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## COLLARED—A Film Case Study about Insider Trading and Ethics

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# ARTICLE

*Garrick Apollon*

## COLLARED— A Film Case Study about Insider Trading and Ethics

**Abstract.** This Article discusses the visual legal advocacy documentary film, *Collared*, by Garrick Apollon (author of this Article). *Collared* premiered in fall 2018 to a sold-out audience at the Hot Docs Cinema in Toronto for the Hot Docs for Continuing Professional Education edutainment initiative. *Collared* features the story and reveals the testimony of a convicted ex-insider trader who is still struggling with the tragic consequences of “the most prolonged insider trading scheme ever discovered by American and Canadian securities investigators.” The intimate insights shared by former lawyer and reformed white-collar criminal, Joseph Grmovsek, serves as a painful reminder of the unattended human consequences and gravity of insider trading that is too often perceived as a victimless crime. This Article explains how *Collared*, as a legal advocacy film, can be a game-changer for education and prevention of white-collar crime, such as insider trading. *Collared* is presented as a film case study that is followed by a post-screening discussion panel about insider trading prevention and risk mitigation measures for legal and business professionals. The combination of the film and panel provides an accredited CLE/CPE program. This Article focuses on visual legal advocacy as a tool to promote professional ethics to professionals and students. This Article also argues that ethics can be more effectively understood through storytelling to illustrate how ethical decision-making can impact someone’s life, and how the line between ethical and unethical decision-making can be complex, confusing, and become blurred over time.

**Author.** Garrick Apollon is a practicing corporate lawyer of the Law Society of Ontario, Canada, a documentary filmmaker, and adjunct professor at the University of Ottawa's Faculty of Law, French Common Law Section, and a part-time professor of Corporate Governance and Ethics at the Telfer School of Management MBA and Executive MBA Programs.

Professor Apollon is a Fellow with Hot Docs for Continuing Professional Education and earned his J.D. from the University of Ottawa; LLB (Civil Law) from l'Université Laval, LLM (Master of International Business Law) from l'Université Laval, and LLCM (Master of Comparative Law) from the University of Pennsylvania Law School (Penn Law) where he studied visual legal advocacy and law-genre documentary filmmaking with Professor Regina Austin, director of the Penn Program on Documentaries & the Law.

Professor Apollon would like to note that the views expressed in this Article are solely his own and would like to dedicate this Article to his daughters Maïka and Felisia, who are proud of their father's creative skills as a lawyer-filmmaker. Professor Apollon and Étienne Trépanier are the filmmakers and co-producers of *Collared*. You can view the trailer here: <https://www.youtube.com/watch?v=9FBhiaTPqDY> [<https://perma.cc/KP9T-L3C5>] and the course description here: <https://courses.udocsfilm.com/courses/collared-lawyers> [<https://perma.cc/F5W3-BXVL>].

Professor Apollon is the co-founder of UDocs Media, an edutainment film production social enterprise promoting the research and production of content for continuing professional education (CPE) and continuing legal education (CLE) initiatives to advance the rule of law, professional ethics, social justice, corporate social responsibility, and sustainable development. *Collared* is the first documentary film marking the launch of Hot Docs Continuing Professional Education initiative.

As an initiative recently started by the Toronto-based Canadian charity, the Hot Docs Canadian International Documentary Festival (Hot Docs) has become the largest documentary festival in North America. Hot Docs is also one of the most prestigious documentary film festivals and institutes in the world. Hot Docs' mission statement is to leverage documentary films as a vibrant advocacy medium to educate people and promote positive change in our society.

## ARTICLE CONTENTS

I.	Introduction .....	5
II.	The Use of Visual Legal Advocacy and an Edutainment Law-Genre Documentary Film Like <i>Collared</i> for the Development of Interdisciplinary Continuing Professional Education (CPE) Courses.....	7
	A. What is Visual Legal Advocacy?.....	7
	B. What is Law-Genre Documentary Filmmaking? .....	11
	C. What is Edutainment?.....	13
III.	Launching the Documentary Film Project, <i>Collared</i> , at Osgoode Hall Law School.....	20
IV.	What Did the Students Learn in Working on the Documentary Film Project, <i>Collared</i> ? .....	22
V.	What Were the CLE/CPE and Visual Legal Advocacy Objectives of <i>Collared</i> as a Law-Genre Edutainment Documentary Film for White Collar Crime Prevention and Education?.....	25
	A. Chapter 1—A Victimless Crime?.....	30
	B. Chapter 2—Partners in Crime: A Buddy Story....	32
	C. Chapter 3—The White Shoes.....	34
	D. Chapter 4—It Was Not About the Money.....	35
	E. Chapter 5—How to Make a Killing.....	40
	F. Chapter 6—Harsh Time (Jail Stories) .....	42
	G. Chapter 7—The Bad Man Theory.....	43
	H. Chapter 8—The Fall .....	47
	I. Chapter 9—Redemption .....	48
VI.	What I Learned from my Experience as a Visual Legal Advocacy Lawyer and Documentary Filmmaker.....	49

VII.	Continuity and Visual Legal Advocacy Projects in Law Schools.....	50
VIII.	Epilogue.....	51

## I. INTRODUCTION

*I think it is very important that films make people look at what they've forgotten.*

—Spike Lee

Well-researched and well-produced documentary films can influence social change when coupled with an edutainment and social impact strategy.<sup>1</sup> Bono once said, “[m]usic can change the world because it can change people,”<sup>2</sup> while Spike Lee commented, “films make people look at what they’ve forgotten.”<sup>3</sup> Films not only change people—because they include music and offer a sensorial and reflectional human experience, they can make viewers connect with the challenges humanity faces.<sup>4</sup> These societal challenges include greed and corruption, attacks on our democracy and the rule of law,<sup>5</sup> poverty and wealth inequity, social inequalities, racism, experiences in employment, political instability and unrest, terrorism,

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1. See PATRICIA FINNERAN, STORY MATTERS, DOCUMENTARY IMPACT: SOCIAL CHANGE THROUGH STORYTELLING 26 (2014) (arguing documentary films “can have a substantial impact on social change”); see also Kate Nash & John Corner, *Strategic Impact Documentary: Contexts of Production and Social Intervention*, 31 EUR. J. COMMUN 227, 230 (2016) (discussing how well-researched and well-produced audio-visual content can have a social impact).

2. *Bono Quotes*, BRAINYQUOTE, [https://www.brainyquote.com/quotes/bono\\_141199](https://www.brainyquote.com/quotes/bono_141199) [<https://perma.cc/PXL2-34H9>].

3. *Spike Lee Quotes*, BRAINYQUOTE, [https://www.brainyquote.com/quotes/spike\\_lee\\_263499](https://www.brainyquote.com/quotes/spike_lee_263499) [<https://perma.cc/88ZS-LTSU>].

4. The author argues that documentaries use both visual images and audio tracks—perceived by human eyes and ears—to provide a more comprehensive sensorial experience (e.g., through sight, hearing, and even smell, touch, and taste).

5. See Kenneth M. Rosen, *Lessons on Lawyers, Democracy, and Professional Responsibility*, 19 GEO. J. LEGAL ETHICS 155, 156 (2006) (asserting the importance of preparing law students to fulfill their professional duty to work toward an “improved democracy” and the rule of law for everyone).

climate change, global pandemics (such as COVID-19),<sup>6</sup> and economic volatility. These challenges require new, innovative methods of delivering such information and viewpoints.<sup>7</sup> In other words, films are a powerful educational tool because they may “provide viewers with better role models to relate to, often at a personal and emotional level, than through information alone,” and “may help viewers become more receptive to new ways of thinking, as ideas are no longer abstract concepts but rather are experiences lived by individuals . . . .”<sup>8</sup>

Growing up, I watched films as a form of escape from the hard labor of working on our family farm. My first dreams as a child before entering university and then law school were to become an actor like Arnold Schwarzenegger or Denzel Washington and, at the same time, a socially-engaged filmmaker like Spike Lee. I decided to become a lawyer because I felt that lawyers were on a quest for justice. Thus, like my hero Nelson

6. This Article was researched before the COVID-19 pandemic and does not aim to respond to the challenges this pandemic presents. However, this Article is now even more relevant and timely because COVID-19 has compelled educational institutions (including law schools and continuing legal education (CLE) institutions) to suddenly utilize available technological tools to create e-learning content for students across the world. As noted by the World Economic Forum, not since World War II have so many countries seen educational institutions go into lockdown at around the same time and for the same reason. *4 Ways COVID-19 Could Change How We Educate Future Generations*, WORLD ECON. F., <https://www.weforum.org/agenda/2020/03/4-ways-covid-19-education-future-generations/> [https://perma.cc/R9K9-F3NF]. The emergence of e-learning means that visual content, such as the CLE/CPE documentary film program, *Collared*, is in high demand. In January 1996, Bill Gates wrote an essay entitled “Content is King,” effectively predicting the modern-day importance of content and the Internet. Luis Congdon, *Why What Bill Gates Said About the Internet in 1996 Is Truer Than Ever Today*, ENTREPRENEUR (Dec. 5, 2017), <https://www.entrepreneur.com/article/305300#:~:text=In%201996%20Bill%20Gates%20wrote,would%20be%20made%20with%20content> [https://perma.cc/SCK3-RL8V]. It is similarly likely that visual content, such as documentaries, will be “King,” leveraged as educational tools to assist e-learning. For instance, “Netflix has more than doubled the number of new subscribers it expected in the last three months as more people signed up amid the coronavirus pandemic.” Dominic Rushe & Benjamin Lee, *Netflix Doubles Expected Tally of New Subscribers Amid Covid-19 Lockdown*, GUARDIAN (Apr. 21, 2020, 4:55 PM), <https://www.theguardian.com/media/2020/apr/21/netflix-new-subscribers-covid-19-lockdown> [https://perma.cc/TN4Z-Y79F].

7. See generally THOMAS KOULOPOULOS & DAN KELDSEN, *THE GEN Z EFFECT: THE SIX FORCES SHAPING THE FUTURE OF BUSINESS* (2016) (discussing the challenges that humanity and new generations will face and the need to adapt to a new reality).

8. See WORLD BANK, *DEVELOPMENT IMPACT EVALUATION (DIME) ENTERTAINMENT EDUCATION PROGRAM: ENHANCING BEHAVIOR CHANGE CAMPAIGNS THROUGH EVALUATION RESEARCH 2* (2016) [hereinafter *ENHANCING BEHAVIOR CHANGE CAMPAIGNS*], <http://pubdocs.worldbank.org/en/547301468875680468/Entertainment-Edu-workshop-brochure-6-2-16.pdf> [https://perma.cc/5T3E-5UYW] (discussing the revolutionary power of combining education with entertainment).

Mandela, lawyers are the best-positioned professionals to bring about positive social impact and societal change. I never thought about the possibility of combining my passion for films with the law until, as a graduate law student, I met Professor Regina Austin at the University of Pennsylvania Law School (Penn Law). Regina Austin is a William A. Schnader Professor of Law and director of the Penn Program on Documentaries & the Law at Penn Law.<sup>9</sup> Professor Austin unlocked the possibility in my mind of combining my two passions to change the world. She opened my eyes to a world of creative possibilities by teaching me about the art of visual legal advocacy and law-genre documentary filmmaking. In 2016, Dean Lorne Sossin of Osgoode Hall Law School of York University in Toronto gave us a fellowship to do the research for and production of my documentary film, *Collared*.<sup>10</sup> Osgoode Hall Law School of York University established the Fund for Innovation in Law and Media (FILM) in 2015 “to assist its students, visual and digital technology experts, and members of the legal profession and judiciary in developing and delivering new visual advocacy approaches in the justice system.”<sup>11</sup>

## II. THE USE OF VISUAL LEGAL ADVOCACY AND AN EDUTAINMENT LAW-GENRE DOCUMENTARY FILM LIKE *COLLARED* FOR THE DEVELOPMENT OF INTERDISCIPLINARY CONTINUING PROFESSIONAL EDUCATION (CPE) COURSES

### A. *What is Visual Legal Advocacy?*

The Visual Law Project (VLP) at Yale Law School offers a simple and practical definition of visual legal advocacy as “effectively evaluating and

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9. See Regina Austin L'73, PENN LAW: UNIV. OF PA. CAREY L. SCH. [hereinafter *Regina Austin*], <https://www.law.upenn.edu/cf/faculty/raustin/> [https://perma.cc/QTW7-LLAP].

10. See *Collared/Documentary on Insider Trading*, THE HENCK CTR. FOR BUS. & L., <https://hennickcentre.ca/researchers/documentary/> [https://perma.cc/H5KD-FGNU] (providing information regarding how “the Fund for Innovation in Law and Media (FILM) established at Osgoode Hall Law School of York University” helped fund the production of *Collared*). Because of the extent to which this documentary is discussed at length throughout the Article, and due to the author’s extensive familiarity with the same, citations are largely omitted for concision.

11. *Osgoode Hall Law School Launches FILM—A New Visual Advocacy Initiative*, YORK UNIV. (Oct. 22, 2015), [https://digitalcommons.osgoode.yorku.ca/media\\_releases/61/](https://digitalcommons.osgoode.yorku.ca/media_releases/61/) [https://perma.cc/7KF2-H9CJ].

making arguments through videos and images.”<sup>12</sup> This approach is something novel and experimental to the legal profession and has yet to become an institutionalized practice, despite the efforts of Yale, Penn Law, and Professor Regina Austin working to incorporate it into legal education.<sup>13</sup>

Lawyers, above all, need to be good communicators.<sup>14</sup> Lawyers are required to advocate for their clients by communicating orally in court to a judge or jury or in writing through long, typewritten court documents.<sup>15</sup> Speaking from experience, the primary work of in-house counsel in governmental organizations or corporations is to communicate in daily meetings, phone conversations, or in legal opinions, the legal risks that their organization is facing.<sup>16</sup> In the public sphere, lawyers are also advocates, influencing decisions within political, economic, and social systems and institutions regarding important law-related issues.<sup>17</sup>

Lawyers have always been trained in the art of oral and written advocacy, but in today's world marked by technology, the Internet, and social media, lawyers need also be trained in the art of visual legal advocacy.<sup>18</sup> I will go further and argue constituent visual legal advocacy—because of its access to

12. See Visual Law Project, Yale Law School, *About Visual Law Project*, YALE L. SCH. [hereinafter Visual Law Project], <https://law.yale.edu/isp/initiatives/about-visual-law-project> [<https://perma.cc/32ZA-59M5>] (defining “visual advocacy” and speaking about the importance of training in this form of advocacy).

13. See *id.* (providing information regarding Yale's Visual Law Project); see also Regina Austin, *supra* note 9 (describing some of Professor Austin's work in using visual legal advocacy to enrich legal education).

14. See generally Ann Sinshemer & David J. Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21 LEGAL WRITING: J. LEGAL WRITING INST. 63 (2016) (presenting results of a study regarding the communication skills of new associates in law firms).

15. See Stephen Nathanson, *Developing Legal Problem-Solving Skills*, 44 J. LEGAL EDUC. 215, 217 (1994) (“Legal problem-solving is more than the process of using knowledge and skills to meet the client's ultimate goals. The skills lawyers use—for example, negotiation or advocacy or drafting skills—have their own problem-solving aspects: they present special problems which challenge lawyers to invent solutions.”).

16. See Garrick Apollon, *The Intersection Between Legal Risk Management and Dispute Resolution in the Commercial Context*, 15 PEPP. DISP. RESOL. L.J. 267, 271 (2015) (asserting the importance of risk management for lawyers).

17. See generally William Rich, *The Role of Lawyers: Beyond Advocacy*, 1980 B.Y.U. L. REV. 767 (1980) (debating the role of lawyers often extends beyond advocacy for their client).

18. Regina Austin, *The Next “New Wave”: Law-Genre Documentaries, Lawyering in Support of the Creative Process, and Visual Legal Advocacy*, 16 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 809, 812 (2006) [hereinafter Austin, *Visual Legal Advocacy*] (defining visual legal advocacy in practical terms as “a form of nonfiction filmmaking done by lawyers on behalf of clients and their causes”).



justice—amounts in importance to our oath and professional obligation to protect our democratic institutions and the rule of law.<sup>19</sup> It is impossible to argue against the proposition that “[v]isual and digital technologies have transformed the practice of law.”<sup>20</sup> Lawyers today “are using videos to present evidence, closing arguments, and victim-impact statements; advocates are making viral videos to advance public education campaigns; and scholars are debating ideas in a multimedia blogosphere.”<sup>21</sup> Visual evidence and argumentation, such as videotaped testimony and evidence, are now admissible in most criminal proceedings<sup>22</sup> and are becoming increasingly common in criminal tort law.<sup>23</sup> This Article, however, is not about visual legal advocacy in the context of litigation or advocating on behalf of a client, but instead focuses on visual legal advocacy in the specific context of continuing legal education (CLE) and law-related continuing professional education (CPE) for other professionals, such as certified public accountants (CPA), certified fraud examiners (CFE), and certified financial analysts (CFA). *Collared*, as a visual legal advocacy documentary film, was researched and produced primarily as a practical legal ethics guide to help lawyers and other business professionals meet their regulatory and ethical obligations to not engage in insider trading.

