

“We Have Been Thrown Under the Bus”: Corporate Versus Individual Defense Mechanisms Against Transnational Corporate Bribery Charges

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Abstract

The telecommunication company Telia's dealings in Uzbekistan have resulted in bribery accusations both in Sweden and in abroad. The article analyzes the defense mechanisms produced by both the corporation and the prosecuted former executives of the company. Telia's initially denial eventually changed into a partial acknowledgment in combination with a scapegoating discourse. While Telia hardly defended itself at all in the Swedish court, the company's former executives employed a defense of legality, denial of knowledge, of deviance, and of responsibility as well as a claim of being scapegoated. We discuss these developments in the light of the transformation of the Telia case from a mediated corporate scandal to a criminal court case and from a focus on organizational to individual responsibility.

Keywords

corporate crime, accounts, neutralizations, bribery, court ethnography

In 2018, three former executives from the global telecommunication company Telia¹ were put on trial in Sweden in a bribery case involving the eldest daughter of the late Uzbek President Islam Karimov. In Sweden, companies cannot be held liable under criminal law. In the same trial, however, Swedish prosecutors pursued Telia for disgorgement, that is, the surrendering of illegally gained profits from the Uzbek affair. The case has attracted national and international interest, and one of the reasons may be that the Swedish government remains the company's principal shareholder, with almost 40% of the company's shares. On February 15, 2019, the verdict was announced; all three defendants were acquitted, and the disgorgement suit against Telia was dismissed. The prosecutor has appealed to the Court of Appeal, and the appeal case will be heard in the fall 2020. However, Telia's dealings in Uzbekistan have also resulted in criminal investigations abroad. Thus, in 2017, Telia entered a deferred prosecution agreement and agreed to pay US\$965 million to resolve charges relating to violations of the Foreign Corrupt Practices Act (FCPA) and Dutch law. In a press release, acting U.S. Attorney Joon H. Kim referred to the Telia case as “one of the largest criminal corporate bribery and corruption resolutions ever” (U.S. Department of Justice [DoJ], 2017a). The Telia-Uzbek-scandal can be labeled *transnational corporate bribery*, described by Lord and Levi (2016, pp. 365–366) as involving commercial enterprises “that operate in transnational markets and use illicit (financial) transactions/exchanges to win or

maintain business contracts in foreign jurisdictions.” Although transnational corporate bribery should be understood as primarily being committed for organizational gain, it may also benefit the individuals on the giving side of the bribe, either directly in the form of money or indirectly through promotions or prestige (Lord & Levi, 2016). These two interests, the organizational and the individual, although viewed from another angle, constitute the focus of attention in the analysis of the defenses employed by the corporation and the prosecuted officials in this article. Corporate accounts are in this context aimed at protecting a corporation's image and legitimacy, and to begin with, the corporate response and the defenses of the officials were aligned. However, as the analysis will show, at a certain point, the corporation started to distance itself from its former officials, who at that stage needed to prepare for their own, individual legal defenses. As the article will demonstrate, while the representatives of the corporation have employed a full range of different types of accounts, from literal denial to confession, the prosecuted individuals (i.e., the former CEO and

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two former senior executives) have consistently continued with their denial of the accusations. This is hardly surprising, since they as individuals risk 6 years imprisonment for aggravated bribery offenses. These two lines of defense culminated in the criminal trial in Sweden. This meant that the defenses also had to shift both in form, and from one forum to another, from the arena of public discourse to that of the legal process and the courtroom. While the defenses employed in public discourse should be viewed as being strategically focused on the avoidance of blame, legal defenses are instead conditioned by “the rhetoric of the law,” whose objective is that of convincing the court of the absence of guilt (see Croall, 1988, p. 303). The courtroom is in this sense a specific arena shaped by formal procedural rules, in which the legal defense is performed and mediated by legal professionals. On the other hand, other professionals and communication strategies shape the corporate public defense. However, the court setting, the question of legal responsibility and the legal professionals, may shape the accounts employed by defendants in a way that may contrast with or even contradict the public defense. For example, while public accounts are employed in order to be publicly acceptable (Cohen, 2009; Scott & Lyman, 1968), a legal defense might have to “sacrifice” what may be considered acceptable in the eyes of the public in order to frame the legal arguments. While the techniques of neutralization as proposed by Sykes and Matza (1957) assume that these techniques are utilized both *prior* to committing offenses and *after* an offense in order to diminish self-blame, the legal defense comprises discursive tactics framed after criminal investigations have been initiated. Still, the legal defense, including techniques of neutralization, is also employed to maintain a valued social identity and, as such, at least in part, goes beyond the question of guilt (see Bryant et al., 2017). In this article, we want to illustrate the relevance of applying the concept of neutralization to both corporate and individual accounts and also to both the public domain and legal proceedings.

The article aims to answer the following questions: How were accounts framed in order to respond to the allegations of criminality by, on the one hand, Telia (organizational defense) and, on the other, its former executives (individual defense)? How have the different forums (the public discourse and the legal process) shaped the accounts used by the corporation and the prosecuted former executives?

We have followed the accusations against Telia from the time at which the corporation first entered the telecom market in Uzbekistan in 2007, through the criminal trial in 2018. The empirical basis of this analysis comprises: (1) Public statements made by the corporation in the media and in their own publications, such as press releases and annual reports; (2) Written judgments from the U.S. DoJ and Securities and Exchange Commission (SEC) involving Telia; (3) Observations made during the criminal trial on bribery charges in Sweden; (4) Court records from the Swedish trial, including the criminal investigation report, written statements and presentations made in court by the defense, and the written judgment. The empirical material will be approached on the basis of a

frame analysis focusing on how the corporation and individual officials defended themselves against the accusations of crime through the use of denials and neutralization techniques, an approach which has been inspired by the work of Stanley Cohen (2009).

