Florida's Approach to White Collar Crime: Coordinated or Chaotic?

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Abstract

Florida is considered a haven for white-collar crime in the United States. Historically, the Florida criminal justice system has considered white-collar crimes to be less important than property crime or crimes against persons. There is no central source for collecting data or intelligence on white-collar crimes in Florida. Regulatory agencies and law enforcement do not routinely share statistics or intelligence information. Citizens of Florida who have questions about corporations or individuals are shuffled back and forth between law enforcement and regulatory agencies. Florida regulatory and law enforcement agencies need to develop a central coordinated effort that includes the sharing of information, cross training and tracking of patterns of white-collar crime. A successful coordinated effort might lead to a proactive stance on white-collar crime and fewer fraud scams in Florida.

Introduction

The Florida criminal justice system has consistently treated white-collar crimes as less important than conventional crimes despite the financial and emotional impact on victims and society. Citizens of Florida encounter a maze of difficulty when trying to find which government agencies handle complaints and investigations on white-collar crime cases.

"Florida has a fragmented and inefficient approach to investigating white-collar crimes. White-collar crime victims do not bleed so white-collar crime is not a priority for local law enforcement" (Sgt. J. Layman, Broward County Sheriff's Office, personal communication, October 30, 1997).

Research Problem

Florida is considered a haven for fraud schemes (U.S. Department of Justice, 1989), and is one of the top ranked states for incidents of white-collar crime (Matrullo, 1997). This reputation has persisted for years and seems to only be getting worse.

When a Florida resident is suspicious of a business deal or suspects a fraud scam, often the resident will call one or more government agencies for advice, the local sheriff's office, the Department of Agriculture and Consumer Affairs, the Department of Business and Professional Regulation, the Comptroller's Office, the local State Attorney's Office or the city consumer services departments to name a few. These agencies will refer the citizen to other agencies and the citizen is left confused with little information. The citizen is unable to find out whether or not the company and its officers are operating legally or have a criminal history.

Florida has approximately fourteen different state regulatory agencies, sixty-seven sheriff's offices, over 300 police departments, the Florida Department of Law Enforcement and hundreds of city and county consumer service programs. These agencies should be able to manage the on-going problem with white-collar crime in Florida. This project attempts to examine how some Florida agencies handle white-collar crime cases and why Florida continues to be a haven for fraud by exploring the following questions:

1. What is white-collar crime?
2. What are the national and Florida statistical patterns of white-collar crime over the past four years, including number of incidents and financial impact?
3. How do regulatory agencies and law enforcement handle consumer complaints and White-collar crime cases that become criminal investigation?
4. What should Florida do to reduce white-collar crime in the state?

Background

Sociologists and criminologists have debated the definition of white-collar crime since 1939 when Edwin Sutherland first introduced the phrase. Early definitions of white-collar crime concentrated on the class of person committing the crime. For instance, Sutherland defined white-collar crime as " crimes committed by person of high social status that are committed in the course of an occupation"(Albanese, 1995, p.2). This definition failed to include crimes that occur outside of the workplace like credit card fraud and crimes committed by blue-collar workers like embezzlement (Albanese, 1995).

Other terms that have been used for white-collar crime are "upperworld crime," "crimes of the powerful," "avocational crime," "economic crime," and "abuse of power", which is the term preferred by the United Nations (Geis, 1995). White-collar crimes may include crimes of violence. For instance hundreds of people die each year from illegal unsafe working conditions and from unnecessary surgery. The most common white-collar crimes involve frauds in which unwitting customers and consumers are swindled (Geis, 1995).

More recent definitions of white-collar crime concentrate on the elements of the crime. Unlike conventional crimes, white-collar crime requires "planning and organization" along with fraudulent representations. "The deceptive elements of white-collar crimes distinguish them from the stealth and force, randomness and general lack of advance planning that characterize street crimes."(Albanese 1995, p.3). "

> Perhaps the characteristic white-collar crime is conspiracy. A conspiracy is an agreement between two or more persons to commit a criminal act or to achieve a noncriminal act by unlawful means. Therefore, conspiracy is essentially the planning of a crime and considered an inchoate, crime or attempt" (Albanese, 1995, p.5).

Albanese groups other white-collar crimes into three categories: theft, crimes against public administration and regulatory offenses. He then divides the three main categories into subcategories as charted below:

A Typology of White-Collar Crime		
Crimes of Theft	*Crimes Against Public Administration*	*Regulatory Offenses*
Embezzlement	Bribery	Administrative violations
Extortion	Obstruction of Justice	Environmental violations
Forgery	Official misconduct	Labor violations
Fraud	Perjury	Manufacturing violations
		Unfair trade practices
(Albanese, 1995, p.9).		

So white-collar crime may include everything from an accountant embezzling money from his clients to a company that improperly disposes of hazardous waste and poisons a city's drinking water. The perpetrator may be someone who is in a position of power and abuses his or her official position or someone who believes government or business is abusing its power and uses this belief to justify committing tax fraud (Albanese, 1995).

The U.S. Department of Justice Federal Bureau of Investigations,

> . . .white-collar crimes are 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. These acts are committed by individuals and organizations to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage (U.S. Department of Justice, 1989).

The U.S. Department of Justice definition includes crimes such as:

Government fraud – fraudulent acts involving federally funded programs, or the bribery and/or conflict of interest on the part of those individuals in the Executive Branch of Government. This category includes crimes such as corruption in contracting, health care provider fraud and mortgage loan frauds.

Environmental Crimes – include the illegal disposition of hazardous waste which leads to surface and ground water contamination, fires, food chain contamination and human poisoning

Public Corruption - when a public servant, elected, appointed or otherwise, violates Federal law when acting for or on behalf of public office asks, demand, solicits, seeks, accepts, receives or agrees to receive something of value in return for influence in the performance of an official act. For example corruption committed by the judges, law enforcement officials, legislators, regulators and election officials

Financial Crimes - such as bank fraud and embezzlement, advance fee schemes, pyramid schemes, boiler rooms, bankruptcy fraud, interstate transportation of stolen property and counterfeit securities, copyright violations, trademark counterfeiting, computer fraud and abuse.