My argument is that visual legal advocacy is not only an art but also a behavioral science founded on psychology and the science of persuasion.<sup>24</sup> Practically speaking, a lawyer engaging in visual legal advocacy (or a “visual legal advocacy lawyer”) should not only utilize creative skills founded on his

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19. Cf. Bridgette Dunlap, *Anyone Can “Think Like a Lawyer”: How the Lawyers’ Monopoly on Legal Understanding Undermines Democracy and the Rule of Law in the United States*, 82 FORDHAM L. REV. 2817, 2817 (2014) (arguing “the low level of legal knowledge in the United States is fundamentally at odds with the ideal of the rule of law” and “[t]he American legal profession has an opportunity, if not an obligation, to . . . promot[e] and provid[e] basic legal education for the laypeople that the law binds and protects”).

20. Visual Law Project, *supra* note 12.

21. *Id.*

22. See Austin, *Visual Legal Advocacy*, *supra* note 18, at 847 (discussing how lawyers have begun to “tak[e] what they have learned from watching the law-genre work of documentary filmmakers and television news producers” and started using their own “forms of visual legal advocacy,” in forums such as criminal proceedings, “[a]s the kinds and amount of videotaped legal evidence admissible in criminal proceedings is growing”).

23. Cf. *id.* at 851 (“Advocacy films made by the defense in tort cases are a rarity but they do exist.”).

24. Cf. Jansen Voss, *The Science of Persuasion: An Exploration of Advocacy and the Science Behind the Art of Persuasion in the Courtroom*, 29 L. & PSYCHOL. REV. 301, 301–02 (2005) (discussing the process behind attorneys’ use of psychological techniques in the context of trial advocacy).

legal virtuosity but should also incorporate the six principles of persuasion aimed at ethical influence developed by the renowned psychologist and scholar, Robert Cialdini.<sup>25</sup> Following principles developed by scholars in the field of psychology and marketing might appear odd for lawyers until they realize the link between visual legal advocacy and social marketing. Social marketing, like visual legal advocacy, “is an approach used to develop activities aimed at changing or maintaining people’s behaviour for the benefit of individuals and society as a whole.”<sup>26</sup> For example, social marketing campaigns often aim to raise awareness of things such as the health-related dangers of smoking or the environmental benefits of recycling.<sup>27</sup> It is, therefore, certainly arguable that white-collar crime prevention and education should be founded on successful principles of social marketing to change or maintain people’s ethical behavior for the benefit of individuals and society.<sup>28</sup> Professor Eugene Soltes, Jakurski Family Associate Professor of Business Administration at Harvard Business School (the primary subject matter expert for *Collared*) has published research asserting that corporate compliance methods aimed at preventing corporate misconduct, such as insider trading, should not be practiced as a legal exercise.<sup>29</sup> Rather, they should be practiced as a behavioral exercise

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25. See Marc Schenker, *How to Use Cialdini’s 6 Principles of Persuasion to Boost Conversions*, CXL (June 29, 2019) (on file with author), <https://cxl.com/blog/cialdinis-principles-persuasion/> (outlining and explaining “Cialdini’s ‘6 Principles of Influence’”); cf. Kathryn M. Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 MICH. ST. L. REV. 411, 413 (2006) (recommending lawyers study persuasive tactics in order to “expand[] the complement of tools available to advocates, which will make advocacy writing more versatile and interesting, as well as more effective”).

26. *What is Social Marketing?*, NSMC, <https://www.thensmc.com/content/what-social-marketing-1> [<https://perma.cc/6RX4-Y3EX>]; see also Paul Crawshaw, *Public Health Policy and the Behavioural Turn: The Case of Social Marketing*, 33 CRITICAL SOC. POL’Y 616, 622 (2013) (“The key claim of social marketing is that it seeks to promote ‘social good’ . . .”).

27. See generally Sonya Grier & Carol A. Bryant, *Social Marketing in Public Health*, 26 ANNU. REV. PUB. HEALTH 319 (2005) (discussing how the use of social marketing “to design and implement programs to promote socially beneficial behavior change[] has grown in popularity and usage within the public health community”); see also PHILIP KOTLER & NANCY R. LEE, *SOCIAL MARKETING: INFLUENCING BEHAVIORS FOR GOOD* 22 (3d ed. 2008) (providing the example of how school districts engage in social marketing to promote environmental protection by “providing recycling containers in each classroom”).

28. Cf. Grier & Bryant, *supra* note 27, at 319–20 (providing examples of how social marketing has successfully been used in educational and training programs to promote social change).

29. See Hui Chen & Eugene Soltes, *Why Compliance Programs Fail—and How to Fix Them*, HARV. BUS. REV. (Mar.–Apr. 2018), <https://hbr.org/2018/03/why-compliance-programs-fail> [<https://perma.cc/F4FL-8ZFF>] (asserting ensuring corporate compliance and ethics is not primarily a legal exercise for organizations but is more a behavioral exercise to educate and change corporate culture).

that aims to instill a corporate culture of collective and individual ethical decision-making in an entire organization—from senior and middle management to all other employees.<sup>30</sup>

Therefore, I assert that a visual legal advocacy lawyer, just like a trial lawyer, must reach a balance between mastering the art of lawyering and understanding the principles of psychology as a behavioral science with the objective to promote persuasion.<sup>31</sup> My assertion is not only based on conventional wisdom and my own observations after more than a decade of practicing as a corporate lawyer but also on the very definitions of art and science. The Oxford dictionary defines art as: “The expression or application of human creative skill and imagination,” while defining science as: “The intellectual and practical activity encompassing the systematic study of the structure and behaviour of the physical and natural world through observation and experiment.”<sup>32</sup> In conclusion, my argument is that visual legal advocacy should be practiced by lawyers as both an art and a behavioral science.

B. *What is Law-Genre Documentary Filmmaking?*

As defined by Professor Regina Austin:

[T]he term “law-genre documentaries” refers to “true” or “real” stories or narratives as to which the law is the point of departure, a central organizing theme, or such an important consideration affecting the advancement of the chronicle or story being presented that the subject might reasonably be characterized as “law as lived experience.”<sup>33</sup>

In the context of CLE and CPE for other professionals, such as accountants and chartered financial analysts, *Collared*, a law-genre documentary based on the true and real story of Joseph Grmovsek, has received recognition as an educational case study for an accredited course and webinar on professional

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30. *Id.*

31. See Austin, *Visual Legal Advocacy*, *supra* note 18, at 842 (discussing the role of persuasion in crafting a good law-genre documentary).

32. *Art*, LEXICO, <https://en.oxforddictionaries.com/definition/art> [https://perma.cc/4JMZ-JGJ3]; *Science*, LEXICO, <https://en.oxforddictionaries.com/definition/science> [https://perma.cc/XP5P-TLQ4].

33. Austin, *Visual Legal Advocacy*, *supra* note 18, at 815.

ethics.<sup>34</sup> Some of the largest and most respected regulatory professional organizations in North America that have already accredited *Collared* as an ethics course include: The Law Society of Ontario, with more than 58,000 members and lawyers;<sup>35</sup> CPA Ontario<sup>36</sup> and CPA Canada, with at least 210,000 members/charted professional accountants in Canada;<sup>37</sup> CFA Institute (CFA Society Toronto), with more than 154,000 charterholders across the globe;<sup>38</sup> and the Association of Certified Fraud Examiners (ACFE), with at least 85,000 members globally.<sup>39</sup> *Collared* is also accredited to provide continuing education for all Certified Public Accountants (CPAs) in the United States by the National Association of State Boards of Accountancy (NASBA), an association in charge of regulating the accountancy profession in the United States of America, which serves more than 650,000 members in fifty-five State Boards of Accountancy.<sup>40</sup>

*Collared*, though primarily a CLE course, was developed as a cross-disciplinary course on professional ethics and legal education for all business professionals.<sup>41</sup> We live in a “rule of law society,” which includes the legal

34. *Collared* was first accredited for 2 hours of CLE (professional ethics) by the Law Society of Ontario (the province includes Ottawa as Canada's national capital and the City of Toronto, hence the Law Society of Ontario (formerly Law Society of Upper Canada) is one of the oldest and largest bars in North America).

35. See *FAQs*, LAW SOC'Y OF ONTARIO, <https://lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/faq#how-many-lawyers-and-paralegals-are-there-in-ontario-5> [<https://perma.cc/3VE R-4RZH>] (“The Law Society of Ontario is the largest law society in Canada, with over 55,000 lawyer licensees and 9,000 paralegal licensees.”).

36. *Collared—A Case Study in White Collar Crime and Ethical Decision Making*, CPA ONTARIO, [https://portal.cpaontario.ca/Pages/en\\_US/Forms/Public/Events/EventDescription.aspx?eid=017c b600-0baa-e811-ae9b-0050568e53eb](https://portal.cpaontario.ca/Pages/en_US/Forms/Public/Events/EventDescription.aspx?eid=017c b600-0baa-e811-ae9b-0050568e53eb) [<https://perma.cc/6HCW-5CJQI>].

37. *Meet Our Members*, CPA CANADA, <https://www.cpacanada.ca/en/the-cpa-profession/cpas-and-what-we-do/meet-our-members> [<https://perma.cc/DKV4-UAMM>].

38. *Record Number of Aspiring CFA® Charterholders Sit for Exams as Program Marks 55th Anniversary*, CFA INSTITUTE (June 20, 2018), <https://www.cfainstitute.org/en/about/press-releases/2018/record-numbers-of-aspiring-cfa-charterholders-sit-for-exams-as-program-marks-55th-anniversary> [<https://perma.cc/L9P7-8PWC>].

39. *About the ACFE*, ACFE, <https://www.acfe.com/about-the-acfe.aspx> [<https://perma.cc/X33Z-AYC3>]. *Collared* is also accredited by ACFE to provide 4 hours of CPE (professional ethics) credit for certified fraud examiners (CFEs). *Collared: A Story of Insider Trading and White-Collar Crime (Documentary Self-Study)*, ACFE, <https://www.acfe.com/selfstudy.aspx?zid=2c92a0ff73e83e280173ed78d2172673> [<https://perma.cc/VS9W-QAYF>].

40. *About Us*, NASBA, <https://nasba.org/about/> [<https://perma.cc/C9GA-XGBB>].

41. The author would like to acknowledge, as a proud alumnus of Penn Law, that encouraging a cross-disciplinary education is a value he acquired as legal educator at Penn Law, a university that believes “that the next generation of lawyers will be those who are not just superbly trained in law, but also have training in related fields.” *A Distinct Approach*, PENN LAW, <https://www.law.upenn.edu/crossdisciplinary/a-distinct-approach.php> [<https://perma.cc/6ZR8-NWU8>].

doctrine of *Ignorantia juris non excusat* (Latin for: “Ignorance of law excuses no one”).<sup>42</sup> This course is relevant to all professionals because accountants, investment professionals, and even physicians have all been convicted of insider trading.<sup>43</sup> As an alumnus of Penn Law, a university which promotes cross-disciplinary legal education as a core value,<sup>44</sup> I made certain that *Collared* was developed to be relevant and practical for all working professionals and aspiring professionals (university students) so the documentary could be utilized as an edutainment tool, as it is in the ethics courses I teach to JD and MBA students.

### C. *What is Edutainment?*

The term “edutainment” is not new—it “was used as early as 1954 by Walt Disney to describe the *True-Life Adventures* series.”<sup>45</sup> Edutainment is a buzzword, like “infotainment,”<sup>46</sup> that expresses the marriage of education and entertainment in a work or presentation—such as a video game, documentary film, music, or podcast.<sup>47</sup> However, visual legal advocacy is founded in legal education and should be not interpreted as a buzzword.<sup>48</sup> One can also describe edutainment as the academization of our leisure,<sup>49</sup> as

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42. *Ignorantia Juris non Excusat*, BLACK’S LAW DICTIONARY (11th ed 2019).

43. See Robert A. Prentice, *Clinical Trial Results, Physicians, and Insider Trading*, 20 J. LEGAL MED. 195, 222 (1999) (recognizing the harm to the public when physicians and other professionals engage in insider trading).

44. *A Distinct Approach*, *supra* note 41.

45. SAGE MCKINNEY, EDUCATIONAL TECHNIQUES AND METHODOLOGY 58 (2018); see also Ralph S. Izard, *Walt Disney: Master of Laughter and Learning*, 45 PEABODY J. EDUC. 36, 38 (1967) (recounting Walt Disney’s motivation to blend the entertaining aspect of mother nature with informative aspects of natural science).

46. Vangie Beal, *Infotainment Definition & Meaning*, WEBOPEDIA, <https://www.webopedia.com/TERM/I/infotainment.html> [<https://perma.cc/7MGN-2RUN>]; see also Ray Surette, *The Media, the Public, and Criminal Justice Policy*, 2 J. INST. JUST. & INT’L. STUD. 39, 40–41 (2003) (asserting the influence of infotainment “has caused the content of news and entertainment to become more and more similar over the past decade”). See generally Kathryn Manza, *Meaningful Journalism or “Infotainment”?* *The Failure to Define the Public Interest in Axel Springer AG v. Germany*, 36 B.C. INT’L. & COMPAR. L. REV. 61 (2013) (discussing the limitations and negative aspects of infotainment).

47. See generally Michela Addis, *New Technologies and Cultural Consumption. Edutainment Is Born!*, 39 EUR. J. MKTG. 729 (2005) (discussing the term and value of edutainment); David Buckingham & Margaret Scanlon, *Selling Learning: Towards a Political Economy of Edutainment Media*, 27 MEDIA CULTURE & SOC’Y 41 (2005) (exploring the emerging market of edutainment in the United Kingdom).

48. Cf. Austin, *Visual Legal Advocacy*, *supra* note 18, at 847–67 (discussing the importance of visual legal advocacy for legal education and the practice of law).

49. Greg Beato, *Turning to Education for Fun*, N.Y. TIMES (Mar. 19, 2015), <https://www.nytimes.com/2015/03/20/education/turning-to-education-for-fun.html> [<https://perma.cc/X456-XQKV>].

people can find edutainment on live-streaming platforms such as Netflix, *documentary* Channel, TED Talks, podcasts,<sup>50</sup> or in cinemas during international documentary film festivals such as Sundance, or the Hot Docs Canadian International Documentary Festival (Hot Docs), the official edutainment partner of *Collared*.<sup>51</sup>

In the context of visual legal advocacy, a visual legal advocacy lawyer might use a law-genre documentary film as a case law study for a traditional webinar or live course, as I did with *Collared*. In a situation where the goal is to teach ethics and other law-related concepts, the visual legal advocacy lawyer will act primarily as a legal educator. Therefore, I argue that edutainment is a powerful tool because it allows one to teach outside the formal setting of classrooms or corporate boardrooms. Both legally trained and lay audiences alike can take advantage of well-researched *and* entertaining content shown in theatres or at home on televisions, tablets, computers, or smartphones. I further argue, as educators, visual legal advocacy lawyers need to use edutainment as a complementary tool. On one hand, edutainment can be an entertaining solution to an otherwise boring and complex legal education. On the other, edutainment may also provide laypeople with easier access to legal education, promoting justice, and legal ethics.<sup>52</sup> Professor Regina Austin noted, despite recent success by Netflix, “most [law-genre] documentaries are boring and not entertaining; they lack character arcs or plot points that hold the viewer’s attention.”<sup>53</sup> While these aspects are important to keep in mind when making law-genre documentaries for educational purposes, these documentaries should always be well-researched, based on real facts, and never overdramatized nor sensationalized for entertainment purposes.<sup>54</sup>

Neil Postman, who is “a New York University professor and media theorist,”<sup>55</sup> attributed the rise of edutainment to the American culture of Hollywood, which he “criticized in his 1985 book, [*Amusing Ourselves to*

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50. *Id.*

51. The world’s première of *Collared* also marked the launch of a new activity and brand for Hot Docs, called “Hot Docs for Continuing Professional Education.”

52. See Austin, *Visual Legal Advocacy*, *supra* note 18, at 816–17 (“The legal issues are accessible to filmmakers and audiences untrained in the law.”); cf. Steve Greenfield, *Hero or Villain? Cinematic Lawyers and the Delivery of Justice*, 28 J.L. & SOC’Y 25, 25–28, 34 (2001) (discussing how justice in films becomes dependent on the lawyers themselves).

53. Austin, *Visual Legal Advocacy*, *supra* note 18, at 810.

54. See *id.* at 810–11 (discussing the importance of a documentary having a clear, truthful message).

55. Beato, *supra* note 49.

*Death*.”<sup>56</sup> In his book, “he argued that [American] culture’s primary mode of discourse was shifting from print to [television], and that as a result, ‘politics, religion, news, athletics, education and commerce’ had all been ‘transformed into congenial adjuncts of show business.’”<sup>57</sup> Postman’s assertion that our culture has been “transformed into congenial adjuncts of show business”<sup>58</sup> might be true; however, research conducted on edutainment by the World Bank’s 2015 World Development Report, *Mind, Society and Behavior*, does not conclude, as Postman did, that we are at risk of “amusing ourselves to death.”<sup>59</sup> Rather, the World Bank asserts (with cautionary principles): “[E]ntertainment education or the purposeful use of mass media entertainment may” have a positive impact on social change and can “be an effective tool to change norms and behaviors.”<sup>60</sup> The World Bank went so far as to assert: “There is an unprecedented opportunity to use entertainment media to change the lives of billions of people, especially in urban areas. Entertainment education or edutainment can be a game-changer for development.”<sup>61</sup>

Films are considered a valuable tool in classroom learning because they communicate to students at several levels: through their characters, story, context, dialogues, and audio-effects.<sup>62</sup> Legal educators may use feature films and documentaries to illustrate topics and concepts and use them as a source of pedagogical material, which is more entertaining and motivating than conventional teaching methods.<sup>63</sup>

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56. *See id.* (indicating Mr. Postman laments, among other things, the intersection of politics and Hollywood, where “a former Hollywood actor could be president” and “former presidents are replacing professional entertainers . . .”). *See generally* NEIL POSTMAN, *AMUSING OURSELVES TO DEATH* (1985).