Previous Research

The research on neutralizations of white-collar and corporate crime can be traced all the way back to Sutherland, who was responsible for coining the term “white-collar crime,” and his descriptions of how businesspeople embrace an ideology that encourages them to engage in illegal practices and that provides rationalizations for such activity as being necessary and ordinary (Sutherland, 1961, pp. 240–247). Further, prior to Sykes and Matza’s (1957) publication of *Techniques of Neutralization*, Cressey (1953/1973, p. 94) explored in *Other People’s Money* how an embezzler or some other violator of trust may use rationalizations to “adjust” his conception of himself as a trusted person.” Later, Geis (1968), Benson (1985), and Coleman (1987) have analyzed how white-collar criminals neutralize their behavior and, for example, found that white-collar criminals’ accounts were unique to the crimes they had committed (Benson, 1985). More recent studies of neutralizations of white-collar crime have developed the ideas of these classics (e.g., Goldstraw-White, 2011; Klenowski & Copes, 2013; Piquero et al., 2005). Most studies on the neutralizations applied by white-collar criminals differ from corporate accounts, since they have focused on individual rationalizations by corporate employees (neutralizing crimes against the corporation) in contrast to corporate accounts (which neutralize crimes by the corporations). Studies of corporate accounts include examples of different forms of neutralizations employed by corporations (Box, 1983, p. 54), corporate responses to allegations of wrongdoing in the automobile industry (Whyte, 2016), neutralizations employed by large international corporations involved in international crimes (Huisman, 2010; Schoultz & Flyghed, 2016), neutralizations used by the tobacco industry (Fooks et al., 2013), neutralizations made by corporations involved in tax avoidance (Evertsson, 2019), and corporate responses from oil companies in connection with disasters (Breeze, 2012; Mathiesen, 2004). In these studies, scholars have both applied the traditional techniques of neutralization to corporations and identified new techniques that specifically apply to the corporate context.

There is also an extensive communications literature focused on corporate crises, in particular image repair theory and corporate apologetics, that is worth taking into account (e.g., Benoit, 1995, 2015; Hearit, 2006). While focusing on what constitutes the most effective corporate response, the crisis communication literature directs its principal focus at the avoidance of liability concerns (Bachmann et al., 2015; Coombs & Holladay, 2008; Hearit, 2006, p. 42; Kramer & Lewicki, 2010, p. 252). When a mediated scandal occurs, PR consultants may typically recommend apologizing in order to leave the affair behind as quickly as possible (Allern & Pollack,

2012b). Although an apology may prevent a legal dispute, an apology may also be used as evidence of guilt and thus invite legal actions against the company (Coombs & Holladay, 2008; Hearit, 2006, p. 42). One corporate tactic that may be used to purge the corporation of guilt and to restore legitimacy is the use of a scapegoating discourse (see Hearit, 2006, p. 20). By means of scapegoating, “a division is made by which guilt is transferred from the many to the one” (Hearit, 2006, p. 31), while the roots of the problem are not dealt with (Bachmann et al., 2015, pp. 1128–1129).

The literature on white-collar criminals’ accounts helps us understand how individuals frame their defense, while the existing literature on corporate denials and neutralizations, as well as the corporate crisis literature, can tell us more about the organizational aspects of neutralizations. However, none of the cited literature compares individual and organizational forms of accounts, nor how the accounts are developed from public discourse defenses into the legal defenses employed in a criminal trial, as this article sets out to. In addition, there is little literature based on court observations from white-collar or corporate crime trials. Much of the “court ethnography” has focused on juveniles (e.g., Barrett, 2013; Emerson, 2008; Kupchik, 2006) and has in addition been conducted in the United States (Paik & Harris, 2015), which has a different legal system and court culture from that of Sweden. The American legal system, in contrast to the Swedish, is characterized by a plea bargaining culture, not least in relation to white-collar crime (Askinosie, 1989; Mann, 1988). Croall (1993, p. 364) has studied how business offenders in court used strategic arguments (including both defense and mitigation) in an attempt to “minimize imputations of blame and to present themselves as honest, respectable and competent businesspersons.” These arguments include pointing to a *diffusion of responsibility* or someone else’s fault, claiming that the offense is merely technical and that the problems were inevitable, denying the seriousness of the offense and appealing to the defendant’s character or business competence (Croall, 1988, 1993). Croall’s work was based on observations in court and as such captured the *legal strategic defense*. The cases studied in that work, business regulatory crime under consumer protection legislation, differ in many ways from the high-profile Telia case on transnational corporate bribery. Levi (1991), however, has followed a well-publicized white-collar crime in the UK, the so-called Guinness Four case, which was focused on theft and false accounting. He makes observations on the relations between the judge and the defendants, and also those between the defendants and the media/public, but does not explicitly cover the defense mechanisms utilized.

Theoretical Approach—Understanding Neutralizations

Stanley Cohen (2009) describes the use of neutralization techniques in relation to state violations of human rights and uses these techniques as a tool to deconstruct official discourses. Cohen (2009) identifies three overarching strategies, which

