

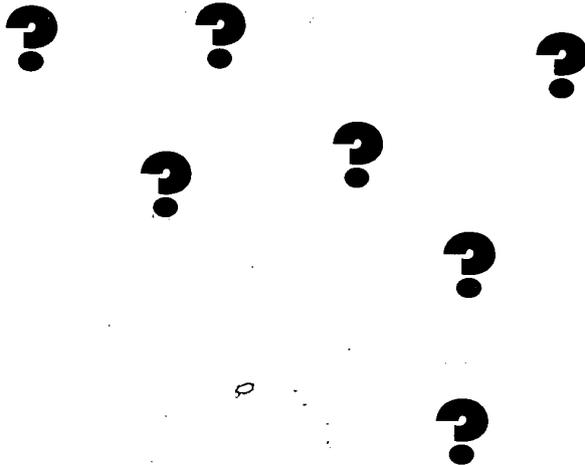


PROCEEDINGS of the ACADEMIC WORKSHOP

**"Definitional Dilemma: Can and Should There
Be a Universal Definition of
White Collar Crime?"**

WHITE COLLAR CRIME

166244



June 20-22 1996

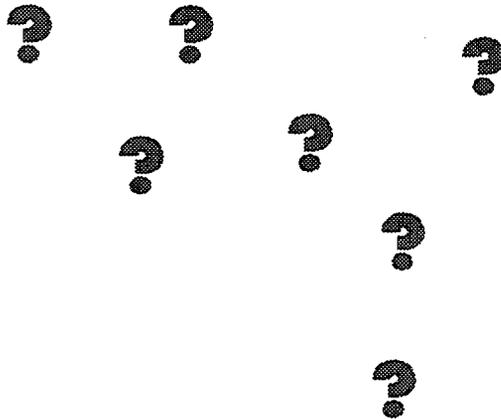
**Sponsored and Co-hosted by
National White Collar Crime Center
and West Virginia University**



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**"Definitional Dilemma: Can and Should There
Be a Universal Definition of
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**WHITE COLLAR
CRIME**



**Edited by James Helmkamp, Richard Ball and
Kitty Townsend**

**National White Collar Crime Center
Training and Research Institute
Morgantown, West Virginia**



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Planned illegal or unethical acts of ^{deception}
~~deceit~~ or ~~fraud~~, committed by an individual
or organization, usually ~~ever~~ during the course
of legitimate occupational activity by persons
of high ^{or respectable} social status, for personal or
^{organizational} corporate gain, that violates ^{the} ~~the~~ ^{fiduciary responsibility of} public trust.

Morgantown, West Virginia
June 21, 1996

... **A**fter many hours of discussion and debate that continued over meals and afterhours, a group of Workshop participants went to lunch on the second day. Discussion was lively and points of agreement and disagreement were noted. Using the exchanges made up to that point, Jay Albanese began to write what he thought might be a consensus definition. Little did he know this would lead to anything more substantial.

The napkin was eventually passed around and changes were made as it circulated. What follows are the many other presentations which generated meaningful insights--on napkins, and otherwise...

CONTENTS

ACKNOWLEDGMENTS	vii
PREFACE	ix
INTRODUCTION	
Opening Remarks.....	3
DICK JOHNSTON	
Welcome to West Virginia University.....	7
DAVID HARDESTY	
Workshop Charge.....	11
BILL McDONALD	
GROUP ONE PAPERS	
The Role of the Collective in Defining White-Collar Crime.....	17
KATE JAMIESON	
Underworlds and Upperworlds: The Convergence of Organized and White-Collar Crime.....	35
GARY POTTER and LARRY GAINES	
GROUP ONE DISCUSSIONS	57
GROUP TWO PAPERS	
What is White Collar Crime? New Battles in the War of Definitions.....	77
JIM COLEMAN	
Offense-Based Versus Offender-Based Definitions of White Collar Crime.....	87
JAY ALBANESE	
From White-Collar Crime to Elite Deviance: Reasons for a Paradigm Shift.....	95
DAVE SIMON	
Recalling Status, Power and Responsibility in the Study of White-Collar Crime.....	105
KIP SCHLEGEL	
GROUP TWO DISCUSSIONS	115

GROUP THREE PAPERS

The Impact of Technology-Based Crime on Definitions of White Collar/Economic
Crime: Breaking Out of the White Collar Crime Paradigm.....153

GARY GORDON

Definition in White-Collar Crime Scholarship: Sometimes it Can Matter.....161

GIL GEIS

White Collar Crime, Computers, and the Legal Construction of Property.....173

RAY MICHALOWSKI

Understanding the Context of White Collar Crime: A Sutherland Approbation.....205

BOB MEIER

GROUP THREE DISCUSSIONS.....221

GROUP FOUR PAPERS

Varieties of White Collar Crime: Corporate, Organizational, Occupational,
Organized, Political and Professional.....243

FRANK HAGAN

Defining White Collar Crime: In Defense of an Inclusive Approach.....263

DAVID FRIEDRICHS

Constructing White Collar Crime: Diverse Perspectives and Convergent Claims.....275

LARRY NICHOLS

Moving Beyond Profit as an Explanation of Corporate Crime: Explaining
Corporate Crime from an Organizational Perspective.....295

GARY RABE and M. DAVID ERMANN

The Logic of Definition Applied to Various Definitions of White Collar Crime.....317

DICK BALL

GROUP FOUR DISCUSSIONS.....337

CONCLUSION

Coming to Consensus.....351

Closing Remarks.....353

DICK JOHNSTON

Acknowledgments

Many different individuals contributed to the success of this Workshop. We most fervently thank the white collar crime scholars who saw the wisdom in our efforts and worthiness of our goals. Their papers and comments form the core of these proceedings.

From the very outset, from concept to Stalnaker Hall, the guidance, support and encouragement we received from Bill McDonald, the Chair of the Center's Board of Directors and Dick Johnston, the Center's Director was greatly appreciated.

We owe a great deal of gratitude to Rebecca Dean, the Center's Meeting Coordinator, who handled the logistical aspects of the Workshop in a magnificent manner. She coordinated all our needs, wants and special requests with Nancy Nestor and her staff at West Virginia University.

Other Center staff including Gary Lusher and Sandy Hantz assisted us in many ways in preparing for the Workshop. Meredith Pearce designed the cover and section dividers.

The WVU Student Interns provided a valuable service by taking notes during the discussion sessions. We hope they derived a sense of interest in the field of white collar crime by observing the experts.

Finally, we want to especially acknowledge the significant contributions of one of our co-editors - Kitty Townsend. She helped in every aspect of the Workshop from abstract and agenda preparation, to audio recording and Intern coordination, to survey collation and analysis, to evaluations, to proceedings format and proofreading.

The overall success of the Workshop was possible by many individuals working together for a common goal. Thank you all.

Preface

When the concept for the Workshop was developed in early 1996, a list of approximately 30 academic experts on white collar crime was prepared and each was invited to participate in the 3-day Workshop. We feel very fortunate to have had about half of these gather in Morgantown, West Virginia, June 20-22, 1996 to discuss the definitional dilemma surrounding white collar crime. We realize that prior commitments, publishing and editing deadlines, teaching responsibilities, and vacations prevented additional participation. This Workshop, which was held on the campus of West Virginia University (WVU), was co-sponsored by the National White Collar Crime Center and WVU.

The purpose of the Workshop was to discuss the many differing opinions on the definition of white collar crime and formulate a working definition that can be operationalized for use by the Center and its membership. This membership is represented by state and local law enforcement agencies, state regulatory agencies, national consumer advocacy organizations, and private-sector businesses in 47 states.

The debate and discussion over the many iterations of white collar crime definitions has a long and storied history with which all the Workshop participants are quite familiar. The National White Collar Crime Center wanted to provide a forum of free exchange through the presentation of individual papers (15 to 20 minutes each) and then an extended period of discussion (1 to 2 hours) after each group of papers...and then incorporate both of these into a working document.

This approach was different from the typical professional meeting where a group of papers is presented by 3 to 5 authors and followed by maybe 5 to 10 minutes of frenzied questions from the audience and comments from the speakers. Then off to the next session. We wanted to provide an extended contact time through long discussion periods, breaks and common social events.

When we initially solicited for papers, we cast a broad net, allowing each author to provide their own unique perspective on the topic area. The resulting papers, presented herein, indeed offer a wide variety of opinions. To provide an open forum and to allow the white collar crime research community and other interested parties an unencumbered view of what the experts think, we chose not to edit these papers. They are however, semi-standardized in terms

of format. Some papers include an abstract and some do not, depending upon the extent to which the abstract contributed to a further understanding of the paper. Literature citations within the body of the papers may be different, while they are consistently annotated in the reference section at the end of each paper.

At the conclusion of the Workshop, the group agreed, by consensus after lively debate and discussion, on an operational definition of white collar crime.

INTRODUCTION

<i>Opening Remarks</i>	3
Dick Johnston	
<i>Welcome to West Virginia University</i>	7
David Hardesty	
<i>Workshop Charge</i>	11
Bill McDonald	

Opening Remarks

Dick Johnston - Director, National White Collar Crime Center

Good morning and welcome to West Virginia - we would like to invite you to enjoy yourself while you are here. We were very enthusiastic about this event as we sought to determine who might be interested in such a gathering, and the response was overwhelming. Many of your colleagues who would have liked to have been here were simply unable to attend because of scheduling conflicts or last-minute things that caused a few people not to be here. I worked on my Masters in criminal justice at the University of Louisville and became familiar with quite a few of the names that I see on the agenda and some of the those who couldn't be here, and while I am not currently involved in the world of academics, I am as closely aligned as I possibly can be at every turn. I admire the challenges that you undertake and the role that the academics play as it relates directly to the practitioner's job in the field, particularly within law enforcement and the criminal justice system.

I would like to take a few seconds to express my enthusiasm and my hope that this will be the beginning of a recurring event, hopefully annually, if not more often, and also that we can encourage you and your colleagues who couldn't be here, to participate with us in a larger more formalized consortium concept. We feel very strongly that this is needed. When I came to the National White Collar Crime Center in August 1992, the Center didn't go by its present name, but was known as the Leviticus Project. Begun in 1978 and supported by federal funding since 1980, the Leviticus Project was a small, narrowly focused anti-crime program dealing with fraud in the coal fields. The Center receives its current funding through a grant from the Bureau of Justice Assistance. We don't say this in public too loudly, but this year even with the thirteen continuing resolutions that ensued before a budget was finally passed, we received over a 100% increase in our budget, and this simply says that Congress recognizes that there is a need to direct more resources towards issues related to economic crime. I can tell you that in working closely with Federal agencies as we do, that there is a great awareness that we need to reallocate some resources, and if not, find new resources. We must start looking at some of the emerging issues as well as the existing issues that surround economic crime. You may notice I am using the term "economic crime." I am glad you are here because you can tell me whether I am using the right term or not.

One of the greatest challenges we see initially is to be an organization whose design and intent will provide an infrastructure for facilitating mutual support and to have a well-versed staff who understands the language and knows what you are talking about. If I say fraud, you may say economic crime, while somebody else says corporate crime or business crime and others say white collar crime. As you can see, there is confusion among practitioners - so please straighten it out for us - tell us what we need to do or not do in this area. Your input has real meaning to the practitioners because one of the greatest challenges of allocating resources at the state level is when our member agencies have approached their legislatures trying to get resources allocated for their various responsibilities in fighting economic crime. The legislatures are usually receptive to the idea that they do not want their state to be a hot spot for fraud or to gain a reputation for being a state that is easy on white collar criminals. So they say - "we certainly want to help, we want to do something about this. Please tell us what the problem is? Please tell us how the problem compared to last year? How does it compare to neighboring states and how does it compare to the national trend?" Therein lies another dilemma - practitioners and administrators turn around and leave because, as you know, there is little reliable data to answer these questions.

So we see two challenges for this body assembled and the extension of this body in the future. We see, first of all, a challenge in the area of definition and, secondly, a challenge in the area of lack of data. Our Research Section at the Center's Training & Research Institute, which began operation in September 1995 here in Morgantown, is committed to moving forward in these areas. We obviously cannot do that in-house alone, so we want to provide a support platform and increase liaison to enable us all to do it better. So we invite you to talk about that and consider those possibilities as time goes on. We will have resources to dedicate to this. We will be able to do some of the things that, heretofore, I don't believe were possible in terms of helping to find data sources and to make those data sources flow into the National White Collar Crime Center and then be made available to those in the field.

Another area that our Research Section has been charged with undertaking, is evaluation research. You all know full well how many program evaluations have been done on the narcotics, street crimes, and juvenile justice problems. We can find very little, if anything, on evaluation of the investigative methodologies relating to economic crime. We very much need to look at prosecution strategies. We also find that there is not too much work in the area of profiling. We

don't know what the victims look like, we don't know what the perpetrators look like as well as we do in other criminal areas. I'm preaching to the choir here, and I don't need to do that, but those problems are very real to the members of the National White Collar Crime Center on a daily basis. We have pledged, to the best of our ability, to find solutions to these problems and others that are of importance to our member agencies and to the public.

The Center provides a variety of training and technical support services to our member agencies. Well, who are our member agencies? Our membership is represented by state and local law enforcement agencies, state regulatory agencies, federal agencies, national consumer advocacy organizations, and private-sector businesses in 47 states who are charged with the investigation, prosecution, and prevention of economic crime. In addition to research, we provide support in four additional areas. The Center provides information services and analytical/data base management services for actual case investigations of a multijurisdictional or nationwide nature. We have a small portion of our budget that is set aside to assist state agencies where they cannot pay for certain portions of an investigation. As you know, white collar crime investigations and prosecutions are very costly, so we'll provide support for things like the cost of expert witnesses, and the cost of transportation and lodging for out-of-state witnesses. In many cases where there are huge financial transactions involved, the state still must reimburse financial institutions for the cost of researching and reproducing financial records and other document recovery. Those two support functions, the information services (the data base management and analytical services) and case funding are managed out of our Headquarters in Richmond, Virginia. In addition to research, training and computer crime support are managed from Morgantown. When I came to the Center in 1992, the first thing we did was a needs assessment with our membership, and the most compelling need that was identified was for training. This was again borne out in our 1996 Needs Assessment Survey. So we have a pledge to equal or better any available economic crime training and to offer that to our member agencies at no tuition cost. This year Congress appropriated additional funding that is primarily dedicated to the establishment of the support mechanism for state and local enforcement agencies that deal with computer-related crimes to receive state-of-the-art training. As you are well aware I am sure, there is a fear among the practitioner population that the entire paradigm of economic crime is changing very rapidly because of the explosive advancements in technology. I can assure you from the work we've done in the last year that there

needs to be a higher level of fear than we are currently seeing, not only in the public sector, but also in the private sector. Our Computer Crime Section is involved in developing curriculums on seizure and recovery techniques because data trails are, in fact, replacing paper trails, emphasizing data recovery, network take-down techniques, and file conversion techniques, among other topics.

A particular area of concern relates to recovery techniques and data trails and related legislation and case law. We are working very closely with the computer crime section at the Department of Justice, and it is understaffed and very concerned about being able to move forward in this area - let me share with you an example. Scott Charney is the individual who runs the Department of Justice, Computer Crime's Unit, and until eight months ago his section had only six people left, each using 286 computers. Well, that shows you where we're at in terms of keeping up with technology. If ever there was a gap between the good guys and the bad guys in law enforcement, it is going to be a horrendous gap when it comes to the use of technology.

I invite you to interact with the staff that is here, to ask questions about the Center, and to consider your future potential roles. We're happy to be able to assemble you for a couple of days to speak on the issue of economic or white collar crime and those problems that may be of concern to you. So enjoy yourself and have a good time.

Welcome to West Virginia University

David Hardesty - President, West Virginia University

Thank you very much. We are proud that you are here, and we hope that we support you well while you are here and that something special results from this conference. I want to take a minute to tell you about our university and to tell you about the life of a college president today, because I think that we have something in common. I will tell you why in a minute. West Virginia University is a comprehensive research land grant institution with a statewide mission. That means there are about thirty-five other institutions like this in the country. We serve the entire state with six campuses. We have about 29,000 students and we have a comprehensive research agenda and a significant outreach and service agenda. So what you are doing is clearly within our purview, and we are proud to support it and very happy that you are here.

The first part of my professional career was in law except for a few years as State Tax Commissioner. And so now I'm in my second career. So while I did not spend my lawyer years in criminal law investigations or criminal law, I was around those investigators and criminals some and understand what you are about. I think maybe I could draw some parallels here. The first point that I would like to make is that a lot of the pressures that are challenging university presidents in the universities today are the same challenges that you will be facing in your search for definition. We live in an increasingly global economy, and it is not unusual for West Virginia businesses, one of the smaller states population-wise in the country, to do business abroad and vice versa. We have several foreign investments here. We live at a time when the shifts in economy from industrial to informational and other shifts have created great job anxiety in America, as well as, throughout the world. I don't know if some of you may get the Economist, it was about five or six weeks ago, that their lead editorial was on job anxiety. We live in a time when technology and communication developments are kind of overwhelming. On a recent trade mission to China, I watched a young female Chinese entrepreneur call her office from the Great Wall by cellular telephone, and I thought man, you know, it's possible to direct dial - I thought about calling my daughter in the car here in West Virginia. In one of these gadget catalogs I recently saw a satellite telephone system that you could buy and take with you to Africa or the Himalayas or wherever you are and connect right in and have clear communications, and this is available in the private sector. Many of these public

sector developments have been spawned through the defense establishment leading to private sector devices and procedures and things of that nature.

Dick Johnston and I were talking about societal changes and discussed Putnam's article about the changing nature of the socialization process in America; it is quite a compelling article. It has been cited three hundred times since it was written including some strong rebuttals that are now coming out as a primary theme; do people care about one another and about social responsibility, and is America's social capital eroding? Well, you know these and many other things that I can talk about are causing us in education to ask three primary questions; who are we, where are we, and where are we headed? I'm going to a seminar at Harvard, for college presidents, in which those basic three questions will be asked by leaders of higher education and some of the leaders from around the country. It seems to me that in the burgeoning field of which you are a part, both the Center and those of you who have an academic interest in this topic, the search for focus is guided by many of the same factors, and really by the title of your conference it does appear that there is an effort to look for a definition. Who are we and, perhaps, where are we? I offer just three thoughts. The first is that it is very important for a layperson like me to underscore to you how important this is. I remember an article I read thirty years ago, I think it was called Prologue to the Principals of Punishment or Introduction to the Principals of Punishment. It kind of introduced me to the concept that there were different reasons or different definitions of punishment, and once I understood that as a student, I could then analyze problems and determine whether it was deterrence or retribution or a kind of containment of criminals that was going on and what was being suggested. Well, I think the knowledge about white collar crime, a clear definition of what it is, and a strong movement to both understand it and investigate it properly, will lead to deterrence and obviously, to various kinds of retribution. People know that you are there, they know that you are not using 286 computers, etc. I think it will have a great impact on the deterrent end of issues or at least possibly could. In looking for a definition, there are many different kinds of definitions that you can develop, directions you can take, and one of the issues that I would consider, is that the way that you define it, may be what happens in the progression. The definition is of significant importance because it will imply priorities and it will imply direction for action. The academic community is providing a very valuable resource to those charged with enforcement of the law.

Secondly, I would encourage you to think about another area that kind of crawls up in my memory. Of course, I had a legal process course in law school in which we looked at the issue of what is the appropriate body of society to govern or regulate. Should it be by private contract, should it be criminalized, should it be illegal or just subject to private ranks of action, that sort of thing. As you think about definition, it might be helpful to think about the actors in society that will be attempting to implement your definition. Is it only the regulatory body that you are thinking about, or is it also potentially the private ranks of action, or is it possible that certain activities should be decriminalized and there may be policy justifications for suggesting decriminalization for certain kinds of things, and remedies in the private sector, and so forth. But if you really look at the basic definition you have to start with some kind of notion of the policy objectives behind your definitions and what it is you are trying to achieve by defining something you can't.

Finally, the means of investigation would go to the definition. The who of the investigation, the how of the investigation, the carving up of appropriate priorities for investigation and things of that nature. Dick didn't ask me to comment on the substance in the conference, and I really am here to welcome you to West Virginia University, but an awful lot of my life has been spent doing definitions, writing laws, writing amendments to the laws, studying laws, jurisprudence, world philosophy, and one of the things that I've learned is that there is more to definition than just aspirational statements. You have to back off and look at what your definition is going to be used for. I do believe that in the long run there is great power in what you are about to undertake. One of the things that I see in attracting foreign investments to West Virginia is the enormous power of making the claim that we are the safest state in the country. One of the things that I see in the private practice of law in the corporate sector is the enormous power of an essentially crime-free culture in a company. It goes without saying that countries like Colombia and others that are over-ridden by violent crimes or the drug culture would want to see our democracy deteriorate. It may well be because of the diversity of our country we will not see our culture deteriorate or our democracy deteriorate by reason of violent crime. There are always pockets like West Virginia where people know each other and it is relatively safe and maybe that culture will permeate. There are always competitors for the violent crime status of certain areas of our country, but white collar crime or economic crime that robs people of the benefit of their bargain that is hidden from public view, that goes unpunished, as in the case of bribery and

corruption of public officials or the same of private business leaders or union leaders, has real potential to undermine the democracy of our country. And so as one who feels a strong sense of stewardship for this great institution, one of the things that I try to do is to tell our students that it is important for them to become responsible citizens, and I mean it, and I try to put some meat on those bare bones. I think what's going on here in this room for the next several days has the potential to shore-up democracy, and so I thank you for doing it on our campus, and I welcome you to West Virginia, and I hope you enjoy your stay here. Thank you very much.

Workshop Charge

Bill McDonald - Chair, National White Collar Crime Center, Board of Directors

Good morning. I am Chief of Enforcement for the California Department of Corporations and Chair of the Board of the National White Collar Crime Center. On behalf of the Board of Directors, I would like to welcome you to this first workshop leading up to the first annual National Economic Crime Summit next May in Providence, Rhode Island.

It is particularly appropriate that this first workshop brings together the best minds in the academic community to try to frame some core issues relating to white collar crime and put them in some kind of rational context.

I have been in the investment fraud business for 19 years, and in my experience, the training and research in the white collar crime area is either rudimentary or non-existent, and what there is has very little relevance to the practitioner.

I attended a symposium on white collar crime at Berkeley a few years ago, and I was amazed to discover that the most eminent people in the law enforcement, regulatory, and academic communities who deal with white collar crime issues every day of their lives couldn't even agree on what the term means. Is it crime by those in a fiduciary relationship to their victims? Is it crime affecting business? Is it crime by managers? Is it crime having a pecuniary goal?

Some may say, "Isn't that like asking how many angels can dance on the head of a pin? Why does what we call these things make any difference? Let's not worry about names and definitions. Let's just deal with the problem."

In *Romeo and Juliet*, Shakespeare said: "What's in a name? That which we call a rose by any other name would smell as sweet." So, does whether we call what we are talking about "white collar crime" make any difference, and does it make any difference if we agree on what the term is referring to in the real world?

Well, I say it does matter, and I'll tell you why. In our society, perception is reality and symbolism is as important as substance. If the context in which we are going to discuss white collar crime is in contrast to street crime, on a symbolism level we will never get it on the national agenda if we continue to use the current terminology.

“White collar crime” sounds sanitary and clean. It sounds technical and non-obtrusive. It’s about books and records, not about life. In the courtroom, judges who deal with drugs and violent crimes all day get a white collar crime case and can’t help but be influenced by the fact that the only other person in the courtroom who looks like they do is the defendant.

When that defendant argues that he is just a businessman trying to make a buck and the ivory tower bureaucrats and storm trooper prosecutors ought to leave the business community alone and concentrate on real crimes, judges and juries frequently fall for it.

The name and the concept of white collar crime should evoke the evil of ruining old peoples lives, of betraying trust, of lying, cheating and stealing and making sport of it, of belittling victims whose only vice is that they were too trusting.

The name and concept of white collar crime ought to evoke the concept of breaking and entering by telephone and computer instead of a gun, of taking capital away from legitimate enterprises and of undercutting public confidence in the investment marketplace.

We need to make it real to the public and we need to make it smell. Let’s call it “Mad Financial Predator Crime” instead of white collar crime. Let’s ban the color white from the definition because there is nothing virginal about fraud, theft, deceit, embezzlement, and extortion.

We need to put white collar crime on the national agenda and the national screen by debunking the notion that everybody does it to one degree or another, and that it is a gentleman’s game, and that the trick is not to be one of the unlucky ones that get caught.

Everyone doesn’t lie, cheat and steal. The business community is not all corrupt. There is and should be a standard of morality and a standard of law in our business and financial interactions and institutions. The punishment for violation of that legal and moral standard ought to be serious and reflective of the societal harm of the activity.

Whether you go to school for 12 or 16 or more years in this country, schools don’t teach financial survival skills, and many members of the public are like lambs being led to the slaughter by the wolves on the periphery of the business community who live by fraud and deceit.

Phil Feigin, the Securities Commissioner of Colorado, says that there has never been a fraud of passion. Fraud is cold-blooded and ruthless and greedy and cruel and selfish. The name and the concept ought to reflect that and ought to give it the character which it deserves.

Does anyone care? Well, I'll tell you who should care, and that is all of us.

- when there is a three day crime summit in Los Angeles and it is devoted entirely to street crime without one mention of economic crime, we should care...
- when we seek new staff positions to fight white collar crime in our home states and the Legislative Analyst asks us for statistics that demonstrate "increased workload," and we have no ability to provide it or even to understand the question, we should care...
- when we have to kiss off thousands of consumer complaints a year with no investigation or documentation whether they are meritorious or not, we should care...
- when we take an enforcement action and a reporter asks how many victims there are of this type of scam and how it fits into the big picture of white collar crime and we have to make something up, we should care...
- when judges give light sentences to white collar criminals because they dress nice and drive nice cars and after all, these are only "technical violations," we should care...
- when the Congress is willing to dedicate billions of dollars to drugs, gangs, and organized crime and a pittance to white collar crime, we should care...
- when the television stations will spend 4-5 air minutes in prime time news broadcasts on the cute new animal at the zoo while not giving any airtime to a multi-state operation attacking white collar crime, we should care...

So, I challenge the academic community here today to give us the words and the empirical information and the conceptual framework to make the case that white collar crime is a national epidemic, that it hurts millions of people by trashing their financial security and their pride and their self-respect, and that the law enforcement and regulatory communities need more support, more staff, more equipment, and more access to the consumer and to the media.

To the old lady who has had her life savings taken from her by a smooth talking con artist and can only wish that she had been knocked over the head and had her purse snatched instead, these are not academic distinctions--they are very much real world problems and dichotomies.

But we need a vocabulary and a conceptual framework that makes them meaningful to the victims, and to the public, and to our elected officials, and to the media. And it's got to be a real-world framework that recognizes the new realities of economic crime such as the Internet and the national obsession with deregulation, outsourcing and downsizing.

That is our challenge at this Workshop, and I wish you well as you engage these issues.

GROUP **1** PAPERS

***The Role of the Collective in Defining
White-Collar Crime*** 17
Kate Jamieson

***Underworlds and Upperworlds:
The Convergence of Organized and
White-Collar Crime*** 35
Gary Potter and Larry Gaines

The Role of the Collective in Defining White-Collar Crime

Kate Jamieson

University of North Carolina - Charlotte

Abstract

Definitions of white-collar crime are often put forth in order to focus inquiry to an identifiable range of behaviors. The commonly agreed upon distinction between occupational and corporate crime is perhaps the most prominent such example. Importantly, such a distinction narrows the white-collar crime concept and enables etiological work to focus on one form or the other. That definitions should enhance our knowledge of the field is undisputed. It may be useful to view all crime as lying along a continuum of organization with varying degrees of collectivity defining much deviant behavior. Such a definition both distinguishes white-collar crime from traditional street crime and links the two forms together by considering the organizational form as an encompassing context for all crimes. This essay considers such a conceptualization, examining several defining principles for white-collar crime and how these may be linked to organizational dimensions of this behavior.

The Role of the Collective in Defining White-Collar Crime

White-collar crime has become a commonly used term to describe an array of non-traditional forms of illegal behavior; those not typically targeted by municipal police agencies. One can identify several approaches to defining this term beginning with Sutherland's (1949:2) description of "crimes committed by a person of respectability and high social status in the course of his occupation." Other conceptualizations may include reference to occupation, social class of the offending party, the degree or type of harm done or special skills required to carry out the offense. While definitional schemes hold heuristic utility, most serve to distinguish white-collar offenses from more traditional street crimes. Indeed, Sutherland's original description of white-collar crime was primarily put forth to illustrate that even these kinds of

offenses¹ could be understood through the theoretical principles of differential association (Geis, 1992). Thus, defining the term with any precision was less important to Sutherland's analysis.

That we continue to address definitional dilemmas with respect to the study of white-collar crime is interesting in itself. Perhaps our general reliance on empiricism and the use of the scientific method as a paradigm for understanding phenomena presses the need for greater clarity and unequivocal meaning behind the term. Certainly, defining criteria should open up and illuminate the field of inquiry so that we may come to better understand relevant characteristics of these kinds of illegal behaviors. My principles of definition, as outlined in this paper, cannot be construed as either absolute or mutually exclusive characteristics of the phenomena. Rather, these principles represent a means of examining white-collar crime as connected to deviance generally, but outside traditionally held images of crime and justice. These are qualities that, for me, are salient to understanding the etiology of white-collar crime.

The relatively brief history behind development of the white-collar crime field is intertwined with attempts to define the term. It may be useful to briefly review the history of these efforts.

Historical Perspective

Following Sutherland's work, early investigations generally focused on a specific type of white-collar offense or offender. This includes research focusing on wartime rationing violations in the Detroit wholesale meat industry (Hartung, 1950) and rule violations of the Office of Price Administration, also during World War II (Clinard, 1952). Cressey (1953) focused on a specific type of offender when studying embezzlers imprisoned in federal penitentiaries, and Lane (1953) examined the corporation as offender in a study of labor and trade violations in the New England shoe industry. Also during this time, a general treatment of the excessive (and abusive) powers of the nation's political-military-industrial complex was offered by C. Wright Mills in The Power Elite (1956).

¹ Sutherland examined the life course of 70 of the largest U.S. corporations for instances of labor, advertising, patent and other restraint of trade violations, documenting over 900 decisions involving these companies.

Despite early interest and the case study approaches, attention shifted away from the development of white-collar crime as an area of study in the late 1950s and early 1960s. Perhaps this was due to problems concerning what is to be included in the white-collar crime term (see Newman, 1958; Reiss, 1966), or perhaps the postwar economic boom and the change in corporate structures from single product businesses into diversified conglomerates introduced complications into an already elusive topic. Other historical influences may have stalled development of the field of white-collar crime in the United States, as President Johnson's domestic "war on crime" policies during the mid-1960s focused scholarly and programmatic attention on crime and criminals that threatened "safe streets" rather than those that threaten a consumer "safe" economy.

With the benefit of hindsight, one may postulate any number of reasons for the reemergence of scholarly work in the white-collar crime area in the mid-1970s. Ralph Nader's Unsafe at Any Speed (1965) documented the production of deliberately unsafe motor vehicles and spawned a consumer rights movement that challenged the motives and ethics of corporate executives who victimized consumers through faulty products (see also Green, 1973; Turner, 1970). Attention to illegal behavior by persons in a position of power and authority may have been fostered by a Watergate-induced disillusionment with once respected institutions (Braithwaite, 1985). In the newly formed arena of criminal justice, perhaps this disillusionment took the form of Robert Martinson's "What Works?" (1974) which documented disappointing failures in widespread attempts to rehabilitate criminals.

Attempts to incorporate white-collar offending into sociological and criminological research agendas focused some effort on operationally defining the term. This was important from a pragmatic perspective as well, as justice agencies sought means of addressing these offenses in meaningful ways. Writing for the National Institute of Justice, Herman Edelhertz (1970) attempted to identify what is meant by the white-collar crime term in order to focus enforcement and prevention efforts. Edelhertz identified four types of white-collar offending (1970:19-20): 1) "personal crimes" committed for individual gain outside of a business context (i.e. credit card fraud, tax evasion); 2) "abuses of trust" committed by someone against an employer (i.e. embezzlement, expense account fraud), 3) "business crimes" committed during the course of otherwise legitimate commerce (i.e. antitrust, commercial bribery), and 4) "con

games” where the central activity is illegitimate (i.e. phony contests, land frauds). This typology was a fairly important contribution to the field of study. It was encompassing in that it included a variety of offenses with one conceptual framework and it distinguished between legitimate and illegitimate businesses. However, the approach was somewhat unwieldy. By excluding reference to social class, Edelhertz included a great deal of petty offending by the poor (Coleman, 1985) and some distinctions appear as artificial or unnecessary, such as that between tax fraud by individuals versus business owners (see Shapiro, 1980).

The notion of *cui bono* or “who benefits” from the action (Blau and Scott, 1962:45-54) promoted a distinction between “corporate crime” intended to further organizational goals and “occupational crime” which describes individuals acting for personal gain (Clinard and Quinney, 1973). The perspective of the victim may also be used to classify, identifying property white-collar crime which results in economic damage to the victim and personal white-collar crime which may result in physical injury, illness or death. These kinds of distinctions enabled white-collar crime research to focus more singularly on one form or the other. Corporate or organizational crime was the focus of Clinard and Yeager’s (1980) instrumental work which examined a variety of offenses among American manufacturing firms.

The definition of “organizational” crime offered by Schragger and Short (1978) focused on the operative goals of the organization and the adverse impact of the offending behavior:

Organizational crimes are illegal acts of omission or commission of an individual or a group of individuals in a legitimate formal organization in accordance with the operative goals of the organization, which have a serious physical or economic impact on employees, consumers or the general public (1978:411-412).

Importantly, this definition encompasses offending by the government (see also Ermann and Lundman, 1978).

Other and more recent conceptualizations of white-collar crime may cite a connection to occupation or social class of the offending party as in “elite deviance” (Simon, 1996), or may focus more exclusively on the harm done (see for example Albanese, 1995) or the special skills

or opportunities an offender must have to carry out the offense (cf. Shapiro, 1990). Still others have approached the topic of white-collar offending from a social control perspective, identifying gaps in the law that forestall effective enforcement and prosecution (see for example Stone, 1975).

All these approaches to delineating white-collar crime have merit individually. One may also consider that it is with the intersection of act, actor, and societal response that a distinction may be drawn between white-collar crime and traditional street crime. This intersection may also assist in conceptually tying the two forms together. The organizational form may be used as a descriptive context for a range of deviant behaviors. The points raised in the following sections are meant to be suggestive of how varying degrees of collectivity may hold influence over individual and group behavior. Although presented individually, it should be noted that these defining principles are not meant to be mutually exclusive qualities or absolute rules of definition. The attempt here is to describe a set of related characteristics that assist in identifying deviant acts and actors as part of a particular etiological focus.

The Organization as Context

The notion that all interactive behavior is socially organized in some manner has been elaborated elsewhere. Vaughan (1992) identifies social organization as existing along a continuum of complexity beginning with patterned interactions and moving to groups, simple formal organizations and complex organizations. Best and Luckenbill (1994:12-13) offer characteristics of five different forms of deviant organization: loners, colleagues, peers, teams, and formal organizations. Again, these ideal types lie along a continuum of organizational sophistication with formal organizations comprising the most complex form.

Given this, it may be possible to examine the definition of white-collar crime using a continuum of formal and informal organization. This continuum contextualizes all deviant behavior by degrees of organization. At the less organized end of the continuum are individual deviant actions characterized by impulsiveness and “heat of passion.” A great deal of interpersonal violence occurs between persons with prior relationships, where arguments escalate into expressive physical conflict. This is also true for a large proportion of property crime processed in criminal court (see for example Vera, 1977). Here, organization around the deviant

act itself is minimal and the only structure one may note is that existing in the relationship itself. Husband and wife for example, exist within a structure of marriage or cohabitation that holds role expectations for each partner. In this sense, the relationship may be characterized as an organized marriage or common-law living arrangement. But expressive violence between these two parties often erupts without a sense of structure, planning or rationality to the interaction. So, the behavioral roles of these individuals may be thought of as organized, but the expressively violent behavior is not².

At the opposite end of the continuum are deviant actions carried out by persons operating in specialized roles within highly complex organizations. These offenses ultimately serve instrumental goals and are carried out with rationality, planning and efficiency. Executives from legitimate for-profit corporations who knowingly engaging in illegal activities in order to foster profit are prototypical here. Perhaps the most well known example occurred when Ford Motor company executives decided to manufacture the Pinto as an unsafe automobile based on a straight cost-benefit analysis that factored in the price of wrongful death lawsuits (Dowie, 1977). Rather than correct design deficiencies -- which would set production behind schedule and miss potentially important markets of opportunity -- Ford proceeded to manufacture a flawed and dangerous automobile. This decision maximized the profit potential of the Pinto, which epitomizes rational adherence to organizational objectives.

Along this continuum exist varying degrees of organization with expressive offending at the less organized end and instrumental deviance at the more organized end. This raises the first important defining characteristic for white-collar crime:

(1) White-collar crime is always oriented toward instrumental goals while traditional street crime may also incorporate expressive goals.

Regardless of whether the object of the deviance is individual or organizational gain and regardless of whether the offense involves personal or property harms, there is an instrumental purpose to all white-collar offending. The Ford Pinto case is an example of a violent white-

² It may be possible to identify an instrumental purpose behind expressively-oriented violence since harm to the victim may serve some personally satisficing goal for the offender. However, these are generally short-term, highly passionate solutions and not considered instrumentally driven within the present context.

collar crime carried out to meet instrumental purposes. Ford executives' analysis of the costs associated with retooling production to correct for design deficiencies led to the *internally* rational decision to accept loss of life as an efficient means of handling the dilemma. While such a decision may lack rationality from a personal, humanistic standpoint, the nature of organizational structures promotes a decision making style wherein corporate performance and efficiency are maximized at all costs (see generally Jamieson, 1994). Similarly, the deliberate manufacture of unsafe consumable products (Braithwaite, 1984) or failure to maintain safe working conditions for employees (Curran, 1993) can be construed as efforts to minimize expenditures and maximize efficiency on the part of the offending parties³.

The point of this distinction for the present analysis is that in order to carry out instrumental goals, some degree of organization is necessary. Although this is certainly true in the case of a highly complex formal organization such as Ford, this would also be true for individuals acting alone, since the individual must structure his or her actions around achieving the objective. Embezzlement by a bank teller for example, requires a level of sophistication regarding bank operations that emanates from the occupational role. In addition, carrying out the offense requires planning and organization about when to embezzle, what steps to take to avoid detection, etc. Therefore, all deviance characterized as instrumental, which includes white-collar crime, will be located on the more organized side of the continuum⁴.

The second defining principle recognizes social class as an important source of exposure to formal organizations.

(2) White-collar offenders are more likely than traditional street offenders to come from powerful societal positions.

³ Ostensibly, these actions are not intended to cause physical harm to victims; the primary goals behind the actions are designed to benefit the organization and/or the persons involved in the company. Nonetheless, *strict liability* clauses of the criminal law imply such an intent and enable prosecution under criminal statutes.

⁴ This also begs the question of why all professionals do not violate the law in furtherance of instrumental goals. Although beyond the scope of this exploratory paper, the role of personal ethics and a culture of integrity within organizational settings are among the factors that may forestall deviant, unethical or illegal courses of action (see for example Clinard, 1983).

A great deal of white collar offending is connected to lines of business and commerce which are typically accessed through one's occupation. This is in contrast to traditional street offenders who often lack the same degree of access to powerful institutions serving broad-based goals. Social class may be operationalized in a number of ways, although occupation is the most relevant for the present discussion.

In writing about the role of inequality in generating crime, Braithwaite (1992:81) refers to "crimes of poverty motivated by *need* for goods for *use* and crimes of wealth motivated by *greed* enabled by goods for *exchange*" (emphasis in original). White-collar crimes are crimes of relative wealth. This distinction can be perceived as predicated on the offender's participation or membership in complex organizations that serve a legitimate and valued function in society. Importantly, white-collar offending often occurs within an organizational context where otherwise important, worthwhile and legitimate goals are being pursued. Traditional street crime does not necessarily occur within the same organizational contexts and hence, these offenders lack the credibility that accompanies relatively affluent occupational roles of white-collar offenders.

Generally, the more organized end of the continuum consists of deviant acts committed by persons from higher social classes. This is not to suggest that middle and upper class persons do not commit offenses classified as less organized. These latter offenses however, are more likely to be expressive conflicts and therefore not defined as white-collar offending.

Furthermore, it is possible for persons from lower social strata to commit offenses that have characteristics of white-collar offending, as when the convenience store cashier systematically siphons money from the cash register or low level employees steal goods or money from their employers. These are persons whose occupations hold a minimal degree of trust within the organization. More importantly though, the complexity of these actions is relatively low both in terms of the number of participants required to carry out the deviance and the resources needed to complete the act. More sophisticated forms of illegal activity, classified as white-collar crime, are carried out by persons with greater responsibility than these low level employees -- even when carried out by an employee operating alone. As Best and Luckenbill point out (1994:76-77):

Deviants organized in less sophisticated forms sometimes perform relatively complex operations... The computer criminal who single-handedly devises a complicated scheme for breaking into and stealing from computerized records, the embezzler who carries out an elaborate series of illicit financial manipulations... are engaged in complex violations that call for substantial resources. However, these offenses cannot be committed by everyone. These loners draw upon resources which they command through their conventional positions, turning them to deviant uses. The computer criminal usually is an experienced programmer, the embezzler occupies a position of financial trust...

Access to influential spheres of economic life places one in a powerful authority structure. This is related to a third defining principle:

(3) The greater the degree of organization, the more powerful the offender and the more likely the individual or group of individuals is able to exert influence over the crime definition and social control processes.

The ability of white-collar offenders to hold influence over the crime definition and social control processes has been discussed elsewhere (see for example Reichman, 1992; Coleman, 1985; Mann, 1985; Wheeler, et al., 1988; Simon, 1996; Vaughan, 1996). That persons from higher social positions are treated differently in the justice process is also well documented (see for example, Bernstein, et al., 1977; Lizotte, 1978; Myers and Talarico, 1987).

Traditional street crimes which exist at the less organized end of the continuum, are often *mala in se* offenses where there is little disagreement over the need to legislate against these offenses and punish offenders. Murder, rape, robbery and other offenses within the traditional purview of municipal police are considered inherently wrong and worth moral approbation. Conversely, much white-collar offending may be characterized as *mala prohibita*, where conflict exists regarding the definition of these offenses as criminal, much less deviant and where punishment in the traditional sense is perceived as less critical.

Antitrust offending for example, is often construed as a legitimate means of aggressive competition and culpability is typically decided on the basis of "reasonableness" tests by

administrative law judges. Hence, there is considerable debate about whether certain activities of businesses should come under legal scrutiny (see for example Salop and White, 1988). Further, when found in violation by the Federal Trade Commission (FTC), companies are subjected to consent decrees where they agree “to stop a particular practice, refrain from such activity, and maintain FTC contact regarding adherence to the agreement for a period of time” (Jamieson, 1994:90). The fact that case outcomes and punishments are often negotiated may reflect the relative power of accused parties to influence the social control process. Offenses that require a great deal of coordination among participants and/or that require the cooperation of several decision makers within an organization often indicate diffused or ambiguous responsibility. Social control efforts necessarily become less pointed at specific parties/abuses and subject to the power of a relatively organized defendant (cf. Reichman, 1992).

Donald Black (1976) has written about the role of organization in justice processing and identifies an offender or victim’s degree of organization as defining his/her position of power in the criminal justice process. The capacity for collective action is greater for organizations or collectives than it is for individuals so that the more organized a party is, the more likely they are to prevail in the justice process. These principles have found support in analyses of criminal case processing in various jurisdictions (Kruttschnitt, 1985; Hagan, 1989; Jamieson and Blowers, 1993), suggesting that deviant behavior at the more organized end of the continuum is more likely to be influential in justice processing.

The final defining principle considers white-collar offending from the perspective of the victim:

(4) White-collar crimes are more likely than traditional street crimes to be nonconfrontational and to involve relatively diffuse patterns of victimization.

Traditional street crimes often involve direct confrontation between victim and offender. Again, many criminal offenses occur between persons who know each other and this personal knowledge lends a different kind of character to these offenses. To confront a victim and demand money in a robbery is qualitatively different than the white-collar offender who rigs a sealed bid and defrauds taxpayers for example. Even the victim of a burglary, which is not directly confrontational, experiences a violation of privacy and personal space that induces fear and often results in victims engaging in protective measures to prevent future victimization.

Although it is certainly not absolute, a great deal of white-collar offending is highly impersonal and diffused among numerous victims. Corporate executives who decide to fix-prices, illegally dump toxic wastes into public waters or engage in illegal stock trades do not have to directly confront the victims of these offenses. And the victimization is extremely diffuse and pervasive when considering the number of persons affected in any given year by monopolistic pricing, toxic waterways or illegal manipulation of the stock market. Furthermore, many victims of these white-collar offenses are unaware that they have been victimized, could not realistically develop proactive measures to prevent additional victimizations (see generally Shapiro, 1990), and, in general, are scattered and unorganized as a group.

These principles of victimization associated with much white-collar offending hold many implications for how these behaviors are perceived by the general public and agents of social control. Sutherland referred to “relatively unorganized resentment of the public against white collar crimes” (1983:56). As the politics of crime prevention are responsive to public demands in this area, offending behavior at the less organized end of the continuum, where confrontation and fear for personal safety are at risk, will demand policy attention over white-collar offending.

Conclusions

The defining principles outlined above operate in combination with each other. Instrumentally oriented crimes, committed by relatively powerful persons, with a degree of coordination and complexity, that lack direct victim contact and result in highly diffused harms are most like white-collar offending. Conversely, expressive violence by relatively powerless persons, with little organization or planning and that involve face-to-face confrontation between victim and offender is least like white-collar offending and more often within traditional notions of street crime.

Still, one may point to exceptions to these principles which may blur the white-collar/street crime distinctions somewhat. Street offenders can commit instrumental, utilitarian offenses that involve complex planning and coordination as in the case of drug sale operations that net exceptional profits for participants. Although societal reaction to these offenders is generally more consistent and condemnatory, it may be possible to conceive of these enterprises as existing in a mid-range of the continuum (see Simon, 1996:274). Nonetheless, organized

criminal enterprises involved in instrumental offending still lack the connection to legitimate occupational structures typical of persons from relatively powerful societal positions. It is this latter characteristic that may allay moral approbation on the part of the public somewhat. Ultimately, whether these collectives are considered within or beyond the purview of white-collar offending is not essential to the delineating the field of inquiry in general.

The principles above also do not address the notion of legality or punishment as components of the definitional perspective. As stated in the introduction, the focus has been on the behavior of individuals and groups from a context that emphasizes the collective nature of deviance generally. Both traditional street crime and white-collar offending are meant to come under this larger umbrella term.

Finally, the defining principles, when taken together, serve as imprecise guides for making judgments about the offending behavior from a variety of salient perspectives. That they fail to exhaust the possible points of reference in such an exercise is undisputed. They do however, consider the phenomena from a multi-faceted perspective shaped by concern for the role that collectives and collective behavior bring to the study of social problems and their control.

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Underworlds and Upperworlds: The Convergence of Organized and White-Collar Crime

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Introduction

“White-collar crime” is not a precise sociologically or legally defined category of criminal offenses. Rather, it is a social construct used to delineate a set of characteristics which identify the crime itself, the social context of the crime, and the attributes of the criminal actors. Much like similar social constructs, such as “street crime,” “organized crime,” “juvenile crime,” and “political crime,” the concept of white-collar crime has more to do with the unique conditions under which criminality occurs than with a specified criminal act. For example, fraud and theft may be white-collar crimes, or may be analyzed under constructs emphasizing “property crime,” “street crime,” or “organized crime,” depending on the social and occupational positions of the offenders involved, the degree of legitimacy that can be ascribed to offenders and/or their respective organizations, the centrality of criminal acts to the offenders’ livelihood, and the self-perception of the offender. So, white-collar crime is less a precise definitional classification of offenses or offenders and more a heuristic device guiding the study or analysis of crimes by certain actors in certain social settings. The key issue becomes one not of definitional precision but of explanatory power and this issue may be tested only in comparison with other heuristic devices.

“Organized crime” as a similar social construct seems an especially propitious device against which to assess the utility of the white-collar crime construct. After all there are some similarities between the two concepts. Both involve some level of organization. Both accentuate issues of self-perception, legitimacy and the centrality of the criminal act. And both are evolving concepts benefiting from extensive scholarly study which has served to modify their original

forms. The question to be asked, however, is whether our increased understanding of these phenomenon has led to a diminution of their utility as separate and unique social constructs placing crime in context.

The Characteristics of White-Collar Crime

The most important characteristic ascribed to “white collar crime” as a social construct is the idea of social status or social class position of the criminal actor. Sutherland referred to “white-collar crime” as crime “committed by a person of respectability and high social status in the course of his occupation (Sutherland, 1940). Ever since Sutherland’s classic statement first defined the concept, the white-collar crime literature has ascribed great important to the concept of social class position as both a definitional device and an explanatory device in articulating the components of the criminal act itself. It is suggested that this social class position differentiates the fraud, theft, perjury, bribery, etc., of the organizational and occupational actor from similar acts by the “dangerous classes.”

In the purest “white-collar” crimes, white-collar social class position is used 1) to diffuse criminal intent into ordinary occupational routines so that it escapes unambiguous expression in any discrete behavior; 2) to accomplish the crime without incidents of effect that furnish presumptive evidence of its occurrence before the criminal has been identified; and 3) to cover up culpable knowledge of participants through concerted action that allows each to claim ignorance. (Katz, 1979: 435).

Social class position defines not only the criminal actor but the very ability to commit the crime in question in the social context within which that crime occurs.

When Edwin Sutherland first introduced white-collar crime as a social construct he placed great emphasis on the offender’s occupational role and social class position. But Sutherland also recognized the ambiguity of the construct when compared with similar heuristic devices. For example, Sutherland found several similarities between “white-collar criminals” and professional thieves, another group he studied in depth. Sutherland found that both classes of criminals exhibited a “persistence of behaviors” over time and a propensity for widespread recidivism. Sutherland asserted that both white-collar crime and professional theft are ubiquitous

in society and seriously underestimated by officially produced data. In both cases offenders who are caught and prosecuted do not lose social status among their day-to-day and intimate associates. Both professional theft and white-collar crime are deliberate acts involving some degree of organization and criminal intent. Where Sutherland made distinctions between the two categories of crime were in the areas of self-conception and public perception. Thieves were thieves and proud of it. The public viewed a professional thief as a criminal. White-collar criminals did not view themselves as criminal actors. Rather, they were caught up in the competitive rhythm of the business world, or in personal problems which caused them to commit aberrant indiscretions, or they were people victimized by unfair and ambiguous laws and regulations. Similarly the public viewed white-collar criminals primarily as legitimate actors who strayed or made mistakes (Pontell, Rosoff and Goode, 1990: 290). While Sutherland did not make explicit such a comparison between white-collar and organized criminals, it is clear that many of the same similarities and dissimilarities could be identified. While status, position, public and self-perception and occupational context are all vital to understanding white-collar crime, as well as to understanding organized crime and professional theft, it would be in error to assert that such characteristics can be identified with precision. Rather, all forms of crime, occur on a continuum of legitimacy, status, public and self-perception and embeddedness in occupational routines (Smith, 1980).

Modifying White Collar Crime as a Social Construct

In the years since Sutherland's classic statement prescribing the parameters of white-collar crime as a social construct, scholarly investigations have in some cases added modifications to those parameters, in other cases expanded those parameters, and in some cases introduced new components to the construct. This scholarly work along with a recognition that all the constituent variables making up this social construct occur on a continuum leads us to the consideration of several important concepts embedded in the white-collar crime construct. Among the most important of these modifications are the concepts of 1) the organizational dimensions of deviance, 2) front activities, 3) inauthenticity, and 4) criminal corporations.

The Organizational Dimensions of Deviance. Because white collar crime invariably occurs within some kind of organizational context, even a rudimentary one, the importance of

organizations to the social context of the criminal act must be considered. Organizations, both formal and informal, offer various settings and opportunities for deviance which differ appreciably from the settings and opportunities available to individuals. So, members of the organization, and particularly new recruits to the organization must be socialized to accept the justifications for behavior that are contrary to norms outside the confines of the organization. Because the deviance is organizational rather than individual, the behavior must be supported by others in the organization. Others must engage in similar behavior or must tolerate it. Organizational deviance must be supported by the dominant administration of the organization (Ermann and Lundman, 1978: 7-8).

Organizational deviance may develop in two ways. First, it may develop when the organization adopts goals, either formally or informally, that deviate from societal norms. Second, it may develop when deviant means are adopted as ways to attain otherwise legitimate organizational goals.

These dynamics may be most clearly seen in Clinard and Yeager's articulation of the forces that create an impetus toward corporate criminality (Clinard and Yeager, 1980). First, the corporation may place more emphasis on profits than on ethics. Second, there may be a strong desire for organizational expansion, security or the maintenance of a successful operations, coupled with a fear of failure and high levels of group loyalty. Third, there may be strong organizational pressure for high levels of performance by members. And finally, some market structures are inherently criminogenic. While Clinard and Yeager were writing about corporations there is little in their discussion that would preclude the application of the same principles to organized crime groups. Similarly, while Ermann and Lundman were addressing the organizational dynamics of legitimate organizations, very little difference is discernible when looking at organizations falling on the other end of the spectrum of legitimacy.

Front Activities. Modern organizations are characterized by centralization of authority; the creation of specialized vocabularies (a criminal argot) which produces an organizational ideology which "sanitizes" misconduct, allows for the denial of responsibility and victimization, and which condemns the condemners; and, both the routinization and fragmentation of tasks through specialization. All of these characteristics facilitate the use of front activities by corporations and formal organizations. Front activities hide organizational deviance behind

ideology or a public posture. They facilitate management by manipulation. Austin Turk has articulated these front activities in looking at governmental intelligence agencies (Turk, 1981). Turk argues that intelligence agencies lie as a “routine activity,” regulated only by political expediency. Similar front activities can be identified in businesses and corporations. For example, businesses and corporations routinely provide only specific information requested by regulators, even though other information at their disposal would more fully inform the truth. Corporations and businesses routinely destroy or lose potentially embarrassing or incriminating information prior to any request to produce the information. Corporations routinely fragment information so that documents turned over to regulators is incomplete, out of sequence, and difficult to recreate in context. And finally, corporations and businesses routinely portray deviance occurring with the organization as the work of a deviant or overzealous individual, not the result of organizational norms (Bernstein, 1976). So, deceit is routinized in formal organizations of all types, intelligence agencies, corporations, small businesses, and organized crime syndicates.

Inauthenticity. Inauthenticity is the organizational practice of maintaining an overt positive appearance in the face of a problem or a revelation of wrongdoing (Seeman, 1966: 67-73; Baxter, 1982; Etzioni, 1968, 1969). An oil company may run ads emphasizing their commitment to the environment after an oil spill at sea. A pharmaceutical manufacturer may focus on its research to cure an incurable illness after having been caught falsifying test results or withholding data from the FDA. A chemical company may stress its people-oriented management style after having been caught with its hands in a toxic dump site. In fact, Presthus has noted that one type of social character is particularly successful in making it to the top of organizations: an individual with a superficial sense of warmth and charm, who views things in black and white and, therefore, finds it easy to make decisions, and who is able to categorize and dehumanize individuals (Presthus, 1978). In other words, someone quite adept at the implementation of the strategies of inauthenticity.

Criminal Corporations. Some organizations have no need for the niceties of fronting activities or inauthenticity, they are simply criminal from the start. Scholarly investigations by Block and Bernard (1988) and Levi (1984) have added the concept of criminal corporations to

the parameters of white collar crime as a social construct. Criminal corporations are organizations which are either created, run or assumed as means of committing crime.

The waste-oil business has produced a classic example of such a criminal corporation, as shown in Block and Bernard's case study (1988), that details the operations of four waste-oil refineries owned by an entrepreneur named Russell Mahler. Mahler had successfully managed the refineries for almost three decades, successfully capturing over 5% of the U.S. market for re-refined lubricants. In the 1970s, however, Congress passed the Resource Conservation and Recovery Act which established minimum standards for the disposal of hazardous waste. The new regulations dramatically increased the cost of waste disposal and made the re-refining of waste oil into lubricants very expensive, thereby threatening the economic health of the entire waste-oil business. The net effect of these increased costs was to create:

economic pressure to dispose of toxic wastes by cheap but illegal means. Waste oil dealers already had facilities for the storage and disposal of waste products and could illegally sell a mixture of toxic waste as fuel with minimal chances of being caught. Thus, a new illegal means for making money was presented to waste oil dealers at the same time that their traditional, legal means for making money suddenly disappeared (Block and Bernard, 1988: 116-117).