57. Beato, *supra* note 49 (quoting POSTMAN, *supra* note 56, at 3–4).

58. POSTMAN, *supra* note 56, at 4.

59. *See* ENHANCING BEHAVIOR CHANGE CAMPAIGNS, *supra*, note 8, at 1 (discussing the benefits of mass media entertainment). *See generally* POSTMAN, *supra* note 56 (explaining how Americans are “amusing ourselves to death”).

60. ENHANCING BEHAVIOR CHANGE CAMPAIGNS, *supra* note 8, at 1.

61. *Entertainment Education*, WORLD BANK, <https://www.worldbank.org/en/research/dime/brief/edu-tainment> [<https://perma.cc/974G-4HCH>].

62. Austin, *Visual Legal Advocacy*, *supra* note 18, at 850; *see also* Elizabeth A. Pendo, *Telling Stories About Health Insurance: Using New Films in the Classroom*, 5 HOUS. J. HEALTH L. & POL’Y 269, 271 (2005) (discussing the experience of a legal educator using clips from three recent popular films, *Critical Care*, *The Rainmaker*, and *John Q.*, as a method of enhancing coverage and discussion of legal and policy issues).

63. *See* Pendo, *supra* note 62, at 285 (discussing the benefits of using clips from films to augment legal education and create a fun atmosphere that sparks discussion).

Many people, especially those from younger generations, whether Millennials or Generation Z, have liquid expectations that demand they be educated and entertained at the same time.<sup>64</sup> Based on my experience of teaching for more than a decade as an adjunct professor in JD, JD–MBA, and MBA programs, it is foreseeable that, in the near future, law professors classically lecturing on case law and doctrine will face backlash not just from their students but also from their law or business school's administration. Since the COVID-19 pandemic began, e-learning has become the norm and demand for visual content to support traditional e-lectures will only grow.<sup>65</sup> Additionally, in our personal lives, we live as subscribers to Netflix and consumers of premium video content found on social media. It is not surprising that many expect the same level of entertainment and engagement from their education.<sup>66</sup> This is arguably even more true for CPE and CLE because participants are not as deferential as an average student—they expect to receive value for their money in the form of relevant, practical, and entertaining professional development courses.<sup>67</sup> I argue, because CPE and CLE courses—particularly for legal or professional ethics—are (and should be) mandatory requirements to keep a license to practice,<sup>68</sup> using edutainment is even more necessary in these areas of education. For instance, when I teach a course on negotiation and mediation ethics to lawyers and ask them why they have registered for my course, they candidly reply they are only doing so to get their mandatory, annual three hours of

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64. See Lauren A. Newell, *Redefining Attention (and Revamping the Legal Profession?) for the Digital Generation*, 15 NEV. L.J. 754, 775–76 (2015) (stating approximately 95% of teens use the Internet, approximately 93% of teens own or have access to a computer at home, and more than three-quarters of teens own a cellphone or smartphone); see also KOULOPOULOS & KELDSEN, *supra* note 7, at 142 (“Why are small [video] segments needed? Attention. . . . The students [who are] in college now are much more comfortable watching a video segment than reading the equivalent in a textbook.”).

65. KOULOPOULOS & KELDSEN, *supra* note 7, at 10–12 (“Take as an example e-books, which today you are as likely to find in the hands of a preschooler as in those of an eighty-year-old retiree.”).

66. See *id.* at 142 (describing how college students are more comfortable learning through using technology than by reading a textbook).

67. See *id.* at 158 (implying adult education has been influenced by technological changes and should no longer be expected to be “long, drawn-out, and boring”).

68. See Jocelyn Downie & Richard Devlin, *Fitness for Purpose: Mandatory Continuing Legal Ethics Education for Lawyers*, 87 CANADIAN BAR REV. 773, 785 (2008) (arguing “continuing legal ethics education is necessary and the legal profession should mandate such education in order to meet its responsibilities” and “the legal profession collectively . . . hold[s] a public trust that must be executed in the public interest”); see also Mary Frances Edwards, *Mandatory CLE: Shield or Sham*, 3 J. PRO. LEGAL EDUC. 27, 31 (1985) (discussing how CLE is not a sham, but instead a shield “to protect the public and the profession itself from ignorance and obsolescence”).



professional ethics.<sup>69</sup> This Article argues that edutainment, through visual legal advocacy, provides the most practical and time-effective means possible to fulfill this mandatory CLE requirement, promote ethics, and prevent white-collar crime in the legal profession.

Edutainment is also important for social change because lawyers play a key role as public advocates, educators, and drivers of access to justice.<sup>70</sup> Consider the O.J. Simpson trial, arguably the most-publicized and well-covered trial of the modern television age, as the first demonstration of the power of edutainment in our justice system (and not just because the Kardashian family is making a lucrative business from the fame of their father: O.J. Simpson's defense lawyer).<sup>71</sup> The O.J. Simpson trial is a stark reminder that fame should not form the basis of visual legal advocacy, as fame is associated with human vanity and power.<sup>72</sup> With the rise of social media and our societal need for *cinéma-vérité*,<sup>73</sup> we must be cautious not to fall into Neil Postman's assertions in *Amusing Ourselves to Death* or, as in the O.J. Simpson trial, amusing ourselves with the death and misery of others.<sup>74</sup> As explained by Professor Regina Austin, most law-related documentaries—such as *Collared*—“inordinately focus on criminal law and criminology, to the neglect of other areas of law that are visually harder to capture or explain on film or that do not involve adversaries engaged in a ritualized struggle between good and evil.”<sup>75</sup> As a documentary filmmaker,

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69. See *Mandatory CLE*, ABA, <https://www.americanbar.org/events-cle/mcle/> [https://perma.cc/LRV7-74GD] (providing regional rules and regulations regarding mandatory CLE).

70. Karen L. Loewy, *Lawyering for Social Change*, 27 *FORDHAM URB. L.J.* 1869, 1871–84 (2000) (describing different ways lawyers may employ the law to achieve social change).

71. See Wayne J. Pitts et al., *The Legacy of the O.J. Simpson Trial*, 10 *LOY. J. PUB. INT. L.* 199, 200–01, 215 (discussing the sensational nature of the O.J. Simpson trial in 1995 and how, despite its great media coverage, the cultural legacy of the trial was quite limited).

72. *Id.*

73. See Sean Axmaker, *Cinema Verite: The Movement of Truth*, PBS (Dec. 14, 2015), <https://www.pbs.org/independentlens/blog/cinema-verite-the-movement-of-truth/> [https://perma.cc/V422-KXD3] (discussing the history and modern popularity of “cinéma vérité” or “truthful cinema”); cf. Charles Musser, *Film Truth, Documentary, and the Law: Justice at the Margins*, 30 *U.S.F. L. REV.* 963, 964–65 (1996) (discussing *The Thin Blue Line* as an example of a trial documentary and examining the issues involving truth in the documentary).

74. See generally Nancy B. Rapoport, *Dressed for Excess: How Hollywood Affects the Professional Behavior of Lawyers*, 14 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 49 (2000) (discussing the negative impact of Hollywood on our justice system).

75. Austin, *Visual Legal Advocacy*, *supra* note 18, at 810. Austin also discusses how “law-related subjects beyond the criminal law do not seem to be systematically linked to each other in any coherent way that facilitates critical viewing or sustained communal discourse or ‘film talk’ by a law-trained audience.” *Id.*

I am the first to plead guilty to leveraging the fascination we have for real human stories in criminal law and criminology.<sup>76</sup> “Crime—particularly violent crime—may be our national obsession. It dominates the news, it’s the subject of popular novels, and it’s all over television, from FX’s *The People v. O.J. Simpson* to HBO’s *The Night Of* to Netflix’s *Making a Murderer*”<sup>77</sup> or *The Innocence Files*.<sup>78</sup>

Edutainment, if used wisely, is the solution for involving law-related human stories beyond those of criminal law and criminology.<sup>79</sup> My assertion is that—as Bono said for music and Spike Lee said for film—edutainment is uniquely able to change us and bring what we have forgotten to our attention. Not all Hollywood movies are about crimes; there are romantic love stories, serious human stories like *Selma* depicting Dr. Martin Luther King Jr.,<sup>80</sup> and humoristic and dramatic stories like *St. Vincent* with the iconic Bill Murray.<sup>81</sup> In law-genre documentaries, edutainment serves to present law-related human stories that are systematically linked with current challenges faced by humankind.<sup>82</sup> For example, the selection library of Hot Docs is divided into twenty-two categories of documentary films, many being law-related.<sup>83</sup> These offerings unleash our curiosity with compelling stories in a variety of areas, including: activism, animals & animal rights, capitalism & big business, crime & intrigue, ecology & the environment, gender & sexuality, health & medicine, mental health & addiction, immigration & refugees, journalism & the media, politics & political intrigue, race & multiculturalism, science & technology,

76. *See id.* (stating the majority of law-related documentaries focus on topics related to crime).

77. JM Olejarz, *Understanding White-Collar Crime*, HARV. BUS. REV. (Nov. 2016), <https://hbr.org/2016/11/understanding-white-collar-crime> [<https://perma.cc/NV2A-PB3F>].

78. Innocence Staff, *What to Expect from ‘The Innocence Files,’ Netflix’s New Documentary Series*, INNOCENCE PROJECT (Apr. 15, 2020), <https://innocenceproject.org/netflix-innocence-files-documentary-series-bite-marks-wrongful-conviction/> [<https://perma.cc/X9WJ-HZ2U>].

79. *See* Austin, *Visual Legal Advocacy*, *supra* note 18, at 839–40 (discussing the importance of portraying human stories and human subjects “as complex, deeply contextualized figures” in documentaries).

80. *SELMA* (Paramount Pictures 2014).

81. *ST. VINCENT* (Chernin Entertainment 2014).

82. *Cf.* KOULOPOULOS & KELDSEN, *supra* note 7, at 158 (explaining even “theory or detailed material such as regulations, policies, or procedures” can be explored via edutainment).

83. *Cf.* *Hot Docs Collection*, HOTDOCS, <https://www.hotdocs.ca/p/hot-docs-collection> [<https://perma.cc/F7XP-8LRE>] (providing “hundreds of titles” which may be viewed on-demand “on platforms across North America”).

and war & conflict.<sup>84</sup>

In this age of edutainment and infotainment, people are suffering from a severe form of global attention deficit disorder caused by the incessant bombardment of information and stimuli from the Internet and social media.<sup>85</sup> Arguably, as the influence of the Internet and social media increases, fewer and fewer people will take the time to listen to, watch, or read long documents or emails.<sup>86</sup> We live in a time when short Facebook, YouTube, and Instagram videos dictate mainstream education and debates.<sup>87</sup> At a time when the film industries of Hollywood, Bollywood, and Nollywood are growing<sup>88</sup> and spending billions annually (e.g., Netflix's content budget was thirteen billion dollars for 2018) to develop new content that will generate billions more,<sup>89</sup> Americans, for example, spend an average of more than three hours a day watching television.<sup>90</sup> With this trend in mind, and given the severe global attention deficit, educating and encouraging ethics among professionals should be done through edutainment.

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84. *Ideas & Issues*, HOTDOCS, <http://www.hotdocs.ca/p/subject-index/ideas-issues> [<https://perma.cc/B74A-L6F3>].

85. See *supra* note 79 and accompanying text; see also Rupesh Enagandula et al., *Study of Internet Addiction in Children With Attention-Deficit Hyperactivity Disorder and Normal Control*, 27(1) *INDUS. PSYCHIATRY J.*, 110, 110–14 (2018) (discussing how the exponential increase in the use of the Internet has led to children's excessive involvement in the Internet). See generally Caitlin Dewey, *Is the Internet Giving Us All ADHD?*, *WASH. POST* (Mar. 25, 2015, 2:37 PM), <https://www.washingtonpost.com/news/the-intersect/wp/2015/03/25/is-the-internet-giving-us-all-adhd/> [<https://perma.cc/UF95-KDTA>] (considering the correlation between increased rates of ADHD and ADHD-like tendencies and usage of the Internet and social media).

86. See *supra* note 85 and accompanying text.

87. See generally Seok Kang et al., *Attention Deficit Hyperactivity Disorder on YouTube: Framing, Anchoring, and Objectification in Social Media*, 53 *CMTY. MENTAL HEALTH J.* 445 (2017) (providing the example of how social media and websites like YouTube have influenced social discussion of health disorders, such as ADHD).

88. See Amy Watson, *Film Industry—Statistics & Facts*, *STATISTA* (Dec. 19, 2018), <https://www.statista.com/topics/964/film/> [<https://perma.cc/Y7BF-SWHI>] (“The global film industry shows healthy projections for the coming years, as the global box office revenue is forecast to increase from about 38 billion U.S. dollars in 2016 to nearly 50 billion U.S. dollars in 2020.”).

89. Dana Feldman, *Netflix's Content Budget Is Updated to \$13B for 2018*, *FORBES* (July 9, 2018, 5:46 PM), <https://www.forbes.com/sites/danafeldman/2018/07/09/netflixs-content-budget-is-updated-to-13b-in-2018/#5486a3472b8c> [<https://perma.cc/66FC-Q727>].

90. Amy Watson, *U.S. Media Usage—Time Spent Watching Television 2014–2021*, *STATISTA* (Sept. 11, 2019) <https://www.statista.com/statistics/186833/average-television-use-per-person-in-the-us-since-2002/> [<https://perma.cc/2PLN-JKYP>].

### III. LAUNCHING THE DOCUMENTARY FILM PROJECT, *COLLARED*, AT OSGOODE HALL LAW SCHOOL

In 2015, Osgoode Hall Law School of York University announced the establishment of a new fund to assist students, digital and visual technology experts, and legal professionals in delivering novel visual advocacy approaches to the justice system: the Fund for Innovation in Law and Media (FILM).<sup>91</sup> The endowed fund, established with a gift of \$100,000 from alumna Kathryn Podrebarac, was used to create and sustain Osgoode's experiential education programs based "on the use of visual advocacy to address social justice issues, educate the public about the law and legal process, and enhance the practice of dispute resolution."<sup>92</sup>

I am always attentive to new developments in North American visual legal advocacy. When I saw that one of the top law schools in Canada had launched a visual legal advocacy program, I immediately sent an email to the benefactor, Kathryn Podrebarac, to thank her for her generous gift for the launch of the FILM initiative. I mentioned in my email that I trained in visual legal advocacy with Professor Regina Austin at Penn Law and was currently working on the research and production of *Collared*. She replied that she was inspired to establish the FILM initiative as an endowed fund for visual legal advocacy development after attending a lecture by Regina Austin in Toronto. She also copied Dean Lorne Sossin on our email exchange. A few weeks later, Étienne Trépanier (a lawyer who would become my co-fellow and co-producer for *Collared*) and I met Dean Lorne Sossin and found him to be a visionary leader who saw the potential in our visual legal advocacy proposal. Resultantly, Dean Sossin offered us a fellowship to complete the research for and production of *Collared*.

Of all the ingredients involved in making a good documentary film, the budget is one of the most critical. Our fellowship paid for the equipment rentals and travel costs associated with the production of *Collared*. Our own funds complemented the fellowship budget to help us make a documentary that was created at a level to which we always aspired to reach as filmmakers and that reflected well upon the FILM initiative. The fact that we presented the documentary at Hot Docs proves we accomplished those goals. Despite the fellowship and research contributions from Osgoode Hall Law School students, the completion of the film required a substantial personal

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91. *Osgoode Hall Law School Launches FILM—A New Visual Advocacy Initiative*, *supra* note 11.

92. *Id.*

investment of time and resources. As a full-length documentary film of fifty-two minutes, we estimated *Collared* required a dedication of 400 hours from pre-production to post-production. Viewing *Collared* as a pro bono case, legal fees for such a project would surpass \$220,000.

When people question the value of our visual legal advocacy work, I ask them to imagine the cost of specialized medical doctors researching and producing a visual medical advocacy film to improve public health and perception.<sup>93</sup> This topic is beyond the scope of this Article, but considering the strict requirements imposed on medical doctors in their training, I argue visual medical advocacy should be taught (or used) in medical school.<sup>94</sup> As a result of this belief, I am currently working with the Faculty of Medicine at the University of Ottawa on visual medical advocacy projects to promote mental health in the legal profession. As a part of this project, I have researched a pro bono CLE/CPE program (a program at the intersection of human rights and public health) based on the Hot Docs film entitled *Lessons Injustice*.<sup>95</sup> The key subject matter experts in the film are physicians explaining the negative consequences of discrimination on people's health and the importance of self-care for victims of racial and gender discrimination in today's society.