"The essential distinction to remember about white-collar crime is this: It is not a specific crime in itself, but rather a 'technique' of committing a crime" (Bintliff, 1993, p.8). Premeditation, organization, fraudulent representations and personal gain are the key elements of any type of white-collar crime definition. The victims may be a corporation or industry, an employee, a customer or the general public (Blintliff, 1993). Less obvious elements include: "1) the victims unwitting cooperation; 2) society's indifference to the crime; and, 3) the perpetrator's noncriminal self-image" (Blintliff, 1993, p. 3).

Statisticians and researchers find it difficult to develop a standardized process for collecting comprehensive data on white-collar crime due to the on-going disputes over defining and categorizing white-collar crime. Florida has one of the highest incidences of fraud in the United States, but does not have a process for routinely and systematically collecting data on white-collar crime (Matrullo, 1997).

No centralized office compiles white-collar crime data at either the state or the federal level. Even the Bureau of Justice Statistics, the branch of the federal Justice Department whose mission is to accurately track criminal activity limits itself to crimes against persons and households (Matrullo, 1997, p.18).

Only the National White Collar Crime Center in Richmond, Virginia, a federally funded nonprofit agency, attempts to measure the impact of white-collar crime on a national level. Jim Helmkamp, the Research Director, estimates the costs of white-collar crime on a national level to be between $665 billion and $2.2 trillion dollars a year (Matrullo, 1997).

The Justice Department's National Crime Victimization Surveys (NCVS) provide statistics on violent and property crimes based on household surveys. These victimization surveys provide no assistance in determining the extent of white-collar crime because they collect information only about the crimes of rape, robbery, assault, burglary, larceny and motor vehicle theft (Albanese, 1995).

The Federal Bureau of Investigation's Uniform Crime Reports (UCR) provide annual statistics on specific crimes reported to the police each year. These crimes include homicide, rape, robbery assault, burglary, larceny, motor vehicle theft and arson. The UCR's also contain information on four types of white-collar crime: fraud; embezzlement; forgery;and, counterfeiting. Only arrests, however, are reported on these four crimes, not the number of incidents reported to police or regulatory agencies. Arrest statistics do not provide the true extent of crime, as large numbers of criminals are never caught (Albanese, 1995). The number of participating agencies varies from year to year on the UCRs. In 1994, for example, 8,466 agencies participated in the UCR survey. The following year, 1995, the number of agencies participating in the UCR survey increased to 9,498. Further, only small-scale offenses are reported to police, with complex corporate crimes unreported (Livingston, 1996).

Federal Bureau of Investigation
Crime in the United States
Arrests

	1985	1994	1995
Forgery and Counterfeiting	66,841	86,514	91,991
Fraud	251,358	306,072	320,046
Embezzlement	8,727	10,933	11,605

(U.S. Department of Justice, 1996)

Complaint and conviction statistics may also be indicators of white-collar crime but they are not considered reliable measures of crime, as staffing levels, agency priorities and the discretion of prosecutors' influences them. Other possible indicators of white-collar crime are statistics maintained by regulatory agencies but no one has ever collected these statistics and examined them for any trends or patterns (Albanese, 1995). "A major problem with these selective and sporadic counts of white-collar crimes and arrests is that they implicitly suggest that white-collar crime is not as serious as conventional crimes" (Albanese, 1995, p. 85). Many criminologists, sociologists and associations agree, however, that the costs of white-collar crime far exceed the costs to society incurred by conventional crimes.

According to Albanese and others, analysis of national statistics, estimated economic losses from street crimes are about $10 billion per year, according to the UCR, but the losses from white-collar crime are approximately $200 billion, or 20 times as high (Albanese, 1995; Clinard & Yeager 1980). Steven Barkan's analysis (1997) included national statistics from different sources named below to compare the cost of street crime to white collar crime. The FBI's estimate of total property loss in 1994 from street crimes (robbery, burglary, larceny, auto theft and arson) was $13 billion. The U.S. News and World Report estimate for the cost of all corporate crime including price fixing, false advertising, tax evasion and fraud was $200 billion. The General Accounting Office estimated health-care fraud to be $70 billion, and the U.S. Department of Commerce estimated employee theft to be $45 billion. The estimate of noncorporate tax evasion according to the U.S. General Accounting Office came to $100 billion, which brought the total cost of white-collar crime to $415 billion (Barkan, 1997).

Barkan also compared deaths caused by conventional crimes versus deaths caused by white-collar crimes. The national UCR's estimate for 1994 homicides was 23,305.

> For white-collar crime (and misconduct) . . . [there were] 55,000 work-related deaths from illness or injury; 30,000 deaths from unsafe products; 20,000 deaths from environmental pollution; and 12,000 deaths from unnecessary surgery. Adding these figures together, about 117,000 people a year die from corporate and professional crime and misconduct. This number far exceeds the number of people murdered each year (Barkan, 1997, pp. 371-72).

Other groups have estimated the costs of white-collar crime in more specific areas. The Association of Certified Fraud Examiners estimates that occupational fraud and abuse costs U.S. organizations more than $400 billion annually. The insurance industry estimates that fraud costs at least $17 billion annually in property and casualty lines and $50 billion in the health insurance field (National Underwriters Property and Casualty-Risk & Benefits Management, 1992). All of these figures are estimates because no one has established a standardized procedure for keeping track of monetary losses due to white-collar crime.

The indirect cost of white-collar crime is often considered more damaging than the direct financial impact. White-collar crime generates alienation, distrust and the erosion of confidence in major institutions like savings and loans, government and insurance companies (Friedrichs, 1996). Often victims encounter “callous indifference” to complaints, and “bureaucratic,” “disorganized” responses from government agencies or corporate officials (Albanese, 1995). “The President’s Commission on Law Enforcement and Administration of Justice (1967a) claimed that pervasive white collar crime, and the failure of the justice system to respond effectively to it, was harming the moral legitimacy of the justice system” (Friedrichs, 1996, p. 58).