Michael Levi's (1984) work centers on what he calls long-firm fraud. Long-firm fraud results from a corporation using its good credit to obtain supplies or resources from legitimate suppliers and then reselling those goods or resources at a profit without paying the suppliers. Levi classifies long-firm fraud in two ways. The first is preplanned long-firm fraud in which the corporation is set up with the express intention of committing fraud against suppliers. Slippery-slope long-firm fraud describes a situation in which a heretofore legitimate corporation turns to fraud primarily as a result of market demands.

Long-firm fraudsters have two main goals. The first is to obtain the goods in question on credit. The second is to efficiently dispose of those same goods as a profit before their suppliers take action against them. Achieving these goals is considerably easier for the slippery-slope fraudster because he or she already has established suppliers and established lines of credit with those suppliers. In addition, the slippery-slope fraudster also has well-established outlets through

which to sell goods. In preplanned long-firm fraud these relationships must be established as the corporation itself is created. Attaining lines of credit from suppliers is achieved by creating phony references from nonexistent businesses that give the appearance of having actively engaged in commerce with the criminal corporation. Levi found that preplanned long-firm fraud involved a high level of organization and coordination with criminal actors already in the field. The criminal corporation, for example, usually seeks out a number of professional “organizers,” “bent bank managers,” “shady businessmen” and “big-time criminals” in order to facilitate its phony credit paper trail and in order to obtain startup capital. Once this assistance has been obtained the participants simply:

purchase an existing perfectly respectable firm or limited company, preferably on credit terms, and then, usually without informing suppliers of the change in ownership, obtain extensive credit on the basis of the former owner’s reputation before finally absconding with the proceeds (Levi, 1984: 8).

Levi’s description of “long-firm fraud” in the corporate world bears startling resemblances to organized crimes’ bankruptcy scams. Usually organized criminals will purchase an already existing corporation paying only part of its value in cash. The rest of the sale price is set to be paid in installments. The organized criminals then order goods from the company’s usual suppliers which are quickly sold off at a profit. Other company assets may be disposed of as well, and the cash from the sale of goods and assets is transferred to a second corporation also controlled by the organized crime syndicate.

The concepts of inauthenticity, front activities and criminal corporations significantly alter the classic description of white-collar crime. What was originally conceived of as crime by individuals of high status committed in the course of their occupations or professions now takes on the added dimension of criminal intent. Long-firm fraud, ignoring toxic waste disposal regulations, withholding and resequencing information and creating a corporate front all are acts requiring deliberation and intent. When organizational deviance is planned, premeditated, and designed for criminal purpose, the organization becomes a criminal organization and the lines of demarcation between white collar and organized crime become extremely difficult to discern.

But the imprecision of these demarcations is made even clearer when we look at the criminal law itself, particularly the RICO Act.

RICO. Of the all the statutes which have impacted on organized crime (i.e., the Hobbs Act, the Mann Act, conspiracy laws) none has had a greater impact than the RICO (Racketeer Influenced and Corrupt Organizations) Act of 1970. RICO imposes draconian penalties on any organization that has been involved in a pattern of criminal acts (defined as two or more crimes in a ten-year-period). Interestingly, while RICO has been used successfully against dozens of organized crime groups it has also been successfully invoked against corporations like Shearson/American Express, Lloyd's of London, E. F. Hutton, and General Motors (Mokhiber, 1985: 23). In these cases, and many others, the criminal acts of respectable people and organizations have looked very much like the machinations of organized crime syndicates (Pontell and Calavita, 1993).

In this regard, a case study by Peter Reuter may be instructive. Reuter studied garbage collection in the New York City area and found that private garbage collectors are members of a garbage cartel which divides the New York City service area and allocates territories to each cartel member. As a result, garbage haulers do not have to compete against each other and therefore can charge higher prices than the market would ordinarily dictate. The very substantial profits realized from this arrangement are divided among cartel members with a small percentage set aside to retain the services of local organized crime groups who in return facilitate the business and discourage competition from outside the cartel (1987). This arrangement is a classic organized crime enterprise and would be easily recognized as such by most observers. But, it is difficult to understand how it differs from the same arrangement maintained by the U.S. oil industry, an arrangement also resulting in high prices and excessive profits (Blair, 1976; Coleman, 1989: 22-30).

The New York City garbage collection business is not the only example of organized crime following the lead of corporate entities (or is it the other way around?). Just like activities of Russell Mahler's waste oil business, companies that haul toxic wastes have also been engaged in wanton violation of environmental laws, often dumping their poisons in city sewers, on the side of a road, in a stream or lake, or in an abandoned strip mine. These haulers have also found

that alliances with organized crime syndicates facilitate the business of business (Block and Scarpitti, 1985).

In the meat packing business organized crime controlled-companies have been known to use rotting or diseased meat to make ground beef, hot dogs, and sausages (Kwitny, 1979: 1-46). But, once again, it is often difficult to discern the mob from the corporate managers. Take the case of Hormel, one of the largest meat processors in the world. Hormel bribed inspectors from the Department of Agriculture to ignore persistent violations in their production and packaging of meat. In fact, Hormel not only produced unsafe food products for original consumption, but the company recycled spoiled meat and sent it back to the market:

When the original customers returned the meat to Hormel, they used the following terms to describe it: "moldy liverloaf, sour party hams, leaking bologna, discolored bacon, off-condition hams, and slick and slimy spareribs." Hormel renewed these products with cosmetic measures (reconditioning, trimming, and washing). Spareribs returned for sliminess, discoloration, and stickiness were rejuvenated through curing and smoking, renamed Windsor Loins and sold in ghetto stores for more than fresh pork chops (Wellford, 1972: 69).

Similarly, the Beech-Nut Nutrition Corporation mislabeled its baby food, claiming that a substance which was primarily colored sugar water was apple juice for babies. The company entered guilty pleas to 215 criminal counts charging that it had intentionally defrauded and misled the public. Despite all of this, law enforcement rarely if ever speak of the Hormel criminal syndicate of the Beech Nut Baby Crime Family.

Corporate Collaboration With Organized Crime

Despite the careful distinctions attempted in the criminological literature to differentiate white-collar and organized crime, the fact is that it has been common throughout U.S. history for a series of exchanges between the under- and upperworlds to develop into long-term corrupt relationships. In the private business sector, respected institutions such as Shearson/American Express, Merrill Lynch, the Miami National Bank, Citibank, and others have eagerly participated in illicit ventures with organized crime syndicates (Lernoux, 1984; Moldea, 1978). For example, in the infamous "Pizza Connection" case in which Southeast Asian heroin was

distributed through a series of pizza parlors located in the United States, tens of millions of dollars were laundered through New York City banks and then transferred by those banks to secret accounts in Switzerland, the Bahamas, and other countries. In addition to using banks to launder money, the "Pizza Connection" heroin traffickers also used the brokerage firm of Merrill, Lynch, Pierce, Fenner, and Smith, depositing \$5 million (all in \$5, \$10, and \$20 bills) over a six-week period. Merrill Lynch not only accepted these highly dubious deposits but provided the couriers carrying the heroin money with extraordinary security for their transactions. At the same time, couriers from the "Pizza Connection" were laundering \$13.5 million through accounts at another brokerage house, E.F. Hutton, which also provided private security services for the couriers. The affinity of major brokerage houses for heroin money is not new; it has long historical precedents. For example, in the 1930s and even into the 1940s, illegal gambling syndicates were among the largest customers of the fledgling AT&T corporation and played a key role in insuring its subsequent survival and financial health (King, 1975: 40). In another case, in the 1960s, both Pan American Airways and the Hughes Tool Corporation entered into partnerships with organized crime syndicates in gambling casino ventures both in Las Vegas and the Caribbean (Reid, 1969: 138-139). During the 1940s, Detroit automobile manufacturers used organized crime syndicates in an effort to suppress organizing drives by the United Auto Workers. At Ford Motor Company an organized crime syndicate was given a monopoly over the haulaway business in return for taking over the newly established autoworker union. Even after the AFL successfully organized the industry, Ford still hired organized crime figures to act as strike breakers (Pearce, 1976: 140). Contrary to the official portrait of organized crime, under- and upperworld criminals form close, symbiotic bonds. Businessmen are not the pawns of organized crime; they are, in fact, an integral part of it.

It would be virtually impossible to try to catalogue all of the cases of such relationships in U.S. history. In fact, it would be impossible to outline all of the corrupt relations between businessmen and organized criminals in a single city. So we will content ourselves with a discussion of two important illustrations of alliances between white-collar and organized criminals: 1) an historical view of Meyer Lansky's attempts to integrate organized crime and corporate America, and 2) the role of organized crime and in the great savings and loan scandals of the 1980s.

The Worlds of Meyer Lansky

The organization and coordination of crime is very much like the structure of legitimate business. Finance, investment, capitalization, and credit all matter just as much for organized crime as for McDonalds. And in both cases, "bankers" have a great deal of say in the structure of the enterprise. Money enters the banking system from a great variety of sources, usually in used bills, the profits of gambling, vice, narcotics, and burglary. These monies can be laundered through Las Vegas, Miami, Mexico, Liechtenstein, Switzerland, the Caribbean, and so on. They can be invested and give the businessperson a level of return on profit unheard of since the heyday of the well known robber barons: the Fisks, Goulds, Vanderbilts and Morgans. After almost a century, organized crime enterprises have thoroughly penetrated legitimate businesses. Did even Meyer Lansky know all the ramifications of his multinational money-moving conglomerate? The scale of the enterprise is suggested by two things: the vast profits of gambling alone must go somewhere, and the tiny proportion of drug operations that actually come to light involve a substantial capital investment. Cressey gives a good account of such "money-movers." Money-movers hide illegally obtained cash and put it to work. "Importing, real estate, trust funds, books, stock and bonds, are his typical undertaking" (1969: 234). Of course, money-movers come in various shapes and sizes. Some are glorified loansharks. Others are men of wealth and international prestige, and it is this latter category we wish to describe here. We will describe the workings of a handful of such men clustered around the awe-inspiring Meyer Lansky.

The remarkable career of Meyer Lansky has been frequently retold, most comprehensively by Hank Messick (1973), but a brief recapitulation might be useful. Lansky was born in Grodno, Russia, as Maier Suchowljansky in 1902; and with his family, he migrated to New York in 1911. By 1918 he had formed acquaintanceships with Bugsy Siegel and Lucky Luciano. As with many others, Prohibition gave him his greatest opportunity, and the "Bugs and Meyer" gang gained prominence as a bootleggers' mercenary force. By the late 1920s, with Lepke Buchalter and Luciano, he pieced together the outlines of a bootlegging syndicate which would be the dominant influence in organized crime for the next three decades. After Prohibition, he and Siegel cast their eyes further afield -- to the West, the Sunbelt, the Caribbean. In Miami, Lansky initiated the "Gold Coast" with its hotels and casinos; in Cuba he created

Batista's leisure empire; in Nevada and California, Siegel used syndicate money to create a network of enterprises. Siegel was shot and killed in 1947, probably because of a dispute over cost overruns on the Flamingo hotel and casino in Las Vegas. But Las Vegas lived on to flourish and prosper. Lansky's business enterprises were now sufficiently far-flung to withstand any one setback like that which would be dealt him by Fidel Castro. If Havana fell, he could turn back to Las Vegas or open new enterprises in Haiti, the Bahamas, or even in London.

Attempting to describe Lansky's activities is an almost impossible task, even if we could be sure which of the numerous ventures he is credited with he was in fact involved in (some authors credit him virtually every financial scam since 1925). So with this caveat, we can begin to describe Lansky's activities on behalf of organized crime. First, let's take a look at the cast of characters which so frequently are participants in Lansky-inspired activities.

Lansky associates can broadly be divided into two categories: 1) the old-time veterans of the gangs of the 1920s and 1930s; and 2) newer associates, usually relatively clean lawyers and businessmen. The Minneapolis mob headed by Isadore Blumenfeld "Kidd Cann" in the 1920s provided Lansky with some of his most durable business partners. Blumenfeld's brother, "Yiddy Bloom" held substantial investments in Miami area real estate and controlled a large portion of the New York gambling market. Probably his best known financial coup was the early 1970s stock fraud surrounding the artificial boosting of Magic Marker shares. Bloom was joined in this by his son Jerold and some fifteen fellow conspirators (Pennsylvania Crime Commission, 1980: 195-198). Also from the Blumenfeld Mob was John Pullman, who lived in Canada and Switzerland and was an expert in the use of numbered accounts and dummy corporations. He was the head of the "Bank of World Commerce" in Nassau (Bahamas) in the 1960s, a highly effective "laundry" for Mob money (Pennsylvania Crime Commission, 1980: 198; Fried, 1980: 276-277).

Other prominent figures in the Lansky orbit were newer and more respectable figures. For example: Delbert Coleman came to prominence in the late 1960s in the "Parvin-Dohrman" affair. In 1968 Coleman was associated with Korshak in an attempt to purchase the Parvin-Dohrman casinos in Las Vegas -- and to artificially float that company's stock shares. Coleman and Korshak were also involved in Bernie Cornfeld's Investor's Overseas Services (IOS) scam (Fried, 1980: 282-286; Raw et al, 1971: 229; Demaris, 1981: 247).

The ownership of a Las Vegas casino is often frighteningly complex. However, we might recount the history of one casino in order to give some idea of the sort of problems involved. In the mid-1950s, the Parvin-Dohrman company bought the Flamingo. In the 1960s, it bought the Fremont and sold the Flamingo to a consortium headed by Morris Lansburgh, with Lansky receiving a finder's fee. The Parvin-Dohrman empire then expanded to include the Aladdin, and also the Stardust, purchased from Moe Dalitz. In 1968 Parvin agreed to sell out to Delbert Coleman with Sidney Korshak acting as intermediary (and getting a \$500,000 finder's fee for the transaction). At the end of 1968, while the sale went through, Coleman and Korshak succeeded in artificially boosting the Parvin-Dohrman stock from \$35 to \$141 a share with the aid of financial impresarios like Bernie Cornfield of Investors' Overseas Services. After the inevitable collapse, Korshak and Coleman pocketed their profits and Parvin-Dohrman changed its name to Recrion (Fried, 1980: 282-286).

By the 1950s, organized crime had a well developed role in Miami hotels like the Sands and the Grand. By the 1980s, some estimates claimed that roughly half of Miami Beach hotels were connected to mob money through Lansky or associates like Lansburgh and Yiddy Bloom (Moldea, 1978: 105-107). By the 1970s, a "subculture of banks in southern Florida" was linked by "interlocking directorates and major investors" (Fried, 1980: 141). Besides the Miami National, there were the Bank of Miami Beach, International Bank of Miami, the Key Biscayne Bank, and Southeast First. Federal prosecutors linked Southeast First to the intelligence community and especially to the 1976 murder of Chilean exile Orlando Letelier.

Banks could provide a clean base for further ventures. For instance, it was Rosenbaum's bank which supported Cornfeld's IOS. Again, the Overseas Investors Corporation gave Robert Vesco his opportunity to plunder a fortune. Both the Vesco and Rosenbaum ventures collapsed by the 1970s (Raw et. al., 1971; Fried, 1980: 276-286; Clarke and Tighe, 1975; Hutchinson, 1974; Messick, 1969: 201-209).

Organized crime learned long ago that it was useful to register companies and place investments in foreign nations with fairly lenient laws on the transfer of money. Examples include Switzerland, Liechtenstein, the Bahamas, Panama, the Cayman Islands, and the Netherland's Antilles. Organized crime money has flowed freely into Canada -- pornography syndicate money through Morton Goss in Toronto and Lansky's money through John Pullman.

Also, Canada's convenience for drug importation has made cities like Montreal open organized crime territory. Britain has proved an equally tempting target since the legalization of gambling there in 1960. Lansky, the Cellinis, Angelo Bruno, and others all made exploratory journeys there in the 1960s. The British government closed casinos because of alleged organized crime involvement -- the Colony Club in 1966, and Penthouse magazine's interests in 1971. British gangsters like the Krays also tried to link up with U.S. colleagues -- apparently both Bruno and Lansky. In England as in Holland, Rueben Sturman has made major incursions into the pornography trade (Blum and Gerth, 1978). When Australia was discussing the legalization of gambling in the mid-1970s, the Bally corporation attempted to gain a foothold, but extensive connections with Dino Cellini and Gerry Catena led to their exclusion (Blum and Gerth, 1978). Bally was much more successful in its ventures in Sweden (Block and Chambliss, 1981: 135-142).

Anyone studying organized crime will have frequent call to look at the activities of the Teamsters' Central States Pension Fund. This fund -- it passed the billion dollar mark in 1972 -- has served as an organized crime bank. It has largely financed the development of Las Vegas and of gambling and leisure in Florida and California; it financed the La Costa Country Club and the "Cove Associates" deal; it finances real estate deals, and played a large role in the deals which resulted in removing President Nixon from office. From the 1950s to the 1970s, this fund was largely directed by Paul Dorfman and his stepson, Allen.

In the 1930s, the teamsters secured their position by providing employers with a tame and amenable alternative to the radical CIO and the Communists. From the early 1930s, the leadership was closely tied to gangsters -- especially in Detroit; but by the late 1940s, Jimmy Hoffa had consummated the organized crime - Teamster Union alliance. Hoffa's former mistress became friendly with Moe Dalitz, and this contact gave him a whole series of Mob friends -- the Pressers in Cleveland and the Chicago mob. From the latter, Hoffa became close to Paul Dorfman, an associate of Anthony ("Big Tuna") Accardo. Dorfman had a distinguished record in the Capone mob as a labor racketeer. In the 1920s and 1930s, he had led the corrupt Chicago Wastehandlers Union after the murder of a predecessor (a murder allegedly carried out by Jack Ruby) (Moldea, 1978: 49-50, 55-58, 86-88, 141-49; Demaris, 1981: 321-326, 342, 378, 402).

In 1951 the Teamsters set up the Central States Health and Welfare Fund, the insurance portion of which was run through a company managed by Paul's inexperienced stepson, Allen Dorfman (born 1923). Allen learned quickly. He guided the investments both of the Teamsters and of Hoffa personally. They moved into oil, stocks, and especially real estate -- one unusually corrupt deal involved the Sun Valley retirement community, a deal which would later result in legal trouble for Hoffa. In 1955 the union established a new Central States, South-Eastern and South-Western Pension Fund, run almost entirely by the Dorfmans.

Allen did extremely well. His own Union Casualty Agency had now become a substantial conglomerate. It owned insurance companies, oil interests, and slum housing; it held real estate -- even a resort in the Virgin Islands.

In 1963 a Senate inquiry into misdeeds by Bobby Baker was interrupted by protests from Baker's attorney, Edward Bennett Williams. Apparently, Baker's conversations with a gambler named Levinson had been wiretapped, and Williams protested that this constituted a violation of Baker's civil rights. However, he had misunderstood one major point: the target of the investigation was not the wayward politician; it was the powerful, but little-known gambler.

Levinson was extremely well-connected both with the legitimate and the criminal worlds. "Above ground" his connections were so good as to secure access to secret FBI wiretaps while he contributed generously to Nevada politicians at all levels of government. In the underworld, he was close to Lansky faithfuls like Doc Stacher and Benjamin Siegelbaum while he participated in the Bank of World Commerce and the Exchange Bank of Geneva. In 1962 the IRS began a large-scale investigation of Las Vegas "skimming." This resulted in 1967 in convictions for the Fremont and the Riviera - a Sam Cohen operation. Levinson was fined a token sum but his notoriety was primarily due to the Baker link (Mollenhoff, 1972). In short, Levinson seems to be another example of the rise from organized crime to corporate business.

Organized Crime, The CIA and the Savings and Loan Scandal

The savings and loan scandal of the 1980s has been depicted in a myriad of ways. To some, it is "the greatest ... scandal in American history" (Thomas, 1991: 30). To others it is the single greatest case of fraud in the history of crime (Seattle Times, June 11, 1991). Some analysts see it as the natural result of the ethos of greed promulgated by the Reagan

administration (Simon and Eitzen, 1993: 50). All of these depictions of the S & L scandal contain elements of truth. But to a large degree, the savings and loan scandal was simply business as usual. What was unusual about it was not that it happened, or who was involved, but that it was so blatant and coarse a criminal act that exposure became inevitable. But with its exposure, three basic but usually ignored "truths" about organized crime were once again demonstrated with startlingly clarity:

1. There is precious little difference between those people who society designates as respectable and law abiding and those people society castigates as hoodlums and thugs.
2. The world of corporate finance and corporate capital is as criminogenic and probably more criminogenic than any poverty-wracked slum neighborhood.
3. The distinctions drawn between business, politics, and organized crime are at best artificial and in reality irrelevant. Rather than being dysfunctions, corporate crime, white-collar crime, organized crime, and political corruption are mainstays of American political-economic life.

It is not our intent to discuss the unethical and even illegal business practices of the failed savings and loans and their governmental collaborators. The outlandish salaries paid by S & L executives to themselves, the subsidies to thrift institutions from Congress which rewarded incompetence and fraud, the land "flips" which resulted in real estate being sold back and forth in an endless "kiting" scheme, and the political manipulation designed to delay the scandal until after the 1988 presidential elections are all immensely interesting and important. But they are subjects for other inquiries. Our interest is in the savings and loans as living, breathing organisms that fused criminal corporations and organized crime into a single entity.

The Washington, D.C.-based Palmer National Bank was founded in 1983 on the basis of a \$2.8 million loan from Herman K. Beebe to Harvey D. McLean, Jr. McLean was a Shreveport Louisiana businessman who owned Paris (Texas) Savings and Loan. Herman Beebe played a key role in the savings and loan scandal. Houston Post reporter Pete Brewton linked Beebe to a dozen failed S & L's, and Stephen Pizzo, Mary Fricker, and Paul Muolo, in their investigation of the S & L fiasco, called Beebe's banks "potentially the most powerful and corrupt banking network ever seen in the U.S." Altogether, Herman Beebe controlled, directly or indirectly, at

least 55 banks and 29 S & L's in eight states. What is particularly interesting about Beebe's participation in these banks and savings and loans is his unique background. Herman Beebe had served nine months in federal prison for bank fraud and had impeccable credentials as a financier for New Orleans-based organized crime figures, including Vincent and Carlos Marcello (Bainerman, 1992: 277-278; Brewton, 1993: 170- 179).

In March, 1986, Robert L. Corson purchased the Kleberg County Savings and Loan of Kingsville, Texas, for \$6 million, and changed its name to Vision Banc Savings (Bainerman, 1992: 280-281; Brewton, 1993: 333-351). Corson was well-known to federal law enforcement agents as a "known money launderer" and a "mule for the agency," meaning that he moved large amounts of cash from country to country. When Corson purchased Vision Banc, it had assets in excess of \$70 million. Within four months it was bankrupt. Vision Banc engaged in a number of questionable deals under Corson leadership, but none more so that its \$20 million loan to Miami Lawyer Lawrence Freeman to finance a real estate deal (Houston Post, February 4, 1990). Freeman was a convicted money launderer who had cleaned dirty money for Jack Devoe's Bahamas-to-Florida

Vision Banc was not the only financial institution involved in Freeman's Florida land deals. Hill Financial Savings of Red Hill, Pennsylvania, put in an additional \$80 million (Brewton, 1993: 346-348). The Florida land deals were only one of a series of bad investments by Hill Financial which eventually led to collapse. The failure of Hill Financial cost the U.S. treasury \$1.9 billion.

Mario Renda was a Long Island money broker who brokered deposits to various savings and loans in return for their agreement to loan money to phony companies (Brewton, 1993: 45-47; 188-190; Pizzo et al. 1989: 466-471). Renda and his associates received finders fees of 2 to 6 percent on the loans, most of which went to individuals with strong organized crime connections who subsequently defaulted on them. Renda brokered deals to 160 Savings and Loans throughout the country, 104 of which eventually failed. Renda was convicted for tax fraud.

Organized and White Collar Crime

“Organized crimes” exhibit many of the same characteristics of “white collar crimes.” In fact, Dwight Smith, Jr. has argued that organized crime "represents, in virtually every instance, an extension of a legitimate market spectrum into areas normally proscribed. Their separate strengths derive from the same fundamental considerations that govern entrepreneurship in the legitimate marketplace: a necessity to maintain and extend one's share of the market" (1978: 164).

Organized crime represents a series of reciprocal relationships and services uniting criminals, clients, and “persons of respectability. Organized crime has as its most important function the task of providing a bridge between the covert world of organized crime and the overt world of legitimate business, finance, and politics. It is this reciprocal relationship, the uniting of what Alan Block has called the "underworld" and the "upperworld" which is the primary task of an organized crime syndicate.

The relationship between organized crime and business is both functional and necessary to the continued existence and efficient operation of organized crime. Organized crime has grown into a huge business in the United States and is an integral part of the political economy. Enormous amounts of illegitimate money are passed annually into socially acceptable endeavors. An elaborate corporate and financial structure is now tied to organized crime. The existence of that structure renders much of the utility of social constructs such as “white collar” and “organized crime” irrelevant.

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GROUP 1 DISCUSSIONS

The following discussions focused primarily on the papers presented by Kate Jamieson and Larry Gaines. Comments related to other white collar crime definitional issues were welcome.

Michalowski Thinking about the two papers, what I begin to see is this idea; I like that notion of organizational complexity as an organizing principal from the least, if you will, from the lowest level of organizational complexity on up to the highest. But somewhere in the middle there is also a dimension of guilt, legitimate and illegitimate, there is that wonderful gray area between. You (Jamieson) talked about the spin-off corporations, but also the corporations that exist to serve the illegitimate corporations that exist to serve the legitimate corporations or created by them, exist to serve them. The waste oil dumper, for example - I like that dimension.

My comment is that we might want to be careful about assuming, and I agree about impulse versus planning, but what often goes along with that is the assumption that the street criminal does it for some kind of pleasure, some kind of emotive pleasure in that expressive crime. Whereas, the person who does the instrumental or the planning is not doing it for emotive pleasure. But if one were to extend the Katz's pleasure of making things happen, and I think if we want to talk about the context within white collar crime, I suspect that many people who do it, part of what's going on here is the pleasure of exerting the power of the position to make things happen. I know people with fiduciary responsibility who get a great thrill ultimately about circumventing tax law, and because it's a pleasure that somebody gets from committing the crime that actually outrages the public. "You mean you enjoy hurting someone?" I think if we extract that notion, we just make them bloodless calculators who aren't getting a kick out of it. We lose a very powerful dimension in terms of the public perception of what makes something criminal.

Simon I have a comment on each of your papers. I was really struck by Larry and Gary's paper and spent the majority of the (presentation) time trying to blur the line between organized crime and white collar crime and then the remaining few seconds arguing for a distinction between upper world crime and lower world crime. It seems to me that it doesn't fit and I just wondered why they were in there. For Kate's paper, the distinction between acts committed by individuals for their own

gain and acts committed on behalf of an organization to enhance the organization, I don't think holds much water, because a lot of people in organizations are asked to commit acts, and if they refuse they get fired; if they go ahead and do it, they perhaps get rewarded in some way or promoted, and seems to me that, like with most dichotomies, in the end you really can't separate these things very well.

Jamieson Yes, I agree with you that there is a benefit, an individual benefit, to someone affecting corporate gain in terms of prestige. You get a bonus at the end of the year because you saved us money by dumping waste into the river or whatever the crime was. That to me is kind of secondary in some ways to the gain realized by the corporation - they are driven by the fact that we need to make money for the organization, at least it seems to me. I think that is good point.

Coleman I think there is still some use in the distinction between the individual crime and the organizational crime because ideologically, everybody in an organization acts with their own motivation. As another dimension of organizational structure, I think ideologically it's completely different in understanding the causes. So I think for some purposes it's useful, I'm not saying it's useful for everything, but I wouldn't want to throw that out.

Michalowski I think maybe if you turn it around and not ask why the person does it, but ask who the primary beneficiary of the offense is, I think there is something different between an offense that is an attack on an institution and someone who embezzles versus an act which aids the institution, the person who keeps fraudulent books. And I feel we wouldn't want to lose that distinction. I think you're right, we don't want to forget that people's motivations may be personal, but we also need to think where it fits, what's in the institutional framework, is it something animated by the institution that the institution wants to have happen or something the institution doesn't want to happen?

Simon I think you're on the right track, and that is we need to keep both things in mind if there is an individual benefit dimension in a lot of these things and an organizational benefit as well and in some other types of white collar crimes such as embezzlement, it is pretty much an individual thing. All I'm saying is that you get a much richer picture of it if you look at both types of benefits.

Jamieson I think it also tells you something about motivation in that responsibility becomes diffused when you are in an organization that's huge and you are part of the decision making process like with the Challenger incident. David, you were saying where the organization broke down essentially is how, it wasn't running efficiently at all and some of the principles on which it used to run NASA and Morton Thiokol were eroded in the process of that whole disaster. But the responsibility was for pilot abuse, you know, there were a number of people who took a little part in each decision and so who do you put in jail for that. I think the more complex the organization the more you are able to do that.

Simon I think there is another point here we are getting very close to and one that seems to befuddle my students especially because they come from a culture like ours where individualism is so highly prized and part of the national mythology in a lot of ways. They cannot believe that organizations aren't anything more or less than collections of individual personalities who sort of run around and do what they want and somehow avoid bumping into each other in the process. The point to get across of course, is that individuals as role players and in organizations don't behave the same ways as they do in private life, within limits. Jim (Coleman) and I, for a long time, have kind of had this surreptitious debate over whether or not if somebody is unethical in their private life are they going to be unethical in their public life and what difference does it make. And the answer seems to be more and more yes, there seems to be some consistency at times between people who do and those who are in powerful positions. In fact, in some ways, think it leads them to believe they can be more immoral in their private lives because they seem to believe they can get away

with this. Look at the O. J. Simpson case, and the Michael Jackson kinds of incidents, for example.

Friedrichs To follow up somewhat on Dave Simon's comments, it seems to me one of the underinvestigated phenomena is the relationship between, what I would like to call avocational crime (using it in a somewhat different way than Gil Geis did in an article many years ago). That is to say, the white collar classes commit many types of offenses, including insurance fraud, tax evasion, avocational and customs violations, outside of an occupational context, and I think there has been relatively little attention paid to these offenses. In other words, it's often the same people actually committing these, the same people who commit occupational or corporate-related offenses, but they are doing it outside of the occupational context. I think there has been relatively little investigation of the relationship between an individual's private and public or professional life. I also think that a neglected aspect of that, what I've called student white collar crime offers a good example of this public and private persona. The quintessential form of student white collar crime is cheating because the student's primary occupation as a student is to get good grades, graduate and get a job. Indeed, there's a book by Persell and Cookson, on elite boarding schools, which used the term student white collar crime about the cheating that goes on in such schools. Certainly it seems reasonable to infer that the experience with that type of student white collar crime would contribute in important ways to their later practices as a professional. This is also an area that seems to be somewhat neglected.

Gordon Another area that I think has been neglected is organizational crime. We've focused too much on traditional organized crime, and I think there is a whole range of organizations out there that have come together for short periods of time to commit crime. You are seeing, for example, credit card fraud, when organizations come together to counterfeit credit cards and there is a whole distribution network that works globally. These areas I don't think are getting a whole lot of attention.

Michalowski David, you said something, that was very significant when you talked about the people outside being the same people. One of the dimensions here, and maybe this is where Sutherland actually wasn't that far off the mark, is that there are sectors of society who know how things work. You can only circumvent custom laws or tax laws or all of these things that you do if you already inhabit a place in the world where you know how things work. So if you do it in your private life, you do it in your public life because you are situated - you have a privileged enough position to know this much. And then going back to what Kate said, the higher up in the organizational structure you may be, the broader the range of knowledge you have about how to circumvent things; I think that is kind of interesting to think about. Why is it the same people? Is it that there are just corrupt people or is it that they are, in fact, in a privileged position so they could think about and know about how to do these things?

Gordon I caution you against accepting that. Jay and I were just talking about this interesting case in a Connecticut mall where these guys wheeled in an ATM and sucked up of everybody's credit card and PIN numbers using a lap top and said sorry we don't have any cash for you today - they did that for sixteen days. These people knew nothing about ATMs, but in a six month period they set out to study ATMs and they understood the entire system, how it operated, the vulnerabilities of that system and then they targeted their scam to do that. With our technological world now, I think we have to be careful not to say that it has to be people who are in an occupation because anybody who understands technology can figure quickly how the credit cards work.

Michalowski I wouldn't see that as different from what I was saying in that people were positioned to have the knowledge. These people positioned themselves just like some working class kid who goes off to college and learns some interesting things and ends up in a corporation somewhere. So, people can change their professional

skills. You have to have some skill, you have to be in place. And then some people are more positioned than others. These people obviously worked to position themselves. Although I agree it certainly took more than technological development to get to that position.

Nichols

One thing you see a need for is more organizational theory, and we know in most departments a course in complex organizations is not one of your big draws, yet in a sense, that is really what we need. If you look at the business literature, there is a lot being written about the changing structure of corporations, the virtual corporation, the corporation without boundaries and other perspectives. Harrison has a book out about production networks - what he calls concentration without centralization. One of the implications of the papers, especially the second (Jamieson) paper, is that to understand the criminological aspects, what we really need is more organizational theory and how do organizations work? One of the questions is where do you attribute the responsibility? If something goes wrong, is it the act of the organization? Sometimes it's attributed to an individual when it was an organizational act, sometimes it's attributed to an organization when it was some kind of a network within that organization. The rationality issue is interesting by itself and provides a different dimension here. I thought the analysis was somewhat Weberian in its emphasis on increasing rationalization. Are bureaucracies rational? Are the pleasures of people in power who break the law rational or is just the same kind of seduction that you get in other forms of crime. I think you can find highly irrational elements in some of these big cases. You look at someone like Mike Milken who is making his over \$500 million just on commissions; why does someone like him need to break any rules? I mean, he obviously is doing pretty good.

Jamieson

Greed.

Nichols Well, that's my point. Sutherland got us thinking in terms of profit motivation. Let's not forget the whole nonprofit sector, which is a huge part of our society, a growing part of our society, because we could have that betrayal of trust.

Look at the Jim Bakker sentence. We give him forty-five years - four times as much as Mike Milken because of the symbolic aspect of the betrayal. He is in a nonprofit area so I wouldn't want to totally identify the profit and the white collar crime here.

Jamieson Yes, I was actually including nonprofit and government in the same organizational continuum. I didn't want to limit it to the profit-making organizations necessarily because they go through the same kind of structuring, specialization and centralization, at least in a complex, or academic type organization as the other ones do, as do regulatory organizations.

Rabe I think within the organizational field, a lot of times we look at profit as a motive, but to really understand the total picture you need to look at the context in which that behavior occurs, social and historical. You mentioned the Ford Pinto case - when there was a tremendous influx of the small fuel-efficient Japanese cars. Ford was put in a position where it needed to compete. Thus, Ford designed and started to manufacture the Pinto before they realized that these things (gas tank placement) were hazardous. They were committed to a specific course of action where they made a rational choice, based on the calculation of an economist, saying it's more efficient to pay off these suits. We get the perception that this was a rational process, but we need to look at the whole organizational context in which these initial rational decisions were made.

Jamieson But it made more sense at the time.

- Gaines** Sure, but that's the way the automotive industry has always done business. They will see a flaw and will sit and calculate what the recall will cost them versus fixing the flaw.
- Rabe** Exactly, but that's only half the picture. I think we need to look at the whole context of how that occurred.
- Michalowski** Who decided that was rational?
- Nichols** Was it rational to save ten bucks a car?
- Rabe** It was an economic rather than rational decision.
- Coleman** I think you make a calculation and try to be rational: your result may not be necessarily rational. We're saying that you're making a calculated rather than an expressive decision.
- Michalowski** I'm saying that even the very notion that one would sit down and calculate (a decision) as a rational one, there is a cultural assumption embedded in the very notion that I'm taking a rational act here by the cultural definition of what's rational.
- Simon** I sat in on Neil Plunkstein's organizational theory course at Berkeley, and when you first get into this literature you feel like it's really good for your mind because you are doing all of these logical exercises about why organizations behave the way they do. One of the big organizational scholars from Stanford came and gave a talk and said the reason organizations decline is because they find a niche for themselves and do not hire people that tend to take risks. These people get sort of stuck in that niche and pretty soon the rest of the environment passes them by. He also said he noticed that the people who are innovators are people that are rather amoral and willing to take risks. I asked him if the risk takers are also likely to be the people

that will get the organization into a scandal, and he said basically yes, that is exactly what I'm saying, but I don't want to use that word because, you know, it doesn't fit in with what is viewed as rationality. Once you realize that it may make you feel good to use your brain cells to make all of these logical connections, that all the logical connections fit around this concept called rationality, and in the end you kind of wonder what is rationality - it is a socially constructed concept which can be incredibly irrational. So I think you're right. You've got to look at this context very carefully. One other question I have for both of you and I think we're getting very close to it here; most of the studies of corporate crime have shown concentrations of crime and crime rates, within different industries, where some are more criminogenic than others. Some of you seem to imply and, I know, you are surprised that I am saying this, but we paint with a broad brush, that business equals corruption period, that they all do it, and I wonder, down the road, if we shouldn't deal with this issue. Do you think that the studies that have been done so far have shown these variations in rate just because of that's where most of the regulatory enforcements take place or is white collar crime and corporate crime really much more widespread than we've been lead to believe?

Hagan It often depends upon the economic nature of the industry in terms of antitrust enforcement. The Clinard and Yeager study finding of the large amounts of antitrust violations in the oil and pharmaceutical industries show that some industries have much larger amounts than others.

Coleman You're using a definition of actual crime, of law violation. In the more regulated industries the regulations predate the crime. The other industries aren't regulated even though they are deviant.

Simon You're using the word deviant!

Coleman I think that regulations can create the crimes.

Michalowski In a way that's the flaw of the question. How do we know, because we don't have a uniform system of enforcement across all of these industries. On the other hand, to the extent that the notion of corporate culture or organizational deviance makes any sense, if there is organizational deviance that is achieved by corporate culture, then presumably there has to be some differentiation or else the concept is useless and so that would be something we would have to ask ourselves. If we can say that there is organizational cultures then presumably some are more criminogenic than others. If we say they are all the same then there is no point in talking about the concept.

Coleman Industry accounts for a lot too. For example, I've long thought that industries that do more dangerous kind of things, like automobiles, are inherently more likely to be regulated. There's a lot of crime because they try to regulate it, and it generates scandals when things screw up. If you're making hats, you know, I mean there's crime in that too, but it isn't a scandal.

Nichols Look at price fixing in the matza industry. There were only two big ones in New York and they were jacking up the prices and fixing the prices and people were going in for the holy days and weren't going to question the price of matza but it's not as scandalous.

Jamieson I think it also has to do with the way they do business. Automobile manufacturers deal with thousands of dealers across the country and there are several layers of buying and selling where things can go awry and that are regulated by the government. From the time the car is manufactured until you buy it at the (Ford) dealer it passes through so many hands. The same thing exists with oil - it goes all the way down to the gas station for distribution. It's real flat with a lot of people down here at the bottom, and then the few big oil companies up at the top, like the auto manufacturers, and so the layers of wheeling and dealing back and forth are huge.

- Michalowski** Extend that backward Kate, because it is a fascinating notion. When you think about the auto industry, they deal not only with a huge number of layers this way but in production, they deal with hundreds and thousands of vendors as well as through all the people who provide them this part and that part.
- Jamieson** So that exposes them to more opportunity for a crime.
- Gaines** It would be interesting to look at Chrysler. Chrysler, I guess, just had this big controversy over buying back lemons and selling them. I would be curious to know if who or what was behind that particular aspect of white collar crime. What their relationship would be to anybody else in the organization, who may be involved in other aspects, like price fixing or buying deficient parts? In other words, is there a core (group of people) or how does it spread out or is there an organizational climate or how does it evolve within an organization, within a large complex organization?
- Nichols** If we focus more on organizations, maybe we could begin to compare across-systems. One of the parochial features of the whole white collar crime field, and in much of sociology as we know, is focused so much in the U.S., and we focus so much on the economic and political setup here. Any notion of organizational deviance, elite deviance, implies that this can happen wherever we have large complex organizations, it can happen wherever we have elites. Sometimes it's just a matter of we don't have enough data from other places to really begin to analyze and compare. I taught a course in organized crime for a few years and I use to begin by apologizing that I was going to reinforce the Italian and Sicilian stereotypes, because we seem to have so much more material on them. In the white collar crime field, there is nothing wrong with analyzing the Fortune 500 or the American political economic setup or whatever, but we've been so focused on the here and

now of corporations, that some of the things we're talking about actually point in other directions, point to a kind of broadening out of what we've been doing.

Jamieson That's where the data are though too. I think it's kind of a data-driven thing.

Nichols Well, I try to work in some lectures on the Japanese Recruit Cosmos scandal, but I feel so inadequate to begin to convey the whole context of the financing and political campaigns in Japan, that I at least try to get in a little something for comparison of the white collar crime course.

Rabe In speaking of the culture of Japan, I had a colleague of mine who went there to study white collar crime about ten years ago and they said "What?" The whole Japanese culture, even though the organization may be doing things that we would consider in our cultural definition as crime, they were recognized as perfectly acceptable business practices there. So the culture variations also explain the differences and how we perceive those types of things.

Nichols Very recently with the bail out of the Japanese Bank in New York by another Japanese Bank, there have been all kinds of concealed losses over a period of years, but there's a whole culture of cleaning up the mess in a different way than we would deal with.

Coleman I think at some level those things are considered criminal even in Japan. But you don't talk about that. There's just no good sociology there, you just don't talk about the dirty linens.

Nichols If you look at the Soviet Union, corruption was pervasive and this was well known, but of course, it wasn't really being policed very well. So it's very hard to get the data on what the Soviet government is up to. You want to talk about environmental crime, there's ravaging of the environment over there, as well as here.

Michalowski One of the things that's interesting, having worked for about the last eight years on and off within the Cuban legal system, is to observe this idea of organizational structures. You talk about corruption that is rampant, you can have organizational structures that are more criminogenic than others as they create the conditions, whereby the only way you could function, is in fact, to go around the law. For example, in the distribution of things, when distribution is very narrowly controlled and you have people in a key gate-keeping position, then the likelihood for bribes goes up substantially and it's clearly structural, it's clearly an organization that leads to that. And then around that a culture begins to develop about how you do this. Some things are going to be more and you would probably begin to dissect the organization or organizational framework that increase or decrease the likelihood that these things are going to occur.

Simon There's another problem here that is being alluded to as it reminds me of my students that say "Boy you know, if you steal something in that country, they chop your hand off. Why can't we do that here?" And I point out that we have a Constitution, people have rights here and that is not the proper reference group of nations for the United States. The proper reference group of nations, most of the time, are other industrial democracies. And in terms of white collar crimes, I think even here it's a little bit risky. As I understand it, in a lot of European countries, many of these acts are not against the law, people are not sent to jail, organizations are not fined, and so it is a different ethic. The same with organized crime in Japan. As I understand it, the Yahoos are not only very popular, but they have their own building, their own newsletter; they have a deal with the police where they made this agreement to help the police with street crime and in return, they get to commit their organized crime without much interference. And, they also have political ties that are very powerful and rather open.

Nichols While there are a couple of issues that could help us study how white collar crime is defined in different societies, that's data we could examine and compare, and look at the influence of culture. As you said, for example, what we call insider trading in the U.S. is no big deal in Europe. But also I know you're (Simon) interested in the universal human rights issues. You're interested in trying to find some broad norms that maybe would apply everywhere in terms of deprivation of liberty, torture, and these kinds of issues. So I think we need to look at both, and I don't mean to say that we could just take the definition of white collar crime in the U.S. and transpose it, I wouldn't want to do that.

Albanese We can get back to the initial point Larry Gaines made in his paper about the similarities between white collar and organized crime. I, of course, have argued this for a long time as have other people. As a matter of fact, when I teach the course, I teach white collar and organized crime as part of the same course to help students conceptualize it in that way. I think that the interesting point that Larry makes is that when you look at the behaviors that characterize white collar and organized crime, there are no important differences between the two. Really, the only differences that we find tend to be, in most cases, the types of people who engage in the behavior. Which I will argue this afternoon, is rather an arbitrary station.

We are in fact talking about a category of behavior here. I'm hoping not to try to categorize individuals. So many times the distinction we draw between white collar and organized crime are artificially based on types of people who engaged in a behavior, when in fact the behaviors themselves are identical. And that merging is happening more and more, as you all know. Racketeering laws are being applied to both white collar and organized crime. All the new laws coming up are being more or less cross-applied, it seems. I think there is going to be even more blurring between two types.

Nichols On the same point, anything that the upper world people do is not necessarily a

white collar crime is sort of the same thing your saying. And high education is not what Sutherland meant by white collar crime and probably not what some of us mean by white collar crime. It gives people high status but I don't think we can call it a white collar offense.

GROUP **2** PAPERS

- What Is White Collar Crime? New Battles in the War of Definitions*** 77
Jim Coleman
- Offense-Based Versus Offender-Based Definitions of White Collar Crime*** 87
Jay Albanese
- From White-Collar Crime to Elite Deviance: Reasons for a Paradigm Shift*** 95
David Simon
- Recalling Status, Power and Responsibility in the Study of White-Collar Crime*** 105
Kip Schlegel

What is White Collar Crime?

New Battles in the War of Definitions

James W. Coleman

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The best place to start our discussion is at the beginning, and that means with Edwin Sutherland. His famous 1939 Presidential address to the American Sociological Society which first introduced the concept of white collar crime was one of the landmarks of twentieth century criminology. Others before Sutherland had pointed out the need to study the crimes of the rich and powerful along with more traditional criminological fare, but it was Sutherland with his lofty status in the discipline, his phrase making ability, and his groundbreaking research, that really got this endeavor going.

According to Sutherland's definition, a white collar crime was "a crime committed by a person of respectability and high social status in the course of his occupation." In order to understand why Sutherland chose this particular definition, we must keep his fundamental objective in mind--to call the attention both of criminologists and the general public to catastrophic damage caused by the crimes of the rich and the powerful and to the fact that such crimes were going almost entirely unpunished by the criminal justice system. Thus, only crimes committed by persons of high status were included as white collar crimes. But it was not enough that the offenders merely have a lofty social position, they must also abuse the privilege they enjoy as part of their occupational life. A price-fixer or an embezzler were white collar criminals, while an executive who abused his children was not.

As could have been predicted from the climate of those times, Sutherland's new category of crime created a storm of controversy. Criticism came from sociologists like George Vold (1958) who held that "there is a basic incongruity involved in the proposition that a community's leaders and more responsible elements are also its criminals." Ernest W. Burgess (1930) argued that white collar criminals were not criminals because they did not conceive of themselves as such. But the most influential of these critics, Paul Tappan (1947), took a more legalistic approach, blasting Sutherland's

definition as vague and moralistic and holding that criminologists should confine themselves to the study of convicted offender's, since no one else qualifies as a criminal.

Yet all this criticism, which often seemed to contain an almost personal attack upon Sutherland, was ultimately a failure. Criminologists continued to do studies of white collar crime, and the concept gained growing popularity with the public, eventually becoming a household word in English and numerous other languages around the world. Today, these early criticisms seem to be rooted in the ideological straight jacket that confined so much social scientific inquiry in the early decades of the post WWII era. It is doubtful that Burgess would have given a rapist who thought he had done nothing wrong the same exemption from the labeling process as the business executive. From today's perspective, it is equally puzzling to imagine how Tappan could have ignored the central point Sutherland was trying to make: that white collar offenders have the economic and political power to prevent their arrest and prosecution even when they have committed serious criminal offenses. Obviously, a definition that includes only those who are labeled as criminals will exclude the majority of white collar offenders thus confining the inquiry within safe ideological boundaries that pose no threat to the status quo.

The Edelhertz Revision

Just about the time that the original controversy had died down and it appeared that Sutherland's concept of white collar crime had vanquished its critics, a new front was opened. This new trend of thought accepted the validity of the concept of white collar crime, but redefined it a radically different way than Professor Sutherland had. The origins of this approach can be dated to a 1970 publication by a former prosecutor with the Department of Justice, Herbert Edelhertz (1970). After recognizing Sutherland's contribution, he went on to argue that the definition of white collar crime must include crimes committed outside of one's occupation and not be defined in terms of the status of the offender. Edelhertz's definition of white collar crime was "an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile to obtain money or property to avoid the payment or loss of money or property or to obtain business or personal advantage." Thus, under this rather awkwardly worded definition any property crime that was done solely by trickery and deception was to be a white collar crime. While this definition was widely cited in criminology textbooks, Sutherland's concept of white collar crime once again defied its critics and held tenaciously to its original meaning. For most criminologists and for the general public, the

activities of counterfeiters and con men still remained in a separate intellectual category from the respectable criminals in which Sutherland was interested.

Edelhertz's definition with various slight modifications remained influential with the federal bureaucracy, however, and from there it returned back into academic criminology. It was the definition used by then FBI director William Webster (1980) in his article in the *American Criminal Law Review*. A similar definition is used by the Bureau of Justice Statistics in the data it publishes on white collar offenders¹ as well as in several recent research projects relying on official data especially the large project on white collar offenders in the federal courts headed by Stanton Wheeler (1982).

There seem to be two reasons for the renewed popularity of this definition. Because it includes a far wider range of offenses as white collar crimes than the original, it allows government functionaries to provide a more convincing public account of their effort to stop white collar crime. This definition also has advantages for the academic criminologist, because it is far easier to use when analyzing official government statistics. Indeed, many of the studies employing an Edelhertz-style definition would probably have been impossible with Sutherland's approach. For one thing, most official statistics give us no information on the class background of the offenders. Moreover, many of the crimes that were central to Sutherland's definition are so rarely reported in official data as to render statistical analysis virtually impossible.

If this definition enables us to carry out studies that would otherwise be impossible, why not use it? To my mind the answer is simple. What criminologists are studying using this definition is often useful and worthwhile, but it is often *not* white collar crime. After all, the term "white collar" or "white collar worker" *directly* refers to someone of reasonably high status as opposed to the blue collar worker or the unemployed. But Edelhertz's definition is so broad that a skid row alcoholic coning a friend out of a bottle of wine, a welfare mother hiding the presence of her boyfriend in her home, and a small-time drifter and con-man are included as white collar criminals. Surely, Professor

¹ For example, Donald A. Manson, Tracking Offenders: White-Collar Crime, Bureau of Justice Statistics Special Report, (Washington, DC: Government Printing Office, November, 1986). It should be pointed out that the Bureau of Justice Statistics did use an occupational qualification in its definition in the Dictionary of Criminal Justice Data Terminology (Second Edition, Washington, DC: U.S. Department of Justice, 1981), and continues to include the characteristics of the offender. According to the dictionary, white collar crime is a "nonviolent crime for financial gain committed by means of deception by persons whose occupational status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities; also nonviolent crime for financial gain utilizing deception and committed by anyone having special technical and professional knowledge of business and government, irrespective of the person's occupation (p.81)."

Sutherland would turn over in his grave if he heard such talk. This approach threatens the whole intellectual thrust of Sutherland's effort to call attention to the crimes of the rich and powerful and the way they escape punishment, and could easily lead us back to focusing on non-violent street crimes which are far easier and far less threatening to study. In Kathleen Daly's (1989) study of female white collar offenders, for example, 20 percent of the "white collar criminals" included in her study were actually unemployed at the time of their offense.

Even worse, the Edelhertz definition (although not the one used by Daly) explicitly excludes any crimes that were committed by physical means, thus ruling out many of the most serious corporate crimes which often involve direct physical harm to workers or the general public. Any approach that would count a welfare mother who lies about her income as a white collar criminal but excludes a business executive who hires a detective agency to harass a whistle blower, itself does injustice to the whole idea of white collar crime. This does not mean that the kind of studies done under the Edelhertz definition are not useful and constructive, but simply that they are not studies of white collar crime.

Contemporary Criticism

But just because the Edelhertz definition is flawed doesn't prove that Sutherland's approach is the most useful one. What then of the many criticisms that are still leveled at the traditional definition of white collar crime and most especially its insistence that offenders must be of high social status and respectability? It has often been charged, and I think rightfully so, that terms like "high social status" and "respectable" are excessively vague. Criminologists who use Sutherland's definitional approach, myself included, have seldom spent much time or effort to systematically explore this issue. In most cases, the assumption is that if an occupation has traditionally been considered white collar rather than blue collar, then the offenders who worked in such occupations are white collar criminals. But with the rapid changes in the contemporary economy and the sweeping reformation of traditional occupational distinctions, it is often unclear what is a white collar job and what is a blue collar job; in fact, many new careers don't seem to fit into either category very neatly. There is, moreover, no longer a guarantee that jobs that are clearly in the white collar category are actually "high status," since many of the growing legions of clerical and information workers meet the traditional criteria for white collar status even though they may actually hold relatively menial positions.

Although this problem points up the need for more careful operationalization, it does not pose a real threat to the conceptual integrity of the Sutherland approach. A more fundamental challenge comes from those who argue that a definition of any type of crime must be based solely on actual behavior, and not the characteristics of the offender. There are two reasons commonly given for this position. Some criminologists have claimed that since legal offenses are based solely on behavior, that criminological categories should be as well (Braithwaite, 1985). Such a argument is hardly convincing, however, since its basic premise is false. Many types of criminal offenses do actually include characteristics of the offenders as a part of their definitions. In order to commit statutory rape, for example, the offender must be over a fixed minimum age. A derivative of this argument attacks the Sutherland definition from a more criminological perspective holding that the inclusion of socio-economic status in the definition of white collar crime is a mistake because it prevents us from also using social status as an explanatory variable. As Gary Green (1990) put it, "socio-economic status cannot be an explanatory variable in white collar crime because only higher status persons, by definition, can commit such offenses." But this objection, like its more legalistic cousin, fails to stand up to scrutiny. Although it is true that Sutherland's definition excludes lower status persons, there is no reason the conceptualize socio-economic status as a dichotomy, and there is still a very wide range of status variation among white collar offenders. And even if that were not true, there is no reason socio-economic status couldn't still be used as an explanatory variable, just as the sociological and psychological characteristics of adolescents are used as explanatory factors in juvenile delinquency.

Refining the Concept of White Collar Crime

All this is not to say that Sutherland's definition was perfect or even the best of all those in use. There are, I think, several ways it can be improved, as long as we are faithful to the original intent of Sutherland's conceptualization which has proven so useful an approach over the years. It seems reasonable to make the definition of white collar crime as broad as possible by including persons from the middle levels of social status as well as financial crimes that are not a direct part of the offender's occupation, such as tax evasion. But it seems to me that any adequate definition of white collar crime must exclude low status offenders and organized and career criminals. On the other hand, it should not be restricted to what are termed economic, non-physical, or non-violent offenses. The violation of civil liberties, such as the burglaries, political sabotage, and outright violence directed against political

dissidents by law enforcement agencies are clearly white collar crimes despite the "physical" nature of the offenses, as is the corporate violence unleashed by dumping life threatening pollutants into the environment. Nor is there anything to be served by restricting white collar offenses to those that involve a violation of trust as some criminologists propose (Shapiro, 1990). Few of Standard Oil competitors invested any trust in the that great monopoly, but that hardly stopped them from being victimized by its predatory activities; similarly today's public opinions polls show that few American continue to trust or believe in the tobacco multinationals, yet those firms certainly continue to be major white-collar offenders.

To meet these criteria, I have elsewhere defined white collar crime as "a violation of the law committed by a person or group of persons in the course of an otherwise respected and legitimate occupation or related financial activity" (Coleman, 1994). Like all the others, this definition has its shortcomings but at least it is broad enough to cover all the offenses traditionally thought of as white collar crime, while excluding street crimes that happen to be committed by trickery instead of force.

One final question about the definition of white collar crime still needs clarification: Exactly what qualifies as a violation of the law? One of the central issues of the early debates concerned whether or not to include violations of civil as well as criminal law, but as the study of white collar crime has matured, more and more criminologists have accepted Sutherland's contention that it should include both. As Blum-West and Carter (1983) pointed out, the distinction between torts and criminal offenses is often not in the acts themselves but in the administrative response to them. Most white collar offenders violate both types of laws, and the decision to pursue a case in civil or criminal court is made largely on extralegal grounds.

As if the old problems weren't enough, new definitional issues have been created by the increasingly international character of the modern economy have arisen. Today, deviant actions by individuals or organizations are often subject to several different sets of national laws or may manage to stay in the cracks between different jurisdictions, and there are growing questions about how we can best classify such actions. Any behavior that violates the law of the country in which it occurs is obviously illegal, even if it is carried out by foreigners or foreign multinationals. In some cases, the actions of multinationals in foreign countries may also be subject to the "extraterritorial" jurisdiction of their country of origin. But although this standard is a good starting point, it is inadequate to deal with the activities of foreign multinationals in poor Third World countries. As Michalowski and

Kramer (1987) have pointed out, the multinationals are often far wealthier and more powerful than the Third World countries in which they do business and can exercise great influence over the laws those countries do or do not enact. It is therefore necessary to include internationally agreed upon principles of human rights and national sovereignty in deciding what is and is not criminal behavior. Although these international laws are not as clearly defined or as widely accepted as the statutes in most individual nations, the basic principles governing the conduct of nations and multinational corporations are well established, and have been codified in such United Nations documents as the Universal Declaration of Human Rights, the Guidelines for Consumer Protection, and the Draft Codes of Conduct for Transnational Corporations. Violations of the standards in these documents, should, I would argue, be included in our definition of white collar crime.

