”⁴⁶ Over time, however, “women grow to like the ‘improved’ lifestyle”⁴⁷ and justify their means as an effort to keep up appearances.

One aspect of the propensity to steal that women and men have in common is this popular justification: “I didn’t do it for myself, I did it for my children.”⁴⁸ In Lynne Vieraitis’ study, *Do Women and Men Differ in Their Neutralizations of Corporate Crimes?*, she calls this common justification or neutralization strategy an “appeal to higher loyalt[y].”⁴⁹ It appears to make both women and men feel better to tell themselves and others that they are selfless. This excuse, however, rarely persuades investigators.⁵⁰

D. Advantages for Pink-Collar Criminals

Understandably, women may face less suspicion than men when it comes to the commission of high-level financial or corporate crimes since they rarely frequent the ranks of high financial power or corporate authority.⁵¹ Once they achieve those ranks, women are presumed to have overcome so many obstacles that they would do everything in their power to preserve their job and play by the rules. Why then do we fail to suspect that women in lower or

FORBES MAG. (Aug. 7, 2018, 7:37 AM), <https://www.forbes.com/sites/walterpavlo/2018/08/07/oj-prosecutor-marcia-clark-shares-insights-on-cbs-pink-collar-crimes/?sh=1e19d6f011e3> [<https://perma.cc/77Q6-T4NM>].

⁴⁴ Alicita Rodriguez, *Pinking Up White-Collar Crime*, UNIV. OF COLO. DENVER NEWS (Mar. 16, 2021), <https://news.ucdenver.edu/pinking-up-white-collar-crime> [<https://perma.cc/WE7G-89A7>].

⁴⁵ Vieraitis, *supra* note 12, at 480.

⁴⁶ *Id.*

⁴⁷ Pavlo, *supra* note 43.

⁴⁸ Vieraitis, *supra* note 12, at 479 (citing the five neutralization techniques delineated in Gresham M. Sykes & David Matza, *Techniques of Neutralization: A Theory of Delinquency*, 22 AM. SOCIO. REV. 664 (1957)).

⁴⁹ *Id.*

⁵⁰ See generally DOROTHY ZIETZ, WOMEN WHO EMBEZZLE OR DEFRAUD: A STUDY OF CONVICTED FELONS (1981) (describing incidents of women being prosecuted for fraud and examining the psychology of female embezzlers).

⁵¹ Petter Gottschalk, *Gender and Crime: Convenience for Pink-Collar Offenders*, DEVIANT BEHAVIOR, July 15, 2020, at 1, 3.

mid-level jobs will abuse their power, especially those jobs typically performed by women?

“Women nurture and raise us. We love and trust them . . . [s]o being a female crook is the perfect cover.”⁵² While the glass ceiling limits the prevalence of high-ranking, C-suite corporate criminals like Elizabeth Holmes,⁵³ many women are uniquely positioned within the workforce to facilitate low- to medium-scale financial crimes in a less ostentatious way: as of 2020, “[w]omen hold 90% of all bookkeeping jobs. These are the positions where money moves through business.”⁵⁴ Attracting less suspicion due to gender tropes and with access to the books, women may be the ideal candidates to commit financial and corporate crimes.

Compounding these advantages enjoyed by potential pink-collar criminals, some researchers have found that women “can justify their actions and neutralize their potential guilt feelings far better than men.”⁵⁵ Maybe the traditional narrative that women are merely innocent bystanders and victims to crime is not all it is cracked up to be.

E. Helpful and Harmful Gender Stereotypes

What exactly are stereotypes and why should companies and prosecutors care about them? While they help to create order out of something complex, like human beings, they tend to reduce that complexity in a harmful, limiting way.

Stereotyping is a type of cognitive shortcut The downside of stereotypes is that all of those associations that we make, while they might be right and they might be useful, they might also be wrong. So if you walk into a meeting assessing a woman, you might immediately associate feminine characteristics as being more communal and less aggressive. But perhaps the woman is more aggressive than you expected, so you’re reacting to her in a way that is different than you would react to her if she were a man. That’s where stereotypes get us in trouble.⁵⁶

⁵² Rajaratnam Venkatesh Prabhu, *Pink Collar Crime*, SOCIO. INDEX, <http://sociologyindex.com/pink-collar-crime.htm> [https://perma.cc/34CV-5JZ7] (quoting Kelly Paxton).

⁵³ Dodge, *supra* note 17 (“The lack of opportunity in male dominated corporate and professional realms resulted in few women who participated in, for example, insider trading, Ponzi schemes, or price-fixing.”).

⁵⁴ Weinstein, *supra* note 6.

⁵⁵ Gottschalk, *supra* note 51, at 1.

⁵⁶ Chris Wofford, *Women Are “Bossy” and Men Are “Decisive”*, ECORNELL #IMPACT, (Jan. 24, 2018), <https://ecornell-impact.cornell.edu/women-are-bossy-and-men-are-decisive> [https://perma.cc/VJ8L-WEP6].

Having such cognitive shortcuts in place does not make someone a bad person, but it is the affirmative duty of each person to dissect these shortcuts. Below are three gender stereotypes typically placed upon women: the caretaker, the victim, and the bitch.

1. The Caretaker

Women are nurturers, caretakers, empaths, and accessories to husbands who take care of the finances, right? Women are trustworthy, honest, and live to serve anyone but themselves, don't they? Although stereotypes that women are docile, caretaking, law-abiding citizens appear harmless, they may not be. Certainly, those women who do not identify this way might feel limited or reduced by this description. But who else suffers? The corporate movers-and-shakers, mission-driven non-profit founders, the high-rolling CEOs, the young, plucky tech start-ups, and their shareholders do. Pink-collar criminals profit from the trust we automatically bestow upon them just for being women.

2. The Victim

The woman's experience in the workplace is often characterized by "segregation, underpayment and sexual harassment."⁵⁷ While few argue these characterizations to be untrue, the time-honored narrative that working women are perpetual victims creates the perfect storm of trust and pity for potential pink-collar offenders to exploit. It is necessary to acknowledge that there are more aspects to the working woman's experience than that of the harassed victim.

In a strange way, the women who are sick of being cast as the victims benefit from these stereotypes. Other archetypes of women benefit as well, including the woman who needs to pay the bills and does not mind where the money comes from, the woman who needs to pay the babysitter tomorrow, and the woman who wants to send her kids to private school but knows the family finances are stretched thin.