Many researchers have called for a greater standardization of definitions and recording practices, more reliable characterizations of the universe of offenders and better coordination among the criminal, civil and administrative agencies that collect statistics (Friedrichs, 1996, Reiss, 1980). These recommendations would benefit Florida citizens by helping to establish a better understanding as to the extent of white-collar crime in the state.

To determine how Florida measures the impact of white-collar crime in the state, a review of statistics from different regulatory and law enforcement agencies was necessary. In addition, interviews with leading regulatory and law enforcement officials were conducted to understand the day-to-day handling of consumer complaints and inquiries and how criminal cases are developed. Finally, law enforcement and regulatory officials were asked their opinions on how Florida treats white-collar crime cases and what recommendations they have for improvement.

Method

A review of historical and recent literature was conducted in an attempt to understand the definitions of white-collar crime, the financial losses and emotional impact on victims. Statistics were obtained from federal government agencies like the U.S. Department of Justice Bureau of Justice Statistics and the Federal Bureau of Investigation. The National White Collar Crime Center provided materials and statistics on the extent of white-collar crime. The Association of Certified Fraud Examiners provided their “Report to the Nation on Occupational Fraud and Abuse.” State statistics on white-collar crime were gathered from the Florida Department of Law Enforcement (FDLE), the Florida Department of Insurance (FDOI) and the Florida Department of Banking and Finance (the Comptroller’s Office).

Interviews were conducted in person and over the telephone with lead officials in two state agencies that handle white-collar crime on a daily basis, the FDOI and the Comptroller’s Office. These agencies provided insight on the day to day handling of consumer complaints and regulatory inspections that may lead to criminal cases. An interview was conducted with a representative of the FDLE to gain a perspective on FDLE's approach to white-collar crime.

Interviews

The interviews conducted with the FDOI and the Comptroller's Office examined the purpose and jurisdiction of the agencies. Documents were obtained during the course of the interviews that listed the industries and persons the agencies regulated per Florida Statutes.

The agency's procedures for handling consumer complaints and inquiries about companies and individuals were explored. The minimum qualifications needed to become a regulatory inspector or examiner in these agencies was discussed. The interviewees were questioned about the training regulatory inspectors and examiners receive.

The interviews included questions such as, "What is the procedure if an inspector discovers criminal activity?" The interviewees explained who conducted criminal investigations, the minimum qualifications for investigators and the type of training they receive. The interviewees were asked to name the law enforcement agencies they work with in developing cases and to describe the level of cooperation they receive. They were also asked to describe the level of cooperation with prosecutors. Finally, the interviewees were asked to state the agency's main concerns about investigating and prosecuting white-collar crime cases.

Both agencies provided statistics from the past four years on the number of opened cases, arrests, convictions and cases closed. Statistics on the amount of financial loss incurred by victims was also requested.

The FDLE interview covered the original purpose for which the agency was created and its jurisdiction. The procedures for handling consumer complaints and inquiries were discussed. The types of assistance that FDLE provides to regulatory agencies on criminal cases and the type of resources FDLE possesses for investigating white-collar crime were examined. Examples of the level of cooperation with regulatory agencies and prosecutors on white-collar crime were provided by the interviewee. Finally, the FDLE representative was asked to state the agency's main concerns on investigating and prosecuting white-collar crime cases in Florida.

FDLE provided information on the type of courses it teaches to local law enforcement throughout the state on white-collar crime through the Division of Criminal Justice Standards and Training. FDLE also supplied a copy of the current curriculum for the FDLE academy class.

Some weaknesses in the data obtained for this project include the fact that the Annual Report on Crime in Florida published by FDLE does not provide complete data on white-collar crimes. The report included only arrest statistics for four types of white-collar crime: bribery; fraud; embezzlement; and, forgery/counterfeiting were included in the reports. Statistics from the states' regulatory agencies on the number of criminal cases opened, the amount of financial loss to victims and arrests on other types of white-collar crime are not included in the Annual Report on Crime in Florida.

Another area of concern was the hesitation on behalf of one or two agency representatives to state what they felt was the truth. On more than one occasion an interviewee requested that his or her response to a question not be reported for fear of offending another agency or losing his or her job. In those situations, the interviewee's initial response was not included in this report.

Results

The results are divided into an overview on the purpose of each agency, the statistics for each agency over the past four years and the interviews of key employees.

The Florida Department of Law Enforcement (FDLE)

Overview

The Florida Department of Law Enforcement is a statewide law enforcement agency that offers a wide range of investigative and technical services to local criminal justice agencies. The agency's services include:

Investigation and Forensic Sciences Services: identifying and investigating organized and multi-jurisdictional crimes; apprehending criminal and fugitives; gathering and sharing criminal intelligence; investigating public corruption; seizing illegally gained assets; dismantling criminal organizations; aiding in the locating of mission children and providing protective services to Florida's Governor and other dignitaries. In addition, forensics experts provide technical support through FDLE's Statewide Crime Laboratory System.

Criminal Justice Information Services: providing criminal justice information to prevent crime, solve cases and recover property, and to identify persons with criminal warrants, arrests and convictions. They also provide statistical and analytical information about crime to policymakers and the public.

Criminal Justice Professionalism Service: provides law enforcement training programs to sworn officers. They also certify qualified officers and revoke the certification of officers who fail to maintain minimum standards.

Statistics

The statistics on specific white-collar crimes in Florida that were compiled in the annual Crime in Florida report prepared by FDLE show the following numbers for the past four years:

Number of Cases Reported to Law Enforcement

	1993	1994	1995
Bribery	25	34	30
Embezzlement	3,086	3,443	3,691
Fraud	37,128	39,761	41,176

(Florida Department of Law Enforcement, 1993; 1994; 1995)

Number of Arrests	
1996	
Forgery/Counterfeiting	4,067
Fraud	20,859
Embezzlement	10

(Florida Department of Law Enforcement, 1996)

The fraud statistics include false pretenses, swindle, confidence games, credit card/ATM fraud, impersonations, welfare fraud and wire fraud. The 1993, 1994 and 1995 reports include all cases reported to police whether or not anyone was arrested. The 1996 report only includes statistics on arrests.