The Alternative Conceptualizations

What of the other concepts that have been proposed as substitutes for white collar crime? While I think I have been rather tough on those who would radically redefine Sutherland's concept of white collar crime, I see real value in some of the alternative concepts such as elite deviance and occupational crime--as long as they are seen as additional tools in our definitional arsenal and not as a replacement for the original term. Some time ago, Clinard and Quinney (1973) proposed replacing white collar crime with two other terms--corporate crime and occupational crime. Although this is a useful dichotomy, those two kinds of offenses make more sense when seen as varieties of white collar crime, as Clinard himself later recognized (Clinard & Yeager, 1980). Schragar and Short (1978) proposed a different replacement for the concept of white collar crime: organizational crime - a term which was similar to Clinard and Quinney's corporate crime except that it also included offenses by governmental organizations. But again I would argue that this conceptualization is more useful when seen as one subtype of white collar crime, for it does not include many of the offenses covered in Sutherland's original definition, and can rather neatly be used as a broader replacement for corporate crime in the typology proposed by Clinard and Quinney.

On the other end of the spectrum is the very wide ranging concept of "elite deviance" proposed by Simon (1996). By dropping the explicit link to legal norms but retaining the defining importance of the high social status of the offenders, Simon certainly remains true to Sutherland's original intentions as well as to those of the school of sociology best exemplified by the work of C.

Wright Mills. His approach also has the virtue of bringing a broader range of objectionable behaviors into our field of study. On the other hand, however, by dropping the explicit link to the law, researchers using this approach risks being carried away by their own opinions and biases, and perhaps more importantly considering the importance of praxis to the advocates of this perspective, they risk losing the ability to tap into the public's deep resentment that rich and powerful *criminals* are abusing their positions of respect.

A different alternative is presented by a broader definition of occupational crime. There is, however, considerable confusion in the use of this term, since it is commonly defined in two contradictory ways. In their influential work, Criminal Behavior Systems, Clinard and Quinney (1973) originally used it in a rather narrow sense. Occupational crimes referred only to individualistic offenses committed in the course of ones occupation, while crimes committed, at least in part, in the furtherance of the interests of ones employer were termed corporate crimes. In a more recent work, Gary Green (1990) defines occupational crime much more broadly: "Occupational crime refers to *any act punishable by law which is committed through opportunity created in the course of an occupation that is legal.*" In one sense, Green's approach seems superior, since on the face of it there appears to be no reason that occupational crimes should exclude offenses simply because they are also in the interest of the offender's employer. However, Clinard and Quinney's definition has been highly influential over the years, and any attempt to change it inevitably creates some serious confusion.

Where Do We Go From Here?

Sutherland never intended the concept of white collar crime to be simply a useful tool of objective scientific inquiry. Its genius was to link an unexplored field of inquiry to a ringing challenge to the status quo, and the enormous popularity of this conception and the field of study it help create is directly attributable to this fact. Those who would create a new class of white collar criminals without white collars have either missed the point or intentionally seek to turn the study of white collar crime into a field more suited for receiving government grants than challenging the glaring injustices of the late modern era. The term "white collar" explicitly refers to those of higher social status, and if that qualification is removed then nothing but an eviscerated self-contradictory shell remains.

On the other hand, if the data or a researcher's interests make it more useful to take a different approach, then they should use different conceptualizations that make their assumptions clear. If researchers prefer not to include the criterion of social class in their definitions then it would make more sense to call those offenses occupational instead of white collar crimes. Although the term "economic crime" is not used as frequently as some of the others, I would suggest it as an attractive alternative for those who would like to limit their field of study to non-violent offenses. All in all, I think the basic point is that there is room for all conceptual approaches in this broad field of study, but we must be careful to use the terminology that most clearly and honestly conveys the spirit of what we are actually doing.

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Offense-Based versus Offender-Based Definitions of White Collar Crime

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Abstract

White collar crime is often defined in terms of the social status or occupation of the offender. As a generic term for a large category of behaviors, white collar crime is artificially limited in scope when constrained by such offender-based characteristics. It is proposed that a definition of white collar crime based on the behavior in question, rather than on offender attributes, removes arbitrariness inherent in attempting to distinguish otherwise identical offender behavior that occurs in different occupational and social settings.

Introduction

When I go through the car wash, when the line is long and the temperature is high, I sometimes wonder if the person taking my money is pocketing some of it and not recording the sale in the cash register. Some scholars would consider it a form of white collar crime, if the money was taken, because it was done during the course of an occupation. Others would exclude it as a form of white collar crime because it was not done by someone of high social status.

Occasionally, a person cheats on his or her income taxes. Some scholars would consider this a form of white collar crime only if it occurred during one's occupation, or was carried out by someone of high social status. Individuals who cheated on their personal income taxes would be excluded as a form of white collar crime by many.

These examples of the car wash embezzlement and the income tax fraud illustrate the conundrum of white collar crime. Like obscenity, we seem to know it when we see it, but there appears to be much more difficulty in defining it in precise terms.

What Did Sutherland Mean?

White collar crime is a generic term that refers to a large body of individual offenses. The term was invented a half century ago by Edwin Sutherland. Unfortunately, his definition was imprecise, leading to a lot of variation in the definitions one observes for white collar crime.

Sutherland did not spend much time defining white collar crime in his book of the same name, because his interest was in applying his concept of "differential association" to explain the cause of all criminal behavior, and not just traditional or "street" crimes. Sutherland devoted only a few paragraphs defining his subject because, in his view, "The significant thing about white collar crime is that it is not associated with poverty..." His treatise on white collar crime was designed to highlight the utility of his differential association theory of the cause of crime; he was clearly less interested in exploring the limits of the new category of behaviors he had named.

Sutherland (1949) later defined white collar crime in the following way:

White collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation.

Two significant features of this definition indicate that Sutherland did not believe this was a comprehensive definition of white collar crime. First, he used the term "approximately" to suggest he did not offer his definition as a *fait accompli*. Second, this definition ended in a footnote in his book. That footnote states "the term 'white collar' is used here to refer principally to business executives and managers..." (emphasis added). Once again, Sutherland used a conditional term ("principally") that illustrates his definition of white collar crime is probably broader than he uses in his book. It is important to keep in mind that his book focuses on corporate violations of the law, so it is easy to see why he chose to focus on people of high social status during the course of their occupations.

Sutherland recognized that he excluded "many crimes of the upper class, such as murder, adultery, and intoxication," because these "are not customarily part of their occupation procedures." Likewise, he excluded con games operated by "wealthy members of the underworld, since they are not persons of respectability and high social status" (Sutherland,

1949). Here, he equates low high social status with the underworld, rather than with legitimate blue collar jobs.

Unfortunately, he does not address a fundamental issue that has confounded discussions of white collar crime since then. Simply stated, how is it logical to consider tax fraud committed by an employee on behalf of his or her corporation a white collar crime, but the tax fraud by that person on his or her personal income tax return as something else? It is arbitrary to distinguish identical behaviors, involving similar people with similar motives, calling one white collar crime, and the other something else. Sutherland does not explicitly address this question, nor do most scholars today. Instead, there is a blind adoption of Sutherland's definition of white collar crime, even though Sutherland himself noted it was "approximate" and only "principally" concerned with the conduct of business executives and managers. This has artificially limited research in white collar crime to a subset of the behaviors that are commonly associated with the term.

Has 'White Collar Crime' Become Part of Our Volcabulary?

Given the confusion caused by the originator of the term white collar crime, it is relevant to see how the term has come to be used during the subsequent 50 years. A Lexis-Nexis search conducted of general news sources for this paper discovered the term white collar crime was employed 141 times during the last 30 days. 725 times since the first of the year. 1,854 times during the last 12 months. Clearly, white collar crime has become part of the vocabulary of America.

Next, I examined the contexts in which white collar crime was used. That is to say, what specific types of behaviors are we talking about when we speak of white collar crime? As you might guess, the range was vast: securities violations, industrial spying, official bribery, employee benefit fraud, government corruption, health care fraud, embezzlement, extortion, forgery, investment fraud, bad checks, stock fraud, computer fraud, insider trading, counterfeiting, kickbacks, mail fraud, money laundering, tax evasion, environmental crimes, racketeering, conspiracy, among other offenses.

Interestingly, white collar crime was not used exclusively for crimes committed in an occupational setting, as motorcycle gangs, bad check writers, computer crimes, various frauds,

and money laundering were all cited in non-employment contexts. Similarly, a number of these offenses did not involve people of high social status.

Both of these features were anticipated by Sutherland in his original, conditional definition. But many investigators since then have limited their inquiries, arbitrarily, to occupational settings and/or white collar crimes committed by those of high social status.

To Unmuddy the Water

So how should we conceptualize white collar crime? It appears to be a rather amorphous category of behavior. On the other hand, there are certain distinctive qualities to the behaviors included within the term white collar crime, as it is used in both the scholarly literature and in the media.

The answer lies in using an appropriate unit of analysis. If the nature of the offense, rather than the nature of the offender, is used to define white collar crime, greater clarity, scope, and precision would be achieved when the term is used as described below.

Looking at the Offense versus the Offender

Sutherland arguably made a definitional error in defining white collar crime in terms of the attributes of the offender, instead of the attributes of the offense. If we look closely at the behaviors common to white collar crime, broadly defined, a clearer conceptualization emerges.

Conventional or "street" crimes, such as robbery, assault, and larceny, are characterized by the use of force or stealth. White collar crimes are characterized by planning and deceit. Unlike most other forms of criminal behavior, white collar crime involves planning and organization. Street crimes involve little or no planning, whereas white collar crimes involve at least some form of advance preparation. In addition, white collar crimes also involve some form of trickery or fraud. These fraudulent representations lie at the heart of all substantive offenses of this type.

Taking these two attributes of white collar offenses, and combining them with the principal part of Sutherland's definition, a definition of white collar crime would read as follows:

Planned or organized illegal acts of deception or fraud, usually accomplished during the course of legitimate occupational activity, committed by an individual or corporate entity (Albanese, 1995).

This definition points to the characteristic features of white collar crimes, something Sutherland did not do, while it also points out that it usually, but not exclusively, occurs during the course of one's occupation, nor does it include any reference to one's social status. This is done for two reasons.

Many types of fraud and forgery, for example, are unrelated to one's job, yet they involve all the attributes of occupationally-related crimes of this kind. Excluding certain identical behaviors from a definition, based solely on whether one is on the job or of high social status, does not promote uniformity or clarity. Second, while occupational or social status may commonly be associated with these offenses, they are not necessary conditions to engage in the illegal behaviors that are part of white collar crime.

Some scholars focus on the "abuse of power" as a fundamental feature of white collar crime, although Sutherland did not explicitly address its importance. Abuse of power is a relative, rather than an absolute notion. An individual empowered to file his or her own income tax, either lawfully or fraudulently, has certainly been granted power inasmuch as there are other ways taxes could be collected without giving individuals such power. Likewise, the guy at the car wash who pockets some of the money entrusted to him is engaging in embezzlement and has a degree of power (over the disposition of receipts) in his role, even though he may not be of high social status. Therefore, "abuse of power" can mean any opportunity to violate the law from a position of authority. This can include personal, corporate, or governmental tax fraud, embezzlement, or other crimes characterized by planning and deceit, rather than by force or stealth.

White Collar Offenses

Given the general definition above, white collar crime can be characterized by its planned nature. As a result, the characteristic white collar crime is conspiracy. Conspiracy punishes

preparation or planning to commit an offense. White collar crimes are distinguished from street crimes in that they require some form of preparation, whereas street crimes do not. A conspiracy occurs when two or more people agree to commit a crime, or to carry out a legal act in an illegal manner. Many white collar crimes are committed by persons acting in groups of two or more, so it can be seen how conspiracy characterizes many white collar crimes.

The substantive offenses which describe the intentions of white collar offenders can be grouped into three categories: white collar crimes of theft, crimes against public administration, and regulatory offenses. According to this conceptualization, white collar criminals aim to steal, obstruct lawful government processes, or violate rules designed to insure fairness and safety in business and government.

Within each of these broad categories are individual offenses which combine to form an offense-based description of white collar crime. White collar crimes of theft include embezzlement, extortion, forgery, and fraud. White collar crimes against public administration include bribery, obstruction of justice, official misconduct, and perjury. Regulatory offenses include administrative, environmental, labor, and manufacturing violations, as well as unfair trade practices. This typology is illustrated in Table 1. Each of these offenses are defined more fully elsewhere, but together they comprise the universe of white collar crime (Albanese, 1995).

TABLE 1. A Typology of White Collar Crime.

<u>Characteristic Offense</u> →	<u>Conspiracy</u> →	<u>Planning to Violate Law</u>
<i>Crimes of Theft</i>	<i>Crimes Against Public Administration</i>	<i>Regulatory Offenses</i>
Embezzlement Extortion Forgery Fraud	Bribery Obstruction of justice Official misconduct Perjury	Administrative violations Environmental violations Labor violations Manufacturing violations Unfair trade practices

Conclusion

Sutherland's use of the term white collar crime to connote occupational crimes by those of high social status represents only part of the universe of white collar crime, as Sutherland himself recognized. To accurately encompass the full range of behaviors embodied by the term, it is necessary to focus on the behaviors of white collar offenders, rather than on the attributes of the offenders themselves. Behavior, rather than the identity of the offender, is the fundamental unit of analysis in criminal codes and constitutions, and it should be the same in the case of white collar crime.

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From White-Collar Crime to Elite Deviance: Reasons for a Paradigm Shift

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The Nonscientific Nature of Definitions

On the surface, it may seem that the definitions of concepts would be a straight forward exercise, one that conforms to the canons of empirical social science. This, however, is hardly ever the case when one is dealing with matters of public policy. As soon as policy rears its ugly head, one has crossed the boundary between science and ideology, politics, and the struggle between competing definitions of reality (Simon, 1978: Chapter 1).

This is especially the case with concepts over which the most wealthy and powerful interests in the nation have some influence. The very interests that tend to write much white-collar crime legislation (i.e., legislators and business lobbies) tend to be those most effected by it. Imagine for a moment, the outcry if convicts and violent street criminals were brought in to testify about the content of legislation regarding UCR related crimes. Moreover, that we are even here at a workshop trying to decide on some common definition of white-collar crime speaks volumes about the impossibility of doing so.

This is because definitions, like facts, never speak for themselves. White-collar crime, like other major social problems that become political issues, involves not just definitions. Rather definitions, because they are advanced by ideological interests, are loaded with assumptions regarding theories, methodologies, policy solutions, and projected consequences, should such solutions fail to be enacted (Simon, 1978). There is just no escaping the ideological thicket.

Even the FBI, a supposedly nonpartisan agency, has not been able to steer clear of politics regarding its definition of white-collar crime. During the 1980s, the Bureau defined

white-collar crime as any act involving concealment or guile in which payment was avoided, money lost, or personal or business advantage was gained, without the use of force. So nonspecific is this definition that it includes everything from welfare fraud to corporate crime, hardly the intent of any extant definition of white-collar crime up to that point in time (Simon & Swart, 1984: 109). Thus, the FBI's definition was useful in persuading conservatives it was cracking down on welfare fraud and convincing liberals that the Bureau was chasing after upper-middle class criminals and corporations.

Aside from the politics of the matter, there has always been major problems with any definition of white-collar crime that tries to focus solely on that which is against the law. Item: Edwin Sutherland, who originated the term white-collar crime in 1939, defined it as the illegal acts of high status individuals, and then ended up studying the crimes of corporations. No political crimes were included in Sutherland's study (nor were there in Clinard's study (1979) 40 years later).

Mainstream texts have not fared much better concerning definitional shortcomings. Coleman (1992:5) includes all manner of legal violation, including noncriminal law violations in his definition. He excludes noncriminal "moral issues," which he then proceeds to discuss anyway. Likewise, Albanese (1995) relates white-collar crime to the notion of conspiracy. The problem here is that a large number of white-collar offenses by individuals, such as embezzlement, do not involve legally defined conspiracies.

Of all the mainstream books, only one utilizes the notion of deviance rather than crime. Yet, Ermann & Lundman, (Eds.) (1993) fail to tie their excellent readings to any overall concept of social structure, concentrating only on middle levels of power (i.e., bureaucratic organizations), neglecting the role of organizational environments in the commission of such deviance.

Given these limitations, I have advocated the concept of elite deviance for some fifteen years (Simon, 1996), and continue to do so. Like every other definition, there are some problems, but these limitations are not a consequence of the definition used, but of the nature of the data involving elite offenses. Thus, Gil Geis (1996) is quite right when he notes that if secret acts of elites go undetected, then the moral harm done to the public trust becomes impossible to measure. Likewise, if there are undetected conspiracies, no one, no matter what their definition

of white-collar crime, will be able to study either the nature or impact of such deeds. All theories of white-collar wrongdoing rest on empirical measures, and without the data, there are simply no means available to study what takes place. Aside from this one limitation, which applies to all school of thought in the area, there are some interesting advantages to using the concept of elite deviance.

Elite Deviance & Millsean Sociology

Elite deviance grew out of the paradigm developed by C. Wright Mills in a series of works (Simon, 1996). The paradigm possesses several advantages over unwieldy definitions of white-collar crime. These include:

1) The elite portion of the concept relates to the social structure of American society and is very important in determining the degree of power, wealth, and the ability to define reality possessed by elites. Empirical measures of these variables are easily obtained (Simon, 1996: Chapter 1), are some of the best measures of elite accountability or the lack thereof. The massive inequalities of postmodern American civilization constitute a major structural contradiction and are also a major cause of social problems in general.

2) The definition of elite deviance involves both criminal and noncriminal deviant behavior, and thus does recognize the importance of moral and ethical issues (especially justice and fairness) in discussing elite wrongdoing. However, the definition of elite deviance, like all other social problems, is based on the concept of empirically demonstrable harms (physical, financial, and moral). All these various harms can be measured with available empirical data, including (for moral harm-i.e., public distrust) the use of public opinion polls. Moreover, within the elite circles of American life, Mills hypothesized, exist a group of criminal and deviant practices known collectively as the higher immorality.

Mills used the term *higher immorality* to describe a *moral insensitivity* among the most wealthy and powerful members of the United States' corporate, political, and military elite (which he termed the *power elite*). For Mills, the higher immorality translated into a variety of unethical, corrupt, and sometimes illegal practices, which were viewed as a systematic, institutionalized feature of contemporary U.S. society.

In business and in government, Mills felt, many transactions are accomplished via interpersonal manipulation. One type of such manipulation by the successful is using a false *front*: pretending to be interested in what others have to say, attempting to make others feel important, and radiating charm and self-confidence (despite one's own insecurities). Obviously, if social relations are based on insincere feelings, these activities would be characterized by a good deal of alienation on the part of the participants.

In addition, Mills felt that some business and political arrangements included the favors of prostitutes. The sexual favors of these high-priced call girls are often paid for with executive expense account allotments (which will be discussed later). Aside from interpersonal manipulation and the peddling of high-priced vice, the higher immorality also includes

1. unethical practices relating to executive salaries and expense accounts;
2. unfair executive and corporate tax advantages;
3. the deliberate creation of political and/or economic crises by the power elite;
4. the manipulation of public opinion; and
5. the violation of antitrust and other laws relating to political corruption.

Since Mills described these various types of deviance in the 1950s, the nation has witnessed scandal after scandal involving these various forms of the higher immorality. Mills also considered one form of the higher immorality; the relationships between the wealthy and powerful and members of organized crime. Thus, to update the analysis of the nature of the higher immorality provides a balanced view of the types of deviance taking place within elite circles.

3) The sociological imagination paradigm also recognizes additional variables necessary for a true sociological theory of elite wrongdoing. These include:

a) the reality of the nature of bureaucratic organizations-the middle level units within which much of elite deviance takes place. Recognized as crucial is the fact that organizations can cause a great deal of alienation among both their elite and non-elite members, and that these conditions of structural alienation, such as inauthenticity and dehumanization, can cause feelings of alienation among organizational members. In turn, these feelings of alienation

are often a major cause of elite wrongdoing, a theory not considered by any other view of white-collar deviance.

b) The elite deviance paradigm also recognizes the individual as a unit of analysis. Here, the concepts of social character and personal (feelings) of alienation can be utilized in order to explain personal deviance on the part of both elites and non-elites, such as that which characterized the lives of O.J. Simpson, Michael Jackson, and other elites.

c) The paradigm posits interrelationships between social structural, organizational, and individual level units of analysis, thus offering a complex theoretical schema concerning the causes of white-collar wrongdoing. The paradigm is also very elastic, allowing those using it to study other forms of white-collar deviance, including that which takes place within various professional occupations and the criminal justice system (Henderson and Simon, 1994).

d) The paradigm may also include an analysis of what Mills termed "history," by which he meant how history is made in the current historical epoch, and the master trends within that epoch that determine whether a given civilization is on the ascendancy or the descendancy.

4) A final focus of the paradigm concerns those concepts at the heart of most social problem definitions, ideology and policy. While most conceptions of white-collar crime accept the social structure of the political economy of American capitalism as a given and propose only modest reforms for those espousing a structural view of elite wrongdoing insist that since it is the social structure that is responsible for elite and non-elite wrongdoing, then it is social structure itself that must undergo significant alterations if such social problems are ever to be dealt with effectively (Simon, 1996: Epilog).

Elite Deviance Today: A Summary

1) Structure & Contradiction: The Power Elite & Massive Inequality.

The power elite dominates the American social structure. This elite consists of large corporations, the executive and legislative branches of the federal government, and that group of organizations that make-up what we have described as the military-industrial complex and its "secret government."

Contradictions within the structure of this society are the cause of social problems, including elite wrongdoing. The power elite constitutes a structure that has amassed an undemocratic amount of wealth, political power, as well as the power to define cultural values. Such values include the unlimited accumulation of private property, consumerism and materialism, celebrity worship, and a belief in "rugged" individualism in an organizational society.

The Higher Immorality is an institutionalized set of deviant and criminal practices that take place within corporate and governmental institutions. These practices involve deception and manipulation of the public, corruption, corporate crime, and, occasionally, cooperation with organized criminal syndicates. All the practices associated with the higher immorality are in and of themselves major social problems and they, in turn, cause further problems, including various other types of crime. What we have in America is a crime factory, in which all types of criminal activity are part of an interrelated nexus involving violent crime, drug trafficking, money laundering, and corruption.

This wrongdoing is probably more closely related to what used to be termed sin than it is to anything else. Thus, while Judeo-Christian theology focuses on individual wrongdoing, elite deviance teaches us that we ignore the sins of collectivities at our own peril.

2) Historical Epoch: The Postmodern Era. The economies of these nations are divided into modern, (First World), semi-modern (old Soviet Bloc states/Second World), and Third World (poor and struggling to modernize nations). First World multinational firms increasingly extract raw materials, cheap labor, and surplus profits from Third World nations, whose international debts continue to mount. The capitalist world system tends toward instability at numerous "flashpoints," and wars, revolutions, and terrorism are common in the face of massive international inequalities.

3) Mass Society & Postmodern Culture. Below the power elite structure is an evolving mass society composed of unorganized, relatively powerless masses of people, who lack a sense of community concerning their neighborhoods and society. A power elite prevents the masses

from capturing democratic power. Elements of postmodern culture, especially advertising, make it difficult to separate fantasy and reality.

4) Social Character: The Antisocial Social Character. The dominant social character in mass society is a person who dislikes or is indifferent to work, is politically, societally, and self-alienated, and is prone to be engaged in various degrees and types of "wilding" (deviant acts). The antisocial social character tends to escape into mass culture, and engages in personal relationships through interpersonal manipulation and self-deception. The inauthentic and dehumanizing contents of postmodern culture reinforce various forms of personal alienation.

We have also learned that when people's needs for love, recognition (validation) and identity are not met the result is a profound alienation that results in sinful behavior-like homicide, theft, and a lack of morals of any kind. So profound has this condition become in contemporary America, that it is now proper to speak of such antisocial behavior as being an important part of the American character. What this means is that this nation is steeped in a crisis of meaning, spirit, and amorality, and is profoundly in need of aspiritual renewal.

Thus, I say that when the CIA had violated its charter by selling narcotics, opening the mail of U.S. citizens and spying on congresspersons and newspaper reporters, plotting the assassinations of foreign political officials, then it is time to reevaluate what intelligence is.

- When every U.S. president from Eisenhower to Bush lies to the American people about the activities of the CIA, when every president since Franklin Roosevelt had used the Federal Bureau of Investigation for political and sometimes illegal purposes than it is time for a new definition of law enforcement in America.
- When the litany of illegal acts by governmental officials and/or their agents grows longer with each passing year and comes to include, burglary, bribery, perjury, wiretapping, harassment of administration opponents with tax audits, and the like, and when, public confidence in government is so low that nearly three-fourths of Americans believed that the government regularly lies to them, then I say it is clearly time for a new political ethic in America (Simon, 1996: 1-5).
- When the speaker of the house resigns after being charged with 69 ethics charges, including selling copies of his own book at outrageous prices as hidden campaign contributions, and

when 355 current and former house members had written almost 20,000 overdrafts on their accounts at the house bank, and when the current speaker of the house serves his wife with divorce papers while she is in the hospital and then complains of the lack of family values, I say it is time for a new set of values in American political life.

- Likewise, when major corporations willfully market products known to be dangerous, and when a corporation asks the federal government to estimate the worth of a human life in order to make decisions about releasing dangerous deadly products onto the market, I say it is time for a new set of business ethics in America.
- When certain large corporations are guilty of what “chemical crimes.” Through their dumping of waste products into the air, water, and landfills and the production of products that pollute unnecessarily, and assault the public with dangers to the health of present and future generations, then I say it is time for a new environmental ethic in America.

All of these incidents and many others have cause great moral harm to the nation. Thus,

- When thirty percent of employees have personally witnessed violations of criminal or ethics codes by their bosses, including making dangerous products, engaging in criminal activity, practicing discrimination, and/or breaking job safety laws, and
- When only one in ten Americans is satisfied with his or her job. Only three in ten feel any loyalty to their company, and 43 percent claim they cannot trust their co-workers, and
- When 70 percent of Americans now claim that there are no living heroes, while 80 percent believe that morals and ethics need to be taught in schools, and when the public now believes that the leading cause of the United States’ economic decline is unethical behavior by [business] executives, then clearly there is a great crisis of confidence, one which justifies wrongdoing on the part of ordinary people, exists in America.

These realities tell us much about the modern nature of evil. First, evil is no longer as easy to spot as it is when demons possess the soul of an individual. Conspiracies are now entered into behind closed doors, in the name of free enterprise or national security, by men who feel what they are doing is their duty. Right and wrong no longer appear as a battle between good and evil, but as committee decisions taken in the name of profit or democracy, by people who consider themselves pillars of society, Christian gentlemen, and good family men. Such

decisions are often made as a matter of bureaucratic routine, devoid of moral content or judgments about consequences.

Behind these amoral deeds lies another reality, one that stems from the nature of wealth and power; namely that wealth and income (and access to political power) are now more inequitably structured in the U.S. than in any other industrial democracy. The middle class has declined by 15 percent in the past 20 years. Multinational corporations have transferred or eliminated over 2.5 million high-paying jobs in America's central cities in the past 15 years, causing inner city crime rates to soar. Thus, are the actions of the powerful, both legal and illegal, linked to the actions of the powerless?

5) Master Trends: The Descendancy of American Civilization. While it is difficult to predict the future's crises and their causes, some elements of trouble down the road seem clear. Massive inequalities of wealth and power within and between nations, and environmental and population growth problems constitute genuine harms. The spread of postmodern culture worldwide is contributing to a crisis of democracy in which manipulated masses of people react passively to media propaganda by corporate and governmental elites. Democracy itself is at risk.

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Recalling Status, Power and Respectability in the Study of White-Collar Crime

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Since a central aim of this gathering is to discuss the definition and meaning of white-collar crime it is appropriate to begin this paper with a general disclaimer that I doubt whether I can contribute much in the way of anything to the discussion of definition that has not somehow, somewhere already been said.

This being said, I believe that the core ingredients to the idea of white-collar crime include the notions of power, status and respectability. They not only drive opportunities for offending, but, more importantly, they drive how we respond to this kind of crime. This is especially important for how we define white-collar crime, since our response mechanisms often determine whether we perceive and define crime in the first place. I believe recent research has strayed from the important ideas relating to power, status and respectability that permeate all aspects of white-collar crime, and as such we are left susceptible to claims that the study of white-collar crime has nothing significant to contribute to our understanding of crime generally.

Before I go further I would like to make a few observations surrounding the debate about the definition of white-collar crime. Reviews and accounts of the definitional problems posed by Sutherland's term are far too numerous to mention. Nonetheless, I would like to respond to those existing accounts of white-collar crime that encourage us to toss away the notion of white-collar crime as so much intellectual gobbledy-gook.

Some scholars have advocated that we dismiss the term white-collar crime because we cannot seem to come to any common agreement as to its meaning. They typically begin by taking stock of the myriad definitions of white-collar crime, highlight the seeming contradictions and fuzziness in them and conclude with the bleak prognosis that such disagreements and

contentions found in the approaches taken to white-collar crime take us down a path leading nowhere.

Though I share some of their frustrations, to these critics the most fitting response I can offer is, welcome to the social sciences! Surely we can all think of terms and ideas of more social significance than white-collar crime that fall prey to similar difficulties and challenges. Take, for example, one idea which is itself central to the notion of white-collar crime--power. Robert Dahl (1957) has noted that "(T)he concept of power is as ancient and ubiquitous as any that social theory can boast." March (1966) writes that "in being used to explain almost everything, the concept of power can become almost a tautology, used to explain that which cannot be explained by other ideas and incapable of being disproved as an explanation for actions and outcomes."

These quandaries are not limited, of course, to sociology. Legal premises, such as those surrounding notions of criminal intent, lend themselves to similar debates. The National Commission on Reform of Federal Criminal Laws found seventy-eight different combinations of words delineating degrees of fault in the various federal statutes. In a similar vein, and lest we think the debate on the term white-collar crime has gone on long enough, consider the socio-legal construction of the term "privacy." Weston (1967) writes that "few values so fundamental to society as privacy have been left so undefined in social theory or have been the subject of such vague and confused writing by social scientists." Judith Thompson (1995) notes "(P)erhaps the most striking thing about the right to privacy is that nobody seems to have any very clear idea what it is." Regan (1995) concludes that "(T)hese difficulties in conceptualizing privacy not only are of philosophical importance but also have profound implications for the formulation of public policy to protect privacy." Sound familiar? Clearly we are not alone.

I do not believe these conceptual limitations provide *prima facie* rationale for the elimination of the term, nor do I believe that recasting the term, or "refining" it to "occupational crime," "elite deviance" or "abuses of trust" necessarily overcomes these problems. Gil Geis's (1992) excellent overview of the definitions of white-collar crime convinces me that closing one can of worms will surely lead to the opening of another. Such slights of hand may overcome the weight of historical baggage, but it won't be long before they too fall prey to similar disputes. I tend to take a more fatalistic view here in that I believe that these conceptual problems are

inherent in greater and lesser degrees in any socially constructed phenomenon, and are part and parcel of the scientific method.

I am more troubled by those who argue for dismissing the concept, such as it is, of white-collar crime because it affords little theoretical value. Travis Hirschi and Michael Gottfredson (1987) have made such a claim and to a lesser extent, Shapiro (1990) suggests that the idea behind the term white-collar crime could be better expressed as abuses of the norms of trust. I fundamentally disagree with the former, and while there are many compelling aspects of Shapiro's argument, my own view is that she overstates her case.

The theoretical value of a term is, in its simplest, but most powerful state, the ability of the term to label a concept that in some fashion captures the essence of an entirely new phenomenon, such as "cyberspace" or delineates a large construct in ways that make that construct more comprehensible. In this instance, of course, the larger construct is crime. Used in such a fashion, the value of the term might be to separate out distinguishable discrete units (typologies), or it might delineate the phenomenon along a continuum according to important dimensions.

I readily admit my discomfort with an approach to a problem that essentially seeks the path of least resistance by collapsing information and excluding or dismissing variations. Such an approach ultimately grossly oversimplifies the phenomenon. This being said, I do believe the idea of white-collar crime does delineate an important dimension or component to crime. If you ask people if they have heard the term white-collar crime most would answer in the affirmative, and most people share at least a general understanding of what white-collar crime means. Thus, as with so many terms, white-collar crime does have a shared meaning, and that shared meaning has come to represent an idea of considerable importance upon which important judgments are made. Unfortunately, the essential ingredients that make up this idea are not receiving the attention they deserve. This has to do with the ideas of power, status, and respectability, and in my view, these represent the crucial ideas behind the idea of white-collar crime. It is to these central ingredients that I would now like to turn.

Chronological accounts of the idea of white-collar crime tend to distinguish perspectives which focus on the conduct (fraud, trust, deception etc.), from those that focus on the offender (Daly, 1989). As helpful as these distinctions are, my own feeling is that both the quality of the

act and the profile of the actor are important and they are strongly interrelated. As I look back on the past twenty years of scholarship on white-collar crime I see a cyclical pattern that helps us to understand where we are at today. As much a product of the times as anything else I suppose, the late 1960s and 70s produced a literature on white-collar crime that was largely actor-oriented, largely polemic, and largely theoretical, about the abilities of the powerful to gain immunity from social control and thereby try anyway, to satiate their insatiable greed for money. I attribute this work largely to attention given to two criminological ideas of the time, labeling and (for the lack of a better term) "Marxist criminology." As Richard Sparks once lamented, as important as some of the contributions of the Marxist perspective were (and still are) the often sanctimonious overtones seemed to announce that only Marxists understood the true nature of things and were certain to be the only ones who were going to heaven. To their credit, however, and with some exceptions, most of the scholarship on white-collar crime during this period came from this direction.

Of course, one of the characteristics of this scholarship was the noticeable absence of any empirical or testable data. Claims were laid out, and it seems they were believed by the believers and cast off by the skeptics.

This trend was offset in the early 1980s by several large empirical studies of white-collar sanctioning, including the work from Hagan, Nagel and Albonetti (1980) on sentencing in the Southern District of New York and the sentencing projects that emanated from the National Institute of Justice funded project on white-collar crime undertaken at Yale. Both studies examined offenses that were considered, from a legal perspective, to fit the nature of white-collar crimes, including tax evasion, embezzlement, mail fraud, false claims, anti-trust, bribery etc. Both studies also attempted to define "white-collarness," but used somewhat different measures. Hagan et. al. (1980) considered educational level and income as indicators of social class, whereas Weisburd, et.al.(1991) considered social status, as measured by the Duncan Socioeconomic Index. Interestingly, both studies found that their respective measures of white-collaredness influenced sentencing patterns but did so in the opposite direction than one would expect.

These studies have received their fair share of criticism on the grounds that such studies of officially processed behavior are inherently "sociological fictions"; that is to say, the social

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construction of "white-collarism" was created by the information obtainable from the data (Geis 1992). Of course, these problems are the methodological lice of the social sciences, and research on all aspects of white-collar crime, not just sentencing, are plagued with them. As much as I understand and empathize with these limitations, however, they cannot be rationalized away; they fundamentally distort the picture we take. The current trend I find bothersome is our apparent absolute faith in our method to the point where we are willing to "deconstruct" or abjure the concept of white-collar crime rather than question the data sources we use to examine it. Perhaps no where is this problem more apparent than in Hirschi and Gottfredson's discussion of white-collar crime (1987). As compelling as their argument may seem on its face, my feeling is that their ladder is perched against the wrong wall. To understand white-collar crime we must begin with the idea, as vague and problematic as that idea is, and then piece together our understanding of that idea with the data that most appropriately informs us about it.

Looking back over the past twenty years of research, two observations can be made about the treatment of these core ideas of status, power, and respectability. Either we treat these notions as "given," never bothering to define what they mean--John Braithwaite's (1992) otherwise interesting discussion of poverty, power and white-collar crime, for example, is absent any definition of the term, "power". Or, we turn these fundamentally dynamic and parralatic phenomenon into static, moribund variables. We treat them as discrete "things;" that is to say, we treat them typically as nouns, measuring them as dichotomies whose attributes are either present or absent, when, in fact, they may be better understood as adjectives that characterize those who possess them, often in degrees and usually under a given set of circumstances and relationships.

Treating variables like power, status and prestige as context-specific and relational is a significant departure from the way we typically study these attributes. Not only have we typically considered these ideas to be things one has or does not, we consider them enduring qualities in all situations and at all times. Yet common sense tells us this is not always the case; each of these is relative to a given audience, environment or situation. Status, as measured by such conventional ways as education, means one thing to a group of prisoners studying for their GED, and quite another to P.G. Wodehouse's Oxford and Cambridge educated characters as they commingle during cocktails at the Drones Club. Another analogy is appropriate by way of a

story. It is said that an irritated man once approached Picasso and complained to him that he ought to paint pictures the way they really are; that is as objective constant things. Picasso looked at him curiously and said that he did not understand. The man took out a photograph of his wife and said, "like this, this is how she really is, whereupon Picasso grimaced and said, "rather small, isn't she, and flat? How things "really are" makes sense only in a relational context. I believe that Sutherland understood this when he coined the term white-collar crime. It has been pointed out before, but it bears repeating, that the very idea of white-collar work has changed quite dramatically over time. At the time the term was employed, white-collar crime was synonymous with power, prestige and respectability because being in a white-collar occupational role was powerful, prestigious and respectable. Now, there are far more white-collar workers, and the power and prestige and respectability that enure from the title white-collar worker, are not nearly so great as they were fifty years ago.

Of course, there is an enduring quality in some of these notions; Bill Gates is wealthy no matter what base you go from. But here again the idea is not so much that one is wealthy or not, but rather how that wealth is utilized in a given context or situation, whether it be in a fashion that allows a scam artist to effectively defraud their victims with a display of material worth that sets the stage for unequal distributions of power, or used to hire attorneys at \$380.00 an hour to craft a pre-sentencing profile that portrays the violators in the most favored light.

It is often suggested that we consider such ideas along a continuum. I believe it is more appropriate to view them as we would from a prism, where the qualities of power, status and respectability dance in reflection to given events, individuals and circumstances. We can begin to untangle these ideas by separately studying their meaning and application in relationship to 1) the offense, which includes those in institutions and organizations and the roles comprising the offending network, 2) the victims, and 3) the social control mechanisms and agents responsible for controlling the conduct. I want to briefly describe each in more detail, using examples from the securities industry.

One finding that appears frequently in the more recent empirical studies is the not so surprising idea that offense complexity negatively influences the likelihood of apprehension, conviction and sentencing. Offense complexity is typically measured by such means as organizational involvement, number of co-conspirators, and financial gain. These are, I think,

pretty poor proxies for such an important idea and in themselves tell us little about white-collar offending. What makes white-collar offenses complex is their proximity to and inherent relationship with legitimate business activity; activity that is itself respected and powerful, if for no other reason than it is capitalism at work. To the extent that there is a continuum of complexity in white-collar offending, I would argue that it co-varies with the complexity of the legitimate industry. Several years back, the Securities and Exchange Commission, in conjunction with the U.S. Attorney's Office brought charges against a group of individuals who were defrauding potential penny-stock investors by claiming they had invented a self-cooling beverage can, much in the same way the Comparator recently claimed it had invented the infallible fingerprint machine. These scams were detected and prosecuted largely because the firms were themselves bogus operations, operating in a largely uncompetitive or non-established market, trading on a relatively unregulated market dominated by relatively powerless investors (at least compared to the institutional investors found on the Big Board.) They were largely unsophisticated operations because they had relatively little leverage, or positional advantage in the market. Compare this, however, to a different kind of financial scam--for example the trading violations that were uncovered in the Chicago Board of Trade and the Chicago Mercantile Exchange in the late 1980s. Here, broker dealers systematically engaged in self-dealing and other practices that probably would have gone undetected had it not been for the griping and complaining of a very powerful grain company doing business in the wheat and soy pits who had had just about enough of the short changing that plagued most of their orders. What makes these offenses so complex is that these systematic frauds varied only slightly from normal trading activity, structured by the norms and by-laws of legitimate, powerful and respected financial experts. Of course, both these examples would appear in the larger data sets, though in all likelihood, the self-cooling beverage can case would be designated a complex white-collar crime, and the individual convictions of broker-dealers would not, because those individuals would largely be looked at as acting alone. We miss much then by failing to consider how power, status and respect, affect the relational nature of the offender and his or her activity in the context of the legitimate workaday world.

Similar issues arise with respect to victimization. It is not necessary that we view problems of white-collar crime victimization differently than we view victimization in other

offenses. We can learn about the problems relating to victimization by understanding how issues of power, status, prestige and respectability influence the way offenses are perceived, defined and finally reported. Again, these characteristics appear on different levels, and they work both independently and in consort with one another. While we often fixate on the influence that the powerful, respectable and prestigious have on the victim, it is equally important to examine how power, status and respectability operate within the general confines of the activity or the industry, and how this larger locus of power influences the potential pool of victims and vice versa. A good example of this can be found with what is now referred to as MEWA scams. MEWAs are Multiple Employee Welfare Arrangements that provide health care and other benefits to employees of typically small businesses that are more prevalent in particular kinds of industries. They are especially susceptible to pyramid schemes, but what makes them so difficult to regulate is that they are cloaked within and mimic very legitimate and important health provider plans. With the complex and ever-changing nature of health coverage generally, victims are especially vulnerable, given the unequal levels of knowledge and understanding of the health care provider (i.e. power), not only with respect to the individual policy holder but more importantly to the small businesses that buy into such plans. In such an environment it is very difficult to perceive the offense and almost impossible to define it as such, at least not before the money catches the last cable to the off-shore account.

Finally, we know the least about how power, status and respectability operate in relation to the mechanisms of social control, even though this is the most important aspect of white-collar crime. Of course, much has been written about such issues as regulatory capture, but here again the writings tend to oversimplify these complex interrelationships. In the social organization of securities markets there can be literally dozens of regulatory agencies involved in the control of various kinds of fraud in the markets, that include local police agencies, the FBI, IRS, Postal Service, the Securities and Exchange Commission, the National Association of Securities Dealers and the self-regulatory bodies found in the exchanges themselves. The web of social control is expansive, and dynamically interrelated and open to regulatory conflict. The Insider-trading indictments and convictions that spawned the Wall Street scandals of the 1980s were not so much the product of rampant abuse in the market as they were the opportunistic targeting of activity by U.S. Attorney Gulianni that in turn produced a chain reaction of enforcement actions

by securities regulators fighting for turf. This example calls attention to the need for more research on the relational aspects of power, status and respectability that exist not only between the regulators and the regulated, but between the regulators themselves.

Ultimately, the term white-collar crime takes its meaning and significance in relation to other, more important concepts, and we should not lose sight of this fact. The problem of white-collar crime, in the end, is a problem of equity and fairness in relation to the law. There are individuals and entities, who, by virtue of certain qualities independent from those framed by the law, namely, power, status and prestige, violate norms of behavior and escape the mechanisms of social control. It is not necessary that these be studied in aggregate terms--the wealthy, the powerful, the prestigious--to understand how wealth, status and power can be used to circumvent the law.

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GROUP **2** DISCUSSIONS

The following discussions focused primarily on the papers presented by Jim Coleman, Jay Albanese, David Simon and Kip Schlegel. Comments related to other white collar crime definitional issues were welcome.

Simon

There are two things that I have in my paper that I didn't say much about because Gil Geis isn't here, but one of the comments he made about elite deviance at the ACJS meeting (Las Vegas, 1996), and it is quite correct, is that if the public does not find out about a scandal when one goes on how can you measure harm. And my answer is that there is a limitation that is generic to every definition of white collar crime and as far as I know almost every methodological technique connected with it. That is to say, if we cannot get access to the data, we can't measure anything, including public outrage because the public doesn't have access to it. And again, that is not something that is generic to the notion of elite deviance but every notion of white collar crime, and I say this in the hope that down the road we can get more cooperation from more agencies and the media in getting access to more data.

Second, one of the charges I think that could be said against elite deviance, was something Larry Nichols alluded to this morning, why only study the very top of these. Why not branch out? Well, I don't know if you've seen this book, but we have a book of Crimes of the Criminal Justice System where we take the paradigm and look at what's going on inside the CJS and certainly this can be applied to any kind of white collar crime, not just those at the very top.

Michalowski

I want to engage in what in Latin America they refer to as an intervention as opposed to a question. First of all, Kip, I was both comforted in and somewhat disturbed by your quote from Richard Sparks. Comfort in the fact that he couldn't find any way to actually criticize the substance of Marxian criminology, so he had to criticize the style. But since I'm probably one of the few people, or maybe the last living person who will have to claim that title as a Marxist criminologist, there is something I want to add here. Several people noted about how the occupational world has changed since Sutherland; by how the rapid expansion of rational bureaucratic organizations in the later 1950's and 60's may have rendered someone's concept of high social status somewhat archaic. Today, the proposed population of salaried desk jobs would have a mark of high social status, and some of the time

much more. The point here is this; when Sutherland used those terms, and I think as Jay points out rather clearly, he was talking about a certain segment of the population. He did not use the term, he was smart enough not to use the term. He was talking about the capitalist class. That's who he meant. If one looks at his biography, long before he ever wrote about crime he held a chair, an endowed chair in socialism at Richard Jewel College. So he was not unaware, and I think one of the things that we might want to just think about, and I struggled with this some years ago, when I was trying to both work in Cuba and do some writing that would help me think about corporate crime or white collar crime not in a definitional sense that would just apply to capitalism or American capitalism, but how would this also applies in noncapitalist societies, because they obviously have it too. The notion of corporate crime somehow doesn't fit quite so well in socialist societies, so one of the things that I thought about was the issue of where people are situated with respect to the accumulative process. Basically, all modernist states attempt to accumulate capital. Whether (had as) they have now disappeared, actually existing socialist countries, their primary engine as a political economical organizations is the accumulation of capital, and people are situated differently and I just want to share just a couple of things about that.

I think there are two key situational dimensions. One is the sector where people are situated, whether it is extractive, manufacturing, finance, retail or in some aspect of a political state one of whose key purposes is to create an environment within which accumulation goes on. Where people are situated conditions their chances for creating harm through the use of the power of their position. There is another dimension, and that is the organizational dimension, and that is the degree of control people have over the apparatus of accumulation. In other words do they control money, do they control materials, do they control labor, do they control cultural and ideological productions. And, if people are situated differently, and to go back to a case, wherever you are situated organizationally that conditions your options.

So the final bit is, I think, what someone would say if you were writing today, because the capitalist class, as he (Sutherland) defined it, was a very, very narrow strata of folks who held those positions. And it was almost to say that if you held one of those positions you were already a member of that class. Less than 10% of the population went to college, had a college degree, when Sutherland was writing, and where did they come from? They came from the investment or the cultural class, the ministers, children of ministers, etc. But what we are now looking at is two groups of people; the investor class or capitalist class, or whatever you want to call them, and the new class: all those intermediary managerial types who are in those classes who will probably fit Sutherland's notion of high social status today. I think he was talking about different and a very special kind of violation by people who are situated in those positions that enable them to use the accumulative process or pursuit of the accumulative process in ways that cause harm, and I think that's still in all the value of what he was pointing at. But I think we lost that notion that he really was talking about the investor class or people who were closely allied to the investor class.

Nichols

I had thought about that again. We can talk about Sutherland endlessly and the basic problem, of course, is someone was trying to correct the situation that existed at a particular point in time and carve out a definition of something that was being overlooked. I think Sutherland was trying to form a definition of things people were getting away with that were socially harmful, and I'm pretty much agreeing with Sutherland and Simon in terms of things that are socially harmful but not particularly regarded as criminal. Now the Frankfurt school is mentioned, and Marxism, and it is really a two sided violation isn't it? On one side you have the offender, and on the other side you have non-enforcement. I don't think we're talking very much about that side of it today; we're talking more about characteristics of the offenders or offenses, but they are getting away with it because of this non-enforcement.

In fact, I have a paper under review right now that talks about the Bank of Boston

case. Out of the whole industry, basically all banks were not following the currency reporting requirements, and only the Bank of Boston was identified as criminal. Other banks did basically the same thing. They were all treated as civil violations, especially when they made these so called volunteer disclosures after the Bank of Boston was crucified, and then people came forth and said this is voluntary now; we're doing this freely, you know. They were just as Sutherland said, treated as being only a civil violation with exactly the same behavior, exactly the same status, exactly the same industry, exactly the same in everything else, but it's got a two-sidedness that isn't there with Sutherland's definition.

Friedrichs I want to specifically address something my old friend David Simon has mentioned, and preface it by saying that I am a little uncomfortable with both elite and deviance as his chosen terms. Elite deviance on the one hand and street crime on the other hand is a certain kind of polarization - with the crimes that are being committed by the people down there on the street and the crimes being committed by the people up here, the elite. But the rest of us are not involved. In a certain sense, there is a danger that I recognize that there are many activities that go on in the middle, but I think that it is obviously indisputable that the great majority of those (whether we like it or not) processed and treated and defined as white collar offenders are not elite by your terms or by anybody else's terms. I would agree certainly that the offenses committed by the elites are the most harmful and the most egregious, and all of that again is a conceptualization where one has to find a satisfactory way to avoid becoming part of a process simply of polarization and losing anything else in between.

On the deviance side, much of this activity involves a kind of conformity -- conforming to the prevalent standards, whether it's in the government or within the corporation. I think rightly or wrongly the term deviance is so powerfully identified with different people who are different, of course -- nuts, sluts and perverts, in one colloquial expression of it. And the striking feature, of course, about the elite

deviants is precisely that they are not deviants in that sense. So I think there is a problem and a great deal of confusion if the term overwhelmingly refers to nuts, sluts and perverts, and then you say elite deviants. You are asking people to make a large conceptual shift which may be unrealistic.

Again, the striking feature of much of this is the role of conformity. I do not want to get into an extended digression on the Holocaust, but (Daniel) Goldhagan's recent book, Hitler's Willing Executioners, shows that ordinary Germans in huge numbers were directly and happily involved in this whole process of extermination. I have problems, by the way, with this thesis, but the point is that one way of saying they were conforming was that they were conforming within their own context. What is so striking is you have to understand they were conforming. Whatever we think of what they were doing, they saw themselves as conforming. There were many ways of conforming, and they weren't deviant. Of course, they were engaging in, objectively, horrendously harmful activity, but that is not typically what the term deviance means: to deviate from the standard, at least in a sociological sense, or to deviate from normal standards in a particular context. So I have a problem with, I guess, both of those aspects.

Simon

I agree with almost everything you said except with the part that involves me, because it doesn't. First of all, you are absolutely right about the concept of "deviance." As everybody knows who has studied it, there are at least four different definitions of that term, and I think like any responsible scholar you've got to define your terms. I define deviance in terms of physical, financial and moral harms which are measurable. Now if somebody is confused by that, I don't know what else I can do. Likewise for the term "elite." The reason I wrote Elite Deviance in the first place is because, precisely as you pointed out, so much of the literature was about nuts, sluts and perverts. And a big gap that we saw was the deviance of the wealthy and powerful was very rarely talked about in sociology at the time.

One has the responsibility to define one's terms. One can talk about elite's being the most wealthy and powerful in society, you can also talk about elite occupations that have special status by virtue of the fact that they are defined as professionals, so on and so forth. The term "elite" is elastic as well, and I certainly think it is an ethical and intellectual responsibility of any scholar who uses those terms to define them, and I promise that I will define them in every book I author. Thus far, I have.

Friedrichs That's great. So you have elite deviance but you certainly can see there is something that can cause confusion. What would your chosen term then be for all this other activity that has been referred to by many presenters and scholars?

Simon As white collar crime.

Friedrichs You just satisfied that. The rest of that is white collar, so you're saying we have elite on one end of deviance, and that requires great attention. We obviously have street crime, and all the other activity in between would be white collar crime.

Simon Yes, white collar deviance.

Michalowski Are you not entering into a bit of an Alice-in-Wonderland world by saying in your definition, I'm not talking about deviance, and so I'm going to define it as harm. In fact, is it not the case that really what you're talking about is not elite deviance; you're talking about elite harm.

Simon Absolutely.

Michalowski I know that you're identified with the term elite deviance. People know that term and it has a certain position.

Simon In fact, some people say that that is the most likable thing about the book.

Michalowski It seems to me that it might make more sense in order to accomplish your purpose and hit harder, if you just called it elite harm. It's not just somebody deviating a little bit, it's somebody causing genuine injury to society.

Simon There is no answer to a problem like this one where both, I think the public vocabulary and even the members of the academic community's vocabulary, in some ways have polluted the term to the extent that it has so many meanings. All you can do is be clear about what you mean.

Gaines I like the term "deviance" because the flip side of this whole discussion is if we don't talk about white collar crime, then the public might get caught up in the whole idea that it doesn't have to be a criminal offense. Recently one of our local papers was doing a piece on Medicaid. I don't want to say Medicaid fraud, because it wasn't fraud. They were looking at respiratory therapy, and, for example, they looked at these two ladies, a woman and her daughter, who formed this company and were making over a million dollars a year administering respiratory therapy in nursing homes. It seems that everybody who came to the nursing home had to have some form of therapy. They go through and look at all the nursing homes, look at how many people are out there, and what they are charging, and these people basically are deviant from the norm. Nobody's figured out a way to charge them criminally, but, you know, if there isn't a law (against this), I think there should be.

Friedrichs But I would dispute some basic premise that with the term crime, exclusively what we refer to is a violation of law. In fact, I tell my criminology students that "crime" is a term used in many different ways. Specifically, the word is invoked not only in a legal fashion. In talking sometimes about it as statutorily defined or as defined by adjudication. The term is also used in a purely political way. Then, from a moralistic point of view: to right-to-lifers, abortion is a crime. That's the word they use even if it doesn't have legal standing. Humanistically, there is the argument that

objectively harmful activities are crimes. And people invoke the term “crime” in a purely subjective way. Somebody does something they don't like, that's a “crime.” People use that in the colloquial sense.

So I think in many ways the problem of meaning is an issue with many terms, but I find on balance that the dimension of harm is clearly conveyed in connection with anything you call crime. A subjective point of view, a moralistic point of view, a humanistic point of view, a political point of view, or a legal point of view that suggests some harm has been done. That is very clear cut. And in that sense, I think on the other side of it, harm is involved in many of these kinds of activities that you and I think perhaps should be legislated against. But in many ways the term “deviance” is more problematic precisely because in many cases those involved are conforming to industry-wide standards. They are conforming to what is done in their business, although if a choice has to be made, I come down on the side of the term “crime,” not necessarily in a legalistic sense.

Ideally, people should always be clear about how they are using a term, but I think you're getting into more trouble with deviance than you are with the choice to go with “crime” because of the heavy baggage that “deviance” carries. And it comes with baggage that I think is certainly incompatible with the way you want to use it and the way you could use it.

Simon

The term “crime” carries the very same baggage in many ways. You know, if we were having this discussion fifty years ago in Nazi Germany it would be a crime to kiss a Jew. It seems to me that five years later we revisit the discussion and it wouldn't be a crime. So the fact of the matter is you have to, you know, if we are going to do a metaphysical and ontological analysis of all of this we've got to, it seems, to hit at the heart of the concept, which is, what is a crime? A crime is an act that is against the criminal law, and again, most of the scholars in white collar crime books don't stick to that definition, but it's based on an offense to the value system

of the culture that it comes from. You know, if we were having this discussion three hundred years ago, adultery would be prosecuted as a crime, but not anymore. Or practicing witchcraft, as Gil Geis would say if he was here. So it seems to me, David, that crime presents the very same problem, but the issue to me is that the value system of this culture is based on the Judea Christian ethic. If you read very closely the biblical sources about harm, which is called "sin," you will understand that sin and that which harms people are very closely aligned, and that harm seems to me to be at the heart of the definitions of crime that dominate this culture, and that as everybody here (not everybody, as many people have already pointed out) knows, there are many things that are harmful that are not against the law. There are many things that are against the law that are harmful that were not against the law ten, fifteen or twenty years ago.

Friedrichs True, many things that are harmful don't involve deviance.

Simon Okay, but on the other hand, what if the situation that you have industries where criminal activity is the norm, then what do you call it? Normal crime?

Friedrichs Normal crime, just like normal accidents. It's a wonderful term -- normal crime.

Simon It seems to me that it almost obviates the whole idea of crime.

Coleman Let me say a couple of things in defense of (the term) "white collar crime." First, let me address yours and some of what Jay said too. One point I think you (Simon) leave out where you talk about sort of dumping "white collar crime" is what you (Albanese) were saying in your presentation. Something that has been cited eighteen hundred times in the last year in Lexis-Nexis -- there is a power in this concept that I think has proven itself over the years, and I don't think the alternatives work when it involves deviance. The guy on the street doesn't know what deviance is in the way that they know what crime is; and you lose this. And the reason it's

been so successful -- it has this power, and some concepts just do that. I think it's proven, so I think it would be foolish to throw that term out. I think that's really got a power that these other terms just don't have with the average person, and I think it's been proven. Look at all the languages which have taken up the term.