together form a spiral of denial, and which may appear separately or in sequence. In the first, *literal denial*, the event itself is denied, for example by claiming that “nothing has happened.” The second form of denial, *interpretative denial*, occurs when the media and human rights organizations show that the event really has taken place. In these situations, those responsible must retreat and admit that the event has happened, but they then defend their actions by attempting to reformulate the description of the problem in various ways and by denying the extent of what has happened. In the third form of denial, *implicatory denial*, there is no attempt to deny either the facts or the conventional interpretation of these facts. Instead, the focus is directed at contesting the implications of what has happened. Cohen (2009, p. 103) points out that in practice the three forms of denial seldom run in sequence and that they more often appear simultaneously. Within these three principal forms of denial, Cohen (2009) identifies seven different techniques, of which five are drawn from Sykes and Matza’s (1957) theory (denial of responsibility, denial of injury, denial of the victim, condemnation of the condemners, and appeals to higher loyalties), while two were developed specifically in relation to political actors (denial of knowledge and moral indifference). Although Cohen’s development of the theory has been commended for the way in which it analyzes official discourse by linking individual denials to organizational denial (Whyte, 2016), the distinction between the individual level and the organizational is not always clear. In his book *States of denial*, Cohen (2009) uses empirical evidence to support his claims based on individuals, such as Israeli torturers and Nuremberg defendants, as well as on governments, without making a clear distinction between the two. This is an inherent limitation in Cohen’s theoretical framework. In consequence, it is our hope that this article will be able to contribute to a clarification of individual and corporate forms of denial, and as such, it constitutes a theoretical contribution to the literature on denial.

In their original theory, Sykes and Matza (1957, p. 666) argued that neutralizations “precede deviant behavior and make deviant behavior possible.” As both Minor (1981, p. 300) and Maruna and Copes (2005, pp. 230–231) emphasize, this implies that neutralization techniques are not merely after-the-act rationalizations, they also enable crime. However, as the theory has been developed, one of the subjects of discussion has focused on *when* the accounts are employed. Benson (1985, p. 587) has noted that “[i]t is important to distinguish between neutralizations that cause or allow an offense to be committed and accounts that are developed afterwards to excuse or justify it.” White-collar crime scholars such as Cressey (1953/1973, pp. 94, 118) and Benson (1985, p. 587) have adopted a similar position, reasoning that techniques of neutralization are available before the offense takes place. While Cohen’s (2009, p. 58f) development of the techniques of neutralization is based on analyses of perpetrators’ and bystanders’ denials of atrocities *ex post facto*, he argues that the use of neutralization techniques must be present, to some extent, prior to crimes being committed. In contrast to neutralizations that cause or allow an offense to be committed, the legal defense that constitutes part

of the current study is undoubtedly comprised of after-the-fact accounts. The legal defense accounts also differ in the sense that they have been framed in order to avoid criminal culpability for the acts in question and not necessarily to serve to justify acts in order to avoid self-blame or the blame of others (although this might also be the case).

Methodological Approach

The empirical material employed in the article was collected in four steps and is drawn from different sources. The first step involved the collection of official statements in which Telia's response to the accusations is expressed in sources such as press releases, annual reports, letters to shareholders, dominant national newspapers, and radio and TV interviews. These sources covered the period from 2007, when Telia first entered Uzbekistan and the first allegations were made, to the end of 2017, and they include the corporate response to the global settlement and to the criminal charges. The official material from Telia was collected from the corporation's website, and the national media material was obtained by means of a systematic search in the digital news archive, *Retriever Research*. Altogether, the sample includes more than 400 publications in which the corporation has defended itself. The material was gathered at several points during the period 2015–2018. It is employed in this article to describe the corporate responses leading up to the global settlement and the criminal trial in Sweden.

In the second step, we have collected and analyzed the written judgments relating to the global settlement. The judgments from the U.S. DoJ and SEC have been employed to understand Telia's position on the settlement and also to make sense of the public statements made by the corporation in relation to the settlement (collected in the first step).

Third, observational data were collected in 2019 during the Telia trial. This part of the analysis is based on the observations made during the trial at Stockholm District Court between September 5th and December 19th. We participated in those parts of the court proceedings that we viewed as being most relevant from the perspective of our research, primarily during the prosecutor's presentation of the charges, the opening presentations of the prosecution and defense cases, the presentation of the defense case for each point in the indictment, the cross-examination of the defendants, and the lawyers' closing arguments. In addition, the trial comprised several weeks of witness testimony, which we have only observed on a small number of occasions which we regarded as being relevant. The Telia company only presented its defense case in general terms, without presenting a detailed defense in relation to each point in the indictment of the kind presented by the three indicted individuals. Nor was there any cross-examination of any current representative of the corporation in connection with the different points in the indictment.

During the trial, we made detailed field notes of what was said in court and also of the way the different actors acted in the courtroom. Observing proceedings from the open gallery at the

back of the courtroom created a distance to the courtroom actors and allowed for the writing of extensive field notes in real-time on a laptop. Since we were also able to audio-tape the court hearings on the days we were present, this allowed us to transcribe parts of the hearings verbatim, and also to add details from memory that were not "talk," thus producing the so-called full or complete field notes (Emerson et al., 2011). In addition, we added our own impressions following a given day, preliminary ideas, and an analysis of what we had observed, in a separate document (see Paik & Harris, 2015). This means that we have made extensive notes on those days during which we observed the court proceedings. While field notes usually focus on describing scenes (Emerson et al., 2011), our own have instead largely focused on what was said, and only to a lesser extent on people's behavior (e.g., in the form of gestures and other forms of nonverbal information).

Official documentation related to the court case, the so-called court files, which include the written judgment, the police investigation report, the defense lawyer's power-point presentations, and recorded court cross-examinations, comprise a fourth form of empirical data. The court files were requested from the district court following the conclusion of the trial and have been analyzed in parallel with the field notes made during the court observations. For example, when we have noted that the defense referred to a document that had been filed with the court, the relevant annex in the court documentation has been used to assist in our analysis of the field notes. All presented quotes have been translated from Swedish to English.

