



2019 ANNUAL CONFERENCE

***“White Collar Crime”
“What Color Is Your Collar?”***

Presented by

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atkinson

CERTIFIED PUBLIC ACCOUNTANTS | CONSULTANTS

A member should be alert for fraud only if something comes to his/her attention?

TRUE

FALSE

The perception that fraud is likely to be detected is the most important deterrent to fraud?

TRUE

FALSE

Research shows that a criminal's social class is the determinant aspect of white collar crime?

TRUE

FALSE

Organizational Opportunity

WHAT COLOR IS YOUR COLLAR?

White Collar Crime – Crime in the upper, white collar class, composed of respected business and professional men.

Economic Crime – Non violent?

This is an offense class for which there is no equivalence in the law.

Organizational	Occupational
Organizational opportunity is so important Organizations have power in our society and can commit crime	Crimes committed by individuals

OUR BEST DEFINITION

White-collar crime violations are those violations of law... that involve the use of a violator's position of economic power, influence, or trust in the legitimate economic or political institutional order for the purpose of illegal gain, or to commit an illegal act for personal or organizational gain.

ORGANIZATIONAL CRIME

- Misrepresentation of a product
- Poor quality product
- Toxic products
- Anti-trust violations
- Insider trading
- Money laundering
- Loan advances – Function as bribes
- Price fixing
- Foreign payoffs
- Computer fraud
- Illegal political contributions
- Tax crimes
- Independent businessmen and professionals - investments, insurance, legal, financial, doctors

Organizations face numerous risks to their success; economic risk, disaster risk, supply-chain risk, regulatory risk, and technology risk all affect organizations in different ways and to varying degrees. While fraud risk is just one of the many entries on the list, it is universally faced by all business and governmental entities. **Any organization with assets is in danger of those resources being targeted by dishonest individuals.** And, unfortunately, a notable portion of that threat comes from the very people who have been hired to carry out the organization's operations. It is risk—the risk of occupational fraud is dishonest individuals.

OCCUPATIONAL FRAUD TYPES

- Individuals stealing from clients and customers
- Fraudulent disbursements
- **Corruption** – Various wrongful acts designed to cause an unfair advantage
- **Bribes** – Give and receive corrupt payments to influence an official act or business decision
- **Embezzlement** – Trusted employee crime - stealing
- **Kickbacks** – Illicit payment to a facilitator
- **Conspiracy** – A secret plan to do something unlawful
- **Racketeering** – Criminal form of business repeated continuously
- **Ponzi Schemes** – Attract new cash inflows based on deception
- **Extortion** – Corrupt act expensed by pressure or threats
- **Conflicts of Interest** – An undisclosed economic interest exists in the matter
- **Theft of data** and intellectual property

CONTRIBUTING FACTORS TO WHITE COLLAR CRIME

- Economy runs on debt
- New information technologies expand opportunity for wrongdoing
- Government programs distributing large amounts of money make enticing targets
- The importance of credentials
- We have a culture based on ever increasing affluence and success
- The amounts of profits and cash transactions for the largest corporations is staggering.

ORGANIZATION OPPORTUNITIES

- Large organizations become decentralized
- Large organizations cultivate specialization which leads to a “management gap”
- Tiered structure of most organizations obscures personal responsibility
- Most organizations might be predisposed to crime because of the “bottom-line” ...as a means of obtaining goals.

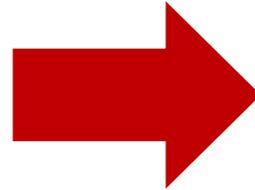
ORGANIZATIONAL ATTITUDES

- A corporation values loyalty
- The safety of the company means my safety
- Employees can be trained in criminal behavior on a defacto basis – if someone doesn't want to enforce questionable acts – they can get someone else
- Organizational subculture and values are developed over time
- It comes down to the CEO

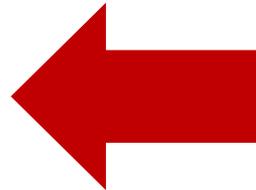
If illegal behavior consistently resulted in decreased patronage or even consumer boycotts, consumer pressure would be an effective tool in the control of illegal corporate behavior. But, consumers are often unaware when a corporation's products are unsafe or when it has been violating antitrust laws or polluting the environment. Without organized behavior, a consumer's withdrawal of individual patronage is generally ineffective.

DYNAMICS

***Corporations
Drive The
Economy
And
Innovation***

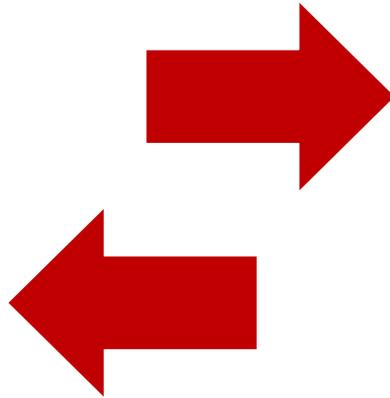


***Power
To
Influence***



DYNAMICS

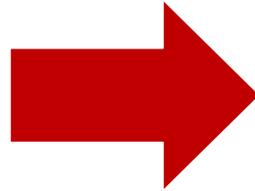
***Emphasis
On Risk
Taking
And
Material
Affluence***



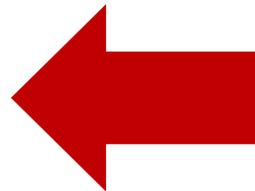
***Emphasis
On Fairness
In
Competition
And Society***