According to Moses Jordan (personal communication, October 23, 1997), Bureau Chief for the Florida Crimes Information Center Bureau, the change in format makes it impossible to compare statistics from previous years with the 1996 annual report. He also indicated that FDLE has never included statistics from the Department of Insurance, the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Affairs or any regulatory agency.

None of the Crime in Florida reports provide information on the total amount of money victims lost as a result of the embezzlement and fraud schemes. Crimes such as health care fraud, tax fraud, workers compensation fraud, money laundering, environmental crimes and contractor fraud are not included in the State's main report on crime.

Interview

Phil Ramer, Special Agent in Charge, Office of Statewide Intelligence, was the representative from the FDLE who agreed to provide information for this project. Mr. Ramer has been in law enforcement for 24 years and with the FDLE for 23 years. The following is a summary of Mr. Ramer's interview on FDLE's purpose and approach to white-collar crime. (P. Ramer, personal communication, July 18, 1997).

The FDLE was originally created in 1967 to investigate complex protracted multi-jurisdictional crimes. Specifically the legislature at the time wanted FDLE to handle the growing organized crime problem throughout Florida.

Citizens who call the FDLE with a consumer complaint or inquiry about a company or individual are referred to different agencies. Some complaints and inquiries are referred to the Florida Department of Agriculture and Consumer Affairs, and some are sent to County Consumer Service offices in the area the consumer resides. If the complainant is alleging criminal violations of the law, the complaint is referred to one of FDLE's regional field offices or the State Attorney's Office in the judicial circuit where the citizen lives. Some State Attorney's Offices have white-collar crime units that are capable of investigating the consumer complaints but many do not have special units and will not handle the complaints that are referred.

No one maintains a central database on corporate convictions or the officers of the convicted corporations so that the consumers can find out whether or not companies and their officers have a criminal history. There is a need for all Florida government agencies to share databases on corporate and business information for consumers. In the past, there has not been any vision, technology or money to create a common database for all government agencies to access.

Many regulatory agencies do not have law enforcement authority so they periodically contact FDLE for assistance periodically. FDLE will help the regulatory investigators with the execution of search warrants, pen registers, wiretaps and arrests. In the past, an integrated approach was used with prosecutors and regulators on large criminal cases.

Law enforcement and regulatory investigators would use the Integrated Approach Panel to cooperate together on criminal cases at an early stage in the investigation. Better cases were developed when law enforcement agents and regulatory investigators started working cases together at the beginning of a case.

Eventually, the Integrated Approach Panel was decentralized and each regional office of FDLE was expected to start a panel in their region of the state. The integrated approach panel is no longer used as a method of developing cases.

According to FDLE's newly revised Statewide Investigative Strategy, each regional group is required to have someone responsible for an intelligence group on economic crime. The regional director assigns agents and analysts to gather intelligence from regulatory agencies and informants. There are no trained financial analysts within FDLE.

New FDLE agents attend an academy where they receive some instruction in financial investigations. The current Special Agent Training class (class #17) will receive instruction on the RICO statute, Business Association and Criminal Law on Document Subpoenas, Public Corruption Investigations, Health Care Fraud, Financial Investigative Techniques, RICO Case Development and Managing a Major Case Investigation, and Real Estate Investigative Techniques. The new agents do not receive instruction on financial analysis, computer crimes or the handling of large numbers of documents.

The FDLE Crime Lab has employees who specialize in computer searches. These technicians are specially trained for computer crimes and work with special agents when computers are part of a crime.

FDLE has worked with regulatory agencies on criminal investigations that have led to some outstanding results. One example is the joint effort with the Attorney General's Medicaid Fraud Crime Unit. The two agencies worked together for months and presented many cases to State and Federal prosecutors.

When criminal investigators and regulators do not work well together, bad cases are developed. Regulatory agency employees do not always recognize when a case has criminal violations. A case may be jeopardized before criminal investigators are called in because regulators do not know or understand criminal procedures.

The most successful cases involve the prosecutor working closely with the regulators and criminal investigators. The best example of prosecutors working with regulators and investigators to develop solid cases is the Medicaid Fraud cases that were developed with the Office of Statewide Prosecution, the Medicaid Fraud Crime Unit and the FDLE. The joint effort led to the presentation of several good cases being presented to the Statewide Grand Jury.

When prosecutors and investigators do not work well together problems develop. The lack of cooperation affects whether or not the case is filed and the final disposition.

FDLE's main concerns on investigating white-collar crime can be summarized as follows:

- Fraud cases are so protracted that agents and prosecutors do not want to get involved;

- The end results are disappointing because sentencing is usually no more than a slap on the hand;

- Sometimes a prosecutor is not willing to take a complex case to trial due to possible confusion to the jurors or the impact on the prosecutor's workload;

- Fraud consumes tremendous resources such as labor and storage of documents. The chances of receiving reimbursement for such expenses is nonexistent in fraud cases;

- Other cases and priorities often prevent agents from concentrating on protracted cases therefore there is a lack of understanding among agents on the more organized crime groups.

Another employee of FDLE, Dwight Floyd, provided information from the Division of Criminal Justice Standards and Training, on the types of seminars provided to law enforcement throughout Florida through FDLE. Approximately six different courses in the area of white-collar crime investigations (Economic Crimes – Crime Scheme Identification, Frauds and Schemes, Tangible Property Frauds and Schemes, etc.) were offered in the 1980's through Standards and Training. All of these courses were eventually placed on inactive status. Since 1988, the Standards and Training division has not offered any training in the area of white-collar crime investigations to law enforcement in the state. (Florida Department of Law Enforcement Division of Criminal Justice Standards & Training 1996).