The coding and analysis of all the empirical material has been focused on the manifestations of defense strategies, the so-called *accounts* (see Scott & Lyman, 1968; Cohen, 2009), and has been approached by means of frame analysis, that is, an analysis of how the phenomenon in question is framed. Frame analysis involves a focus on discourses, which may be described as the language, key concepts, and categories that are used to frame a given issue (Bacchi, 1999). By contrast with more customary analyses of discourses, frame analysis focuses on capturing the conscious formulation of statements (Bacchi, 1999). Although the empirical material is drawn from two different forums, the public discourse and the court proceedings, both comprise conscious formulations, often prepared by a team of legal or media consultants.

Analysis of the Defense—Corporate Versus Individual and Public Versus Court

The analysis is presented in the chronological order of the events, from the first accusations, through the global settlement, to the criminal court proceedings in Sweden.

The Uzbek Scandal and the Corporate Response

In 2007, Telia entered the telecom market in Uzbekistan, a country controlled by the authoritarian President Islam Karimov and his family (up until his death in 2016); Karimov has

over the years been shown to have had very little respect for human rights (Human Rights Watch, 2015). For years, Telia's expansion into Central Asia, with Uzbekistan at the forefront, was the main driver of company growth. However, as a result of the region's human rights record, Telia's presence in Uzbekistan was from the start criticized by human rights organizations, investors, and the Swedish media. The criticism related to Telia's partner in Uzbekistan and this partner's connections with President Karimov, and also to claims that Telia's equipment was being used for the purpose of surveilling the political opposition. Telia's response to these claims involved a wide range of neutralizations and denials and included stating that the company was aware of the corruption problems in Uzbekistan while at the same time giving assurances that it had zero tolerance for corruption. Simultaneously, one of the primary responses involved what Cohen (2009) refers to as *denial of knowledge* and in particular of any connections to the Uzbek president and his family. The corporate denial of knowledge functions here as a way of stressing the lack of information and details in order to avoid criticism. Cohen's (2009, p. 6) understanding of a subtle denial of knowledge, turning a blind eye or not wanting to know, comes close to Telia's response.

In September 2012, one of Sweden's leading investigative journalism TV shows presented revelations about the acquisition by Telia of a 3G license, frequencies, and number series, in order to become established as a telecom operator in Uzbekistan in 2007. Information was presented describing extensive financial transactions with a letter-box entity, Takilant. The journalists claimed that Takilant was owned by an assistant to the president's daughter, Gulnara Karimova (Uppdrag granskning, 2012). *Denial of knowledge* as to who had benefited from the purchase of the 3G licenses in Uzbekistan was one of the defense mechanisms used by the company. The immediate response, however, was *literal denial* (see Cohen, 2009). The day after the TV revelations, the CEO, Lars Nyberg, stated at a press conference that: "I feel convinced that Telia has not bribed anyone and has not participated in money laundering" (TeliaSonera, 2012c). *Literal denial* involves contesting accusations on a factual level, "nothing happened" (Cohen, 2009, p. 104). Telia's reassurances of their zero tolerance for corruption tie into Cohen's continues description of *literal denial*: "We would never allow something like that to happen, so it could not have happened" (Cohen, 2009, p. 104). A week later, Telia announced that a Swedish prosecutor had initiated a criminal investigation to examine suspected bribery offenses (TeliaSonera, 2012a).

At this stage, the *literal denial* was maintained by both the corporation and the senior managers who were under investigation by the prosecutor's office. Although the corporation stated that it welcomed the investigation, the allegations were described as "unfounded" and "completely false" (TeliaSonera, 2012b). Later, the strategies employed by the corporation and its accused managers, respectively, would follow two separate paths. A few months later, after a private investigation initiated by the corporation, the CEO resigned. This was followed some time later by Telia announcing that four senior executives had had to leave the company because of the Uzbek affair.

The Global Settlement—FCPA and Dutch Law Violations

In March 2014, U.S. and Dutch authorities announced that they were investigating the transactions in Uzbekistan. It would take more than 3 years before a settlement was reached, and during this time the new CEO and Chair of the Board of Telia recurrently expressed that they were cooperating fully with U.S. and Dutch authorities and that they were prepared to take responsibility for earlier wrongdoings (Telia Company, 2016a, 2016b). Using Cohen's (2009, p. 113f) terminology, this type of account may be interpreted as a *partial acknowledgment* and more specifically as a *temporal containment*, referring to activities as something that used to take place. Cohen (2009, p. 113) points out that just as there are varieties of denials, there are also graduations of acknowledgments. The partial acknowledgment functions as a way of showing that one takes the accusations seriously or at least of appearing to do so (Cohen, 2009, p. 113). At the same time, the temporal containment implicit in this type of partial acknowledgment *displaces the incident into the past* (Mathiesen, 2004, p. 43) and avoids the criticized events being transferred to the current situation.

In September 2017, Telia announced that they had agreed to pay US\$965 million to resolve charges relating to violations of the FCPA in order to win business in Uzbekistan. The global settlement, or the deferred prosecution agreement, was reached between Telia and the U.S. DoJ, the SEC, and the Dutch Public Prosecution Service. In the settlement, Telia received full credit for cooperating in the investigation, which included having provided information about involved individuals, and having "clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct" (U.S. DoJ, 2017b, p. 8) and therefore had its fine reduced. In his paper entitled "The Corporate Criminal as Scapegoat," Garrett (2015, p. 1794) notes that the U.S. DoJ's focus on individual culpability for corporate crime, as outlined in its policy known as the "Yates Memo," obliges companies to hand over culpable individuals in order to receive credit for cooperation. It is hardly surprising then that in the "Statements of Facts" attached to the settlement we can read the following:

Executive A and certain management and employees within TELIA and affiliated entities [...] understood that they had to regularly pay the Foreign Official millions of dollars in order to enter the Uzbek telecommunications market and continue to operate there. (U.S. DoJ, 2017b, Attachment A, p. 3)