DYNAMICS

***Those
Who Want
The
Highest
Rewards***



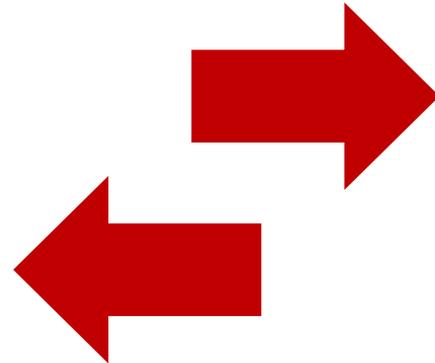
***Those
Who
Value
Honesty
And
Integrity
The Most***



***“The earth is flat”
“The earth is round”***

DYNAMICS

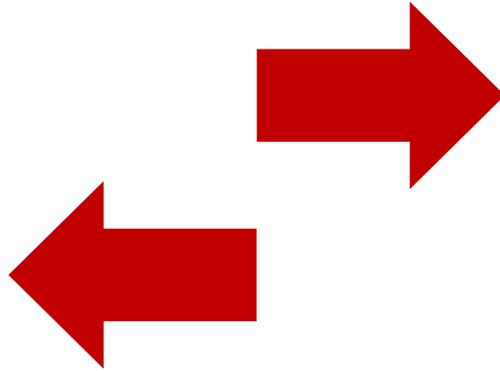
***Insistence
On
Forthrightness
Plus Fair Play***