I also have a couple of comments on Jay's paper. First, you want to expand white collar crime beyond just the occupation, and I personally do that in my book. I don't think that would bother Sutherland as much; I don't think he'd turn over more than a half RPM on that one. I think that's reasonable. But I have trouble with the exclusion of status from the definition. Two points. One is if we're going to call something "white collar crime," I think that name implies there is a certain status element. That's what white collar means, right? Let's go back to what the term means. I understand the term white collar when Sutherland used it and still today implies reasonably high status. So, shouldn't we include it if that's the implication the term means?

Albanese You're making a compelling point. My issue is: would you consider a bank teller a white collar criminal? Invariably you draw these lines. They are very gray lines for exact rules of behavior, and, to me that is a problem.

Coleman I agree. My second point and then I'll let you respond. I am afraid that if we exclude status from the definition of white collar crime our research may start to drift off the subject.

I wouldn't think it would be a problem except that I think it pulls researchers into easier areas to study the safer, more comfortable areas like the lower-status offender and welfare chislers, and people like that, and pretty soon what we're studying is entirely different than what was intended. There is no longer a focus primarily on the crimes of the powerful and elite, but more and more emphasis on studying street criminals and lower level criminals. So I think that's the danger of not including

some kind of status hierarchy. My approach would be to keep that status/respectability in there, but be flexible on how you interpret it.

Albanese I could compromise and say usually of “high social status.” I think you have a lot of trouble to actually define that term. Because to me the average guy on the street probably feels that a bank teller has considerable social status, because they control thousands of dollars. If they may decide to take it for lunch money or something, and it seems to be a common practice for many tellers -- is it a white collar crime? My argument would be, well, how do you say that it's not a white collar crime? To me that is ultimately an arbitrary distinction because it's the same behavior, similar people, similar motives, I just don't see it.

Ball You know, Jay, when you talk about stratification even in introductory sociology, you talk about what are the dimensions of stratification, you talk about status as one of the dimensions, power as another dimension, wealth as another dimension, income as another dimension. I think what you're talking about is the bank teller's power isn't it, rather than status?

Gaines I'm not sure they have either power or status.

Ball You can have low status and high power. For example, a supply sergeant in the army has low status and tremendous power.

Helmkamp They also have opportunity.

Albanese The guy at the car wash has a lot of power and his pockets are stuffed with twenty dollar bills, so the point is that you ultimately have to make a distinction. If he's got a thousand dollars in his pockets is that more power than on a slow day when he only has a hundred.

Helmkamp Is it not necessarily power, but in your case opportunity?

Albanese If you've got the opportunity, you've got the power. By the way our income tax system is set up, we all have the power to cheat. There are other ways to tax that wouldn't give you that power. I would argue that to consider if somebody cheats on their individual taxes, it is not white collar crime, but if one does it during the course of their occupation, a white collar crime may have been committed -- this is completely arbitrary.

Michalowski This debate about "is it a crime," or "is this activity not that serious," lends itself to a Cuban example. In 1988, the Cubans revised their criminal code, and they were struggling with the definition of crime - what does crime mean? They ended up by saying crime is a violation of law that involves grave social injury. Violations of law that do not involve grave social injury are not crimes; they are infractions. In other words, they would make the point where under western notions or American or capitalist notions of law, or bourgeois notions of law, a crime is a fixed category. So whether I steal ten dollars or one hundred thousand dollars from the till, it all falls under the rubric of crime. They spent years struggling with this, and they said one of the problems with the notion of crime is that it doesn't contain the dividing line between crime and no crime and does not incorporate the dimension of harm or a certain harm threshold. I wonder if that's one of the things that we are struggling with as we are looking for a definition of what is crime. We get caught up with the fact that if we want it to be a unitary category it has to include the least harmful and the most harmful actions, they all must be taken in under the same umbrella. I don't know if that's any use, but it just sort of occurred to me that that is one of the dimensions that we actually leave out because we think so categorically about what crime should be.

Gaines Are the tobacco companies criminals? Are they white collar criminals?

Nichols I would say that they are in the process of being criminalized. They are probably going to be seen someday as having done something criminally wrong.

Gaines But not in our lifetime because they've got too much money and power.

Michalowski And status.

Nichols Yeah. In looking at the issue of harm from Sutherland's perspective, it seems to me that he's talking about how much a particular type involves a particular betrayal of trust by people in high positions. So isn't there always that aspect in that there's investment of trust in these businesses and these respected and highly paid people, and there is an element of betrayal and violation that's different from other kinds.

Coleman I think in Sutherland's day that was true. I'm not so sure we trust the guys (tobacco industry). Look at the public opinion polls. Look at the confidence. I don't think anybody trusts the tobacco industry. I don't think they are betraying anybody's trust; nobody trusts them.

Michalowski Are they not betraying an ideal. The fact that people are bothered by this indicates that something is being betrayed.

Coleman That's the underlying thing. I think we have lost some of that trust.

Nichols Or if there is an office involved which is vested with varying levels of trust - is the betrayal with the current resident of the office or the position itself? It's not the doctor, it's the medical profession in which we invest trust. That we are betrayed by those that we specially trust, isn't that what Sutherland was really angry about?

Simon I would like to respond to something that Jim Coleman said about the notion of white collar crime resonating the public. It's not my experience that social science is

driven by that which resonates with the public when we come to defining our terms. You know even with things that resonate with the public, the idea that the sun revolves around the earth used to resonate with the public, and it seems to me if a term comes along that seems to have more descriptive or explanatory use in some way, then it's the job of the person who fabricates it to try to get it into the public light. What I am saying is that which resonates with the public changes it.

Coleman I give a little more credit to the public than you would, David. I think the public includes a lot of pretty well-informed people, who over the years have found this concept useful. It's kind of worked its way into the collective consciousness, so I think that we have to consider that. I don't think we give them (the public) credit.

Gordon I think it's become more of a generic term. If you look at some of what Jay was talking about earlier, it is used for everything. And so when you use it for everything, does it mean anything?

Simon Well, that's one of the issues. Public use has perverted some of the terms.

Gordon That's why I was arguing for a narrower definition. The guy on the street might give you your definition.

Albanese I thought Jim Coleman's other point was compelling and was related to one of David Simon's earlier points. That is, if you take high social status out of your definition then you push interest in white collar crime and look to study lower levels in the population - welfare cheats, for example. And, of course, in America we tend to hate rich people because we think they're greedy and corrupt, and we hate poor people because we think they are the source of our street crime problem. We like to push on both ends, you know, crime is up there and crime is down here and I'm okay in the middle. I think one advantage of leaving out the high social status is

that you get people to look at themselves, people just like you and me committing white collar crimes.

Michalowski Won't they then reject it (definition with high social status)?

Albanese Nobody likes to admit that they have high social status.

Friedrichs I do think that's part of the problem, and I hope to elaborate a little on that tomorrow by my remarks. In Jay's presentation he reminded us that Sutherland excluded con games from what he described as white collar crime. Now that, of course, raises a question of what are con games? What is conning people? Well, Sutherland probably had in mind things like three card monte; nobody here would call that white collar crime, but more likely a kind of street, low level, professional criminal activity. On the other hand, you had Prudential scamming large numbers of investors. This involves the use of great power for the purpose of a con. Most of us would agree that would be a form of corporate crime. What about the time share and resort salesmen and other examples I used in my book, described as contrapreneurial. That is a beautiful term because you have a large number of enterprises that have the appearance of legitimacy, but are driven by the objective of conning people. Whether we're talking about telemarketing or land sale scams, they are to my mind and ought to be recognized as white collar crime.

A large class of activities have elements that are associated with some of these notions we discuss in terms of white collar crimes. Some of them appear to be respectable and so forth, and at the same time certainly don't agree with Sutherland's classic conceptions of upper status, powerful people. So I think part of my solution is simply to recognize that you have pure types, and you have hybrid types and then you have those forms of activity that clearly have nothing to do with white collar crime.

Albanese Keeping in mind that Sutherland offered his definition as conditional: he didn't present it as somebody who said this is the definition of white collar crime. We have two conditions -- "approximate" and "principally," which means he did have other things in mind which he never got around to fully explaining, except the fact that he excluded con games by people of the underworld. We interpret they lacked respectability and social status. I'm not convinced that when he said that he was talking about organized crime types, and I don't think he's thinking about it in the same terms that we talk about it, in terms of lower status.

Nichols I'd like to mention the issue of police corruption as I think it is something that is somewhere in the middle. The cop on the beat has a kind of situational power, kind of like your sergeant or car wash guy, but it isn't somebody really highly placed, you know, and that there is a form of trust invested in your police more than other people that maybe make the same amount of money as them. There is kind of betrayal if the cops are dishonest more than if Midas Muffler is, for example.

Albanese Working on your brakes.

Nichols I'm glad they finally got caught because I thought for years that they were crooked, and finally they got nailed a few years ago. But with the police there is a special element of trust, yet the status criteria I don't think really works unless we say that in people's eyes they all have high status, but we know how poorly they are paid and that incident in New Orleans recently with the off duty cops, the robberies and whatever. We're talking about how they make ten or twelve thousand dollars a year or some God awful amount of money, so would we say they have a high status? But there is a lot of trust invested in them. So we don't conceptualize police corruption in the white collar field very clearly. It seems like some of it fits, but another dimension doesn't fit.

Hagan Well, maybe we're getting too hung up on the "high status" or "respectable status" or something that might cover the middle ground. I don't know if we will ever come to any agreement on where the cutoff is. Jay wants to include everyone. I think there is a cutoff somewhere.

Albanese The guy at the car wash is respectable.

Hagan If you don't have a cut-off somewhere you have things like Gottfredson and Hirschi saying white collar criminals are no different than other criminals. That makes no sense.

Coleman I agree very much. I would include the middle levels but not, I think when we get into welfare cheats and car wash guys -- it's too much.

Jamieson Aren't you inadvertently referring to harm here, when you're talking about the ability to evoke harm on the part of the car wash guy is not nearly the same as the ability to evoke harm on the part of a Lee Iacocca or someone with a lot more access to power. If we listen to what Chairman McDonald was talking about and that you (Coleman) alluded to, he was really focusing on the victim when he said we should care. We should care because people are cheated out of money, old ladies are cheated out of their life savings. You know that those are crises really, and if we omit status from the definition, it seems to me we don't do justice to the kind of harm that higher status people can do.

Albanese They do have more power.

Jamieson The behaviors may be the same, but I don't know that their motivations are the same.

Albanese Okay, then what do we do about the controller at the university who accepts your \$5,000 tuition payment and puts it in his or her pocket and the car wash guy who puts five grand in his pocket the same day. The harm is equivalent, and in both cases they have committed a crime of embezzlement. If you call one white collar crime and not the other, to me, it seems, you are on real thin ice. You are making a very arbitrary distinction.

Jamieson Do you think they have the same image of themselves, the same self-image?

Albanese I don't care.

Hagan I don't know if white collar crime is really a legal offense as such, and I think what we're talking about is a global sensitizing concept, and by using your example we could call the controller a white collar criminal and call the other one a common criminal. You're not dealing with legal constructs.

Michalowski Status is such a slippery word. If you take away the notion of status and maybe substitute position and look at where people are socially positioned, and, as I said, if you take the investment class and the new class and you look at all that literature, somewhere in there is probably a gray area that begins to divide. We say that below this social position and below this level of trust (in the office), it's something different. I am sure it is not a bright line but it is a gray area; I think status is too slippery because are you talking about a Weberian definition of status or are you talking about a class-based one? If you just look at social position and the trust and the opportunity invested in that position you probably could find a division somewhere. I think that the emphasis on the nature of the offense, whether I steal a buck or I steal \$100,000 as being irrelevant, is a real mistake.

Jamieson Kip, you talked about a relational measure of class which is something I think is very important. I am not sure I understood about the relationship to the legitimate working world, and I'm not sure I got the right concept of that.

Schlegel I want to back up a little bit and maybe clear that up. When I think about ideas of status and power and respectability in the way Sutherland refers to them, I think that we're going astray when we want to apply those ideas to motivational accounts -- that somehow we want to tie these ideas to what is pushing these people or explaining their conduct or whatever. I do think it becomes important in the sense that status, power and prestige affect opportunity structures for crime, and I also think, and more importantly, that power, status and prestige affect how we see that behavior and how we respond to it. So in the example of the car wash person and the controller, I do think that there is a difference in how we respond to those individuals by virtue of the status, prestige and power that we place in those actors. We're likely to get the car wash guy when the cops roll up, and we're likely to get the controller when the tax regulators find it. I think that those notions make the most sense in relation to the response. And then to get into this relational notion, I think it is a real danger to think about these notions as being static qualities, that somebody has power, somebody has status, somebody has prestige, and they carry them all the time. I think there are instances where some people would have great status and in other instances would not, or great power in some instances. What makes it relevant with the notion of white collar crime is the utilization of that quality at that given moment which explains how they were able to take advantage of an opportunity structure. So it doesn't really matter to me if somebody has a million dollars. It's how they use that million dollars or how they use their power which is what I think Sutherland was referring to, and the difficulty then of being able to respond to it through a social control mechanism that by definition can't keep pace with what's happening -- the event that is happening.

There is one other point that I wanted to make about the definition. I began my paper with it, and I wish I would have brought it up, and that is, I do think this discussion about how nobody can agree about the term, to me, becomes silly after awhile. If you stop and think about every socially constructed phenomenon, whether it's social class, or the idea of privacy, or the idea of power, if you look at the literature everybody begins the discussion about privacy or power, but nobody agrees on what these terms mean. Few values so fundamental to society as privacy have been left so undefined in social theory or have been the subject of such vague and confused writing by social scientists. Welcome to the social sciences. This is what we do, and so I think there is a point where it doesn't matter any more, and we don't need to come to some agreement. What we have to do is find where there are useful ideas that we can take and do research that might offer us a better picture.

I do think that the issue here is understanding crime. It is not understanding white collar crime. I think it is understanding what white collar crime tells us about how we think about this larger construct called "crime," and what I find us doing is spinning so out of control about defining white collar crime and debating about it that it really does render us susceptible to the arguments that we're not telling anybody about crime because we're not; all we want to look at is white collar crime, not what does this tell us about how we think about notions of harm. So saying that some people use power and status and others don't, and that is all we all want to study, doesn't make sense to me. What's important is how is power and status utilized under circumstances in different situations? How does that affect how we respond to the problem? And, thus, since what we see depends on how we respond to it, our picture of crime is very distorted.

Simon

I would like to say one thing about this notion of "status," and that is that I do think that it is important. This discussion kind of reminds me of the contrast between a fictional character like Murphy Brown who has a child out of wedlock versus when a teenager has an illegitimate child. It is the same behavior, but the connotations

they take on are radically different. When an unwed teenager has a child, it has all kinds of perceptions concerning welfare, lack of parental values, lack of family values, etc. But somebody like Murphy Brown, who is kind of a caricature for the upper middle class, liberated, professional woman, then, in some circles, she's considered groundbreaking, pioneering, liberated, etc. I think it is the same thing when you start talking about these different types of criminal behaviors.

Nichols I want to talk about a point in Kip Schlegel's paper about the mimicry of the ordinary workings of the system of legitimate operation of business and some issues that are raised. The party of harm from the point of view of, let's say, Marxist critique or political economy critique, raises a question on how does the term elite deviance add anything to the term capitalism, and, if you regard the routine operations of capitalism to be in themselves and of themselves harmful. Marx said all profit was theft, right? And in a sense, if the system itself is grinding people down and creating all of these terrible problems, we're talking about elite deviance. I think that in the Schlegel paper, there was kind of a notion of legitimate commerce and illegitimate commerce.

Simon I understand the distinction you are trying to make and I think it's useful.

Nichols If the system itself in routine operations is harmful, and if that is what you're saying, it's not such an aberration from the system -- it's just the nature of the system.

Simon I think there are two points here, one of which is fairly easy to distinguish, while the other one is much more problematic. When we talk about only deviance, I think it is important to establish the notion, that first of all, not every occupation or industry has the same rates of criminal activity; rates vary widely. So not every industry or occupation are as criminogenic as every other. Second of all, one of the things that sort of fascinates me are how crime patterns vary over time, and it is also the case, I would imagine, that white collar crime rates would vary over time as well. I have a

few ideas about why. I think it has to do with the sort of cultural ethic that we have at any given time in our history. I think this is one of the things that has been gained from looking at Mills' notion of what history is. Another point concerns the nature of the system, and that to me is much more problematic and this is why I am a Millsian and not a Marxist. I don't think that every business person and every corporation and every politician is a crook. But what I do think is there are certain kinds of values that are part of the system that contribute to race, crime, etc.

Michalowski What we're talking about is the analysis of the structure of capitalism after Marx. It isn't the case that all profit is theft, but if I move to the environmental example, it is very clear that human life is destructive to the planet. There is no question about it. The existence of human beings through the extraction of that which we need to survive is destructive - so we can say that the system needs to be changed. There are clearly different ways that human beings could extract their livelihood from the planet, however, some are more destructive than others.

The same thing is true with accumulative processes. This is what happened. The attempts that were made to follow Marxism and to come up with new social orders were ways of saying how do we do the accumulative process and make it less harmful to individuals. It is clear that those things did not work out for a lot of complex reasons. But I think one could take a political and economical analysis and say, as David does, that there are great harms being done with the system of accumulation of production and distribution as it currently exists. There are also ways that we can produce and distribute that are less harmful in terms of what we would call white collar crime, than the ways we are now doing it. This isn't to say that somehow it is just hopeless because the whole system is all profit and theft. Accumulation has to occur; so how do you have it occur and control the degradation. Capitalism itself is not a monolith. Some capitalist countries do it less harmfully than others. They can structure it where you have probably less corporate crime as we would know it and less white collar crime than others. And that may be

the utility of a structured political economic system and how it places people in positions that either increase or decrease their opportunities to do those things that we call white collar crime, whatever we want to define white collar crime as.

Simon Mesner and Rosenfeld have gotten at some of these things in their book, Crime and the American Dream, where they make a distinction between the nature of American capitalism versus European capitalism and they compare some of the kinds of patterns that take place between the two. American culture is radically different than much of what you find in other capitalist countries. Other capitalist countries don't seem to make celebrities out of crooks the way we do. I don't see a lot of European magazines putting John Gotti's picture on the cover of the larger circulation magazines and saying what a great family man he was even though he's had people murdered and was worth three hundred million dollars through illegal drug trafficking.

Nichols These are aspects of harm, and to you (Simon) crime is harm. Is anything that produces alienation and exploitation, from your point of view, criminal?

Simon I am afraid that this whole discussion is going to turn into an interview with me and I don't want that to happen. I think exploitation and harm are the same thing. I point that out in the book in a footnote, that I think that's what elite deviance basically is. It is elites exploiting their opportunities and. As far as alienation goes, I do think that alienation is a very strong contributory cause to a great deal of the harm that goes on. It is my contention that the conditions of alienation, the structural conditions of alienation, especially in authenticity and dehumanization, have personal components, as well as structural components. They translate into feelings of alienation among human beings. I don't know if you saw Ralph Nader's book some years ago called The Big Boys, where these coal mining executives were having a conversation and one of them related a story where one of the board members had gone down into a coal mine and observed what the workers did. He

commented later that he would never criticize coal miners again as far as the occupational conditions that they work under were concerned. So what was overcome there was a form of alienation, and it seems to me that one of the characteristics of modern bureaucracy is that the elites are often very cut off from the non-elites. Sometimes, by intention and other times by design. So yes, there are these kinds of factors that enter into it (elite deviance). I am convinced of that .

Helmkamp I have a question which I would like to pose to the group; five or ten dollars might be of harm to somebody or a hundred thousand or a million dollars to someone else. Can a construct be made on levels of white collar crime, again whatever that definition is, in terms of the amount of monetary loss.

Simon Yes. I believe that, and I always have. I think that when as David Friedrichs said a little while ago, you're talking about the elite levels. It does involve the most money and many times the most physical harm, as well.

Helmkamp But look at it in terms of the victim. A thousand dollar loss to me could be devastating while a million dollar loss may be life threatening to somebody else - so, are they both white collar crime? Can we have a continuum no matter what the dollar amount of loss is, or do we pick some arbitrary level to establish a level of harm?

Simon You're changing your question now.

Helmkamp Alright.

Simon Because your original question was, can you define different strata of white collar crime based on the amount of loss? So, you were talking about aggregate amounts of money, now you're talking about the relative importance of the loss of one thousand dollars to one person versus a million dollars to another person and that is

a different category of harm entirely and that's where it becomes incredibly relative. Yes, the little old ladies who sent five dollars in to Jim Bakker, and who went without heat, that five dollars was an incredible loss to them.

Michalowski That money was well spent in their minds, but I'm not sure that's a good example. Most of the people who gave money to Bakker felt good about it and defended him when the fraud was uncovered. They felt that they got something intangible but of value. I think this is a bad example.

Simon I'm not sure that's not true of most victims of fraud before they find out it's a fraud.

Michalowski But what I want to say is even when these people found out it was a fraud they felt that way. They said we don't care. I gave it to him and it made me feel good because I was getting right with God and even if he did the wrong thing with the money I behaved in a godly fashion and, therefore, I feel okay about it.

Simon Well, the point is, yes, it's all relative to your income if you want to talk about the victimization which is different than aggregate loss. So, yes, it's true.

Nichols Well I guess the qualitative versus quantitative debate that came up earlier is that the same quantitative amount has different meanings in different people's lives, and therefore, you need something with a qualitative slant to really have an understanding as to what's going on.

Michalowski I have a comment about your (Helmkamp) question on the levels; is it the same thing if you have a thousand dollar loss, if a woman is defrauded, and I am a con artist and I defraud somebody a thousand dollars, or I operate a large scale banking scam and I defraud ten thousand people a thousand dollars? It seems to me now that you would have different levels - so you have white collar crime in the first degree, so on and so forth. That actually might be a useful way of thinking about it. You

want to keep the gravity of the crime to the victim in mind, but you would also want to consider what is the nature and gravity of the overall offense. If it's a million dollar scam to a lot of people or it's a thousand dollar scam to one person, I think those are certainly different, at least in terms of what we say is level. It might all be white collar crime, but it will be, I think, preposterous not to say that they represent different levels of gravity and injury to the society, as well as to individual victims.

Schlegel I get very uncomfortable about some of these discussions and maybe if we're working in the securities markets those notions are so amorphous. I mean, how many of us have been harmed by insider trading?

Michalowski All of us, right?

Schlegel How? In what way?

Michalowski Well, to the extent that insider trading creates a false value in the stock market, and that false value then papers over the real value and it affects things like prices of commodities, groceries, retirements, and so forth. Yes, I mean everybody is affected.

Schlegel But in one instance of insider trading, are you affected by that? Who's affected by that? What it is, is an exchange - an exchange of value which is often (only of) paper value, which has, in many instances, very little direct application to a particular individual. We can talk about the welfare interest of securities investing, but then that is not a financial harm, that is not a dollar loss. It is in my interest to know that my securities are dealt with fairly and openly.

Friedrichs Eventually all of us have retirement plans or whatever, invested in the stock market. If it loses value as a result of insiders dumping the stock or buying up stock knowing that it is going to rise in value, are these losses widely diffused

over time or does it come down to some kind of incremental financial loss to us as individuals?

Schlegel Show me what that incremental dollar loss would be?

Friedrichs Well, I grant that would be difficult. Just what that loss is would be hard to identify, but I think that's very different from saying it isn't there. I mean, it just doesn't make sense to me that certain of the insider traders , like Boesky or whoever, pull in hundreds of millions without that somehow counterbalancing.

Schlegel The insider trading law was not designed around the notion of individuals losing a direct material value. It has always been built around the notion of establishing fair rules of game.

Michalowski But isn't that true of a lot of regulatory law. I mean, the idea of not monopolizing the market partially is that. It's really hypothetical - so what you do is establish what presumably are fair rules of the game on the presumption that if those rules aren't followed, that the game is somehow going to be rigged and it is going to be harmful. I think that what you are saying is that unless you can show me exactly how not following the rules of the game are harmful there is no harm.

Schlegel Okay, going back to one of the points that Jim Coleman made awhile back about how do you know the degree of crime in a given industry, and saying, they tend to be enforced or regulated more heavily, then the question would be why are they regulated more heavily? It may well have to do with their dangerous behaviors. Things like the regulation of the pharmaceutical market is not built around the notion of a fair game accept with respect to antitrust. There is a danger now if a product, a medical product, is sold that causes death and injury.

Michalowski But I think what you are dealing with is the vector of the harm. With a pharmaceutical, the causal chain that leads to the harm is much more visible and, I think, this is, in fact, partially the difference between street crime and white collar crime. That is, we can see the vector or the causal chain and we can understand it as crime. There are other ways as our systems become more complex that the causal chains to harm become more complex, and we cannot see them and, therefore, we say they are not as harmful.

Schlegel I am not saying that I don't think that when insider trading occurs that nobody is ever harmed financially. Now there may be somebody who has traded in something and there is an insider trading scheme going on and they happen to be in at the wrong time and lose a lot of money because it got sold out from underneath. Then I can see there is clearly a financial injury in these instances. But I do think that it is precisely the difficulty in seeing the vector of the harm that makes any attempt to say that we can figure in aggregate terms or the social harm by monetary value, or that we can distinguish white collar crime from other kinds of crime, because I don't think we can. If you look at the Bearings case, for example, you know the \$1.2 billion (or whatever it was that Leason claimed to have lost) should not be considered a social loss. It's a paper trail that has some loss but you can't calculate it as \$1.2 billion worth of loss because of the convolution of the other processes that are going on at the same time.

Simon And, I also think that there are certain cases where you can see this vector of harm more clearly. There is no doubt in the public's mind or in the mind of professional people about the harms of tobacco. Yet the tobacco industry has escaped an enormous amount of regulation in part by making deals with the government. So, it isn't true that the clearness of the harm always results in more intense regulation.

Nichols Well let's look at the pain threshold as I think it is one of the implications of the

discussion. Maybe on paper you could show a certain dollars and cents loss, but maybe it is so imperceptible that it is just kind of gets scattered about.

Schlegel When we think about harm, it involves a whole variety of welfare interests of which money or financial security is but one. There is physical security, there is a sense of trust in the markets, trust in the political system, etc., and a lot of the white collar crime issues that we are dealing with are related to welfare interests which are not so easily quantified. A lot of street crime can be quantified very clearly in terms of physical injury, loss of life, dollar loss value, while many white collar crimes are described in terms of the sense of the harm related to notions of trust in the political or economic process.

Ball I think this is going to turn out to be much more important than it sounds right now, because we have been flipping around on synonyms to white collar crime all day - from early this morning, financial crime, economic crime and so on. Obviously what you are just saying is that those synonyms don't hold.

Simon They don't. We're talking here about violations of trust to a large degree, whether it's done by the President of the United States or a bank teller or a police officer, or a car wash guy. There are culturally-held ideas about how certain people in business, in clergy, in education, and in occupations in general, are supposed to behave. The definition of white collar crime is that when those expectations are violated and a trust is violated, or in the case of a given profession, the ethics of that profession are violated, then it is held in many cases that at least ethical breaches of behavior have taken place, if not criminal breaches of behavior.

Michalowski Where do you draw the dividing line? Is it occupational because if I cheat on my partner, presumably it may be a violation of trust. So somewhere there is a dividing line I would think.

Simon Yes, I'm glad you're bringing that up.

Michalowski One of the things we haven't actually talked about in terms of identifying where the harm is, is what, in at least in the environmental stage, they call the "outrage factor." If there was somebody who claimed harm from tobacco, part of the whole issue with the tobacco is the people who choose to smoke. And now second hand smoke has become a volatile issue, as well. Say I choose to smoke and it may be harmful, but I choose to smoke anyway, and can sit there with a cigarette and be outraged by pollution and say that plant down there is harming me. Yet they are not outraged by the tobacco companies because they say I get a benefit from smoking. I think this is one of the things that confounds us in trying to explain the public notion of harm and to the whole notion of the outrage factor.

Simon Interviews with people who smoke say that 90% of them would like to quit. That it is not a choice once they are addicted, it is hard.

Michalowski This is not a defense of tobacco, but smoking does not raise the same level of outrage among smokers as pollution does, and there are a lot of areas in which people engage in risky behavior and they are not as outraged because they see a benefit from it. It is where we don't see the benefit (that we become outraged), and this may have something to do with white collar crime too.

Simon A lot of smokers have rationalizations about why they smoke. You can hear them any time. Everybody's got to go sometime and at least I get to chose how I am going to die.

Michalowski I'm not making an argument about tobacco, I'm sorry I chose that example. I'm talking about the outrage factor.

Simon I am saying that that affects the outrage factor in this case. The other point that you

brought up is the distinction between private behavior, and ethical violations in your private life, or even criminal violations in your private life, versus what you do as a member of a profession - a very interesting set of circumstances. Think of President Kennedy and the image of him that we had when he was President, then think of the literature that has been published since the revelation that he was sleeping around with many women (in and out of the White House and with Jackie there or not). That has led some scholars to say that if there had been public knowledge of this while he was President he probably would have been impeached. So my point is do ethical violations or criminal violations in one's private life become part of one's unethical or illegal behavior as in the course of one's occupation.

Michalowski Is that a rhetorical question?

Simon No, and the answer is absolutely they can, if they are found out and become public knowledge. O. J. Simpson is not just an individual. He is a corporation. He is an incorporated person and those murders had a tremendous affect on

Michalowski David, would these affairs constitute white collar crime? I agree with most of my feminist friends, that personal becomes political, okay, and so those behaviors do matter in very deep ways, but would the affairs be white collar crime?

Simon If you're significant other was a student, yes.

Michalowski Yes, but then, there are rules, you're condemned by the laws.

Jamieson That's a different question.

Michalowski Yes, but you're putting qualifiers on it. Okay, what I'm saying is, is there a dividing line then between private violations of trust that constitute white collar crime and are there other violations of trust that constitute elite deviance, and other violations

of trust that do not constitute elite deviance. Is there a line somewhere and if there is, where would you put it?

Simon I say you don't have to put it anywhere, because the press and the public will put it there for you. Because these kinds of ethical strictures are much looser at times in our history and much more rigidly adhered to at other times.

Michalowski That's a cop-out.

Simon It's the truth.

Friedrichs This is striking to me in a way. I said that I thought what was under-investigated was links between student white collar crime and adult white collar crime, between avocational and white collar crime, on the one hand. On the other hand, there is a lot of evidence that you can have people quite immoral in terms of their sexual behavior and highly moral in terms of their occupational behavior, and vice versa. I was talking earlier about the striking case of Charles Keating, who became famous as the founder of Citizens for the Legion of Decency, was outraged about pornography and others types of (filth). I assume that he was faithful to his wife, a good family man and devoutly went to church, but he had no qualms about cheating thousands of elderly people in California out of their life's savings. Franklin Roosevelt supposedly was unfaithful to Eleanor, but in other ways was regarded as a very great president, if somewhat duplicitous in some respects. In any case, I do think that these realms of morality are not necessarily connected, although they might be.

Simon What about Bloomingdale, you know, the guy whose department store enjoys, I think, a rather good reputation on a ethical basis. He was a sexual sadist and when Reagan tried to appoint him to some committee they rejected him precisely because

of his personal reputation and Reagan ended up creating a brand new post just for him that wouldn't have to face congressional approval.

Michalowski Did his sexual predications constitute white collar crime? Or elite deviance?

Simon I think elite deviance in this case, yes.

Michalowski So any deviance by an elite is elite deviance?

Simon No, not any deviance. Deviance that becomes perceived as a character issue.

Michalowski So the definition of elite deviance is entirely in the hands of the public's perception in terms of whether they know about it and then how they react to it. I guess I'm saying is that it is getting so broad that it is becoming almost everything and then it becomes nothing, and I think it is a useful concept.

Simon It seems to me that what we are talking about here is a form of moral harm and moral harm has to do with public distrust. And if there are offenses that outrage the public that have to do with the value system of the culture as the one that you are using clearly does, then yes, it seems to me it has to be.

Michalowski If, sexual wanderings and so on are part of the moral system of the culture, it certainly is honored more in the breach than anything else if one looks at the surveys about actual behavior.

Albanese But are we talking about white collar crime which the public is not sufficiently outraged about?

Michalowski Yes.

Coleman You sound like you can clearly define what's harmful and what's not. I don't know if Kennedy sleeping with Marilyn Monroe was harmful to anyone, I haven't the slightest idea and I don't really care either.

Simon One of the things that was written is that sleeping with the girlfriend of a Mafia don, constituted a potential breach of national security and, therefore, was of potentially great harm.

Coleman This is why I'm more comfortable with the concept of white collar crime. At least we know what the laws say and we don't have to have this discussion. I just don't see it there.

Simon Actually if it wasn't for discussions like this we wouldn't have this conference.

GROUP **3** PAPERS

- The Impact of Technology-Based Crime on Definitions of White Collar/ Economic Crime: Breaking Out of the White Collar Crime Paradigm*** 153
Gary Gordon
- Definition in White Collar Crime Scholarship: Sometimes it Can Matter*** 161
Gil Geis*
- White Collar Crime, Computers, and the Legal Construction of Property*** 173
Ray Michalowski
- Understanding the Context of White Collar Crime: A Sutherland Approbation*** 205
Bob Meier**

* Presented by Dick Ball

** Presented by Jim Helmkamp

The Impact of Technology-Based Crime on Definitions of White Collar/Economic Crime: Breaking Out of the White Collar Crime Paradigm

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Abstract

Technology has changed the landscape of white collar crime negating the traditional Sutherland definition of respected persons whose status in their organization provides them the opportunity to commit crime. Technologically-based crimes and frauds involving computers, credit cards, cellular phones and other means of telecommunications, require a reassessment of the present definitions of white collar and economic crimes. The recent phenomenon of criminals and their enterprises mixing conventional and economic crimes further complicates any effort to provide a clear definition of economic or white collar crime. Without universally agreed upon definitions, issues of public policy, research, and operational responses will remain unfocused.

Introduction

When I heard about this gathering, my first thought was that we would spend three days discussing and debating an issue that no one has been able to resolve in the over fifty years since Sutherland coined the phrase white collar crime. Could twenty academics agree on a common definition of a concept that has eluded others for so long? While I think we all have a better chance of winning the lottery, I agreed to participate in the hopes of identifying key differences and to search for common ground.

White collar crime is a term I rarely use, but I find myself falling back into the habit when I am discussing this area of criminal justice with someone who is unfamiliar with other terms. It connotes a general concept that while hard to pin down does get a "I know it when I see

it” reaction with most people. It is only when you try to go deeper that the problems arise. The term is much like a trade mark, e.g. Kleenex. Even though it comes in various sizes, shapes, and is known by other names, people always refer to the original name. Are we stuck with such a term? Is it possible to break the white collar paradigm?

In an effort to define this field, academics have focused on the individual who commits the act, the act itself, or narrow and specific typologies that categorize certain types of crimes. While each of these provides some resolution to the conundrum, they leave many questions unanswered and may contribute to the lack of focus of public policy, research, and operational practices.

I thought about beginning this paper with a review of the past efforts to define white collar crime, an exercise that I have my economic crime investigation class do every semester. Based on the assumption that someone else before me will take on that task and the frustration levels of my students, I have opted to look at the key components of these definitions, with a focus on technology-based crimes, to determine if there is any possible common ground and to identify problem areas.

Key Terms in White Collar Crime Definitions

In reviewing definitions of white-collar crime, economic crime, financial crime, political crime, and occupational crime, several common denominators arise. These include the use of some of the following terms; non-violent, special occupational (professional) or technical skills, opportunity in the course of one’s occupation, misuse of position of power, trust, or influence, status in the organization, personal or organizational gain, deception, illegal--act punishable by law. Each of these terms will be discussed with a focus on how they may help clarify the present confusion and how in many cases they add to the current problem. The current proliferation of high-tech crimes has also required a rethinking of many of the key components of these definitions.

Sutherland’s pioneering work helped to focus on these crimes, while at the same time placing severe constraints on developing a more comprehensive and usable definition. Two key aspects in his definition, opportunity as a result of one’s status in an organization and a person of respect, are no longer prerequisites to commit these acts. In some cases, it may be advantageous

to hold a certain position in an organization, but it is not a necessary condition, as technology has leveled the playing field. In many situations, the individuals at the bottom of the organizational chart, whose job it is to enter or modify data, have the same opportunity to commit these acts. Additionally, individuals external to the organization may have the same opportunities as a result of the vulnerabilities of communication and computer systems. As a result of these changes, a person of respect no longer contributes anything to an evolving definition.

White-collar crimes have been considered non-violent crimes or ones in which no actual force is used. This concept can be found in several definitions. Increasingly, the individuals who commit the crimes that are discussed in this paper are not non-violent offenders. Economic crimes are being used by criminal organizations to provide the financial resources or communications to promote enterprises in drug dealing, gun running, and other non-economic crimes. Assuming this trend continues, it raises questions regarding how cases with multiple crimes will be counted, classified, and treated by the criminal justice system. It also calls in to question the efficacy of labeling these crimes non-violent or not crimes against persons. Each definition requires that the act be illegal, an act punishable by law. This seems an obvious requirement for any definition of crime. The difficulty that arises with new technologically-based crimes is that there are no specific laws that are directly applicable. Therefore, cellular phone fraud may be viewed as a theft of service or even a simple theft. While applying old laws to new types of crime is not a recent phenomenon, it is occurring much more frequently as these technological crimes push the old boundaries. This poses an interesting dilemma in terms of public policy. Since it is necessary to count and report the frequency of an act in order to make legislators realize that a new law is needed to control a specific behavior, classifying a new crime under an existing statute is counterproductive.

Deception or some type of con appears to be a necessary prerequisite for the commission of economic crime. False identities, a misrepresentation of one's abilities or intent, false promises, and a deliberate effort to conceal information or transactions are required to commit these offenses. This is certainly true in the high-tech areas from social engineering on the human side to efforts to use technology to spoof computers, produce counterfeit credit cards, and cloned cellular phones. This is one of the only areas where there appears to be consistency that applies to all types of crimes that have been included in this area.

A misuse of one's position through abuse of power, trust, or influence is an ingredient in many definitions. As discussed above, one's position in an organization may still be necessary to commit certain acts, but not all.

Personal or organizational gain is an important factor in the effort to define these crimes. Depending on the motivation, there must be some personal or organizational financial gain or an attempt to gain an unfair advantage over another or an organization. The latter takes into account the intangible gain that occurs in the event someone exceeds their access level or trespasses in a computer system and "steals" proprietary information. There are several situations where no tangible gain or future benefit is derived from the act. The MIT graduate student who allowed commercial software to be downloaded from his bulletin board escaped conviction because he did not charge individuals to use his BBS or to illegally copy the software. There are numerous cases where hackers have gained access to computer systems but have not "taken anything" or caused any harm to the system. The only benefits they received were bragging rights to impress other hackers.

Special occupational (professional) or technical skills are a requirement in some definitions. These skills allow the individual not only to assess the vulnerabilities of the system or organization, but permit them to take advantage of the lack of controls or loopholes. Special occupational skills would include any business, accounting, computer, and telecommunications knowledge or background, that would assist someone in determining the weak links in a system and allow them to exploit them. There is no doubt that technology has leveled the (opportunity) field by giving employees at the lower end of the organizational chart potential access to data and information that could lead to criminal activity.

The above exercise begs the question as to whether we can develop or agree on a universal definition to break the white collar crime paradigm. It certainly appears that with few exceptions each of these definitional components either are not inclusive enough or raise requirements that are no longer viable or productive. One solution would be to propose a very broad generic definition that would encompass all the areas this group deems applicable. Such an example would be similar to the 1981 Department of Justice definition for computer crime. Computer crime is "any violations of criminal law that involve a knowledge of computer technology for their perpetration, investigation, or prosecution." An alternative method would be

Albanese's (1995) typology, where *three* categories: crimes of theft, crimes against public administration, and regulatory offenses, are defined to accommodate the variation in types of crimes that he argues are white collar crimes. This partially satisfies everyone as many aspects of white collar crime are incorporated. However, some may not fit into the paradigm.

New Term and Definition

A new term to describe the group of crimes that we are addressing is needed. I propose the term "Economic Crime." Economic crime encompasses many of the areas included in the various definitions of white collar crime, but does not carry the same baggage that has been attributed to white collar crime.

Assuming that there could be agreement on a new term (the NWCCC may have to change its name), the more difficult task is to develop a definition that is neither too general as to offer no assistance in this dilemma or one that is so narrow as to limit research, public policy debate, and operational practices.

Economic crime is defined as an illegal act (or a constantly evolving set of acts) that is generally committed by deception or misrepresentation (fraud) by someone (or a group) who has special professional or technical skills for the purposes of personal or organizational financial gain or to gain an unfair advantage over another individual or entity. This definition resolves most of the issues addressed above.

While using the above definition, I have focused on specific crimes e.g. credit card fraud, cellular fraud, insurance fraud, banking fraud, and looked at categories of crimes e.g. financial crimes, high-tech crimes. A definition applied to individual or categories of crimes provides a focus to study economic crime.

Public Policy, Research, and Operational Issues

A new definition with broad consensus would provide a focus so that academe, government, and corporate America can form a partnership and successfully deal with this issue. At present there is no clear national research agenda in this area. There is not a cohesive approach by federal law enforcement agencies and there is not a consensual approach by the corporate side. No one of these groups will be able to solve these crimes or deal with the societal

impact by themselves. Several issues need to be addressed by these groups individually and collectively if the economic crime agenda is to be moved forward.

On the academic side, there is no clear research focus. This is partially because there is no national organization or federal agency to assist in the setting of an agenda. Also, federal funding of research has been limited and inconsistent. Following the Willie Sutton approach, academic researchers have concentrated on other aspects of crime because that is where the money is. From an educational perspective, few professors (in comparison to the large numbers in the criminal justice, criminology, and related fields) teach courses in the economic crime area. Presently, there are no graduate programs in this area although three are on the drafting table: Long Island University, Utica College of Syracuse University, and West Virginia University. The only undergraduate program with a specific major in this field is the economic crime investigation major at Utica College of Syracuse University. There are a myriad of reasons for the paucity of programs including faculty interest, faculty training, and limited resources.

The federal government perspective raises several issues in terms of jurisdiction, levels of expertise, the need for new laws to prosecute these crimes, whose responsibility is it, and funding levels for both research and operations. The jurisdiction for economic crimes has been divided across several federal law enforcement agencies. While memorandums of understanding, e.g. the 1984 agreement between the U.S. Secret Service and the Federal Bureau of Investigation, have helped to reduce overlap, several agencies are expending resources to combat similar crimes. These lines are blurred because organized groups are committing a variety of economic crimes at the same time.

From the corporate perspective (my focus here being crimes committed against and not by corporations), there has been a reluctance to invest in the resources to prevent, detect, and investigate economic crimes committed by internal or external individuals or groups. Many organizations have viewed it as the cost of doing business and have only become more vigilant as the loss as a result of their victimization rises and the bottom line is significantly impacted. Many corporations have not wanted to publicize the fact that they are victims especially if the dollar loss is substantial. To do so might be to question the viability of the company or to be embarrassed about lapses in security. They also assume that law enforcement will assist in the resolution of these crimes. Because of a lack of resources and specific expertise, law

enforcement officials and prosecutors have not responded to the needs of these institutions. High dollar thresholds must be met before many United States Attorneys will accept an economic crime case. Others have been reluctant to take cases because of lack of subject matter expertise and because of the uncertainty of winning the case.

Federal law enforcement agencies have been willing to assist in investigating initial cases but have not been willing to deal with subsequent cases where the organization did not take corrective action to reduce their vulnerability. This strategy has in part been the impetus for corporations to increase security, develop prevention and detection methodologies, and to initiate internal investigations.

Recommendations

1. Develop a single term that more accurately describes the crimes under study. What is proposed here is the use of economic crime instead of white collar crime.
2. Develop a clear definition that has strong consensual agreement among academic, government, and corporate communities.
3. Develop a national research focus that includes studies of various types of economic crime, the methods of measuring and recording these crimes, and the application of technology to develop new methods of preventing, detecting, and investigating economic crimes.
4. Promote academic programs both on the undergraduate and graduate level. This will provide for a well educated and trained workforce for government, corporate, and academic entities involved with the prevention, detection, investigation, and prosecution of economic crime. Provide for retraining of faculty and resources.
5. Provide a federal level clearinghouse to share methodologies and training, and to develop partnerships among academe, governmental agencies, and industries. Two organizations that have made efforts in this area are the Economic Crime Investigation Institute and the Department of Justice's Law Enforcement and Corrections Technology Transfer Program.
6. Work with various constituencies to help promote laws that relate directly to the current and evolving economic crimes.

Conclusion

It is apparent that all parties concerned: academics, practitioners, and corporate individuals, should make an effort to break the white collar crime paradigm by coining a new term and finding an acceptable definition. If this is possible, it will help to unify what can best be described as a fragmented process to detect, prevent, investigate, and prosecute a wide range of crimes that have a significant impact on the economy, levels of privacy, and society's trust in its institutions. It will provide a focused effort in defining public policy, research agendas, and operational responses.

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Definition in White-Collar Crime Scholarship: Sometimes it Can Matter

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Questions regarding the proper definition of terms in scientific work usually will in time sort themselves out, so those conceptualizations that possess the most intellectual rigor and the greatest research and policy relevance come to prevail. Ultimately most definitions will end up in the archival graveyard. It is the inherent nature of scholarly work that succeeding generations will improve upon and discard earlier formulations that they come to regard as crude and primitive.

Why, then, should we bother to try to pinpoint the "best" definition of white-collar crime? In the free marketplace of ideas, social and political considerations as well as scientific requirements and fashions will in due time determine the fate of Sutherland's original concept, which he largely advanced with rather cavalier definitional disregard. For a cautionary tale, one need only look at the later life of Pepinsky's (1974) attempt to reconceptualize the study of white-collar crime: the subtitle of Pepinsky's article is "redefinition of a field." Few remember the piece, though it appeared in a major disciplinary journal, and even fewer have the slightest idea today of what redefinition it was that the author sought. Nor did Pepinsky himself linger any longer in the realm of white-collar crime in order to press his point by empirical demonstrations of its possible vitality.

At the same time, it must be appreciated that the adoption of one particular definition rather than another can have significant consequences. Take as an example the manner in which racial categories are defined. For one thing, there is the absurd classification of persons who have one "white" parent and one "black" parent as falling into the "black" category. And, of course, skin color itself offers a notably poor criterion by which to differentiate human beings. The consequences of the irrational adoption of this Linnean pigeonholing of people and the total

disregard of logic in transmuting a continuum into distinctive and separate entities have been awesome and awful.

The same deep social significance can hardly be claimed to prevail in regard to the concept "white-collar crime," but, as I will seek to show, the adoption of definitions that depart from what might reasonably be said to lie at the heart of Sutherland's pioneering work has produced what I see as untoward and unfortunate results. For me, Sutherland meant the term "white-collar crime" to characterize illegal behaviors in the course of their occupation committed by persons in positions carrying power and prestige (Sutherland, 1940, 1949). He most assuredly did not embrace within the category crime by unemployed persons or welfare recipients. Sutherland was, however, notably mute when it came to a core question that reasonably concerns those who followed him: How do you (and why should you?) differentiate offenders who break the same law, say that against insider trading, even if one offender is a corporate executive and the other an unemployed job applicant who happens to overhear confidential information when he eavesdrops while waiting to be interviewed?

In his 1939 address to the American Sociological Society, in which he introduced the concept of white-collar crime, Sutherland stressed (because the prevailing ethos of his vocation so demanded) that he was primarily interested in employing substantive material on white-collar crime to demonstrate the inadequacy of existing theoretical positions. He wanted to show that an Oedipus complex, low intelligence, or similar scientific shibboleths obviously were not responsible for the genesis of criminal behavior because such traits were usually not found in those who commit white-collar crime.

Since Sutherland's day, white-collar crime often has been the rock upon which newly-advanced theories of criminal behavior have foundered, though they nonetheless continue to parade their premises, brushing aside the trenchant criticism of their failure to satisfactorily interpret white-collar crime. They typically do so either by finessing the issue or by some semantic slight-of-hand. "I elliptically assumed as obvious that which was impossible to prove, while proving at length and in detail that which was obvious," one writer all-too-familiar with the process has noted. "It is a technique for which I claim no credit, it having already been brought to a state of near perfection by some of my colleagues" (Wheelis, 1960).

In a similar vein, Thomas Huxley once remarked that there is nothing more tragic than the murder of a big theory by a little fact. But Huxley hastened to add that nothing was more surprising to him than the way in which a theory will continue to live long after its brains have been knocked out (Thomas, 1960). Nothing much has changed since Huxley expressed his astonishment at the obdurate survival patterns of moribund theories. Bernard (1990) has told us why this is so for criminological theories: they are invariably stated, he notes, in a manner that does not allow for categorical falsification or irrefutable proof. Nonetheless, white-collar crime, defined as a category of illegal activity by otherwise highly successful and powerful persons, stands as a formidable barrier against presumptuous attempts to claim that one has an explanation for all forms of law-breaking.

Definition and the Yale Studies

For the remainder of this brief paper, I want to review and critique the definitional basis of recent work by white-collar crime scholars who were housed at the Yale Law School. First, however, I want to convey my high regard for the quality and quantity of the work that grew out of the National Institute of Justice's long-term grant to the Yale group. Anyone writing about white-collar crime has to be deeply indebted to the members of the Yale group for the contributions they made to the field. I also want to say, because it is important to me that it be said, that personally and professionally I have the highest admiration for those members of the group with whom I've crossed paths.

It should also be noted that there is nothing "wrong" with what the Yale group did. Their methods are sophisticated and the results flow with impeccable logic from the definitional premises which guide their research. My disagreement lies with their definition of white-collar crime in those of their studies based on offender populations, again not because the definition is necessarily "incorrect," but, because in my judgment, it dilutes and distorts the forceful theoretical and policy implications of Sutherland's original position.

That issue alone would not have triggered this paper, however. What has intrigued and concerned me is how the definition of white-collar crime adopted in the Yale studies has allowed theorists of the right to surmount the formidable intellectual barriers traditionally imposed by the existence of white-collar crime. At first, such theorists merely ignored white-collar crime,

relegating it to an insignificant status on the ground that public concern lay not with such esoteric offenses but with index crimes: burglaries, rapes, murders, and similar threats to life and property. These behaviors, they argued, constitute the essence of the "crime problem" and satisfactory explanations for criminal behavior could be found in the nature of those who perpetrated such offenses.

Subsequently, fueled by the definition employed and the consequent findings of the Yale studies, such theorists, most notably Michael Gottfredson and Travis Hirschi (1990) on one hand and James Q. Wilson and Richard J. Herrnstein (1985) on the other would be able to maintain that their ideas and their general theories of crime were perfectly congruent not only with offenses of the street variety but also with those of a suite nature. This development seems to me to provide very important grounds to examine most carefully, in both scientific and ideological terms, how we care to delineate what we will label as white-collar crime.

Given the (page) limit imposed on this paper, my consideration of this matter will be in the nature of a suggestive hit-and-run exercise. There is something to be said, as any student of burglary can appreciate, for breaking and entering and then getting out quickly. But, that noted, I need to apologize beforehand for the rapid once-over. The subject deserves better, though I would like to believe that my points, however more nuanced, contexted, qualified, and expanded they might be are essentially accurate and persuasive.

White-Collar Crime and Recidivism: A Prototypical Study

Rather than run amok among the many books and articles produced by the Yale School (see Wheeler, 1993, for a comprehensive bibliography to that time), I want to focus my attention on a recent and more or less representative Yale team publication by David Weisburd and several co-authors (Weisburd, Waring, and Chayet, 1995).

The Weisburd et al. article essentially seeks to demonstrate empirically the error of common wisdom that maintains that white-collar criminals, because of their class position, will be more readily deterred by punishment. The argument, which John Braithwaite and I (Braithwaite and Geis, 1982), among others, have made (but not demonstrated) is that white-collar offenses are calculated, and therefore more readily deterrable, and that the fear of loss of standing is more compelling for persons with business, political, and professional power.

Weisburd and his colleagues, in a statistically sophisticated analysis, show that the recidivism rate for their sample of white-collar offenders differs but slightly from that of street offenders. They conclude that their results demonstrate that the assumption of low recidivism for white-collar offenders "is wrong, at least as regards official reoffending among those convicted of white-collar crimes in the federal courts" (Weisburd et al., 1995).

There are a number of things in the analysis to which I demur. First, I do not read the literature, my co-authored article in particular (since I know it best), as suggesting that a taste of prison will keep white-collar offenders from going back to their old or similar kinds of illegal tricks - though I believe this too is accurate if the offender roster is restricted to heavy-hitters. Instead, what is claimed is that white-collar offenders are likely to be exquisitely anxious about imprisonment and that a perceived threat to themselves by means of the example of what is happening to others will be more likely to deter them than muggers and burglars. That axiom deals with general deterrence; Weisburd and his colleagues, as their title indicates, are concerned with specific deterrence.

My much deeper reservation focuses on what Weisburd and his colleagues define as white-collar crime. Using the Yale data set, they rely on federal prosecutions in selected courts for bribery, embezzlement, income tax evasion, false claims, mail fraud, securities violations, antitrust offenses, and credit fraud. We are offered a profile of some of the demographics of persons caught in this definitional net. "Only" (their word) eight percent of the total sample was unemployed at the time of the offenses and more than three-quarters were working in white-collar jobs. Officers and owners of businesses made up about one third of the sample. Looked at another way (my way), we find that two-thirds of the sample is made of persons who were not in positions of much clout and that a not insignificant number did not even have jobs. In these terms, a Sutherland disciple can most certainly resonate to Daly's (1989) observation when, relying on the same Yale data set to study female white-collar offenders, she found that about one-third of her subjects were unemployed and suggested that for her sample their "socioeconomic profile, coupled with the nature of their crimes, makes one wonder if 'white-collar' aptly describes them or their illegalities."

We have here an honest disagreement, but one that, for reasons indicated earlier, has become an important one. I do not believe that the Yale studies looked at a pure, and probably

not even much of a representative sample of what I regard as white-collar criminals. This being so, it is not too difficult to sift through the white-collar crime literature, from Sutherland onward, and by using a sample notably different from that to which the earlier work referred to prove that it is off target. Had the Yale researchers differentiated their sample in terms of the status of offenders, I would be surprised if they would not have reached a different conclusion about recidivism. If nothing else, upper social echelon offenders are a good deal older than street criminals and this item alone would tend to reduce their reoffending rate.

The Theoretical Sequelae

The foregoing matters have had eddying consequences of considerable significance to our understanding of all criminal behavior and as part of the moral and ideological warfare that has marked several recent attempts to interpret such behavior.

James Q. Wilson at first sought to marginalize white-collar crime, distancing it from what he would portray as the real crime problem. Predatory crime was pictured as far more serious than antitrust violations. Besides, wrote Wilson (1975), "I am rather tolerant of some forms of civic corruption (if a good mayor can stay in office and govern effectively only by making a few deals with highway contractors and insurance agents, I do not get overly alarmed)." It would be difficult to locate a statement smugger and more embracive of elite criminals (providing, of course, that they are "good") than this one.

Later, seeking to locate the cause of crime in biogenic factors, Wilson and Herrnstein in Crime and Human Nature, a book that commanded widespread public attention, confront the question of how white-collar crime fits with their position. Had they adopted Sutherland's definitional stance the flaws in the argument that they make that they truly are interpreting all crime would have become self-evident. Relying on the Yale data and Gottfredson and Hirschi's proclamations that there truly is no such distinctive category as white-collar crime, they maintain that blacks are overrepresented in the ranks of white-collar offenses to much the same degree as they are in "on the street" offenses (Wilson and Herrnstein, 1985).

For their part, Gottfredson and Hirschi (1990), in a characteristically feisty contribution, insist that their general theory, which traces the genesis of criminal behavior to the absence of self-control, easily incorporates white-collar offenders. For them, offenders are "impulsive,

insensitive, physical (as opposed to mental), risk-taking, short-sighted, and non-verbal." To squeeze white-collar criminals into this formula they rely upon the Yale definition and data regarding the behaviors. Doing so allows them, as Tittle (1991) has observed, "to depict white-collar crime as irrational and disorganized, despite much evidence that many corporate entities, government officials, and high-status individuals use fraud and force in carefully planned ways to enrich themselves and preserve their positions." Obviously a bit exasperated by this sort of thing, Tittle (1991) adds: "Characterizing all crime the same way seems to reflect the authors' peculiar confrontational approach to criminology, rather than empirical or logical necessity" (see also, very notably, the critiques by Steffensmeier, 1989, and Benson and Moore, 1992).