<u>Florida Department of Insurance(FDOI)</u>

<u>Overview</u>

The Department of Insurance regulates fire, casualty, liability and windstorm insurance rates and approves all policy forms. The Department also determines whether or not the insurance companies seeking to do business in Florida are financially sound.

The Insurance Commissioner tests and licenses insurance agents, solicitors, adjusters, and bail bondsmen. He enforces laws relating to pre-need burial contracts, life care contracts, ambulance service contracts, automobile and home warranty associations, automobile clubs, premium finance companies, scholarship plans, nonprofit hospital and medical service plans, nonprofit optometric service corporations, nonprofit pharmaceutical corporations, mortgage guaranty insurance, title insurance, fraternal benefit societies, donor annuities, and health insurance programs for certain property and casualty coverage.

The Insurance Commissioner is charged with investigating fraud in all lines of insurance, plus violations of the Insurance Code. Additionally, he administers the funds for retirement of police officers and firefighters.

The divisions in the Department of Insurance that implement and monitor the insurance laws are:

The Division of Insurer Services - monitors the financial condition of insurance companies and approves insurance rates.

The Division of Agent and Agency Services - responsible for licensing and regulating the professional activities of insurance agents and agencies.

The Division of Insurance Consumer Services – operates a toll-free consumer Helpline, 1-800-342-2762; they field general inquiries and complaints from citizens to help resolve their insurance problems.

The Division of Risk Management - administers the state's property and casualty self-insurance trust funds, including state employees' workers' compensation, state liability claims, and state property insurance claims.

The Division of Insurance Fraud - takes charge of investigating all forms of insurance fraud, including illegal and unscrupulous activities by agents, companies and consumers.

The Division of Rehabilitation and Liquidation - is the last opportunity for insurance companies in financial trouble. When companies become financially unstable, they are sent to this division by court order. Depending on the financial difficulties of the company, it is either placed into rehabilitative supervision to help restore it to a stable condition or the company is liquidated.

Statistics

The criminal case statistics provided by the Department of Insurance for the past four years include cases involving workers compensation fraud and insurance fraud.

Florida Department of Insurance
Criminal Case Statistics

	1993-94	**1994-95**	**1995-96**	**1996-97**
Cases opened	1308	1171	1128	1056
Cases Approved for Prosecution	334	368	408	381
Warrants Issued	278	343	406	304
Arrests Made	363	397	449	442
Convictions	250	275	364	295
Cases Pending	1834	1572	1335	1390
Cases Closed	895	1248	1307	1056

(Florida Department of Insurance, 1994; 1995; 1996; 1997)

These statistics provide a complete picture on the number of criminal cases handled by the Department of Insurance in the past four years. The number of “cases opened” reflects the number of investigations opened that have indications of reasonable suspicion to probable cause that a violation of the insurance laws of Florida has occurred. The cases may involve violations of the general fraud statutes such as Florida Statutes Chapter 817 or the workers compensation statutes under Chapter 440. The cases are opened after a field office supervisor reviews the referral and determines that a violation has occurred.

“Cases approved for prosecution” represents investigations that have been presented to a prosecutor and the prosecutor has agreed to file the case based upon the report presented by the investigator. The “warrants issued” category represents cases in which a warrant or capias for the arrest of a defendant has been issued by a judge. The “arrests made” section provides the statistics on the number of actual physical arrests made of defendants by the Division of Insurance Fraud.

“Convictions” tracks the number of insurance fraud cases filed and disposed of by prosecutors. This number may include pre-trial intervention programs, withholds of adjudication and actual convictions.

“Cases pending” includes cases that have been opened and are still under investigation. “Cases closed” are cases that have been closed due to lack of evidence and cases that prosecutors have declined to prosecute

The statistics do not provide any information on the financial impact on victims. The victims can be individuals, insurance companies and local and state governments.

<u>Interview</u>

Jerry Stewart, Bureau Chief for the Division of Insurance Fraud in the Department of Insurance, was the lead representative for the agency in this interview. Philip Fountain and Michelle Newell answered questions on regulatory inspections and personnel. (J. Stewart, personal communication, July 18, 1997). The Department has a 1-800 hotline number for reporting any kind of insurance fraud in Florida. When consumers inquire about companies the Department can tell them whether or not a complaint has been filed against a company or agent but they cannot tell the consumer whether or not there is a criminal investigation. When a consumer calls to complain about an insurance agent or company the complaint is sent to a field office in the area where the consumer is located and an investigator reviews the complaint. A supervisor determines whether or not there is enough information to open a criminal case). The majority of referrals to the fraud unit are from insurance companies. Insurance companies with more than $10 million in premiums are required by law to have an in-house special investigation unit. If the insurance company has less than $10 million in premiums they are required to have a fraud plan and a designated person to handle such problems (J. Stewart, personal communication, July 18, 1997).

According to Philip Fountain, Bureau Chief, Bureau of Agent and Agency Investigations, inspections are based on complaints or tips from consumers. They receive an average of 4,000 complaints a year through the hotline operated by the Division of Consumer Services at the Department of Insurance. Thirty-five percent of the cases in his division are from the hotline (P. Fountain, personal communication, October 15, 1997).

The forty-five inspectors (Insurance Analysts I &II) in the Bureau of Agent and Agency Services statewide, primarily look for violations of the Insurance Code. If the analysts discover criminal activity they will refer the case to the Division of Insurance Fraud. Sometimes the cases are referred once the inspection is complete. Other times, if the violations are severe, the criminal and regulatory divisions will have simultaneous but independent investigations. The administrative investigation can result in a suspended or revoked license with fines and probation. The criminal investigation can result in criminal charges. The Insurance Code specifically identifies activities, which are considered criminal, so there is no special training in recognizing criminal activity. The analysts do receive annual training on changes in the code and law as well as on the job training (P. Fountain, personal communication, October 15, 1997).