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93. See Regina Austin, *Super Size Me and the Conundrum of Race/Ethnicity, Gender, and Class for the Contemporary Law-Genre Documentary Filmmaker*, 40 LOYOLA L.A. L. REV. 687, 687–89 (2007) (discussing the visual, legal, and medical advocacy impact of the documentary film, *Super Size Me*, which tells a compelling, salient narrative about the harms of fast food through the truthful tale of a thirty-day journey of consuming nothing but McDonald's food offerings); see also Aline C. Gubrium et al., *A Situated Practice of Ethics for Participatory Visual and Digital Methods in Public Health Research and Practice: A Focus on Digital Storytelling*, 104 AM. J. PUB. HEALTH 1606, 1606 (2014) (“Explor[ing] ethical considerations related to participatory visual and digital methods for public health research and practice, through the lens of an approach known as ‘digital storytelling’”).

94. The World Health Organization (WHO), a “specialized agency of the United Nations,” is concerned with international public health. *World Health Organization*, BRITANNICA, <https://www.britannica.com/topic/World-Health-Organization> [<https://web.archive.org/web/20200403063522/https://www.britannica.com/topic/World-Health-Organization>]. The WHO and World Bank Group are “responsible for administering the International Health Partnership.” Robert MT Staruch et al., *Calling for the Next WHO Global Health Initiative: The Use of Disruptive Innovation to Meet the Health Care Needs of Displaced Populations*, 8 J. GLOB. HEALTH 1, (June 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6005401/> [<https://perma.cc/HE78-TJDA>]. The World Bank Group believes in the power of edutainment documentary films to change our world. *Entertainment Education*, *supra* note 61. This is an exciting exploration for international and local community public health to explore.

95. *Lessons Injustice*, UDOCS, <https://courses.udocsfilm.com/courses/lessons-injustice> [<https://perma.cc/MWY7-G724>].

#### IV. WHAT DID THE STUDENTS LEARN IN WORKING ON THE DOCUMENTARY FILM PROJECT, *COLLARED*?

The recruitment and coordination of the law students involved in the project was only possible thanks to Lana Kharlip, the assistant director at the Hennick Centre for Business & Law. She provided a team of seven JD and JD–MBA students from Osgoode Hall Law School to work on the administration of the research fellowship and production team. The students, not having taken a course in film studies nor having other previous experience in this field, focused largely on research. This focus made sense because well-made documentaries are often based upon exhaustive research, and few students are as good at research as those studying law.<sup>96</sup> Most of the students were volunteers who received credit towards the completion of their mandatory pro bono requirement of seventy hours, and one student received credit for a directed research project under the supervision of a professor.

During my time working with students on *Collared*, I observed first-hand that one of the hardest challenges for law students is distinguishing objectivity from advocacy.<sup>97</sup> Law students are trained to think rationally in terms of factual, jurisprudential, and doctrinal terms.<sup>98</sup> Such legal training often leads to a lack of the emotional, social, and cultural intelligence required for the creative thinking necessary to capture the attention of an

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96. Cf. Lawrence J. Fox, *Ethics Bureau at Yale: Combining Pro Bono Professional Responsibility Advice with Ethics Education*, 62 J. LEGAL EDUC. 551, 553 (2013) (discussing the dedication and research abilities of law students in the context of pro bono activities).

97. See Michael T. Colatrella Jr., *Learning “the True, the Good and the Beautiful” in Law School: Educating the Twenty-First Century Litigator*, 33 REV. LITIG. 741, 797–98 (2014) (calling for legal education reform in response to the needs of “current and future generations of lawyers whose clients will expect of them a broader definition of what it means to be an ‘advocate’ than the one most law schools have previously contemplated”). This article supports my argument that visual legal advocacy is a core discipline that will be the future of law because of the importance of visual advocacy on the Internet and social media. See *id.*

98. See generally Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCH. PUB. POLY & L. 1173 (1999) (“The traditional knowledge-based law school curriculum is slowly giving way to one that increasingly exposes students to various lawyering skills. Nonetheless, legal educators are generally averse—or at best ill equipped—to support that training with the empathic and psychological skills good lawyering demands. The author discusses how emotional intelligence is essential to good lawyering and argues that it can and should be cultivated in law school. The article draws upon three examples of popular culture to explore both the absence and possibilities of interpersonal intelligence in the practice of law.”).

audience.<sup>99</sup> As noted previously, advocacy skills—especially visual advocacy skills—are based on a lawyer’s ability to capture the attention of the jury, comprised of both laypeople and law-trained members.<sup>100</sup> In other words, emotionally intelligent lawyering is based on the ability to work with both our mind and heart and influence the minds and hearts of others.<sup>101</sup> A complaint persists in the legal profession that lawyers often lack emotional and cultural intelligence.<sup>102</sup> I emphasize the great need for cultural intelligence in a multicultural western society and in today’s globalized world.<sup>103</sup> Our laws and legal system are socially constructed; therefore, a great advocate must understand the historical and cultural construction of law in a given society.<sup>104</sup>

I told my law students I wanted my film to be educational and geared towards advocacy, not activism.<sup>105</sup> Activism is “[t]he policy or action of using vigorous campaigning to bring about political or social change,”<sup>106</sup>

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99. See Christine C. Kelton, *Clients Want Results, Lawyers Need Emotional Intelligence*, 63 CLEV. ST. L. REV. 459, 493 (2015) (concluding integration of emotion and cognition is necessary for effective advocacy); see also John O. Mudd, *Thinking Critically About “Thinking Like a Lawyer”*, 33 J. LEGAL EDUC. 704, 706 (1983) (concluding lawyers do not think in patterns different from other people).

100. See discussion *supra* notes 14–15; cf. Stephanie A. Vaughan, *Experiential Learning: Moving Forward in Teaching Oral Advocacy Skills by Looking Back at the Origins of Rhetoric*, 59 S. TEX. L. REV. 121, 150 (2017) (discussing the importance of developing oral advocacy skills, communication skills, and the ability to work in a team for legal professionals to develop critical thinking skills and practice exercising professional judgment).

101. See John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 326 (2008) (discussing how “emotional intelligence . . . can be taught and learned” and explaining why individuals with high emotional intellect “have superior ability to persuade, influence, and communicate . . .”).

102. Cf. *id.* at 347 (asserting emotional intelligence competencies can strengthen lawyers’ professional skills).

103. See Aastha Madaan, *Cultural Competency and the Practice of Law in the 21st Century*, 30 PROB. & PROP. 29, 30 (2016) (recognizing the importance of cultural competency “in the future of the [legal] profession and society” and “embrac[ing] the principles of equal access and non-discriminatory practices in service delivery”); see also Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISCOURSE 140, 149 (2014) (discussing the need for legal professionals to self-reflect and be aware of personal biases for the benefit of the lawyer-client relationship).

104. See generally Frederick Schauer, *The Social Construction of the Concept of Law: A Reply to Julie Dickson*, 25 OXFORD J. LEGAL STUD. 493 (2005) (noting the social and political construction of the concept of law).

105. Cf. Patricia F. First & Louis F. Miron, *The Social Construction of Adequacy*, 20 J.L. & EDUC. 421, 429 (1991) (analyzing the judicial construction of educational adequacy norms through accountability, responsibility, and community).

106. *Activism*, LEXICO, <https://en.oxforddictionaries.com/definition/activism> [https://perma.cc/5PS3-Q75D].

while advocacy is “[t]he profession or work of a legal advocate.”<sup>107</sup> Essentially, a visual legal advocacy lawyer uses legal arguments, not political arguments, to visually educate or litigate a case.<sup>108</sup> I also explained the difference between advocacy and activism through the example of *The Corporation*, an award-winning documentary. I no longer show *The Corporation* to my MBA students due to many student complaints that the film “diabolized” corporations, but understated that governments have a legal responsibility to remain free from corruption, and that they should hold corporations accountable by enforcing regulations.<sup>109</sup> I mention this point despite being an admirer of Michael Moore’s advocacy for gun control in his documentary *Bowling for Columbine* and his critical look at the presidency of George W. Bush and the War on Terror with the documentary *Fahrenheit 9/11*.<sup>110</sup>

The goal of *Collared* is to educate both professionals and the public, each having different political views. We, as legal advocates, need to remain apolitical because of our professional, ethical, and deontological obligations to comply with the law, protect the confidentiality of our clients, and never engage in insider trading activities. I argue in this Article that visual activism, like Michael Moore’s, is politically motivated and about political arguments, whereas visual legal advocacy is about conveying legally-sound and well-presented legal and political authorities.<sup>111</sup> For this reason, I argue that

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107. *Advocacy*, LEXICO, <https://en.oxforddictionaries.com/definition/advocacy> [https://perma.cc/Z2BM-V8TV].

108. *Compare id.* (defining advocacy in terms of the work of a legal advocate) *with Activism*, *supra* note 106 (defining activism).

109. *Cf.* Garrick Apollon, *The Importance of an ADR Program for the Effective Enforcement of International Human Rights Under the Free Trade Agreement Hope II Between the United States and Haiti*, 25 FLA. J. INT’L L. 117, 132 (2013) (discussing how “criticism of global corporations went so far as to label select multinational corporations ‘pathological’ on account of their pursuit of profit and power, whatever the environmental or social cost”). *See generally* Mark N. Wexler, *Conjectures on Systemic Psychopathy: Reframing the Contemporary Corporation*, 3 SOC’Y & BUS. REV. 224 (2008) (concluding “psychopaths enter and rise to prominence in the flexible, hypercompetitive context of the contemporary corporation”).

110. *Cf.* Nathan Moore, *Get Stupid: Film and Law via Wim Wenders and Others*, 31 CARDOZO L. REV. 1195, 1196 (2010) (recognizing a viewer’s inability to distinguish “a clear difference between the filmic reality and another encompassing reality of the ‘real world’”).

111. *See* Larry Alexander, *Law and Politics: What Is Their Relation?*, 41 HARV. J.L. & PUB. POL’Y 355, 357, 363 (2018) (“Having now discussed politics, law, and legal norms as either rules or standards and why rules are desirable, let me now turn to the topic of legal interpretation. Some—even members of the Harvard Law School faculty—believe that there is no one thing that interpretation is.” This article equates “law” with rules that settle determinately what must be done.



visual legal advocacy video material or documentaries should always pass, like in jury trials, the test of *voir dire*. Originally, *voir dire* referred to an oath taken by jurors to tell the truth (Latin: *verum dicere*), by saying that what they know is objectively accurate, subjectively honest, or both.<sup>112</sup> In the making of *Collared*, my job as co-producer and director of research was to lead interviews with subject matter experts as a trial lawyer would with expert witnesses.

My expectations as a research director were clear: I wanted to discourage lawyers and other professionals who might engage in insider trading by showing them Joseph's story. The story illustrates insider trading, even if it does not amount to a pernicious, predatory white collar crime like fraud, remains a crime that can lead to tragic human consequences.<sup>113</sup> The emphasis was on the human side of the story—something that the cross-disciplinary perspective encompassing the story's historical and cultural creation must incorporate.<sup>114</sup> I learned, for the next project, my instructions should be more specific to prevent students from struggling to present such a holistic analysis, as it is a large endeavor.<sup>115</sup>

#### V. WHAT WERE THE CLE/CPE AND VISUAL LEGAL ADVOCACY OBJECTIVES OF *COLLARED* AS A LAW-GENRE EDUTAINMENT DOCUMENTARY FILM FOR WHITE COLLAR CRIME PREVENTION AND EDUCATION?

A growing body of research has revealed that the financial cost and physical harmfulness of white-collar crime on society can overshadow the

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And . . . equate[s] 'politics' with first-order practical reasoning—the reasoning that produces the rules and the reasoning that standards invite. Politics leads to law, but politics then conflicts with it.”); see also Marlene Booth & Aviam Soifer, *Fact or Fiction in Film*, 15 LEGAL STUD. F. 233, 235 (1991) (discussing why Michael Moore may be perceived as a “journalist, documentarian or comedian, depending on your point of view”).

112. *Voir Dire*, BLACK'S LAW DICTIONARY (11th ed. 2019) (providing the historical context for *voir dire*). See generally David Suggs & Bruce D. Sales, *The Art and Science of Conducting the Voir Dire*, 9 PRO. PSYCH. 367 (1978) (analyzing the process and components of *voir dire*).

113. See discussion *infra* Section V.I.

114. Cf. Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL'Y 249, 258–67, 304 (2004) (discussing “[t]he availability of ‘one-stop shopping’ for a comprehensive, cross-disciplinary approach to business problems is perhaps the biggest attraction of the multidisciplinary form of practice” and explaining why it is more effective because “individuals in different professions usually approach and resolve the same problem in different manners [providing a beneficial perspective]”).

115. Cf. *id.* at 258–67 (discussing challenges law students often face when dealing with clients in clinics who have unfamiliar backgrounds and experiences).

impact of blue-collar street crime on society.<sup>116</sup> We researched and produced *Collared* to illustrate the growing concern among Canadian and U.S. citizens of the dangers posed by elite financial crime offenses, such as insider trading.<sup>117</sup> In the U.S., public awareness of insider trading is more present.<sup>118</sup> As evidence, I often mention to my classes the highly-rated cable television show *Billions*, in which insider trading is a central topic.<sup>119</sup> Inspired by the documentary *The Corporation*, I made certain that Canada's leading scholar and forensic psychologist in the field of psychopathy, Angela Book,<sup>120</sup> gave us her expert testimony. Book testifies that white-collar criminals are psychopaths on the spectrum of psychopathy; the business world (white-collar world) admires and wants personality traits of a psychopath (e.g., smart, charming, and persuasive (or manipulative)).<sup>121</sup>

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116. See generally Cedric Michel et al., *Public Knowledge About White-Collar Crime: An Exploratory Study*, 65 CRIME L. & SOC. CHANGE 67 (2016) (emphasis in original) (“To date, scholarly efforts that have investigated societal response to crimes of the powerful have limited their field of inquiry to *public opinions* about white-collar crime. Although these studies have provided valuable empirical evidence of a growing concern among U.S. citizens regarding the danger posed by elite offenses, their failure to include a valid measure of *lay knowledge* about white-collar crime significantly limits our ability to infer the extent to which the public is familiar with the scope and magnitude of this social issue.”).

117. See *id.* at 87 (concluding the public knowledge about white-collar crime was higher among educated non-religious Caucasians with access to the Internet).

118. See *id.* at 72 (indicating white-collar crime occasionally obtains “front-page coverage,” as did Martha Stewart’s insider trading).

119. Joe Nocera, *What ‘Billions’ Gets Right About Insider Trading*, BLOOMBERG OP. (Feb. 21, 2017, 12:37 PM) <https://www.bloomberg.com/opinion/articles/2017-02-21/what-billions-gets-right-about-insider-trading> [https://perma.cc/37TN-LNXXZ].

120. Angela Book, BROCK UNIV., <https://brocku.ca/social-sciences/psychology/people/angela-book/#publications-angela-book> [https://perma.cc/PU3C-J7FW].

121. See Laurie Ragatz, *A Comparison of White-Collar Offenders and Non-White-Collar Offenders on the Psychological Variables of Personality, Criminal Thinking, and Psychopathy* 8, 16 (2011) (graduate dissertation, West Virginia University) (on file with West Virginia University Research Repository) (describing traits common to white-collar criminals and favorable in the corporate domain); see also Nadrien Bishop, *Red-Collar Criminals: Are They Driven by a Psychopathic Nature?* (2013) (Ph.D. dissertation, Chicago School of Professional Psychology) (discussing how Dr. Frank S. Perri and Dr. Terrance G. Lichtenwald coined the term Red-Collar (RC) Criminal, during research on fraud-detection and murder).

RC criminality refers to a white-collar criminal who murders to prevent further exposure of the fraudulent activity. Bishop, *supra*. Research has shown that white-collar criminals have psychopathic traits; therefore, they make the assumption that their RC counterparts have psychopathic traits. *Id.* The purpose of the study is to identify which psychopathic traits are present in RC criminals that may be absent in white-collar criminals. *Id.* Further, using the Hare Psychopathy Checklist-Revised 2 (PCL-R2), which is an assessment tool utilized to rate an individual’s psychopathic or antisocial behaviors and traits, the researchers conducted a comparative analysis of white-collar and RC behavior, specifically as it relates to criminal activity and intent. *Id.*

We primarily researched and produced *Collared* for an audience of lawyers, accountants, fraud experts, and investment professionals as they receive their legal education in the context of their mandatory courses on professional ethics. However, we also ensured that *Collared* remains accessible to laypeople because our “failure to include a valid measure of *lay knowledge* about white-collar crime significantly limits our ability to infer the extent to which the public is familiar with the scope and magnitude of this social issue.”<sup>122</sup>

“Blue-collar” and “white-collar” are two terms in the English language that evoke different social realities.<sup>123</sup> We see white-collar workers performing comfortably in an office, dressed in nice clothes. In contrast, we see the blue-collar worker getting his hands dirty doing manual labor or toiling away in a manufacturing job.<sup>124</sup> Even though the line between these types of workers is fading with time, its most basic usage—to say one person is working a white-collar job and another is working a blue-collar job—carries the significance of not only salary but also social class.<sup>125</sup> The line between white-collar crime and blue-collar crime is also fading in the world of law enforcement:

Our attitude toward white-collar crime is a little different. On the one hand, it fascinates us: Why do well-paid professionals commit it—on their own, with colleagues, or as part of an organization-wide collaboration? On the other hand, it bores us: Complicated financial schemes are difficult to understand, and the perpetrators and victims are often unclear. Who suffers when a company shifts numbers around on a spreadsheet? Who’s to blame when it

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122. Michel et al., *supra* note 116, at 67; *see also* Austin, *Visual Legal Advocacy*, *supra* note 18, at 815–17 (stating the importance of visual legal advocacy documentaries to be “accessible to filmmakers and audiences untrained in the law”).