***Market
Based
Economic
Competition***

PERCEPTIONS

***Toxic
Waste
Offenses
That
Produce
Death Are
Serious
Offenses***

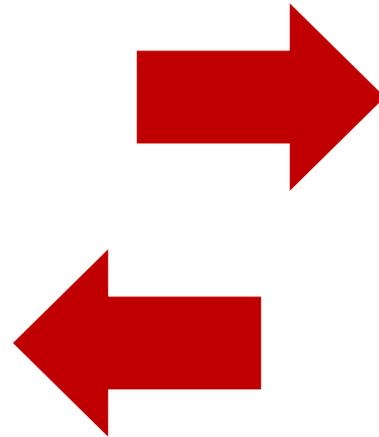


***Is The
Corporate
Executive
An Evil
Person?
A Criminal?***

DYNAMICS

Goals set too high

*Risk
Being
Considered
Incompetent*



*Take
Unethical
Shortcuts*

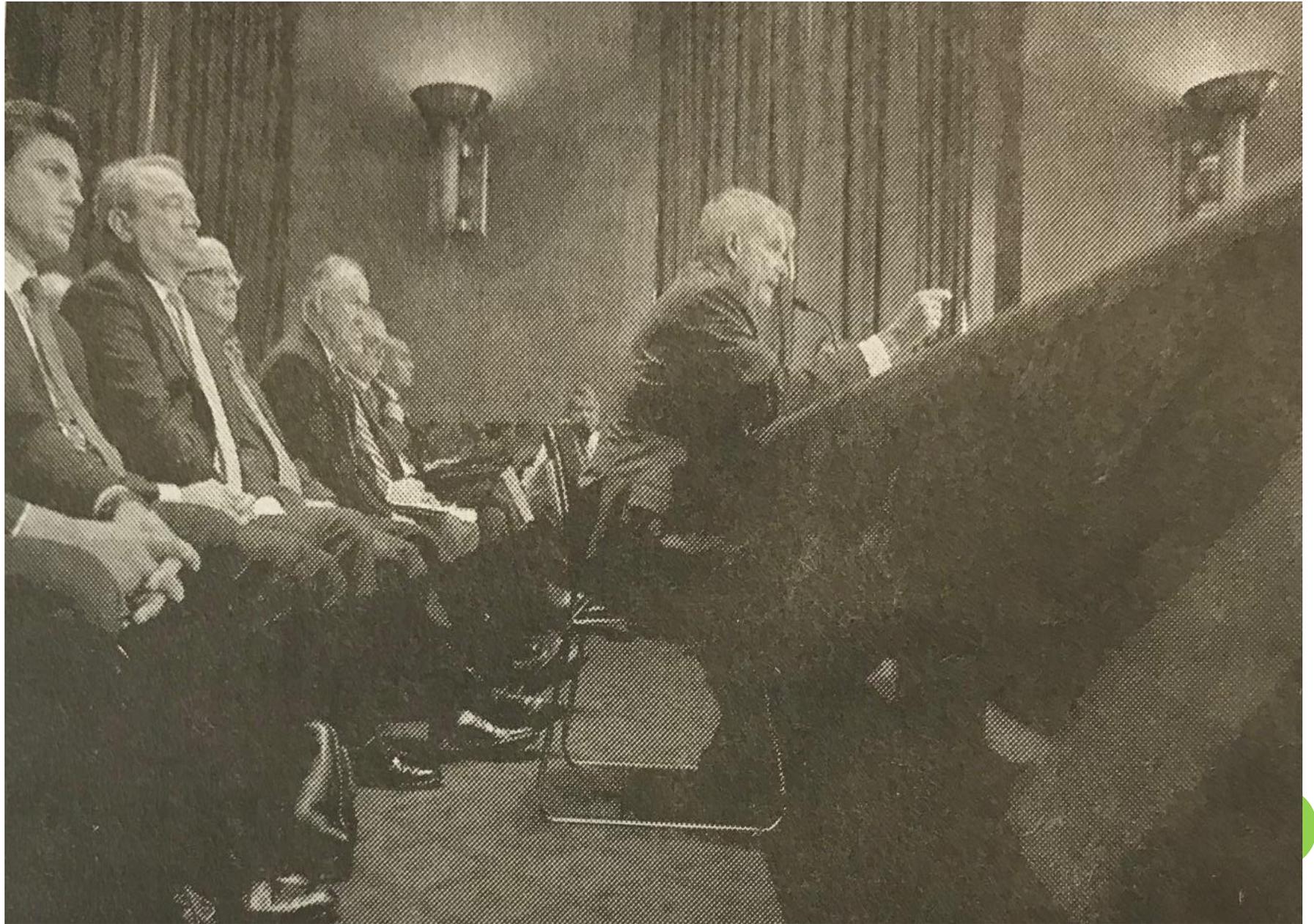
AGGRESSIVE SALES TARGETS AT WELLS FARGO

- 30,000 Fake Accounts - 2017
- Unwarranted Fees - 2018
- Unwanted Products - 2018
- Misleading correspondence to bank customers

WELLS FARGO TO DATE

- 1.6 billion in fines paid
- 662 million in settlements paid
- CEO paid 17 million in 2018, an increase of 36% over prior years





VOLKSWAGEN

***Failed
Diesel
Emission
Data***



“Dieselgate”

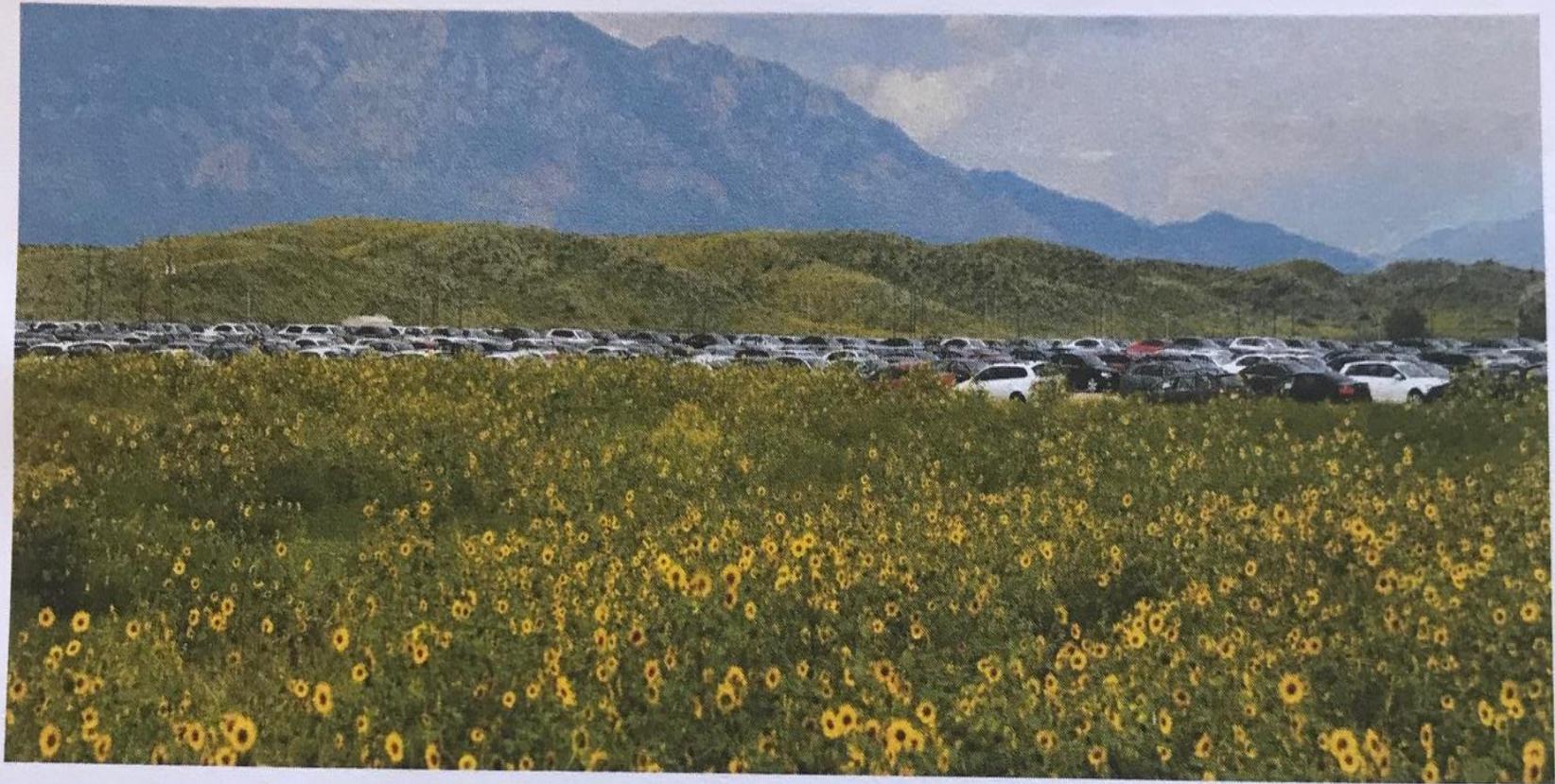
DIESELGATE

UNITED STATES

- 500,000 cars had to be repurchased
- 10 billion in fines

GERMANY

- Germany's laws that might come in to play requires an outright "swindle" of money that can be calculated.
- Cars polluted up to 40 times more than the allowable limit.