Executive A here refers to "a high-ranking executive of Telia who had authority over TELIA's Eurasian Business Area" (U.S. DoJ, 2017b, attachment A, p. 2) and is one of the three who would subsequently be prosecuted in the criminal court in Sweden. The other two who would later be prosecuted in Sweden are not identified as clearly in the settlement but are included in the term "certain management." In the settlement, Telia also agreed that the company and its authorized representatives would not make any public statements contradicting the acceptance of responsibility (U.S. DoJ, 2017b). Thus,

during the following days, the statements published in Swedish and international news publications from the new CEO and the new Chair of the Board of Telia included a confession in their comments on the settlement:

We also made the judgement that this is the best thing for the company and its owners. We must also remember that a serious crime has been committed, bribes of 330 million dollars have been paid according to American and Dutch legislation, and a settlement is therefore better in our judgement than going to court. (Johan Dannelind, CEO of Telia, Dagens industri, 2017)

In addition to this confession, the statements made by Telia representatives often refer to the corporation as a new and changed organization, placing the responsibility indirectly on the former management.

We have to remember that these events were initiated ten years ago. We work in a different way today and we have learned a great deal along the way. We have changed the company's culture and leadership. (Marie Ehrling, the Chair of the Telia Board, Svenska Dagbladet, 2017)

Here, we can see that what started with a strategy of denial changed to a position of corporate confession. However, the confession functions as a way of distancing and differentiating the current corporation from its former leaders. Although the confession and acknowledgment include an admission of guilt (Hearit, 2006, p. 19), an apologetic rhetoric may also include a dissociation whereby the "the company is able to locate guilt, not in a company as a company, but instead in the actions of a few individuals" (Hearit, 2006, p. 31). It shifts the blame from the company to individuals, which is also known as *scapegoating* (Hearit, 2006; Scott & Lyman, 1968). A corporation responding to accusations by means of scapegoating techniques may also fit well into a media logic. Mediated scandals tend to emphasize individual rather than collective responsibility (Allern & Pollack, 2012a; Benediktsson, 2010). From a corporate perspective, scapegoating can be effective since it reduces complexity, allowing the corporation to avoid scrutiny and continue its operations (Bachmann et al., 2015). This is also what the former executives would claim during the trial, as will be shown below.

The Three Defendants' Legal Defense in Court

When the trial started at the Stockholm District Court on September 5, 2018, 6 years had passed since the Swedish prosecutor had first initiated the criminal investigation. The preliminary investigation protocol amounts to almost 40,000 pages, which also indicates both the extent of the investigation and the uniqueness of the case. As has been mentioned, in addition to the criminal charges against the former CEO and two other senior company officials, the prosecutor had initiated legal proceedings against the Telia Company for US\$208,500,000 for the disgorgement of profits acquired through crime. This amount was included in the global settlement that Telia had reached with U.S. and Dutch authorities

and was to be paid to either Sweden or the Netherlands, depending on the outcome of the legal proceedings against Telia in Sweden. Nonetheless, the prosecution and the trial were primarily focused on the accused individuals' responsibility for the indicted crimes.

During the 42 days of the trial, we have observed a variety of defense strategies that could be analyzed in relation to the literature on techniques of neutralization, although some of the accounts presented were legal arguments, and in this sense clearly after-the-act defense mechanisms. Prior to the start of the trial, the three accused individuals had not taken the opportunity to give their side of the story, with the exception of a few statements made by their defense lawyers when the charges were brought by the prosecutor. While the former CEO had been at the forefront of the initial literal denial by the corporation, he was now instead defending himself in a criminal court, which is quite different. The court hearing also constitutes a fundamentally different forum from press releases or the media in the sense that the defense is foremost a matter of legal argument in order to win the case rather than a question of protecting a corporation's image and legitimacy.

Those defending the former CEO framed the prosecution as being unexpected and at the same time claimed that he had already been convicted in the "media trial" (cf. Åkerström et al., 2016), portraying the prosecutor as having been partly responsible for this. The second individual standing trial was the Telia corporation's president of business area Eurasia. The Swedish prosecutor described him as being "chiefly responsible" (closing arguments, day 42), and he is also the person presented in the American settlement as the most responsible individual. The third prosecuted individual was Telia's general counsel for Eurasia and has been described as "the lawyer" in the affair, but part of his defense is based on denying this role. At the same time, his role as the company lawyer with responsibility for the coordination of the relevant business transactions was not questioned by his defense. As in many white-collar crime cases (Levi, 1991), all three defendants argued that their lives have been ruined by the prosecution. The counsels for the president of the Eurasian operation and the company lawyer in particular emphasized the inability of their clients to continue to earn a living.

The three teams of defense lawyers comprise what could be described as some of Sweden's top lawyers in the field of white-collar crime. Thus, the prosecuted individuals have not opted to avail themselves of a public defender or to be defended by lawyers paid for by the corporation. This is in line with Benediktsson (2010) observation that many executives suspected of criminal activities have to stand trial alone rather than being able to use organizational resources to defend themselves. Throughout the trial, the defendants would emphasize that they had been abandoned by the corporation.

Denial of Knowledge, Defense of Legality, and Denial of Deviance

On the first day of the court hearing, the two prosecutors opened their 555 page long power-point presentation and

started to present the charges. One of their overall arguments was that “Gulnara Karimova [the daughter of the President of Uzbekistan of that time] was in control of the telecom market in Uzbekistan and that her position had been known to the telecom companies.” The prosecutor maintained that Takilant was a partner in several international telecom companies working in Uzbekistan, with an ownership stake of exactly 26%, and argued that “Telia is not an isolated incident.” The prosecutor also maintained the position that Gulnara Karimova had been the formal owner of Takilant, the offshore company to which Telia had paid money for licenses.