Fountain stated that the Department of Insurance receives many referrals for the Department of Agriculture and Consumer Services and the Department of Business and Professional Regulation. The Department of Insurance also interfaces with the Department of Banking and Finance on a regular basis since anyone who wants to sell a variable annuity or variable life insurance product must be licensed by both the Department of Insurance and the Department of Banking and Finance. Another example of overlapping regulation involves viaticals, the “early payment on a life insurance policy for someone suffering from a terminal disease or chronic disabling illness” (Currier, 1998) The Department of Insurance licenses and regulates viaticals but fractionalized viatical contracts are sometimes considered unregistered securities so the Department of Banking and Finance regulates those contracts (P. Fountain, personal communication, October 15, 1997).

Fountain commented that, based on his experience in the Department of Insurance, Florida is a “hotbed for white-collar crime. The state is a potential victim bed for any fraud scheme” (P. Fountain, personal communication, October 23, 1997).

Michelle Newell, Division Director of Life and Health Insurance, explained how the Division of Insurer Services regulates insurance companies. There are two types of examinations that are conducted: 1) financial exams; and, 2)market conduct exams. The Department of Insurance is statutorily required to conduct financial exams every three years. It conducts market conduct exams at the Department’s discretion (M. Newell, personal communication, October 16, 1997).

Financial Examiner Analysts conduct the financial examinations. They look for compliance with the Insurance Code, accounting practices and procedures and whether or not the companies are paying claims in a timely manner. Insurance Analysts conduct the market conduct examinations. They look at sales practices, how fair the companies are in settling claims, whether or not insureds are deriving benefit from their contracts and if the policies were sold in a fair manner. If the analysts discover criminal behavior they will first try to protect the policyholders, which may involve issuing a Cease and Desist Order. Once they have done everything to protect the policyholders they will refer the case to the Division of Insurance Fraud (M. Newell, personal communication, October 16, 1997).

The Division of Insurer Services receives complaints from consumer services and other sources like the media or other insurance companies. If there are many complaints coming in on the same company, then the analysts will target the problem during an examination and may refer the case to the Division of Fraud (M. Newell, personal communication, October 16, 1997).

According to Stewart, trained criminal investigators (Law Enforcement Investigators I & II) handle cases that are referred to the Division of Insurance Fraud with law enforcement backgrounds. They receive training in financial investigations, insurance fraud investigations, interviewing techniques and other law enforcement skills relevant to insurance fraud investigations (J. Stewart, personal communication, July 18, 1997).

Traditionally, the Division of Insurance Fraud handles criminal investigations on their own with no outside assistance. The Division only asks for outside assistance when it's resources are challenged, such as not enough agents to execute a search warrant. If a case involves more than one state, it will ask the FBI for assistance or the U.S. Postal Inspectors if the case involves mail fraud. The Division usually calls the local sheriff's office or police department to handle the transportation of arrested criminals to the jail. Arson cases are worked with the fire marshal and the local police. The best example of a case that was successfully investigated with the help of local law enforcement and the Division of Insurance Fraud involved thirty-three search warrants executed in one day throughout the state for one insurance company. The investigation was successful because there was extensive cooperation with all state and local agencies (J. Stewart, personal communication, July 18, 1997).

The most challenging situations occur when cases are referred to Federal law enforcement agencies. Communication from federal agencies is poor. If the case is fantastic the federal agency just takes the case and the Department of Insurance never hears from them again. If the case has some problems then the federal agency will just "sit on it" and never communicate with the Department of Insurance as to whether or not the federal agency will work the case or not (J. Stewart, personal communication, July 18, 1997).

"The prosecution of insurance fraud cases is sometimes difficult. The State Attorney's Offices do not have any emphasis on white-collar crime and are not prepared to handle numerous cases. They do not recognize that insurance fraud is a serious problem in Florida. Prosecutors need to recognize the problem and redefine thief" (J. Stewart, personal communication, July 18, 1997).

Stewart believes that white-collar crime will be the crime of the twenty-first century. "The motivating factors are greed on the part of the upper class and the middle class trying to stay above the poverty line. In addition, more people will gain knowledge of computer technology and use it to make money and stay ahead." Stewart also stated that sentencing on white collar crime is not tough enough. "The fact that white collar criminals are not labeled as criminals points to a lack of ethics in our society. When prominent members of our community are arrested we need to really shame them" (J. Stewart, personal communication, July 18, 1997).

Department of Banking and Finance (Comptroller's Office)

Overview

The Comptroller's Office is responsible for the licensing, chartering and regulation of the following industries:

- Mortgage Brokerage and Mortgage Lending
- Funeral and Cemetery Services (pre-need sales)
- Securities and Investments
- Retail Installment Sales (motor vehicle installment sales)
- Trading Stamps Dealers
- Money Transmitters
- Financial Institutions
- Credit Unions
- Banks and Trust Companies
- Savings and Loan Associations
- Loan Brokers
- Commercial Collection Agencies
- Consumer Collection Agencies

The Comptroller's Office has six operating divisions:

- **Division of Accounting and Auditing** - plans, supervises, coordinates and directs all fiscal programs for the Comptroller;

- **Division of Finance –** licenses and regulates non-depository financial institutions and other related industries

- **Division of Financial Investigations** – investigates complaints against mortgage lenders/brokers, consumer finance companies, securities fraud, investment fraud, motor vehicle sales, "boiler room operations", retail installment sales, home improvement sales, trading stamps, going-out-of-business sales, collection agencies, money transmitters, check cashiers, banks, savings associations, credit unions, trust companies, international banks, misuse of state funds or property, funeral pre-need sales and cemetery trust funds;

- **Division of Information Systems** – designs, implements, operates and maintains the State of Florida Accounting System (SAMAS);

- **Division of Banking** – responsible for the supervision, examination and chartering of banks and savings and loan associations, trust companies, credit unions, international bank agencies, and administrative and representative offices; licenses and supervises financial institutions branch offices; appointment of receivers or liquidators of the institutions when necessary to protect the public welfare; registers and regulates check cashers, foreign currency exchangers, money order issuers and funds transmitters;

- **Division of Securities and Investor Protection –** responsible for the regulation of the securities industry; registers firms and individuals who sell securities as well as the securities (Florida Department of Banking and Finance, 1997).