Hundreds of Golfs, Beetles, Jettas, Passats Volkswagen cars and some Audi A3s are parked in a parking lot north of the Pikes Peak Raceway on August 24, 2017, in Colorado Springs, Colorado. (RJ Sangosti/The Denver Post via Getty Images)

The Guardian



Barclays bank reaches \$100m US settlement over Libor rigging scandal

ACTIONS USED BY BUSINESSES TO RATIONALIZE CONDUCT

- Government regulations are unjustified because the additional costs of regulations and bureaucratic procedures cut heavily into profits.
- Regulation is unnecessary because the matters being regulated are important.
- Although some corporate violations involve large sums of money, the damage is so diffused among a large number of consumers that, individually, there is little loss.
- Violations are caused by economic necessity; they aim to protect the value of stock, to ensure an adequate return for stockholders, and to protect the job security of employees by ensuring the financial stability of the corporation.

CORPORATIONS CANNOT BE JAILED

- Corporate crimes are difficult to uncover and prosecute
- They may be fined
- They may be restrained
- Consent agreements
- It is difficult to determine who might be responsible for wrongdoing – Upper level executives take steps to make sure they don't know of details

PERSONAL SUFFERING

The white-collar criminal by virtue of his conviction has suffered a loss of position, usually loss of employment, sometimes status in his profession, other times the ability to ever find employment in anything requiring a fidelity bond or what have you. Whereas the common street criminal hasn't had a career loss of a similar nature; indeed, in some areas the conviction of a crime is some sort of a badge of maturity.

WALL STREET EXECUTIVES NOT JAILED

- **Enron** – Arthur Anderson deleted emails and shredded thousands of documents in a bid to cover up crimes.
- **June 2002** – Firm guilty of obstructing justice
- **2005** – Supreme Court overrides verdict due to faulty jury instructions – Arthur Anderson as victims?
- Sustained public relations push by the Company, white collar criminal defense bar case prosecution in a negative light – government went too far – innocent people were put on the street.
- In the **mortgage scandal** that grew out of the 2008 recession, no high ranking banking executives were prosecuted.

WHITE PAPER: THE SEVEN ELEMENTS OF AN EFFECTIVE COMPLIANCE AND ETHICS PROGRAM

The Federal Sentencing Guidelines have become an important barometer used by Federal prosecutors and regulators in determining whether a company should be charged with a crime at the conclusion of an investigation, and if so, the severity of the civil enforcement action.

This document describes the seven elements of an effective compliance and ethics program.

FEDERAL SENTENCING GUIDELINES

The seven elements are summarized as follows:

1. Establish policies, procedures and controls
2. Exercise effective compliance and ethics oversight
3. Exercise due diligence to avoid delegation of authority to unethical individuals
4. Communicate and educate employees on compliance and ethics programs
5. Monitor and audit compliance and ethics programs for effectiveness
6. Ensure consistent enforcement and discipline of violations
7. Respond appropriately to incidents and take steps to prevent future incidents

DOWNWARD DEPARTURES

The guidelines list the following factors that could justify a downward departure:

- Substantial assistance to the authorities in the investigation or prosecution of another organization.
- The organization is a public entity.
- Members or beneficiaries (other than shareholders) of the organization are direct victims of the offense. A downward departure in these cases may be warranted because a fine might increase the burden on the victims.
- The organization has agreed to pay remedial costs that greatly exceed the organization's gain from the offense.
- The organization has an exceptionally low culpability score because: there was no involvement by anyone with substantial authority in the organization; there was an effective compliance program in place; and the base fine was determined by some means other than the organization's gain from the offense.

UPWARD DEPARTURES

When a court imposes a fine that is greater than the maximum fine provided by the guidelines, this is known as an upward departure. The guidelines list the following as factors that could justify an upward departure:

- The offense involved a foreseeable risk of death or bodily injury
- The offense constituted a threat to national security
- The offense presented a threat to the environment
- The offense presented a risk to the integrity or continued existence of a market
- The offense involved official corruption
- The organization's culpability score was reduced because it had an effective compliance program, but the program was only implemented because of a court order or administrative order. In cases such as this, the court impose an upward departure to offset all or part of the reduction.
- The organization's culpability score is greater than ten.

RESTITUTION

The guidelines require that, whenever possible, the organization must pay full restitution to the victims of the crime. Restitution is not viewed as a form of punishment in the guidelines, but rather as a means of remedying the harm caused by the offense.