Putting working women into categorical boxes and assuming they will behave accordingly does not benefit companies, individuals, or the public. Viewing women as complex, sophisticated, sometimes ill-intentioned humans is required. This complexity is captured well by the "Redstockings," a second wave feminist group from the 1960s, where they "identified the effects of invisibility of women":

Our society has defined humanity as male, and female as

⁵⁷ Julia Margaret Hammond, *Pink-Collar Crime: Women and Crime Committed at Work*, 5 REV. SOC. STUDIES 39, 39 (2018).

something other than male. In this way, females could be human only by living vicariously thru a male. . . . This is the root of her own oppression as a woman. Bitches are not only oppressed as women, they are oppressed for not being like women. . . . They must recognize that women are often less tolerant of other women than are men because they have been taught to view all women as their enemies.⁵⁸

Pink-collar crimes flourish thanks to systematic victimization of women combined with the policing of the boundaries around how women are expected to behave at work. Since women were traditionally expected to live vicariously through men, few would suspect one to become the main character of her story by robbing her employer.

The other side of this very sharp sword is the criminalization of men. Although less pervasive in button-up, white-collar settings than street crime due to interweaving themes of racism and classism, the U.S. criminal system tells the story of “bad guys,” not bad women.⁵⁹ Men are made out to be violent, unethical, and ill-tempered, which puts them in a similarly harmful box.

According to the Federal Bureau of Prisons, while men constitute slightly less than half of the population, “93.2 percent of . . . federal inmates are men, and only 6.8 percent are women.”⁶⁰ While women suffer from the Pay Gap,⁶¹ earning only 83 cents for each dollar that men earn, and a resulting opportunity gap in commission of high-level white-collar crime, men have been plagued by the Prison Gap for as long as the U.S. has existed.⁶²

3. The Bitch

This one word alone prevents women from taking initiative, voicing their opinions, surfacing conflict, and holding others accountable in the workplace. While men are often lauded as “leaders” for exhibiting the same behaviors, women are castigated and described as a “bitch.”⁶³ To avoid this punishing descriptor, working women will resist speaking up when there is a problem at work, and stew on it rather than voicing anything resembling a

⁵⁸ *Id.* (quoting Freeman, *supra* note 41, at 227–28).

⁵⁹ See Weinstein, *supra* note 6.

⁶⁰ Dyfed Loesche, *The Prison Gender Gap*, STATISTICA (Oct. 23, 2017), <https://www.statista.com/chart/11573/gender-of-inmates-in-us-federal-prisons-and-general-population> [https://perma.cc/854G-T33R].

⁶¹ Megan Wisniewski, *In Puerto Rico, No Gap in Median Earnings Between Men and Women*, U.S. CENSUS BUREAU (Mar. 1, 2022), <https://www.census.gov/library/stories/2022/03/what-is-the-gender-wage-gap-in-your-state.html> [https://perma.cc/9YUW-AJHJ].

⁶² See Loesche, *supra* note 60.

⁶³ Wofford, *supra* note 56.

complaint or a nag. In the perfect storm of discontentment and resentment, these women may instead be driven to speak or act out through other, more secretive means. Below are several examples of women acting out against their employers in secretive, deceitful ways.

F. Instances of Pink-Collar Crime

Mark Cuban, owner of the Dallas Mavericks and star of ABC's "Shark Tank," is an outspoken victim of pink-collar crime.⁶⁴ As a young entrepreneur, fresh out of Indiana Business School, his first company was off to a successful start with \$84,000 in the bank.⁶⁵ His receptionist, however, had something else in mind.

Instead of mailing checks to the vendors who were owed, she would "white[] it out, put[] her name on it, take[] it to the bank . . . [W]ithin one day, [the company] went from having \$84,000 in the bank to having \$2,000 in the bank."⁶⁶ By forging checks, she stole \$82,000 in one day. When Cuban tried to get his money back from the bank, it was gone.⁶⁷ Despite her self-interests, it was awfully nice of her to leave him \$2,000.

A closer inquiry into the culture and oversight systems at Mark Cuban's company might explain his misstep. He describes the "setback" as just another part of business: "[t]here's always gonna be things you don't anticipate."⁶⁸ Perhaps he fell into the comforting trap of assuming that women in receptionist roles are subservient, obedient, and lean always towards advancing the goals of whomever commands them. The keen student of pink-collar crime and gender theories would have known better.

In 2014, Ms. Marilyn Dudley of Lexington, Virginia, treasurer of her Presbyterian church's women's fund, was charged with 24 counts of embezzlement after stealing over \$150,000 from the church over a period of 12 years.⁶⁹

⁶⁴ Kathleen Elkins, *Mark Cuban Had \$82,000 Stolen from His First Company and It Was 'The Best Thing That Ever Happened to Us'*, CNBC (Feb. 7, 2020, 9:01 AM), <https://www.cnbc.com/2020/02/06/mark-cuban-had-82000-dollars-stolen-from-his-first-company.html> [<https://perma.cc/BJ4M-RSZM>].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Happy Carlock, *Church Still Coping After 12-Year Embezzlement*, PINK-COLLAR CRIME: TRADING TRUST FOR THE TILL (May 20, 2015), <https://pinkcrime.academic.wlu.edu/category/moving-forward/victims-in-their-own-words-collerstown-presbyterian-church> [<https://perma.cc/B39H-JBKX>].

By 2010, 38-year-old Christie Talbot had stolen \$365,000 from The Society for Personality and Social Psychology while she worked for a Cornell University professor who studies criminal psychology.⁷⁰ “The thefts took place, one check at a time, from 2007 through 2010.”⁷¹

In 2017, Shannon Nagle was charged with stealing \$663,000 from the women’s care clinic in Aspen, Colorado where she was office manager.⁷² Her justifications for the crime included “anger and resentment” towards her sister who worked as a physician at the clinic.⁷³ She hid her operation with fake QuickBooks reports.⁷⁴

In 2020, Ms. Virginia Hoskings, the president of a Virginia volunteer fire department, was “charged with embezzling more than \$373,000 over a three-year period.”⁷⁵ While investigating this case, expert Kelly Paxton uncovered an uncanny statistic: “over 27.5% of the embezzlement occurring in volunteer fire companies in the US is committed by females.”⁷⁶ Considering only 9% of firefighters were women as of 2020, this statistic is especially surprising.⁷⁷

1. The Red Flags of Fraud

Learning the common behavioral red flags fraudsters display can help businesses minimize losses.⁷⁸ In a 2020 national report on occupational fraud and abuse, the number one red flag identified in every study since 2008 was associated with the fraudster’s personal life: living beyond one’s means.⁷⁹ The

⁷⁰ Jeff Stein, *Leaders of Org. Wanted Stiffer Penalty for Tompkins Woman Who Stole \$365K*, THE ITHACA VOICE (Aug. 7, 2014), <https://ithacavoice.com/2014/08/leaders-org-ripped-365k-tompkins-county-woman-wanted-stiffer-penalty> [<https://perma.cc/VXE3-SCTA>].