Conclusion

I want to conclude with four points. First, I believe that for many reasons, some of which I have indicated elsewhere (Geis, 1992), it is scientifically and ideologically worthwhile to retain Sutherland's focus on the rich and the powerful as constituting the group from which white-collar offenders emerge. Among the definitions in the literature, the one that I prefer is that by Albert J. Reiss, Jr. and Albert Biderman (1980):

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

This definition presumably would have to be extended to embrace offenses in which a corporation or other organization commits a criminal violation. Personally, I believe that it would be sounder both on juridical and public policy grounds to allow organizations to be prosecuted only civilly (Geis and DiMento, 1995). But since the law deems otherwise such anthropomorphic acts must be located as part of white-collar crime or in a nearby definitinal niche.

Second, I would suggest that if analyses are to be based on legal categories it would be a preferred strategy to subdivide offenders within the category in terms of their status, a matter

which almost inevitably influences their modus operandi and other aspects of their illegal behavior.

Third, I believe that it has proved and will continue to prove feckless to seek to locate the holy grail of a general theory of criminal behavior or of white-collar crime behavior. The results of such an effort routinely are largely tautological and banal. In my more irresponsible moments I can persuade myself that it would be just as easy to construct a theory that blamed crime on "overcontrol" as it is to maintain that absence of self-control lies behind law-breaking.

My final point therefore, is that we will do much better if we concentrate our research attention on relatively homogeneous forms of white-collar violations rather than on the general category. This position endorses the belief of Anthony Giddens (1976), among others, when he notes that those who are yearning for "the arrival of a social scientific Newton" are going to be disappointed. They are "not only waiting for a train that won't arrive," Giddens says, "they're in the wrong station altogether." "Theories and concepts emerge in social science like popcorn," he further observes, "puffed up by their own steam," and defended by "warring factions which group themselves under the umbrella of their own singular visions."

My theoretical advocacy is the same as that adopted by Sutherland before he succumbed to a delusion of interpretative grandeur and enunciated his theory of *differential association* as the explanation for all crime:

Most of the scientific work in criminology has been directed at the examination of crime in general. Crime in general consists of a great variety of criminal acts. These acts have very little in common except that they are all violations of the law. They differ among themselves in the motives and characteristics of the victims, the situations in which they occur, the techniques that are used, the damages which result, and the reactions of the victims and public. Consequently, it is not likely that a general explanation of all crimes will be sufficiently specific or precise to aid greatly in understanding or controlling crime (Sutherland, 1934).

Sutherland then went on to say that understanding crime can be analogized to understanding disease: "Some general theories of diseases have been stated and are useful," he noted. "The germ theory of disease is a very useful general theory, but even this theory does not

apply to all diseases. Progress in the explanation of disease is being made principally by the studies of specific diseases." Therefore, Sutherland concluded, "It is desirable to concentrate research on specific crimes" (Sutherland, 1934).

This, it appears to me, is eminently sound advice. It should be taken, I suggest, in tandem with the warning that if white-collar crime does not continue to highlight power and status it no longer will be able to serve as a very powerful scientific and polemical weapon in the ideological debates that currently mark commentaries about criminal activity in our society.

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White Collar Crime, Computers, and the Legal Construction of Property

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Abstract

The rapid expansion of computerized access to information has proved to be a boon to business, industry, and the general public. It has also proved to be a fertile arena for the development of new forms of white collar crime. This paper explores the definitional problems posed by these new crimes, and the efforts to protect computerized information from unauthorized access and use. In particular, it examines how computerization and electronic transfer of information have challenged long-standing *conceptions of property*, particularly intellectual property. The core arguments presented here are 1) that economic development results in periodic revolutions in the form in which value occurs; 2) that legal strategies to protect new forms of value require legal redefinition's of what constitutes property; 3) that the legal definitions frequently lag behind the technological changes that animate them; and 4) that we are currently in the midst of such a period of redefinition in which the legal meaning of property and the mechanisms to protect it are contested terrain. These themes are developed through an examination of emerging state and Federal legislation governing computerized white collar crime, and an exploration of how specific cases frequently problematize existing definitions of electronic property.

"Someday in the near future, a judge will ask a hacker why he breaks into computer networks, and the hacker, evoking the ghost of Willie Sutton, will answer, 'Because that's where the data is [sic]'" (Willmott, 1995:69)

Introduction

Since the late 1970s, the expanding computerization of industry, government, finance, education and social life has dominated technological development both in the United States and worldwide. The introduction of digital technologies for creating, manipulating and exchanging information and data has profoundly altered how the world communicates, designs, finances, markets, produces, publishes, writes, and even makes love.

Computerization has also profoundly expanded the possibilities for crime and social harm. The computerization of economic, political and social life has opened the door to an every-growing array of computerized stratagems for “crime.” I bracket the term “crime” here because the continued rapid development of computerized forms of harm has clearly thrown several rather nasty monkey wrenches into the legal clockwork by which we define crime. Computerization has created a post-modern mode of communication and information transfer that enables potential wrongdoers to be everywhere and simultaneously nowhere at once. This post-modern communication system makes possible such things as trespass without bodily intervention, taking without removing, copying without duplicating, and theft without victim knowledge or even victim loss. These new computer “crimes” pose the additional challenge of being able to transcend state and national boundaries in milliseconds.

The emergence of new forms of “computer crime” has been widely noted in the popular, the academic, and the trade press. While many specific variants of “computer crime” have been discussed in these settings, two more general issues have received less attention. One is the fact that most (although not all) computer crime is *white collar crime*, and as such poses the same problems of definition and control characteristic of more familiar types of white collar crime. The other is that the cultural-economy through which we define, first the nature of property, and then, design strategies for its protection, is animated largely by modernist conceptions of property that are ill-suited to thinking about the potentials for computer crime.

My purpose here is to offer some preliminary thoughts on these issues. I will first consider the “white collar” nature of computer crime and then examine the definitional problems computer crimes pose for a modernist cultural-economy of property in a post-modern world.

Computer Crime as White-Collar Crime

The concept of “white collar crime” is a much debated thing, to which the very occurrence of this conference is testimony. As Kramer (1984) notes, even in White Collar Crime, Sutherland, arguably the founding document of white collar crime studies, began with a definition that focused on the individual characteristics of the wrongdoers, but ended by analyzing corporate-level rather than individual-level data. Since then lawmakers, lawyers, investigators and academics have argued over the nature of white collar crime. What we *can* say about white collar crimes, despite their illusive definition, is that they are most often:

1. Committed by individuals who are employed in positions other than those of wage-hour laborers, using skills and access related to their position to commit their crime.¹
2. Involve either violations of the trust invested in them by their employers or others who grant the offender the opportunity which makes the crime possible, or they are a violation of the public trust invested in the organization on whose behalf the crime was committed.
3. Have as their immediate goal to advance the economic and/or political position of the wrongdoer, or the economic and/or political position of the institution on whose behalf the wrongdoer committed the offense.
4. Are usually “administratively segregated” from more prosaic “common” crimes (Sutherland, 1949). This means that they are rarely investigated by the same police agencies that handle economic crime, and that those accused of white collar crimes typically are not subjected to the same processes nor risk the same punishments or stigmatization associated with common crimes.
5. Have far less labor-power and funding devoted to their identification and control than do common crimes.

One might note that items 1 through 3 are concerned with characteristics of the offense itself - the wrongdoer, the context, and the motive - while the last two items focus on the legal response to the crime. One might furthermore observe that the way in which we respond to a

¹ The rapid expansion of rational-bureaucratic organizations in the later 1950s and 1960s may have rendered Sutherland’s conception of “high social status” somewhat archaic. Today, the proportion of the population employed in salaried “desk jobs” which would have been a mark of “high social status” in Sutherland’s time, have rendered much white collar work merely commonplace lower rungs on the middle class ladder.

type of crime does not tell us what the crime *is*, and consequently should not be part of its definition. I would argue, however, that the nature of a crime is determined by how we respond to it. As social constructionists have long observed, there are no objective measures of whether or not an act is normal, deviant, immoral, or criminal (Spector and Kitsuse, 1977). The distinction between whether an act is criminal or non-criminal is a social determination. For some time criminologists have noted that many white collar or corporate crimes cause death, injury or illness, impose financial loss, or threaten the emotional security of their victims in numbers and amounts that exceed “common” crimes (Michalowski, 1985; Friedrichs, 1996). Yet it is the ordinary street crimes that are the primary focus of the justice system, and that also provide the most basic topic of popular entertainment and news. By comparison, white collar and corporate crime receive only limited attention. It is sometimes argued that this is because the public has more *fear* of common crime, and feel more outrage toward its perpetrators. But this itself is a social judgment based on cultural processes of acquiring information, assessing risk, and assigning blame. While it is understandable that most people would rather lose a couple of hundred dollars to price-fixing that have their home burglarized, it is the social processes of information construction and communication that leave many people with an exaggerated sense of their risk of being burglarized, and a parallel lack of awareness of the hundreds, and perhaps thousands, of dollars they will certainly lose *every year* due to corporate and white collar crime. I am not suggesting there are no differences between common crimes and white collar and corporate crime. Just as homicide differs in motives and techniques from shoplifting, so do crimes committed in a white collar context or with white collar techniques differ from crimes committed with street wisdom or street techniques. At the same time, however, I want to suggest that any understanding of what constitutes white collar crime must include the mode of response to it as part of the essence of white collar crime, rather than as simply post-definitional control strategies. Just as police cars, handcuffs, and urine-dank holding cells are part of the *meaning* of ordinary street crime, audits, subpoenas, and injunctions are part of the meaning of white collar crime.

The majority (but again, not all) computer crimes fit the central characteristics of white collar crime enumerated above. I want to review these briefly.

Computer Crime as Insider Crime

The vast majority of computer crimes are committed by individuals in the context of their employment. According to computer security experts, 90 percent of computer crimes occur inside companies or other bureaucratic institutions, not from outside “hackers” or other criminals outside of organizations. Nearly every major U.S. corporation reports having been victimized internally by computer crime between 1990 and 1995, and 43 percent of these reported having been victimized twenty-five times or more (Anthes, 1995). Current estimates of the loss due to computerized embezzlement alone range from \$3 to 5 million annually (Hafner, 1990).

Most of the evidence about the nature and extent of computer crime is compiled by computer security experts whose primary task is to protect business *from* computer crime. This means that current estimates of the extent of computer crime are silent about computer-related crimes committed, not against, but *on behalf of* corporations or other bureaucratic institutions by their employees or confederates. Consequently, most discussions of computer crime focus only on the “white collar” component of upperworld computer crime, and give little attention to the corporate or political dimensions of upperworld computer crime by insiders. If we were to add all the harms and injuries committed on behalf of business, industry, government and other social institutions using computer technology to the more frequently reported crimes committed against them, insider computer crime would likely dwarf outsider computer crimes by even more than the current 9 to 1 estimate.

Despite the overwhelming evidence that the bulk of computer crime, and certainly the bulk of serious computer crime, is insider crime, the dominant image of the computer criminal remains centered on such things as the solitary *hacker* breaking into computers for techno-thrills or some more nefarious purpose, or the slick operator using computerized technology to dupe unsuspecting citizens. It is revealing that the first, and to date the most highly publicized prosecution under the 1986 Computer Crime and Computer Fraud and Abuse Act, the nation’s first comprehensive computer crime law, focused on an outsider crime. In this case Robert Morris, a 24-year old graduate student and son of a renowned computer security expert, was prosecuted and convicted in 1990 for writing a computer program that disrupted several thousand computers via the Internet in 1988. The image of the typical computer criminal as just an ordinarily-situated and motivated criminal who just happens to use a computer is further

enhanced by the tendency to deploy the language of ordinary street crime in the discourse on computer crime. Phrases such as “a SWAT team in cyberspace” (Ramo, 1994), “hacker invasion” (Belts, 1993), “cops on the I-way” (Godwin, 1995), “hacker dragnet” (Schwartz, 1990) and “data rape” (Szwak, 1995) contribute to an image of computer crime as a product of the same “criminal element” that causes street crime.

The attention that both enforcement agencies and the press devote to hacker crimes runs counter to the U.S. Office of Technology Assessment’s conclusion that “the more significant security problem is abuse of information systems by those authorized to use them, rather than by those trying to penetrate the systems from the outside” (Hafner, 1990). However, just like other insider white collar crimes such as embezzlement, tax evasion and so forth, insider computer crimes are seldom reported by businesses. Organizations, particularly financial institutions, fear negative publicity and loss of consumer confidence should it become public knowledge that they are vulnerable to computerized thefts. And institutions seldom report computer crimes committed on their behalf. So we are left with a type of crime that is committed mostly by insiders, but that is imagined by the public, is handled by law enforcement, and studied by academics largely as an outsider offense. Moreover, because the outsider fits more comfortable with our image of the criminal, particularly in an era when there is so much attention given to the so-called “predator,” (Websdale, 1996) outsider computer criminals make for more interesting news stories and more titillating academic writing.

Violation of Trust

Insider computer crimes (and these are the vast bulk of computer crimes) normally employ information and access in some way that either 1) is not a legitimate part of a person’s organizationally or legally authorized duties or privileges within an organization, or 2) is not an appropriate fulfillment of the trust given by the public or the polity to the organization. When insider computer criminals use the knowledge and/or access they enjoy as part of their employment to victimize their employer, they are clearly violating the trust invested in them as workers. When they utilize their skills and/or access to advance the interest of the company in some criminal way, they violate the legal trust invested in them as citizens to behave in accordance with the law. In addition, when insiders commit computer crimes to advantage their

organization - for example creating false clients to improve their financial appearance to potential investors - they are also violating the broad social trust that we invest in our economic institutions in return for granting them the legal right to do business in the society (Friedrichs, 1996). Similarly, when government insiders utilize illegal computer schemes for the sake of political gain - for instance (without warrants) conducting surveillance of computer-recorded citizen activity such as telephone calls - the fundamental trust that citizens should be able to have in their political institutions is violated. Indeed, it may be this aspect of insider white collar crimes, computerized or otherwise, that represent the gravest threat posed by upper-world offenses. By destroying trust in our private and public institutions, these crimes may have a greater potential for eroding the social foundations on which the society rests than any other type of crime.

Personal or Organizational Enhancement

Most computer crimes - with the interesting exception of certain hacker crimes - are motivated by the same goals that animate other forms of white collar crime. This is the desire to utilize the access, knowledge, and privilege of some organizational position for either economic or political gain. This gain can flow directly to the computer criminal, as in the case of bank employees who transfer several million dollars to themselves, stock brokers who use complex computer transactions to hide their own insider trading, or the rising corporate executive who combs computerized company personnel documents for "dirt" that can be used to neutralize office rivals. On the other hand, the direct beneficiary of a computer crime may be an institution, as in the case of a comptroller who manipulates inventory records to minimize tax liability, or the programmer who helps his company circumvent copyright law by creating a slightly modified version of a competitor's software or computer architecture in order to minimize R & D costs. Whether the immediate gain is institutional or organizational, because most insider computer crimes occur from the same motivations that have been the basis for white collar crimes since the emergence of white collar work, they pose the same problems of identification and control typical of white collar crime generally.

Administrative Segregation of Computer Crimes

As insider white collar crimes, most computer crimes are handled by the same agencies and in the same manner as other white collar offenses. The use of computers to commit many typical white collar crimes such as embezzlement, copyright or patent infringement, tax evasion, political dirty tricks, or price-fixing are computer crimes only insofar as computerized technologies for the access, manipulation, storage, and retrieval of data create novel possibilities for the commission of these crimes. Expanding computerization of all organizational functions may mean that eventually there will be few white collar crimes that will, or even could be committed without resort to computer technology. Nevertheless, the intent, character, and outcome of these crimes remain the same as their pre-computer counterparts. It is their *modus operandi* that has changed. Thus, there is no reason to anticipate that computer-facilitated white collar crime will not continue to enjoy the same “administrative segregation” given to other forms of white collar crime.

There are three exceptions to the likely administrative segregation of computer crimes. One of these involves the use of a computer to commit a common crime. Using a computer to access architectural plans in order to plan a “real” bank robbery involving physical intrusion, tracking sales records of an auto dealership to facilitate thefts of high demand cars in almost new conditions, or using the Internet to solicit children for underage sex are examples of computer usage in common crime. These offenses will most likely be handled as ordinary crimes, and their perpetrators treated as ordinary criminals - as the “scumbags” that populate police talk, and the “criminal element” that politicians are so fond of excoriating. Their similarity to the normative “criminal” makes these computer criminals easy targets for the public outrage directed toward street crime.

The other two exceptions are crime committed by “hackers.” One is the profit-seeking hacker and the other is the thrill-seeking hacker. Both types of hackers fit the “white collar” image in terms of the social characteristics of the offender - it takes a relatively highly educated and highly skilled person to commit most serious forms of computer crime. For-profit and for-thrill hacker crimes, however, lack two other characteristics of typical white collar crimes; they are not insider crimes, and they are not normally violations of any explicit trust granted to the offender by the organization. For-profit and for-thrill hacker crimes differ when it comes to

motive. The for-profit hacker is normally motivated by one or more of the same things as the insider; personal economic or political gain, advancing the fortunes of some institution or perhaps revenge against an institution. Ironically, the most widespread cultural image of the hacker - the lone techno-freak who breaks through computer security systems in order to take an illegal walk through their data bases for the sheer adrenaline joy of it all lacks even the typical motives of direct individual or organizational material gain. Yet this type of offender is more likely to be seen and administratively handled as a "real" criminal than the corporate executive who manipulates a client data base in order to convince a corporate lender of the sound financial future of her employer, even though the evidence of actual harm resulting from their respective crimes points away from the thrill-seeking hacker. I will suggest, based on my discussion of the cultural economy of computer crime that follows, that these thrill-seeking hackers may even be viewed as ultimately more dangerous criminals than the for-profit hackers because their actions are not disciplined by the normal definitions of value that motivate even the for-profit hackers.

Limited Enforcement Attention

Like white collar crimes, computer crimes - precisely because they are most often white collar crime - will not be the target of extensive enforcement efforts that are in any way commensurate with their numbers or the harm they cause. Moreover, as previously mentioned, some portion of the enforcement efforts directed toward computer crime will be directed away from the most prevalent and harmful versions - insider white collar versions of computer crime - and toward the outsider crime. This will be particularly true if the dominant cultural image of the computer criminal as the thrill-seeking hacker rather than the statistical reality of the computer criminal as a corporate employee retains its currency.

The Cultural-Economy of Property and Law

In the previous section I suggested that along most dimensions, the vast bulk of contemporary computer crime is indistinguishable from what has typically been considered white collar and/or corporate crime. Thus, all of the issues and problems of defining white collar crime and its variants apply no less to computer crime. There is one important way, however, in which computer crime - both insider and outsider varieties - differ fundamentally from previous forms

of white collar and corporate crime, and from crime in general. The target of computer crimes, the offense itself, and the methods used to commit it involve a novel phenomenon that I will call *insubstantial electronic value*. The novel character of value encoded in an insubstantial electronic form underlies much of the current difficulties faced by those concerned with defining and controlling crimes committed on or with computers. It is here that the cultural-economy of value and its relationship to our understanding of social harm comes into play.

By the cultural-economy of value, I am referring to the dynamic intersection between the material world of production and consumption, on the one hand, and the cultural processes that assign meaning and value to the material world in which these process take place. In this, I am guided by Hoebel's (1973) observation that what a society considers to be property is not a natural or inevitable categorization; it is a social construction.

The creation of digital forms of knowledge, data, and communications created a new potential for value but one that was poorly served by our contemporary social and legal definitions of property. To the extent that electronically digitized forms of value disordered the taken-for-granted about the nature of "property," it challenged the system of control strategies that have been deployed to protect established forms of property, as well as the authority structures these forms represent and reproduce. What I propose is that the emergence of insubstantial electronic value posed a dilemma for all those concerned with the possibilities for computer crime. Either the new insubstantial electronic value had to be subsumed under the older definitions of property embedded in the existing cultural-economy of value, or the very foundation of the cultural-economy of value would have to be changed to incorporate a new non-property form of value. This is not a dilemma that can be directly observed, but rather one whose outlines can be discerned from the attempts to construct and enforce computer crime laws beginning in the 1970s. Before moving into the specifics of the efforts to resolve this dilemma, however, I would like to situate my inquiry within its larger meta-theoretical context.

Theorizing Legal Forms

One of the most difficult tasks faced by those who attempt to analyze the social construction of laws and law enforcement practices is deciphering the relationship between the behavior of actors and the social context within which they act. The route to this understanding

lies beyond an exclusive focus on those who advocate, create or enforce laws. If all the motives underlying why people contribute to a particular system of legal control are laid end-to-end, they might prove a voluntaristic explanation of *how* those laws came into being. They would not, however, explain *why* those laws came into being. The sociological analysis of legal processes necessitate an appreciation of both the purposive action of human agents and the social forces which render those actions purposive. What I am suggesting is that concerns and fears about property and threats to it, and the laws and law enforcement strategies created to allay these concerns are expressions of a cultural-economic framing that informs individuals *a priori* about how to understand such things as property, ownership, authority, and authorship.

A taxonomy of theories of law-making can be constructed around the role assigned to human agency in the law-making process. According to this criterion, theories of law-making would be classified as either *subjectivist* or *objectivist*, depending on the degree of autonomy they assign to the consciousness of participants in the law-making process (Therborn, 1970). Based on this classification, pluralist and both Weberian and instrumental Marxian theories are subjectivist. On the other hand, structural Marxism, cognitive structuralism and some versions of post-structuralism are objectivist in character.

Despite their differences, pluralist, Weberian, and instrumental Marxian theories of law-making generally assume that laws result from deliberate and correctly-conscious attempts by individual *subjects* to advance their interests. These theories share a common focus on the questions of whose interests are represented in the law, and by what strategies did they succeed in having those interests codified. The question of how individuals come to understand their “interests” does not play a prominent role in these formulations.

Structural Marxism, cognitive structuralism, and post-structuralism, by comparison, are *objectivist* theories. That is, they tend to treat individual consciousness and the awareness of interests as objects of external social forces, and thus, as topics to be investigated. According to these approaches, history, and thus all human action, is the product of social forces not normally recognized or understood by historical social actors (Benton, 1984). Structural Marxism, following the basic theoretical parameters set forth by Althusser (1971), locates these motive forces in the economic, political and ideological arenas. That is, law-making can never be fully understood in terms of individual consciousness and the subjective pursuit of interests as framed

by that consciousness. It is instead, the fundamental characteristics of social organization and the forms of class conflict they engender that are the true underpinnings of the law-making process in the modernist state. Within structuralist theories of law-making, individuals or interest groups are seen, not as subjects, but as actors filling roles (Althusser, 1971; Poulantzas, 1973) and speaking lines (Habermas, 1973), authored by the political, economic, and ideological forces that comprise the social system. From a structuralist perspective, a complete explanation of law-making must account for the motives and actions of actors through an analysis of the social arrangements in which the (necessarily) dependent consciousness of these actors is constructed.

Cognitive structuralism and post-structuralist theories shift the emphasis away from the specific and tangible institutions of politics and economics in favor of increased attention to the power of ideological processes to shape both consciousness and action (Sumner, 1979). Cognitive structuralism, which encompasses semiotics and French structuralism, theorizes ideology (defined as the deep linguistics or symbolic framework within which consciousness operates) as a force equal in importance to “substructural” political-economic forces in shaping social reality. Post-structuralism/deconstruction, when applied to law and state power by writers such as Foucault (1979) and Pfohl (1987), seeks to reveal the ways in which power and authority, as constructed within a given political-economic system, manifest themselves and are reproduced through the ideological construction of consciousness and daily rituals of authority, dominance, and submission.

Instrumental and Ideological Consequences of Law

Both subjectivist and objectivist theories offer insights into the process of law-making. Neither alone, however, is sufficient. Subjectivist theories generally overlook or undervalue the compelling power of an established set of social arrangements to shape the consciousness and thereby influence the behavior of individuals, while objectivists theory tends to obscure human agency to the point where novelty and change become difficult to explain. The link between these two views of law-making resides in understanding the role of ideology in providing the framework within which social action takes place.

Law as Ideology

Law operates in two synchronous realms, the instrumental and the ideological or “symbolic” (Gusfield, 1963; Marx, 1974). Where criminal law is concerned, the instrumental realm is characterized by the self-conscious desire of law-makers to enable the capture, prosecution, and punishment of those who threaten either the general social order or the interests of some powerful sector of the polity - although the latter is often understood as the former. According to this view, criminal law in a capitalist society serves two instrumental functions. The first is to control those who threaten the kinds of property relations that are necessary for a capitalist market-economy to operate (Quinney, 1977). This function produces the panoply of criminal laws protecting property rights and the alignment of these rights with capitalist relations of production (Chambliss, 1964; Hall, 1954). The second instrumental function of law is to secure the authority of the state, a task of law in all state systems, regardless of their political-economic base. At the instrumental level, law secures state authority by prohibiting and attempting to control most forms of citizen-initiated violence, insofar as such acts 1) usurp the exclusive right of the state to authorize violence, and 2) bring into question the state’s legitimating promise that it will guarantee social peace (Michalowski, 1985).

The ideological realm refers to the role of law in defining 1) the terms within which the discourse on “rights” takes place, and 2) the content of that discourse. Written law in modern state societies authorizes specific forms of social relations and prohibits others on the basis of certain pre-existing *natural* rights which are believed to exist independently of the social and political process by which “rights” are defined under law. In contrast to this position, Pashukanis (1951) argued that rights only emerge as political and social realities when the law speaks of them. While individuals may engage in political struggles for “rights” that they believe to be inherent or “God given,” as a practical matter these rights only exist when they become legally and politically accessible. Or as Hirst (1979) writes, “[law] constitutes the very subject whose existence it refers to...” The “rights” granted to individuals define not only what people can properly do, but also what they can do to others, and what others can do to them. In short, the political construction of rights define the acceptable limits of social relations, and in doing so establish the basic framework of what one can expect out of being a person in that world. That is, they serve as the basis for the ordinary consciousness of social actors in the society.

Criminal law is a subtext of this wider discourse on rights. Through its designation of what actions can be punished by the state, criminal law dramatizes and solidifies both the practical meaning and the practical limits of the language of “rights.” Laws of theft, for instance, serve the instrumental purpose of enabling the prosecution of thieves, while simultaneously re/producing and re/presenting the hegemonic discourse on property rights.

While all laws have both instrumental and ideological consequences, it is also possible to identify instances when one or other of these roles is more salient. The criminalization of “vice” for instance, often has ideological consequences that are more important than the actual control of the targeted behavior (Erikson, 1966; Gusfield, 1963; Helmer, 1975). I suggest that computer crime laws, likewise, have important ideological consequences that extend beyond their obvious purpose of protecting the insubstantial electronic value inside computers. Their first and most important accomplishment was to bring insubstantial electronic value under the discourse on property rights characteristic of the cultural-economy of world-wide, post-industrial capitalism.

Computer Technology, Property, and Law

The development and later deployment of digital technological had, by the later 1970s, led to the widespread storage of all manner of valuable information in digital form within computers. It also led to an extensive communications network that had the potential of ensuring that anyone with access to a computerized communications system could potentially gain access to every computer linked to it. These computers, however, were not merely high-tech filing cabinets. Because the value stored in computers was volatile - it could be erased, changed, moved, communicated, or altered by something insubstantial as the passage of electrons - it represented an entirely new form of property. Furthermore, the explosive potential for unwelcome access to computer-resident information posed a broad challenge to the hegemonic construction of property and authority relations. It was this challenge that provided the cultural context within which new computer crime laws and strategies for controlling computer crime were created.

Technological Novelty and the Law

The emergence of new technology almost always provokes the creation of new laws. The development of printing gave birth to the laws of copyright (Latman, 1979). The development and deployment of the steam locomotive led to an extensive body of legislative and case law at both the state and Federal level designed to control the new forms of physical, economic, and political harm that followed in the wake of the burgeoning railroad industry (Commons, 1924; Friedman, 1978; Kolko, 1965). The technological developments that made possible the telegraph, telephone, photography, radio, television, automobiles, aircraft, genetic engineering and so on have likewise spawned their own body of law. It is not only the immediate physical manifestations of the new technologies that demand legal adaptation. Technologies also promote new forms of social organization that too must be accommodated in the law. The 19th century development of technologies of mass production and mass transportation were necessary (although not sufficient) antecedents to the rise of the trust, and later the modern corporation, which in turn animated a fundamental reconstruction of U.S. law (Sklar, 1988).

Students of law often limit their analysis of these changes to their legal implications. Bigelow (1985), writing about computer law says, for instance, “each new technological advance creates new *legal problems* and calls for reevaluation of old concepts” (emphasis added). These problems, however, go far deeper than the law. New technology “creates legal problems” precisely because it threatens to disrupt established social relations. New technologies generate ambiguities with respect to the rights and liabilities of both those who claim ownership and/or access over the new technology and those who will be affected by it.

The ambiguity of new technology threatens to disrupt social relations in two arenas. The first area concerns the potentiality that some new technology will disrupt existing economic relations. The potential for ruinous competition over radio airwaves, for example, precipitated the creation of a licensing system for radio stations to determine who had the “right” to specific frequencies (Barnouw, 1966). The technology for photographic reproduction necessitated new laws of copyright to establish the legal rights of both those who owned this new technology, and those whose images might be appropriated through the use of photography (Edelman, 1979). In both cases emergent forms of value - radio frequencies and photographic images - had to be

situated within the established discourse on property rights before the economic problems posed by these new technologies could be resolved.

The second problem area concerns the potential for new technology to disrupt established patterns of authority and dominance. The movable type printing press created not only new property and a new industry, but also threatened to destroy the control over “The Word” that had been central to the hegemony of the Roman Church. Attempts by the Roman Church to keep the new technology of printing from disrupting its hegemonic control over scriptural interpretation ultimately failed. This failure played an important role in the eventual collapse of the entire feudal mode of production because it crippled one of feudalism’s critical ideological supports, the routinized acceptance of a hierarchical order ordained by God and overseen by the “one True church” (Rifkin, 1985).

The steam locomotive as a form of interstate commerce and transportation likewise threatened to, and ultimately did, reduce the powers of individual states to control and regulate economic relations within their borders (Commons, 1924; Kolko, 1965). Similarly, in its early years, the automobile generated popular concern because of its perceived ability to weaken community ties, and in particular for its potential to disrupt established patterns of parental authority over young adults (Jeansonne, 1974). And the emergence of radio required, not only the above mentioned need to allocate air wave “ownership,” but also a perceived need by the government to control the “moral” and political content of what was broadcast. Similarly, the emergence of computerized communication in the form of such organs as the Internet and the World Wide Web have created the potential that everyone can become their own writer, editor, publisher, director, and producer - bypassing both the hegemonic control over mass communications enjoyed by the mass media industries, and the long arm of the laws that currently regulate communications.

In sum, technological innovation remains troublesome until it is firmly lodged within the established ideals and practice of productive relationships, economic exchange and social authority that constitute the cultural economy of a society.

Computers, Property Rights, and Social Relations

The sudden and increasing computerization of U.S. business, industry, and government, represented a technological innovation of grand proportions. Fueled by the microelectronics revolution and a steady improvement in the ratio of computing power to price, by the early 1970s institutions in both the public and private sectors began increasingly to rely on computers for their day-to-day operations. While this expansion is well-known, a few facts might be illustrative.

By 1985, the value of computers and related equipment produced in the United States had reached \$63 billion dollars. This represented 63 percent of all U.S. manufacturing in electronics, and nearly 10 percent of *all* manufacturing in the United States that year. The value of computer and computer-related production had been predicted to double to just under 20 percent of all U.S. manufactures by the late 1990s (Suby, 1985). Moreover, these figures underestimate the role of computer production in the U.S. economy since they do not include the value of computer and related electronics produced by overseas operations of U.S. companies (Grunwald and Flamm, 1985). Another indicator of the expansion of computer technology is its effect on employment. According to the Department of Labor, “employment of computer workers more than doubled between 1970 and 1980, growing from 676,000 in 1970 to 1,455,000 in 1980. That was nearly five times the average growth for all occupations in the economy” (Bureau of Labor Statistics, 1985a). The Department of Labor also predicted that “employment in computer occupations [systems analysts, programmers, computer and peripheral equipment operators, key punch operators, and computer service technicians] is expected to rise...to 2,140,000 in 1990, an increase of 47 percent [over the 1980 level]. This was nearly three times as fast as the expected rate of growth for all occupations in the economy” (Bureau of Labor Statistics, 1982).

As early as the late 1970s computer-related design and computer controlled manufacturing had become commonplace in most heavy industries (Bureau of Labor Statistics, 1985b). From that time forward, computerization penetrated almost all levels of production, distribution, management, governance, and communication.

Law and the Protection of Computerized “Property”

As both an element contributing directly to the production of goods and services, and as an industry itself, computers are clearly one of the forces of production in contemporary society (Inverarity, Lauderdale, and Feld, 1983). As such, we should expect computers to receive protection under the law just as any other element of production. It is also clear that at the moment of their introduction into modern society, computers were already protected under the established rights of property, as concretized in a variety of laws prohibiting theft, damage, and misuse of property, productive or otherwise. As *machines*, computers enjoyed the full protection accorded to property under U.S. law (*Triangle Underwriters v. Honeywell*, 1979). The established social relations of property, created and validated over centuries of capitalist legal evolution, were perfectly capable of incorporating the computer-as-machine into the legal matrix. Legally, computers *as physical property* represented no novelty.

The real novelty of computers resides in their function as the *site* for the production and storage of insubstantial electronic value in the form of information and knowledge, and as the central tool for design, production and communication. The threat of social disruption posed by computers arises not from what computers are, but from what they do. The concern is not that someone might steal the computer, but that someone might gain access to what is inside the computer, that is, to the labor that has been, or might be, accomplished with the computer.

Should someone steal the contents of a safe, or desk, or filing cabinet, the items taken, in most cases, would be protected by existing laws of theft (*American Law Institute*, 1978). So why did the emergence of insubstantial electronic value lead to new laws? The answer to this question lies in the fact that at the outset of the computer revolution, the electronic information inside computers, although a potential source of value and authority, existed in a legally ambiguous position with respect to 1) the rights of property, and consequently 2) the role of the state in protecting that property. The *potential value* and the *potential authority* of electronic information could not be fully enjoyed until these potentials were expressly recognized and protected under law.

Protecting Property Relations

Information inside a computer represents a novel form of value. Electronic information exists, not as a tangible, material entity, but as nothing more than a volatile pattern of electrons arrayed in patterns of open and closed gates to form intelligible numerical or textual symbols. Information, documents, and data inside computers, as well as the digital communications that flow between them, exist in a form that can be “stolen” without ever being removed, can be altered without being touched, and can be distributed without being reduced.

The new form of unauthorized “taking” made possible by computers not only fails to fit the common law concept of “taking and carrying away,” it also lacks any element of trespass in the ordinary, physical sense. The “taking” of information from a computer bears a superficial similarity to industrial espionage or other forms of spying that involve copying, but not removing, valuable documents. However, these forms of theft usually require some form of unlawful physical entry by the body of the thief into the place where the information is kept. In contrast, taking information from inside a computer does not require the putative thief to engage in any unlawful or questionable *physical* entry into sites of production. Unauthorized access to computer-based information frequently takes the same form as the information itself, a volatile pattern of electronic messages. Unauthorized electronic access can be gained over the telephone, from a terminal, by intercepting messages carried on telephone lines, or even through the interception of microwave communications (Landreth, 1985).

The real problem posed by computers was that they could be the targets of *disembodied* crime while the cultural economy of capitalism and the law that flowed from it had, for the most part, constructed property crime as an embodied act.

The pre-computer legal system was not without laws that could have been applied to those guilty of unauthorized computer access. Statutes prohibiting theft of services, wire fraud, industrial espionage, illegal entry, and ordinary theft were all used in various instances to prosecute computer crime (Stern and Stern, 1983). Nevertheless, both the media and computer security advocates often spoke about the problem as one of information thieves whose depredations could not be controlled with existing laws. In one such lament, *Business Week* (1982) claimed that even if information thieves are caught, “it is not always easy to prosecute them. Larceny means depriving someone of their possessions permanently. Can a person be

tried for stealing a copy of information when the supposedly stolen information remains in the computer?” Similarly, Mano (1984) complained, that one “might as well play billiards with a sash weight” as try to control computer abuse by applying existing laws to this new threat. The real problem was that the existing statutes did not expressly confront the disembodied nature of computer crime, nor did they *specifically* define computer-based information as alienable property. Although the information inside computers was clearly valuable, the form of this value was intangible and its character as property remained legally ambiguous.

The emergence of insubstantial electronic value was not the first time the U.S. legal system was required to define the juridical nature of intangible property. In the *Minnesota Rate Case*, for instance, the Chicago, Minneapolis, and St. Paul Railroad petitioned the Supreme Court to rule that their “future interest” in the form of anticipated profits from selling space in grain elevators to farmers was protected property under the 14th amendment. In a novel decision, overturning a substantial body of precedent, the court agreed, holding that the Minnesota state legislature had unconstitutionally violated the railroad’s property rights by setting maximum rates for grain storage in its elevators. In effect, the Court *created* a new form of property by granting legal protection to the intangible “future interest” in profit made possible by the emerging relations between vertical monopolies and their customers (Commons, 1924). Similarly, the history of copyright laws represent a series of legal inventions through which the intangible value of a reproducible image was brought under the aegis of capitalist property relations (Edelman, 1979). While laws and legal rulings such as these served to protect the immediate financial interests of identifiable groups of property holders, their sociological significance extends well beyond the fact that they directed the state to protect the profit potential of certain industries and specific investors. More importantly, they incorporated emergent forms of value within existing capitalist property relations, not only to the benefit of the owners of the property in question, but to the benefit of capitalism as a system. As Commons (1924) noted, the development of the corporate structure, which itself was necessary for the further expansion of capitalism in the United States, required legal protection for the potential profits from large-scale, long-term investments. The court behaved proactively in this case, insuring the growth potential of the emerging corporate system. It is this ability of the judiciary, legislators and other state-managers to behave proactively to preserve and promote a certain vision the cultural-

economy that lies at the heart of what is sometimes termed the “relative autonomy” of the state (Chambliss and Seidman, 1982).

One of the basic conceptual elements of the cultural economy of capitalism is the juridical construction of property rights. Individuals enjoy rights to property only insofar as those rights are enumerated within the law, and individuals are granted a form of legal title to access, utilize, and/or dispose of the property in question. The necessity of defining the new insubstantial electronic value as property within the established framework of property rights presented itself to law-makers as the simple, non-controversial, and common sense task of keeping the new form of value out of the hands of those who did not have title to it. The legal response to this problem can be seen in the early and continuing concern with criminalizing *unauthorized* or fraudulent access to computers and strategies to catch information *thieves*. The swift and widespread legislative support for computer crime laws criminalizing unlawful and/or fraudulent access to computers between the mid-1970s and early 1980s answered the threats computerized value posed for the existing cultural-economy’s understanding of property. The concern with locating computerized value within the rubric of the existing cultural economy was so paramount that many new state and Federal laws failed to criminalize computerized white collar crimes committed by individuals who had *authorized access* to the data and/or information used to commit this crime. The 1986 Federal Computer Security Act, for instance, criminalized *only* crimes committed through some *unauthorized* computer use. This law, however, proved to be too much of a good thing. Employers found that they could not deploy it to prosecute employees who, though they had legal access to their employers computer files, used them in ways that harmed the enterprise. The law was amended in 1992 to incorporate a more versatile definition of computer crime. Nevertheless, its initial construction reveals the degree to which the threat posed by computer crime was the threat of legally unregulated access to the new insubstantial electronic value. Not all new laws enjoy this common sense quality that enveloped early efforts to criminalize unauthorized computer access. Indeed, most do not. The closer any putative crime comes to disrupting basic components of property rights, however, the more natural will seem the need for control. Unauthorized access to electronic information cut very close to the bone in a cultural-economy where protecting and insuring the prerogatives of individual ownership of productive forces is the *sine qua non* of routinized economic activity.

Protecting Authority Relations

A second consequence of a failure to establish clear legal controls over insubstantial electronic value would have been a destabilization of authority relations. As Foucault (1979; 1980) notes, power authorizes the control and definition of knowledge. This link between power and knowledge resides in authority. Those who, either directly through their own labor, or indirectly through their purchase of the labor of others, are the “authors” of knowledge, derive power from their ability to control the “knowledge” that is produced. Any loss of control over that knowledge diminishes this power. As computers increasingly became tools for authoring and storing information, the possibility of unauthorized access to this information threatened the established link between power and knowledge.

It is instructive to reiterate here that it was the “hacker” who became the primary symbol of the threats posed by alleged computer crime. As an expression of this concern, a number of authors chorused a lament over computer-related frauds and other abuses by hackers (Allen, 1975). Yet, although considerable attention has been focused on the harm hackers might create by altering information (as in the case of medical records), these information “thieves” often merely peruse information to which they do not have authorized access (Landreth, 1985). Yet, even if they only engage in a thrill-seeking walk through computerized information over which they do not exercise authority, hackers threaten established authority relations. If the authors of electronic information cannot determine who does and who does not have access to that information, authority is seriously eroded.

At a more concrete level, the threat unauthorized access to information poses for authority relations is less what hackers might do *to* data than it is what they might do *with* the data. If computer hackers, for instance, gained access to ARPANET or other sources of classified military information, the real threat is not that they would start a war with that information. Rather, it is that such purloined information could be used to oppose or contradict government statements about military necessities, statements that are often justified on the grounds that the government has access to special “national security” information unavailable to the public. Or consider what threats to established authority relations lie in the possibility of workers gaining access to computerized management memos, or in citizens’ lobby groups

acquiring currently non-public business or government data relevant to their cause? In such cases the privileged position of those in power to control access to knowledge could be seriously challenged. On the other hand, the established relations of power that are violated by unauthorized access to electronic information are symbolically, as well as practically, reaffirmed when computer-resident data are unambiguously designated as private property, and when unauthorized access to that data, regardless of the harm or lack of harm caused by such interventions, are clearly designated as crimes to be prosecuted throughout the resources of the state. It is instructive to consider that unauthorized computer access could have been left in the civil realm, requiring the offended party to demonstrate a loss, and to initiate and pay for litigation, much as had been the protection of private property prior to the creation of laws of theft (Hall, 1952). Doing so, however, would have left the juridical nature of insubstantial electronic value in legal limbo, to be determined on a case by case basis.

Conclusion

In the final analysis, the emergence of new laws to control computer crime provide a useful standpoint from which to view the wider problematic of defining white collar crime. Specifically, the tendency to focus on outsiders and hackers as the essential computer criminals mirrors the wider tendency of both the government agencies responsible for controlling white collar crime and academics who study white collar crime, to focus much of their attention (although not all) on wrongdoers who more closely match the dominant image of the criminal as a deviant outsider committing crimes that follow a typical causal chain from evil intention to evil action. Complex, insider, and sometimes only quasi-intentional harmful acts of commission and omission perpetrated by those in positions of trust fit less neatly into our historically developed understanding of crime. Consequently, these types of offenses tend to generate less outrage and less attention than their more prosaic counterparts despite the demonstrably greater economic, physical and social harm they cause. Broadening the definition of white collar crime, including computerized white collar crime, to include all forms of non-violent occupational wrongdoing should be avoided since it tends to transform white collar crimes from its original meaning as a special set of serious violations by elites who misuse privileged positions of trust, into a more generic form of ordinary crime. To accept the full implication of the meaning of white collar

crime as suggested by Sutherland, however, would require that we recognize that many apparently upstanding and important members of the economic and political elite are, in fact, criminals. In the end, it is tempting to continue to focus on the relatively small-time, computer-based criminal organization, the petty criminal computer user, and insiders who raid their employers' assets, than it is to undertake a serious re-thinking of just who might be the real criminals in the new, computerized white-collar world. Unless we do, however, our efforts to control white collar crime will mirror those of control agencies that imprison individual drug users and street-level dealers while big operators, the banks who launder their money, and the governments who tolerate their operations remain beyond reach, and even often above suspicion.

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Understanding the Context of White-Collar Crime: A Sutherland Approbation

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The term "white-collar crime" has labored without acceptable definition since the time of Sutherland, but the field of white-collar crime has prospered without one. This remarkable condition represents one of the paradoxes of the field, but there has been little effort devoted to understanding this paradox. Most writers on white-collar crime are well aware of this situation since they inevitably start their discussions with an obligatory obeisance to Sutherland after which point the definitional issue is addressed. The conventional approach is to either acknowledge the deficiencies of Sutherland's definition and move on quickly to a discussion of a case study or theoretical position, or, alternatively, to try to wrestle with the definitional issue directly. The latter approach usually involves the irresistible compulsion to offer one's own definition and the cost this approach incurs is that no discussion of the definition of white-collar crime can move safely through the definitional minefield without severe damage.

This paper takes up the issue with a suggestion that we should be striving more not for precise nominal definitions, but conceptions of white-collar crime that are sensitive to the nature of the offender, victim, and context in which this behavior takes place. This approach, called "criminal event perspective," involves addressing specifically certain elements of a definition of white-collar crime, but it does not result in a definition that either competes with or is supplementary to existing nominal definitions. In order to get to a discussion of the criminal event perspective, it is necessary to perform the traditional Sutherland ritual mentioned earlier where proper homage is paid.

Sutherland and White-Collar Crime

Edwin Sutherland coined the term white-collar crime and performed the initial conceptual and empirical work on the topic, but his legacy in this regard is an ambivalent one. Clearly, his

pioneering work was critically important in the scientific acceptance and legitimacy of the field, but his work was confusing to say the least. The confusion was not merely the result of studying a topic involving acts many of which were not violations of criminal law -- although this was part of the problem. Rather, the confusion had to do with the scope of the topic and the reasons for Sutherland's apparent interest in the topic. Sutherland had at least two motivations: show the fruitfulness of his theory of differential association by applying it to a new area, and express his contempt of a group of criminals who were, by Sutherland's standards, more dangerous than most street offenders (Schuessler, 1973; Geis, 1983).

Sutherland's commitment to differential association was well known by the 1940s. The theory appeared in his textbook, Criminology (later Principles of Criminology). This book was written at the suggestion, and perhaps insistence, of E. C. Hays, Chair of the Department of Sociology at the University of Illinois, where Sutherland began teaching in 1919¹. The first edition of the book appeared in 1924 and did not contain a theory of criminal behavior. The book was one of the first criminology texts, and contained a summary of virtually all of the criminological literature at the time, something that cannot be done now. It offered Sutherland a venue in which to proclaim the superiority of environmental over genetic influences on behavior and undoubtedly increased Sutherland's visibility professionally as he proudly carried forth the relatively new sociological flag into intellectual battle. The text went through two editions when Henry McKay complemented Sutherland on his theory of crime. Not knowing what theory McKay was referring to, Sutherland found the passage McKay referenced and read that crime was the result of culture conflict in particular city areas. McKay, of course, was pleased that Sutherland was sensitive to the notion of "natural areas," of which Shaw and McKay made much, but Sutherland appears to have been naive in understanding that his statement was vaguely theoretical, let alone a theory of crime. In any case, by the next edition in 1939, differential association makes its tentative appearance as a formal theory only of "systematic" not all crime, a designation that would be dropped in later editions. The importance of the theory for Sutherland is reflected in its position in the 1939 edition: it was the whole of Chapter 1². The next (1947)

¹ Sutherland obtained his Ph.D. degree in 1913 and taught for six years at William Jewell College in Nebraska before moving to Illinois.

² When Donald Cressey took over the book for the 1955 edition, he placed the theory of differential association, more modestly, as Chapter 4.

edition contains the theory as we know it today: nine propositions directed toward explaining all criminality.

Sutherland enjoyed considerable celebrity as a result of his theory.³ As is the case today, criminologists make their most significant mark when they are associated with a particular theory of crime. For one thing, their names are mentioned in criminology courses at least once each academic term. Sutherland's position in the discipline of sociology was in large part the result of his theory. While Sutherland had been involved in a number of visible research efforts, it was differential association and its emphasis on the social dimensions of offending that ultimately would propel Sutherland to the presidency of the American Sociological Association and his presidential address on white-collar crime in 1939.

Sutherland evidently was not much interested in a definition of white-collar crime, either because it wasn't necessary (perhaps because his theory would explain all crime anyway, regardless of precise definition) or because he himself was confused about it.⁴ His research prior to the publication of his white-collar crime book all dealt with the behavior of individual criminals, while his study of the largest 70 corporations in the United States -- his major research effort on the topic -- involved aggregate data. Perhaps Sutherland didn't sense a contradiction here. After all, one could argue that corporate behavior is merely the behavior of the individuals in the corporation, although it is virtually conventional wisdom in criminology today that white-collar crime and corporate crime involve important behavioral and contextual differences that preclude that kind of conceptual reductionism (see Tonry and Reiss, 1993).

It should also be recognized that Sutherland's path-breaking work was possible in part because of his not narrowing his inquiry to fit some particular definition of white-collar crime. Had Sutherland addressed the definitional issue in 1949 like some scholars do today, the field might look parochial and even more confusing than it does. Without a restricting definition to

³ Sutherland's impact extended beyond the traditional campus. His text is the only criminology book that was reprinted for use by the Armed Forces for soldiers during World War II. The book was printed in its entirety by the United States Armed Forces Institute in March, 1944 as an education manual -- EM 266.

⁴ The definition Sutherland employs in his book is prefaced by the word "approximately," an indication that he strove for a more broad conception of white-collar crime rather than a more narrow definition. There is another interpretation, of course, of why Sutherland used the word approximately: Edwin Lemert (1972: 43-44) once asked Sutherland what he meant by the term white-collar crime. Sutherland replied that he was not exactly sure.

clutter his way, Sutherland was free to span both individual and collective levels of behavior and to identify illegal acts regardless of which body of law defined the acts as illegal.

Sutherland began his interest in and study of "violations of law by businessmen" in the late 1920s (Sutherland, 1973: 78). His work was sporadic and was presented initially in his presidential address before the American Sociological Association. Even in his initial scholarly foray, however, Sutherland didn't dwell on definitional issues, although he does indicate that "white-collar crimes in business and the professions consist principally of the violation of delegated or implied trust...." (Sutherland, 1940: 3). This definition was largely ignored in the empirical work on white-collar crime that followed shortly after the publication of Sutherland's book. Clinard's (1952) study of the violations of the Office of Price Administration during World War II, and Hartung's (1950) study of violations in the wholesale meat packing industry addressed, in turn, the two levels at which white-collar crime can be said to operate -- the individual and corporate.⁵ Clinard's offenders were individuals, while Hartung's were businesses, exactly like those found in Sutherland's own research. Clinard (1952: 227) notes that white-collar crime refers to "violations of the law committed primarily by groups such as businessmen, professional men, and politicians in connection with their occupations..." after which he cites virtually all of Sutherland's publications on the subject.

Subsequent work would divide precisely along this individual-aggregate dimension with work by Cressey (1953) on embezzlement (individual) and Geis (1967) on price-fixing on the heavy electrical equipment industry (collective). But the individual-aggregate dimension has been difficult to maintain in some instances since, again, one could always argue, as Geis did, that while Westinghouse and General Electric were the major companies involved, the price-fixers were individuals (see also Geis, 1995).

Subsequent work also ignores the definition of white-collar crime. Authors appeared not to find it necessary to develop the concept of white-collar crime; their concern, rather, was the development of the knowledge base about white-collar crime rather than conceptual elaboration. By 1977, Geis and Meier publish what they considered at the time to be a compendium of

⁵ Clinard's research grew out of his work with the Office of Price Administration in Washington, D.C. from 1942 to 1945 where he was Chief of the Analysis and Reports Branch in the Enforcement Department. Hartung's article was a revision of his Ph.D. dissertation completed the previous year at the University of Michigan, perhaps the first doctoral dissertation on white-collar crime.

"classic" pieces on white-collar crime, which in retrospect could have been a euphemism for "some of the few" pieces on white-collar crime (Geis and Meier, 1977).

By the 1980s, in spite of inadequate research funding, the literature on white-collar crime grows enormously. Perhaps it is related to criminologists' concern with the "greed decade" of the 1980s, the increasing national debt, and the widening gap of income inequality in the United States. In any case, according to traditional indicators as reflected in publications and papers presented at professional meetings, white-collar crime comes again to be a growth area in criminology, a situation that continues into the 1990s when there is sufficient scholarly material and student and professorial interest to publish textbooks on white-collar crime (e.g., Friedrichs, 1996; Simon, 1996) as well as collections of papers for classroom use (e.g., Ermann and Lundman, 1982; Schlegel and Weisburd, 1992; Blankenship, 1993; Geis, Meier, and Salinger, 1995)). The number of courses devoted exclusively to white-collar crime has also increased substantially.

All of this work occurs in the absence of an agreed-upon definition of white-collar crime. So, while Sutherland is criticized by most writers for this *lucanae*, the critics are apparently able to sidestep the problem, or avoid it altogether. Perhaps the problems with defining white-collar crime are not so serious after all.

Definitions and Conceptions of White-Collar Crime

There are at least three strategies for building consensus on the meaning of white-collar crime. One is a *deductive* strategy that starts with a formal or nominal definition of white-collar crime and finds instances of behavior that match the definition. A second strategy is an *inductive* one that would identify what people seem to mean by the term "white-collar crime," identify common elements in this meaning, and then distill a definition from these elements. Because of the conceptual dangers in either of these strategies, a third alternative has arisen: dispense with definitions altogether, except in the broadest sense, and attempt to identify a *conception* of white-collar crime that would, perhaps, incorporate several definitions. These strategies are reducible to two -- construct definitions either via induction or deduction, or conceptions.

Definitional Strategies

There are many definitions of white-collar and corporate crime, and there is little potential utility in analyzing them all. Let it suffice that competing definitions have been offered by Sutherland, Hartung, Tappan, Clinard and Quinney, Bloch and Geis, Simon, Shrager and Short, Wheeler et al., Michalowski and Kramer, and Ermann and Lundman (see the review in Friedrichs, 1996: 8). Not all of these definitions are distinct, and some are directed at the individual, and others at the organizational levels of observation. The definitions vary on a number of dimensions, but all of them are directed toward refining and making more explicit the conception offered by Sutherland.

Conceptual Strategies

In contrast to a definitional strategy, an alternative approach has been informed by connotations of the expression white-collar crime, such as power, fraud, duplicity, abuse of trust. There are at least three conceptions of white-collar crime and they are distinguishable by their use of a key word or phrase: white-collar crime as abuse of trust (Shapiro, Friedrichs), white-collar crime as risk (Meier and Short, and others), and white-collar crime as abuse of power (again, see the review in Friedrichs, 1996). These conceptions are broader than individual definitions because they are not limited either to kind of offenders, kinds of law, kinds of contexts (occupational, organizational, etc.), or kind of victim or consequences. Yet, each of these elements is permitted to exist in the conceptions.

A conceptual strategy suggests that one could begin with a conception and work toward a more precise definition. For example, a conception of white-collar crime as abuses of power clearly alerts us to an important dimension of these crimes, but fails to specify the kinds of acts that would be considered white-collar crime. What kind of power? What kinds of abuses? These are questions that must be addressed before a definition is possible. In fact, a definition makes answers to these questions not only important, but necessary. But, moving between conceptual and definitional levels is difficult, and sometimes confusing. Consider the following illustration of such confusion.

An Example of a Definitional Strategy

It is useful to identify the difficulties of the definitional approach by citing one example. The example is representative because the offered definition suggests many of the problems other definitions raise.

It is not just that some definitions are contrary to one another, but that there is significant definitional confusion. It is sometimes suggested that there is confusion about what is to be explained, how much homage to be paid to Sutherland, how sharply the definition should distinguish white-collar from other, related crimes, and where separate definitions should be developed depending on whether the purpose is scholarship or prosecution. In short, there appears to be confusion about virtually everything about the meaning and scope of white-collar crime. It is a wonder we know anything at all about this category of behavior.

Consider an example. In a recent book, Jay Albanese (1995) engages the topic of white-collar crime in the traditional manner. The ritual deference to Sutherland occurs in the opening chapter where Albanese's definition is presented. The remainder of the book provides substantive examples of the definition. To his credit, Albanese believes the issue is important to resolve before the subject matter of white-collar crime is fully engaged. His treatment of the definitional topic is representative of, but considerably more extensive than, other discussions of the definition of white-collar crime I have encountered in recent years. Those who push for precise definitions of white-collar crime should be very interested in Albanese's efforts.⁶

Albanese's (1995: 3) definition is:

Planned or organized illegal acts of deception or fraud, usually accomplished during the course of legitimate occupational activity, committed by an individual or corporate entity (Emphasis deleted).

This is hardly a startling definition. He speaks of illegal acts, the use of deception or fraud, an occupational context, individual or collective offenders all of which are generally consistent with the Sutherland's conception of white-collar crime. In short, it appears to be

⁶ I consider myself among those who have, at various times, called for more precision in using the term white-collar crime. Calling for more common ground, however, is different from requesting more definitional precision. The position adopted in this paper is that while common ground is not only admirable, it is necessary. The experience of the last half-century since Sutherland's work, suggests that definitional disputes are unlikely to produce that common ground, while more broad conceptions have a greater chance of success.

merely a re-wording of Sutherland's ideas.