The three defendants applied a *denial of knowledge* by referring to a lack of information or details regarding the beneficial owner of Takilant. The president of the Eurasian operation claimed during cross-examination that there were just “rumors and stories, we have never found any proof” (day 8). Similarly, one of the defense lawyers asserted during the closing arguments on the last day of the court hearings that it would not have been possible for the defendant to know that Gulnara Karimova was behind Takilant, since “a police search in Switzerland had been required to finally establish this connection” a long time after the business transactions had been concluded (case no. B 12201-17, B 12203-17, annex 414).

The main legal battle during the court hearings related to the position of Gulnara Karimova. The Swedish law on bribery at that time required there to be a connection between the improper benefit received and the performance of the recipient’s work or duties, which could entail a risk of undue influence. Following the lodging of the court indictment, the three defense teams made a joint effort to appeal the decision to prosecute (see case no. B 12201-17, B 12203-17, annex 95) based on the argument that Gulnara Karimova was not a bribable person according to the legislation and that the prosecution should therefore be dismissed. They supported this appeal with the help of a legal opinion from a Professor Emerita in law. The appeal was dismissed but in court the *defense of legality* continued. A defense of legality could be interpreted as a form of literal denial, arguing, on a factual level, that the act is not a criminal offense. It could also be seen as a form of interpretative denial, where the interpretation of the illegality of the act is questioned (see Cohen, 2009, p. 107). Either way, the legalistic claim utilized by the defense in court referred to the definition of bribery in Swedish law. One of the defense lawyers expressed this clearly: “When we heard the suspicions, a thought arose in me as a lawyer. This is not a bribery offence that the prosecutor is describing, it might be anything at all, but it is not a bribery offence” (field notes, closing arguments, day 42). Another lawyer stated that “The defense’s fundamental opinion is that *nobody* should have been registered as a suspect, let alone prosecuted” (see case no. B 12201-17, B 12203-17, annex 359). The defense of legality was employed in relation to Swedish law, which was contrasted with that of other legal jurisdictions: “In many foreign jurisdictions, it is sufficient for her to have been a “foreign public official” in some sense—this differs from the legal situation in Sweden. And as we are all

aware, it is Swedish law that is to be tried in this case” (opening presentation of the defense, day 3).

This defense of legality illustrates the differences between a defense in court aimed at avoiding legal responsibility and a public defense aimed at saving the corporation from blame. While making their legal claim by contrasting Swedish legislation with other legal jurisdictions, the defense was indirectly saying that the act might be punishable in another context. Another example of this was seen when the defense presented its position in relation to the charges on the first day of the trial, arguing that the actions had not been illegal at the time but might have been today, since the events involved “conditions that are covered by later legislation. If Gulnara Karimova has been able to influence decisions made by competent decision makers, it is not a formal position, so it is a typical case of the offense that was introduced in 2012, that is, trading in influence” (defense counsel, day 1). The defense counsel were here referring to legislation that was not introduced in Sweden until 2012, that is, after the prosecuted offenses had been committed, when “trading in influence” became an offense. Thus, the legal defense was focused on showing that the acts that were being prosecuted fell outside the remit of the legislation that was in place at the time of the suspected offenses.

During the trial, the prosecutor declared that Telia had “paid for government agency decisions” (presentation of the prosecution case, day 2). The defendants on the other hand contended that what had happened was not “unusual” or “abnormal” and that the payments were “commercially motivated.” During the closing arguments on the final day of the trial, the counsel for one of the defendants explained:

Thus there is a very large number of people who have been given detailed information about the transactions. There is one common denominator. Nobody, not a single one, has raised a red flag. [...] To those who know about these business operations, the transactions do not appear extraordinary or deviant. Nobody drew the conclusion that this might constitute a bribe.

This type of defense could be labeled a *denial of deviance*, a term coined by Whyte (2016, pp. 175), which includes accounts that refer to an act or event as a normal form of conducting business (see also Benson, 1985, p. 594; Coleman 1987, p. 413) or that make an appeal to conformity with norms (see Cohen, 2009, p. 91) within the company, the business as a whole, or the country in which a business is operating. This defense resembles the legal defense but works somewhat differently. While the legal defense uses the law as the yardstick, the denial of deviance uses social or business norms as the standard against which the behavior is measured—in other words arguing for the fact that the actions are a case of *business as usual*. The above quote from the trial also includes another form of defense in that it argues that the actions were not only, or even at all, the responsibility of the defendants, a form of denial of responsibility that will be further explored below.

Denial of Responsibility

A prominent part of the framing of the defense in court involved a *denial of responsibility*, with the defendants accepting that something had happened but denying their own responsibility (Cohen, 2009, p. 61). As has been shown above, the three defendants did not accept that the acts were illegal but did not deny that the transactions had taken place. Instead, they referred to others as constituting the responsible party. However, this type of defense was applied somewhat differently by the three defendants.

During the first day, the counsel for the president of the Eurasian operation argued for an absence of responsibility by referring to people above his client in the corporate hierarchy as being responsible for the decisions: “He has not made any of the relevant decisions, has not executed any payments. The decisions have been made by the Board and the CEO, when he has been responsible” (statement of defendant’s position in relation to the charges, day 1). Locating the responsibility for the actions with the Board, and the Board’s decision to enter the Uzbekistan market, was a prominent element in the defense of all three of the accused. The defense of the CEO was mainly focused on the fact that the decision to enter Uzbekistan had been taken by the Board prior to his becoming CEO. The counsel for the president of the Eurasian operation also referred to the fact that his client “has not been responsible, or had the competence, to assess the legal issues” (day 2), while the company lawyer argued that he was not the individual who had “been holding the pen” (field notes, day 6, presentation of the case, charge no. 1); instead, three different external law firms had been involved, along with Telia’s chief legal officer (closing arguments, defense, day 42, power-point presentation, case no. B 12201-17, B 12203-17, annex 414).