⁷¹ *Id.*

⁷² Jason Auslander, *Police Say Aspen Office Manager Stole \$660K from Doctor’s Office, Hid It with Fake Quick Books Reports*, STEAMBOAT PILOT & TODAY (Oct. 3, 2017), <https://www.steamboatpilot.com/news/aspen-office-manager-steals-660k-from-doctors-office-hides-it-with-fake-quick-books-reports> [<https://perma.cc/WS4A-UBH4>].

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Curt Varone, *\$373K Pink Collar Theft from Virginia Fire Company*, FIRE L. BLOG (Aug. 4, 2020), <https://www.firelawblog.com/2020/08/04/373k-pink-collar-theft-from-virginia-fire-company> [<https://perma.cc/LTA3-ZSMT>].

⁷⁶ *Id.*

⁷⁷ Rita Fahy et al., *U.S. Fire Department Profile*, NAT’L FIRE PROT. ASS’N (Aug. 31, 2022), <https://www.nfpa.org/News-and-Research/Data-research-and-tools/Emergency-Responders/US-fire-department-profile> [<https://perma.cc/P3LJ-HQTY>].

⁷⁸ ASS’N OF CERTIFIED FRAUD EXAM’RS, *BEHAVIORAL RED FLAGS OF FRAUD 1* (2020), <https://legacy.acfe.com/report-to-the-nations/2020/docs/infographic-pdfs/Behavioral%20Red%20Flags%20of%20Fraud.pdf> [<https://perma.cc/74R4-HYJN>].

⁷⁹ *Id.*

report found that 42% of occupational fraudsters were living beyond their means while perpetrating.⁸⁰ In 52% of total cases, the perpetrator's behavior manifested in connection with work duties, most often becoming unusually close with a vendor or customer.⁸¹ Small and large business owners would be wise to look out for these red flags in their colleagues, managers, and lower-level employees.

G. *Tension Between Feminist Theories*

Two distinct theories of feminism—formal equality and difference theory—will aid a discussion of pink-collar crime. While formal equality aims to address gender disparities by treating men and women the same, difference theory acknowledges that there are differences between men and women, whether that be how they were socialized growing up or how their community tries to define them by putting each in separate boxes.⁸²

When considering how women should be punished for committing pink-collar crimes, one should analyze the benefits and disadvantages of each theory of feminism. This Note does not argue that women and men should be treated the same because they are not the same. Grounded in difference theory, it suggests that prosecutors should ask themselves which aspects of walking through the world as a woman might make their commission of criminal activity more or less culpable.

What questions should prosecutors ask themselves when investigating a pink-collar crime? What blind spots have they yet to examine? Prosecutors, judges, and wary business owners should discourage behaviors and practices that construe women in the workplace as compliant, innocent, and simple-minded bystanders since these stereotypes have the unintended effect of benefitting pink-collar criminals.

The implicit sentencing perspective that women who behave boldly like men should be punished more harshly should also be discouraged. More aspects of a criminal's personhood should be considered when developing an appropriate punishment. We should sentence a first-time offender for stealing money to buy baby formula differently than a repeat offender who has grown so accustomed to her posh lifestyle that she needs to steal to keep up appearances. There is more to each of these actors than meets the eye.

⁸⁰ *Id.*

⁸¹ *Id.* at 2.

⁸² Gouws, *supra* note 9, at 55–56.

H. *Women as Harmless, Well-Intentioned, Morally Upright, and Pure*

Men have long been in the business of characterizing women.⁸³ As the nineteenth-century French novelist Honoré de Balzac put it, “[W]oman’s virtue is man’s greatest invention.”⁸⁴ “The ideal woman that male authors dream of generating is always an angel”⁸⁵ Is this why women in subservient roles are rarely expected to deceive?

Among other characterizations, innumerable authors throughout history have described women as “angel[s] in the house,” including but not limited to Goethe and Coventry Patmore.⁸⁶ According to Virginia Woolf, the “angel in the house” image imposed upon women by men of history is the most harmful of them all.⁸⁷ Imagery of pure, virgin, saintly goddesses and an ethereal Madonna to describe women is nothing new. The history of the “angel in the house” trope is described by Goethe in his novel *Wilhelm Meister’s Travels*,

She . . . leads a life of almost pure contemplation. . . . [A] life without external events—whose story cannot be told as there is no story. . . . When those involved in feeling and action turn to her in their need, they are never dismissed without advice and consolation. She is an ideal, a model of selflessness and of purity of heart.⁸⁸

This “angel in the house” “has no story of her own but gives ‘advice and consolation’ to others, listens, smiles, sympathizes.”⁸⁹ This is the last person one would expect to steal from the doctor’s practice, to fudge the books to hide the missing half-million dollars in revenue, or to white-out the addressee on the contractors’ checks to deposit them into her own account.

The angel is expected to be eternally grateful for even being let out of the house, for being hired by the dentist’s office to keep the books, or for being promoted to manager at the accounting firm. Then, she is expected to have no agenda whatsoever, since her own story does not exist. She plays only a supporting role in the lives of men and her support comes only in the form of benign, selfless consolation and kindness.

Beyond this pervasive and pernicious image, from the eighteenth century

⁸³ SANDRA M. GILBERT & SUSAN GUBAR, *THE MADWOMAN IN THE ATTIC* 7 (1984).

⁸⁴ *Id.* at 13 (quoting Honoré de Balzac).

⁸⁵ *Id.* at 20.

⁸⁶ *Id.* at 20–22.

⁸⁷ *Id.* at 20.

⁸⁸ *Id.* at 22 (quoting Hans Eichner, *The Eternal Feminine: An Aspect of Goethe’s Ethics*, in Johann Wolfgang van Goethe, *FAUST* 620 (Walter Ardt trans., Nolan Critical ed. 1976)).

⁸⁹ GILBERT & GUBAR, *supra* note 83, at 22 (emphasis removed).

onward, conduct books for young ladies encouraged “submissiveness, modesty, [and] self-lessness,” reminding girls to always be “angelic.”⁹⁰ The writers of these conduct books which harken back to *The Booke of Curtesye* in 1477 remind girls to maintain the “virtues of modesty, gracefulness, purity, delicacy, civility, compliancy, reticence . . . [and] politeness.”⁹¹ These writers, largely men, assured women “if Woman owes her Being to the Comfort and Profit of man, ’tis highly reasonable that she should be careful and diligent to content and please him.”⁹² While one might argue that this narrative about women is outdated, vestiges of its harmful effects remain ubiquitous in modern day life.