But rather than considering this as a conception that would be useful as a guideline for research and policy, Albanese begins to take apart the conception (he calls it a "general definition"). This is where the trouble starts because Albanese takes positions that depart from other, more narrow definitions. He asserts, for example, that abuse of power is not a necessary part of a definition of white-collar crime (p. 4). The discussion that follows makes it clear that Albanese equates the term "abuse of power" with "violation of trust," and this is true, but only, of course, by definition. Albanese (p. 4) uses two meanings of the term power, one of which is an unusual application of that term. The first meaning is conventional and relates to someone who does something contrary to the norms of his or her occupation or profession, taking advantage of that position. The second meaning, however, is different.

In the second meaning, Albanese considers the actions of a violator who commits a crime because of the *perceived* abuse of power of the *victim*. A man who cheats on his taxes because of the perceived illegitimacy of the government is an example of this second kind of abuse of power. So, while offenders in the first instance simply violate trusted positions for self-gain, offenders in the second example do so motivated by political advantages. Of course, these second offenders could be cheating on their taxes for self-gain as well as making a political point, and this would make them simply conventional offenders (no occupational context, no political motivation) while those who cheat on their taxes for political purposes are political criminals. In neither case can they comfortably be considered white-collar criminals. Albanese further indicates that planning and deceit are elements in white-collar crime, but if so they are common to a number of crimes that are not white-collar crimes as well, including many murders, rape, armed robbery, and confidence swindling. In other words, planning and deceit are not unique to white-collar crime. What is odd is that Albanese indicates (p. 4) he wishes to specifically exclude crimes involving violence.

The confusion continues in a subsequent section where Albanese attempts to use this "general" definition in constructing a typology (p. 5). A section titled "A Three-Part Typology" begins "the remaining three types of white-collar crime can be divided into three groups." The three types are crimes of theft, crimes against public administration, and regulatory offenses. But

the discussion starts with the idea of conspiracy as "*the* characteristic" white-collar crime. Therefore, are there four types, the other three, and conspiracy?

What I am suggesting is that attempts to offer precise definitions often conflict with other precise definitions and reconciliation is often impossible. Albanese might have been better off not engaging the definitional issue so directly and letting the general definition (which I call a conception) do all the talking. In any case, as is often remarked, definitions are neither true nor false; they are more or less useful. A more important question may be whether definitions or conceptions are better at rallying the troops and create common ground for work that furthers theoretical, empirical, and policy objectives.

White-Collar Crime and Criminal Events: An Example of a Conceptual Strategy

A criminal events perspective alerts us to the study neither of the offender, nor crime, but to the offender, victim, and situation in which the crime takes place. As such, it is proposed here that the meaning of white-collar crime is not to be found in a narrow definition that isolates either characteristics of the offender, or the nature of the crime, but in the combination of offender, victim, and context in which the crime takes place. This is called a "criminal events perspective" (see Miethe and Meier, 1994; Meier, Kennedy, and Sacco, 1996).

Definitions that cater to offender characteristics (e.g., Sutherland, 1949) or the nature of the crime (e.g., Wheeler et al., 1982) necessarily have only part of the conceptual picture. What each misses is consideration of the other in the context of the offending. Clearly, white-collar crime is a function both of the offender and offense. A physician who commits an assault is not a white-collar criminal, nor is the auto mechanic who charges for unnecessary repairs a conventional criminal. Sutherland reminds us that white-collar criminals and ordinary criminals can commit the crimes of fraud, forgery, or bribery, but such offenses are classified as white-collar crime only when the offender is "respectable."

The term respectable has been often misunderstood. In many discussions of Sutherland's conception of white-collar crime, it is assumed that respectability refers exclusively to high social standing. But respectability is not merely a function of social status. There is another meaning of the term respectable, one that keys on the personal characteristics of trust and

honesty -- or the appearance of honesty. There are respectable auto mechanics (they perform only needed repairs) and the not-so-respectable ones (who violate the law). It seems to me that this latter connotation is an important theoretical, but not definitional, component of white-collar crime. Respectability is what makes fraud or deceit possible. Shoplifters are thieves who are posing as respectable customers. It is their appearance of respectability that creates the conditions for this crime, as opposed to robbers who strike no such pose and therefore commit the crime of theft in a different, more direct, manner.

Let us start with a simple conception of white-collar crime that views it *as a violation of law committed in the context of the offender's legitimate occupation*. This conception identifies two elements: law violation, and occupational context, each of which is consistent with Sutherland's original formulation and the meaning found in most discussions of white-collar crime (e.g., Braithwaite, 1985). It does not specify which laws, or even bodies of law, nor does it attempt to identify the kind of occupation. Furthermore, this view is inconsistent with those definitions that find the meaning of white-collar crime only in particular kinds of illegal acts (e.g., fraud), or exclusively in the personal characteristics of the offender (e.g., high socioeconomic status) because those definitions often attempt to anticipate either the kind of acts that are involved (i.e., which laws are violated) or who can commit these crimes (i.e., who is respectable enough to be considered a white-collar criminal). The proposed conception is deliberately broad, although it is able to stake out sufficient definitional ground to take in what most people mean by the term "white-collar crime." Let's examine the elements.

Occupation

The occupational dimension of white-collar crime is critically important. Occupation is a special status, one that confers power, trust, and individual identity. It is the context in which much conventional life is lived and against which many people regard themselves as successful in life. There is a large body of law governing the behavior of individuals in occupations, many of which are considered to be white-collar crimes (Brickey, 1995). The link of occupation with white-collar crime is so strong, it does little conceptual injustice to consider white-collar crime as a subset of occupational crimes generally (Quinney, 1964).

This conception does refer to the offender, but only inferentially by suggesting that white-collar crime is a crime committed in a particular context -- an occupational context. Offenders commit these crimes during the course of their legitimate occupation. The adjective "legitimate" is added to the definition to reduce the chances of a particular confusion. Suppose the individual's occupation is "hitman" for a criminal syndicate. Would his or her refusal to kill someone constitute a crime under this definition? No. While the violation occurs in an occupational context, it is not a legitimate one. The occupation itself is illegal.

Against this conception, various crimes could be compared. An employee who violates a position of financial trust is a white-collar criminal regardless of whether the motive was to solve an unshareable financial problem (Cressey, 1953) or simply to obtain extra money for high living (Nettler, 1974).

Law

It is virtually impossible to imagine any definition of "crime" that does not make reference to law, although some criminologists have adopted a restricted view of what kind of law is appropriate for criminologists to use. The exchanges by Sutherland, Tappan, and Burgess nearly a half century ago identified the issues, and the subsequent work on white-collar crime has sided with Sutherland's view that white-collar violations are real crimes. Clinard (1952: 229) argues, for example, that black market offenders are criminals in the sense that their behavior is socially injurious, they violate government rules, they incur state sanctions, and they experience social stigma.

Legal reference has been kind to criminologists interested in conventional crime. There is little dispute about the meaning or illegalities of "violent crime." Reference to murder, assault, rape, and armed robbery carry almost universal meaning, with only a few exceptions. But even criminological reference to such types of crime as "organized crime" or "professional crime" do not encounter major definitional problems in spite of the fact that they are making reference not to specific laws, but collections of law. Organized crime and professional crime are conceptions of crime, and while there are competing definitions, the meaning of the expressions "organized crime" and "professional crime" are broad. The operational definition of organized criminality, for example, is a legal one found in the pattern of crimes in the RICO statute, not the individual

crimes that make up RICO. As such, the illegal acts of organized crime are not racketeering, extortion, the distribution of illegal drugs, or the other crimes mentioned in RICO; it is the *pattern* of such offending that matters.

The concept of professional crime represents many of the same definitional problems as that of white-collar crime. The distinction between amateur and professional theft is not the particular crime committed since each can commit the same crimes, such as shoplifting. Rather, the meaning of professional crime is a combination of crime and characteristics of the offender: the extent, for example, to which the offender has well-developed criminal skills and attitudes, the extent to which theft becomes a way of life, one's associations with other criminals, and the like.⁷ Perhaps because there are few scholars working on professional crime, or because the division of labor on professional crime is scattered around different offense types, definitional disputes do not represent a hindrance either to scholars or criminal justice officials.

But criminologists interested in white-collar crime have had no such luxury, often because law has proven to be an unhelpful, and often misleading, guide, and because the notion of "crime" is too closely tied only to criminal, not other, law. But we can agree with Quinney (1964), and others, that white-collar crime represents violations of law. Some white-collar crimes are found in criminal law, others in administrative and regulatory law (Brickey, 1995).⁸ So while scholars interested in conventional crime seldom need to confront legal definitional barriers, observers of white-collar crime seemingly have done little else. Clinard (1952: 227-228) makes essentially the case that needs to be made here: white-collar crimes are violations of state-made rules that are backed with state-authorized sanctions. This idea has stood the test of criticism over the last 45 years.

Conclusion

Some have claimed that the study of white-collar crime has been impeded by the absence of an agreed-upon definition. Nevertheless, there is now a large body of theory and research on

⁷ It is ironic that Sutherland (1937) is among the first to develop the conception of professional theft. I would argue that Sutherland approached the meaning of white-collar crime in much the same way he did with professional criminality: as a conception.

⁸ Brickey (1995) fails to offer a definition of white-collar crime; in fact, the term is not even listed in the index of the volume. Neither are the names of Sutherland or Geis.

this topic that rivals that of other criminological specialties. Edwin Sutherland is often blamed for this condition by confusing offender-based with law-based definitions of crime. While Sutherland himself may have been confused about the topic, one could argue that work on white-collar crime has been slowed more by practical than definitional disputes, including a traditional lack of funding for upper-class crime. Another factor has been the slow development of a critical mass of researchers on the topic, which I suppose is to be expected in the growth of relatively new scientific areas.

There are two approaches, one that seeks to identify narrow fit-every-case instances of white-collar crime, and another, broader approach to seek definitional boundaries, but sets them within a context that recognizes features of the offender, victim, and setting or situation. This latter, criminal events approach, is more fruitful and has unintentionally been used in the study of white-collar crime. Sutherland's conception is still useful: white-collar crime is crime committed in an occupational context.

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GROUP **3** DISCUSSIONS

The following discussions focused primarily on the papers presented by Gary Gordon, Gil Geis, Ray Michalowski and Bob Meier. Comments related to other white collar crime definitional issues were welcome.

Friedrichs Ray, as always, you have many interesting and very original things to say, but I want to clarify one thing about the insider/outsider distinction when you said that we trust insiders and don't trust outsiders. One of the distinctive features of crime is we don't trust strangers; that is incontestable. But, I think one of the features of white collar crime is that there is indeed a relatively high level trust of corporations, businesses or professionals we do business with, not with whom we are operating on an insider relationship, and that, it seems to me, is quite central to the problem. I don't know if I captured the distinction you wanted to make, but I would not necessarily agree that you can make the dichotomy that insiders we trust and outsiders we don't.

Michalowski I think what I was saying goes back to something that Larry Gaines was talking about yesterday. It is not to say that we trust the insiders, but as far as the institution, they are socially invested with a trust in that institution. Structurally, we do invest in them the trust to play by the rules of the game. That's why we're disturbed. You see, it really wasn't so much talking about if I don't trust a corporation, but the violation of my trust as a citizen in the society when they don't play by the rules of the game.

Gordon That's more external than internal. I thought you were talking more about the people who actually work in the corporations who were committing the computer crimes.

Michalowski Right, but when people inside the organization commit a computer crime, whether or not they commit that computer crime against the organization, they are violating the trust that has been invested in them as workers in the organization. When they commit a crime on behalf of the organization what gets violated is the larger social trust that's invested in that organization to play by the rules of the game.

Friedrichs But it's still a violation. I mean the nature of the violation of trust is different, that's true. But the point is, it's not the same thing, if I understood you originally, as saying we don't trust outsiders. I think it's correct to say that there are different forms of trust, different levels of trust that pertain to outsiders and insiders. This is quite different, to me, than saying that we don't trust outsiders and we do trust insiders.

Michalowski I think we're actually saying the same thing. All I'm saying is that when someone burglarizes my house it is different.

Friedrichs We don't trust people sneaking around the neighborhood or who looks suspicious, that's true, but that's the beauty of it. We do trust, by and large, institutions, corporations, and professionals - even if it's misplaced trust.

Michalowski But, I guess maybe we're using the word trust quite differently. I'm not as concerned about the individual sense of trust. I'm concerned with the issue of trust as a set of social arrangements. That is, we invest institutions with the legitimacy, the right to engage in certain actions because we presume those actions will be taken for the common good. When those actions are taken in ways that violate the common good, that larger societal trust is disrupted. I'm not sure I was actually talking about how any given individual might feel about the societal arrangements with the allocations of legitimacy, trust, and responsibility.

Simon To follow this up, there are some workplaces where nobody is trusted. If you saw the movie Casino, there is this scene about how the dealers are watched by the shift bosses, and the shift bosses are watched by the pit bosses, and the pit bosses are watched by the managers, and the managers are watched by some other executive, and the camera in the sky watches everybody. I think this may be true among some corporations.

Friedrichs And then what follows from that, David, and what I hope to pursue further, partly inspired by something Jim Helmkamp said at the ACJS meeting (Las Vegas, March 1996), is all of this perception about downsizing. For example, white collar workers are being laid-off, or forced into early retirement in huge numbers with no benefits, or at least much-reduced benefits. This is a relatively new phenomenon here, as well as in Japan; the Japanese have this culture where you get into the corporation and you're taken care of for your life. The question that really comes out of this is will the level of distrust of institutions by their own employees increase greatly when the employees can no longer count on the institution or the corporation being there for them. So, I think that there is a lot of reason to believe that surveillance of employees, distrust, and all the things you're taking about, David, will increase. Because, traditionally, in many corporations you could depend upon loyalty. Such loyalty is rapidly eroding and that may have a lot of consequences that need to be considered.

Coleman What does that have do to the definition of white collar crime, including trust in it? It sounds like since you're advocating that trust should be part of the definition of white collar crime and now you're saying that that trust is eroding. Don't you have a problem there?

Friedrichs Well, with white collar crime a violation of some level of trust is always involved. I'm not sure I understand just what problem you have with that.

Coleman Well, it seems like you want to include (trust) in the definition, even though we haven't heard your paper yet. You want to include the idea of trust as part of white collar crime, and yet there is less and less trust , but not less and less white collar crime.

Friedrichs Part of the question is, in a certain sense, that there are interesting things to be followed up on if employers and employees trust each other less and less. Is there

more white collar crime or is there less? That is the interesting point. It can go either way, and I hope to look at that further. One is that if you work for an employer who you no longer trust to be there for you, are you then going to put your neck on the line and possibly go to prison if you violate laws on behalf of that employer? That's one way it can play out. The other way it can play out is that you want to be sure that you're not one of the people downsized by the employer, so you're going to go out of your way to break laws on behalf of the employer so that you become indispensable to the organization.

Simon There is a third possibility that I've written about for 12 years. Namely, if you don't trust the company that you work for, you're much more likely to turn around and rip them off.

Gordon Now the company is more likely to watch you because they know that they're likely to get ripped off. So there is intrusion detection software now which profiles employee's computer behaviors. So they know exactly what you're doing.

Friedrichs I think we're going into a different environment with regard to trust, and it has complex ramifications.

Coleman My point was that personally I wouldn't include the violation of trust as part of the definition of white collar crime, and I think the fact that they don't seem to vary together indicates to me that it's not really part of the definition, or a necessary part. Trust is often violated, but I don't think it's needed.

Michalowski Rather than being part of the definition per se, maybe the issue of trust is part of understanding the consequences in a way. That is, the higher the level of trust that gets violated probably the graver the social consequences are. It may not necessarily be part of the definition, but one of the things that David Friedrichs was suggesting is that you can clearly have white collar crimes that are a violation of

trust. I invest a certain amount of trust in my tellers not to do this, or who ever the employees are, or I may not trust my employees at all and set up great levels of surveillance. So, in both cases you have a violation of the work rules. One violation of the work rule involves a situation where trust is presumed, and another one where no trust is presumed.

Friedrichs I would hang on to the element of trust in the definition. Because I do think that it's absolutely implicit in any relation that a consumer has with a corporation, an employee has with an employer, an employer has with an employee, that there is some level of trust. Now, granted, there may be a deterioration of that, but trust is a part of white collar crime in a way that is not true of street crime. You are walking down the street and some stranger or street person is following you, there is no trust. It is a necessary feature of the relationships and the connections and the ties that are involved in white collar crime.

Gaines I don't think you're talking about trust, I think you're talking about abuses of positions of power. That may be a better term to use rather than trust, because trust, I think, denotes several things, one of which is what you're getting at. But I think what you described a minute ago is an abuse of a position of power within the bureaucracy. I think that there is a much more specific term that might get at what you're aiming at.

Rabe I may not trust Exxon, but I need to pull up to their gas pump every day, and may be victimized by the nature of the way our society is organized. So, I'm more of a willing victim. And I agree with Jim Coleman, that trust is a variable, that you have certainly illustrated, has no relationship with the true rates of white collar crime. I think it has more to do with the way Ray has structured it.

Nichols I think we could make a case that any crime is a violation of trust, if we assume that

society is some kind of moral community. I've been mugged, and I wouldn't recommend it to anyone. I was standing on a subway platform in Chicago at midnight when four guys come up to me and one of them puts his arm around my neck. And we start talking about what we can do to resolve this problem and it is shocking. You're just standing there and you have a certain sense of your civil rights not to be assaulted and somebody just attacks you. I'd never met these guys, so we didn't have a pre-existing relationship. And you have this element of the stranger, but you could make a case that in so far as there is moral community, any crime is a violation of trust. But a white collar crime is a particularly serious violation of trust with graver harm to society than this more minimal crime among strangers.

Some of the things that have come to me the last couple of days during all the discussion, and what I think Sutherland initially proposed as a phenomenon for study, was a two-sided violation of trust. There is a violation of trust by the perpetrators and the enforcers, and we talk here mostly about the violation of trust by the perpetrators who fail, kind of Durkheimian self-control, the professional ethic if you will, and the labeling people come along later and sort of focus on the other side. Although they don't talk about it as a violation of trust, they talk about it as an arbitrary enforcement, a lot of discriminatory, class-based or race-based aspects. But I think that what Sutherland postulated was a two-sided violation of trust that had particularly grave consequences for the moral order.

Simon

I'd like to read some questions about each paper if I could. Beginning with Gary Gordon's paper. I don't want to spend a lot of time about whether or not our definition(s) of white collar crime should be formulated to push the agenda of this Center. In many ways I think it's irrelevant. I think if we can work together, with each other, and have common ground, great. If we can't, you know, let's kiss each other good bye and go our separate ways. I mean, I don't know where it's written that any Center or any one definition of white collar crime needs to dominate this field.

Second, I wonder, given your wish to drop certain elements of the definition of white collar crime, as to the inclusion of a corporation that makes illegal campaign contributions or business executives that bribe politicians. Is that an economic crime? Would that not be considered a white collar crime under your definition. Similarly, if you drop the idea of status, then doesn't welfare cheating become an economic crime, or white collar crime? If you just want to turn the notion of white collar crime over to functions of technology and computer usage, what do you do about all the white collar crimes that don't have anything to do with violations of the use of computers, such as unsafe working conditions, or the deliberate manufacture of dangerous products?

I also wanted to comment on Gil's paper, and say that most of his criticism, which I thought was fascinating, didn't have much to do with any definition of white collar crime. He was criticizing the Yale studies and their measure of white collar criminals through the use of court cases. And the problem with that is, if you know anything about enforcement, is that a very large percentage of these cases are settled out of court. It might be worth looking at the folks who do make it to court, because it sounds like they're the lowest level of the white collar criminal, maybe the dumbest, maybe the ones who are the least able to afford expensive legal counsel. So, I think he's on to something there, but from another perspective. I also would love to know what he means by overcontrol as a cause of crime. Does he mean the imposition of fascism by elites from above. What does that mean?

In Ray's paper, I do not agree that definitions are nothing but tools. They are very much ideological constructions of reality that carry with them all kinds of implications about methodologies and policies and so forth. I also disagree that academics seek only understanding. Some of us, and I thought you (Michalowski) were one of us, want to change the world as well. I would like to know a little more about this inside/outsider stuff. My father used to own a McDonalds, and he

didn't trust anybody that worked for him. And one of the biggest losses to a company like McDonald's is employee theft from the safe after the store closes. I can tell you about this one case that is quite fascinating, where my father caught one of the employees red-handed, and called his parents in and said this is what your son did. The parents said and you must not make much money if you get excited about a little theft of \$500. We don't know what's wrong with you. So, I'd like to know where this insider/outsider definition begins and ends.

Michalowski I want to make a comment here to a couple of things that you said. One, I agree with you. When I say that definitions are tools, what I meant was that definitions are ways of trying to get certain work done. And something I was going to say with respect to what Larry Nichols had said, which I thought was very good. We've been talking here as if there is some distinction between fact and value, and reason and desire. But in fact, when we construct definitions we construct them because we want those definitions to do certain kinds of work for us. And that work, in fact, is based upon desire and value. So, I have no quarrel when I said tools, that's what I meant. But what I think is important about it, in terms of what you said, Larry, is the idea of a moral community. Maybe every crime is a violation of trust because it's a violation of the moral community. In fact, to some extent, or perhaps when we talk about the idea about trust (and these crimes are violations of trust), the work we are trying to do is say this society should be one where there is a moral community. It should be one where corporations behave in the public trust, or in the public interest. So, in fact our definition of trust is actually an expression of our desire.

Simon No, it's an ideology.

Friedrichs Historically, there has been a kind of bifurcation with the virtual absence of trust toward street people, poor people, and people in the neighborhoods with guns, and the laissez-faire attitude toward business and corporations: trust them and leave

them alone. We trust them to do the right thing. I mean, that's obviously a kind of simplification, but that's my point. There has been a fundamental, historical bifurcation. In the medical profession we let the doctors police themselves. We sure as heck aren't letting the numbers runners in the ghettos police themselves. While this is kind of an abstract sentiment, society requires some kind of generalized level of trust. But many of us lock our cars, because we don't necessarily trust the next person walking past.

Simon The other definition of the concept of trust, is a legal one -- the First National Bank and Trust Company -- meaning fiduciary responsibility.

Friedrichs Well, that's a different use of the term, obviously.

Simon No, it's just showing that there is fiduciary responsibility connected with some trust.

Friedrichs Well, the term is obviously used in many ways. I have a different reaction to Meier's paper. I hope to get into that, possibly definitively respond to some of the concerns that David (Simon) expressed earlier. I wanted to bring up another point after I had listened to Ray's (Michalowski) presentation. Many of us, of course, have talked about the famous Carrier's case. There was this gap, and in the Carrier's case this gap is the modern law of theft. Are you really saying that we're in a situation with computers that we really need a Carriers case once more to redefine the notion of property?

Michalowski Yes, I think that there is a whole series of those, going back to the Carriers case all the way on up through the invention of law, copyright with printing, and so on. I think spotting the Carriers case, or spotting the Minnesota Rate case or any of the others is only a construct and a way of crystallizing a moment. That case becomes perhaps the identifiable pinnacle or water shed leading to change. While we know that the case didn't forever change every single case comparable to it

immediately afterwards, only in hindsight can we spot that moment. So, I'm not saying that there is going to be any single one case that will somehow resolve it for good. But what I do see, is that we are at a moment of shift in terms of having to incorporate something else that, heretofore, is as novel as the Carriers case, of whose responsibility is it to protect property that is in motion in search of other profit.

Gordon I want to respond to a couple of things that David said earlier. I wasn't necessarily advocating that we come up with a definition that agrees with what the Center says; I just listed the possibilities that we need to consider here in terms of why we were sitting here and pick which one you prefer to do. I think with the status and with the whole issue of computers, we could play games back and forth. I could give you a situation where I think status is irrelevant, and you'd come back with another one where it is relevant. I think partly what Ray was saying is that computers have changed some of the dynamics that we're talking about, and again, what Sutherland was writing about fifty years ago. I'm not sure that some of what he was saying is functional today.

Michalowski I just want to interject something here. I wasn't suggesting somehow that we're going to turn it all over to computer crime. The point I was simply making was that most computer crime is white collar crime. And that many white collar crimes won't be able to be committed without the use of computers, as the FBI defines it. And in fact, I was questioning the issue as to whether these really are computer crimes, if the computer is merely the instrument. So I wasn't suggesting that the world of white collar crime is going to disappear and there will be only computer crime. In fact, I'm concerned about the creeping use of the term computer crime and possible misrepresentations. So, if I use a computer to calculate the fact that it will be cheaper to let Pinto's blow up, is that a computer crime or is that something else?

Simon That's one thing I was going to ask you.

Michalowski Precisely. I would not say that that is a computer crime. I don't like that creeping definition, that just because you use a computer, so I just wanted to clarify that.

Coleman I wanted to go into what Gary Gordon said about status. I also had a response to Gil Geis' paper who I think kind of talked about that; and I didn't agree with him about what he said about Sutherland and why he went into white collar crime. But he did talk about the Yale Studies and how using a definition of white collar crime that doesn't have status was used to refute, for very ideological kinds of ways, some of the traditional concerns. And people who use the Yale Studies for other reasons have said white collar crime is like any other crime and here are these studies that show it. Yet, the kind of white collar crime they are talking about isn't the white collar crime that most of us mean when we say white collar crime. So, if you take status out, you get this kind of double-talk. That's my concern, and I think Gil's paper spoke to that in a way.

Nichols If you take out status then you lose sight of violation of trust through non-enforcement. Because we know that they are going to enforce the law against the low-status people. Does anybody doubt that? But if you take status out, you lose that other dimension of violation of trust, I think. Which is part of the real thrust of Geis' critique.

Hagan Dick, on your presentation of Geis' paper, one of the things you indicated I think, is that his data is all available through ICPSR in Michigan. To get the data file on that and then run some analyses by the variable of social status would be very interesting.

Albanese Do they have that in there?

Hagan I think it is.

Michalowski Well, what data is there? I mean the data is all corporate data, that's one of the problems.

Hagan No, it's trial data.

Michalowski Oh, you're talking about the Yale Studies.

Friedrichs If you checked the data and looked more fully at social status, which they clearly did not do, would you get a different result?

Ball I think we should check it out.

Michalowski Is there data about the entire case process or only those who were prosecuted?

Coleman I think there is some pre-trial data, isn't there?

Michalowski Can you factor-out the ones who had charges dropped?

Gaines You'll never get access to that information.

Albanese Which is why you can argue when you're studying white collar crime that to study sentencing outcomes is almost besides-the-point. Because if you read the book (Defending White Collar Crime) on the defense of white collar criminals, a very compelling case is made that these attorneys pride themselves on intervening before the formal charge is lodged. That's where the plea bargaining takes place. Therefore, the poor suckers that end up in the trial setting are a very self-selected group. Then to find out that they don't match whatever your hypothesis is, well you're probably missing an important piece of the pie.

- Simon** I would also like to point out one more thing that Bob Meier mentioned and that is that Sutherland also ended up studying things that were not against the law. So he studied basically elite violations, some of which were not against the law. If that's not elite deviance, then I don't know what it is.
- Gaines** It's things that should be against the law.
- Friedrichs** Well, it's against the law, the moral law. I would not really quite agree with you, but say that some kind of law is violated. Although, it isn't necessarily criminal law.
- Coleman** I think it kind of confuses the issue when you add in a moral law on top of legal law. Then you are talking about deviance. Which I don't think is any different.
- Simon** But you did.
- Coleman** Yes, I don't think that there is anything wrong with writing a book about white collar crime and discussing something other than white collar crime. Or if I'm studying marital violence I can include information about violence between people on the streets to compare it to. I don't see that just because you're dealing with white collar crime, you can't talk about anything else. I think that a lot of things that aren't white collar crime are very similar, are worth discussing, and are very enriching and enlightening. And, I certainly don't want to just ignore everything else. I'm just saying that because somebody has studied white collar crime and activities that may not be against the law, that's okay -- although these activities may be against the law in the future. I don't think that just because you're using the white collar crime rubric, you can't look at anything that is marginal or maybe doesn't quite violate the law, I don't see that as a problem.

Gaines Something that is troublesome to me, is this idea of economic crime. Basically what I see, and a lot of what Gary Gordon talked about, and I guess the outsiders that Ray was talking about, for example. I don't see the outsiders as white collar criminals, and a lot of the people that Gary was talking about I don't see as white collar criminals either. In other words, if I go out and buy a box to clone cellular phones, that may be economic crime, but it's certainly not white collar crime. So, I see this whole notion of economic crime as sort of infringing upon the idea of white collar crime, and I'm sure that the elites in our society would like for economic crime to sort of overtake and subsume the whole idea of white collar crime. I just see that as a dangerous problem.

Michalowski That was the purpose of my point, to say that when you have outsider computer crime we want to define that. We do act as if that's the key problem. I think we can see very clearly in the prosecution of computer crimes that the ones we're going after are those outside the computer systems that are attacked or compromised. And the ones that are inside, that are fully authorized to use those, and use the systems on behalf of the institutions, are beginning to disappear from the definition, or, at least, don't get as much attention. Those are the ones which I would say fit much more closely to what Sutherland meant by white collar crime. It doesn't matter what definition you use. Look at what people have studied historically, and you can see a transition away from the crimes of the insider and the elite, and increasingly, you end up with the Yale Studies.

Albanese In Bob's paper, he gave the example of the auto mechanic who cheats you on the parts or something. Would that be white collar crime in his view? So, I place my trust in this guy. I put my car in the garage, and you hope this guy is going to do what needs to be done. So how do you reconcile that? If, on one hand, you see him as having low social status person, on the other hand you do trust this guy. So how could it be white collar crime or not white collar crime? To me the only resolution is to look at the behavior. The behavior is such that you're giving him

something, you share a responsibility, you're putting trust in this person, and then they violate that trust.

Helmkamp Is your car wash guy the same way?

Albanese Yes.

Simon I would say that it makes a difference whether your auto mechanic is part of a automobile dealership, is hooked up with the automobile industry.

Albanese Why does that matter?

Simon Because, if it is an established practice from within the industry, to in fact cheat on the amount of time it takes to repair a car.

Hagan I would view that as corporate crime. What Jay is talking about is maybe the person is not connected with some specific industry. It's just occupational crime.

Simon But we're talking about the status of the company.

Gaines Yes, but if you go to the guy that works on cars, if he doesn't work for a dealership, he walks up, scratches his head and says it's going to cost you \$137 bud. He does not tell you how long it's going to take him. You are going to him because you think he's cheaper than taking it to the (Chevrolet) dealership.

Rabe I don't trust my mechanic, but he knows how to do the work. It's a necessity. Just like going to Exxon. I don't trust him but it's what I need to do. He's going to victimize me less than someone else.

Simon I think you are getting at an issue here that is very important. A lot of what we've

been calling trust around here, comes from an oligopolistic or, in some cases, monopolistic situation where we have little choice. But, to turn this (auto repair) over to somebody with a degree of expertise, does that mean we surrender our sense of trust too. Absolutely not.

Gaines We're talking about abuse of a position of power.

Coleman We could have a whole seminar on what trust is. Morals are mentioned here, which is what I think Gary Rabe is saying is not really there. We don't really trust him in the way we trust a friend and yet some kind of institutional trust is operating here. I don't know what the right term is for it.

Michalowski It's also a societal trust in a way. You're talking about the oligopolistic or monopolistic interpretation in which we have evolved a situation, based on the logic that whatever problems it poses, is for the greater good. So, to the extent then that these behaviors use the oligopolistic situation not for the greater good but only to enhance their own self. I guess there is this larger level of societal arrangements that we say are proper. They are validated in law and everything.

Simon I don't know, Ray. You're not very far away from Milton Friedman's definition of the greater good here, where it is the responsibility of all businesses to make a profit. Ethics be damned.

Michalowski That's right. I'm not agreeing with it. What I'm saying is that socially that is how things have, in fact, developed. And that's the problem. That Friedman's argument says that in the end, just as Adam Smith says, in the end this will ultimately serve the greater good. But as we increasingly feel that it doesn't serve the greater good, then that whole set of arrangements begins to look fraudulent.

Albanese As Gary pointed out, you might not necessarily trust your auto mechanic, but you

do empower your auto mechanic. With that, the auto mechanic now has the power to say “I’m changing the spark plugs,” when he doesn’t.

Simon But is that power?

Michalowski It sure is opportunity.

Albanese You’re giving him the opportunity to defraud you, to cheat you.

Michalowski But does this mean that the level of what we’re talking about is, “I trust you, I empower you to screw me a certain amount. And if you screw me more than that, you’ve violated my trust.”

Gaines You know every time we take our car in to have it worked on is there anyone who feels they are going to get a good deal or the right deal no matter where they take it?

Gordon I want to go back one more time to the economic crime issue. When we don’t focus on the outside threat, we lose a whole perspective. Maybe you say that is not important, we’ll get rid of it, it doesn’t fit with our view of white collar crime. As I said to begin with, economic crime has a different focus than a lot of what you folks are talking about, but I think we’re missing a huge chunk of crime by just tossing it out.

Gaines I think what you have to realize is that it goes back to the root of the problem. Why is it that we are clinging to this term white collar crime. It goes back to what Bill McDonald said yesterday. We hope to be able to use this term white collar crime to come up with this nasty connotation, to get the public outraged, to get the courts outraged and do something about it.

Simon That’s his agenda.

Gaines Yes. That may be part of why we need to safeguard this whole concept of white collar crime. To some extent, right or wrong, most people associate white collar crime to the elite. That's why I'm not so sure that some guy who embezzled \$20 as a teller in a bank is a white collar criminal. I have difficulty with that, although under traditional definitions he would be considered a white collar criminal.

Gordon But somebody who hacks into a bank's computer and transfer \$3.5 billion, what are they?

Gaines A thief.

Simon The other point that you're real close to here, and the reason I have so much trouble with economic crime is that, as Mills pointed out, back in the 50's there were so many business executives that went into the government. And many government employees that go into business after they leave the government -- the two groups are rather inseparable. These are crimes of political economy -- not just economic crimes. They do have a dimension of power, not just an abuse of power, but access to the kinds of political power that gives people incredible advantages. For example, there are five or six former head administrators for the Environmental Protection Agency who are now millionaires because they've gone into working for waste management companies after they've finished working with the EPA. There is a revolving door there, and it seems as though special arrangement are made. Insider trading just doesn't take place on Wall Street, it took place inside the Pentagon also. Pentagon contractors engaged in it. Look who gets into the President's cabinet. It's upper-class business executives, over and over again. Why? Is it because these are the only people in the world who understand how to regulate the economy? Not at all. This kind of economic position does interrelate with power. I really would have a lot of trouble reducing all this to an economic dimension when it's clearly not the way the world works anymore.

GROUP **4** PAPERS

- Varieties of White Collar Crime:
Corporate, Organizational,
Occupational, Organized, Political
and Professional*** 243
Frank Hagan
- Defining White Collar Crime:
In Defense of an Inclusive Approach*** 263
David Friedrichs
- Constructing White Collar Crime:
Diverse Perspectives and
Convergent Claims*** 275
Larry Nichols
- Moving Beyond Profit as an
Explanation of Corporate Crime:
Explaining Corporate Crime from an
Organizational Perspective*** 295
Gary Rabe and M. David Ermann
- The Logic of Definition Applied to
Various Definitions of White
Collar Crime*** 317
Dick Ball

Varieties of White Collar Crime: Corporate, Organizational, Occupational, Organized, Political and Professional

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Abstract

The interface between traditional white collar crime (occupational and organizational crime) with other manifestations of white collar crime (organized, political and professional white collar crime) is explored. The changing nature of fraud, criminal enterprises and transnational crime are examined as blurring many of the classical distinctions between such varieties of crime.

Members of the National Security Council conduct secret, and illegal foreign policy which is financed in part by bankrupting savings and loan organizations. An intelligence agency steals the commercial secrets of a private company. That same private company employs organized criminals to control labor unions. Another company forces its franchise holders to swindle customers on automobile repairs while another rolls back odometers on "new cars" before selling them as new products. These are just a few instances of criminal events that continue to blur the distinctions that have traditionally been made between white collar crime, occupational and corporate (organizational) crime, and other forms of crime such as professional, organized and political crime.

Sutherland's initial definition of "white collar crime" has been criticized for being too general, however many of the synonyms, proposed substitutes, variations and related terms have failed to provide any greater lexicographic precision.

The following list provides working definitions of the various types of crime to be discussed.

White Collar Crime involves "a crime committed by a person of respectability and high social status in the course of his occupation" (Sutherland, 1949).

Avocational Crime is a crime which is deterrable by the prospect of public labeling as a criminal, committed by one who does not think of himself as a criminal and whose major source of income or status is something other than crime (Geis, 1974a).

Corporate Crime consists of the offense committed by corporate officials for their corporations and the offenses of the corporation itself (Clinard and Quinney, 1986).

Economic Crime refers to any nonviolent, illegal activity which principally involves deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention (American Bar Association, 1976).

Elite Crime is a violation of the law committed by a person or group of persons in the course of an otherwise respected and legitimate occupation or financial activity (Coleman, 1989).

Elite Deviance refers to "acts by elites and/or the organizations they head that result in any of the following types of harms:" physical, financial or moral harms (Simon, 1996).

Occupational Crime consists of offenses committed by individuals for themselves in the course of their occupations and of offenses of employees against their employers (Clinard and Quinney, 1986).

Organizational Crime involves illegal actions taken in accordance with operative organizational goals that seriously (physically or economically) harm employees, consumers, or the general public (Schrager and Short, 1978).

Professional Crime is illegal behavior for economic gain or even for economic livelihood which involves a highly developed criminal career, considerable skill, high status among criminals, and fairly successful avoidance of detection (Clinard and Quinney, 1986).

Upperworld Crime refers to laundering acts committed by those who, due to their positioning in the social structure, have obtained specialized kinds of occupational slots essential for the commission of these offenses (Geis, 1974b).

The concept of "white collar crime" shares with other social science concepts the problem of attempting to attach specific scientific meaning to a term that has widely varying public definition. Concepts such as culture, organized crime, personality, profession and social class are other examples. The concept of white collar crime is a qualitative, sensitizing concept and will always be difficult to fully operationalize.

Some characteristics of white collar crime as a concept include:

1. We are really talking about white collar offenses/offenders. The concept is not restricted to just legally defined crimes, but includes many areas of elite deviance, harmful activities, civil and regulatory violations and the like. While the term white collar offenses is a more encompassing construct, use of the term or other concepts inevitably give way to the concept "white collar crime," a more comfortable term and sociological conceptualization.
2. The core of white collar crime includes most occupational and organizational (corporate) crime. More petty or lower level offenses while technically occupational or organizational (corporate) crime are more examples of conventional and occasional property crime and do not fit the concept of white collar crime.
3. The term white collar crime will never be defined adequately for scientific purposes but will remain a useful global concept.

4. White collar crime need not be restricted to occupationally or organizationally-related activity, but may as in one of Herbert Edelhertz's (1970) types of economic crime consist of "crimes committed by individuals on an ad hoc basis" such as insurance swindles or income tax violations.
5. White collar offenders do not view themselves as criminals and crime is not their predominant activity. This distinguishes white collar crime from some other elite crime such as professional and organized crime.

Sutherland's (1949) initial concept of white collar crime, defined as "a crime by a person of respectability and high social status in the course of his occupation," has been criticized on a number of points mainly relating to: the unclear importance attached to the status of the offender, and the fact that such crime includes deviant behaviors that are not necessarily illegal (Quinney, 1964). While these criticisms are on target, the importance of Sutherland's concept lies not in the scientific utility, but rather in its sensitizing quality. It alerted us to a phenomenon and as a result, the field of criminology would never be the same.

Given rival conceptualizations of white collar crime, would there be any advantage for the U.S. Department of Justice to rename The National White Collar Crime Center, The National Economic Crime Center, The National Elite Deviance Center or any number of other alternatives? It is this writer's opinion that these alternatives, although perhaps more technically precise, have just as many shortcomings and the term white collar crime remains useful and descriptive.

In an 1980 National Institute of Justice commissioned symposium on white collar crime, Gilbert Geis (1982, 182-183) summed up the seemingly continual effort to arrive at some consensus regarding a definition:

The task of defining white-collar crime is in many ways wearisome, perhaps best left to those with a predilection for medieval theological debates. What is required for the moment is taxonomy, based on:

1. Existing law
2. Determination of forms of harm.
3. Categorization of traits of offenders, especially their position in the occupational structure, as such position bears on their illegal behavior.
4. Modus operandi
5. Types of victims of the offenses, whether customers, competitors, the general public, or the offender's own organization, among others.

Each of these delineations would have its particular value, depending on the task it is called on to perform; each could form the basis for additional discussion and refinement.

One useful typology of occupational and organizational crime was suggested by Bloch and Geis (1970), who distinguished between offenses committed:

1. By individuals as individuals (for example, lawyers and doctors and so forth);
2. By employees against their employers (for example, embezzlers);
3. By policy-making officials for the employers (for example, antitrust cases);
4. By agents of the corporation against the general public (for example, in false advertising); and
5. By merchants against customers (for example, in consumer frauds).

Another widely cited attempt to delineate types of white collar crime (defined as economic crime) was that of Herbert Edelhertz (1970), who identified four types:

1. Crimes by persons operating on an individual ad hoc basis, for example, income tax, credit card or bankruptcy fraud.
2. Crimes in the course of their occupations by those operating inside business, government or other establishments, in violation of their duty of loyalty and fidelity to employer or client. This category is what Clinard and Quinney

(1973) and others call occupational crime. Examples include: embezzlement, insider trading, commercial bribery and kickbacks.

3. Crimes incidental to and in furtherance of business operations, but not the central purpose of the business. This is what Clinard and Quinney (1986) call corporate crime or others refer to as organizational crime. Examples are: antitrust violations, deceptive advertising and commercial espionage.
4. White collar crime as a business, or as a central activity. These types of crime are examples of professional crime and include: scams, con artist operations, land frauds and phony charity and religious frauds.

Following Geis's (1982, 182) call for definitions, which among other things examine "the types of victims of the offenses, whether customers, competitors, the general public, or the offender's own organization among others...", this writer has developed an "Occupational/Organizational Crime Grid" which examines nine types of such white collar crime in terms of the type of criminal (individuals, employees or organizations) (Hagan, 1994). Figure 1 illustrates this model.

While attempting to expand on previous typologies by Edelhertz (1970) and Bloch and Geis (1970), and resembling a typology by Goff and Reasons (1986) for organizational crime, the typology has been as useful heuristically as Edelhertz's typology in discussing types of white collar crime. These types, however, are ideal types and in actuality many types of crime fall into more than one of these categories.

Sutherland (1956) saw many parallels between the behavior of corporate criminals and that of professional and organized criminals:

1. They are recidivists, committing their crimes on a continual and frequent basis.
2. Violations are widespread, with only a relatively few ever being prosecuted.
3. Offenders do not lose status among their peers or associates as a result of their illegal behavior
4. Like professional thieves, business criminals often reveal contempt for

government regulators, officials and laws that they view as unnecessarily interfering in their behavior.

The corporate or executive offenders involved in what gangster Al Capone used to call the legitimate rackets differ from professional criminals in that they do not view themselves nor are they usually perceived by others as criminals.

FIGURE 1. The Occupational/Organizational Crime Grid

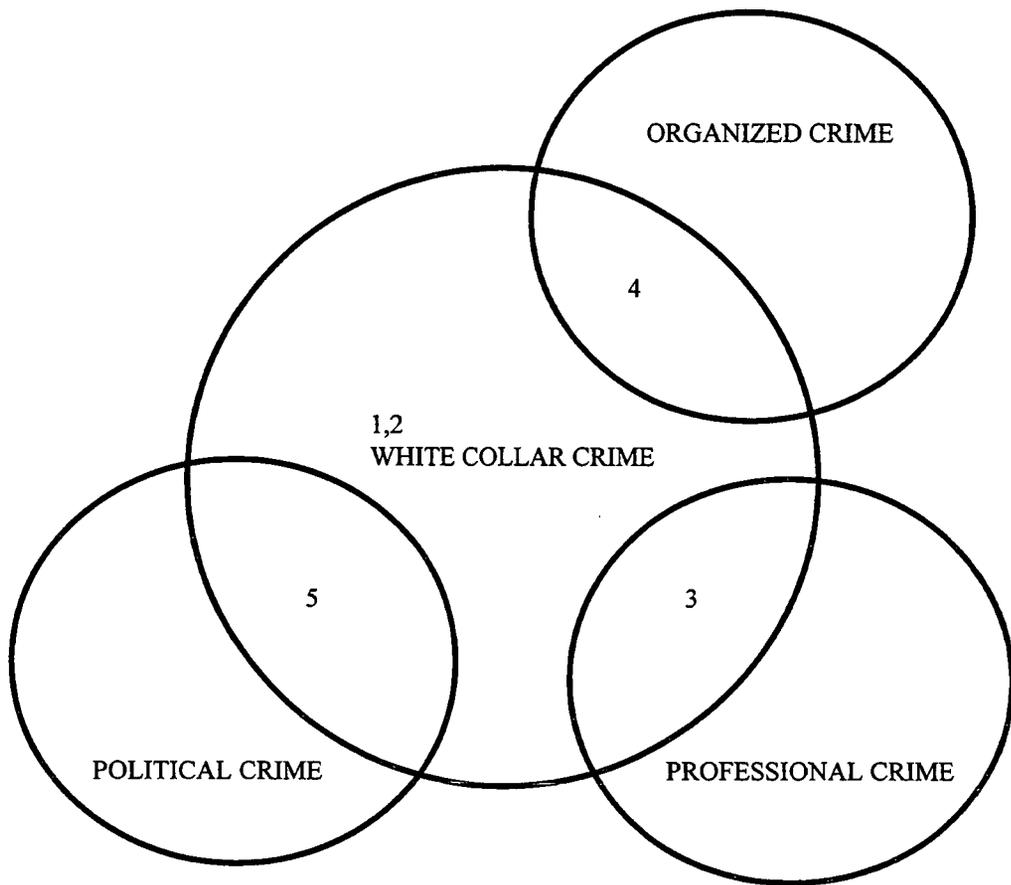
		<i>Crime Committed by:</i>		
		<i>Individuals (Public Consumer)</i>	<i>Employee</i>	<i>Organization (Corporation, State)</i>
<i>Victim Crime Committed Against:</i>	<i>Individuals (Public Consumer)</i>	(1) Merchant vs. Consumer Professional vs. Client	(2) Individual Corruption, Payoffs	(3) Production of Unsafe Products Deceptive Advertising
	<i>Employee</i>	(4)	(5) Sweetheart Contracts	(6) Occupational Health and Safety Violations, Environmental Hazards on Job
	<i>Organization (Corporation, State)</i>	(7) Insurance Fraud, Tax Fraud	(8) Embezzlement, Insider Trading	(9) Industrial Espionage, Unfair Competition, Patent Violations

<i>Type</i>	<i>Description</i>
(1)	Individual vs. Individual (Public)
(2)*	Employee vs. Individual (Public)
(3)	Organization vs. Individual (Public)
(4)*	Individual vs. Employee
(5)*	Employee vs. Employee
(6)	Organization vs. Employee
(7)*	Individual vs. Organization
(8)	Employee vs. Organization
(9)	Organization vs. Organization

*These crimes may not have direct corporate or occupational ramifications.

Following the lead from Sutherland, I would like to propose the existence of five principal types of white collar crime, as shown in Figure 2.

FIGURE 2. Types of White Collar Crime



1. Occupational Crime
2. Organizational Crime
3. Professional White Collar Crime
4. Organized White Collar Crime
5. Political White Collar Crime

The distinction between and examples of occupational and organizational/corporate crime has considerable agreement among most criminologists. Following the definitions of Clinard and Quinney (1986), occupational crime refers to offenses committed by individuals for their own benefit in the course of a legitimate occupation while organizational/corporate crime involves offenses by organizational/corporate officials for the benefit of the organization. The potential permutations and combinations of these five principal types of white collar crime certainly exceed the types 3, 4, and 5 depicted in Figure 2, but assuming these as ideal types, discussion will now turn to each of these.

Professional White Collar Crime

The benchmark for the analysis of professional criminal behavior was Edwin Sutherland's The Professional Criminal (1937). He viewed the professional criminal as a sociological rather than legal construct and as possessing the following characteristics:

1. Crime is the criminal's sole livelihood and is engaged in it for economic gain.
2. There is a highly developed criminal career.
3. There is considerable skill involved.
4. High status in the criminal world is bestowed on professional criminals.
5. Professional criminals are more successful than others at avoiding detection and imprisonment.

The bulk of attention of state attorney general's white collar crime units and even many federal efforts against white collar crime in the past has been directed against professional crime.

While a number of writers (Inciardi, 1974, 1975; Klein, 1974; and Shover, 1977) forecast the disappearance of professional crime since its heyday during the Depression, this writer agrees with Staats (1977) and Chambliss (1984) and submits that professional crime has not so much disappeared, but changed with modern society. The professional "street crime" characteristic of industrial society has given way in post-industrial society to "white collar professional crime" which blurs with occupational and corporate crime. It is perhaps impossible to identify such boundaries clearly (Hagan, 1991 and Hagan and Benekos, 1991). While there may have been a decline in professional pickpockets, burglars or robbers, there may have been an increase in

sophisticated financial con artists, particularly beginning in the 1980s. Professional crime is not dying, but it is changing. In an examination of the biggest series of white collar crimes in American history, Hagan and Benekos (1991) found that the deregulated economy of the 80s attracted professional criminals to big business as well as many occupational and corporate criminals began adopting the tactics, rationalizations and even jargon of professional criminals. Concentration, however, and focus of attention on the activities of professional criminals by federal agencies and law enforcement groups while warranted is still "the minor leagues" compared with the continuing relative inattention to and leniency with respect to the far more costly occupational/corporate crime.

Many of the operations of the savings and loan crooks such as Charles Keating in the 1980s had a startling similarity to standard professional con games. The analogy of a federally-sponsored Ponzi game in which zombie thrifts were kept alive only through the wizardry of creative RAP (regulatory accounting principles) accounting is particularly appropriate.

Dwight Smith, in "Paragons, pariahs and pirates: A spectrum-based theory of enterprise" (1980), developed a theory to specifically analyze organized crime or more specifically, "criminal enterprise." It also provided a useful model for examining professional and occupational/corporate crime. Much criminal activity is an extension of legitimate enterprise. Professional crime derives from the same fundamental assumptions governing entrepreneurship in the legitimate marketplace -- profit. Smith sees the pharmacist and narcotics dealer performing similar functions in providing drugs, one legitimately and as a paragon, and the other illegitimately and as pariah or pirate. Deposit insurance and deregulation of savings and loans in the 1980s became the "crack cocaine of American finance" (Mayer, 1990) and the paragons (legitimate thrift operators) adopted some of the principles of con artists as professional white collar criminals. Many professional criminals were attracted to the business of professional white collar crime.

In the classic model of the professional criminal, con artists rely on professionals, lawyers, and politicians to "put in the fix "and "cool out the mark." Fixers prevent adverse legal proceedings while mark cooling involves convincing marks (victims) that they have little legal recourse once they realize that they have been victimized. The S & L crooks were aided and abetted by some of the "best and brightest" professional talent that America had to offer. More

than eighty law firms represented Charles Keating to the tune of \$70 million in legal fees. Six of the then "Big Eight" accounting firms were charged by federal authorities with illegal conduct. Wall Street brokerage firms also unethically took advantage of unsophisticated thrift managers. In The Greatest Ever Bank Robbery: The Collapse of the Savings and Loan Industry, Martin Mayer (1990) indicates:

What makes the S & L outrage so important a piece of American history is not the hundreds of billions of dollars, but the demonstration of how low our standards for professional performance have fallen in law, accounting, appraising, banking, and politics -- all of them.

Professional white collar crime might be illustrated by Charles Keating who began as a shady white collar criminal and as time went on began to run the equivalent of a professional Ponzi scheme with many phony investments and swindles of elderly investors. Similarly, televangelist Jim Bakker in the PTL scandal perpetrated perhaps one of the biggest religious frauds in history, siphoning off as much as \$100 million of the church's funds for his own personal use in addition to drawing \$49.3 million in excess pay.

The Chrysler Corporation in the 90s was nailed by federal investigators for rolling back odometers on automobiles and selling them as new ones, and Sears & Roebuck was convicted in California and New Jersey of systematically defrauding auto service customers. Professional white collar criminals could be illustrated by many savings and loan crooks such as Michael Hellerman (1977), author of Wall Street Swindler, who under an assumed name infiltrated and looted the world of deregulated savings and loans.

Organized White Collar Crime

Much has been written in the past regarding the infiltration of legitimate business by organized criminal groups such as the American Mafia. Success and money from illegitimate operations present organized criminals with potential tax problems. Movement into legitimate businesses provides many opportunities for organized crime. They provide a legal source of income that can explain their high lifestyles. Because of their methods, the criminals can

monopolize markets and make more money than their competitors. Such businesses also yield a "cover or respectability," as well as providing a basis of operation and a meeting place, particularly for dealing with public officials. They enable the laundering of funds and offer a diversification of operations.

Federal agencies such as the FBI and the Department of Justice use the Federal Task Force on Organized Crime's general operational definition:

Organized crime includes any group of individuals whose primary activity involves violating criminal laws to seek illegal profits and power by engaging in racketeering activities, and when appropriate, engaging in intricate financial manipulations.

Accordingly, the perpetrators of organized crime may include corrupt business executives, members of the professions, public officials, or any occupational group in addition to the conventional racketeer element (National Advisory Committee on Criminal Justice Standards and Goals, 1976).

For the purposes of general prosecution and enforcement, most federal and state laws end up including under the definition of organized crime any group of a conspiratorial nature that includes types of criminal activity that would ordinarily be labeled as occupational, corporate, political or even conventional crime (Ibid.).

The RICO (Racketeer Influence in Corrupt Organizations) statute of the Organized Crime Control Act of 1970 prohibits the proceeds from a pattern of racketeering activity from being used in the acquisition of legitimate businesses that are involved in interstate commerce. Generally, a "pattern of racketeering" involves participation in any two of specified crimes, such as murder or extortion, within a ten-year period. RICO had broadened the classification of "organized lawbreaking" to include political corruption and white collar crime. RICO held that criminal associations need not be wholly corrupt; that is, they could be partly legitimate, thus permitting the law's application to private business, labor unions, law enforcement, judicial and government offices. If the illegal income is derived from, or is used to acquire interest in or to conduct an enterprise, then it is eligible for RICO. The following individuals or groups have been RICO-ed: a hospital equipment business, The Macon County Sheriff's Department, a Florida state judge (his judicial district was named as the enterprise), a pornography operation,

bailbondsmen, an oil platform construction company, a Michigan mayor (for shaking down real estate operators), and crooked pharmacists and nursing home managers (Press, Shannon and Simons, 1979).

While the general picture drawn of organized crime consists of traditional crime syndicates such as the American Mafia, a variety of other types exist including local and national, politically-controlled organized crime groups (Hagan, 1994). Locally controlled groups are ones in which the local political and power structure is not simply corrupted or an ally, but an actual partner in running criminal operations. This type has been suggested by Chambliss (1988a). Block and Chambliss (1981) claim that in virtually every U.S. city those running criminal operations are members of business, political or law enforcement communities and not simply "on the pad."

In national, politically controlled organized crime syndicates, organized crime groups operate in partnership with elements of the national power structure. National authorities actually participate in the planning and execution of criminal activities. Block and Chambliss (1981) and Chambliss (1988a,b) indicate that the nineteenth-century Asian opium trade, controlled and managed by the European capitalist countries, formed the capital for industrial development in the West. France, and later the United States in Indochina, encouraged tribes to grow narcotics and traffic in them in return for resisting Communism (McCoy, 1972). In post war Japan, the Yakuza have been used by corporations for security and espionage purposes. The relationship between organized and white collar crime may be twofold. On the one hand, organized white collar crime takes place when white collar operatives begin to act like organized criminals, whereas white collar organized crime entails organized criminals infiltrating the world of white collar crime.

Political White Collar Crime

Political crime involves crime committed for ideological purposes and may be for or against the state (Hagan, 1997). Recent scandals such as the BCCI, Iran-contra and Iraqgate serve as examples of the intersection between white collar crime and political crime. BCCI, the Bank of Credit and Commerce International, was a Third World bank that was involved in the largest international bank collapse in history. Those involved in the scandal included intelligence

agencies, governmental bodies, terrorist groups, drug traffickers, and organized criminals. Passas (1994) explains:

BCCI's illegal activities covered an impressive range: Ponzi schemes, deceitful accounting, frauds against depositors, money laundering, financing of illegal arms deals and nuclear programs, corruption of politicians, and other influential individuals, illegal control of financial institutions and assistance to intelligence agencies for illicit operations.

BCCI was a "rogue bank" that was also used for Iran-contra operations, CIA payments to Manuel Noriega and to Afghani rebels.