123. *See* Randall A. Gordon et al., *Perceptions of Blue-Collar and White-Collar Crime: The Effect of Defendant Race on Simulated Juror Decisions*, 128 J. SOC. PSYCH. 191, 194–97 (1988) (finding a relationship between a defendant’s perceived social class and whether the defendant is perceived to be a typical offender of either white- or blue-collar crime); *see also* Michael M. O’Hear, *Blue-Collar Crimes/White-Collar Criminals: Sentencing Elite Athletes Who Commit Violent Crimes*, 12 MARQ. SPORTS L. REV. 427, 437–46 (2001) (recognizing the reasons for sentencing high-status defendants either more or less harshly than low-status defendants).

124. *Cf.* O’Hear, *supra* note 123, at 428 (implying the difference between white-collar criminals and blue-collar criminals often comes down to “wealth, social status, and highly paid employment”).

125. *Id.*; *see also* Olejarz, *supra* note 77, at 110 (indicating white-collar criminals are not just well-paid but are also often part of large companies with complex bureaucracies).

has thousands of employees and layers of bureaucracy? And even if we can identify those responsible, how should we punish them?<sup>126</sup>

For instance, the U.S. Department of Justice (DOJ) has recently begun utilizing an “aggressive approach to white-collar criminal cases.”<sup>127</sup> The approach utilizes “adapted techniques developed for use in ‘blue-collar’ criminal cases—those involving drugs, organized crime and the like . . . .”<sup>128</sup> These include techniques such as “wiretaps and undercover sting operations . . . .”<sup>129</sup> This “grey-collar” crime approach appears “to harness all of the tools in its formerly blue-collar arsenal—and even new ones developed just for white collar cases . . . .”<sup>130</sup>

*Collared*'s CLE/CPE objectives can be summarized in one core central theme: namely, to demonstrate that all crimes, even insider trading, can have unattended human consequences. I have observed, as an educator and advocate in the fields of business ethics and white-collar crime prevention and education, that the business case for convincing people not to engage in white-collar crime is often weak and flawed.<sup>131</sup> As the research director of *Collared*, I decided to focus on the human consequences of engaging in such a crime as a deterrence factor for professionals. I also wanted to raise awareness about the issue to the Canadian public.

The core theme of the visual legal advocacy in *Collared* is the need to pay more attention and take white-collar crime seriously in Canada. At the time of this writing, Joseph Grmovsek remains the first—and only—Canadian to be prosecuted and serve a federal prison sentence for insider trading.<sup>132</sup> The goal is not simply to offer *Collared* and Joseph Grmovsek's compelling story in a webinar to legal and other professionals but also to leverage the film to allow for engaging and entertaining lectures in movie theatres, boardrooms, and classrooms. In terms of visual legal advocacy, I have two

126. Olejarz, *supra* note 77, at 110.

127. *See generally* Michael D. Ricciuti et al., *White Collar Crime in 2015*, 22 INV. LAW. 32 (2015) (describing the new aggressive approaches the DOJ is taking in regard to white-collar crimes).

128. *Id.* at 32.

129. *Id.*

130. *Id.* at 34.

131. *See* Chen & Soltes, *supra* note 29 (asserting corporate compliance and ethics is not primarily a legal exercise for organizations but more a behavioral exercise to educate and change culture).

132. Settlement Agreement Between Staff of the Ontario Securities Commission and Stanko Joseph Grmovsek, *In re* the Securities Act, R.S.O. 1990, c. S.5, as amended (2009), O.S.C. Bull. (Can. Ont. Sec. Com.), [http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set\\_20091025\\_grmovseks.pdf](http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20091025_grmovseks.pdf) [<https://perma.cc/K3B5-DFFF>].

specific objectives with *Collared*. First, I would like *Collared* to spur a Canadian parliamentary committee on white-collar law enforcement, which could lead to better enforcement and more resources provided to the RCMP and other law enforcement agencies to fight white-collar crime in Canada. For instance, the establishment of a Serious Fraud Office (SFO) in Canada, as exists in the United Kingdom, would be a concrete and practical first step. The SFO in the United Kingdom investigates and prosecutes serious or complex fraud and corruption in England, Wales, and Northern Ireland.<sup>133</sup> A Canadian SFO would enhance the visibility, expertise, and capability of law enforcement. This would also have a positive impact nation-wide, leading to the perception that white-collar crime is now taken seriously in Canada.<sup>134</sup> Second, I am acting as a mentor for the rehabilitation of reformed white-collar criminal, Joseph Grmovsek. I find it interesting that Canadians, on the one hand, accept that they have a lot to learn about enforcement and punishment of white-collar criminals from Americans, but on the other, they fail to see they also have a lot to learn about rehabilitation and reintegration of reformed white-collar criminals.<sup>135</sup> Has the lack of enforcement and punishment in Canada in terms of prison sentences for this crime made the offense less forgivable to Canadians?<sup>136</sup> As noted by

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133. SERIOUS FRAUD OFF., <https://www.sfo.gov.uk/> [<https://perma.cc/9DGB-FAYM>]. My claim is that the Anglo-Canadian culture, as a constitutional monarchy, usually highly regards and respects British legal traditions and that, based on my expertise in comparative law, I believe that such legal transplant could work.

134. *See id.* (explaining the Serious Fraud Office “investigates and prosecutes serious or complex fraud, bribery and corruption”). *But see* David Kirk, *Serious About Fraud?*, 75 J. CRIM. L. 249, 250 (2011) (emphasis in original) (discussing a divergent opinion that “the SFO has not been an unqualified success (*Private Eye* has consistently referred to it as the ‘Serious Farce Office’), and therefore it does not deserve to survive”).

135. *See* Note, *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116 HARV. L. REV. 2186, 2199 & n.86 (2003) (noting some offenders will view “sanctions more as badges of pride than as marks of shame” but usually not in the context of white-collar crime); *see also* Dan M. Kahan & Eric A. Posner, *Shaming White-Collar Criminals: A Proposal for Reform of the Federal Sentencing Guidelines*, 42 J.L. & ECON. 365, 371 (1999) (arguing from the perspective of incapacitation, shaming white-collar criminals has similar consequences as imprisoning because “everyone knows or can easily discover that the offender is a bad type”).

136. *See* Katherine Beaty Chiste, *Retribution, Restoration, and White-Collar Crime*, 31 DALHOUSIE L.J. 85, 100 (2008) (emphasis in original) (“Evidence suggests that the Canadian public *is* suspicious of the use and abuse of power by the business community” and therefore their ability to participate in a restorative justice process is affected, “whether the topic for debate is CEO compensation, price fixing, accounting fraud, substandard products, or globalization. To the extent that white-collar offenses are dealt with solely as *crime*, an opportunity is lost for restoration of public trust in business—itsself as a ‘social relationship’ . . . .”). The author proposes to differentiate and understand the debate for white-collar crime in Canada through the frame of political economy. *Id.* at 89.

Joseph Grmovsek himself, maybe it is because the United States is a secular country that deeply embraces Christian values of redemption and second chances?<sup>137</sup>

We divided the research for the development of the documentary's story into nine chapters, with each chapter having its own CLE/CPE and visual legal advocacy purpose. The chapters are as follows:

A. *Chapter 1—A Victimless Crime?*

*Collared* shows that despite the academic debate, insider trading is not a “victimless crime.” It often creates unintended victims that suffer consequences of the wrongdoings. Victims usually are the people closest to the perpetrator, i.e., co-workers, employers, clients, family, loved ones, and the perpetrator themselves through their own personal and professional reputations.<sup>138</sup> *Collared* demonstrates victims are often the clients of the professionals who commit insider trading and who, as trusted advisors, violate their duties of confidentiality.<sup>139</sup> When such professionals engage in insider trading or its facilitation, they undermine the overall principle of confidentiality, which serves as a cornerstone of every professional/client relationship.<sup>140</sup>

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137. See generally Katie E. Corcoran et al., *Religion and the Acceptability of White-Collar Crime: A Cross-National Analysis*, 51 J. FOR SCI. STUDY RELIGION 542 (2012) (examining “whether shared religious beliefs and religious social relationships . . . and belief in a personal, moral God . . . negatively affect attitudes toward the acceptability of white-collar crime?”); see also Stuart P. Green, *Moral Ambiguity in White Collar Criminal Law*, 18 NOTRE DAME J.L. ETHICS & PUB. POL'Y 501, 518–19 (2004) (“[There is] moral ambiguity deeply embedded in the fabric of white collar criminal law. Much of white collar crime involves conduct that is hard to define, hard to identify, and hard to prove; yet it is also some of the most harmful conduct our society faces. The answer is not a retreat from the criminalization of such conduct, but rather a recognition of its distinctive character, and a resolve to seek out certainty where ambiguity now prevails.”).

138. For insightful critiques of current insider trading doctrine, and proposals for new theories of insider trading, see generally Sung Hui Kim, *Insider Trading as Private Corruption*, 61 UCLA L. REV. 928 (2014) (articulating the harm of insider trading, who the victims are, and suggesting insider trading should be interpreted as “common law fraud” because it reduces public confidence in markets). The documentary film, *Collared*, shows the tragic unattended human consequences of perpetrating illegal insider trading activities.

139. See Harry S. Gerla, *Confidentiality Agreements and the Misappropriation Theory of Insider Trading: Avoiding the Fiduciary Duty Fetish*, 39 U. DAYTON L. REV. 331, 332–33 (2015) (discussing the question of confidentiality in the context of insider trading and whether a breach of a confidentiality agreement should be able to form the basis of liability for insider trading).

140. *Id.*

*Collared* focuses on presenting Joseph's criminal actions or conduct,<sup>141</sup> a constituent element of insider trading, as a white-collar crime (*actus reus*) in contrast to his mental state (*mens rea*) as the accused.<sup>142</sup> This approach was chosen to educate about insider trading—our visual legal advocacy and CLE/CPE objective—and to avoid falling into the trap of the academic debate on whether it is a victimless crime or if it has been criminalized much in the way anti-trust actions were before it (for reasons that are more ideological than economic).<sup>143</sup> An article in the Washington Post went as far as to claim the legalization of insider trading activities could have helped uncover scandals like Enron.<sup>144</sup> My position in light of Joseph's story is,

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141. The Law Society of Ontario asserts Joseph Grmovsek's behavior amounted to corruption of the legal profession and the rule of law. See Law Society Hearing Panel, L. Soc'y of Upper Can. v. Grmovsek, 2011 CANLII 0137 (Can. Ont.), <https://www.canlii.org/en/on/onlst/doc/2011/2011onlshp137/2011onlshp137.html> [https://perma.cc/HZ4R-GPH9] ("Insider trading and tipping are corrupt practices."); see also Michael McKiernan, *Grmovsek Disbarred*, CANADIAN LAW. (July 22, 2011), <https://www.canadianlawyermag.com/legalfeeds/author/michael-mckiernan/grmovsek-disbarred-4054/> [https://perma.cc/J9MC-HSGN] (reporting Grmovsek's conduct resulted in his disbarment by the Law Society of Upper Canada). Fundamental to avoiding corruption are the principles that no one is above the law and the same laws apply to all of us. The independence of our profession supports the rule of law.

142. Law professor Samuel W. Buell points out that "corporate crime is all about context and that cases may come down to whether those accused knew their actions were illegal—which means prosecutors must try to read minds after the fact." Olejarz, *supra* note 77, at 110. Buell continues, noting "the standard defense in a fraud case is not that the fraud didn't happen; it's that the fraudster didn't know he or she was breaking the law—or that, whatever the government may think, the fraudulent behavior is business as usual in that industry." *Id.* See generally SAMUEL W. BUELL, CAPITAL OFFENSES: BUSINESS CRIME AND PUNISHMENT IN AMERICA'S CORPORATE AGE (W.W. Norton & Co. 2016) (exploring the legal issues of white-collar crime from the *actus reus* and not the *mens rea*). Buell, a law professor at Duke University, was a lead prosecutor in the Enron case. Olejarz, *supra* note 77, at 110; Samuel W. Buell, DUKE L., <https://law.duke.edu/fac/buell/> [https://perma.cc/8VUL-C9WA].

143. See R. Tom Naylor, *A Typology of Profit-Driven Crimes*, DEPT. OF JUST. CAN. 47–48 (Oct. 2002), [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr02\\_3/rr02\\_3.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr02_3/rr02_3.pdf) [https://perma.cc/AF4G-6CBZ] (asserting the illegality (or immorality) of insider trading could still be open to question: "Insider trading is not a predatory crime—it does not involve the forced transfer of property. It is not a market-based crime—the object of the exchange, securities, is perfectly legal. It is not even clearly a commercial crime . . ."); see also Mitchell N. Berman, *On the Moral Structure of White Collar Crime*, 5 OHIO ST. J. CRIM. L. 301, 301–02, 326–27 (2007) (describing reasons for enacting legal rules that do not precisely track the contours of moral norms, and stating legal theorists "will see farther if they more fully appreciate the extent to which the problem of legal drafting departs from the problem of identifying the underlying moral wrong that the law might be intended in the first instance to capture").

144. Dylan Matthews, *Insider Trading Enriches and Informs Us, and Could Prevent Scandals. Legalize It.*, WASH. POST (July 26, 2013, 9:36 AM), <https://www.washingtonpost.com/news/wonk/wp/2013/07/26/insider-trading-makes-us-richer-better-informed-and-could-prevent-corporate-scandals-legalize-it> [https://perma.cc/54XN-MDHE].

ultimately, crime does not benefit the criminal and only results in negative consequences for them and their loved ones. The simplistic approach to discussing insider trading by saying “a crime is a crime” or “crime does not pay” is also a prevalent prosecutorial approach, as noted by Samuel W. Buell, a Duke University law professor and former lead prosecutor in the Enron case.<sup>145</sup> Buell’s thoughts on the matter were summarized in an article in the Harvard Business Review as follows:

[C]orporate crime is all about context and that cases may come down to whether those accused knew their actions were illegal—which means prosecutors must try to read minds after the fact. [Buell] notes, for example, that the standard defense in a fraud case is not that the fraud didn’t happen; it’s that the fraudster didn’t know he or she was breaking the law—or that, whatever the government may think, the fraudulent behavior is business as usual in that industry.<sup>146</sup>

B. *Chapter 2—Partners in Crime: A Buddy Story*

The fraud triangle can explain Joseph’s story: “(1) a pressure or incentive that provides a motive to commit fraud (e.g. personal financial problems); (2) an opportunity for fraud to be perpetrated (e.g. weaknesses in, or ability to override, internal controls); and (3) an attitude that enables the individual to commit fraud or the ability to rationalize the fraud.”<sup>147</sup> Joseph Grmovsek explained those three principles in the context of his real-life example, discussed why he and his late co-accused started their activities, and detailed how they executed a plan that spanned a decade-and-a-half.

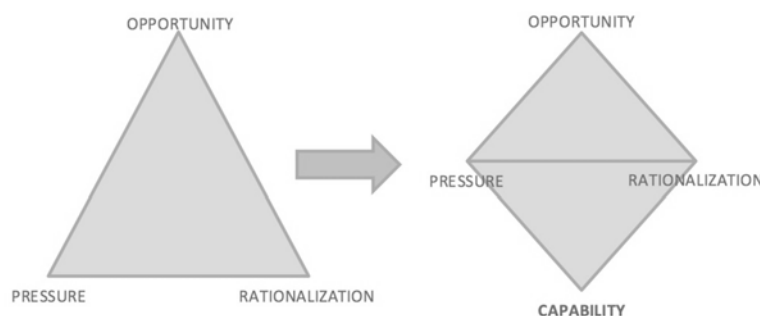
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145. Olejarz, *supra* note 77, at 110.

146. *Id.*

147. Clinton Free, *Looking Through the Fraud Triangle: A Review and Call for New Directions*, 23 MEDITARI ACCT. RSCH. 175, 177 (2015); *see also The Fraud Triangle*, ACFE, <http://www.acfe.com/fraud-triangle.aspx> [<https://perma.cc/9EHB-4MVU>] (“The fraud triangle is a model for explaining the factors that cause someone to commit occupational fraud.”).