With the majority of corporate leadership and C-suites dominated by men, women still dominate subservient roles, acting in support of men in most employment settings.⁹³ This disparity allows the age-old power dynamic of the servant-angel to continue to play out undisturbed. “While females comprise nearly half of entry-level positions,” only 25% of C-suite roles are occupied by women “at the top 1,000 U.S. revenue-producing corporations.”⁹⁴ We have a long way to go before the “angel in the house” narrative becomes foreign and obsolete.

I. *Trust and Economics*

Why do we trust that certain women will not take our money? Trust and economics have long been inextricably linked. When parties decide to transact, legally or otherwise, economic factors are not the only motivators behind the decision.⁹⁵ Some factors are completely unrelated to logic, like behavioral and social dynamics between parties to the transaction. “A large body of evidence suggests that ‘social capital’ as embodied in the tendencies to ‘trust’ and to ‘reciprocate’ trust influences a wide range of economic phenomena and activities.”⁹⁶

One study finds that “expectations regarding reciprocation play a

⁹⁰ *Id.* at 23.

⁹¹ *Id.*

⁹² *Id.* (quoting ABBE D’ANCOURT, *THE LADY’S PRECEPTOR. OR, A LETTER TO A YOUNG LADY OF DISTINCTION UPON POLITENESS* 8 (J. Walts ed., 3rd ed. 1745)).

⁹³ Daniel Kurt, *Corporate Leadership by Gender*, INVESTOPEDIA (Feb. 22, 2022), <https://www.investopedia.com/corporate-leadership-by-gender-5113708> [<https://perma.cc/4TXV-L285>].

⁹⁴ *Id.*

⁹⁵ See Ananish Chaudhuri & Lata Gangadharan, *An Experimental Analysis of Trust and Trustworthiness*, 73 S. ECON. J. 959, 959–60 (2007).

⁹⁶ *Id.* at 959.

significant role in the decision to send [or give] money.”⁹⁷ Are some more willing to give an elderly lunch lady, a blonde-haired CEO, or a 5’2” bookkeeper their money because they expect her to display similar generosity in return? We expect women who appear to comport with their subservient roles to reciprocate acts of generosity, like being entrusted to handle the company’s banking information or write large checks on behalf of the company. We know, however, that this is not always how the cookie crumbles.

The study also shows that “subjects who are ‘trustworthy’ (defined as subjects who reciprocate the trust placed on them), are also more trusting. But the converse is not true—subjects who appear to be trusting do not necessarily reciprocate the trust of others.”⁹⁸ With an eye towards gender, the paper concludes “that men exhibit higher levels of trust than women do but there are no significant gender differences in reciprocal behavior We attribute the lower trust exhibited by women to a greater degree of risk aversion.”⁹⁹

Perhaps the question is not why some employers trust certain women not to steal from them, but rather who is usually doing the trusting. According to the U.S. Bureau of Labor Statistics, employers like managers and supervisors still tend to be mostly men as of 2021.¹⁰⁰ Thus, women who commit pink-collar crimes by stealing from their employers are likely to be stealing from men, the more trusting of the two.

It is easy to imagine why men might be relatively more trusting, given they are unlikely to have been taken advantage of in the past. Working women operate on high alert, ready for their ideas to be dismissed, their sentences to be interrupted, and their chests to be ogled at while men simply carry on about their days. A wise employer, male or otherwise, should consider this increased risk-tolerance and trust to be potential blind spots when it comes to detecting and preventing deceitfulness among his employees. Perhaps the more keenly aware, risk-averse women should be placed in higher positions to monitor oversight systems since they are better attuned to and more experienced with suspicious behavior.

J. Motives

Twenty-eight percent of occupational fraud cases across the globe are

⁹⁷ *Id.* at 960.

⁹⁸ *Id.*

⁹⁹ *Id.* at 977–78.

¹⁰⁰ *Labor Force Statistics from the Current Population Survey*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/cps/cpsaat11.htm> [<https://perma.cc/7N9Q-3Y3M>].

committed by women.¹⁰¹ What motivates these women to commit fraud? Anger and resentment towards men? Financial need? How do traditional gender roles put women in a tight spot financially? “Mothers hold a greater share of household responsibilities, even when both parents have jobs, says Washington and Lee University Sociology Professor David Novack.”¹⁰² “[H]aving children can put women at a disadvantage when it comes to applying for jobs and getting hired.”¹⁰³

1. The “Double Day”

Researcher Dorothy Sue Cobble writes about historical pressures on women entering the workforce and the phenomenon these women often experience called the “double day.”¹⁰⁴ This term describes the second shift that begins for women at 5 PM, when they return home from their nine-to-five job. Childcare, cooking, cleaning, laundry, and bedtime story reading all begin when Mom walks in the door, even though she is exhausted after an already long day.

“In 1942, Katherine Ellickson, who would be one of the staunchest advocates for working mothers in the postwar era, voiced her concerns about the ‘double day’”¹⁰⁵ Women are often viewed as the “default parent,” automatically in charge of all household duties and child rearing. As noted by Cobble and Ellickson, this “default” did not go away as it perhaps should have when women entered the workforce.

The families that feel this crunch the most are low-income. When household duties cannot be outsourced to staff or expensive babysitters, the “second shift” most often falls onto the working mother. By the same token, when a family cannot rely on a single household income and both parental figures need to work, the mother cannot opt to spend her entire energies at home. Either way, these women lose.

Growing up, my mom worked the “double day.” I always thought it was odd to see her tired, rushing in the door at 7 or 8 PM from her job as a sales

¹⁰¹ ASS’N OF CERTIFIED FRAUD EXAM’RS, PROFILE OF A FRAUDSTER (2020), <https://legacy.acfe.com/report-to-the-nations/2020/docs/infographic-pdfs/Profile-of-a-Fraudster.pdf> [https://perma.cc/B2D9-RERK].

¹⁰² Hendley Badcock & Happy Carlock, *Greed, Need or Inequality: What Drives a Woman to Embezzle*, PINK-COLLAR CRIME: TRADING TRUST FOR THE TILL (May 20, 2015), <https://pinkcrime.academic.wlu.edu/tag/female-embezzlement> [https://perma.cc/6N7G-3E7F].

¹⁰³ *Id.*

¹⁰⁴ Dorothy Sue Cobble, *Halving the Double Day*, 12 NEW LAB. F. 63, 64 (2003).

¹⁰⁵ *Id.*

associate for Pottery Barn, only to start automatically shuffling dirty dishes into the dishwasher or throwing in a load of laundry. Even as a small child, something about that did not feel fair.