In the name of achieving secret and often illegal foreign policy objectives, figures associated with the Reagan and Bush Administration involved themselves in shady deals that ordinarily would be considered white collar crimes (Hagan, 1992; Hagan and Simon, 1994; and Simon and Hagan, 1995). They did so with the motivation of *raison d'etat* (reason of state), that any means were appropriate in order to accomplish national security objectives. In the Iran-contra conspiracy, a private group, Enterprise, was set up within the Reagan White House to secretly sell arms to hostage-taker Iran and use the profits to illegally finance Nicaraguan contra operations. During this same period, the collapse of savings and loan organizations cost the American taxpayers over \$200 billion, with an estimated one-third of the losses due to criminal operations. Some of these collapses and the lack of zeal in investigating them may have been due to the fact that some of the S & Ls may have been used by the CIA for money laundering. The CIA may have moved drug money through Mafia-linked S & Ls in order to buy arms for the contras (Brewton, 1992). The collapse of at least twenty-two S & Ls were believed linked to such activity.

In Iraqgate or the Banca Lavoro Affair, it is alleged that the Bush Administration secretly helped provide financing and arms to Sadaam Hussein in an effort to win him over and then covered up the policy after he invaded Kuwait. Banca Nazionale del Lavoro is an Italian bank whose Atlanta branch was used by Iraq to finance its arms buildup. Billions of dollars in loans to

Agriculture in a labyrinth of deceit. The Bush Administration was less than candid in explaining its involvement.

Conclusion

White collar crime will remain a problematic, but a useful construct in American Criminology. This problematic nature is made even more complex by other forms of white collar crime: organized, political and professional. Such hybrid forms further exacerbate the elusive attempt to achieve definitional simplicity and consensus.

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Defining White Collar Crime: In Defense of an Inclusive Approach

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Preface

A workshop dedicated to addressing the definitional question on white collar crime is certain to inspire a sense of exasperation from at least some of those who toil in the vineyards of white collar crime scholarship (the metaphor of the vineyard is specifically intended here to convey some sense of the tangled complexity, and interrelatedness, of many dimensions of white collar crime). We are, after all, well over a half century down the road from Edwin Sutherland's (1940) landmark speech introducing the concept of white collar crime to an audience of sociologists. Much published work since that time has grappled with the definitional issue. Gilbert Geis - one of the scheduled participants in this workshop - published one contribution on the topic in 1962; thirty years later, in 1992, he published yet another instructive consideration of the issue. My own first published contribution on this issue appeared the same year (Friedrichs, 1992). To find oneself once again contending with the definitional question, and the fairly large literature pertaining to it, is certainly to experience a potent sense of *deja vu*. As Robert Meier (1996) observed at a recent meeting of the Academy of Criminal Justice Sciences, the definitional confusion surrounding white collar crime is not characteristic of other subfields within criminology (although in the case of organized crime, at least, there are enduring issues on the proper use of the relevant terminology). Some researchers in the field clearly believe that our attention should be focused on advancing an empirical understanding of "white collar crime," and we should not waste time and energy on fruitless and unproductive dialogues over definitional issues.

I begin with the foregoing observations because I believe it is necessary to acknowledge a broad degree of indifference, or even hostility, to on-going efforts to define white collar crime. My own view, however, is that such efforts are not only necessary, but even essential.

Surely any meaningful analysis of issues pertaining to white collar crime, or any type of comparative propositions, must be based upon a reasonably clear understanding of what the term means, or does not mean. It does not follow from this that the term should necessarily be narrowly, or operationally defined. But the most sophisticated empirical or descriptive white collar crime study is going to have limited value unless it is linked in, or articulates a position on, the definitional debates that are such a critical component of the larger environment within which such crime (and attendant social control) occurs.

Clarification regarding the use of the term white collar crime, whatever form it might take, would then appear to be a useful contribution. My own view is that we should simply recognize that a valid division of labor informs the field of white collar crime studies, with some best suited to contribute on the theoretical/conceptual side, and others to the empirical/policy-oriented side. Obviously, however, the ideal situation in the field is one where significant interchange and interaction occurs. In the case of white collar crime the various constituencies - e.g., governmental officials, members of the media, white collar crime scholars - seem, on the whole, to have had little systematic mutual discourse on the relevant conceptual issues.

The definitional disputes on white collar can be attributed to a number of causes. Some may indeed regard these disputes as evidence of the relatively immature status of this subfield. Conversely, others may regard it as reflecting the singular complexity of "white collar crime." Sutherland himself has commonly been blamed for some of the confusion, insofar as he defined and used the term in different ways (Nelken 1994; Poveda 1994). It is implicit in the charge for this workshop that at least some students of white collar crime would consider the establishment of a single, clear, operational definition of the key term as the best possible solution to the present, on-going state of confusion. I am not personally persuaded that at this late date we can hope to produce any such definition that could be successfully imposed upon the diverse constituencies invoking the term. If this workshop were being held in June of 1939 (instead of 1996) at the instigation of E. H. Sutherland, seeking advice on the specific content (and wording) to be appended to the term "white collar crime," which he was planning to introduce in his American Sociological Society presidential address in December, our mission might be quite different. But the genie has long been out of the bottle, and nothing we

do is likely to get it back in again. If we are highly unlikely to be able to get an agreement on the concept of white collar from workshop invitees - David Simon and Gary Green, for example - it would seem to be improbable in the extreme that we will obtain agreement between interested parties within the various constituencies invoking this term, or concept. I do think a more realistic objective might be the promotion of a consciousness of the diverse applications of the white collar crime term, and a call for greater clarity on how it is being invoked. However, I have proposed a "provisional resolution" of the definitional dilemma (see Friedrichs, 1992), and in the section that follows I will attempt to both summarize and refine somewhat the case I made at that time.

The Case for an Inclusive Approach

Whether we like it or not, then, the term white collar crime is used in exceptionally diverse ways by many different constituencies. Among scholars and academics there is a basic division, to my mind, between mainstream scholars who tend to favor some form of an operational definition of white collar crime, and progressive scholars who favor a humanistic interpretation of the concept. I have characterized this -- perhaps somewhat facetiously - as "the war between the white collar criminologists" (Friedrichs, 1992). The distance between the conceptions is sufficiently great that they would seem to refer to almost wholly unrelated phenomena: i.e., mainstream criminologists tend to focus on middle class (or even blue-collar) individuals who have been prosecuted for some form of (arguably rather petty) economic illegality, while progressive criminologists tend to focus on elite powerholders and organizations that are engaged in massively harmful but not necessarily unlawful activities. Indeed, many of these academics have moved away from - or deliberately repudiated - the term white collar crime, insofar as they recognize its problematic nature, and have replaced it with some other term, such as elite deviance or occupational crime. But whether or not they like it the work of these scholars is frequently subsumed under or linked with white collar crime, either in a pedagogical or a research-related context, if only because this is the most familiar or general rubric. And any of the alternative terms, while solving some problems, in all likelihood create new ones. For example, the problem with "elite deviance" is that it shifts attention from the non-elite nature of much harmful governmental, corporate and occupational

activity, and also suggests deviation and stigma in circumstances where peer group conformity and rewards are present.

Susan Shapiro's (1990) case for defining white collar crime in terms of violations of trust - in part, to allow such criteria as social class to be investigated as an independent variable - privileges analytical rigor as an objective over the potent polemical dimension of the concept. But not everyone would concede that such a trade-off is desirable, or defensible.

The concept of occupational crime moves one away from the specifically financial character of illegal activity carried out in this context, and of course encompasses many who do not enjoy a white collar status. If occupation is obviously critical in providing special opportunities for a wide range of offenses, other contexts (e.g., family membership) do this as well. As I have noted elsewhere (Friedrichs, 1992), the conflation of high level corporate executives making profit-maximizing decisions to pollute the environment with hotel maids who pilfer from guests and physicians who sexually molest patients is no less problematic than the conflations within the white collar crime concept.

To my mind, any meaningful invocation of the term white collar crime must incorporate in some measure the following elements: It is a violation of law (although not necessarily criminal, civil or administrative law), involving a violation of trust (although the degree of trust is variable), with a basic financial aspect (to realize financial gain, or minimize loss), committed within an occupational context, by a respectable (not necessarily elite) individual (or group of individuals, or an organization), with some identifiably harmful consequences (physical, economic and social), and real victims (often diffuse, and frequently unaware of their victimization). I am, incidentally, wholly conscious of the fact that the preceding listing includes both attributes of offenders, and of offenses; it is deliberately inclusive. White collar crimes may have violent consequences, but these consequences are never the direct, intended objective of the offense; rather, they are outcomes (anticipated or not) of actions oriented primarily toward some financial (or status-enhancement) goal. White collar offenders virtually by definition have some primary identity other than that of criminal.

Risk tends to play a key role in white collar offenses insofar as they typically involve a cost-benefit calculation, with gains from commission of the offense viewed as significantly

outweighing risks of apprehension and prosecution; furthermore, white collar offenses often involve imposing unwitting risks on others in return for some form of gain to the offender.

Fraud or some form of misrepresentation tends to be at the heart of the violation of trust that defines white collar crimes. I will not here attempt to summarize (or provide a critique of) Susan Shapiro's (1990) brief on behalf of trust and its violation as the central attribute of white collar crime (I have done so in Friedrichs, 1992). Although I have reservations about some basic aspects of her approach, which favors an analytical over a polemical concept, I do think the case for the centrality of a violation of trust is quite persuasive (as is suggested by the title of my book).

"Respectability" is an admittedly problematic term, but at a minimum, the notion of white collar crime cannot in a meaningful sense be applied to the unrespectable: i.e., "street" people. If white collar offenders are not morally respectable they occupy a status with some measure of social respectability, and surely the success of white collar crime schemes is typically intertwined with the projection of a respectable status.

Although I would certainly agree that a disproportionate percentage of the very worst white collar crime is committed by elites, it would at this stage appear to be a hopeless challenge to restrict the application of the term "white collar crime" to such elites (even if this is somewhat more consistent with Sutherland's own original intentions). On the somewhat related issue of the role of "power" in any definitional equation, the same type of difficulty would appear to arise: i.e., many of those who are identified and prosecuted as white collar offenders do not exercise "power" in a conventional, political sense of the term. Stuart Henry and Dragan Milovanovic (1996: 109) argue that all crimes are acts of the "powerful" - or attempts by those with power to exploit those without it. If it is useful to challenge the mystifications that overstate differences between white collar and conventional offenders, one must also be wary of understating some differences: i.e., both the corporate polluter and the rapist exercise power over their victims, but surely there are some fundamental differences between these offenders as well.

While collusion or conspiracy is often taken to be a key element of white collar crime - and Sutherland did refer to such crime as a form of organized crime - the fact is that many activities widely defined as white collar crimes involve individuals acting alone.

Let us consider one illustrative case on the definitional conundrum. Gary Green (1993) has vigorously challenged the conventional classification of embezzlement as a type of white collar crime. He points out that it does not necessarily occur within an occupational role, does not necessarily involve the violation of trust, is often carried out by individuals not engaged in collusion with others, and that these individuals do not necessarily have a middle class status. Indeed, it is more typically the victims of embezzlement, as opposed to the offenders, who occupy a middle or upper class status. All these points are well-taken: i.e., embezzlement by definition need not meet the minimal criteria of any coherent conception of white collar crime. Surely Green would not deny, however, that at least some embezzlements are white collar offenses. Kitty Calavita and Henry Pontell (1990), for example, have introduced the term "collective embezzlement" to refer to the massive thefts carried out within many of the S & Ls of the 1980s, and surely these activities were white collar offenses in every sense: indeed, they might be said to exemplify white collar crime. By the same token, not all frauds (e.g., a "three card monte" scam) are white collar offenses, but some certainly are. And some embezzlements or frauds may obviously be borderline cases. Of course, there are some offenses (e.g., antitrust violations) that do appear to be white collar offenses by definition. But in broad terms almost any activity that we might identify strongly with white collar crime - from anticompetitive practices to the production and distribution of unsafe products - is likely to have some manifestations in contexts wholly removed from the white collar world. Accordingly, our focus should be less on the claim that a particular offense category is or is not a form of white collar crime and more on the degree to which a specific set of actions meets the criteria of a white collar offense.

But what of applications of white collar crime in the context of specifically empirical, quantitatively oriented studies? It is in fact very difficult to make truly valid comparisons between the disposition of conventional offenders and white collar offenders by the criminal justice system, when the two classes being compared have been importantly determined by various types of biases. David Weisburd, Elin Waring, and Ellen Chayet (1995), in addressing the issue of deterrence and white collar crime, find evidence to challenge the common assumption that white collar offenders are far less likely to have prior arrests than conventional offenders. One interpretation of such a finding (as the authors recognize) would

focus both on how white collar crimes are defined in the federal justice system, and how individuals (or organizations) are selected for processing as white collar offenders by this justice system. For example, federal categories could include many non-white collar offenders (e.g., welfare cheats) and exclude many white collar offenders (e.g., corporate executives responsible for unsafe working conditions). Furthermore, white collar offenders in the federal offense categories might be proportionately more vulnerable to arrest than conventional crime recidivists. The study just discussed extends the work of the Yale White Collar Crime Project. The last book published as part of this project highlighted the middle class status of the majority of those actually processed as white collar offenders (Weisburd et. al., 1991). Again, the finding that white collar offenders are middle class, not elites, reflects: 1) the state's way of defining and processing white collar offenders; and 2) the simple fact that proportionately, the middle class is much larger than the elite class. This finding, then, tells us less about the attributes of white collar offenders than it tells us about how such offenses are defined and processed.

A term such as white collar crime tends to be invoked for some specific purpose, and the intended purpose can easily influence the meaning of the term. To briefly reiterate my argument elsewhere (Friedrichs, 1992) on this point, the term white collar crime may be invoked for polemical (and presentational), typological (and taxonomic), or analytical (and operational) purposes. To be more specific, briefly: the polemical purpose for invoking the term white collar crime tends to be focused on calling attention to the pervasive criminality and harm engendered by the powerful and the privileged; the typological purpose for invoking the term uses it as a general categorical rubric under which many specific forms of offending not encompassed by the term conventional crime occur; and the analytical purpose of invoking the term white collar crime is to provide a definition applicable to empirical research. In the section that follows I will make a few observations pertinent to the second of these purposes.

A Typology of Trusted Criminals

My basic position is that the concept of white collar crime is primarily useful as a starting point or a heuristic (or polemical) device, as a means of directing attention away from conventional forms of crime and toward other forms of crime, historically neglected. But

whether or not particular offenses (or offenders) fit into the white collar crime (or criminal) category is essentially a matter of degree. Accordingly, white collar crimes are ordered along a continuum, with varying degrees of purity. My typology, formulated for my text, Trusted Criminals, (1996) attempts to discriminate between high-consensus forms of white collar crime - corporate and occupational - and various cognate, hybrid, and marginal forms. It takes into account the context in which illegal activity occurs; status or position of offender; primary victims; principal form of harm; and legal classification. Corporate crime - the primary focus of Sutherland's (1949) original, landmark study - would appear to be the least problematic case of a pure form of white collar crime. But even here, if the term corporation is applied to any incorporated entity, it can encompass corporations of vastly different sizes and resources, established for different purposes, and operating in very different ways. At what point, for example, does a corporation cease to be a legitimate business engaged in white collar crime, and become more accurately characterized as an illegitimate enterprise organized specifically to carry out criminal activities, with only a surface appearance of legality or legitimacy? In the category of occupational offenders, physicians who defraud Medicaid would clearly appear to be white collar offenders, but what about repairmen who defraud their customers? My own solution to this is to recognize that occupational crime overlaps with and intersects with white collar crime, but not all financially-oriented illegalities committed in an occupational context are white collar crimes. For example, minimum wage store clerks who steal from their employer are engaged in occupational crime, but not in white collar crime in any meaningful sense. The greater the social status, respectability, resources, and power of the offender, the "whiter" the crime. The specific point of demarcation between white collar and non-white collar offenders is obviously somewhat arbitrary, or a matter of degree.

Within the field of criminology a significant degree of consensus attends to two forms of white collar crime: corporate and occupational. For reasons given in Trusted Criminals (1996) - and not reiterated here - I am among those who believe that it is valid to speak of corporate (or organizational) crime; I am conscious of those who regard such usage as problematic. The small business has been somewhat slighted in the conventional dichotomy of corporate and occupational crime: exactly how big must a business be before illegal actions carried out on its behalf become a form of corporate crime? Furthermore, in the case of small

businesses, it may be especially difficult to disentangle actions taken on behalf of corporations from actions taken by individuals wholly for their own benefit. In a number of respects, small business or retail crime may be a hybrid of corporate and occupational crime. And as suggested earlier, the point at which an occupational offense ceases to be a white collar crime in any meaningful sense of the term continues to be somewhat arbitrary; certainly non-economically driven occupational offenses are something other than white collar crime.

If corporate crime and occupational crime (with the qualifications just noted) tend to be "high consensus" forms of white collar crime, it is clear that there are a broad range of activities manifesting some basic dimensions of white collar crime, but not fitting wholly under the rubric of either corporate or occupational crime. In one formulation I have referred to "residual" white collar crime: i.e., all that is left over after we have factored out the high consensus forms. In Trusted Criminals I discuss governmental crime as a cognate form of white collar crime; state-corporate crime, finance crime, and technocrime are considered hybrid forms of white collar crime, whereas what I call enterprise crime, entrepreneurial crime, and avocational crime are marginal as well as hybrid forms of white collar crime. Clearly, then, I am identifying with the position that white collar crime is not an either/or proposition, but is rather a relativistic phenomenon, and is ranged along a continuum, or spectrum. The key elements or dimensions traditionally identified with white collar crime may be present in varying degrees of "purity," and in a virtually infinite number of possible permutations or combinations.

Conclusion

The term "white collar crime" has now become a part of the language: not only the English language, but as Gilbert Geis and Colin Goff (1983) remind us, of many other languages as well. Any invocation of the term signals a fundamental negative disclaimer: one is not addressing the matter of conventional or street crime, as these terms are typically understood. If it seems highly unlikely that we could persuade the many different constituencies invoking this term to adopt a single, operationally-defined meaning of white collar crime, we might at least hope to promote greater clarity on how the term is being used. One of the unfortunate consequences of the present confusion on the term is that we all too

often have a situation of comparing apples to oranges. The term "white collar crime" can continue to serve various useful purposes - as suggested earlier - if we are both clear about those purposes, and refrain from imagining we will find the holy grail: i.e., a single, coherent, operationalizable, uniformly adopted meaning of white collar crime.

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Constructing White Collar Crime: Diverse Perspectives and Convergent Claims

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In a famous passage, from Alice in Wonderland, Humpty Dumpty tells Alice, "When I use a word, it means just what I choose it to mean--neither more nor less" (Carroll, 1977). To this, Alice responds, "The question is whether you **can** make words mean so many different things." Without suggesting that participants here (at this Workshop) have tumbled into a realm of irrationality, the quote is relevant to our definitional purpose, for the term "white-collar crime" has been the bearer of many competing meanings. Carroll's dialogue actually includes two related thoughts: what words, and whose words. Most of our distinguished presenters have addressed the what, that is, the content of definitions. This paper will emphasize the **who**, by examining a broad range of perspectives, both in the academic world and in the larger society.

The approach that I will apply is known as "constructionism," and is especially popular in the field of social problems. The name derives from a 1977 book by Malcolm Spector and John Kitsuse, Constructing Social Problems, whose thesis is that problems refer not to objective conditions but to perceptions of conditions. The authors call statements of perceptions "claims," a term that includes two intertwined meanings: 1) assertions that some condition **exists** (for example, global warming); and 2) complaints that the condition is **wrong, harmful or otherwise undesirable** (because it might lead to coastal flooding, for example).

Claims are put forward by individuals or groups known as "claimsmakers." Constructionists see claimsmakers as activists and members of organized movements seeking to raise consciousness. Who are the major claimsmakers on the problem of white-collar crime? This paper considers several: sociologists and criminologists, law enforcement agencies, mass media, management educators, social movement participants and makers of popular culture.

The constructionist approach interprets events by linking the content of claims to the **group interests** of claimsmakers. How do such groups, in other words, benefit if others accept the claims they present? A famous example (Pfohl, 1977) argues that physicians benefited from claims they made about child abuse, by creating business for themselves while also gaining occupational prestige. For our purposes, the question becomes how claimsmakers about white-collar crime may benefit from their definitions, and how such potential benefits shape the content of their claims.

Claimsmaker groups sometimes achieve "ownership" of issues, in the sense that their definitions attain hegemony over those of others. Gusfield (1963), for example, found that conservative religious and rural groups dominated the "symbolic crusade" to define consumption of alcoholic beverages as a major problem, while Jenkins (1994) more recently concluded that the FBI acquired ownership of the social problem of serial murder.

As it combines these considerations, constructionism emphasizes the plasticity of interpretive work. Perceptions of particular problems can shift, as happened when smoking came to be viewed as involving deliberate corporate deception and innocent victims of "second-hand smoke," rather than merely addicted individuals (Troyer, 1989). Problems can also "rise and fall," as Ball and Lilly (1982) showed with regard to "the menace of margarine." Though mindful of the issue of power, constructionists believe that perceptions vary somewhat independently of existing structures, and see numerous sources of influence and creativity.

From a constructionist point of view, a crucial consideration is that white-collar crime has been accepted as a "real" social problem. Widespread usage of the term in both popular and professional circles indicates that it meets Ibarra and Kitsuse's (1994) constructionist criterion of a "vernacular constituent of moral discourse." Nevertheless, various claims are being presented in different arenas of discourse, each of which has a margin of autonomy. Overall, there is a broad interactive matrix in which contemporary understandings of white-collar crime are being shaped. Indeed, this conference reflects two sectors of that matrix: academic disciplines and law enforcement.

The present paper offers a preliminary sketch that may contribute to an understanding of how what was once a narrow academic controversy has developed into a major public problem.

Claims and Claimsmaker Groups

Criminology and Sociology

Given the impossibility of summarizing a century of claims, the discussion will confine itself to sketching out major themes and tendencies. Two patterns are most evident: Progressivist reform and radical political-economy critique. The reformist orientation dominated from the turn of the century into the 1960s, while political economy has become prominent since that time.

Among the most important early works is Edward A. Ross's 1907 book, Sin and Society, which challenged public opinion that "beholds sin in a false perspective, seeing peccadilloes as crimes, and crimes as peccadilloes" (vii). Ross argued that understandings of immorality and crime must change as society evolves, and that this requires leadership from progressive activists. Of particular interest is the chapter on "the criminaloid" or quasi-criminal, a type that developed with rapid, ineffectively regulated economic expansion, and whose harmfulness was not recognized because it was cloaked in respectability and ideology. Therefore, Ross says:

To run him to earth and brand him, as long ago pirate and traitor were branded, is the crying need of our time. For this...is society's most dangerous foe, more redoubtable by far than the plain criminal.... Every year that sees him pursue in insolent triumph his nefarious career...hurries society toward moral bankruptcy.

The reformist view was likewise dominant in Edwin H. Sutherland's famous 1939 address on "White-Collar Criminality," which inaugurated the systematic study of the problem. Sutherland identified himself as a dissident in social science critiquing theory and practice and offering an alternative approach. Throughout the discussion, he contrasted his academic discourse with "popular" notions of crime and criminals. He also indicted his profession for failure to follow proper scientific procedures in two senses: 1) neglecting an enormous amount of relevant data; and 2) failing to formulate a general explanation of crime.

Sutherland claimed there are important differences in crimes committed by higher and lower classes, and related differences in the social responses to such offenses. He did not explicitly consider offenses by groups in the middle, although these tend to be merged with the white-collar category. The primary criteria of class are income and respectability, especially that associated with occupation or profession.

The paper's famous argument states that conventional understandings of crime are misleading and incorrect, that crime is in fact not closely correlated with poverty or with the psychopathic and sociopathic conditions associated with poverty, and that an adequate explanation of criminal behavior must proceed along quite different lines (Sutherland, 1940).

Such lines, as we know, refer to the processes by which crime is learned, especially in peer groups and organizational cultures.

For Sutherland, white-collar crime is a two-sided violation of trust that has a corrupting influence on business, government, the professions and society generally. The more obvious side is that of the respectable perpetrators, while the less visible aspect is the enforcers who fail to bring violators to justice. In a summary passage, Sutherland (1940) says:

The financial loss from white-collar crime...is less important than the damage to social relations. White-collar crimes...create distrust, which lowers morale and produces social disorganization on a large scale.

This interpretation is based on an implicit understanding of society as an organized moral community.

Though powerful, this critique is parochial, for Sutherland does not compare the U.S. with other societies. Nor does he consider the possibility of white-collar crime occurring in non-capitalist systems. His indictment appeals to traditional values, especially community, democracy and fundamental fairness under law.

Sutherland's discourse grants a privileged status to social science, by repeatedly asserting that actions which have not been considered criminal **should** be so regarded. Social scientists know better than the general public, agents of law enforcement, and others -- or at least should know better. Sutherland does not consider how his critique is possible, and assumes that science provides an absolute point of leverage for reform efforts.

During the past two decades, this approach has been increasingly challenged by claimsmakers who favor a "political economy" understanding -- an approach grounded in conflict

theory, especially the neo-Marxism and "New Left" politics of the 1960s and 1970s. This discourse is a radical critique of both criminology and of American social structure.

The most influential statement of the perspective has been the volume, Elite Deviance by Stanley Eitzen and David Simon (1982). Following (and further developing) the "power elite" model of C. Wright Mills (1956), Simon and Eitzen critique the traditional image of the United States as a democracy, and interpret white-collar crime as a harmful by-product of oligarchy. White-collar violations, in other words, are largely the offenses of the upper class against middle and lower classes.

Indeed, Simon has recently argued that the very term "white-collar crime" should be rejected as hopelessly vague. In its place, the term "elite deviance" is advocated as clearer and more adequate, because: 1) it refers only to "persons of the highest socioeconomic status;" 2) it includes unethical acts that result in physical, financial, or moral harm; and, 3) it "differentiates acts of personal enrichment from acts that are committed on behalf of one's employer" (Simon, 1996).

The political economy perspective seems (like Sutherland) to claim a special privilege by implying that sociologists can render unerring moral judgments. The behavior of elites tends to be treated as transparent, with little allowance for uncertainty or ambiguity. For example, Simon (1996) asserts:

In short, the U.S. economic system, state-supported capitalism, is the source for many of our elite deviance problems. Capitalism and the government that accompanies it have no fundamental commitment to remedying social ills.

There seems to be an unresolved tension here between the emphasis on universal human rights and the critique of capitalism. Although the term "elite deviance" implies that its referent should appear wherever elites are found, Eitzen and Simon (1982) often speak as though the United States is uniquely evil. This limitation arguably detracts from the critical thrust of the concept of elite deviance, which might be more broadly applied.

For quite some time, sociological claimsmakers have also framed the problem of white-collar crime in other ways that advocate "rethinking" Sutherland's original formulation. Thus, two decades ago, Geis and Meier (1977) spoke of a "renaissance" in the field, and called for "hypothesis development and testing, and the kind of research that moves forward by careful, additive

processes." Shortly thereafter, Clinard (1980) presented the issues in terms of "the abuse of corporate power." Vaughn (1983) advocated approaching the field from the perspective of "unlawful organizational behavior." A decade later, Schlegel and Weisburd (1992) edited a substantial volume on "white-collar crime reconsidered" that was based on a conference commemorating the fiftieth anniversary of Sutherland's address. Jamieson (1994) drew upon the perspective of the sociology of complex organizations. Most recently, Friedrichs (1996) developed a systematic analysis based on the social organization of trust, risk and respectability.

Law Enforcement

Claims about white-collar crime by law enforcement sources were largely negative for many years. White-collar crime did **not** appear in the FBI's index of major crimes, and did **not** make the "most wanted" list. White-collar violations were generally **not** made into criminal indictments, and even when they were, did **not** result in lengthy imprisonment. Prosecutors did **not** target top managers but rested content with actions against corporations.

Gradually, during the past three decades, these negative claims have been replaced by positive allegations. Prosecutors have been more aggressive in bringing indictments, while judges have handed down stiffer sentences. The Watergate scandal alone resulted in the imprisonment of over twenty high-status offenders and the disbarment of some. The Ford Motor Company was brought to trial on a charge of homicide. Michael Milken (who received \$550 million in pay in 1987) was sentenced to ten years in federal prison. Charles Keating was convicted by both the federal government and the State of California. Reverend Jim Baker received the shocking sentence of forty-five years for duping small investors. All these actions communicate the claim that white-collar crime is a serious problem and that white-collar offenses will henceforth be treated like traditional street crimes.

This claim was most dramatically asserted in the late 1980s when federal prosecutors began to charge white-collar offenders under the Racketeer Influenced and Corrupt Organizations Act. Possibly influenced by recent successful RICO prosecutions of organized-crime bosses, prosecutors used the controversial statute to convict Princeton-Newport Limited Partnership, and to compel Drexel Burnham Lambert to agree to a settlement in which the company paid \$650 million in penalties to the government.

Most recently, law enforcement's claims have led to the creation of the National White Collar Crime Center. The very operation of this Center, and its Training and Research Institute, is a form of claimsmaking analogous to that of agencies concerned with traditional crimes, such as the Drug Enforcement Administration or the Bureau of Alcohol, Tobacco and Firearms. This week's workshop itself is a further claim that white-collar crime merits a higher enforcement priority.

Due to existing institutional arrangements, however, the claims of law enforcement will always have fewer degrees of freedom than comparable statements from academics. White-collar crime will necessarily be defined in terms of organizational and agency missions, rather than social relations in the broadest sense. The definitional problem, in other words, **will be linked to the urgent problem of organizational survival** in an atmosphere of competition for scarce resources. The National White Collar Crime Center, for example, cannot define the problem in a way that places it in conflict with government agencies and their funding.

Claims from law enforcement will likewise be constrained by an obligatory acceptance of the legitimacy of the political and legal order. Law enforcement personnel, in other words, do not have the license to critique social arrangements that academics enjoy.

Mass Media

From the perspective of constructionism, accounts of social problems by media can be conceptualized as "secondary claimsmaking" (Best, 1990), in the sense that they are derived from the claims of others. Media claimsmakers, however, do not merely repeat what primary claimsmakers assert; they adapt these materials to their own purposes and formats. Social problem claims are valued as means of holding the attention of audiences, selling newspapers, increasing advertising revenue and profits, winning awards for investigative journalism, and so forth.

A strong case can be made that the media have characterized white-collar violations as a major social problem since the early 1970s. A quarter-century ago, reports on Watergate elevated the Washington Post to the position of "the world's most famous newspaper," for a time, and provided a model that other news organizations have emulated. The Wall Street Journal, for example, made a major effort to intensify its investigative reporting after being criticized for laggard coverage of Watergate (Scharff, 1986).

Newspapers have also expanded their coverage of white-collar crime for other reasons. Reporting of business news in general has increased, both in the front sections and in sections devoted entirely to business. There has also been a strong trend toward "tabloidization" (Anderson, 1988; Tumber, 1993; Chermak, 1995) that increases the likelihood that white-collar crimes will be reported. Even the stately New York Times, for example, has lately included a "little wild streak" of sex and scandal (Diamond, 1995).

White-collar offenses have also become a staple of televised investigative journalism, from the efforts of local stations to national prime-time programs. In the late 1970s, for instance, "60 Minutes" did a famous segment on the Ford Pinto. More recently, NBC became embroiled in controversy after staging a fiery crash involving a GM pickup truck.

Analysis of claims that mass media present about white-collar crime should also include the activity of major book publishers, whose sales volume is immense. The two decades since Watergate, and especially the past ten years, have seen an enormous outpouring of books about white-collar violations.

There has not yet been enough systematic research to provide a basis for generalizing about mass media claims on white-collar crime. Most published studies have focused on print media, rather than television, radio or book publishing. An early contribution was made by Swigert and Farrell's (1980) analysis of the Ford Pinto case, which found a trend toward "the personalization of harm" in news stories. Fisse and Braithwaite (1983) analyzed the effects of publicity on corporate offenders. More recently, efforts have been made to develop a "newsmaking criminology" that would include white-collar issues (Barak, 1995; Surette, 1992). Thus, analyzing the Imperial Food Products fire, Wright, Cullen and Blankenship (1995) concluded that print media had failed to raise the issue of "corporate violence," opting instead to focus on "ineffective regulatory processes."

Management Education

In contemporary management training programs, the issue of white-collar crime frequently appears in two types of courses. The first type is generally known as "business and society." Classes of this sort became relatively widespread in the 1960s, and proliferated during the following decade. A primary reason for this quantum increase was the decision by the American

Assembly of Collegiate Schools of Business (AACSB) in 1968 **to require a course on business and society in all accredited programs** (Pamental, 1988).

Business and society courses discuss white-collar scandals and pose the question of how managers should respond to them (e.g., Sethi and Steidlmeier, 1991). From this perspective, white-collar violations are challenges that management professionals must be prepared to face to protect the well-being of their firms. Far from being unprincipled offenders, corporations are seen as legitimate organizations (Sutton, 1993) attempting to fulfill important social needs (e.g., Frederick, Post and Davis, 1992). They may even be themselves victims of white-collar crime -- a point little noted by sociologists.

The second relevant type of course, business ethics, began to appear during the late 1970s (Powers and Vogel, 1980; Hoffman, 1977). In the early 1980s, Bentley College's Center for Business Ethics conducted a national survey on the issue and received responses from 655 schools. More than three hundred of these reported that a course on business ethics was already offered, and another forty-eight indicated that such a course was being planned (Hoffman and Moore, 1982). Since that time, many individual schools have made ethics courses mandatory (e.g., Gentile, 1991), and the national accrediting organization (AACSB) has considered proposals to require ethics courses in all accredited programs.

Business ethics courses approach white-collar crime as a problem to be avoided through effective self-regulation in terms of well defined value systems. Business is regarded as a moral enterprise and members of corporations are treated as moral agents (e.g., Boatwright, 1991; Hoffman and Moore, 1990; Frederick and Hoffman, 1989).

Business ethics courses also include materials dealing with the efforts of corporations to create ethical climates and train employees about ethical decision making. Claims about corporate efforts to raise moral standards in business have been presented by the Conference Board, a prominent organization whose members represent some four thousand firms. This group has sponsored conferences and reports on the ethical practices of companies.

Thus, in the late 1980s, the Conference Board surveyed 300 firms in the U.S., Europe and Mexico, of which two hundred and thirty-eight submitted corporate codes of ethics. Nearly half of these also operated ethics training programs or discussion groups. Respondents identified product and workplace safety, health and environmental issues as serious concerns (Berenbeim, 1987).

Another report in the early 1990s pointed to a strengthening of the trend toward codes of ethics. Research findings showed that

Many companies now believe that their codes are legal documents rather than simple mission statements....Some companies...rely heavily on their board of directors' ethics committees as creators and watchdogs of company codes (Brothers, 1991).

A 1994 report on the fifth annual conference reaffirmed the theme of maintaining legitimacy and preventing crime through ethical conduct. In language conveying both accountability and perceived vulnerability, the authors emphasized that

The current sentiment that business owes something to society cannot be ignored....Once companies stray from what the public expects...they may find it impossible to regain the trust of the consumers who control their futures (Garone, 1994).

The business ethics perspective has also been communicated in specialized journals and events sponsored by a range of recently established professional associations. Such groups include the Society for Business Ethics, the Ethics Officer Association, and the Council for Ethics in Economics. In July 1996, the first World Congress of Business, Economics and Ethics was being held in Tokyo. Specialized journals include the *Business Ethics Quarterly*, the *International Journal of Value-Based Management*, and the *Business and Professional Ethics Journal*.

Social Movements

The past two decades have witnessed broad-based campaigns to define white-collar crime that have characteristics of social movements. Early efforts were associated with Ralph Nader and his "raiders." These activists produced a book, Taming the Giant Corporation (Nader and Green, 1973) that called for a policy of federal chartering of firms. Shortly thereafter, the boycott of Nestle products occurred, as a protest against the allegedly unsafe marketing of infant formula in developing nations.

During the same period, the United Farm Workers Union, led by Cesar Chavez, organized a national boycott of grapes in an effort to compel better treatment of migrant workers. Among the agribusiness organizations targeted by Chavez and his supporters were the Gallo and Campbell

companies. Another popular tactic of the era was the proxy shareholder resolution at annual corporate meetings. Numerous resolutions of this type were introduced to pressure companies to divest themselves of assets in South Africa until apartheid was abolished.

There have also been specific victim-rights movements, especially on the issues of unsafe products and environmental violations. The campaign to sell Love Canal to the federal government and relocate its residents, and the movement to compensate veterans and families harmed by Agent Orange were prominent early examples. More recently, victims' movements have focused on the alleged "Gulf War Syndrome" of illness, and on health problems said to be caused by silicone breast implants. Anti-tobacco activists and movement groups such as ASH and GASP have meanwhile pressured the federal government to regulate tobacco as a drug and to restrict its advertising.

The mass tort actions of recent decades also have certain characteristics of movements, especially intensive publicity and recruitment. Asbestos-related litigation directed at the Manville Corporation, and the Dalkon Shield victim fund operated by American Home Products have been the most prominent cases in this category.

In the opinion of some observers, blowing the whistle on white-collar offenses has also acquired features of a social movement, especially a recognized leadership and specialized media such as clearinghouses for complaints (Glazer and Glazer, 1989).

Other analysts perceive a large-scale general movement against upper-world violations. The term "social movement against white-collar crime" came into vogue after the 1980 article by Katz that focused on federal prosecutors as "moral entrepreneurs." More recently, Cullen, Maakestad and Gray (1987) portrayed a broader movement that included mass media, individual activists, and academics as well as law enforcement personnel.

Popular Culture

Claims about social problems also appear in popular culture forms such as novels and plays, magazine stories, films, humor and cartoon strips, or popular songs. Constructionist sociologists have approached these as "tertiary claimsmaking" (Best, 1990), since the materials used are frequently derived both from primary activists and secondary claimsmakers in mass media.

During the past two decades, claims about white-collar crime have frequently appeared in popular culture. The Watergate scandal alone generated a motion picture, numerous autobiographies and an enormous volume of cartoons, such as those in the popular "Doonesbury" strip. The Ford Pinto case likewise provided the basis for the film "Class Action." Official corruption was a major theme of several movies, including "And Justice for All," "Clear and Present Danger," even "The Untouchables."

In the absence of systematic research on such claims, it is difficult to do more than sketch out general patterns. The problem of white-collar crime was presented as the **struggle of heroic individuals against corrupt systems** in numerous films, especially those dealing with whistleblowers. Examples include: "Silkwood," "The China Syndrome," and "Marie." The Serpico case was the subject of both a book and a movie.

At other times, the white-collar problem was portrayed in terms of **uncontrollable greed**, as in "Wall Street," and "Leona Helmsley: The Queen of Mean." **Conspiracies** of public officials were highlighted in films about the assassination of President Kennedy, especially "Executive Action," "Ruby," and "JFK." Corporate cover-ups of dangers to the public were focal points in "The China Syndrome" and "Class Action." Violent white-collar offenses were less prominently featured, but did appear in "Silkwood" and "Missing," as well as the assassination films.

An interesting example of the increasing emphasis on white-collar problems can be found in the recent box-office hit, "The Fugitive." Although features of the story were retained from the earlier television series, the plot was **transformed in the film from a tale of traditional street crime into a white-collar scandal** involving members of the prestigious profession of medicine.

Works of investigative journalism have also presented claims about white-collar crime to popular audiences in recent years. The E. F. Hutton bank overdrafting case was the subject of three books, all of which portrayed events in terms of the model of classical Greek tragedy (i.e., the flaw of pride leads inevitably to ruin). Another recent book, Den of Thieves (Stewart, 1992), about the Levine-Boesky-Milken insider trades, became a bestseller and won the Pulitzer Prize for journalism. Other investigative books have featured the Bakkers' PTL scandal (Shepard, 1989), the savings-and-loan crisis (Adams, 1990; Pizzo, Fricker and Muolo, 1989) and the global frauds of the Bank of Credit and Commerce International (Adams and Frantz, 1992).

Reciprocal Influences Among Claimsmakers

Each claimsmaker group has a certain sphere of activity, and presents its claims about white-collar crime within some bounded arena of discourse. Sociologists and criminologists dominate the discussion within certain academic contexts, especially undergraduate colleges of arts and sciences. Professors of management enjoy a parallel privilege within programs for business majors or schools of management. Investigative journalists have forums in mainstream newspapers, on television airwaves and in popular bookstores. Law enforcement professionals develop their views within particular jurisdictions and organizational missions.

None of these arenas of discourse, however, is hermetically sealed and numerous reciprocal influences can be observed among claimsmaker groups. Thus, the claims of sociologists appear in textbooks used by law-enforcement professionals and their students (e.g., Coleman, 1993). Decisions by prosecutors produce major cases that sociologists later analyze (e.g., Ermann and Lundman, 1996), while also providing materials to the creators of popular films and books. Choices by mass media organizations to investigate and broadcast selected white-collar stories affect the education of students in business ethics courses (e.g., Weiss, 1994). The claims of victims' movements shape mass-media programming and the research agendas of criminologists.

Such reciprocal influences will evidently become the norm in a global society dominated by mass media and ever-proliferating means of telecommunication. Claims about white-collar crime will flow ever more freely on the information superhighway, thereby creating new possibilities for democratic control and the empowerment of those previously unable to make their voices heard.

Conclusion

This paper has considered the definition of white-collar crime as a complex matrix of claimsmaking activities involving diverse groups. Each of these claimsmakers was seen as presenting a set of claims within some particular arena of discourse, where it could establish some degree of local ownership of the issue. All groups, however, were also described as affected by the definitional work of others. The entire process was characterized as increasing in complexity and in reciprocal influences.

The most interesting finding is that claims made by diverse groups with very different interests have largely converged and reinforced one another. There is now no serious resistance in

sociology and criminology, or law enforcement, or mass media, or business education or popular culture to the claim that a major problem of white-collar crime exists in the contemporary United States. Such consensus is arguably relatively rare.

The analysis also suggests that no claimant group will attain monopolistic ownership of the issue of white-collar crime in the near future. This means that sociologists and criminologists would be well advised to abandon any pretense of exclusive proprietary rights, even though they may believe that they "discovered" the issue. While some may find such tolerance difficult, it will arguably result in an expanded dialogue that will enrich all arenas of discourse.

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Moving Beyond Profit as an Explanation of Corporate Crime: Explaining Corporate Crime from an Organizational Perspective¹

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Introduction

While most contributors to this volume have engaged in a debate about the definition and type of white collar crime, this paper has a different focus. We address the issue of corporate or organizational crime, and in particular the causes of corporate/organizational crime. Most perspectives on organizational crime can be placed into two perspectives: 1) agency or rational actor models, and 2) structural perspectives.

Applied to corporate crime, agency models argue that crimes result from proactive decisions made to maximize some desired end (usually profit), while of course trying to minimize risks of punishment. Corporate crimes result when maximizing people and organizations decide to commit crimes after calculating that doing so will optimize their benefits. Decision-makers faced with constellations of expected costs and benefits analyze the odds of these costs and benefits for available options -- some of which are criminal -- and choose the illegal one if it has the best overall chance of paying off.

These models are generally favored in law, economics, and management technologies. In its search for blameworthiness, the law focuses on intent. Given its successful history explaining macro-economic phenomena by assuming rational pursuit of self-interests, economics now tries to use the same assumptions for explaining crimes by organizations. And, with their goal of

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devising technologies to improve management, consultants advocate rationality. Thus, "within accounting research, rationality is often associated with the prescription of rational choice models of decision making, rather than with empirical descriptions..." (Mouritsen, 1994:194).

Structural models, on the other hand, try to look at actual rather than assumed decisionmaking, so they focus on departmental specialization, organizational environments, organizational cultures, bounded rationality, and other constraints on purposive organizational behavior. Structural explanations may emphasize that motives of offenders often conflict with the profit goals of their organizations, or that opportunities for crime are limited because costs and benefits are difficult to foresee or calculate. Ordinary people make decisions that reflect limited rationality, because they have severely limited information about the present, and estimates of the future consequences of current actions that are wobbly at best. These models are embraced by most works on organizational functioning, and by sociology and related disciplines that look for "latent functions;" the unintended and unobvious consequences of actions that are not seen by ordinary folks.

As will become abundantly clear, we subscribe to the latter view. Well-informed and rationally-made decisions may be useful heuristics and admirable goals, but they offer poor explanations of most known cases of corporate crime. "Formal rationality is an ideal-type construction, a one-sided exaggeration of features of social interaction and a heuristic that is not intended to acknowledge fully all of the complexities of a particular empirical situation" (Mouritsen, 1994:193). These ideal-types fail the test of usefulness when studying corporation crime -- their simplifications of motives and opportunities fail to add more than they subtract from our understanding of corporate crime.

We believe students of corporate crime must begin by recognizing Marshall Clinard and Peter Yeager's assertion that:

the first step in understanding corporate illegality is to drop the analogy of the corporation as a person and analyze the behavior of the corporation in terms of what it really is: a complex organization (Clinard and Yeager, 1980:43).

These complex organizations include profit-dependent organizations (e.g., most major drug, auto, military equipment, and chemical producers), as well as organizations that are governmental or voluntary (e.g., Department of Defense, Atomic Energy Commission, and local hospitals). Hence, it does not assume *a priori* that corporate profit-seeking provides overriding deviant motives and opportunities. Corporate crime is ordinary behavior within and by organizations. It is not extraordinarily rational. No organizational goal, not even profit, could be pursued with anything resembling the rationality presumed by the agency model.

Consider what the following representative summaries of our present and past knowledge of decisionmaking have to say about rationality. Mary Zey's (1992) anthology on decision making begins with four "critiques of rational choice models," followed by fourteen current selections that offer "alternative perspectives." W. Richard Scott (1992:50) summarizes past writing in his book, Organizations as Rational Systems, thus:

With the important exception of Weber, the early rational system theorists did not take much notice of the effect of the larger social, cultural, and technological context of organizational structure or performance.... [They] virtually overlooked the behavior structure of organizations. We learn much from them about plans and programs and premises, about roles and rules and regulations, but very little about actual behavior of organizational participants. Structure is celebrated; action is ignored.

Rational choice, though appealingly parsimonious, is too simplistic to explain (or help prevent) corporate crime. Profit is necessary for corporations, of course, just as food is necessary for people. But only in emergency conditions (impending bankruptcy or famine) does either overwhelm other goals. Most American corporations go about their business balancing short-term profit against long-term profit, security, or growth, just as most Americans see acquisition of food as only one of many goals.

Agency Explanations

Economists' Agency Models. Rational actor/agency models advocated by many prominent economists conceptualize the organization and its agents as rational and calculating actors (see

generally Becker, 1968, 1985; Posner; 1980). The profit goal is paramount and guides all organizational actors.

Gary Becker (1985:20), for instance, writes that "executives *contemplating* [emphasis added] whether to commit a crime take into consideration not only the punishment they face if caught but also their chances of being apprehended." Explaining the Ford Pinto case, Jack Anderson and Les Whitten assert that "buried in the secret files of the Ford Motor Co. lies evidence that big automakers have put profits ahead of lives" (1976:B7). This assumed rational, effective pursuit of clear illegitimate goals seems surprising to us, since observers generally do not stand in awe of the rationality and foresight with which large corporate and governmental bureaucracies pursue their legitimate goals. Nonetheless, many commentators assume great organizational rationality and clarity of purpose when trying to explain antisocial organizational behavior.

Of course, they focus on the attempted rationality of the process, not on the actual rationality of the outcome.

Criminologists' Agency Models. Edwin Sutherland's (1949) landmark book that coined the term "white-collar crime" made assumptions not much different from those economists make. Following the understanding of organizations prevalent in his time, Sutherland assumed that corporations are designed to rationally pursue clear goals and objectives. Since Sutherland's time, however, the study of organizations has come a long way, now recognizing that organizations are coalitions with multiple goals and limited rationality.

Through the 1960's, criminological theories had moved away from perspectives which relied on criminal behavior as the product of some calculated choice. Most of these perspectives originated from the work produced by the Chicago School scholars which examined the influence of macro level social factors on crime rates. This work influenced Sutherland's concept of differential social organization, Merton's notion of strain, and many of the perspectives which examined the impact of social factors and power relations on crime (e.g. labeling, conflict, Marxist and feminists perspectives). More recently these macro level perspectives have been reexamined with the work of Messner and Rosenfeld (1994) and their reconceptualization of strain.

However, in the 1970's, agency models began to experience a renaissance. Most of the new choice models emphasized opportunity, cost and benefits, and offender decisions to commit crime. They were variously named "routine activities theory" (Cohen and Felson, 1979), "lifestyle theory" (Hindelang, Gottfredson, and Garofalo, 1978), and "the rational choice model" (Cornish and Clark, 1986). A recent introductory sociology text unequivocally asserts that sundry corporate crimes, ranging from bribery, price-fixing, sale of unsafe products, and environmental pollution, "result from deliberate decisions made by corporate personnel to increase or maintain organizational resources or profits" (Farley, 1990:212). All of these works purport to describe the decisionmaking process that offenders actually engage in prior to offending. Like classical perspectives, they embrace the notion that crime results from a rational calculating process.

Rational Motives and Opportunities

Criminologists (and television script-writers) generally consider that all crimes must have motives and opportunities. In the following section, we will summarize briefly the motives and opportunities that agency models must assume. First, agency models assume a single overwhelming goal -- profit maximization. Actually, motives compete. There are many levels of rationality. What is rational for the long-term health of the company may not serve the primary interests of institutional investors (who buy 70% of stock sold now), nor may it be rational in terms of the short-run interests of corporate managers or divisions. Corporate employees at Johns-Manville had clear rational motives to hide the hazards of asbestos, since the resulting lawsuits that bankrupted their employer came years after they had retired from the company. Similarly, department managers never volunteer to reduce the number of personnel in their department, even if doing so would increase the long-term profitability of the firm. Clinard and Yeager (1980:47) note that:

especially for the very large corporations, which dominate the American economy, the role of profit consideration in illegal behavior needs to be qualified.... [F]irms may be possessed of multiple goals rather than simply high profits, and these other goals may also be important in the genesis of corporate crime.... [And they] may not seek to

maximize profits and endure the business risk that strategy often entails but may instead seek satisfactory levels of profit rate and growth, which in turn will enable corporations to achieve their other goals.

Second, agency model commentators and social scientists assume that, if there is motive there will be crime. Organizational motives make *organizational crime inevitable*. They come to this conclusion by assuming that corporations are essentially identical to greedy or pressured persons, except that organizations are better able to see their needs fulfilled because they have fewer distractions and greater rationality (Gross, 1978).

This perspective makes too many questionable assumptions. Most importantly, it assumes that stockholder motives (e.g., profit) equate with the motives of people who actually run companies. In reality, of course, the best interests of employees are not necessarily consistent with the best interests of their employers. Interests of the principal (in this case, a corporation) and those of the agent (employee) may diverge. The problem is long-standing. The Dutch United East Indies Company declined because "a seismic shift in opportunity structure opened the way for heightened principal/agent problems and undermined group discipline, contributing to the demise of Dutch hegemony and the rise of the English empire in the eighteenth century" (Adams, 1996:12). From Berle and Means' (1932) classic work on the American economy to the present with the work of agency theorists, it has become increasingly apparent that this assumption violates much of what we know about motives in organizations.

Some new criminological perspectives recognize that rationality is bounded. It is limited by participants' perceptions. In essence, rationality is constructed by and limited to an individual's understanding of realities. Organizational agents merely engage in a systematic process calculating the *perceived* costs and benefits of engaging in criminal behavior.

Paternoster and Simpson, for instance, argue that "threats to profitability alone are not sufficient to cause managers across firms, or even the majority of managers within a firm, to violate the law" (1993:46). However, if the organizational agent perceives that the benefits of the criminal behavior exceed the costs, a criminal event will occur. Therefore an individual must rationally and sufficiently contemplate the following information prior to acting: 1) perceived certainty/severity of formal legal sanctions; 2) perceived certainty/severity of informal sanctions;

3) perceived certainty/severity of loss of self-respect; 4) perceived cost of rule compliance; 5) perceived cost of noncompliance; 6) moral inhibitions, and; 7) perceived sense of legitimacy/fairness. These considerations are tempered by the characteristics of the criminal event and prior offending by the person (1993:47).

Like motives, opportunities in the agency model are plentiful and clear. The most telling criticism of these assumed opportunities emphasizes how limited are organizational abilities to have, share, and act on useful information. No person can have the information needed for a decision, so organizations need meetings to coordinate, share authority, and diffuse responsibility and accountability. Even then, the quality of information and its use are bounded.

The image of the one-shot rational choice by single well-informed individuals comes from assuming that the prescriptive discussions of how managers should make decisions are also descriptive of how they actually do make decisions. In fact, so much is written about how to make rational choices exactly because managers so seldom can act in these ways. The ability of stockholders to serve their own interests is also limited. Criminal decision making frequently harms their *long-term* interests, while enriching managers or just protecting their jobs and short-term interests. But stockholders have virtually no input into corporate decision-making. Hence, the prescription imbedded in what is commonly dubbed the "Wall Street Rule" to sell stock when dissatisfied, not try to reform the company.

The Structure Model

Opposing agency models are "organizational process" or structure models which argue that organizational crimes flow from organizational contexts rather than conscious motives. Kriesberg's (1976:1101) adaptation of Graham Allison's (1971) analysis of the Cuban Missile Crisis is the earliest and one of the most influential uses of this perspective. Kriesberg portrays "the corporation as a constellation of loosely allied decision making units (e.g., a marketing group, a manufacturing division, a research and development staff), each with primary responsibility for a narrow range of problems." Because of organizational complexity, each unit has considerable autonomy in making decisions and setting goals.

The structural model permits rationality, but it starts from different observations about how corporations cope with the worlds in which they operate. They attempt, sometimes

successfully, to balance incompatible goals. For instance, crime may be the product of a set of non-criminal decisions, which ultimately gives later decision-makers the motives and opportunities to commit crimes. Consider Kermit Vandivier's experiences at B.F. Goodrich.

Vandivier was working for B. F. Goodrich when his company won a brake contract for the Air Force's A7D light attack aircraft. One of Goodrich's most qualified and arrogant engineers prepared the design, which won because it minimized weight by using four brake disks instead of the usual five. It also won because Goodrich submitted an unusually low bid to overcome resistance due to a past company failure with the same purchaser. Parts for the new brake were ordered, and work progressed on completing the design. Word around the plant was: "We can't bungle it this time. We've got to give them a good brake, regardless of the cost" (Vandivier, 1972:200).

Unfortunately, in the first of a series of government-mandated simulated braking tests using the plant's dynamometer, the brake "glowed a bright cherry-red and threw off incandescent particles of metal and lining material" (Vandivier, 1972:200). Employees running the test assumed that defective parts or unsuitable brake lining material caused this failure, and the next few, so they made adjustments. Only then did they begin to realize, in stages, that the four-disk brake design itself had insufficient surface area to do its job.

By then, however, time was running out as ordered parts began arriving and deadlines for delivering the assembled brake loomed. "Panic set in." But they plowed on, endangering lives and company profits until the dangers could no longer be hidden.

Instead of telling the purchaser that the four disk design was inadequate, key decision-makers started to use large room fans to cool the brake during testing, as well as other more creative ways to "nurse" it to pass. Even these violations of the military's carefully-specified testing methods were insufficient. So Goodrich personnel used "engineering license" to alter actual test data.

"Intelligent, law-abiding officials of B. F. Goodrich, one of the oldest and most respected of American corporations, were actually going to deliver to a customer a product that was known to be defective and dangerous and which could very possibly cause death or serious injury" (Vandivier, 1972:201). Several near crashes during flight tests began the process of exposing the brake design's inadequacies and the company's concealment of its hazards (Ermann, in preparation).

These acts were not irrational, but their rationality was limited in the three ways suggested by Simon (1986:169):

1. Uncertainty about the consequences of actions chosen from among alternatives;
2. Incomplete information about the alternatives actually available; and
3. Complexity of the world that makes calculation of the consequences of action impossible.

Rather than seeking the optimum solution, Simon suggests that it is rational to satisfice: to settle "for a satisfactory, rather than an approximate-best, decision" (1986:170). The most sophisticated of management techniques, therefore, simplify the real world so that the models can use optimizing models to generate approximations. It is therefore rational to plan by gradually building, step by step, decision by decision, rather than to preplan an entire series of steps to a given final forced decision.

Simon (1986:164) argues that rationality can be limited by the complexity and cost of even trying to calculate the best course of action. He draws an analogy to the game of chess, for which winning would be made trivial given the closed system and limited types of moves, were it not for the fact that an average game of, say, forty moves could be played in 10^{20} possible ways. Rationality is theoretically possible, but practically impossible. Thus, it is rational to limit the number of factors considered. Rules of thumb and approximate values are used to try to reach the most satisfactory solutions under the limits on getting full information of future outcomes.

In a world filled with uncertainty and the high cost of gathering information, muddling through on the basis of limited information and limited planning is rational and unavoidable. As part of this muddling through is an optimism that things will work out -- as they often do. This can lead to overconfidence as in the Goodrich case summarized above. Often we act first and explain later.