Source: ACFE

148

Joseph Grmovsek’s story explains that insider trading appears to be easier to justify and rationalize (referencing the rationalization element of fraud) than a predatory crime—such as fraud against the elderly—because no direct victim is ever seen or known.<sup>149</sup> The fraud diamond goes beyond the fraud triangle by considering the individual’s capability to commit the crime within the context of the four elements of fraud.<sup>150</sup>

148. See generally ACFE, <https://www.acfe.com/> [<https://perma.cc/5SJK-FX3W>] (providing information and educational resources regarding fraud). For more information on the fraud triangle and fraud diamond, see Michelle Giacomini, Fiscal Crisis & Management Assistance Team, *Fraud Happens: What You Need to Know*, FCMAT (Oct. 25, 2019), [https://www.fcmat.org/Publications/Reports/Fraud\\_Happens\\_October\\_25\\_2019\\_IPC\\_Fall\\_Symposium.pdf](https://www.fcmat.org/Publications/Reports/Fraud_Happens_October_25_2019_IPC_Fall_Symposium.pdf) [<https://perma.cc/ZF7Z-2HWZ>].

149. See generally EUGENE SOLTES, *WHY THEY DO IT: INSIDE THE MIND OF THE WHITE-COLLAR CRIMINAL* (PublicAffairs 2016) (explaining differing reasons for insider trading); see also Jeremy Willinger, *Never Black and White: Eugene Soltes Exposes the Gray*, ETHICAL SYS. (May 14, 2016), <https://www.ethicalsystems.org/never-black-and-white-eugene-soltes-exposes-the-gray/> [<https://perma.cc/9WJM-YBQY>] (reviewing Soltes’ novel, saying he shows “white collar crime is less a cause of pernicious plots and more a product of a lack of focus, proximity and context” and that “[g]iven the proximity to profits and the potential for self-dealing, the business community is uniquely exposed to pressures for misbehavior”).

150. See Jack W. Dorminey et al., *Beyond the Fraud Triangle*, ACFE (2011), <https://www.acfe.com/article.aspx?id=4294970127> [<https://perma.cc/XK27-T9U7>] (considering professional and academic research extending beyond the fraud triangle beginning in the 1950s); see also David T. Wolfe & Dana R. Hermanson, *The Fraud Diamond: Considering the Four Elements of Fraud*, 74 CPA J. 38, 38–39 (2004) (emphasis in original) (presenting a four-sided fraud diamond—extending the fraud triangle to incorporate “an individual’s *capability*: personal traits and abilities that play a major role in whether fraud may actually occur” given the presence of pressure, opportunity, and rationalization).

As shown in *Collared*, capability is a key factor; that is why we need to target issues of prevention regarding lawyers, accountants, and investment professionals.<sup>151</sup> Focusing on capability requires organizations to observe, assess, and document the capabilities of top executives, key personnel, and employees who have the opportunity to perpetrate and conceal fraudulent acts.<sup>152</sup> I argue that the individual's capability explained in the fraud diamond is already incorporated to some degree in the opportunity element of the fraud triangle.<sup>153</sup> Nonetheless, the addition of this element is very relevant and practical for white-collar crime prevention, detection, and education.<sup>154</sup>

### C. Chapter 3—*The White Shoes*

As explained in *Collared*, Joseph Grmovsek got involved in illegal insider trading after seeing the footwear of a summer law student at the firm in which he began his legal career. The shoes he saw were expensive white leather driving-shoes. When he asked the student why he was wearing such unorthodox shoes in the office, the student replied he was wearing them to drive the car he had just purchased with money made from insider trading that was waiting for him downstairs. This striking example is why prevention and education for white-collar crime is so important. Joseph's story shows that vigilance is key because, as Professor Soltes from the Harvard Business School explains, ethical mistakes start with small mistakes.<sup>155</sup> There truly are slippery slopes for the first steps into crime, regardless of what shoes one is wearing.

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151. Dorminey et al., *supra* note 150.

152. See Wolfe & Hermanson, *supra* note 150, at 39–42 (understanding why a person commits fraud requires an understanding of that person's capabilities).

153. See *supra* text accompanying notes 145–50; see also Wolfe & Hermanson, *supra* note 150, at 38–39 (addressing the fraudster's opportunity to commit the fraud in both the "opportunity" and "capability" elements of the fraud diamond; the "opportunity" element is also present in the fraud triangle).

154. Wolfe & Hermanson, *supra* note 150, at 39.

155. See Willinger, *supra* note 149 ("Soltes . . . authored a distinctive entry in the business ethics canon that presents a unique perspective derived from those who perpetrated white collar crime- and are now dealing with the repercussions. For those currently atop the business pyramid, they would be wise to internalize just how far an ethical lapse can make them fall."); cf. SOLTES, *supra* note 149, at 127 ("As significant as this fraud was, none of the devastation was viscerally anticipated by the executives making these [accounting] adjustments.").

D. *Chapter 4—It Was Not About the Money*

Harvard Business School Professor Eugene Soltes' acclaimed book, *Why They Do It*, is about understanding white-collar criminals' minds and serves as a backdrop to Professor Soltes' contribution to *Collared* as one of its key subject matter experts.<sup>156</sup> *Collared* tries to answer the complex question of why Joseph Grmovsek became entangled in an extensive white-collar criminal scheme. This question is fundamental if we want to prevent white-collar crime in our society. As explained in *Collared*, and based on the fraud triangle, white-collar criminal behavior results from the confluence of appropriate rationalization, motivation, and opportunity.<sup>157</sup> Greed and money certainly play a role, but those factors are not as central as many might think.<sup>158</sup> Joseph Grmovsek was an accomplished law student starting a lucrative legal career in downtown Toronto, and his co-accused, Gil Cornblum, eventually became a sought-after partner in an international law firm. Cornblum was making a seven-figure U.S. dollar salary while working and living in Toronto. It is very hard to determine a white-collar criminal's psychological motivations because they are often based on a multitude of individual factors.<sup>159</sup> This is why I argue it is more practical to resort to sociology instead of psychology to explain a white-collar criminal's motivation.<sup>160</sup> This orientation is also useful for white collar crime prevention because if a law firm, or any organization, wants to prevent white-collar criminal activities, it needs to understand the societal roots of the behavior to create a micro-society or corporate culture of integrity that will prevent such activities.<sup>161</sup> This goes back to the question of bad apples versus bad barrels.<sup>162</sup> There will always be bad individuals in a society or

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156. See generally SOLTES, *supra* note 149 (providing insight into the psychology behind white-collar crime).

157. Dorminey et al., *supra* note 150; see also *supra* notes 147–49 and accompanying text.

158. See SOLTES, *supra* note 149, at 83, 92, 111 (insinuating money is not the main motivational factor for white-collar crime).

159. *Id.*; see also James William Coleman, *Toward an Integrated Theory of White-Collar Crime*, 93 AM. J. SOCIO. 406, 406 (1987) (“[N]o theory of motivation, however sophisticated, is sufficient to explain the causes of white-collar crime . . .”).

160. See generally Coleman, *supra* note 159 (supporting the idea of an integrated theory of white-collar crime and analyzing it from cross-disciplinary perspectives).

161. See Jennifer K. Robbennolt & Jean R. Sternlight, *Behavioral Legal Ethics*, 45 ARIZ. ST. L.J. 1107, 1112–13 (2013) (providing a “comprehensive survey” of behavioral ethics and psychology principles as applied to legal ethics).

162. See *id.* at 1112 n.31 (noting an individual's characteristics, as well as their environment, “influence ethical decision making and behavior”).

organization, but bad organizations and societies develop people into bad individuals.<sup>163</sup>

“It is argued that the origins of symbolic motivational patterns are to be found in the social structure of industrial capitalism and the ‘culture of competition’ to which it gives rise. But no theory of motivation, however sophisticated, is sufficient to explain the causes of white-collar crime.”<sup>164</sup> The research concludes with an analysis that “the patterns of opportunities presented to social actors in different structural positions in advanced capitalist nations” result in different outcomes.<sup>165</sup> This goes back to the assertion of the French philosopher, Jean-Jacques Rousseau: that we are good by nature but corrupted by society.<sup>166</sup> To explain the importance of this ethical theory, when I teach business ethics to my JD and MBA students I always ask them whether they could assert that German people of the 1930s and 1940s were bad people to allow for Hitler and the establishment of the Nazi regime in their society.<sup>167</sup> This controversial question always

163. *Cf. id.* at 1113 (“[C]omplex and ambiguous ethical rules and standards, agency relationships, the ethos of the adversarial system, the pressures of modern legal practice, positions or feelings of relative status of power, and cues or pressure from others are all characteristics of the practice of law that attorneys need to pay attention to if they want to avoid crossing ethical lines.”).

164. Coleman, *supra* note 159, at 406.

165. *See id.* at 406, 433–34 (analyzing opportunities for corruption in various occupations).

166. Donald R. McConnell, *The Nature in Natural Law*, 2 LIBERTY UNIV. L. REV. 797, 831–32 (2008) (discussing Enlightenment philosophers, such as Rousseau and Montesquieu, associating the “natural law” as the design of human nature and ethics in society). Their philosophical framework was constructed from theoretical and scientific observations, rather than a theological design. *Id.* at 832. Jean Jacques Rousseau’s philosophy often serves as an analytical framework to criticize the modern capitalistic obsession with private interest, and how that could lead to neglect of public duty. *Cf.* Michael Ignatieff, *On Civil Society: Why Eastern Europe’s Revolutions Could Succeed*, FOREIGN AFFS. (Mar./Apr. 1995), <https://www.foreignaffairs.com/reviews/review-essay/1995-03-01/civil-society-why-eastern-europes-revolutions-could-succeed> [<https://perma.cc/5XVD-D8TQ>] (quoting Rousseau as saying: “Amid such neglect, despotism might thrive, and both public virtue and private liberty would be corrupted”).

167. *See* Sarah J. Heim, *The Applicability of the Duress Defense to the Killing of Innocent Persons by Civilians*, 46 CORNELL INT’L L.J. 165, 166, 174–75 (2013) (discussing the failed argument of defendants who “raised duress as a defense to charges of war crimes and crimes against humanity since the Allies held the first large-scale war crimes trials at Nuremberg in the wake of the Second World War”). Heim explains, after an appeal by one such defendant before “the Appeals Chamber for the International Criminal Tribunal for the Former Yugoslavia,” the plurality emphasized soldiers should be held “to a higher level of accountability than civilians because individuals with military training are expected to ‘exercise fortitude and a greater degree of resistance to a threat than civilians.’” *Id.* at 166–67. However, Heim discusses the dissent of Justice Cassese who “rejected the plurality’s adoption of the common law rule on duress and argued that international courts should allow defendants to raise duress as a defense to the killing of innocent people under very limited circumstances.” *Id.* at 167; *see also*

ends by blaming Hitler as the individual evil force who created that monstrous empire, while viewing the German people of that time period as victims.<sup>168</sup> I always remind my students about the vital importance of virtue ethics and doing the right thing even if it hurts.<sup>169</sup> I explain to them that during the Nuremberg trials in the wake of the Second World War, where the Allies held large-scale war crimes trials, many high-ranking Nazi defendants “raised duress as a defense to charges of war crimes and crimes against humanity . . . .”<sup>170</sup> “Although the International Military Tribunal (IMT) generally rejected the defendants’ attempts to use duress as a defense, it never went so far as to rule [it out completely].”<sup>171</sup> This is because “[c]riminal law generally sets expectations for the ‘reasonable [person],’ rather than for the ‘reasonable hero.’”<sup>172</sup> This also explains the difference between ethics and the law.<sup>173</sup> While virtue ethics does demand a virtuous person to sometimes engage in acts of heroism, “the law does not demand that ordinary people engage in acts of heroism or self-sacrifice.”<sup>174</sup> However, if a coerced person has voluntarily assumed a special duty vis-à-vis others, the law may require a greater level of resistance from that person.<sup>175</sup> This is why, in the world of white-collar crime, there are whistle-blowing protection laws with significant multi-million dollar monetary rewards given to whistleblowers.<sup>176</sup>

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Claire O. Finkelstein, *Duress: A Philosophical Account of the Defense in Law*, 37 ARIZ. L. REV. 251, 251–54, 283 (1995) (emphasis in original) (asserting “Anglo-American jurisprudence resists the concept of excuse . . . as a grounds of moral judgment, even though we accept it as a grounds for denying the applicability of moral judgment”). Finkelstein further asserts: “We have lost the ability to make sense of a defense like duress, then, because we have lost the concept of character judgment, and we have put in its place the less coherent notion of moral evaluation of an action, stemming from the idea that each action is the product of an independent exercise of choice.” *Id.* at 283 (emphasis in original).

168. See Heim, *supra* note 167, at 179 (discussing how civilians should be allowed “to assert a defense of duress because civilians are generally not held to any particular duty of care”).

169. *Cf. id.* at 174 (“[N]o principle of law permits the individual person to avoid suffering or even to save his life at the expense of [the life or lives or] sufferings, on a vast scale, of others.”).

170. *Id.* at 166.

171. *Id.*

172. *Id.* at 168.

173. See *id.* at 169 (implying while a defendant may do something ethically wrong and unlawful, the defendant may be excused if the defendant committed the action under duress).

174. *Id.* at 168.

175. *Id.*

176. Raxak Mahat, Comment, *A Carrot for the Lawyer: Providing Economic Incentives for In-House Lawyers in a Sarbanes-Oxley Regime*, 21 GEO. J. LEGAL ETHICS 913, 932–33 (2008) (asserting the primary goal to prevent insider trading “should be to get the information out at the earliest possible time so

Based on the expert testimony of Angela Book, the forensic psychologist in *Collared*, I argue Rousseau's theory—that we might be good by nature but corrupted by society<sup>177</sup>—cannot always apply. Some white-collar criminals are on the spectrum of psychopathy and might pose an individual threat to a society and its institutions no matter how good they are.<sup>178</sup> Also, organizations' need to understand and protect themselves against individuals is explained in the fraud diamond by going beyond the fraud triangle to prevent people at the top—in positions of authority and privilege—from exploiting the system.<sup>179</sup> This fourth element plays a crucial role in explaining the occurrence of white-collar crime.<sup>180</sup> The fourth element in the fraud diamond is the individual's capability for committing fraud.<sup>181</sup> This is especially so when it involves large sums of

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that transaction costs and shareholder losses are minimized and market confidence is not unnecessarily undermined"). Mahat asserts that whistleblower's rewards are important because if whistleblower's rewards also "become greater with the size of the recovery, they might be persuaded to at least reveal the larger frauds in anticipation of the greater reward." *Id.* at 929. Mahat continues, observing: "The obvious criticism raised by such a reward structure is that in-house lawyers involved in uncovering smaller frauds which may not reach Enron or Worldcom proportions would not have a great incentive to engage in whistleblowing as the bounty might not be enticing enough." *Id.*

177. See *supra* note 166 and accompanying text.

178. See SOLTES, *supra* note 149, at 61 (finding 3.5% of executives display psychopathic characteristics versus 1% of the general population). Soltes further comments: "Perhaps most intriguing was the fact that those displaying greater psychopathic characteristics were rated as having more effective communication skills, being more creative, and displaying greater strategic thinking—characteristics usually associated with more effective management." *Id.* "What makes these psychopaths better executives may also make them more likely criminals." Philip Delves Broughton, *The Psychopath in the C-Suite*, WALL ST. J. (Dec. 14, 2016, 6:47 PM), <https://www.wsj.com/articles/the-psychopath-in-the-c-suite-1481759223> [<https://web.archive.org/web/20170404040028/https://www.wsj.com/articles/the-psychopath-in-the-c-suite-1481759223>]; see also SOLTES, *supra* note 149, at 83 ("Most [executives] don't know when to quit [due to] bull-doggedness or hard-headedness or whatever it is . . . . And we consider it a good characteristic in most cases [but it also leads to embezzlement due to not being] able to walk away from a failing business."); *id.* at 390 ("Some executives . . . may have a greater proclivity to engage in crime due to a lower capacity to appreciate the harm of their decisions.").

See generally Tim V. Eaton & Sam Korach, *A Criminological Profile of White-Collar Crime*, 32 J. APPLIED BUS. RSCH. 129 (2016) (exploring "the personality, psychology, and sociology of white-collar crime"); Clive Roland Boddy, *The Dark Side of Management Decisions: Organisational Psychopaths*, 44 MGMT. DECISION 1461 ("Recent revelations . . . to the Machiavellian machinations of the managers of some of the world's largest [bankrupt companies] have reportedly le[d] to a growing interest in how psychopaths effect organisations and the workplace. Organisational psychopaths are the 1 per cent of the population who score highly on a psychopathy checklist and who work in organisations.").

179. See *supra* notes 145–52 and accompanying text.

180. Dorminey et al., *supra* note 150; Wolfe & Hermanson, *supra* note 150, at 38–39.

181. See *supra* notes 145–52 and accompanying text.

money or the fraud continues for an extended time, allowing the accumulation of millions of dollars, as was the case for Joseph Grmovsek and his late co-accused, Gil Cornblum. As explained in *Collared*, they engaged in what some believe to be “the most prolonged insider trading scheme ever uncovered by American and Canadian securities investigators.”<sup>182</sup> I see this fourth element embodied in the cynical quote of the British Lord Acton, later used in the Hollywood movie *Batman v. Superman*: “Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men . . . .”<sup>183</sup>

In sum, I argue that the strategic necessity to resort to psychology to further understand and prevent white-collar crime is more effective than simply resorting to sociology and organizational behavior to explain why white-collar criminals commit fraud.<sup>184</sup> For this reason, the first line of defense to protect your organization against white-collar crime is corporate compliance.<sup>185</sup> As evidence, one of the first things the FBI investigates in determining if a crime is a case of bad apples or a bad barrel is the prevalence of a corporate culture of integrity, along with the presence of a real corporate compliance program that is not just a “paper program.”<sup>186</sup> This

182. *About the Film*, THE HENNICK CTR. FOR BUS. & L., <https://hennickcentre.ca/researchers/visual-legal-advocacy-program/documentary/> [https://perma.cc/QK6N-AKJW].