During the trial, the company lawyer’s defense counsel repeatedly referred to a long list of people who had been involved in the business deals. During the presentation of the defense case on the fifth day of the court hearing, the counsel concluded: “Again—an extremely large number of people are involved in these transactions. Many have played a much greater role than [the client]. [The client’s] role is very, very peripheral.” Others have pointed out that corporate structures create unique opportunities for another form of denial of responsibility, namely *diffusion of responsibility*, since these structures make it difficult to determine who is to blame (Bandura, 1999; Croall, 1988, 1993). Similarly, we observed during the trial that the defendants ascribed responsibility for various decisions to different levels of the organizational hierarchy or referred to a large group of actors being involved in the decision. Nor was this a claim that was only made by the defense. One of the witnesses, another senior official of the corporation, stated in a police interrogation that the division of responsibility in a company is “blurry” and that it is impossible to identify a single person as being responsible (preliminary investigation, annex J. p. 10).

Another way of denying responsibility involves referring to a lack of any intention to produce harm or commit a crime

(Box, 1983, p. 55; Cohen, 2009, p. 60), which can be labeled a *denial of intent*. The defense lawyers repeatedly denied that their clients had any “intent to commit a bribery offense according to Swedish law” (closing arguments, day 41). One part of the denial of intent can also involve framing the accused as having made no personal gains from the affair, as in the following example: “[the client] has been an employee and has only had the ambition of performing his work in the best way. Has not had any personal interest in the relevant business and has above all lacked any motive.” In contrast, the defendants stressed the corporate gains and the corporation’s interest in the Uzbek market: “There has been a powerful desire on the part of TeliaSonera to implement this business transaction” (counsel for the president of the Eurasian operation, day 2).

Yet, another form of denial of responsibility involves what may be labeled a *denial of control* (see van Dijk, 1992, p. 92), which involves attempts to repudiate responsibility for an act by referring to having no or only limited control over the situation. For example, the CEO’s defense was based on the fact that he had not taken over as CEO at the time that the first decision to enter Uzbekistan had been taken by the Board. During the presentation of the defense case, the CEO’s counsel claimed that his client “could not interrupt the business transactions” and that “breaking off a transaction involves a terribly high cost” (day 3).

The other two defendants instead employed what may be interpreted as a *defense of necessity* (see Benson, 1985; Cohen, 2009, pp. 91–92; Coleman, 1987; Minor, 1981, p. 412), which includes references to obedience (see Cohen, 2009, p. 89) and “acting under orders” (Box, 1983, p. 55). During the court hearing, we repeatedly observed framings such as the obligation to “follow instructions received from his superiors” (presentation of defense case, charge no. 3, day 14). The CEO’s defense counsel also employed a form of defense of necessity by referring to the CEO’s position in relation to the Telia Board: “What does [the client] do following a decision from the board? What does he have to do? Well, he has to implement it” (presentation of defense case, charge no. 3, day 14).

On several occasions during the trial, the defendants described that they have felt abandoned by the company, not least in relation to the global settlement. The CEO’s defense lawyers pointed out that “the former employer, TeliaSonera, has not once made contact with my client” (presentation of defense case, day 3). In the transcript from the 39th day of the court hearing, we can read that one of the other defendants was “very disappointed with Telia, who have chosen to sacrifice certain individuals in order to save the company.” The defendants’ expressions of disappointment with the corporation were expanded into a defense that may be categorized as another form of denial of responsibility, whereby the responsibility for the act or event is transferred from the corporation to one or a few symbolic figures, a *claim of being scapegoated*. As was mentioned above, scapegoating reduces complexity and allows the corporation to avoid scrutiny (Bachmann et al., 2015). This is also what the defendants would argue in court when they referred to the global settlement: “Telia has had powerful

commercial reasons for entering into this contract and it should not be ascribed any evidentiary value. The incentive, we have already said, was 1.4 billion [Swedish Kronor].” In the closing arguments on the last day, one of the defendants described finding the company’s behavior “cowardly” and as “backstabbing.” He continued: “The company decided to throw three individuals under the bus in order to receive hundreds of millions of dollars in reduced costs.” Contesting the definition of the accused as a criminal is a recurrent theme in white-collar crime prosecutions (Levi, 2006). However, what is significant here in relation to all of the forms of denial of responsibility is the relationship between the large corporation and the three prosecuted individuals. They were not accused of committing crimes *against the company*, but *for the company*, and perceived that they were being scapegoated and sacrificed in order for the company to be able to continue doing business.

The Corporate Approach: “It Is Up to the Court”

Since Telia had already reached the global settlement and, as explained above, was not at risk of any additional financial loss, the company’s defense during the trial was almost nonexistent. On the first day of the trial, when all parties to the case presented their positions, Telia’s lawyer asked himself: “Does it constitute a crime? The Telia Company has no opinion on this. We leave that to the court to determine.” This passive role becomes apparent when reading through the field notes from the court hearings. The representatives of Telia are seldom mentioned, but when they are the notes were mostly related to their absence and passivity. The field notes include the following reflections following the second day in court: “Telia’s representatives have not said anything all day. Thus none of the objections [to the prosecution case] came from them.”

The company did not adopt an entirely passive position but rather provided confirmation in relation to several points made in the prosecution case. On the third day of the trial, Telia’s lawyer stated that “Telia does not object to the prosecutor’s information that the ultimate beneficiary in all cases was Gulnara Karimova.” This is not strange, however, viewed in relation to the global settlement, which required the company to keep to the contents of the “statement of facts,” in which the company had already acknowledged guilt. At the same time, one thing did become important, namely that “no confiscation will be implemented by another authority during the period in which the case is ongoing.” In other words, as long as the company did not risk the confiscation of any additional assets besides those already agreed with the American and Dutch authorities, in a case in which the Swedish prosecutor was also a participant, the company had no objections to the prosecution.