So maybe women are tempted to commit pink-collar crimes because they are fed up. We are still in a historical moment of upheaval when it comes to women's role in society. It is still a relatively recent development that women are permitted to work outside of the home. Of course, it seems we have yet to figure out how to permit women to work exclusively outside of the home, instead of working both jobs everyday unlike men.

The period following World War One calls to mind a similar feeling for women. The Suffragette movement ushered in an era of "new womanhood" where "[w]omen yearned for independence, yet they were still constrained by financial limitations."¹⁰⁶ Groups of working-class women were better off than before, but still found themselves in a frustrating position.

Oddly enough, this period of 1880–1930 also marks "the peak of the department store and shoplifting."¹⁰⁷ For researcher Ina Selimić, a thorough analysis of why female criminals during this time were most often implicated in property crimes like shoplifting requires an understanding of their frustrating position in society and the beacon of hope that consumer culture provided them.¹⁰⁸ For these women, stealing became their solace in a continually paternalistic world.¹⁰⁹ Do women today still crave this solace? Would this explain why so many pink-collar criminals, in underappreciated jobs like bookkeeping and accounting who often go home to take on a majority share of childcare, act out defiantly and steal?

K. Interviews with Former Pink-Collar Criminals

A 1981 study by Dorothy Zietz interviewed 100 women criminals charged with financial crimes like embezzlement or fraud.¹¹⁰ The study characterized women's behaviors as intentional and unintentional.¹¹¹ Those "honest" women who embezzled without the fraudulent intent to steal were classified into four systems of behavior: first, the "obsessive protectors;" second, the "romantic dreamers;" third, the "greedy opportunists," and last, "victims of pressure of persuasion."¹¹²

¹⁰⁶ Ina Selimić, *Female Criminality, Class, and Deviance During the Rise of the Twentieth Century Department Store*, 1 LONDON SCH. ECON. L. REV. 1, 1 (2016).

¹⁰⁷ *Id.*

¹⁰⁸ *See id.* at 1–2.

¹⁰⁹ *See id.* at 2.

¹¹⁰ ZIETZ, *supra* note 50, at 25.

¹¹¹ *See id.*

¹¹² *Id.* at 80–81.

The women who intentionally stole or defrauded were classified as “vindictive self-servers, asocial entrepreneurs, and reluctant offenders.”¹¹³ These descriptors do not sound too far off from the way we might describe men who offend in similar ways. When given the opportunity to commit a financial crime, perhaps for slightly different reasons, people will fall into relatively similar deviant behaviors regardless of their gender.

To the surprise of investigators, a woman named Antonella admitted to embezzling at her dental practice and wanted to tell her story.¹¹⁴ She was employed by the practice as a dental practitioner and recalled being offered benefits in exchange for sex by her employer.¹¹⁵ She refused.¹¹⁶ She also reported witnessing the employer “commit[] widespread insurance fraud such as billing patients’ insurance for root canals to cover uninsured procedures like whitening.”¹¹⁷ She casts the blame onto her employer, claiming “I learned the fraud from him.”¹¹⁸ By embezzling from the practice, her goal was to acquire enough money to earn back custody of her children.¹¹⁹ The investigators assigned to her case, however, were not quite fooled by her classic “I did it all for my kids” storyline.

In her retelling of her own transgressions, it was clear to the investigators that she was very intelligent and adept at creatively comingling truth with “evasiveness and falsehood.”¹²⁰ According to the trained sets of ears, “her attempts to manipulate [her audience] and [its] perception of her story were quite noticeable.”¹²¹ The undercurrent of being taken advantage of and sexualized by her boss, however true it may be, paints the picture of a resentful employee unconcerned about harming her highly unprofessional boss. Employers should consider treating their employees like employees, rather than sexual pieces of meat, to reduce resentment and prevent

¹¹³ Dorothy Zietz, *Women Who Embezzle or Defraud: A Study of Convicted Felons*, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/women-who-embezzle-or-defraud-study-convicted-felons> [https://perma.cc/HPH8-2XTY].

¹¹⁴ David Harris, *An Interview with a Dental Practice Embezzler*, DENTAL PRODS. REP. (June 13, 2016), <https://www.dentalproductsreport.com/view/interview-dental-practice-embezzler> [https://perma.cc/7VY9-Q7N4].

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ David Harris, *An Interview with a Dental Practice Embezzler*, DENTAL PRODS. REP. (June 13, 2016), <https://www.dentalproductsreport.com/view/interview-dental-practice-embezzler> [https://perma.cc/7VY9-Q7N4].

¹²¹ *Id.*

occupational fraud against them.

L. Impact

“Because occupational fraud is frequently undetected and often never reported, it is difficult to determine the full scope of global losses.”¹²² However, the Report to the Nations 2020 Global Study on Occupational Fraud and Abuse found that five percent of revenue is lost to fraud committed within the scope of work each year.¹²³ While the losses resulting from fraudulent business owners and executives tend to pack a larger punch with an average median loss of \$600,000 per case, 76% of occupational fraud is committed by employee-level and manager-level staff, likely in lower-level pink-collar jobs.¹²⁴ While small businesses may be less equipped than large corporations to bounce back from financial losses due to deceitful occupational fraud, they are also four times more likely to be victims of check and payment tampering, and twice as likely to be victims of billing and payroll fraud.¹²⁵

III. ANALYSIS

What are practical strategies for small and large businesses to employ to protect against pink-collar crime? This Note is a call for companies to look inwards. Whether it be an emerging non-profit, a start-up, a well-established publicly traded company, or a mom-and-pop business, internal controls must be established to prevent pink-collar crime. One day, you may find yourself sitting on the board of directors or serving as an officer, or maybe an operating manager for a corporation. What are some red flags that expose the corporation to liability? What systems should you aim to put in place?

One third of occupational fraud can be attributed to “a lack of internal controls.”¹²⁶ What does this mean? If your only means of overseeing safe billing, accounting, and suspicious activity reporting is by trusting the employees you have hired to handle your money, you are asking for trouble. While most of the bookkeeping jobs in the United States are held by women,

¹²² ASS’N OF CERTIFIED FRAUD EXAM’RS, REPORT TO THE NATIONS: 2020 GLOBAL STUDY ON OCCUPATIONAL FRAUD AND ABUSE 7 (2020), <https://acfepublic.s3-us-west-2.amazonaws.com/2020-Report-to-the-Nations.pdf> [<https://perma.cc/8BQB-V9G6>].

¹²³ *Id.* at 2.

¹²⁴ *Id.* at 42.

¹²⁵ ASS’N OF CERTIFIED FRAUD EXAM’RS, KEY FINDINGS, REPORT TO THE NATIONS: 2020 GLOBAL STUDY ON OCCUPATIONAL FRAUD AND ABUSE (2020), <https://legacy.acfe.com/report-to-the-nations/2020/docs/infographic-pdfs/Key%20Findings%20from%20the%20Report.pdf> [<https://perma.cc/87UA-NGRN>] [hereinafter KEY FINDINGS, REPORT TO THE NATIONS].