OCCUPATIONAL FRAUD

1. Perceived non-shareable threat
2. Perceived opportunity
3. Rationalization

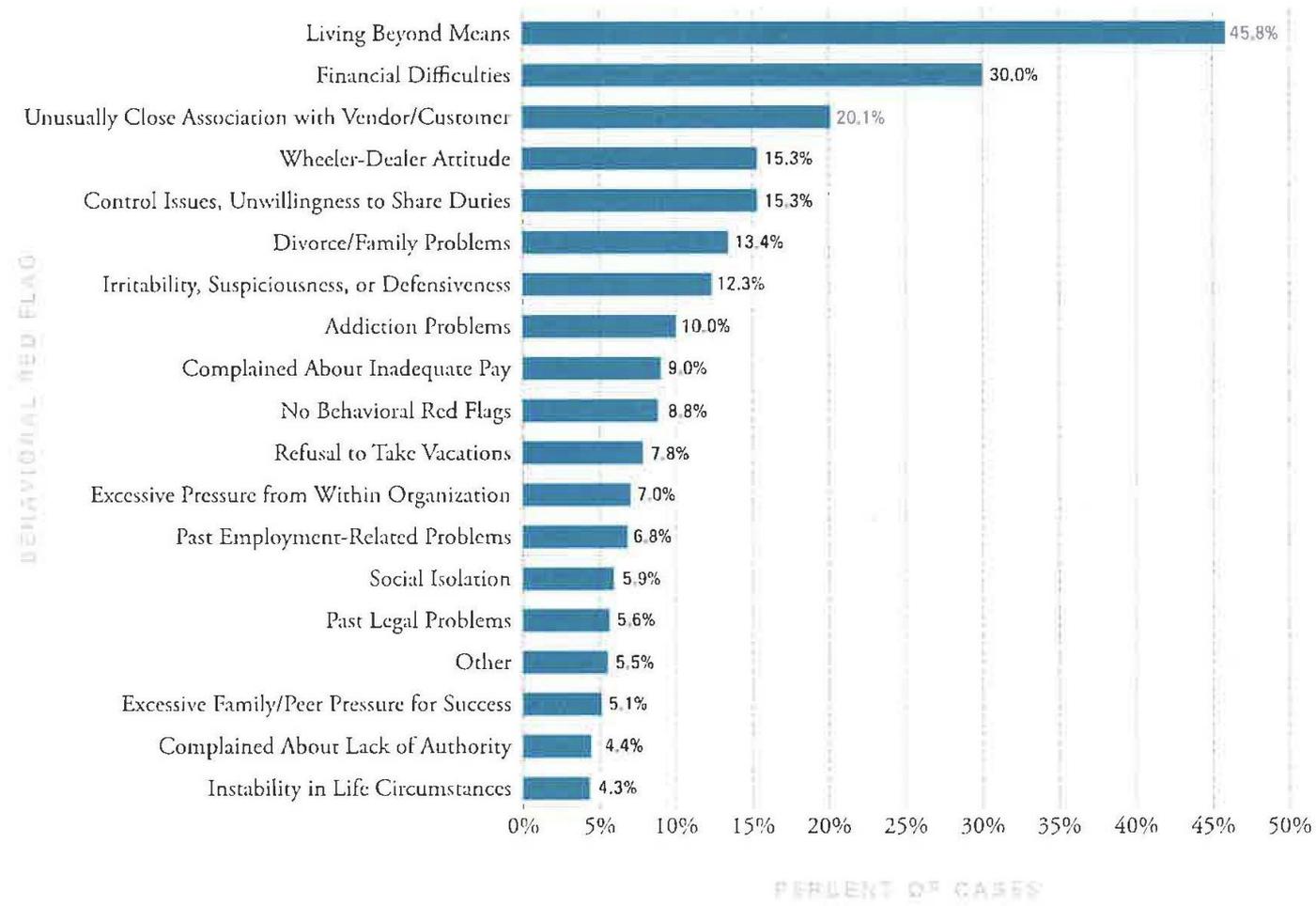


A Study of 200 Embezzlements

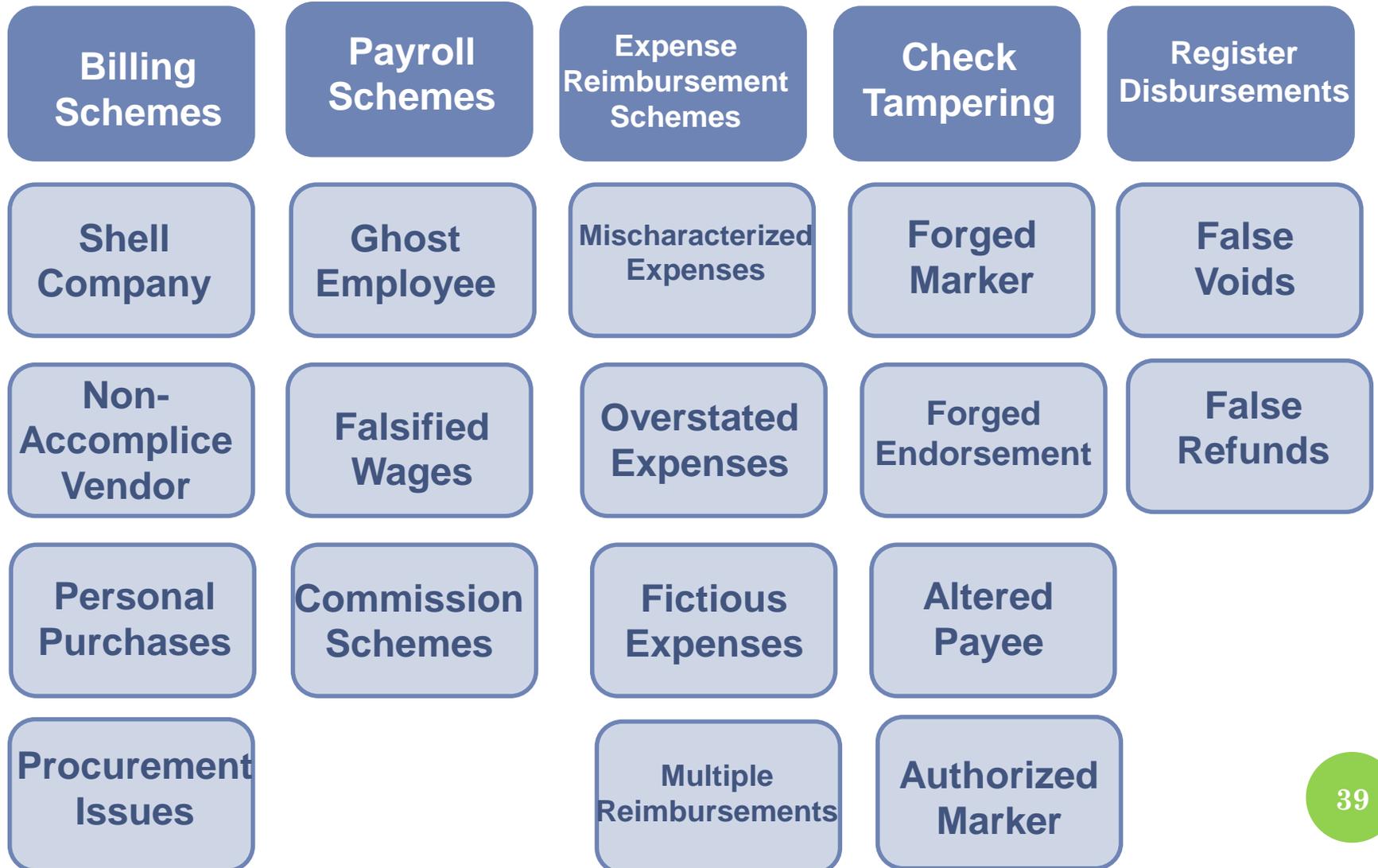
1953 STUDY OF EMBEZZLEMENT – DONALD CRESSEY