183. Letter from Lord Acton to Bishop Creighton (Apr. 5, 1887), in JOHN EMERICH EDWARD DALBERG-ACTON, *ESSAYS ON FREEDOM AND POWER* 364 (Text & Libr’y ed. 1949); see also Michael Hunter Schwartz, *Power Outage: Amplifying the Analysis of Power in Legal Relations* (With Special Application to Unconscionability and Arbitration), 33 WILLAMETTE L. REV. 67, 86 (1997) (discussing the well-known syllogism, “Power tends to corrupt, and absolute power corrupts absolutely,” while mentioning social psychologists “contend that powerholders cannot resist exploiting their superior power for personal gain”); *BATMAN V. SUPERMAN: DAWN OF JUSTICE* (Warner Bros. 2016).

184. See generally Coleman, *supra* note 159 (supporting the idea of an integrated theory of white-collar crime and analyzing it from cross-disciplinary perspectives).

185. See Chen & Soltes, *supra* note 29 (asserting prevention is still key to fight white-collar crime and that compliance programs are important but must be practiced as a behavioral exercise to educate and change cultures).

186. See Garrick Apollon, *FCPA Compliance Should Not ‘Cost an Arm and a Leg’: Assessing the Potential for Enhanced Cost-Efficiency and Effectiveness for an Anti-Corruption Compliance Program with the Implementation of an Enterprise Legal Risk Management Framework*, 5 PENN. ST. J.L. & INT’L AFFS. 486, 498–99 (2017) [hereinafter Apollon, *FCPA*] (discussing the importance of integrity-based program focused on developing appropriate organizational values and empowering employees to act upon those values); see also Cristie Ford & David Hess, *Can Corporate Monitorships Improve Corporate Compliance*, 34 J. CORP. L. 679, 692 (2009) (“[A corporate] compliance-based approach [is described] as focusing primarily on deterrence through punishment for rule violations, while an integrity-based program focused on developing appropriate organizational values and empowering employees to act upon those values. Empirical studies show that the most effective compliance programs have elements of each approach, but that the integrity-based aspects must dominate.”).

approach goes back to the importance of understanding corporate compliance as a behavioral exercise. Therefore, having “tone at the top,”<sup>187</sup> or conduct at the top—with good ethical leaders of organizations or in our society<sup>188</sup>—promotes a corporate culture of integrity.<sup>189</sup> Organizational structures need to also promote integrity from the bottom-up as well in order to empower all of its people to identify criminal leaders like in the case of Enron, Arthur Anderson, or Siemens during their prolonged cultures of bribery in international business deals.<sup>190</sup>

E. *Chapter 5—How to Make a Killing*

In *Collared*, Joseph Grmovsek discussed how his late co-accused executed a criminal plan that spanned a decade-and-a-half. Joseph, as a former corporate lawyer in Toronto, pleaded guilty to an insider trading scheme that the Ontario Securities Commission (equivalent of U.S. Securities and Exchange Commission) alleges netted the duo more than \$9 million U.S. dollars over fourteen years.<sup>191</sup> In the scheme, Cornblum would use his position as a lawyer in a prestigious U.S. law firm to seek out confidential information on numerous companies (usually in relation to merger and acquisition transactions), then transmit that information to Grmovsek with the sole purpose of illegally trading in securities.

The English idiom “to make a killing” means to make a great deal of money, usually in some kind of business or investment venture, and usually accomplished in a short amount of time and without much effort.<sup>192</sup> In *Collared*, we symbolically illustrate that Joseph Grmovsek’s actions, or inactions, literally resulted in the death of his co-accused who was his best friend and whom he loved like a brother.

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187. See Apollon, *FCPA*, *supra* note 186, at 509–10 (discussing the critical and challenging aspect of implementing a tone at the top of corporate culture).

188. *Cf. id.* at 509 n.81 (discussing the ethical role of directors in achieving an ethical environment in their firms).

189. *Id.*

190. See Ford & Hess, *supra* note 186, at 706 (discussing the corporate compliance-based approach designed to spread knowledge and integrity throughout the entire organization).

191. Andrea Hopkins & Pav Jordan, *Insider Trading and Suicide in Canada: A Buddy Story*, REUTERS (Oct. 29, 2009, 8:02 AM), <https://www.reuters.com/article/us-insider/insider-trading-and-suicide-in-canada-a-buddy-story-idUSTRE59R5M920091029> [[https://web.archive.org/web/20201016162433if\\_/https://www.reuters.com/article/us-insider/insider-trading-and-suicide-in-canada-a-buddy-story-idUSTRE59R5M920091029](https://web.archive.org/web/20201016162433if_/https://www.reuters.com/article/us-insider/insider-trading-and-suicide-in-canada-a-buddy-story-idUSTRE59R5M920091029)].

192. Lori, *English Idioms—to Make a Killing*, BETTER@ENGLISH, <https://www.betteratenglish.com/english-idioms-to-make-a-killing> [<https://perma.cc/H9Y5-539F>].



In terms of the “how” or the methods used for structuring the longest-lasting insider trading scheme discovered in Canada and the United States, it is important to remember three things. First, as mentioned before, one must go beyond the fraud triangle and use the fraud diamond by considering the individual’s capability to commit the crime within the four elements of fraud.<sup>193</sup> Lawyers and accountants are two types of professionals that are particularly at risk because they are in positions of authority and operate within their organizations based on a valued expertise and the confidential nature of their services as trusted advisors. Lawyers, for example, have attorney-client privilege, which holds sacrosanct value in our society.<sup>194</sup> These professionals can understand and exploit accounting, managerial systems, or internal control weaknesses, and they have more opportunity to abuse authority to complete and conceal their fraud. This strategy was carried out by Joseph Grmovsek’s co-accused. He was a partner of a respected international law firm and possessed the confidence that their fraud would go undetected—or, if caught, his ego assured him he would be able to talk his way out of trouble. Additionally, the duo had the capacity “to deal with the stress created within” themselves from being “otherwise good person[s]” who set out to “commit[] bad acts.”<sup>195</sup>

Second, consider the importance of physically protecting confidential information and business assets.<sup>196</sup> As explained in *Collared*, most of the confidential information obtained for their insider trading activities was acquired through simple espionage techniques, such as looking on the desks or through garbage cans of M&A lawyers. They would also use temporary staff passwords to access, without detection, computer files of lawyers within the firm working in offices around the world. Some of their

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193. See *supra* text accompanying notes 145–52.

194. The privilege, designed to aid lawyers in providing maximum advice and assistance for their clients, operates by denying a party the right to compel attorneys to testify about communications of a professional character between the attorney and client without client consent. See generally Note, *Attorney-Client Privilege*, 19 AM. CRIM. L. REV. 251, (1981) (asserting the attorney-client privilege is a core societal value that “represents a value assignment of the roles of lawyers in our dispute resolution mechanisms”).

195. See Rasha Kassem & Andrew Higson, *The New Fraud Triangle Model*, 3 J. EMERGING TRENDS ECON. & MGMT. SCIS. 191, 194 (2012) (suggesting there are four observable traits needed to commit fraud, the fourth being the ability to deal with the stress a good person faces when knowingly committing a bad act).

196. See John T. Soma & Lorna C. Youngs, *Confidential Communications and Information in a Computer Era*, 12 HOFSTRA L. REV. 849, 850 (1984) (discussing the changing methods of storing information brought about by developing computer and communications technology, compelling a new look at the treatment of confidential information in both the legal and business setting).

colleagues were less guarded, so they could glean confidential information by observing what those colleagues were carrying or where they were going.

Third, and as noted, insider trading information obtained by Joseph's co-accused was not obtained through conventional tipping. Most of the information was obtained through simple espionage techniques that involved listening to lawyers and others carelessly bragging about their big files or deal-making abilities. This example reinforces the importance of humility in ethical leadership and professional integrity, and also contributes to understanding the importance of the sacrosanct notion of attorney-client privilege and confidentiality in all professions.<sup>197</sup>

#### F. Chapter 6—*Harsh Time (Jail Stories)*

The intent behind discussing Joseph's often graphic and troubling stories from prison was to deliver a strong deterrent effect on lawyers and other white-collar professionals who, before now, have never had any first-hand insights into the prison culture. Joseph Grmovsek mentioned in *Collared* he wished he had experienced such raw and emotional testimony like his own when he was in law school or when he was a junior lawyer, as that would have discouraged him from ever considering white collar crime.<sup>198</sup>

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197. See Neil W. Hamilton & Verna E. Monson, *Ethical Professional (Trans)formation: Themes from Interviews About Professionalism with Exemplary Lawyers*, 52 SANTA CLARA L. REV. 921, 958 n.139 (2012) (asserting “professionalism encompasses theories emphasizing humility, service, and interdependence over competition”); see also Brett Scharffs, *The Role of Humility in Exercising Practical Wisdom*, 32 U.C. DAVIS L. REV. 127, 153 (1998) (recognizing why taking the ethical stance of being humble is not necessarily taking a subordinate position, but of being attentive, thoughtful, wide-awake, and aware).

198.

When a crime is particularly well known, it is often (though not always) the case that the criminal has also inflicted a high degree of social harm. However, the public may often perceive white collar crime as causing a similar level of social harm as, for example, a drug offense, which has, in reality, far less of an impact than the well-known white-collar offense. Because this undervaluing affects judges as well as ordinary citizens, one can extrapolate its effects upon white collar sentencing . . . .

Note, *Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act*, 122 HARV. L. REV. 1728, 1743 (2009) (footnotes omitted). If it is true that punishment serves a signaling function by indicating the actions that society chooses to stigmatize and the degrees to which “bad acts” bear moral condemnation, it seems that the Sarbanes-Oxley scheme has failed in this aspect as well. *Id.* at 1743 n.79.

Scholars have long suspected those who commit crimes place less value on the future than law-abiding citizens;<sup>199</sup> but the story is a little more nuanced, as criminals do value the future, just not as much as the average person. Harsher sentences work as a deterrent, but only up to a point.<sup>200</sup> White-collar crime is very costly, and enforcement is impractical when we only think in terms of law and order.<sup>201</sup> For that reason, it is crucial to also think in terms of prevention, education, and promotion of ethical leadership in our business communities.<sup>202</sup> This leads us to “Chapter 7—The Bad Man Theory” depicted in *Collared*, the documentary film.

### G. Chapter 7—The Bad Man Theory

Enforcement of insider trading and white-collar crime is limited in Canada, but it would be naïve to think Joseph’s story is an isolated case.<sup>203</sup> *Collared* discusses that “Canadian and American securities market regulators

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199. See Giovanni Mastrobuoni & David A. Rivers, Criminal Discount Factors and Deterrence 1–2 (2016) (unpublished manuscript), <http://dx.doi.org/10.2139/ssrn.2730969> [<https://perma.cc/3ERF-JMXL>] (hypothesizing “individuals who more heavily discount the future will be more likely to engage in crime”); see also Bryan Lufkin, *The Myth Behind Long Prison Sentences*, BBC FUTURE (May 15, 2018), <http://www.bbc.com/future/story/20180514-do-long-prison-sentences-deter-crime> [<https://perma.cc/VHB5-3NEJ>] (discussing long prison sentences being viewed as arbitrary, and deterring only to a point, as criminals often think that they will not get caught and also appear to “value the future less than non-criminals”).

200. See Michael Tonry, *Legal and Ethical Issues in the Prediction of Recidivism*, 26 FED. SENT’G REP. 167, 169 (2014) (discussing the different kinds of sentence ranges with respect to recidivism); see also Darryl K. Brown, *The Problematic and Faintly Promising Dynamics of Corporate Crime Enforcement*, 1 OHIO ST. J. CRIM. L. 521, 523, 544 (2004) (“[W]hite-collar crime presents a much broader range of established sanction and remedy options than is the case for traditional street crime[, however] there is a widely shared view that criminal punishment should not be the sole or even primary enforcement tool . . .”); John Hasnas, *Ethics and the Problem of White Collar Crime*, 54 AM. U. L. REV. 579, 667 (2005) (arguing the controversial “solution to the problem of white collar crime might not consist in more vigorous federal enforcement efforts, but in no such enforcement efforts at all”).

201. Cf. Brown, *supra* note 200, at 524 (“White-collar wrongdoing poses far greater barriers to government investigation and information gathering efforts.”).

202. See Hasnas, *supra* note 200, at 585, 667 (explaining the “divergence between ethics and compliance,” by providing a suggestion that “the solution to the problem of white collar crime may not lie in the use of harsher measures to crack down on white-collar criminals” as deterrence rationales are often nonsensical).

203. See Martin Mittelstaedt, *A World of Difference on Insider Trading Prosecutions*, GLOBE & MAIL (Mar. 14, 2011), <https://www.theglobeandmail.com/report-on-business/small-business/sb-growth/a-world-of-difference-on-insider-trading-prosecutions/article1360483/> [<https://perma.cc/ZAG6-QQEE>] (mentioning another high-octane case in New York and noting the Ontario Securities Commission in Canada only took four cases to court in 2010).

have differing approaches to enforcement.”<sup>204</sup> Joseph was caught by U.S. authorities and the only reason he pleaded guilty in Canada was to avoid prosecution with a harsher sentence in the U.S. Utpal Bhattacharya, a finance professor at Indiana University, performed a detailed comparison of the enforcement activities of the Ontario Securities Commission (OSC) in Canada and the SEC. When scaled for the respective size of the different stock markets, Professor Bhattacharya found a wide gap in the regulatory agencies. “U.S. authorities prosecute [twenty] times more insider trading violations than their Canadian counterparts,” and fines imposed in the U.S. are about seventeen times higher.<sup>205</sup> He concluded: “[I]nstead of a hard stick, it’s a soft stick and I do not think the soft stick works for financial crimes.”<sup>206</sup>

This problem can be explained with the “Bad Man Theory,” which is arguably the single most influential Anglo-American jurisprudential doctrine in the school of legal pragmatism or realism.<sup>207</sup> The theory holds that a bad person’s view of the law represents the best test of what exactly the law is because that person carefully calculates what the rules allow and then operates up to the rules’ limits.<sup>208</sup> This theory, also known as “prediction theory,”<sup>209</sup> was first adopted by one of the longest-sitting judges in the history of the U.S. Supreme Court, Oliver Wendell Holmes, “who

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204. Anita Anand et al., *An Empirical Comparison of Insider Trading Enforcement in Canada and the United States 2* (Oct. 19, 2018), (unpublished manuscript) (on file in the Osgoode Digital Commons, Osgoode Hall Law School of York University), [https://digitalcommons.osgoode.yorku.ca/scholarly\\_works/2746/](https://digitalcommons.osgoode.yorku.ca/scholarly_works/2746/) [<https://perma.cc/3L4H-3ND5>].

205. Mittelstaedt, *supra* note 203.

206. *Id.*

207. At the same time, legal theorists have associated both Holmes’s generally empirical and instrumental approach to law and his specific account of legal rules as predictions of judicial decisions with familiar pragmatist teachings, but the author also discusses serious problems with these standard positions. See Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 STAN. L. REV. 787, 787–88 (1989) (“Holmes as legal pragmatist is hardly a new idea.”).

208. See Marco Jimenez, *Finding the Good in Holmes’s Bad Man*, 79 FORDHAM L. REV. 2069, 2071–72 (2011) (describing Holmes’s “bad man” theory and subsequent interpretations of the theory); see also William Twining, *The Bad Man Revisited*, 58 CORNELL L. REV. 275, 282 (1973) [hereinafter Twining, *The Bad Man Revisited*] (“It is not incompatible with good citizenship to be concerned with predicting the likely consequences of one’s actions. The Bad Man, however, is affected by guidance as to his actions *only* insofar as such guidance predicts the ultimate consequences of those actions . . . . The difference between the Bad Man and the Good Citizen does not rest on the latter’s indifference to prediction, but on the former’s indifference to morality. Of course, the distinction between law and morality is not exclusively the concern of the Bad Man.”).

209. See Jimenez, *supra* note 208, at 2076 n.27 (referring to the theory as “Holmes’s prediction theory”).

mentioned that a society's legal system is defined by predicting how the law affects a person, as opposed to considering the ethics or morals underlying the law."<sup>210</sup> Under this theory, the prediction is made by viewing the law through the lens of a bad man, who is not bothered by morals and is unconcerned with acting morally.<sup>211</sup> Instead, such a person would only be concerned with the likelihood of getting caught and the degree of punishment certain acts will bring by force of law.<sup>212</sup>

It is also important to note that the use of the expression "bad man" often irritates legal feminist scholars.<sup>213</sup> To further illustrate my statement, a group of influential women from the American Bar Association (ABA) have launched the "Women in White Collar Subcommittee."<sup>214</sup> Their mission "is to be the national representative of female professionals . . . in the area of white collar criminal, civil, administrative, and regulatory law" who "principally seek to advance gender diversity in white collar representation . . ." <sup>215</sup> In the context of white-collar crime profiling, the criminal is usually a white male like Joseph Grmovsek and his co-accused. The 2020 Global Study on Occupational Fraud and Abuse published by ACFE, a study that includes perpetrator data from more than 2,000 fraud cases, specifies that "[m]en committed 72% of all occupational fraud," and

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210. *Bad-Man Theory Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/b/bad-man-theory/> [<https://perma.cc/GB7H-6SFG>]; see also Twining, *The Bad Man Revisited*, *supra* note 208, at 276 (quoting Holmes as stating "People want to know under what circumstances and how far they will run the risk of coming against what is so much stronger than themselves, and hence it becomes a business to find out when this danger is to be feared. . . . The object of our study, then, is prediction . . .").