Statistics

The criminal case statistics collected by the Department of Banking and Finance for the past four years show the following:

Florida Department of Banking and Finance
Criminal Case Statistics

	1993-94	**1994-95**	**1995-96**	**1996-97**
# of Victims	6261	2152	4237	17,626
# of Criminal Actions Filed	41	53	36	34
# of Defendants Charged	68	132	51	65
# of Convictions	not tracked	45	17	19
Total money lost	$27,072,816	$30,616,885	$16,172,181	$62,605,636

(Florida Department of Banking and Finance, 1997)

These statistics include only criminal cases filed by prosecutors. The Comptroller's Office did not provide statistics on the total number of criminal investigations opened and closed from 1993 to 1997. Therefore criminal cases that are still under investigation or criminal cases that were closed due to lack of evidence are not reported. The Comptroller's Office does keep track of the financial impact on victims. The number of victims and the amount of financial loss vary depending upon the type of scam and the amount of money invested. The Comptroller's Office does not provide any of these statistics to the FBI or the FDLE for annual crime reports because the FBI and FDLE do not include crimes such as securities and banking fraud in their annual reports.

Interviews

The main representative for the Comptroller's Office was Lynn Chang, Financial Administrator, Division of Financial Investigations. Chang referred regulatory inspection questions to Kathleen Kight, Linda Charity and Bob Tedcastle. Bob Rosenau provided the statistics and information on the Comptroller's Office approach to preventing white-collar crime in Florida.

The Comptroller's Office receives numerous consumer complaints and inquiries each year. The Office has a 1-800 number (GET LEAN) for citizen complaints about government waste, a cemetery line for complaints against cemeteries and pre-need sales and a general number for complaints about companies and individuals. Calls that come in on the GET LEAN line are sent to the appropriate Inspector General's Office. Simple problems about regulated companies are handled immediately with a letter or telephone call to the company. If the complaint involves a regulatory problem then the main office or regional office will handle it, depending upon the severity of the case. If the complaint reveals criminal violations then the case is referred to the Division of Financial Investigations. Sometimes criminal securities investigations such as those pertaining to unlicensed stockbroker or stockbroker fraud, will stay in the Securities Division, and are not referred to Financial Investigations. The Division of Financial Investigations and the Division of Securities work with all federal, state and local law enforcement agencies on criminal investigations (L. Chang, personal communication, July 18, 1997).

The Comptroller's Office has three different types of regulatory inspectors: security examiners, bank examiners and finance examiners. According to Kathleen Kight, the Financial Administrator, Research, Planning and Staff Development, Division of Securities, financial examiner analysts have college degrees in accounting, economics, finance, insurance or risk management. They receive on the job training for recognizing criminal violations and work closely with the legal staff (K. Kight, personal communication, October 15, 1997).

Linda Charity, Bureau Chief of Research, Planning and Staff Development, Division of Banking, provided information on bank examiners. Bank examiners have degrees in accounting, economics, finance insurance or risk management and are required to attend a white-collar crime course in Washington, D.C. presented by the Federal Financial Institution Examination Council. Bank examiners not only receive on the job training but often work with federal bank examiners on cases (L. Charity, personal communication, October 15, 1997).

Bob Tedcastle, the Financial Administrator, Division of Finance, provided information on finance examiners. Finance examiners have college degrees in accounting, economics, finance insurance or risk management. The examiners do not receive any formal training on recognizing criminal violations of the law. They do attend seminars presented by the American Association of Mortgage Regulators and attend fraud investigation classes through the Council on Licensure Enforcement and Regulation (CLER). The examiners work with the legal counsel in each regional office, receive on the job training from experienced examiners and attend annual training session on red flags to look for during examinations. If one of the examiners discover criminal violations they will usually continue to gather information, complete the examination and send the information to Financial Investigations (B.Tedcastle, personal communication, October 15, 1997).

Financial investigators have at least a four-year college degree and two years of experience conducting law enforcement investigations. These investigators receive very little formal training. Some of the investigators attend financial investigation seminars at the Federal Law Enforcement Training Center. Every investigator attends continuing education classes on interviewing skills, financial examinations, money laundering, case management and supervision and accounting (B.Tedcastle, personal communication, October 15, 1997).

According to Chang, the Division of Financial Investigations requests assistance from all levels of law enforcement on its cases. Law enforcement agencies will provide assistance for executing a search warrant, interviewing suspects or running a wiretap. Usually, local law enforcement agents and agents from the Florida Department of Law Enforcement are not knowledgeable on white-collar crime investigations so the Division of Financial Investigations will handle it “in-house” (L. Chang, personal communication, July 18, 1997).

Chang gave some examples of cases the Division of Financial Investigations has worked with law enforcement agencies.

1 – They had a check cashing case on a title loan company and no one in law enforcement would assist in the investigation of the company. Five different law enforcement agencies were approached and asked for assistance on a search warrant. Finally, the Florida Highway Patrol took the case and investigated the title loan element of the case.

2 – In Tampa, Florida they had a securities fraud case that was rejected by FDLE and the State Attorney’s Office. They took the case to the FBI and the United State Attorney’s Office. The defendant was sentenced to 30 years in prison (L. Chang, personal communication, July 18, 1997).

Chang believes that the best criminal cases are developed when law enforcement is involved in the initial phase of the case’s development. The FDLE Integrated Approach Panel was one method for getting agencies to work together in the early stages of a case but FDLE primarily used the panel for in house sharing of cases. According to Chang, the level of cooperation from prosecutors is better than ever before. Sometimes the investigators have to educate a new prosecutor. Some State Attorney’s Offices will not accept white-collar crime cases because the cases are too big and complicated (L. Chang, personal communication, July 18, 1997).