The most striking fact about offenders is not the value of their assets but the extent of their liabilities.

Figure 94: Behavioral Red Flags Displayed by Perpetrators



FRAUDULENT DISBURSEMENTS



LOANS

Corrupt payments often take the form of loans. Three types of loans often turn up in corruption cases:

- An outright payment that is falsely described as an innocent loan
- A legitimate loan in which a third-party—the corrupt payer—makes or guarantees the loan's payment
- A legitimate loan made on favorable terms (e.g., an interest-free loan)

MONEY LAUNDERING

Is the disguising of:

- Existence
- Nature
- Source
- Control
- Ownership

Of property (money) derived from criminal activity.

Money laundering operations are designed to take proceeds of illegal activity (drug trafficking) and change them to appear to come from legitimate sources.

USE A FRONT BUSINESS TO LAUNDER FUNDS

- Overstating revenue and expenses
- Depositing cash but not recording revenues
- Indirect investments in real estate
- ATMs
- Digital currencies
- Facilitating offshore accounts

MONEY LAUNDERING SCHEMES

- Using a fraudulent business to launder funds
- Bars, restaurants, nightclubs
- These business have a wide range of sales items. High traffic.

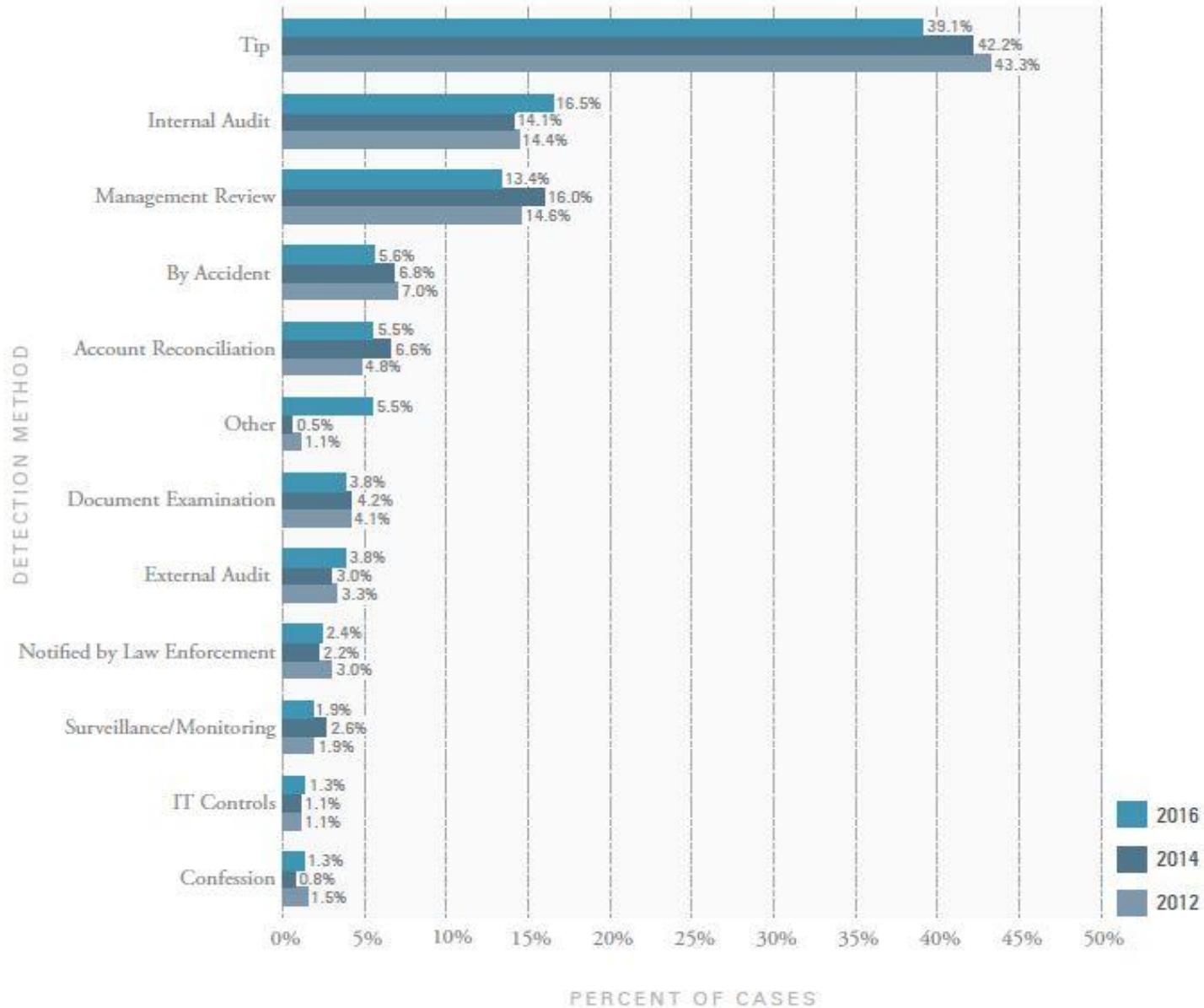
MARCH 12, 2019 COLLEGE SCANDAL

- College cheating scandal snares Academy Award Nominee actress, CEOs, coaches
- 33 parents, 8 schools charged - Texas, Stanford, USC, Wake Forest, Georgetown, Yale, UCLA, San Diego
- Money used to bribe entry cheating on ACT/SAT
- Athletic scholarships based on false identity
- Buying admission into schools

***Within any group
analyze
“where the money is
and how it flows”***

***Increase organizational
intelligence***

Figure 21: Initial Detection of Occupational Frauds



EXAMPLES OF KEYWORDS THAT INDICATE AN OPPORTUNITY TO COMMIT FRAUD INCLUDE:

- Override
- Write-off
- Recognize Revenue
- Adjust
- Discount
- Reserve/Provision
- Quota
- Deserve

EQUIFAX

- On September 7, 2017 Equifax disclosed that hackers had gained access to data for 148 million customers, half of all Americans.
- Hackers got into Equifax because the Company was slow to patch a vulnerability in Apache Struts, a web software.
- 2 insider trading cases in the SEC

EQUIFAX

- Recommended that your credit accounts be frozen – No one would be able to access your accounts without clearance, 8% have done this.
- 60% look at their accounts more often.

BOEING

Sold 2 of 3 safety devices as add-ons –
not standard

Is this a crime?

There is an intangible asset not recorded
on the balance sheet

Your brand reputation

WIKIPEDIA

Bernie Madoff

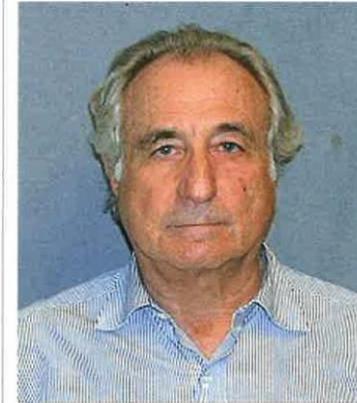