211. See Jimenez, *supra* note 208, at 2071 (discussing the bad man's perspective, who only cares for the material consequences that such knowledge enables him to predict).

212. *Id.* at 2071–72.

213. William Twining, *Other People's Power: The Bad Man and English Positivism, 1897–1997*, 63 BROOK. L. REV. 189, 192, 211–12 (1997) (explaining *The Path of the Law* is "the classic text of legal positivism which also lives on as a sitting target for some powerful lines of criticism" such as criticism by legal feminists); see also *id.* at 211 ("Consider the 'bad man' from a feminist perspective. What will result from a change of gender? Suppose a latter-day Holmes advised law students to look at law from the standpoint of a 'bad woman'? . . . [But] a gender-neutral term such as the 'bad person' or the 'amoral person' sounds vapid . . . [T]he 'bad man' fits male stereotypes; if the gender is changed to meet feminist concerns, it does not work.").

214. *Women in White Collar Subcommittee*, ABA (Dec. 11, 2018), [https://www.americanbar.org/groups/criminal\\_justice/committees/women\\_in\\_wc.html](https://www.americanbar.org/groups/criminal_justice/committees/women_in_wc.html) [<https://perma.cc/TSG3-BC44>].

215. *Id.*

caused higher losses than women.<sup>216</sup> This data can help organizations assess fraud risk in their own workforces.

Though it is beyond the scope of this Article, think about an individual's capacity as the fourth element of the fraud diamond. This can help us understand the social opportunity that, statistically speaking, there is less racial and gender diversity in the white-collar world.<sup>217</sup> That said, not many diverse professionals are as influential as Rajat Gupta. Gupta was a senior partner emeritus and worldwide managing director at McKinsey & Company—a globally renowned management consulting firm—before he brought a massive insider scandal upon them.<sup>218</sup> Conversely, this brings us to the question of whether we can conclude that people of diversity who live in poverty and are socially excluded due to their race are more likely to be perpetrators of blue-collar crime.<sup>219</sup> It is my hope that discrimination based on gender and race will continue to dissipate with time and that lawyers will encourage our society to understand that while those distinctions are required to achieve racial justice, they are also often too simplistic and based on a philosophy of law that is “too black-and-white in

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216. ACFE, REPORT TO THE NATIONS: 2020 GLOBAL STUDY ON OCCUPATIONAL FRAUD AND ABUSE 5 (2020), <https://acfepublic.s3-us-west-2.amazonaws.com/2020-Report-to-the-Nations.pdf> [<https://perma.cc/V7Q2-7V8Q>].

217. See, e.g., Stanton Wheeler et al., *White Collar Crimes and Criminals*, 25 AM. CRIM. L. REV. 331, 337–38, 341 (1988) (contrasting white-collar and conventional crime, and presenting an empirical study comparing demographic characteristics between common and white-collar criminals stating that the majority of white-collar criminals are white men and protestants).

218. See Susan Candiotti, *Source: Former Goldman Sachs Director to Surrender*, CNN BUSINESS (Oct. 26, 2011, 12:02 AM), <https://www.cnn.com/2011/10/25/business/new-york-goldman-surrender/index.html> [<https://perma.cc/T92C-HFQD>] (providing background information on Gupta and the investigation into his crimes).

219. See Jody Armour, *Where Bias Lives in the Criminal Law and Its Processes: How Judges and Jurors Socially Construct Black Criminals*, 45 AM. J. CRIM. L. 203, 206–08 (2018) (discussing “evidence of biased constructions of black criminals in character-based approaches to mens rea” by judges and jurors); Pat K. Chew, *Seeing Subtle Racism*, 6 STAN. J. C.R. & C.L. 183, 184–86 (2010) (asserting legal “[r]acism is not always ostentatiously egregious, explicit, or even conscious,” and that “[o]ngoing empirical research helps to explain modern racism, including the ways in which social and organizational norms affect its occurrence”). See generally EMMA COLEMAN JORDAN & ANGELA P. HARRIS, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS* vi (Found. Press 2d ed. 2010) (refuting “the tacit assumption that ‘justice’ has nothing to do with economics and economics nothing to do with social justice”).

order to keep its practical ‘analytic utility.’”<sup>220</sup> Wise people will embrace the various shades of gray required for legal virtue.

This brings us to the existential question of: what is the profile of the ethical person? After all, the key visual legal advocacy purpose of *Collared* is to promote legal and professional ethics. There is a need to find the good man in the bad man.<sup>221</sup> As Eugene Soltes notes in his book *Why They Do It*, we must always remain vigilant and humble because white-collar crime often starts with small ethical mistakes or steps down slippery slopes.<sup>222</sup> It is, therefore, fundamental to keep the practical “analytic utility” and conventional wisdom to not simply classify white-collar criminals as bad or evil people, but to understand that we are all at risk for different situational reasons.<sup>223</sup>

#### H. Chapter 8—The Fall

This chapter is a metaphor illustrating the fall of Joseph Grmovsek’s co-accused, Gil Cornblum, from a bridge overlooking the Don Valley in the east-end of downtown Toronto. Apparently, wracked with despair and shame and knowing he would come face-to-face the next day with his co-accused on a flight to New York to plead guilty, Cornblum decided instead to climb up and over the guard-rails of the bridge from which he jumped to his death. The 39-year-old lawyer died in the gravel below, leaving a slew of unanswered questions. The origins of this suicide go back nearly 20 years to when Joseph Grmovsek and Gil Cornblum met during their first week at Osgoode Hall Law School in 1990. They soon became best friends who engaged in insider trading activities, with their first trade profiting one-hundred eighty dollars. This was the beginning of over a decade of insider trading that netted them each millions. “The Fall” illustrates that any professional can fall into the trap of unethical or illegal acts, as did Joseph

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220. Garrick Apollon, *Sino-American Contract Bargaining and Dispute Resolution*, 13 PEPP. DISP. RESOL. L.J. 385, 397 (2013) (alteration in original) (asserting a legal racist or ethnocentric conception of the law without looking at the good and bad practices in other legal jurisdictions and cultures “foreclose[s] the possibility of meaningful communication” about the law in our society).

221. Twining, *The Bad Man Revisited*, *supra* note 208, at 282.

222. See SOLTES, *supra* note 149, at 61–63, 127 (explaining white collar criminals are not always bad people or psychopaths but are often people that start with good intentions but fall down slippery slopes and make small ethical mistakes that lead to white-collar crime); see also Willinger, *supra* note 149 (“Eugene Soltes shows white collar crime is less a cause of pernicious plots and more a product of a lack of focus, proximity and context.”).

223. See sources cited *supra* note 222.

Grmovsek and his co-accused. Vigilance and humility, therefore, are vital values for professional ethical leadership.<sup>224</sup>

### I. *Chapter 9—Redemption*

Many people (especially Canadians who belong to a more secular society than their American neighbors)<sup>225</sup> often forget ethics are largely based on spirituality and religion.<sup>226</sup> Redemption refers to the action of saving one's soul or being saved from sin, error, or evil.<sup>227</sup> The word's etymology comes directly from the Latin *redemptionem* which means “a buying back, releasing, ransoming,” but also “bribery.”<sup>228</sup> This is exactly what Joseph Grmovsek explained in *Collared*, in his own words. He wants to redeem himself and “buy back” his place in society by contributing to white-collar crime prevention and education. In that regard, he aspires to one day be hired by securities authorities and regulators to help detect and investigate cases of insider trading. This aspiration is similar to the true story of Frank William Abagnale Jr., whose story was turned into the movie *Catch Me If You Can* starring Leonard DiCaprio and Tom Hanks.<sup>229</sup> Abagnale was hired by the FBI after his release from prison and provides the FBI with consulting and training services to this day.<sup>230</sup>

I believe reformed white-collar criminals like Joseph Grmovsek deserve a second chance in line with what is more common in the United States. Canadian society and regulatory bodies would do well by utilizing those

224. See sources cited *supra* note 222.

225. See Note, *Forty-Ninth Parallel Constitutionalism: How Canadians Invoke American Constitutional Traditions*, 120 HARV. L. REV. 1936, 1946 (2007) (“Canadians are becoming more secular, cosmopolitan, and willing to challenge authority and Americans more devout, closed to strangers, and deferential.”).

226. See Susan J. Stabile, *Using Religion to Promote Corporate Responsibility*, 39 WAKE FOREST L. REV. 839, 852 (2004) (discussing the use of religion in promoting legal and business ethics); see also Robert F. Blomquist, *Law and Spirituality: Some First Thoughts on an Emerging Relation*, 71 UMKC L. REV. 583, 619–20 (2003) (noting spiritual texts “have not been fully mined for their insights on law” and that “legal texts have not yet been adequately scrutinized for their inherent spiritual content”).

227. See, e.g., Sheila Suess Kennedy, *Redemption or Rehabilitation: Charitable Choice and Criminal Justice*, 14 CRIM. JUST. POL'Y REV. 214 (2003) (debating faith-based initiative for restorative justice and that “First Amendment case law, assumes the interchangeability of *religious*, *sectarian*, and *faith-based* as descriptive terms”).

228. *Redemption*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/redemption> [<https://perma.cc/9LBV-DEH3>].

229. *Frank Abagnale*, BIOGRAPHY, <https://www.biography.com/personality/frank-abagnale> [<https://perma.cc/VPD9-6TQR>]; *CATCH ME IF YOU CAN* (Paramount Pictures 2002).

230. *Frank Abagnale*, *supra* note 229.



former criminals' unique experience and expertise while also allowing them the opportunity at redemption by serving as cautionary examples. As noted, one of the most well-publicized cases of redemption for a white-collar criminal is the story of Frank Abagnale.<sup>231</sup> Abagnale became one of the most famous impostors ever, ("claiming to have assumed no fewer than eight identities, including an airline pilot, a physician, a U.S. Bureau of Prisons agent, and a lawyer") before having his life dramatized in a movie.<sup>232</sup> The Hollywood film *Catch Me If You Can*, however, does not cover the darker aspects of his crimes that often put the safety of innocent people at risk. The visual legal advocacy responsibility for *Collared* was to never to glorify Grmovsek or Cornblum's crimes, but to uncover the darker aspects and tragic human consequences of their crimes.<sup>233</sup> This is beyond the scope of this Article, but I argue that if more white-collar criminals like Joseph Grmovsek were jailed and punished to the proportion of their crime, maybe our society would be more willing to talk about rehabilitation and restorative justice for white-collar criminals. Also beyond the scope of this Article is a consideration of how ethics are often based on religious beliefs or spirituality. Perhaps the concept of rehabilitation in a more secular society like Canada does not translate into the more Christian concept of redemption in the United States.<sup>234</sup>

#### VI. WHAT I LEARNED FROM MY EXPERIENCE AS A VISUAL LEGAL ADVOCACY LAWYER AND DOCUMENTARY FILMMAKER

When I called Professor Austin after I received my fellowship for the research and production of *Collared*, she told me to look for a good story where the law-related issue is far more significant than the story itself. In other words, the story to be told is the edutainment component and the law-related issue associated with the story provides the visual legal advocacy

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231. See *supra* note 229 and accompanying text.

232. Stacia Dahl, *Frank Abagnale of 'Catch Me If You Can' Fame Coming to Helena*, AARP (Aug. 1, 2018, 6:52 PM), <https://states.aarp.org/montana/abagnale-event> [<https://perma.cc/5SX5-JLP3>].

233. See Darlene Bay & Sandra Felton, *Using Popular Film as a Teaching Resource in Accounting Classes*, 5 AM. J. BUS. EDUC. 159, 159, 170 (2012) (describing "a pedagogical experiment that used feature films in a senior accounting class to stimulate development of student competencies and raise ethical issues [while discussing the limitations of using films and the danger of glorification and overlook of the consequences]. Rather than being content driven, this active learning technique focuses on skills development, while engaging the students' emotions in the learning process").

234. See sources cited *supra* note 137.

purpose.<sup>235</sup> The story, presented through edutainment, can hold attention for a short span of time, but the law-related issue can be far more enduring and the social outcome of visual legal advocacy can be far more impactful. The importance of film, as filmmaker Spike Lee has said, “[is] mak[ing] people look at what they’ve forgotten.”<sup>236</sup>

I also learned that a visual legal advocacy documentary film was an excellent opportunity to apply my research skills as a legal scholar. The rigor and quantity of work required for the research of a visual legal advocacy documentary film like *Collared* is arguably more intensive than the research required for the publication of a long, peer-reviewed article. As a scholar, I interpret the showing of *Collared* at Hot Docs as an honor equal to having a written work of mine published in a prestigious law review. Hot Docs is not just the largest documentary film festival in North America, but it is one of the most admired events in the international independent documentary filmmaker’s creative community.

#### VII. CONTINUITY AND VISUAL LEGAL ADVOCACY PROJECTS IN LAW SCHOOLS

Osgoode Hall Law School has committed to the research of other visual legal advocacy projects such as *Inside Lehman Brothers*, a scandal that serves as a cautionary tale about corporate misconduct and the challenges of corporate whistleblowing.<sup>237</sup> But continuity has two dimensions. First, funding will be required to support the research and production by documentary filmmakers who can be paired with a legal scholar or practitioner and a team of law students. Leveraging academic fellowships to hire local documentary filmmakers to work with professors and law students could help more law schools, especially those with limited financial resources, to attract talented documentary filmmakers.

Second, my ambition is to launch a visual legal advocacy clinic. I have successfully launched the first course on Visual Legal Advocacy (in French) at the University of Ottawa’s Faculty of Law. A three-credit hour course was offered this last winter term. Up to twelve upper-year JD students

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235. See generally Austin, *Visual Legal Advocacy*, *supra* note 18 (discussing the importance of visual legal advocacy).

236. *Spike Lee Quotes*, *supra* note 3.

237. *Lehman Brothers—Ethics Project*, THE HENNICK CTR. FOR BUS. & L., <https://hennickcentre.ca/researchers/visual-legal-advocacy-program/lehman-brothers-project/> [https://perma.cc/MY8U-7YHW].

participated in my courses. My syllabus is based on Professor Regina Austin's syllabi at Penn Law.<sup>238</sup> The course is formatted as a litigation clinic to provide experiential learning opportunities for law students and expose them to the practice of visual legal advocacy. It focuses on professionalism and the tools of visual legal advocacy outside of the courtroom or litigation setting,<sup>239</sup> including research and fact-finding, interviewing subject matter experts or witnesses for short videos or documentaries, representing pro bono clients and grass-roots mobilization, social media engagement, and edutainment for CLE/CPE. The clinic encourages critical reflection on lawyering in the context of visual legal advocacy, including exploration of legal, procedural, strategic, ethical and theoretical issues. It also provides law students with the opportunity to work on a semester-long project focusing on the research and creative production of a CLE course based on a documentary film in relation to professional ethics. They are responsible for legal research and fact-finding and interviewing subject matter experts or witnesses for short videos that will complement the CLE course based on the documentaries as a case study. The documentary, *Collared*, is an optimal example in the clinic given it is a case study followed by a webinar panel discussion with subject matter experts (i.e., expert-witness testimonies in the language of litigation). Therefore, both the documentary and webinar are accredited as CLE. This kind of experimental learning also permits the law school to later use this premium visual content to be monetized (subject to licensing agreements with film producers) or offered for free (pro bono) for their own CLE programs.

#### VIII. EPILOGUE

After reflection, it is very gratifying that my first documentary film made it to Hot Docs. Again, I am thankful for the loyal support of my friend, Lana Kharlip, who always believed in me and our ability to work well together. I am also thankful for Joseph Grmovsek's contribution to the documentary project (the title, *Collared*, was his suggestion) and for his candid reflections and ongoing support for CLE/CPE initiatives related to white-collar crime prevention and education. From a broader perspective,

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238. *Courses & Seminars*, PENN L.: PENN PROGRAM ON DOCUMENTARIES & THE L., <https://www.law.upenn.edu/institutes/documentaries/courses-seminars.php> [https://perma.cc/9JH9-YTMQ].

239. Such a clinic should instead be part of a litigation clinic and taught by an experienced litigator.

I wish that when I was a student, I had been provided such an exciting opportunity to see my name in the credits of a film like *Collared* and to see the positive impact of my visual legal advocacy pro bono efforts. It is my vision that one day the demand for pro bono visual legal advocacy services in law schools will outstrip their capacity. I am, therefore, encouraging other deans and law schools to replicate the example established by *Collared* at Osgoode Hall Law School and by the pioneering work accomplished by my former professor and mentor, Regina Austin, with her Penn Program on Documentaries & the Law at Penn Law.