Chang summarized the Comptroller’s Office concerns on investigating and prosecuting white-collar crime cases. She stated that,

> White-collar crime receives too little attention. The cases are very hard to get prosecuted because violent crime is a priority. We have had cases where people commit suicide when they lose their life’s savings but the criminal justice system still does not recognize the importance of the cases (L. Chang, personal communication, July 18, 1997).

The prosecution of white-collar crimes is very frustrating. The Comptroller’s Office has found,

> …prosecutors to be uncooperative particularly federal prosecutors. The FBI and IRS will take information but will not give any feed back on cases. Both federal and state courts give out only minimal sentences which are the equivalent to a slap on the wrist” (L. Chang, personal communication, July 18, 1997).

Robert Rosenau provided some insight on the Comptroller’s Office strategies to fight white-collar crime now and in the future. The Comptroller considers it his business to know the extent to which financial damage is inflicted upon the citizens of the state. So, the Comptroller’s Office conducted a thorough search for white-collar crime financial crime databases in the State of Florida. They were surprised to find that Florida does not have an integrated all-source financial white-collar crime database and could not determine the financial damages in Florida (R. Rosenau, personal communication, May 7, 1997).

The Comptroller’s Office realized that they did not know enough about the offenders or victims of white-collar crime to determine how to approach the problem. They decided to develop programs that would help gather information and reveal patterns of activity. The consumer complaint hotlines in the Comptroller’s Officer were streamlined with experts from securities, banking and finance. They developed a standardized complaint form for citizens to file complaints. The Comptroller's Office is developing a standardized statewide complaint handling procedure among all the regional offices. These streamlined hotlines and standardized complaint procedures will help capture vital financial information and statistics which will be sent to an all-source integrated Financial Information Unit (FIU) located in the Department's headquarters. The plan is for the FIU to be the foundation for the Department of Banking and Finances Financial Information and Analysis Program. This program will predict and provide early warning of white-collar crime within Florida and provide proactive support. Part of this program will be the development of a statewide financial information and analysis network (R. Rosenau, personal communication, May 7, 1997).

Once the Department of Banking and Finance's Financial Information and Analysis Network has become operational it is hoping to network via computers with law enforcement, other regulatory agencies, and Florida communities. The Department of Banking and Finance's goal is to have a statewide network that can accumulate statistics and provide the critical early warning signs of white-collar crime (R. Rosenau, personal communication, May 7, 1997).

Discussion

The interviews conducted for this project revealed several common denominators shared by regulatory and law enforcement agencies. All interviewees indicated that white-collar crime is not given the attention it needs in Florida. Regulatory and law enforcement agencies need to work together by sharing intelligence information and investigation talents to reduce white-collar crime in Florida. All agency representatives expressed a desire to see a more *centralized coordinated* approach to combat white-collar crime.

The FDLE and DOI representatives provided some insight on how citizens with complaints or inquiries are referred from one agency to another. Sometimes agencies handle complaints or inquiries on a regional level. In some cases, citizens are referred to other local or state agencies and sometimes agency headquarters handle the problem. One consumer could easily contact the Department of Business and Professional Regulation with a question and be referred to the Comptroller's Office, the Department of Insurance, the Department of Agriculture and Consumer Affairs or a local consumer services program. Consumers are also unable to access information on companies and company officers that have criminal histories because that information is not collected by anyone (M. Jordan, personal communication, October 23, 1997).

The regulatory agencies representatives stated that law enforcement agents do not know how to investigate white-collar crime cases. Law enforcement indicated that regulatory agents do not understand criminal investigative procedures. Both groups stated that the more successful cases involve regulators and law enforcement working together from the beginning of each case.

All parties agree that the Integrated Approach Panel initially worked. The Panel encouraged regular interaction on cases between law enforcement and regulatory agencies, which led to better cases. The cases were strong because both regulatory and law enforcement agents had shared their expertise and skills from the early stages of the case and mistakes were avoided. The panel might be a good starting point for education programs that cross-train regulators and law enforcement officers on how to investigate complex financial crimes in addition to developing cases together.

The statistical reports showed that no one is collecting complete data on white-collar crime in Florida. The Crime in Florida Reports do not include critical information from regulatory agencies, which provide reports that track different categories such as securities fraud, banking fraud, insurance fraud and health care fraud. So there is no uniformity of data collection.

The financial impact reports from the Comptroller's Office indicate a serious problem with financial crimes in Florida. The average amount of money lost by victims of financial crimes in the past four years is over 34 billion dollars. According to the Department of Insurance, fraud costs the people of Florida 6.4 billion annually or about $1,450 per family. (Letter from Commissioner Bill Nelson to Statewide Prosecutor Melanie Hines, April 10, 1997). Unfortunately there is no coordinated process among regulatory and law enforcement agencies for keeping track of the amount of financial loss to victims of financial crimes in Florida.

The Comptroller's Office has taken the initial steps towards creating a centralized database of information on financial crimes. They are going to need the cooperation of other regulatory agencies such as the Department of Business and Professional Regulation, the Department of Insurance, the Department of Agriculture and Consumer Services and law enforcement to make the database complete and develop a successful network (R. Rosenau, personal communication, May 7, 1997).

Leaders in the law enforcement community and regulatory agencies need to develop a standardized coordinated process for collecting data on the number of opened criminal cases, the number of criminal cases filed in court and case dispositions. The Comptroller's Financial Information and Analysis Program might be a good starting point for all law enforcement and regulatory agencies to consider. The program, if successful, could provide criminal profiles, victim profiles, highlight concentrated areas of crime and help Florida take a proactive stance on white-collar crime.

Florida needs to develop a coordinated plan of attack against white collar crime, with regulatory and law enforcement agencies working together by sharing information, educating regulators and criminal investigators and tracking patterns of crimes. As long as regulatory and law enforcement agencies work separately instead of together, the State of Florida will maintain its reputation as a haven for white-collar crime. The citizens of Florida deserve to live in a state that strongly discourages white-collar criminals from preying on the individuals, businesses and government.

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