Bernard Lawrence Madoff (/ˈmeɪdɔːf/^[1] born April 29, 1938) is an American former market maker, investment advisor, financier, fraudster, and convicted felon, who is currently serving a federal prison sentence for offenses related to a massive Ponzi scheme.^[2] He is the former non-executive chairman of the NASDAQ stock market,^[3] the confessed operator of the largest Ponzi scheme in world history, and the largest financial fraud in U.S. history.^[4] Prosecutors estimated the fraud to be worth \$64.8 billion based on the amounts in the accounts of Madoff's 4,800 clients as of November 30, 2008.^[5]

Madoff founded a penny stock brokerage in 1960 which eventually grew into Bernard L. Madoff Investment Securities. He served as its chairman until his arrest on December 11, 2008.^{[6][7]} The firm was one of the top market maker businesses on Wall Street,^[8] which bypassed "specialist" firms by directly executing orders over the counter from retail brokers.^[9]

At the firm, he employed his brother Peter Madoff as senior managing director and chief compliance officer, Peter's daughter Shana Madoff as the firm's rules and compliance officer and attorney, and his now deceased sons Andrew and Mark. Peter has since been sentenced to 10 years in prison^[10] and Mark committed suicide by hanging exactly two years after his father's arrest.^{[11][12][13]} Andrew died of lymphoma on September 3, 2014.^[14]

On December 10, 2008, Madoff's sons told authorities that their father had confessed to them that the asset management unit of his firm was a massive Ponzi scheme, and quoted him as saying that it was "one big lie".^{[15][16][17]} The following day, FBI agents arrested Madoff and charged him with one count of securities fraud. The U.S. Securities and Exchange Commission (SEC) had previously conducted multiple investigations into his business practices but had not uncovered the massive fraud.^[8] On March 12, 2009, Madoff pleaded guilty to 11 federal felonies and admitted to turning his wealth management business into a massive Ponzi scheme. The Madoff investment scandal defrauded thousands of investors of billions of dollars. Madoff said that he began the Ponzi scheme in the early 1990s, but federal investigators believe that the fraud began as early as the mid-1980s^[18] and may have begun as far back as the 1970s.^[19] Those charged with recovering the missing money believe that the investment operation may never have been legitimate.^{[20][21]} The amount missing from client accounts was almost \$65 billion, including fabricated gains.^[22] The Securities Investor Protection Corporation (SIPC) trustee estimated actual losses to investors of \$18 billion.^[20] On June 29, 2009, Madoff was sentenced to 150 years in prison, the maximum allowed.^{[23][24]}