Cohen (2009, p. 76) argues that denials by individual perpetrators and official reactions by governments to accusation of human rights violations look very similar because they are both based on a “culture of denial” that is available when crimes are committed. Cohen does not recognize cases in which individual interests are different from those of the organization or vice

versa. In the case of Telia, the response made by the corporation and its executives to the accusations was initially framed in terms of the interest of saving the face of the organization. Through the settlement with the American and Dutch authorities, the organization (the corporation) was placed in conflict with the individuals (the former executives). The shifting of blame, which the scapegoating of the executives aimed to achieve, changed the game, and we can thereafter see two diametrically opposed accounts in response to the accusations of bribery offenses. However, we might still be able to use Cohen’s reasoning here to understand the differences between the individual and organizational accounts. The corporate accounts are tied into a discourse and culture of denial and acknowledgment that is available in society, whereby the corporation can be separated from its executives, and whereby corporations can accept responsibility in a settlement, pay large fines, and still continue their operations. At the same time, the executives accounts tie into another discourse and culture, that of suspected white-collar offenders who are put on trial, executives who have lost the support of their corporations, and who no longer have anything to gain from framing their defense in the interests of the corporation.

Concluding Discussion

When the court announced the acquittal of the three defendants in January 2018, it was evident that the central legal issue had been that of Gulnara Karimova’s position within Uzbekistan and the limitations of the Swedish anti-bribery legislation. The presiding judge, in a comment made in the court press release, stated that “In order for criminal liability for bribery to become applicable at all, it is required that the recipient of alleged bribes is included in the limited circle of persons who, according to the applicable law, could be held liable for the taking of bribes. It has not been proven in the case that Gulnara Karimova held any such position in connection to the telecom sector, which has been the prosecutor’s main alternative” (Stockholm District Court, 2019). In the media discussion following the verdict, the case has been used as a symbol for the ineffectiveness of the former bribery legislation (e.g., Sveriges Television (SVT), 2019).

In this article, we have analyzed corporate and individual accounts in a case of corporate crime, that is, a case concerning offenses that were “committed *for* the corporation and not *against* it” (Box, 1983, p. 20). The case was one of *transnational corporate bribery* (Lord & Levi, 2016) with both international and national consequences, in which the company had been forced to enter into a global settlement and acknowledge criminal activity, at the same time as three former executives have been prosecuted in a criminal case in Sweden, in which they have been acquitted by the court of first instance. In this article, we have shown how the case illustrates the transformation from a media scandal to a legal process, in which two types of interest are clearly expressed—the organizational and the individual. These different interests are both at stake in this case, which from the beginning was not about individuals

having benefited, but rather about business dealings that benefited the company, and by extension also the Swedish state as the principal shareholder in the telecom company.

The corporation must protect what is best for the corporation in accordance with its legal responsibilities toward its shareholders (Hearit, 2006, p. 51). A mediated scandal requires some form of resolution that signals change (Allern & Pollack, 2012b). While Telia initially denied the accusations, this shifted into a *partial acknowledgment* and *temporal containment* (see Cohen, 2009) in combination with a form of *scapegoating*, which was due to several factors, including investigations that the company itself had initiated, and legal investigations by American and Dutch authorities. During this process, the company distanced itself from its former leadership and identified specific individuals as being responsible. One important detail in this context is the fact that Sweden does not apply criminal liability for legal persons, which means that the company cannot legally be convicted of a crime. By the time of the trial in Sweden, the company had nothing to lose besides the confiscation of profits if the individuals placed on trial were convicted of criminal offenses. And since this amount would be confiscated by the Dutch authorities in the case of the defendants being acquitted, the company was not at risk of having to make any additional payments. However, since the company was required to keep to the acknowledgment of guilt that had already been made in the American courts, in order to avoid breaking the agreement reached with the American authorities, it had little room for maneuver.

By contrast, the prosecuted individuals risked, and since the verdict has been appealed still risk, being sentenced to 6 years' imprisonment. For a long time now, they have been forced to focus on saving their own skin and not primarily on defending the company. The defense counsel therefore argued that the prosecuted acts did not fall within the remit of the legislation that was in place at the time, but that they might possibly be offenses under the legislation as it stands today. This type of argument is difficult to grasp within the framework of the logic of the media, since it is not exculpatory in relation to moral guilt. In van Dijk (1993) terms, this could be understood as an example of different *discourse genres*, in terms of different forums requiring different accounts, or of "audience segregation," whereby specific performances are given to specific audiences (Goffman, 1956, p. 137). Beyond the use of the legality defense, the defendants denied knowledge, deviance, and responsibility. One of the more significant denials of responsibility involved the claim of having been scapegoated. While the scapegoating moved the blame from the corporation to a few individuals (Bachmann et al., 2015, p. 1129), the process of blaming a few selected individuals also constitutes part of the logic of the criminal proceedings. It is difficult to imagine a court hearing in which everyone involved in the decision-making process and implementation of a business deal like Telia's in Uzbekistan could be prosecuted. When the defense argued during the trial that the defendants were not being prosecuted because they were the individuals who bore the most guilt, but rather because they were the most practical/

convenient scapegoats, they were probably right. This article thus illustrates the complexity of corporate crime, and of how it can contribute to our understanding of the accounts that are used by organizations and individuals when they face accusations of criminal wrongdoing.

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Note

1. The public telecommunications monopoly Televerket was transformed into a public sector joint stock company in 1993 and was renamed Telia. In 2002, the company merged with the Finnish company Sonera and was renamed TeliaSonera. In 2016, TeliaSonera changed its name to the Telia Company AB (hereafter: Telia).

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