¹²⁶ *Id.*; *Trust Is Not an Internal Control*, OR. DEP’T OF JUST. (Apr. 14, 2017) <https://www.doj.state.or.us/charitable-activities/laws-guides-for-charities/tips-for-charities/charity-tip> [<https://perma.cc/GWW2-PAX7>].

it is seen too often that appropriate internal controls are replaced by a generalized, gendered trust in women do the right thing.

While companies need not expect all women to be deceitful, their stereotypically blind trust in them does not adequately replace sufficient oversight systems. What internal controls would help? Fostering a culture of accountability within the organization and requiring tiered levels of supervision to review all financial records are good places to start. In 2022, amidst a post-pandemic labor shortage that has yet to remedy itself, compensating employees adequately can ensure retention, with the added bonus of deterring both employees' feelings of resentment and pink-collar crime.

A. "Trust is Not an Internal Control"

To establish a corporate culture that is neither susceptible to deceitful crime nor suspicious of its employees' every move, a balance must be struck. "Trust is both ethically important and essential for business but difficult to measure."¹²⁷ While it should not be relied upon exclusively, trust in your employees should not be dispensed with completely, say experts.¹²⁸ The beloved phrase of risk management and fraud and abuse counselors—"trust is not an internal control"—is often heard in tandem with another maxim: "trust, but verify."¹²⁹ In the employment context, these phrases remind us that simply trusting your employees to do the right thing is not enough. Fruitful, idyllic corporate cultures "motivate employees to work, not in their own self-interest, but in the firm's best interest."¹³⁰

Some scholars inspired by a few high-trust workplaces like Enron and WorldCom posit that "a corporate governance system based on trust might be more cost-effective than one built on elaborate controls."¹³¹ The phenomenon of pink-collar crime, and the 2004 financial collapse of Enron, would suggest otherwise.¹³² This purportedly cost-saving approach to

¹²⁷ Robert Audi et al., *Trust, but Verify: MD&A Language and the Role of Trust in Corporate Culture*, 139 J. BUS. ETHICS 551, 551 (2016).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ David F. Larcker & Brian Tayan, *The Unwritten Contract in Corporate Governance*, COMM'N DIR. (Dec. 3, 2015), <https://www.communication-director.com/issues/hidden-powers-corporate-citizenship-revealed/unwritten-contract-corporate-governance> [<https://perma.cc/LVS8-NQ5D>].

¹³² Troy Segal, *Enron Scandal: The Fall of a Wall Street Darling*, INVESTOPEDIA (Dec. 22, 2023), <https://www.investopedia.com/updates/enron-scandal-summary> [<https://perma.cc/H6W7-JQCZ>].

corporate governance is precisely the attitude that benefits pink-collar offenders and fraudsters.

Why does simply trusting your employees to do the right thing fall short of adequate governance? Trust is a nebulous and amorphous concept.¹³³ While trust has no universally accepted definition despite being thoroughly studied across social sciences, it also varies from culture to culture.¹³⁴ Depending on where your colleagues and employees grew up, trust may function differently among them. Such an amorphous, highly variable approach to governance is unlikely to produce predictable outcomes.

The “trust, but verify” maxim comes from a Russian proverb popularized by Ronald Reagan.¹³⁵ With the increasing speed of transactions in the business context, the “trust, but verify” method has been touted as essential.¹³⁶ The Information Systems Audit and Control Association (ISACA) suggests implementing this approach by taking inventory of your assets through multiple avenues, just in case one fails.¹³⁷ “One cannot protect what they do not know.”¹³⁸ Robust systems of financial reporting and oversight beyond the mere concept of trust, albeit more expensive to administer, are essential to preventing fraud.¹³⁹

How do gender and trust interact? Women in traditionally woman-held subservient jobs are easy to trust because we expect them to behave as typical accountants, secretaries, and bookkeepers would. However, “[t]he prevailing message to women in Western society is that if you want to succeed, act more like men.”¹⁴⁰ Rather than entertain an inquiry into whether women are inherently more trustworthy than men, trust may be more easily bestowed upon women because we rarely expect them to seek success in the ways that men do.

Women are not expected to pursue deceitful paths in order to get ahead because that behavior is reserved for their male counterparts. Some women have internalized the need to “behave like men” in order to succeed or play

¹³³ Audi et al., *supra* note 127.

¹³⁴ *Id.*

¹³⁵ John P. Pironti, *Five Key Considerations When Applying a Trust, but Verify Approach to Information Security and Risk Management*, ISACA (Nov. 3, 2021), [https://www.isaca.org/resources/news-and-trends/newsletters/atisaca/2021/volume-36/five-key-considerations-when-applying-a-trust? \[https://perma.cc/7AP4-Y8ZN\]](https://www.isaca.org/resources/news-and-trends/newsletters/atisaca/2021/volume-36/five-key-considerations-when-applying-a-trust? [https://perma.cc/7AP4-Y8ZN]).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Gillian Ku et al., *Are Women More Ethical Than Men?*, GREATER GOOD MAG. (Mar. 8, 2017), [https://greatergood.berkeley.edu/article/item/are_women_more_ethical_than_men \[https://perma.cc/4f2R-47pk\]](https://greatergood.berkeley.edu/article/item/are_women_more_ethical_than_men [https://perma.cc/4f2R-47pk]).

the system. These are the women who can exploit the lowered onlooker suspicion while deceiving for financial gain. These are the women organizations should not underestimate nor trust blindly. To be safe, organizations generally should not assume that women will never behave like men in effort to “succeed.” In fact, they do it often.

B. Punishment

1. Enforcement

Businesses have several avenues of enforcement when pink-collar crime has been detected within. They can respond to the matter “internally, through civil litigation, and by referring the case to law enforcement,” likely resulting in a criminal prosecution.¹⁴¹ In a 2020 global study, while 80% of occupational fraudsters faced some form of internal discipline, 46% of victim organizations declined to report the incidents to law enforcement stating that “internal discipline was sufficient.”¹⁴² Only 59% of the total cases in the report were referred to law enforcement, exposing the perpetrators to potential criminal liability.¹⁴³ Of those cases, roughly 80% of perpetrators were convicted, with over half pleading guilty or not contesting their charges.¹⁴⁴

2. Prosecution and Feminism

On the off chance that a case of pink-collar crime is referred to law enforcement, how should prosecutors and judges think about pink-collar crime moving forward? Are the goals of feminism and pink-collar crime reduction even compatible? The notion of a feminist criminal justice critique is nothing new. Social science historian Dr. Anne Logan studies the role feminism has played in criminal justice reform.¹⁴⁵ In her book, *Feminism and Criminal Justice: A Historical Perspective*, she describes how women activists have long perceived the double sexual standard that runs rampant throughout the criminal justice system and have sought to remedy it.¹⁴⁶

Her work considers women as outsiders lending a helping hand to the

¹⁴¹ ASS’N OF CERTIFIED FRAUD EXAM’RS, *supra* note 122, at 55.