Bernie Madoff



U.S. Department of Justice photograph, 2009

Born	Bernard Lawrence Madoff April 29, 1938 New York City
Alma mater	Hofstra University
Occupation	Stock broker, investment adviser, financier
Employer	Bernard L. Madoff Investment Securities
Known for	Being the chairman



Duke University is paying the U.S. \$112.5 million to resolve allegations that it violated the False Claims Act by submitting falsified research data to win or keep federal grants. Here, a photo shows the Duke University Hospital in Durham, N.C., in 2008, when some of the fraud was alleged to have taken place.

Chris Keane/Reuters

Duke University is paying the U.S. government \$112.5 million to settle accusations that it submitted bogus data to win federal research grants. The settlement will also



HEALTH

Purdue Pharma Agrees To \$270 Million Opioid Settlement With Oklahoma

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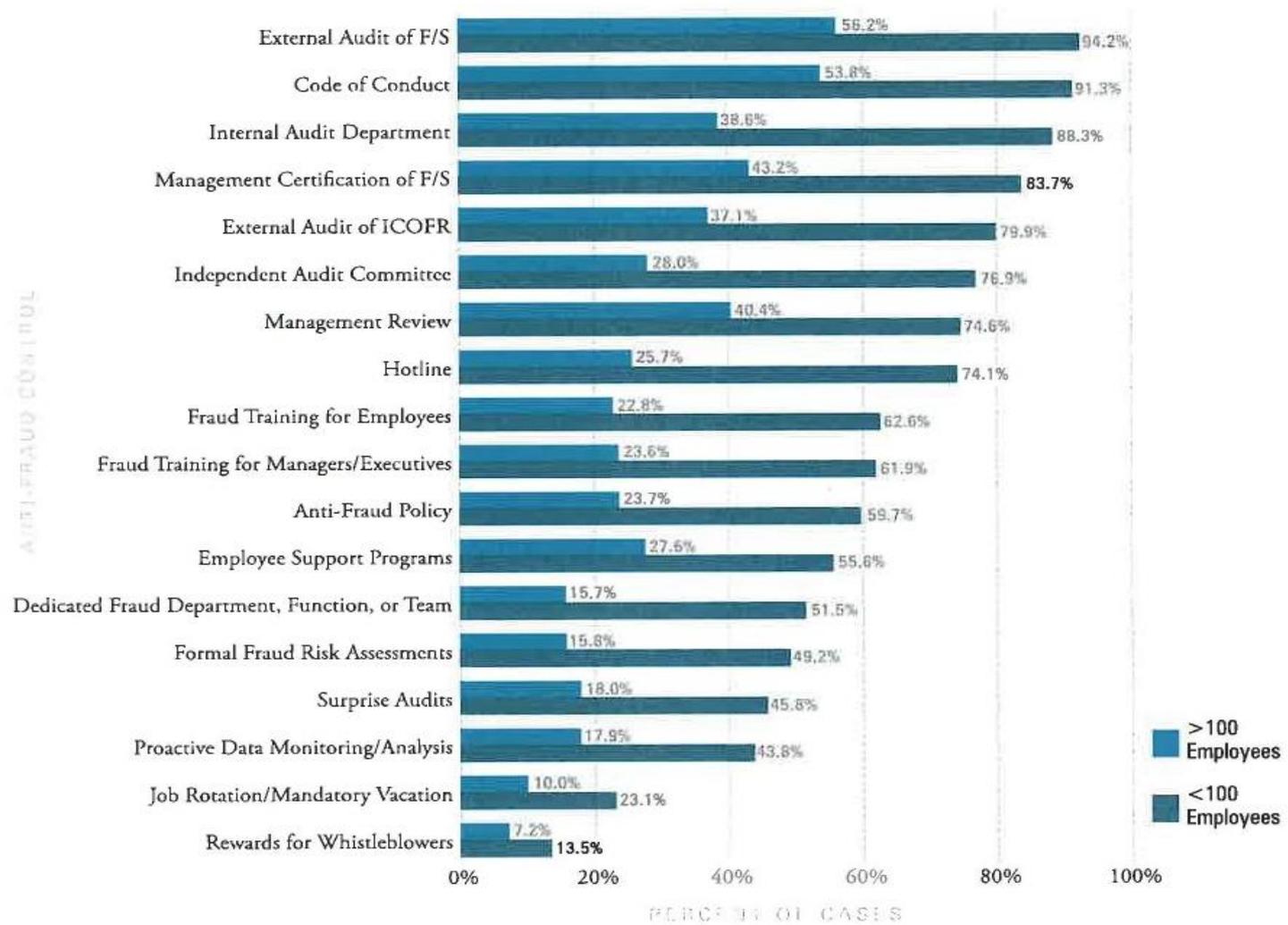
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<https://www.npr.org/2019/03/25/706604033/duke-whistleblower-gets-more-than-33-million-in-research-fraud-settlement>

Figure 48: Frequency of Anti-Fraud Controls by Size of Victim Organization



THANK YOU