In the processes that actually occur in organizations, rules do not always govern actions, individual goals and intentions are weakly linked to individual actions, and units are not closely coordinated with other units. Decisions seem to flow from shifting coalitions of interest groups within the organization. "[A]ll large organizations are not teams, but coalitions. A team is a group of persons working together who have identical goals. A coalition is a group of persons working together who have some, but not all, goals in common" (Downes, 1967:76). These are empirical, not normative, statements. And, they do not suggest that loosely-coupled organizations are poorly managed or ineffective.

More recently, James Coleman (1989) began his analysis by recognizing that organizations are divided into specialized sub-units, each with its own subgoals. These departments do not have profit as their primary goals. Instead, they strive to meet diverse sub-unit goals (product development, manufacturing, distribution and sales, etc.) which are only indirectly related to profit. This perspective assumes that organizational structure loosely translates profit and other goals of the organization into a variety of behavior patterns by its sub-units.

These researchers assume that organizations have inherent irrationalities, limitations, and failures that produce crimes regardless of the moral or immoral motives of the organization's people. Organizations are limited tools for satisfying their own needs or the preferences of their stockholders and leaders. Organizations encourage outcomes regardless of the motives and needs of the participants. For example, the organization neutralizes the sense of personal responsibility by diffusing responsibility. Because responsibility and information are fragmented, prospective criminals can act in ways that would be unthinkable in their private lives. Organizational size, delegation, and specialization, for example, are said to

combine to produce an organizational climate that allows the abdication of a degree of personal responsibility.... Under these conditions, almost any type of corporate criminality... is possible. Executives at higher levels can absolve themselves of responsibility.... (Clinard and Yeager, 1980:44)

People in these cases can distance themselves from victims, since they are separated by social and geographical distance. Gone are the days when the factory owner or decision-maker probably went to school with the person who died in an accident in his or her factory. With a national and international market, decision makers and victims often live thousands of miles apart. "For example, workers engaged in producing dioxin never witnessed the effects of the chemical on the residents of Love Canal in Niagara Falls. Similarly, pilots serving in the Vietnam War convinced themselves that they were bombing geographical targets on maps, not killing civilians in their homes" (Simon and Eitzen, 1990:299). Both the events and the people are ordinary. The events are small steps made now in the context of small steps made earlier, either by the current role occupant or his/her predecessor. Decisions are constrained by past decisions and subunit interest. There was no blueprint.

Structural Motives and Opportunities

An example of how organizational processes generate motives is "escalating commitment." Commitment escalates at both the individual and the organizational level. Human behavior at auctions illustrates escalating individual commitment. People attending auctions may calculate beforehand what they can afford to spend, but once bidding begins they often continue to bid beyond their original intentions, and beyond levels that are prospectively and retrospectively rational. Escalating commitment at the organizational level is illustrated vividly by the following description of British Columbia's decision to host the Expo 86 world's fair in Vancouver.

Despite rapidly increasing deficit projections (from a \$6 million projected loss in 1978 to a \$300+ million projected loss in 1985), the provincial government remained steadfast in its plans to hold the fair. Expo is therefore a visible and prototypical example of the

escalation of commitment, a phenomenon subject to extensive laboratory research in recent years.... It is proposed the escalation starts with project and psychological forces but can evolve over time into a more structurally determined phenomenon (Ross and Staw, 1986:274).

Similarly, we have argued (Rabe and Ermann, 1995) that tobacco companies' motives and opportunities to hide tobacco hazards were organizational and cultural. Profit was just one of many organizational goals. Consequently, rational explanations of tobacco companies actions leads to an incomplete analysis. Because of tobacco company reliance on tobacco, in part, they reacted to allegations of product hazards in two ways: with "smoke" screen research and with diversification. The companies were committed to tobacco well before scientific knowledge about the hazards began to emerge. It is not surprising that once confronted with their own research which supported the hazard allegation, they began an intense effort to limit commitment to tobacco by diversifying.

Commitments escalate for many reasons. First, motives change. Brockner and Rubin (1985) for instance, describe three forms of entrapment over time. 1) Individual entrapment occurs as organizational members escalate their personal commitments to failing projects because pay, promotion, and other rewards depend on the project's success. 2) Group/role entrapment results from pressures to conform, diffusion of responsibility, and an unwillingness to be the bearer of bad news (even if the bad news results from decisions by a previous occupant of the bearer's role). Decision makers interpret signals from their colleagues. "Groupthink" (Janis, 1972) causes people who are deeply involved in cohesive groups to strive for unanimity and modify their beliefs. 3) Finally, organizational entrapment occurs because a project has become irrevocable. Thus, decision makers act in the context of past decisions made by others as well as by themselves.

Second, the structure model argues strongly that organizational motives compete with one another. This is well-illustrated in Arthur Hailey's (1984:162) sociologically insightful novel, Strong Medicine, when a main character observes that:

in any drug company a perpetual tug-of-war existed between sales and manufacturing on the one hand and research on the other. As the sales people expressed it, "Research always wants to be a hundred and ten percent sure of every goddam detail before they'll say, 'Okay, let's go!'" Manufacturing, similarly, was eager to gear up for production and not be caught by sudden demands when a new drug was required in quantity. But on the other side of the equation, researchers accused the merchandising arm of "wanting to rush madly into the market with a product that's only twenty percent proven, just to beat competitors and have an early lead in sales."

Profit was never mentioned in this or most comparable scenarios, though it is a motive. Profit goals compete with and limit other organizational goals. The profit goals of owners compete (often unsuccessfully) with the security, prestige, income, and other goals of managers. Furthermore, as Clinard and Yeager (1980:46-8) have explained, profit maximization goals inevitably must be balanced against other goals such as the minimizing risk, since the most profitable courses of action in a competitive market also tend to be the most financially risky. Hence, behaviors with regard to profit-seeking goals appear best described as the result of management seeking profit levels sufficient to keep stockholders content and loyal while also protecting the long-term viability of the firm (Galbraith, 1967).

Opportunities for committing corporate crime require that *usable* knowledge of possible opportunities and risks be available, and then that the organization be capable of mobilization based on this knowledge. However, knowledge about corporate crime opportunities resists collection, interpretation, and dissemination. This is a much greater problem for white-collar than for street crime, and much more difficult than rational choice models assume. Knowledge about corporate crime opportunities must somehow be collected about a world outside the immediate personal experience of participants. Even more difficult is probabilistically estimating competing risks, communicating criminal risks and opportunities within the organization, and converting the resulting information into concerted action.

Collecting and interpreting information is slow and difficult. Even the best intentioned and most highly informed analysts will find the information available to them to be "messy," and their policy alternatives "ill-structured" (Mitroff and Manson, 1980:331). These analysts must

therefore "frame" safety problems (Tversky and Kahneman, 1981), even though they lack the clear understanding of cause/effect relationships needed to make their framing valid. Thus, their evaluation process is inexact because their information is not particularly informative.

Problems of interpreting information are illustrated by the lack of governmental and public concerns about important chemical risks. In 1990, after years of focusing on chemicals as carcinogens, the federal government for the first time directed attention to a chemical hazard previously ignored -- injury to the nervous system. The Office of Technology Assessment (1990:13) found that "concerns about carcinogenicity have dominated discussions about the risks posed by toxic substances. However, the adverse effects on organs and organ systems, particularly the nervous system, may pose an equal or greater threat to public health."

During the coming decade, we may learn more about previously ignored neurological hazards of chemicals. Or, we may learn that corporate and governmental elites were correct all along to ignore these hazards. The search for these hazards, like the search for all hazards, is akin to looking for needles in a haystack without knowing whether a particular haystack even contains needles. Even if a new needle is found (e.g., even if a newly recognized risk from industrial chemicals is discovered), distribution and use of this knowledge within the organization is slow. Information travels slowly and unpredictably in organizations. We recognize information exchanges in our universities or offices are slow, unpredictable, and often inaccurate. We should likewise recognize that one person or group in an organization suspecting a hazard is not equivalent to the organization "knowing" the information.

Furthermore, information probably will not be fully or accurately transmitted. Information enters at specialized organizational positions with titles like medical researcher, pharmaceutical salesperson, or product safety supervisor. The people who occupy these positions, working in the privacy of their own offices, each labor on a small part of a large problem. They often lack opportunities or motives to observe or influence one another, or to exchange tentative information. Because they are specialized, they will get only partial pictures, despite attending a profusion of meetings to try to share their information. These people have details, but they have difficulty gaining the broad authority needed to correct a problem or kill a project (Jackall, 1988). Perversely, those who enjoy broad authority are necessarily removed from needed detail.

Implications for Control

Ermann and Lundman (1982) suggested that attempts to control corporate crime are either penetrating or nonpenetrating. Nonpenetrating controls, they suggest,

assume that corporate actions can be influenced from the outside by selectively rewarding and punishing the corporation.... They avoid mandating specific changes in corporate structures, procedures, or personnel. Instead, these mechanisms seek levers outside the corporation that may cause it to make necessary changes itself (1982:132).

Agency models suggest nonpenetrating controls. Applying these models to crime control strategy involves a simple equation. Make the cost of crime exceed the benefit perceived or achieved. Fine the organization to the point that would make corporate crime unprofitable. In Becker's words, "Fines... would force companies to think longer and harder before committing white collar crimes" (Becker, 1985:20;. Posner, 1980 and Parker, 1989) have also proposed that fining is not only the best, but should be the only, form of corporate sanctioning. Like most economists, they assume that when organizational agents realize the cost of crime exceeds the benefit, they will be deterred.

However, Coffee (1977, 1979-80, 1980, 1981); Stone (1975, 1977, 1981); Gruner (1988), and Coffee, Gruner, and Stone (1988) argue against over-reliance on fines as sanctions for organizational crime. Fines are not paid by the guilty parties. Organizational agents responsible for the criminal behavior are not harmed by an organizational fine. Instead payment of the fine falls on those who are not culpable -- stockholders, creditors, the work force, and consumers. Coffee (1981:408) summarized what he believed to be the inherent flaw of the economic model:

The Chicago School may therefore show mercy to the corporate executive... but it imposes a harsh penalty on the less privileged classes [such as employees, consumers and other dependents on the organization] who bear the indirect burden of corporate penalties.

Furthermore, if judges try to order fines in the amounts proposed by economists, they would confront what Coffee calls a "deterrence trap." Fines would have to be so large that organizations would not have the resources to pay them. Fining would lead to bankruptcy and possible dissolution of the corporation. Repercussions for the criminal behavior would fall upon guiltless third parties.

Structure models, on the other hand, lead us to advocate "penetrating controls" which assume that:

there are features of a corporation's structure and personnel... that increase the likelihood of deviance. They assume also that these aspects can be changed. In the case of the corporation, changes might include the way members of the Board of Directors are elected, how lower level managers are promoted,... the way top management is informed of the behavior of subordinates, and how it is accountable to the Board of Directors (Ermann and Lundman, 1982:133).

For the most part, Coffee (1977, 1979-80, 1980, 1981); Stone (1975, 1977, 1981); Gruner (1988); and Coffee, Gruner, and Stone (1988) advocate penetrating controls. They believe that sanctions other than fines should be directed at culpable parties. Examples of what they proposed as appropriate sanctions include equity fines, probation, publicity, community service, corrective advertising, private enforcement (civil suits) and criminal actions against culpable organizational agents. Disagreeing slightly, Geis (1972) suggested that penalties imposed at the organizational level will be ineffective. Instead, he argued, the best way to control corporate crime is to impose criminal penalties on corporate agents who commit criminal behavior.

Conclusions

Organizational crime is multicausal. In the real world, motives and opportunities to *rationaly* plan and execute corporate crimes seldom exist simultaneously. Our image of the organization thus is not of a tool to get profits, but rather:

a constellation of loosely allied decision-making units (e.g., a marketing group, a manufacturing division, a research and development staff), each with primary responsibility for a narrow range of problems. Each unit operates under general corporate guidelines, but due to the complexity and breadth of its operations, the unit possesses some autonomy in setting priorities, processing information, defining problems, and initiating action (Metzger, 1984:23).

Each decision and non-decision must be understood in light of what has happened up to that point in the company, not in terms of the presumed guiding star of profit maximization. Corporate people are solving immediate problems, putting out fires, dealing with rival departments, and so forth. We advocate focusing on this corporate crime process.

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The Logic of Definition Applied to Various Definitions of White Collar Crime

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Abstract

Adequate approaches to definition are argued to depend upon one's definition of what constitutes a definition. Variations will depend upon 1) perspectives and, 2) particular purposes derived from them. Methods include the implicative method, the denotative method, the analytic method, and the synthetic method. The positions of the various (Workshop) participants are discussed from this point of view, with references to the literature on white collar crime and the logic of definitions.

Introduction

In the course of definitional disputes, some become very frustrated when asked to define their terms. They take the request as either an exercise in hair-splitting or a delaying tactic. But as Gordon (1996) has stressed during this conference, issues of public policy, research and operational responses will remain unfocused without agreed-upon definitions. Although differing in their demands for specificity, participants at this workshop seem virtually unanimous in their recognition of the need for greater clarification.

Logicians realize, of course, that the definition of terms is the basis for everything that follows. Many arguments can be clarified by a clarification of definitions. Some arguments can even be reduced to differences in definitions of basic terms. There is nothing as practical as a good definition. As one anonymous attorney put it, "Let me make the definitions and I'll win any argument" (Ball and Curry, 1995:225).

The battle over the definition of "white collar crime" is therefore crucial, and those arguing the issue have taken all sorts of positions. Some have suggested abandoning the term (Hirschi and Gottfredson, 1987), maintaining that white collar crime is like any other form of lawbreaking, that

there is a lot of overlap among these offenders and common criminals, and that what is called white collar crime can be readily incorporated into an explanatory framework that accounts for all criminal behavior. Some want a specific definition so as to "liberate the term" from the swamp of ambiguity by using it to refer solely to a violation of trust by which persons are enabled to rob without violence and burgle without trespass (Shapiro, 1990).

Some maintain that everyone already understands the term on some intuitional basis and that any move to sharpen definitions will merely confuse things. Others suggest that it may be taken as a metaphor (Friedrichs, 1996a). Actually, much of the confusion over the definition of "white collar crime" hinges on the definition of definition. How does one define a satisfactory definition?

The search for "true" definitions can mean different things to different people, giving several different definitions of definition. For some it means a search for an absolute meaning that presumably exists and can be "discovered." We are probably beyond this fallacy, which can lead to conflation of word and thing so that we think we are studying the world when we are studying only a word. It can mean the search for the common denominator or "essence" of the thing or the search for the "source" or essential factor that will explain it. It can simply mean assertion of a proposition that "something" exists plus a purely nominal definition, such as when we refer to the "x-factor."

Logicians agree that there are no absolute definitions. That means that there is no perfectly "correct" definition of a term, except in closed logical systems such as mathematics. As Meier (1996) has pointed out in his paper, one might approach the question by trying to determine how a particular term is being used, given that current usage is one way of looking at a definition. As he also notes, the two most apparent approaches are deductive or inductive. Albanese (1996) has taken the latter approach by completing his Lexus-Nexus search of the usage by various media sources. Such an approach does not insist that the conclusion is the "correct" definition, but it has the virtue of showing current usage within certain segments of the population and, as such, offers one empirical solution.

If there is no "correct" definition and we have to depend on usage, does this mean that criminologists are bound by whatever definition happens to be popular in the media? No. We are perfectly free to stipulate our particular definitions.

If there is no "correct" definition, does this mean that definitions are totally relative? No. Empirical evidence suggests that we operate with cognitive mapping structures or "schemas" which organize our thinking, schemas that have also been called frames, scripts, inferential sets, prototypes or information-processing constructs (Entman, 1989). If approached in this way, as Nichols (1996) approaches the issue in his paper, definitions are actually very useful, even necessary. What is important is that we not reify our definitions or schema.

We might consider, for example, what level of generality is most appropriate in defining a term. Simon's (1996) paper rejects the term "white collar crime" as inadequate to his own well-articulated purpose, and then lays out a persuasive set of justifications for pursuing this particular purpose and for using his sociological term, "elite deviance." In another context, Destro (1993:280) has noted that "in legal parlance, sociological definitions tend to be both overinclusive ("overbroad") and underinclusive ("discriminatory"), and if they are adopted for criminal law purposes, they are in danger of being held unconstitutional because they are not specific enough." On the other hand, narrow legal definitions often neglect those very social dimensions that make phenomena such as white collar crime sociologically meaningful by illuminating key issues such as socioeconomic status and social power.

Does "constructionism" mean that all definitions are therefore equally useful as long as accepted only tentatively? No. Some are more useful than others. In fact, criteria exist by which their relative "truth-value" can be judged (Ayer, 1971; Bentley and Dewey, 1947). It is these criteria that ought to occupy us.

As Nichols (1996) has pointed out, the definition of white collar crime is associated with a set of constructs being fought out within a complex arena involving the mass media, law enforcement, business, and popular culture. Each has its own perspective, including its rhetorical procedures for constructing its own sense of reality (Badigikian, 1990; Parenti, 1993). These perspectives often lead to different purposes lying behind the drive to produce definitions.

Part of the problem is that language has not only informative purposes but also affective and promotive purposes. Only if our purpose is totally informative do we seek a definition designed to carry information. In using an ethical concept, for example, we are not describing the world but taking an attitude toward it. Is "white collar crime" an ethical concept?

If our purpose is affective, we seek a definition designed to produce some emotion or mood, in which case "poetic license" becomes perfectly appropriate. If our purpose is promotive we seek a definition capable of producing some definite action, as is often the case with political definitions. While affective or promotive purposes may require that we actually distort information, some would argue that all "facts" carry interpretations and that efforts at purely informational definitions are not only heartless but impossible. Simon's paper (1996) stresses that whether we like it or not, we cannot escape either ideology or power when we deal with definitions affecting social policy.

Affective or promotive communication masquerading as "factual" information may be called polemics or it may be called propaganda. What is our purpose? How many agree with Marx's statement that our purpose is not to understand the world but to change it? How many agree with the counterposition that our purpose is not to understand the world but to preserve the status quo? There are, of course, students of white collar crime on both sides of this fence.

The affective and promotive aspects of definition become clearer in the notion of definition that involves first the embrace and then the recommendation of ideals, such as when democracy (which has so many flaws that it has been called a terrible form of government but still the best we have) is defined in such glorious terms as to make it sound like the ideal state. It can involve the process of abstraction by which we gradually become aware for the first time of a new general element on our experience and give it a fixed name. It can involve empirical generalizations. It can consist of progressive awareness of the complexity of a particular phenomenon to the point of grasping it in a new way through increased insight, sometimes through thought and sometimes through empirical work. It can involve improvement of concepts through substituting a similar concept that is superior for certain purposes, as Green (1990) felt he was doing with the term "occupational crime" or Simon (1996) has argued for the term "elite deviance," or Gordon (1996) has argued for "economic crime." An effective substitution can even succeed in reformulating the question in a better way, sometimes by making the concept more general, sometimes by narrowing it, sometimes by replacing a concept that we have discovered to be self-contradictory or containing significant irrelevancies or false entailments with one that is more self-consistent and free from such irrelevancies and false entailments. It can involve altering a concept to fit into a particular system or into a better or larger system.

The "truth-value" of a definition therefore rests, to a considerable extent, upon one's purpose in seeking it (Ball and Curry, 1995). Friedrichs (1996a) has taken this as a central theme in his paper, showing how different definitional objectives may lead to different sorts of definitions. Thus, he recognizes that a polemical purpose may involve the affective or promotive use of language, while different definitional approaches may be superior if we seek a taxonomy or an analytical achievement. In a somewhat different vein, Geis (1996) stresses in his paper that it may be for many reasons scientifically and ideologically worthwhile to retain Sutherland's focus on the rich and powerful. Gordon's (1996) paper, on the other hand, attempts to avoid ideological issues by stressing the need for an operational definition that will solve technical problems.

Meier's (1996) paper takes the position that we have made considerable progress in white collar crime research and theory without dealing very effectively with the lack of a clear definition, maintaining that a general conception may be more efficacious. Schlegel (1996), taking wealth, respectability and prestige as fundamental properties of white-collar crime, concludes that recent research has strayed from the fundamentals of the definition. Perhaps the problem is that those who share perspectives have less need of definitional precision simply because the shared perspectives will tend to keep them within undefined conceptual boundaries. From the perspectives and purposes of U.S. Attorneys, white collar crime seems to mean failure to file a tax return, embezzlement, mail fraud swindles and fraudulent acceptance of veterans' payments (Hagan, Nagel and Albonetti, 1980). Given their perspective and research purposes, Wheeler, Weisburd and Bode (1982) list eight broad categories of white collar crime, including securities fraud, antitrust violations, bribery, tax offenses, bank embezzlement, postal and wire fraud, false claims, and credit-and-lending institution fraud. Schlegel's (1996) paper takes account of the way in which such a definition can affect both theory and social policy by directing attention to certain etiological issues rather than others and by altering the social control responses.

Geis' (1996) paper also criticizes the work of the Yale group, indicating that his disagreement lies with the premises, not necessarily because they are "incorrect," but because in his judgment they dilute and distort the forceful theoretical and policy implications of Sutherland's original position. For Geis, the premises of the Yale group 1) not only fail to serve a desired purpose but 2) interfere with achieving this purpose, and even worse 3) contribute to the achievement of another that is regarded as anathema. He goes on to say that his concern lies with

how the definition of white-collar crime adopted in the Yale studies has allowed the theorists of the political right to sidestep the powerful intellectual implications traditionally imposed by the existence of white collar crime.

In view of these concerns, it may be worthwhile to make a more concerted effort at a stipulative definition, if only to clarify our different perspectives and purposes. Such definitions offer many advantages, chief among them being their clarification of the logic of hypotheses and policy inferences. If successful, they offer the possibility for development of a more penetrating and comprehensive insight into the range of reality to which words are pointed. Furthermore, the very effort at a stipulative definition tends to lead to reconceptualization as it highlights defects in the concept that is being defined.

Major methods of stipulative definition include the *implicative* method, the *denotative* method, definition by *analysis*, and definition by *synthesis*. In order to clear away some of the conceptual underbrush, it may be useful to examine how various students of white collar crime not only differ in their perspectives and purposes but also in their typical methods of defining their terms.

Methods of Stipulative Definition

The implicative method is sometimes called the contextual method. It implies a definition through use of the word in a total context that suggests its meaning (Baker and Hacker, 1984). Sometimes called the exemplification method, the denotative method proceeds by listing specific examples denoted by the term. The method called definition by analysis proceeds by breaking a phenomenon into constituent parts, taking a listing of all the parts as a definition of the term designating the thing. Definition by synthesis is sometimes also called the relational method because it defines a thing by showing how it fits into a larger whole already defined. Rather than listing the parts that make up the whole of the phenomenon, it defines the phenomenon by fitting it as a part into the whole and completing a jigsaw puzzle.

Each method has its strengths and each has its weaknesses. Much depends upon whether we seek a legal definition of the sort that we have "proved" a case if we establish each of its constituent points or a theoretical definition that contributes to our understanding of the phenomenon. The first may demand an analytical approach. The second may often be best

approached by the synthetic method. Both the implicative method and the denotative method have their own advantages and disadvantages.

The Implicative Method

One of the appeals of the implicative method lies in the way in which it can provide a richer and fuller meaning to a term such as white collar crime. This is true because it shows us the term in actual use and gives an actual portrayal of the phenomenon, illustrating various nuances of meaning in a way that can probably never be captured by a more precise definition. This method is most effective in the sensitive literary treatment or the insightful case study. In this sense, Sutherland's "best" definition of white collar crime might be his book itself, apart from any effort to be more "exact." Sometimes a certain ambiguity is inherent in things, and any effort to force an artificial precision simply succeeds in mutilating our understanding. This is part of what the poet W. H. Auden meant in his proclamation of the "11th Commandment--Thou shalt not commit a social science." Appreciation of this issue is reflected in the work of those who suggest that we might better settle for working conceptions rather than demanding excessive precision.

The implicative method of definition gives us a better sense of the phenomenon as a process. It gives a sense of the dynamics of the thing. When studies such as that of Sutherland make an effort to set forth a succinct definition in addition to the largely implicative definition embedded in a series of case studies, there is often a sense that the succinct definition is inadequate in comparison to the contextual treatment itself. Often the author is accused of "violating" his or her own "definition" in the course of his or her treatment of the phenomenon itself. Some more sophisticated students are tempted to discard the formal definition and search the "text" for the "real meaning" of the term. Those inclined to the literary approach may even attempt a "deconstruction" in a effort to elucidate the latent meanings.

The implicative method is like the old definition of sociology that simply defined by saying that, "Sociology is what sociologists do." It appeals in the sense that it allows room for everyone and for all sorts of approaches, thus keeping things open, but it does this by keeping the boundaries fuzzy. It may be the most satisfactory method of definition in the exploratory stages of research and theorizing about a phenomenon such as white collar crime, but it is not a satisfactory method of stipulative definition because it lacks standardization. Implications are called such partly because

they convey somewhat different meanings to different people. Many hidden connotations in an implicative definition may slip by without theoretical debate or empirical testing, simply because they were implied rather than clearly proclaimed. Thus, part of the problem in deciding the truth-value of implicative definitions is a matter of deciding whether we wish to keep everything open to interpretation and let a thousand flowers bloom or whether we have reached the point in white collar crime studies where general exploration must give way to theoretical specification, hypothesis-testing, and systematic replication.

The Denotative Method

The denotative method proceeds by giving examples. Friedrichs' (1996a:1) recent book opens with such a list, inviting the reader to "consider the following list of activities." It is based on a very basic approach called ostensive definition. Those who say that they cannot define a term verbally but can recognize the phenomenon when it is encountered or can give examples of it are appealing to what logicians call ostensive definition. A good example is Justice Stewart's famous remark about obscenity --"I can't define it, but I know it when I see it."

Several papers at this conference have argued that we do know white collar crime when we see it. Whether that is strictly true or not, there are two reasons to regard this definition of definition as inadequate as a basis for white collar crime research or policymaking. One of these has to do with the difference between a clear idea and a distinct idea. The other has to do with the problem of implicit knowledge.

Although it can be said that one has a clear idea of a phenomena when one can recognize examples of it immediately, the idea has not become distinct until one can communicate the distinctions that differentiate that phenomena from others. So it can be said that Justice Stewart may have had a clear conception of "obscenity" but that he had no distinct idea of it. Because of this, there is no way of our knowing whether he did in fact have a clear idea at all, and there is certainly no way of transmitting this alleged clear idea to law enforcement officers, prosecutors, judges and juries.

As for the problem of implicit knowledge, even if Justice Stewart could have personally escorted every such person to his examples, pointing directly to them, it would not have helped. The fact is that those pointing to some phenomena ostensively are always drawing on a body of

implicit, unarticulated knowledge. This implicit knowledge includes heuristic rules for what to see as well as how to see it. In short, they are unwritten and probably unrecognized rules for observation and interpretation.

The best ostensive definitions are developed through immersion in the phenomenon, so that the term is linked with the most complete sense of the thing to be defined. Succinct definitions seem to miss the "reality" one has experienced and defined. This explains why field researchers show such impatience with "textbook" definitions. In a complex society, however, there are often sets of interpreters who do not share background assumptions and hence see something different in the same phenomenon. To complicate matters further, culture in complex societies is in constant change, so that ostensive definitions change as patterns shift, which seems to be true of the phrase "white collar" in the term white collar crime. The white collar workers of today differ considerably, not only in status but in many other ways, from the white collar workers of Sutherland's time.

Definition is a matter of abstraction. The first step involves an intuition of some unity, uniting a multitude of particulars. The second step involves a deeper appreciation of the complexity inherent in the perceived unity, but without being able to grasp this complexity. The third step involves a satisfactory analysis of this complex whole or a satisfactory synthesis by which it is located in terms of a more global whole. Each of these steps involves a shifting of attention to certain aspects of a phenomenon according to certain rules.

The term "white collar crime" is a typification about a 1) presumed class or, 2) an apparent phenomena. The members of the class are presumed to be related in some way, with the selected factors defining the commonality based on what phenomenologists call "relevancy" or salience. Thus, a poet and a lumberman see a "tree" differently. The salience of various factors may vary by community and over time as certain aspects come to dominate (e.g., immediacy versus long-term perspectives, or etiological concerns versus prevention, or political pressures versus scientific norms, etc.).

Definition by Analysis

Definition by analysis proceeds by breaking white collar crime into component parts, such as properties or types. When used most precisely, definition by analysis will yield a listing of properties each of which is itself not only defined specifically but also weighted according to an

analytic formula (Ball and Curry, 1995). The sorts of properties or types selected will lead in certain directions, with both research and theory heavily influenced by the resulting definitions.

Several contributors at this conference have pointed out the difference between "offender-based" and "law-based" perspectives on the definition of white collar crime (Albanese, 1996; Coleman, 1996; Meier, 1996; Schlegel, 1996). As Coleman (1996) has pointed out, the "classical" approach taken by Sutherland stressed certain properties of the offender, particularly the notion of respectability or high social status, while that taken by Edelhertz (1970) focuses on the properties inherent in the offense. While Coleman defends Sutherland's approach, Albanese (1996) has advocated a definition based on behavioral properties, insisting that offender-based properties be excluded. Schlegel (1996) notes how the availability of data itself can gradually shift attention from one set of properties to another. Meier (1996) attempts a synthesis.

Is nonviolence to be considered a necessary property of white collar crime? Is financial gain to be considered a necessary property of white collar crime? The Dictionary of Criminal Justice Data Terminology (BJS, 1981) uses the following definition:

[White collar crime is] nonviolent crime for financial gain committed by means of deception by persons whose occupational status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities; also nonviolent crime for financial gain utilizing deception and committed by anyone having special technical and professional knowledge of business and government, irrespective of the person's occupation.

Is the fundamental property of white collar crime and therefore its essence or common denominator to be seen as abuse of power, as in much of Sutherland's (1983) approach? Does its essence lie in violation of trust (Friedrichs, 1996a)? Then by implication, if not by definition, the offender must be a person with significant power or a person who has been entrusted with something valuable. Must this abuse of power or violation of trust be directed against the legitimate economic or political order of which the individual is a part (Reiss and Biderman, 1980)? Is the fundamental defining property the use of concealment and guile as the means to the abuse of power or violation of trust (Edelhertz, 1970)?

Analytic definitions can also proceed by breaking a phenomenon into subtypes rather than properties through the creation of typologies. One example of this has been provided by Friedrichs (1996a,b), who uses a taxonomy of corporate crime, occupational crime, governmental crime, state-corporate crime, finance crime, technocrime, enterprise crime, contrapreneurial crime and avocational crime. Hagan (1996) offers a taxonomy of corporate, occupational, organizational, organized, political and professional white collar crimes. The typological approach may be a particularly valuable, partly because analytic definitions that assign the same properties to all white collar crimes can easily deflect theoretical and research attention away from important variations.

It must be stressed that the use of subtypes yields a looser definition for the covering term, white collar crime. This may or may not be desirable, depending on purpose. Attention to subtypes may mean that theory will move more toward explaining how the different subtypes develop than in the direction of generalizing about white collar crime, or it may serve to contribute to this generalization by clarifying the total picture. Which direction will be taken may depend to a considerable extent upon whether we realize what we are doing.

It is also interesting to note the differences in various typologies offered, differences that reflect different perspectives and purposes. Some of these differences reflect a special sensitivity to the fact that the social world is constantly changing, so that typologies that attempt to reflect empirical reality are forced to adapt. Thus, Gordon (1996) has stressed the effect of technology, arguing that it has changed the landscape of white collar crime and thereby negated Sutherland's definition. On the other hand, Michalowski (1996) has stressed the emergence of "electronic property" and the consequent appearance of new forms of white collar crime, but without seeing this as a negation of Sutherland.

Note that in his criticism of the Yale studies, Geis (1996) objects to the definition of white collar crime as set forth in the list of subtypes provided by Weisburd, Waring and Chayet (1995). Their operational definition, which is really an analytical definition by subtypes, relied upon data obtained for federal prosecutions including bribery, embezzlement, income tax evasion, false claims, mail fraud, securities violations, antitrust offenses, and credit fraud. As Geis points out, this hardly produces a representative sample of white collar crime along the lines of Sutherland's definition. What it does is to adopt an expedient by defining the concept in terms of available data rather than inherent properties or analytic subtypes. The result is adoption of a particular law

enforcement definition that takes the concept back to Tappan rather than Sutherland. This definition, and the data flowing from it, then provide support for such theoretical positions as those of Wilson and Herrnstein (1985) or Gottfredson and Hirschi (1990) and actually undermine Sutherland's position.

One of the most useful approaches within the general method of analytic definition is the comparison-and-contrast strategy. It is especially powerful in helping us move from clear to distinct ideas (Ayer, 1971). Friedrichs (1996a) has shown one way to do this by identifying the broad parameters of white collar crime in negative terms by stressing what is not meant by the term.

Another way to do this is by providing a series of comparisons and contrasts among crimes with overlapping but differing properties. This can serve to clarify the meaning of many different but related terms simultaneously. In their comparison-and-contrasting of organized crime and white collar crime designed to show their convergence, Potter and Gaines (1996) list what they call differentiating concepts including social and occupational positions of offenders, organizational legitimacy, self-perception of actors, and the centrality of criminal activity to both organizations and individuals, all of which would be called properties in an analytic definition.

One of the most fruitful outcomes of the analytic approach is the useful concept of a continuum, which can provide either a continuous gradation or a linear typology. Thus, Potter and Gaines (1996) speak of a "spectrum of legitimacy" and use it to advance a theoretical argument for convergence between types of crime. The key to a continuum, of course, has to do with selection of the dimension whose poles define the continuum. Thus, Jamieson (1996) suggests a somewhat different continuum.

Analytic definitions by property are especially desirable in legal proceedings, where a case must be proved point-by-point. On the other hand, the function of a definition is to explain the meaning of a term, and analytic definitions, by tearing terms out of context, may actually deprive them of much of their meaning. That is one reason why complementary approaches tend to be superior.

Synthetic Definition

A synthetic definition of white collar crime would try to establish its meaning by locating it in a larger and presumably better-understood context. If successful, this will open fruitful new

avenues for theory and research. If misplaced, the approach will lead into blind alleys. One of the chief reasons for Sutherland's stress on offender characteristics seems to be his commitment to his differential association theory. Exclusive attention to the characteristics of the offenses designated as white collar crime would have allowed room for explanations based on pathology, which he was determined to combat. Stress on the respectability of the offender weakens explanations based on pathology and strengthens the premises underlying differential association theory. When Geis (1996) proposes burying differential association theory and focusing on abuse of occupational power, he is suggesting that a variety of offender characteristics, including the various pathological explanations opposed by Sutherland, may have a place.

The use of a continuum combines the analytic and synthetic methods, which is another reason why it is so appealing. Thus, for example, Edelhertz (1970) has defined white collar crime in terms of a continuum ranging from individual, ad hoc crime for personal gain in a nonbusiness context at one pole to a full-fledged criminal business at the other. Jamieson's (1996) use of a continuum of organization based on varying degrees of collectivity not only gives a picture of different but related forms of crime but also locates them in relation to one another. That continuum itself represents an assertion of the primacy of organization and then leads us to think of organizational theory as the key to white collar crime studies.

From the point of view of the actor, Rabe and Ermann (1996) show that corporate crime, which lies at a certain point along this continuum, is often not the result of rational choice to maximize profits but rather the result of a myriad of many choices whose final outcome could not have been predicted when they were made. Note that the very definition of "corporate crime" that places it at this point on such a continuum of complexity will tend to undermine any theory that assumes an actor's ability to grasp this complexity with all possible permutations and combinations. Such a definition will give strength to the assumption that behavior is the outcome of many small choices and perhaps short-sighted decision rather than an omniscient vision.

Another way to approach a continuum is through a continuum of analysis based on individual, organizational and societal levels of analysis (Coleman, 1992). Here one can see white collar crime in an individual context, then in an organizational context, then in a more total societal context. Coleman (1992) argues that combining these three different context gives an integrated picture.

Some synthetic definitions locate a phenomenon in terms of its correlates. A great deal of the confusion in efforts to define white collar crime may be traced to mistaking correlates with intrinsic, analytic properties and taking a synthetic definition for an analytic definition. Potter and Gaines' (1996) suggestion that characteristics differentiating between white collar crime and organized crime will become less relevant as we enter the 21st century leads us to wonder whether these particular characteristics should be considered properties or mere correlates. If they are properties, then white collar crime and organized crime are merging into one form of criminal activity. If they are simply correlates, then the two forms of crime will remain distinct. The question is: Are they intrinsic to our conception of white collar crime or do they only appear so because of their long association with the phenomenon?

Another example of synthetic definition can be seen in Simon's (1996) approach, which draws the notion of white collar crime into a much larger frame defined as elite deviance. By substituting the more vaguely defined notion of "deviance" for that of crime, he is able to incorporate many more of the phenomena with which he is concerned. He is forthright in admitting that this approach is guided in large part by his purpose, which is rooted in an underlying sociopolitical perspective not shared by some others involved in the collective effort to define white collar crime. Simon's approach admits the political interests guiding white collar crime studies from the time of Sutherland and treats white collar crime as a sort of rhetorical fabrication that can now be subsumed under the more satisfactory concept of elite deviance.

Some synthetic definitions define white collar crime in terms of causes. Thus, for example, Braithwaite (1992) traces white collar crime to inequality, although this also becomes for him the cause of crime in the streets. Inequality produces crimes of wealth motivated by greed enabled by goods for exchange. White collar crime becomes that form of crime emerging among those high in the social system when the system is based on exchange goods rather than use goods.

Although rejecting the term white collar crime in favor of the term occupational crime, Green (1990) provides an example of a causal, synthetic definition. He defines occupational crime as any act punishable by law which is committed through opportunity created in the course of an occupation that is legal. This definition makes opportunity a necessary condition if not an inexorable cause. Then it goes further and requires that a legal occupation be the original cause that created

the proximate cause in the shape of the opportunity itself in order for the behavior to be defined as occupational crime.

Conclusion

It seems more than clear from the above discussion that the definition of "white collar crime" is perhaps the most critical step in its understanding. It seems equally clear that different definitions spring from different perspectives and depend on different purposes. Perhaps we must not ask, "What is white collar crime?" as if assuming some correspondence notion that there is a reality corresponding to every term. The key question may be: How is the term used?

Failure to understand the meaning of a word is failure to see how the term, seen as part of a "language game," directs us one way and not another. The "games" that can be played with particular terms are patterns of social action, in this case patterns involving the social construction of theory, research and public policy. Thus, Robinson (1950) stresses that the best way to approach definition is as an activity. We ought to see all this as an ongoing activity guided by various perspectives and purposes. It is crucial that we maintain an appreciation of the differences in perspectives and purposes that are at play here.

Note that Potter and Gaines (1996) speak of the term "white collar crime" as a heuristic device that may actually misdirect research and theory absent sophistication about both language and the social reality of crime. That is why it is so important to remain sensitive to our differences even as we try to achieve a working, stipulative definition.

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GROUP **4** DISCUSSIONS

The following discussions focused primarily on the papers presented by Frank Hagan, David Friedrichs, Larry Nichols, Gary Rabe and Dick Ball. Comments related to other white collar crime definitional issues were welcome.

Simon Dave, you have a lot of problems with the idea of elites being part of any concept of white collar crime.

Friedrichs No. That's a very poor way to put it. It's a very important part. I share in your view that it's the most important part. What I am saying is that its unrealistic (to restrict the concept of white collar crime to elites) simply because over a period of more than half a century, whether we like it or not, all these constituencies and claims makers, that I have referred to, have preempted and applied the term in many, many different ways that had nothing to do with elites. As I said, without wanting to repeat myself, if we were back in 1939 we might conduct this whole Workshop on a different basis. But we're not. That being the case, while the elite are an extremely important part of the white collar crime concept, I find it problematic when one says that their activity only is white collar crime. In this view, "white collar crime" refers only, as some believe Sutherland intended, to the harmful activities of the elites of powerful corporations.

Simon I would agree with you, if that was the only definition of elites. But it is not. In fact, there are all kinds of ways to stratify elites. There are federal, state, and local elites. There are elites within different occupations, etc. etc.

Friedrichs Sure. But that still doesn't solve the whole problem.

Simon It seems to me that it goes a long way towards it.

Friedrichs Well, then you want to restrict it. There is no question that there are elites in different realms of the private and public sectors, but the fact remains that any meaningful conception of elite incorporates some really significant and dominant power. I think the only meaningful way to use the term elite, per se, is that elites are at the top of the pyramid, they have special powers, and they

are in a special category. Otherwise, we would be stretching the term elite to include all those who in any context may be privileged in any way; then I think you dilute that very important term elite. In that sense, both of us like to think we've been influenced by Mills, so let's not get too far from what Mills meant by elite. Certainly you aren't suggesting that Mills concept of elite was unrestrictive?

Simon Yes, I agree with you. In the specific sense that he meant it, it was restrictive. But I'm saying that the concept is elastic enough to be inclusive.

Friedrichs That's the wrong concept to stretch. I think the white collar crime concept is the one that, almost by nature, has to be stretched and used heuristically. But "elite" is precisely a concept and a term where it makes sense to maintain a focus. Those who have real power, the power elite; I mean to be restrictive in that way. It's a mistake to stretch and make elastic that particular concept.

Simon Two out of the last three presenters, have opened the Pandora's box of constructionism versus objectivism. Since you've (Larry Nichols) opened the door, it seems to me that there is a huge problem with constructionism. One that I tried to address in the eighth chapter of Elite Deviance. That is that the reason you need a concept like harm is because there are some near universal wrongs, that have been defined by every major religion and by almost every culture and in almost all periods of history. They include such things as murder, rape, incest, and theft. Arguably, I admit, there have been exceptions. The ancient Egyptian pharaohs and the medieval crown heads of Europe were incestuous. But these are as close to moral absolutes as we can get. They exist in almost all cultures.

Michalowski David, what do you mean they exist in almost all cultures? Incest is a culturally

variable thing. Highly variable. Rape is a highly variable thing. We are constructing the idea of incest but what it means, what murder means, all of those things are highly variable cross-culturally. They are not uniform.

Simon I did not say they were uniform. What I said was they are as close to uniform as we can get.

Michalowski No, they are as close to uniform as we can construct them retrospectively.

Simon I didn't say that the perspective was trash. I just said that I had problems with it because we are rapidly approaching the sociological correlate of the "old saw" in physics. Namely, if a tree falls in the forest and there is nobody around to hear it, does it still make a sound? By which I mean, if somebody is killed by an act that is not against the law, versus an act that is against the law, is the person who is killed still dead. And the answer to that question is of course they are. What I'm getting at here is that I have trouble with the constructionist view because many of the things that corporate executives and people in positions of power do that are harmful but are not against the law. Even Nathan Grayson, in his wisdom, has written an article about this criticizing the constructionist view of social problems in general. I agree with him. I really think that there are some objectivist kinds of measures that one can come up with which make problematic some of the constructionist assumptions.

Nichols I think there is degrees of relativism in constructionism. I don't consider myself a card-carrying constructionist in the narrow sense. I consider myself more of an interpretive sociologist or in cultural sociology. We attach meaning to our own experience; even Marx is a constructionist up to a point, saying that we create our own history through our experiences. You know, attaching meaning to our own actions, with the whole superstructure-substructure thing is

in a sense also very constructionist. It's true as you say within this realm of constructionism and Ray knows, there is a whole volume on reconsidering social constructionism. There are some people that would take it to an extreme, and say you can't consider context, for example. The voice of constructionism that I would try to work within is much more, I think, close to what you're talking about. You always have to consider whose facts. It's not to say that there are no facts, but it's a matter of whose facts and how are those facts constructed. In some of these things that we're talking about, like victimization, our whole sense of what victimization means today is different than what it meant fifty years ago, one hundred years ago, two hundred years ago. Even if we were just as liberal, as progressive, as enlightened as we are today. We are alert to things today that we would not have been alert to then. So today, things seem to us to be objective harm, whereas in the past they perhaps would not have been seen to be objective harm. I think that is strange. Being a constructionist, I think that the reconstructionism from my understanding is that you are kind of in a "synthesis state." I mean you are kind of turning it upside down from one point of view. The question is, how has it come to pass that acts you and I and many others might do, that might seem to be objectively harmful, have not be so defined by our law, by our media, by our society. Obviously, the answer here is that the elites, in a narrow sense, have had a disproportionate influence on how the law is constructed, how the media puts things across. I think there are certainly different strains of constructionism. But I think the value of a basic constructionist interpretation is that it permits us to ask how has that come to pass - that things which seem to objectively harm people are not clearly or precisely defined.

Michalowski But you also have to ask how did it come to pass? How did it come to pass that we think that these things objectively are harmful? My concern is two-fold. One, not to misrepresent the ontological record about things like murder and so

forth. But the other one is, I think, a dangerous step to say I am going to have to find an external trans-historical justification for the position, the political position, that I want to take. I think that there is a way in which we can argue that over time, over historical processes in the western world, there are certain ways of treating human beings that have come to be recognized as rights, socially constructed as rights. They are not God-given, they have been historically and socially constructed. A lot of people have struggled and died for those rights, and there is a clear historic process here, and one can defend those claims that these things are harmful without having to say it's not socially constructed. I think you actually give up a lot of the very ground that you want to hold by not tying your argument to the political history of the development of those things as wrongs.

Simon I have two questions for Gary Rabe. I didn't hear any definition of the word rational in your paper. But you talked about it from beginning to end.

Rabe We weren't trying to develop a definition of rationality, we're simply critiquing an economists's notion of rationality as being the calculation of benefits and costs, and any actions resulting from that were assumed to be rational. We were simply saying that's not true. So we weren't trying to define it.

Simon OK. My other question is you said that you were working on corporate crime and the example that you chose was the tobacco companies hiding the hazards of smoking. Is that or is that not criminal?

Rabe In a sense I was using those as synonyms. We talked about organizational misconduct or organizational wrong doing in his (Ermann's) text. In many instances, it simply may be a matter of time and we'll have organizational crime with the tobacco companies. I don't personally get too hung-up on the crime thing, where it has to be a violation of criminal law in order to be considered

criminal. Some people get-hung up on that, I don't. So, I should have clarified that.

Simon Why is it the case that definitions bother the legal professions so much in this sense. When they go into court what they are trying to argue is that violations of law have taken place and not violations of definitions of concepts.

Ball I hear a kind of constructionism that is being taught in some law schools. They say that your job is to go in court, construct a narrative, and persuade your listeners, your jury in particular, of the various points of your narrative. Your job is to reconstruct a narrative and get them to accept the points of your narrative; you can't take reality in there with you. If you prove the points of your narrative, you win the case. This may be a different way than you look at law, but that's what I keep hearing them say.

Michalowski For a number of years I worked with an attorney and we used to do a lot of employment Title VII cases, however, a case was never filed. The first thing that would happen, we would get together and say okay, let's construct a theory of this case. So you'd invent this whole thing basically.

Ball That's what they say. It's a very interesting thing. There is always supposed to be all these facts, and it's a issue of fictions. Facts are the least of anybody's concerns, I think, in law. Now some people might argue with that.

Simon The practice of law is a confidence scheme.

Ball Absolutely. Good old Abe. He said it.

Simon Abe also said that C. Wright got it right. I still believe that despite all this.

Anyway, in constructing typologies which was another way to arrive at a definition. Don't the typologies, what goes into them, have to fit some kind of criteria that has already been defined. Would that not be a definition?

Ball My approach, and I'm not sure I'm right about it, but my approach is to look for these underlying rules, background assumptions, whatever you want to call them. And to say that if you can figure out what your underlying rules are, your typology can be constructed out of those rules, and you can use a term to cover your types. Like white collar crime, but you don't have to reify the term. The term can remain a heuristic poetic reference, a metaphorical reference almost, to your typology. Some logicians would say that is a definition. Others would say that is not a definition. I won't call that a definition. I want an analytical, you know. But a lot of logicians would say that is an adequate definition if you got your typology constructed in accordance with certain criteria or rules that you can work with. That's good. As long as you know what you're doing - that's the name of the game. And your covering term's, a linguistic convenience, and you know what it is.

Friedrichs And what it isn't.

Ball And you know what it isn't. Which is very important.

Friedrichs There is almost a negative definition.

Ball Absolutely.

Michalowski Does that mean you work backwards from a typology then to a definition? In other words, you construct a typology, as David was suggesting, that obviously is operating by rules, however uncertain or unexpressed they may be. Once you construct the typology then, presumably could you not ask, "What were the

rules?’ And force the typology to answer the questions, what the definition really is.

Simon That’s kind of a reverse induction/deduction.

Ball Yes it is. It’s kind of what they call an abduction process. When you’re going to do it scientifically, then, not just like a logician would, but we would want to keep discovering what our rules were in constructing our typology by doing empirical research, and using the empirical data that we are discovering. William James calls it radical empiricism, allowing the empirical findings to affect our schema, our informational processing constructs. It’s allowing the world to alter your head, and your head to reinterpret the world. A constant feedback process and your rules are getting clarified in keeping with what you take to be empirical reality, which I also believe is constructed because of the nature of our optical systems.

Friedrichs I want to be sure we also allot some time for the other people in the room to also give their impressions of what they have heard. I hope some opportunity will be provided. Since they have been listening to a roomful of academics, they may be able to tell us if anything we’ve said makes sense to anybody but ourselves. Sometimes it doesn’t make complete sense to us!

Albanese I think Dick would agree. The problem is with using typologies absent a definition. I’m reminded of the Meese Commission on pornography during the 80’s, where they didn’t define pornography but they said this is a type, and this is a type, and this is a type. And you never know when you might come up with new examples if this is actually a type or not, because you have no reference point to compare it to. And as a result, typologies are notoriously fluid and kind of vague, because you don’t have a reference point to decide what’s going to be included in the typology and what isn’t.

Rabe I have a couple of things I would like to mention. Regarding the notion and comment about rationality and the definition of rationality. First, is this definition of white collar crime. If we want to get hung-up on this crime thing we include in this unethical acts. Well, those certainly aren't criminal acts. So do you drop the crime notion or you drop unethical? Simply by the way we've defined it, we're including acts that aren't necessarily criminal in the strict sense. And secondly, in light of my presentation, I think we need to drop the word "planned." They are not planned.

Friedrichs Incremental?

Rabe They are not thought-out rational processes.

Michalowski Planned implies the individual.

Coleman But is that a defining characteristic? We need planning in the definition. I don't think it's just extra verbiage. I think there is a lot of extra verbiage in there.

CONCLUSION

<i>Coming to Consensus</i>	351
<i>Closing Remarks</i>	353
Dick Johnston	

Coming to Consensus

After many hours of discussion and debate that continued over meals and after-hours, a group of Workshop participants went to lunch (on the second day) to talk even further about their points of agreement and disagreement. Based on the exchanges up to that point, Jay Albanese wrote what he thought might be a *consensus* definition, using the time-tested “napkin” approach in the restaurant. The napkin was passed around the table and changes were made as it circulated. A copy of this historic document is presented as a teaser in the opening pages of these Proceedings.

Surprisingly enough, those present ultimately agreed that the modified definition was one they could accept. The group finished lunch, went to Kinkos across the street, typed up the draft definition, copied it, and made a transparency. At the end of Frank Hagan’s presentation that afternoon, he presented the definition to the entire group.

On the morning of the third day, (three) group discussions were held. There was lively debate as each participant argued for or against specific words or phrases. When the groups reconvened, each group presented their ‘revised’ definition. More debate and discussion ensued with general consensus reached on the following operational definition of white collar crime:

“Illegal or unethical acts that violate fiduciary responsibility or public trust, committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain.”

Who said academics love to disagree?

Closing Remarks

Dick Johnston

I'll try and be brief, although it's not in my nature as Jim, Gary, and Kitty can tell you. I'm really more excited about this today than I was when I made my Introductory Remarks, because this product will be of great value to the Center as it evolves. I hope that it's of value to you, and I hope that this process was of value to you. When I speak of representing the interests of our members, one of the interests of our members is clearly to light a fire under activity in the academic world. And then, facilitate that energy to get more volume done with quality, hopefully, but more volume done on focusing research and expanded teaching in the area of whatever it is that we're going to call it. From our practical viewpoints we want to be a little more inclusive, but certainly white collar crime is the anchor of the whole thing. For lack of a better term, it's the Center's focus point of where the problem is perceived by most of our people, most of our member agencies. In that light, we want to offer to you to tell us if you want us to continue facilitating this type of (in person) forum. If you want to use our Web page, when it is up and running, as a different type of forum - a place where you can continue to interact on an on-going basis. That is a legitimate service and an intended goal of ours to do that for you. With regard to our own research efforts, and what we have to move forward in-house, obviously our efforts are going to have to go very quickly to the end of the spectrum on applied research for all the reasons I heard you cite. The concluding remarks that several of you made, I thought were right on target with understanding not only where you want to go as academics, but where we need to go as the Center. I don't think either of those objectives excludes the other. I think the only way to do it is simultaneously. So, we're happy to facilitate those kinds of things.

Without a whole lot of specificity that I can't provide at this point, because I don't want to raise levels of expectation, I am reasonably confident that in a two- or three-year period we are going to be able to get some people's attention that have some resources. And that we can allocate those resources among our services not excluding research, of course, which would be a primary recipient. In the meantime, we can develop partnerships for

specific projects and look for grant money and so on and so forth. I don't think there is any question that our particular position within the Justice Department probably lends some credibility or a little enhancement to anything that is going to go on there now. On the other hand, I have to tell you that our in-house research efforts are going to be focused more towards short-term, very specific, narrowly defined projects to put deliverables on the street. Because we have, quite frankly, an internal challenge in convincing this mass of practitioners that we service their needs and highly value academic involvement. Because it's been absent from their lives, the members haven't had any real success based on your research. So, that's what I want to deliver to them. Five years from now I want to deliver to them a body of research results that in fact can be translated into a real benefit to them. Either getting them attention, priority, resources, or all of the above. Whatever it is they need to go out and do more about the problem.

We have one axiom at the Center that we use quite regularly, and that is kick up the dust. We expect mistakes, so we also expect disagreement, and dialogue is always a good thing. Particularly in your environment. So, we're happy to facilitate and encourage that. I'm really delighted to see that several of you have expressed interest in looking at certain projects already that have a particular interest to you in the area of research. We'll be more than happy to do that and see how they mesh with our priorities and goals. I think that in terms of our internal research we need a comprehensive public perspective or opinion survey on their understanding of what all this is, and what it means in their lives. To get some baseline idea of where the public is at on that. We also need to look at the victims. Who are the victims? We know from the practitioners standpoint that there are basically two classes of victims that are head-and-shoulders above everyone else when it comes to the kind of crime that our members are involved in. One is the privileged class who primarily give up their funds through fraud and investments. The other is the elderly. Fraud against the elderly in this country right now is becoming a huge concern from the enforcement and government perspective. We are working very closely now with the criminal justice section of the American Association of Retired Persons (AARP) to start doing some really significant and badly needed training in that area. I think there's also an opportunity to do some better research in the area of the elderly. Because almost all of the survey work that's been done on

that population has been done by the AARP. Their surveys show that year after year crime is second or third or sometimes first on the list of concerns of their membership. So we need to look at that area.

We need to look at perpetrator profiles. Who commits white collar crime on a continually, recurring basis. I enjoyed the comment about the observation about do bad guys do more than one crime. Are there habitual white collar offenders? There are. At a gut level we know that, but I'm not sure we can demonstrate that. They travel from crime type to crime type, and often they are very seedy characters. There are virtually no personality differences between them and street criminals. They are just a little smarter in the tack they take for perpetrating their crime. So we've got to look at those kinds of things.

I want to go on and on and pontificate, but let me just say that we very much appreciate your participation, and we hope you have gained something from this workshop. We are quite willing to continue facilitating your dialogue. We hope that we will add to the numbers, at least in terms of facilitating an Internet exchange. You can now go forward and raise this issue and continue to keep things coming and ideas flowing. Because every time I've listened something has clicked for me that was not definitive before in terms of how we need to move our organization in helping our clientele. You need to let us know what that is and what you desire. So, please, your point of contact, is Jim Helmkamp and his section. Feel free to also contact Gary Lusher (Deputy Director) or myself if you have dialogue or adjunct things that you'd like to throw out. Refer people to us if you like. One of Jim's mandates is to develop a (information and data) clearinghouse. We know that there is information out there on economic crime that is available, but we don't think it's been assembled, at least access to it has not been focused at one point. So, we'd like to be that point and serve everyone that way. We have a bulletin board up we call FRAUDLINK. You all are invited to join that if you like. The modules are primarily designed for helping our member agencies, but at one point in time when we were discussing the evolution of a consortium, one of the things that the people we contacted said would be beneficial to academics was a designated place to put unpublished articles in and let their colleagues beat up on them. That, of course, could be done. I think those have since evolved, and you are probably sharing those in different ways now. Anything else you can come to us with that can help you that is not

overly resource intensive, we'd just love to help you do it. You need to be on with your march, and it will have great benefits to our goals and objectives down the line. We need to support that, and we will support that.

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