¹⁴² KEY FINDINGS, REPORT TO THE NATIONS, *supra* note 125.

¹⁴³ ASS’N OF CERTIFIED FRAUD EXAM’RS, *supra* note 122, at 55.

¹⁴⁴ *Id.*

¹⁴⁵ See generally Louise A. Jackson, *Anne Logan, Feminism and Criminal Justice: A Historical Perspective*, 15 CRIME, HIST. & SOC’Y 155 (2011) (discussing criminal justice reform with a feminist lens).

¹⁴⁶ *Id.*

overly imprisoned men of society, instead of viewing women as more culpable than society currently recognizes. For presumably selfish reasons, feminist criminal justice efforts rarely contemplate the idea of putting more women in jail to even out the Prison Gap as a solution to the gender disparity.¹⁴⁷ It is true that given the oversaturation of our mass incarceration system in the United States, putting more people in prison may not be the best answer.¹⁴⁸

3. Progressive Prosecution

A look at the Progressive Prosecution Movement could aid an understanding of prosecuting through an intersectional lens. How have diversity lenses regarding race advanced the study of white-collar crime prosecution, and what could pink-collar prosecutors learn from this sensitivity? The Progressive Prosecution Movement takes a glance at the largely unchecked authority of prosecutors to decide who to punish and how to punish them.¹⁴⁹ According to legal scholar William Stuntz, as of 2001, “checks and balances are an illusion” in the modern American criminal justice system.¹⁵⁰

Progressive prosecution scholars often analogize the American prosecutor as the “king of the courtroom” who urgently needs to be dethroned.¹⁵¹ At the center of this phenomenon is racial prejudice. Prosecutors wield a tool perhaps more powerful than punishment: leniency.¹⁵² The problem that Progressive Prosecution aims to address is the way that leniency is dispensed.¹⁵³ “Prosecutors may offer leniency inequitably, unfairly, or even corruptly.”¹⁵⁴ While two individuals may have committed the same crime, share identical criminal histories, and backgrounds, if the prosecutor or judge identifies more with one defendant than the other, he will most often apply more leniency.

¹⁴⁷ Loesche, *supra* note 60.

¹⁴⁸ AM. C.L. UNION, OVERCROWDING AND OVERUSE OF IMPRISONMENT IN THE UNITED STATES 1 (2015), <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf> [<https://perma.cc/L3ST-W54B>].

¹⁴⁹ Jeffrey Bellin, *Defending Progressive Prosecution: A Review of Charged by Emily Bazelon*, 39 YALE L. & POL’Y REV. 218, 219 (2020).

¹⁵⁰ *Id.* (quoting William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 599 (2001)).

¹⁵¹ *The Kings of the Courtroom*, ECONOMIST (Oct. 4, 2014), <https://www.economist.com/united-states/2014/10/04/the-kings-of-the-courtroom> [<https://perma.cc/GC37-KA9L?type=image>]; see also Erik Luna, *Prosecutor King*, 1 STAN. J. CRIM. L. & POL’Y 48, 86 (2014) (discussing American prosecutors’ vast prosecutorial power).

¹⁵² Bellin, *supra* note 149, at 245–47.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 245.

So, what does this mean for pink-collar crime? Progressive prosecution asks how racial prejudice guides prosecutors' dispensation of leniency toward a particular defendant. As we think about pink-collar criminal defendants, we can ask a similar question: "how do gender stereotypes guide prosecutorial discretion?"

4. Sentencing

For those pink-collar offenders who are referred to law enforcement and criminally prosecuted, gender plays a clever role. Critics tirelessly debate whether Theranos founder Elizabeth Holmes was punished harshly enough for her financial fraud conviction.¹⁵⁵ What factors did the judge and jury weigh heavily in their decisions? Gender? Motive? Opportunity? Necessity? Prior history of crime? Spectators at the trial found her "fascinating because [they could not] decide what to make of her. A manipulative villain? A credulous ingenue? A perpetrator or a victim?"¹⁵⁶ She seemed not to fit in any predetermined box.

The jury only convicted her on 4 of her 11 total charges, so in some ways, she was shown mercy.¹⁵⁷ Playing to "sympathetic gender stereotypes" to soften her image, Holmes's lawyer deftly combatted the prosecutors' "ample evidence that she knowingly lied about her product."¹⁵⁸ It is safe to say that jury members were unsure whether she fell into the monster or the angel category. While commentators broadly accused sexism of lengthening her sentence, others understood the tightrope she walked, "[t]o seem competent, a woman has to dial down her femininity. But if she wants to be likeable, she has to emphasize that femininity For a woman to succeed, likability is essential. For men, it's optional."¹⁵⁹

Judges, juries, and spectators alike are confused when women do not fit into one box or another. We are not used to them having stories of their own or being more than one-dimensional. After all, the "angel at home" leads "a life whose story cannot be told as there is no story."¹⁶⁰ Maybe it is time to

¹⁵⁵ Sarah Green Carmichael, *Elizabeth Holmes's Trial: Was She Held to an Unfair Standard?*, MINT (Jan. 6, 2022, 10:15 PM), <https://www.livemint.com/opinion/elizabeth-holmes-s-trial-was-she-held-to-an-unfair-standard-11641487205258.html> [<https://perma.cc/CER4-NK6G>].

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ GILBERT & GUBAR, *supra* note 83, at 22 quoting Hans Eichner, *The Eternal Feminine: An Aspect of Goethe's Ethics*, in Johann Wolfgang van Goethe, FAUST 620 (Walter Ardt trans., Nolan

defy the definitions ascribed to women by centuries of male authors and view them as falling somewhere between monster and angel instead. Maybe they could even be considered human.

C. Advice for Companies

Paying employees adequately, invoking rigorous oversight systems, and not making creepy sexual advances on new hires are all great places to start when seeking to prevent occupational fraud and pink-collar crime. Other more nuanced suggestions, like letting women employees display anger without calling them a “bitch,” may be easier to say and harder to do. Cultivating an awareness of one’s own knee-jerk tendencies to stereotype employees becomes necessary.

1. Why Women Steal and Why You Should Care

While deviant behavior is still largely irrational and difficult to predict, increased levels of resentment is a reliable predictor of deviant behavior among employees. As of 2022, women have made tremendous strides puncturing the glass ceiling and making their way into conference rooms, laboratories, board rooms, and onto tenured faculties. So where do the lingering resentments lie?

Women resent bosses who do not hear their ideas until a male colleague parrots it from across the room. Women resent bosses who expect them to be polite and content and to display few other emotions at work. Women resent employers who treat an employee’s unwillingness or inability to overextend herself as a lack of ambition. Women resent employers who view them as supportive characters in the workplace while denying that their labor at home as mothers is relevant and important. Humanizing women employees permits them to be whole people, mothers, and workers. Viewing women as whole people, rather than one-dimensional Madonnas, allows them to experience a range of emotions beyond contentedness and delight. Companies must seek to humanize their employees, especially the women employees, not only for the sake of social progress, but also for their sake of their own finances.

Resentful employees who are well-positioned to steal will tend to steal. Content, satisfied, rewarded, and fully supported employees will tend to support the mission of their organization. Thus, it is morally and economically in the best interest of companies to humanize their employees in order to prevent resentful, deceitful behavior.

2. Let Women Be Angry

Let the women in your workplace speak out when they need to. Give them avenues and channels to report inappropriate workplace conduct instead of ignoring it. Let women advocate for themselves as they are well equipped to do.

Do not dismiss a woman employee's complaints as "bitching" and never call a woman who advocates for herself "a bitch." Otherwise, she may have to resort to other means to get your attention, such as draining the business account of \$80,000 and leaving you to your own devices. These complaints and grievances are an early opportunity to intervene and better her situation at work. Creating a safe environment for women to thrive at your company is not only the right thing to do, but it will also prevent the deviant, deceitful conduct that could ruin your organization in the long run.

IV. CONCLUSION

Considering that nearly all bookkeeping jobs are held by women,¹⁶¹ the research that women may be superior at guilt suppression,¹⁶² and the historical characterization of women as morally superior to men, prosecutors, judges, and juries should check their gendered blind spots when evaluating pink-collar crime. Business owners, too, should be less quick to trust someone just because they look like your mom.

The common phrase in fraud and pink-collar crime prevention circles, "trust is not an internal control," reminds us that merely trusting your employees supplants neither a lack of basic financial oversight nor a healthy culture of accountability.¹⁶³ In Oregon, the Department of Justice is tired of hearing "[h]ow could this have happened? We trusted her!" from boards of directors when they break the news of embezzlement by an employee or volunteer.¹⁶⁴ The Department replies, "[w]ell, it happened *because* you trusted her. Embezzlers don't get away with it by acting suspiciously; they get away with it by building—and then exploiting—trust. If board members didn't trust the embezzler, [s]he wouldn't have had an opportunity to steal in the first place."¹⁶⁵

Whether I realized it or not, I expected the lunch ladies at my high school to be angels, saints who care tirelessly for others, with no agenda or narratives

¹⁶¹ Weinstein, *supra* note 6.

¹⁶² Gottschalk, *supra* note 51.

¹⁶³ *Trust Is Not an Internal Control*, *supra* note 126.

¹⁶⁴ *Id.* (emphasis omitted).

¹⁶⁵ *Id.* (emphasis in original).

of their own other than to offer smiles and serve lunch to kids. We were all too shocked to find out that they were not, in fact, angels. Even the *New York Times* was so shocked, they put it in a headline.¹⁶⁶ Although I lacked the vocabulary at the time to explain it, the rebellious feminist in me was oddly proud of my lunch ladies for defying the box we implicitly put them in.

Not only is it refreshing, but it is humanizing to see women portrayed as complicated people, rather than evil “bitch-like” monsters or perfect Madonna-like angels. Blindly expecting and trusting women in jobs historically filled by women to smile and selflessly serve the values of the organization is hurting us collectively. It is hurting women who deserve a more complex identity than that of a happy servant and it is hurting businesses who lazily rely on women to be automatically trustworthy and morally righteous rather than implementing more reliable internal control mechanisms.

What does a workplace that humanizes women look like? It offers generous maternity and paternity leave to dismantle the idea that mothers should drop out of the workforce or figure out how to raise their children on their own. It informs women employees early and often of ways they can report misconduct of their supervisors to those ranked above them in the organization.

Depending on the needs of the organization, such a workplace offers instruction to older, male employees, managers, and supervisors on how to listen properly to women without ignoring them. It prevents men from taking credit for women’s ideas or interrupting them in meetings. It readily promotes women to leadership positions and allows for flexible work-from-home scheduling to let parents balance home and work life more easily. It prizes a diverse workforce where marginalized groups feel comfortable, supported, and taken care of.

A workplace that humanizes women bans use of the words “bitch,” “bossy,” “whiny,” and “nag,” even in informal watercooler conversations. It allows complaints to be freely voiced, heard, taken seriously, and resolved expediently. It does not underestimate women’s abilities nor expect from them perfection.

When women dropped out of the workforce during the 2020 pandemic, the opportunity gap widened and the need to create welcoming, safe work environments for women became even more dire.¹⁶⁷ Every year when *Forbes Magazine* ranks “America’s Best Employers for Women,” they look at a few criteria like diversity, working conditions, and the likelihood that the

¹⁶⁶ See Mervosh, *supra* note 1.

¹⁶⁷ Dawn Ennis, *Meet America’s Best Employers for Women 2022*, FORBES MAG. (July 26, 2022, 9:45 AM), <https://www.forbes.com/sites/dawnstaceyennis/2022/07/26/meet-americas-best-employers-for-women-2022/?sh=2c44cc9660ef> [https://perma.cc/69BH-3HGT].

employee would recommend their employer.¹⁶⁸ They survey 30,000 working women and 20,000 working men.¹⁶⁹ The responses are then “reviewed for potential gender gaps.”¹⁷⁰ The women respondents are asked “to rate their employers on factors such as parental leave, discrimination and pay equity and to nominate organizations in industries outside their own. Representation at the executive and board levels were also factored into the final score.”¹⁷¹

Companies and organizations do not need to wait for Forbes to do the evaluation for them. Blind internal surveys should be conducted at least yearly among employees and companies should seek to improve results each year. Companies like REI, LinkedIn, and Cargill made it into the top 30 companies for 2022, providing excellent examples for others to follow.¹⁷²

Women are complex and so are criminals. They are neither monsters nor angels. Stereotypes that cast women as more ethical, moral, and innocent than men actively allow women to enjoy less suspicion when committing pink-collar crimes. We need not expect women to deviate from morally upright behaviors, but we should not be so surprised when they do.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*